



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

Phillips
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B-199257

August 14, 1980

FINDING

In the matter of Atlantic Electric, Inc., and
Gene Spencer, president.

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 amount 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

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[Obligations to Employees]

the names of persons or firms whom he has found to have disregarded their obligations to employees 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. DAHA02-77-C-0015, in excess of \$2,000, for the conversion of hanger No. 2, Sky Harbor International Airport, Phoenix, Arizona, was awarded by the National Guard Bureau of the Departments of the Army and Air Force to Edelbrock Development and Construction, Phoenix, Arizona, which later became H. G. Toll Company. The contract contained the stipulations and provisions required by section 1 of the Davis-Bacon Act.

A subcontract was awarded to Atlantic Electric, Inc., Scottsdale, Arizona, for the electrical work on the project. The subcontract incorporated the stipulations and provisions of the Davis-Bacon Act.

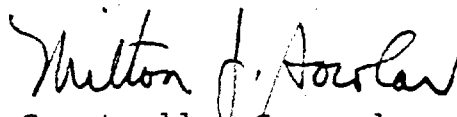
An investigation conducted by the Wage and Hour Division, United States Department of Labor, disclosed that the subcontractor, Atlantic Electric, Inc., having full knowledge of its statutory and contractual responsibilities, did nevertheless disregard these obligations as evidenced by the deliberate payment of subminimum wage rates to persons employed by it on the subject project. As a result of this investigation, 32 employees were found to have been underpaid a total of \$57,483.20 in violation of the terms of the Davis-Bacon Act. The record indicates that payrolls certified by Gene Spencer as president were submitted to the contracting agency containing false information designed to simulate compliance with the applicable labor standards requirements.

At the conclusion of the investigation, Atlantic Electric, Inc., disputed the findings and requested a hearing in accordance with section 5.11(b), part 5, of the Code of Federal Regulations. In his decision dated October 19, 1979, the Administrative Law Judge concurred in the investigation's findings. By certified letter, dated March 20, 1980, the Deputy Administrator, Employment Standards Administration, Wage and Hour Division,

United States Department of Labor, notified the subcontractor in detail of the nature and extent of the labor standards violations charged against the firm and offered the subcontractor an opportunity to submit arguments against the imposition of debarment, but the postal service advised that the letter was "unclaimed."

It is clear, particularly in light of the falsification of the certified payrolls, that good faith was not shown in complying with the Davis-Bacon Act. The Department of Labor has recommended debarment.

We therefore find that Atlantic Electric, Inc., and its president, Gene Spencer, have 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 and, pursuant to statutory direction, no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they have an interest until 3 years have elapsed from the date of publication of such list.



For the Comptroller General
of the United States