

DECISION



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

31917

FILE: B-217706

DATE: August 9, 1985

MATTER OF: Marvin Black Masonry - 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 contrary to labor standards provisions incorporated into the subcontract by reference. 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 November 5, 1984, recommended that Marvin Black Masonry and Marvin Black, 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.

FACTS

Marvin Black Masonry performed work as a subcontractor under prime contract No. DACA09-83-C-0033 with the Department of the Army, Corps of Engineers. Under that contract masonry construction was done on the Vehicle Maintenance Facility at Nellis Air Force Base, Nevada. The prime contract was subject to the Davis-Bacon Act requirement that certain minimum wages be paid. The Davis-Bacon minimum wage provisions were incorporated into Marvin Black Masonry's subcontract by a general reference, although specific references to the Act's requirements or to prevailing wage rates were not made. As a means of monitoring compliance with the minimum wage provisions, and pursuant to 29 C.F.R. § 5.5(a)(3)(ii) (1984), the firm was

032805 / 127616

required to submit payroll records certified to be correct and complete.

DOL found, as a result of an investigation, that 10 employees of Marvin Black Masonry were not paid the minimum wages required by the applicable prevailing wage rate determination. Additionally, DOL found that certified payrolls were falsified in order to conceal the underpayments. Mr. Black, when confronted with these allegations in the course of the investigation, readily admitted both the underpayment and falsification violations. He qualified his admission, however, with the claim that he knew nothing of the Davis-Bacon Act requirements when he submitted bids for the job and first became aware of them when he was notified by the prime contractor that the first certified payroll submitted by Marvin Black Masonry, showing the actual rates paid, would need to be revised to show the correct prevailing wage rates. Without paying additional wages to his employees, Mr. Black corrected the payroll record upward and continued to submit falsified payroll records throughout the duration of the contract performance. At the final investigative conference with the compliance officer, Mr. Black stated that all wages due underpaid employees would be paid. Complete payment was made on April 24, 1984.

By certified letter of August 24, 1984, DOL notified Marvin Black Masonry and Mr. Black of the apparent violations and of the possibility of debarment. In that same letter Marvin Black Masonry was offered an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984), to determine whether debarment action should be taken under the Davis-Bacon Act. DOL has reported to us that this letter was received but no hearing has been requested. DOL has therefore reexamined the record and found that Marvin Black Masonry violated the Davis-Bacon Act and that no circumstances weigh against debarment of the subcontractor and its President.

DISCUSSION

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he finds have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2 (1982). The obligations imposed by the Act at 40 U.S.C. § 276a come into being only through their

identification in contractual provisions and are not directly imposed by operation of the statute. 40 Comp. Gen. 565 (1962). This Office has held, however, that a subcontractor may be bound by the stipulations and representations required by 40 U.S.C. 276a where these Davis-Bacon Act obligations are incorporated into the subcontract by reference. B-191962, June 13, 1978.

In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" and "substantial violations" of the Davis-Bacon Act. A technical violation results from inadvertence or legitimate disagreement concerning employee classification under the prevailing wage provisions. Substantial violations, on the other hand, are intentional and characterized by bad faith or gross carelessness in fulfilling Davis-Bacon Act obligations to employees. See B-3368, *supra*. A violation that is "substantial" is grounds for debarment. Failure to pay the minimum wages required by the Act, coupled with the falsification of certified payroll records, is a substantial violation of Davis-Bacon Act obligations and a basis for debarment. See, e.g., Danham Roofing Co., Inc., B-217705, July 24, 1985.

While Mr. Black denied knowledge of the Davis-Bacon Act requirements, evidence in the record belies this assertion. The Act's provisions were incorporated into the subcontract by general reference. Furthermore, there is evidence in the record that Mr. Black informed his employees that they were to be paid more than the applicable wage determination required, while they were in fact paid less. The evidence in the record points clearly to the conclusion that Marvin Black, as President of Marvin Black Masonry, was aware of his obligations under the Davis-Bacon Act, yet failed to fulfill them. It is clear, particularly in light of the fact that Mr. Black admitted that he deliberately paid his employees less than was called for by the applicable wage determination and that he falsified the certified payroll records in order to conceal the underpayment, that bad faith was shown in Marvin Black Masonry's failure to comply with the Act. See B-200979, March 25, 1981.

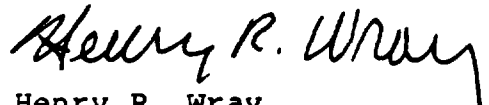
CONCLUSION

Based on our independent review of the record in this matter, we conclude that Marvin Black Masonry disregarded its obligations to its employees under the Davis-Bacon Act.

B-217706

There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Marvin Black Masonry's bad faith in the falsification of certified payroll records. These payrolls were signed by Mr. Black.

Therefore, the names of Marvin Black Masonry and of Marvin Black, 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 at 40 U.S.C. § 276a-2 (1982) 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 the publication of such list.


Henry R. Wray
Associate General Counsel