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DECISION



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

FILE: B-219270 **DATE:** December 23, 1985

MATTER OF: Concrete Applicators, Inc. -
Davis-Bacon Act Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay the minimum wages required by the Act and had falsified certified payroll records. 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 and falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

The Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated March 22, 1984, recommended that Concrete Applicators, Inc. (Concrete Applicators), and Rainier T. Rose, individually and as its President, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. § 276a to 276a-5 (1982), and of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), which constituted a disregard of obligations to employees under these Acts. We concur in DOL's recommendation.

Concrete Applicators performed work under contract number DABT56-81-C-0136 with the Department of the Army doing roof repair work. This contract 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 firm was to submit payroll records certified as to correctness and completeness.

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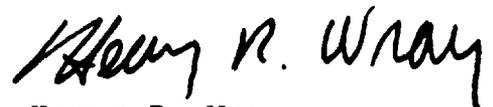
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The DOL found, as a result of an investigation, that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified to conceal the minimum wage violations, and that the contractor did not pay its employees proper overtime compensation. The DOL informed us that a certified letter dated November 21, 1983, was sent to Concrete Applicators advising in detail of the violations with which it was charged, and that debarment was possible. Further, Concrete Applicators was given 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 record evidences the fact that the letter was received. No hearing was requested.

Based on our independent review of the record in this matter, we conclude that Concrete Applicators disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Concrete Applicator's bad faith in the falsification of certified payroll records. See Circular Letter B-3368, March 19, 1957. Further, Concrete Applicator failed to pay its employees proper overtime compensation.

Therefore, Concrete Applicators, Inc., and Rainier T. Rose, individually and as its President, will be included on a list to be distributed to all departments of the Government. 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, funds on deposit with our Office--\$1,100.34-- are ordered to be disbursed to the wage claimants in accordance with established procedures.



Henry R. Wray
Associate General Counsel