

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-218846**DATE:** November 4, 1985**MATTER OF:** Western Painting Contractors -
Davis-Bacon Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had falsified certified payroll records and induced several of its employees to rebate substantial portions of their back wages. Based on our independent review of the record in this matter, we conclude that the subcontractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and rebate inducement was intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated October 9, 1984, recommended that the names Western Painting Contractors (Western Painting) and William C. DeHaven, individually and as Owner, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. We concur in DOL's recommendation.

Western Painting worked as a subcontractor, doing painting and related work, for the Veterans Administration under contract No. V567C-174. The subcontract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the subcontractor was to submit payroll records certified as to correctness and completeness.

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The DOL found as a result of an investigation that employees of Western Painting were not paid the minimum wages required by the Davis-Bacon Act. Further, the DOL found that the certified payrolls were falsified and incomplete, and that employees were induced to rebate portions of their back wages awarded under a prior investigation. The DOL informed us that by certified letters dated February 29, 1984, Western Painting was given detailed notice of the violations with which it was charged, including a statement that debarment was possible. The certified letter also gave Western Painting an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that the certified letter was returned by the U. S. Postal Service with the notation "Not deliverable as addressed - unable to forward," but that a copy of the letter was received by Western Painting's attorney. However, no hearing was requested. After reexamining the record, DOL found that Western Painting violated the Davis-Bacon Act without any factors militating against debarment.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employess under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations", not requiring debarment, and "substantial violations", requiring debarment. We noted that "technical violations" result from inadvertence or legitimate disagreement concerning classification while "substantial violations" result from intentional actions exhibiting bad faith or gross carelessness in observing the minimum wage obligations to employees. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Bryant Paint Contracting, Inc., B-217337, May 23, 1985, 64 Comp. Gen. ____.

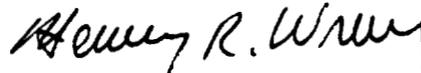
Based on our independent review of the record in this matter, we conclude that Western Painting disregarded its obligations to its employees under the Davis-Bacon Act. There were substantial violations of the Act in that the underpayments of employees were intentional as demonstrated by Western Painting's bad faith in the falsification of certified payroll records and inducement of employees to rebate portions of their back wages awarded as a result of a prior investigation. The evidence shows that Mr. DeHaven

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was involved in these activities. See Bryant Paint Contracting, Inc., B-217337, 64 Comp. Gen. _____, supra; Cal Walt's Incorporated a/k/a K A & B Industries, Inc., B-217940, September 19, 1985.

Therefore, Western Painting Contractors, and William C. DeHaven, individually and as Owner, will be included on a list to be distributed to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.

Further, we find no reason to object to the payment of the wage claimants involved. Accordingly, the funds on deposit with our Office -- \$5,850.38 -- are ordered to be disbursed to the wage claimants in accordance with established procedures.



Henry R. Wray
Associate General Counsel