

DECISION

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

FILE: B-221776**DATE:** March 26, 1986**MATTER OF:** El Greco Painting General Contractors, Inc.**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay its employees the minimum wages required by the act, had misclassified some employees, had not paid overtime to some employees, and had falsified certified payroll records. Based on an independent review of the record in this matter, it is concluded that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the falsification of the records appears intentional. Therefore, the contractor is debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor, by letter dated March 15, 1985, recommended that El Greco Painting General Contractors, Inc., and Paul Boutsikakis, individually and as President of El Greco Painting General Contractors, Inc. (hereafter referred to as El Greco Painting) be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to its employees under the Act. For the reasons that follow, we concur with the Department's recommendation, order its implementation and further order that the funds on deposit with our Office in this matter be distributed to the workers involved in accordance with established procedures.

El Greco Painting worked as a contractor under Contract No. DTCG26-83-C-00011 which called for work to be done on the Fire Island Coast Guard Station, Bay Shore, New York. As a means of monitoring compliance with these provisions and pursuant to 29 C.F.R. § 5.5(a)(3)(ii), El Greco Painting

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was required to submit weekly payroll records certified to be correct and complete.

The Department of Labor found as a result of an investigation of El Greco Painting's performance that El Greco Painting had failed to pay its employees the required prevailing rate. In this regard, according to the applicable Wage Decision (No. NY81-3048, with Modification 1), employees performing work as carpenters were to receive an hourly rate of \$13.65, laborers to receive \$15.80, painters to receive \$16.38 and tile-setters to receive \$14.92. Instead, El Greco Painting paid hourly rates from \$7 to \$10.52. The investigation also disclosed that some employees did not receive overtime compensation for their hours worked in excess of 8 in a day or 40 in a week. In addition, the investigation disclosed that El Greco Painting had misclassified some of the employees and was therefore not paying the employees the correct applicable rates.

Furthermore, the Department of Labor investigation disclosed that the submitted certified payrolls falsely reflected compliance with the labor standards provisions. The certified payrolls indicated hours worked that were less than the actual hours worked and falsely showed payment of the required prevailing wages.

By certified letter dated January 5, 1985, the Department of Labor notified El Greco Painting of the violations with which it was charged and admonished that debarment was possible. Further, El Greco Painting was given an opportunity for a hearing before an administrative law judge pursuant to 29 C.F.R. § 5.12(b). El Greco Painting did not respond to the Department of Labor. After reexamining the record, the Department of Labor recommended that the names El Greco Painting General Contractors, Inc. and Paul Boutsikakis as President of El Greco Painting General Contractors 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.

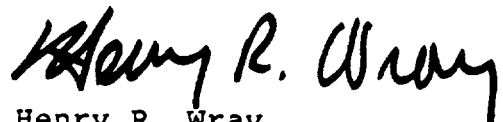
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he finds have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2 (1982). In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate

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disagreement concerning classifications 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., THP Plumbing and Mechanical, B-219703, December 17, 1985.

Based on our independent review of the record in this matter, we conclude that El Greco Painting General Contractors, Inc., and Paul Boutsikakis as President of El Greco Painting, disregarded their obligations to their employees in that underpayment of the employees was intentional as demonstrated by El Greco Painting's bad faith in falsification of certified payroll records.

Therefore, we order that the names El Greco Painting General Contractors, Inc., and Paul Boutsikakis as President of El Greco Painting General Contractors, Inc., 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 publication of such list.


Henry R. Wray
Associate General Counsel