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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

B-188274-O.M., Feb 24, 1977

JAN 25 1977

CLAIMS DIVISION

PA-Z-2716691-204

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The Comptroller General

Herewith is the file pertaining to violations of the Davis-Bacon Act, 40 U.S.C. 276a, by Nassau Contracting Company, and Mr. Warren C. Mickle, owner, incident to the performance as a subcontractor on General Services Administration Contract No. GS-01B(PBO)-1619 covering painting of Government buildings located in Essex, Suffolk and Middlesex Counties, Massachusetts.

Contract No. GS-01B(PBO)-1619 was awarded to the firm of S. Rosenthal & Son, Inc., which engaged the Nassau Contracting Company, owned by Mr. Warren C. Mickle, to perform the work called for in the contract. Although no formal written subcontract was executed, the subcontractor wholly performed on the contract. Mr. Marshall Rosenthal, President of the prime contracting firm, stated that he provided Mr. Mickle with specifications and the approved wage schedules. Mr. Mickle states that he was familiar with Government specifications as he had worked on other federal contracts. However, it is unclear whether Mr. Mickle was aware of the Labor standards provisions of the Davis-Bacon Act.

The violations were discovered incident to an investigation conducted by the General Services Administration as a result of employee complaints. The record disclosed that the Nassau Contracting Company failed to pay the prevailing wage rates and fringe benefits to its employees performing on the above contract. Mr. Mickle failed to submit the required certified payrolls for the period of the contract until after full payment had been made to the prime contractor, and subsequent inspection revealed numerous instances of record falsification to simulate compliance with the provisions of the Davis-Bacon Act. As a result of the investigation, Mr. Mickle voluntarily made partial restitution of unpaid wages totaling $3,505.34 to his employees. However, these payments were insufficient to satisfy back wage liability, and the amount of $1,299.82 remains due four aggrieved employees. Since the firm refused to make further voluntary restitution, and all monies due under the contract had previously been paid to the prime contractor, the General Services Administration was unable to withhold any funds on behalf of the employees for transmittal to this Office.

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Mr. Mickle, as owner of the firm, was advised of the alleged violations and offered an opportunity to rebut the charges. However, no response from the firm was forthcoming. Accordingly, the entire record was reexamined, and the Department of Labor concluded that the firm and Mr. Mickle had not demonstrated a responsibility to comply with the labor standards provisions applicable to federally funded construction work, and that the record did not disclose any acceptable reason or explanation which would mitigate against the imposition of debarment sanctions.

Therefore, the Department of Labor has recommended that the names of Nassau Contracting Company, and Mr. Warren C. Mickle, individually and as its owner, be placed on the Davis-Bacon Act portion of the ineligible bidders' list. The question of possible debarment is submitted for your consideration and instructions.

H. J. Shaham

Chief, Payment Claims Branch

B-188274-O.M.

FEB 24 1977

INDORSEMENT

Director, Claims Division

Returned. The evidence of record is insufficient to establish that the subcontractor expressly or impliedly agreed to the labor standards provisions of the prime contract. Obligations under the Davis-Bacon Act, 40 U.S.C. § 276a, come into being only by virtue of contractual provisions and are not directly imposed by operation of the statute. 40 Comp. Gen. 565 (1961). In the absence of wage stipulations in the subcontract, the subcontractor had no binding obligation to employees under the Davis-Bacon Act. B-183197-O.M., September 18, 1975, B-169841-O.M., July 23, 1970. This being the case, the subcontractor cannot be found to have willfully disregarded its obligations under the Act.

Accordingly, debarment should not be imposed.

Paul G. Dembling

Paul G. Dembling
General Counsel

Attachment