

**DECISION**

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

**FILE:** B-218856

**DATE:** August 8, 1985

**MATTER OF:** Breeze Contractors, Inc. - A Davis-Bacon  
Act Debarment

**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had underpaid employees 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 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 March 4, 1985, recommended that the names Breeze Contractors, Inc., and George Clark Weyuker a/k/a George Clark individually and as President, 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. For the reasons that follow, we concur in DOL's recommendation.

Breeze Contractors, Inc., performed work as a subcontractor under contract No. DTCG-26-83-C-00002 at Governors Island, New York, doing plumbing work. This 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 contractor 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. The DOL informed us that by certified letter dated January 14, 1985, Breeze Contractors, Inc., was given notice in detail of the violations with which it was charged, and that debarment

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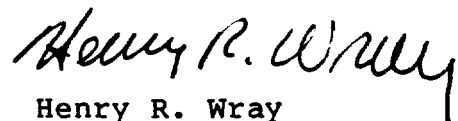
was possible. Breeze Contractors, Inc., was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1984). The DOL reported to us that while this letter was received, no hearing was requested.

After reexamining the record, DOL found that Breeze Contractors, Inc. violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the name Breeze Contractors, Inc., and George Clark Weyuker a/k/a/ George Clark individually and as President, 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 were 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 Breeze Contractors, Inc., disregarded its obligations to 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 Breeze Contractors, Inc.'s, bad faith in the falsification of certified payroll records.

Therefore, Breeze Contractors, Inc., and George Clark Weyuker a/k/a George Clark individually and as President, will be included on a list of ineligible bidders 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  
Associate General Counsel