



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Rams-Head Construction, Inc. - Davis-Bacon Act -
Declination to Debar
File: B-222063
Date: August 13, 1986

DIGEST

The Department of Labor recommended debarment of a contractor and two of its officers under the Davis-Bacon Act because the contractor had underpaid wages to its employees. Based on our independent review of the record, we find insufficient evidence that the underpayment constituted a substantial violation of the Act. Accordingly, neither the contractor nor its two officers will be debarred under the Act.

DECISION

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), has submitted a recommendation that the names Rams-Head Construction, Inc. (Rams-Head), Walter S. Ramsey, individually and as President, and Mel Barth, individually and as Vice President, 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 reasons that follow, we disagree with DOL's recommendation and consequently decline to debar Rams-Head and its officers. However, we order that the funds on deposit with our Office in this matter be distributed to the affected workers.

The record shows that Rams-Head performed excavation work under a contract (DACW59-79-C-0118) with the Corps of Engineers in Bolivar, New York. This contract was subject to the Davis-Bacon Act requirement 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.

As a result of an investigation, DOL found that Rams-Head and its officers had underpaid employees in violation of the Davis-Bacon Act. Specifically, DOL found that, between February 1980 and August 1982, two employees spent part of their time working as power equipment operators and should have been paid for that time at the operators' rate of \$12.62 per hour. Instead they were classified as laborers and paid at the hourly rate of \$9.79. Further, DOL found that paychecks issued by Rams-Head

for 4 workweeks in July 1982 were returned for insufficient funds, although, during the next month, the firm paid the employees the amounts it owed them. Next, DOL found that seven employees were not paid any wages for the workweeks ending August 4, 11, and 18, 1982, and that, for the same weeks, the firm failed to maintain accurate records of the employees' hours and to submit certified payroll records. Additionally, DOL found that Rams-Head had violated the Copeland Act, 40 U.S.C. § 276c, by requiring certain employees to contribute money for the firm's supplies and equipment without any reimbursement.

The DOL's investigative materials contain a letter to the department from Walter S. Ramsey, President of Rams-Head, stating that the firm withheld the employees' wages for the workweeks ending August 4, 11, 18, 1982, because it suspected that the employees had misrepresented the hours they had worked. Mr. Ramsey explained that representatives of Rams-Head had visited the contract site in Bolivar on August 17, 1982, discovered that "virtually no contract work had been accomplished in the last month," and learned that weather conditions on many of the days in question would have prevented the employees from working the hours they had claimed. The investigative report also summarizes several interviews with Mel Barth, Vice President of Rams-Head, in which Mr. Barth alleged that he had made several unsuccessful attempts to settle the work-hours dispute with the seven employees whose wages had been withheld. Mr. Barth stated that the firm had not submitted any certified payroll records for the workweeks in question because such a submission would have amounted to "fraud."

After completing its investigation, DOL notified Rams-Head, Mr. Ramsey, and Mr. Barth of the violations with which they were charged by certified letter, together with an admonition that debarment was possible. Further, Rams-Head, Mr. Ramsey, and Mr. Barth were given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1985). The DOL reported to us that although this letter was received by Rams-Head, Mr. Ramsey, and Mr. Barth, no hearing was requested.

After reexamining the record, DOL determined that Rams-Head owed its employees back wages in the amount of \$9,927.14. Further, DOL recommended that the names Rams-Head Construction, Inc., Walter S. Ramsey, individually and as President, and Mel Barth, individually and as Vice President, be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We disagree with this recommendation.

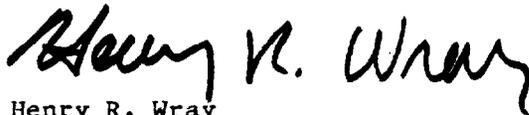
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obliga-

tions to employees under the Act. 40 U.S.C. § 276a-2 (1982). 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.

Based on our independent review of the record, we conclude that there is insufficient evidence that Rams-Head, Mr. Ramsey, or Mr. Barth willfully violated the labor standards provisions of the Davis-Bacon Act. While it appears that Rams-Head misclassified two of its employees, there is nothing in the record to show that this misclassification was intentional. Furthermore, although Rams-Head issued nonnegotiable paychecks for several workweeks in July 1982, the record shows that, during the next month, the firm made full restitution for those checks. Additionally, it appears that the firm's failure to pay certain employees for 3 workweeks in August 1982, as well as its failure to maintain accurate timesheets for those weeks, may have resulted from a legitimate disagreement concerning the employees' work hours. Finally, while the firm failed to submit certified payroll records for the disputed workweeks in August 1982, there is nothing in the record to indicate that the firm falsified any of its payrolls.

Under these circumstances, we conclude that the record fails to establish that Rams-Head, Mr. Ramsey, or Mr. Barth committed substantial violations of the Davis-Bacon Act. Accordingly, we decline to debar Rams-Head, Mr. Ramsey, and Mr. Barth.

The record contains no indication that Rams-Head or its officers have attempted to contest DOL's determination concerning the amount of back wages due to the workers. This, combined with the lack of proof of payment, is sufficient to establish that the employees were underpaid the amounts in question. See C. Brantingham and Associates, B-219040, November 25, 1985. Accordingly, the funds on deposit with our Office will be distributed to the workers involved in accordance with established procedures.



Henry R. Wray
Associate General Counsel