



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

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Debarment Resulting From Davis-Bacon Act Violation } *14733*

B-199610

August 26, 1980

FINDING

In the matter of *(Melton Griffin doing business as AMCO Painting and Drywall, Barry, Texas.*

DLG05147

Section 1 of the Davis-Bacon Act of August 30, 1935, 49 Stat. 1011, 40 U.S.C. § 276a (1976), provides in part that--

"The advertised specifications for every contract in excess of \$2,000, to which the United States * * * is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States * * * and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics * * * and every 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 * * *."

Section 3(a) of the act provides that--

"* * * the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees.

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and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms."

Contract No. DACA 63-76-C-0215 in excess of \$2,000 for the painting of the United States Army Reserve Center, Houston, Texas, was awarded by the Department of the Army to AMCO Painting and Drywall. According to the record, the contract contained the stipulations and provisions required by section 1 of the Davis-Bacon Act.

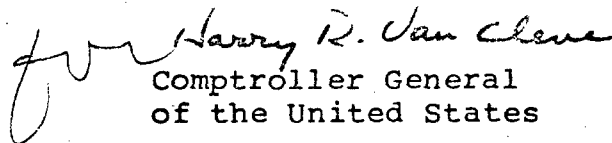
An investigation conducted by the United States Army revealed that the contractor, Melton Griffin, doing business as AMCO Painting and Drywall, having full knowledge of his statutory and contractual responsibilities, did nevertheless disregard these obligations as evidenced by his failure to pay five of his employees the prescribed Davis-Bacon wage rate. The employees were found to have been underpaid a total of \$16,163.13 in violation of the terms of the Davis-Bacon Act. The record indicates that certified payrolls which contained false information designed to simulate compliance with the applicable labor standards requirements were submitted to the contracting agency.

The record also indicates that the contractor, in an apparent attempt to circumvent the labor standards requirements, entered into subcontracting arrangements with three of his employees for performance of work under the contract. We recognize that the Davis-Bacon Act does not cover bona fide subcontractors (only their employees). However, we agree with the Department of Army's position that the employees in question were not bona fide subcontractors and were therefore, subject to the Davis-Bacon Act. There were no written agreements or other documents to substantiate the subcontract agreements. Also, in the certified payrolls, which cover most of the contract period, these individuals were treated as employees. Aside from these facts, there is no evidence that the individuals had prior experience as subcontractors or had any other indicia of a bona fide subcontractor such as a business address or company equipment.

By letter of November 28, 1978, the Deputy Administrator, Employment Standards Administration, Wage and Hour Division, United States Department of Labor, detailed the nature and extent of the violations and offered the contractor an opportunity to rebut the allegations. The contractor requested an informal hearing pursuant to section 5.6(c)(i), title 29, Code of Federal Regulations (CFR). This informal hearing between the contractor and the Department of Labor representatives was held on May 24, 1979, and was presided over by the Assistant Regional Administrator, who issued a ruling sustaining the investigative finding and recommending imposition of debarment sanctions. Although the contractor was advised of his right to file objections to the Assistant Regional Administrator's ruling, no appeal was taken.

Under the circumstances, we must conclude that the contractor's falsification of the payrolls and his attempted circumvention of labor standards requirements by attempting to subcontract the contract work to his employees constitutes a willful intent to underpay his workers in violation of the Davis-Bacon Act. The Department of Labor has recommended debarment.

We, therefore, find that Melton Griffin, doing business as AMCO Painting and Drywall, has disregarded "obligations to employees" within the meaning of the Davis-Bacon Act. Accordingly, these names will be included on a list for distribution to all agencies of the Government pursuant to statutory requirements and no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they or either of them has an interest until 3 years have elapsed from the date of publication of such list.


Harry R. Van Cleave
Comptroller General
of the United States