

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE:** B-222076**DATE:** April 7, 1986**MATTER OF:** Alamo Fence Company - Davis-Bacon Act
Debarment**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had underpaid employees and had falsified certified payroll records. 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 was intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated September 9, 1985, recommended that the names Alamo Fence Company, Alamo Fence Installers (Alamo), and Gary F. Maluski, 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). For the following reasons, we concur with DOL's recommendation and order its implementation.

Alamo performed work as a subcontractor under a contract (NAS10-10935) with the National Aeronautics and Space Administration. The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Furthermore, pursuant to 29 C.F.R. § 5.5(a) (1985), the contractor was to submit payroll records certified as to correctness and completeness.

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, and that employees were not paid overtime compensation at the rate prescribed by the Contract

035049

Work Hours and Safety Standards Act. The DOL computed the gross amount found due to be \$14,909.31, all of which has been paid to the affected employees.

At the conclusion of its investigation, the DOL notified Alamo and Mr. Maluski of the violations with which they were charged by certified letter, together with an admonition that debarment was possible. Further, Alamo and Mr. Maluski were given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b). The DOL reported to us that although this letter was received by Alamo and Mr. Maluski, no hearing was requested.

After reexamining the record, DOL found that Alamo and Mr. Maluski had violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Alamo Fence Company, Alamo Fence Installers, and Gary F. Maluski, individually and as owner, 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.

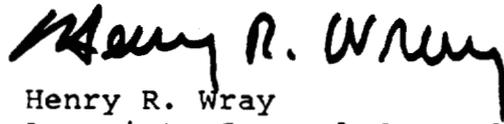
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence 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.

Based on our independent review of this matter, we conclude that Alamo and Mr. Maluski disregarded their obligations to 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 Alamo's and Mr. Maluski's bad faith in the

B-222076

falsification of certified payroll records. In addition, the record shows that Alamo and Mr. Maluski failed to pay employees proper overtime compensation.

Accordingly, we order that the names Alamo Fence Company, Alamo Fence Installers, and Gary F. Maluski, individually and as owner, 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 such publication.


Henry R. Wray
Associate General Counsel