DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-217810 **DATE:** November 27, 1985

MATTER OF: Industrial Engineers, Inc. -- Davis-Bacon Act Debarment

DIGEST:

1. The Department of Labor (DOL) recommended debarment of a contractor under the Davis-Bacon Act (Act) because the contractor had falsified certified payroll records, and failed to pay its employees the appropriate rates of compensation. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees was intentional and the certified payrolls were falsified. Therefore, the contractor will be debarred under the Act.

2. Pursuant to § 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a(a) (1982), workers have a statutory entitlement to certain wage rates which are not subject to contractual modifications, and indeed which are not waivable by the workers. Even if the workers here did attempt to waive their statutory entitlements, the contractor is still liable for their full payment. Thus, the contractor's argument that the employees agreed to such contractual modifications of their wage rates constitutes no defense to violating the Davis-Bacon Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter to the Comptroller General dated December 17, 1984, recommended that the names Industrial Engineers, Inc., and Robert H. Chabot, individually and as President of Industrial Engineers, Inc., be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982). For the following reasons, we concur with DOL's recommendation and order its implementation.

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Industrial Engineers, Inc., performed work as a subcontractor under four contracts (N62472-81-C-0413, N62472-80-C-0150, N62472-80-C-0212, and 50-3K15-2-3). The first three of these contracts were with the Department of the Navy and the fourth was with the Department of Agriculture. All of these contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a), Industrial Engineers, Inc., was to submit payroll records certified as to correctness and completeness.

As a result of an investigation the DOL found that several violations of the Davis-Bacon Act were committed by Industrial Engineers, Inc. On all of the contracts listed above, Industrial Engineers failed to pay all of its employees the minimum wages required by the Davis-Bacon Act. Other violations were also uncovered during the investigation. Some employees performed work on the projects but were not listed at all on the certified payrolls that were submitted. Some employees were paid all or part of the wages in cash but not necessarily at the required minimum rate. Payrolls were prepared and certified so that it appeared that proper wages were being paid. On one project, an individual brought a crew to the job to work for Industrial Engineers, and accepted lump-sum cash payments which he then distributed in unknown shares to his crew. Finally, even when Robert H. Chabot, President of Industrial Engineers, agreed to make restitution for one project, he tried to deduct amounts allegedly loaned to employees from the checks proffered as restitution. In summary, the record of the investigation is rife with examples of what appear to be intentional violations of the Davis-Bacon Act and the governing regulations. The DOL computed the gross amount found due to be $60,480.08, all of which has been paid to the affected employees.

At the conclusion of its investigation the DOL notified Industrial Engineers, Inc., of the violations with which it was charged by certified letter dated October 26, 1984, together with an admonition that debarment was possible. Further, Industrial Engineers, Inc., was given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that while the record indicates that the letter was received, no hearing was requested. After reexamining the record, DOL found that Industrial Engineers,

Inc., and Mr. Robert H. Chabot violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Industrial Engineers, Inc., and Robert H. Chabot, individually and as President of Industrial Engineers, Inc., be placed on the debarred bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. For the following reasons, we concur in this recommendation.

Section 3(a) of the Davis-Bacon Act, 40 U.S.C. § 276a-2(a) (1982), authorizes the Comptroller General to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

In a certified letter dated February 20, 1985, Mr. Robert H. Chabot, President of Industrial Engineers, Inc., has presented certain matters for our consideration. In essence, he argues that his firm and he should not be debarred. The assertions in his letter tend to emphasize equitable reasons why his firm and he should not be debarred rather than contesting the existence of the violations of the Davis-Bacon Act which DOL alleges to have occurred.

In his letter, Mr. Chabot observes that he has made full restitution to the workers involved. The record we have received from DOL confirms this. However, by making full restitution, a contractor is merely doing what it was already legally required to do. Making restitution does not negate the violations of the Davis-Bacon Act which have occurred, nor does it necessarily militate against the imposition of the debarment sanction.

Mr. Chabot argues further that "[t]he payment of low wages to our employees was to their full knowledge. The[y] agreed to work at this rate so that we could obtain jobs and keep busy." In this regard section 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a(a) (1982), in relevant part, provides:

> "[E]very contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work * * *." (Emphasis added.)

As is evident from the plain wording of this statute, the workers involved here had a statutory entitlement to certain wage rates which are not subject to contractual modifications, and indeed which are not waivable by the workers. Even if the employees did attempt to waive their statutory entitlements to their appropriate wage rates, nevertheless, under section 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a(a) (1982), the contractor is still liable for their full payment.

Mr. Chabot also argues that some of the low wage rates were created by a former officer manager. He further argues that he had no knowledge of this, and that when he found out that this office manager was forming a business of her own doing the same line of work, he immediately terminated her employment. These assertions, however, appear inconsistent with Mr. Chabot's arguments that the lower wages were openly agreed to so as to obtain additional jobs.

Finally, Mr. Chabot argues that the restitution which he made has imposed economic hardship on his firm, his family and himself, and that the imposition of the debarment sanction would compound these difficulties. But, of course, debarment is a penal sanction designed to impose economic hardship.

Based on our independent review of the record in this matter, we conclude that Industrial Engineers, Inc., and Robert H. Chabot, individually and as President of Industrial Engineers, Inc., disregarded their obligations to their employees under the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Industrial Engineers' bad faith in the falsification of certified payroll records. In addition, the record demonstrates that Industrial Engineers, Inc., intentionally failed to pay its employees at the statutorily required compensation rates. We do not find that the arguments raised by Mr. Chabot in his letter to us are sufficient to militate against imposition of the debarment sanction for these substantial violations of the statute.

Therefore, we order that the names Industrial Engineers, Inc., and Robert H. Chabot, individually and as President of Industrial Engineers, Inc., 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.

Milton J. Socolar

for Comptroller General
of the United States