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DECISION



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

FILE: B-216848

DATE: April 4, 1985

MATTER OF: Kosmos Ltd. Painting - Substantial
Violations of the Davis-Bacon Act

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act; there was a substantial violation of the Act in that the underpayment of employees was intentional as demonstrated by the contractor's bad faith in the falsification of certified payroll records. Therefore, the contractor will be debarred under the Act.

The Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated November 21, 1983, recommended that the names Kosmos Ltd. Painting (Kosmos) and Peter J. Tripousis, individually and as owner of Kosmos, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982). For reasons that follow, we concur in DOL's recommendation.

Kosmos entered into three contracts (N62474-80-C-0878, N62474-79-C-3290, and N62474-81-B-2409) with the United States Navy to provide painting services. These contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a)(3) (1984), the contractor was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees performing work for Kosmos under these contracts were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that Kosmos falsified the certified payroll records as to hourly rates and amounts paid and omitted several employees from those payroll records. Mr. Peter J. Tripousis, as the owner of

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Kosmos, by a certified letter dated September 6, 1983, was given notice in detail of the nature and extent of the Davis-Bacon Act violations with which Kosmos was charged, and that debarment sanctions seemed warranted; and was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. § 5.12 (1984). The DOL reports that Mr. Tripousis made no response to this offer, which DOL states its certified mail receipt indicates he received. Thereafter, DOL reexamined the entire record, finding that, "the firm has not demonstrated a current responsibility to comply with the labor standards provisions applicable to federally funded construction work, and the record does not indicate any acceptable reason or explanation regarding these serious violations which would mitigate against debarment action."

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. The DOL recommended that Kosmos and Mr. Tripousis, individually and as owner of Kosmos, be debarred for violations of the Davis-Bacon Act constituting a disregard of obligations to the employees under the Act. In B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, 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., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Kosmos Ltd. Painting and Peter J. Tripousis, individually and as owner of Kosmos, disregarded their obligations to their employees under the Davis-Bacon Act; there was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Kosmos' bad faith in the falsification of certified payroll records. Therefore, the names Kosmos Ltd. Painting and Peter J. Tripousis, individually and as

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owner of Kosmos Ltd. Painting, will be included on a list to 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.

for *Harry R. Van Cleave*
Comptroller General
of the United States