

DECISION

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

31782

FILE: B-197903**DATE:** July 26, 1985**MATTER OF:** FMC Painting - Davis-Bacon Act - Debarment**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had failed to pay the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the subcontractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and falsification of records was intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated August 7, 1984, recommended that FMC Painting (FMC), and Charles Moskowitz, individually and as owner, be placed on the ineligible 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 employees under the Act. We concur in DOL's recommendation.

FMC performed work under contract DACA51-80-C-0059, with the Department of the Army, doing painting and other related work. The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the firm was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that FMC failed to maintain a complete and accurate record of the daily and weekly hours worked and that certified payrolls were falsified to conceal the minimum wage violations. The DOL informed us that a certified letter dated April 27, 1984,

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was sent to FMC advising in detail of the violations with which it was charged, and that debarment was possible. Further, FMC was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1984). The DOL reported to us that the letter to FMC was received, but the firm has not requested a hearing. After reexamining the record, DOL found that FMC violated the Davis-Bacon Act without any facts militating against debarment. Therefore, DOL recommended that FMC Painting, and Charles Moskowitz, individually and as owner, be placed on the ineligible bidders list for violation 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 has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter 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 payrolls is a basis for debarment under the Davis-Bacon Act. Bryant Paint Contracting, Inc., B-217337, May 23, 1985.

Based on our independent review of the record in this matter, we conclude that FMC disregarded its obligations to its 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 FMC's bad faith in the falsification of certified payroll records. These records were signed by Charles Moskowitz to be complete and accurate.

Therefore, FMC Painting, and Charles Moskowitz, individually and as owner, will be included on a debarred bidder's list to be distributed to all departments of the Government. Pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any

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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.

A handwritten signature in cursive script, reading "Henry R. Wray".

Henry R. Wray
Associate General Counsel

Memorandum

July 26, 1985

*MA Paul
2/27-1*

TO : Group Director, GGD - Claims Group

FROM : Associate General Counsel - Henry R. Wray

*H.R. Wray*SUBJECT: FMC Painting - (A Davis-Bacon Act case) -
B-197903-O.M.

Returned herewith is your file Z-2808505(1). We have reviewed the record in this matter and find no reason to object to the payment of the workers involved. Accordingly, the funds on deposit with your office may be disbursed in accordance with established procedures. The Department of Labor should be notified when payment of the funds has been made.

Further in accordance with the attached decision, FMC Painting, and Charles Moskowitz individually, and as owner, are to be placed on the ineligible bidders list pursuant to 40 U.S.C. § 276a-2 of the Davis-Bacon Act.

Attachment(s)



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

*MA. Law
RST-I*

OFFICE OF GENERAL COUNSEL

B-197903

July 26, 1985

Mr. Charles Moskowitz
FMC Painting
250 West 57th Street
New York, New York 10019

Dear Mr. Moskowitz:

Enclosed is our decision of today holding that FMC Painting, and Charles Moskowitz individually, and as owner, have disregarded their obligations to their employees under the Davis-Bacon Act in the performance of contract DACA51-80-C-0059, with the Department of the Army.

FMC Painting, and Charles Moskowitz individually, and as owner, will be included on a list to be distributed to all departments of the Government. 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 that list.

Sincerely yours,

A handwritten signature in cursive script, reading "Henry R. Wray".

Henry R. Wray
Associate General Counsel

Enclosure(s)