

DECISION

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

FILE: B-216863

DATE: August 5, 1985

MATTER OF: J & M Electric, aka East Coast Electric Corp. - 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 and overtime compensation 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 Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated April 23, 1982, recommended that J & M Electric, aka East Coast Electric Corp. (J & M), and John Essig, 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), and of the Contract Work Hour and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), which constituted a disregard of obligations to employees under these Acts. We concur in DOL's recommendation.

J & M performed work as a subcontractor under contracts F-28609-78-C-0027 and DACA51-79-C-0040, with the Departments of the Air Force and Army doing electrical and other related work. 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) (1984), the firm was to submit payroll records certified as to correctness and completeness.

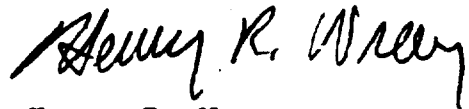
The DOL found as a result of an investigation that employees were not paid the minimum wages required

pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified to conceal the minimum wage violations, and that the subcontractor did not pay its employees proper overtime compensation. The DOL informed us that a certified letter dated December 2, 1981, was sent to J & M advising in detail of the violations with which it was charged, and that debarment was possible. Further, J & M was given an opportunity to rebut the allegations at an informal proceeding in accordance with 29 C.F.R. § 5.6(c) (1981). The DOL reported to us that the letter to J & M was returned by the U.S. Postal Service with the notation "forwarding time expired." After reexamining the record, DOL found that J & M violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that J & M Electric, aka East Coast Electric Corp., and John Essig, individually and as owner, 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 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 payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Morgan Plumbing and Heating, B-217329, June 7, 1985.

Based on our independent review of the record in this matter, we conclude that J & M 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 J & M's bad faith in the falsification of certified payroll records. Further, J & M failed to pay its employees proper overtime compensation. The payroll records were signed by John Essig, President.

Therefore, J & M Electric, aka East Coast Electric Corp., and John Essig individually, and as owner of J & M Electric, aka East Coast Electric Corp., will be included on a debarred bidders 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 such list.



Henry R. Wray
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