

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20541

FILE: B-217857

DATE: August 28, 1985

MATTER OF: S & W General Contractors, Inc.

DIGEST:

1. The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records, failed to pay its employees overtime compensation, and had committed other violations. 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. Therefore, the contractor will be debarred under the Act.
2. Where, as here, the funds on deposit with GAO which have been withheld by a contracting officer pursuant to § 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a(a) (1982) are insufficient to cover the amount due to the workers involved, the amount available should be distributed on a pro-rata basis among them.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated December 5, 1984, has recommended that S & W General Contractors, Inc. (S & W), and Warren Reddix, individually and as President of S & W, be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), and the Copeland Act, 40 U.S.C. § 276c (1982). For the following reasons, we concur with DOL's recommendation, order its implementation, and further order that the funds on deposit with our Office in this matter be distributed to the workers involved.

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S & W performed work under contract number F16602-82-C0027 with the Department of the Air Force. 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, the contractor was to submit payroll records certified as to correctness and completeness. We note that the record also demonstrates that CHWSSA and the Copeland Act imposed additional requirements. Since GAO's function under these two Acts is only ministerial, we will, as requested by DOL, put S & W and its President on the debarred bidders list for violations of those two Acts.

As to the Davis-Bacon Act, the DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to that Act. Further, DOL found, among other things, that S & W, which was under the direction of Mr. Reddix, submitted certified payrolls that were falsified and incomplete, and that employees were not paid overtime compensation under the Contract Work Hours and Safety Standards Act. The DOL notified S & W and Mr. Reddix of the violations of which they were charged by certified letter, together with an admonition that debarment was possible. Further, S & W and Mr. Reddix were given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1983). The DOL reported to us that the letter was returned by the United States Postal Service with the notation "unclaimed." However, on March 1, 1984, the DOL was able to deliver the letter by hand to Mr. Warren Reddix, President of S & W. Mr. Reddix did not subsequently request a hearing. After reexamining the record, DOL found that S & W violated the Davis-Bacon Act without any factor militating against debarment. Therefore, DOL has recommended that S & W and Warren Reddix, individually and as President of S & W, be placed on the debarred bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We concur in the recommendation.

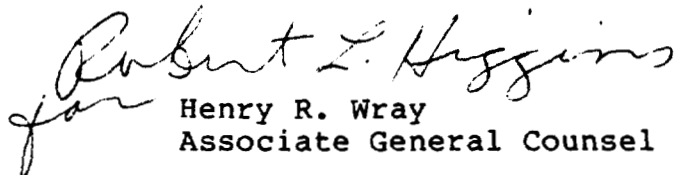
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate 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 S & W, and Warren Reddix, individually and as President of S & W, disregarded their obligations to their employees under the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by S & W's bad faith in the falsification of certified payroll records. In addition, the record indicates that S & W, which was under the direction of Mr. Reddix, failed to pay its employees overtime compensation and several other Davis-Bacon Act violations.

Accordingly, we order that the names of S & W General Contractors, Inc., and Warren Reddix, individually and as President of S & W General Contractors, Inc., be placed 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.

Further, we order that the funds on deposit with our Office be disbursed to the workers involved in accordance with established procedures. Since the \$8,434.86 on deposit with our Office is insufficient to cover the \$9,066.49 due to the workers, the amount available should be distributed on a pro-rata basis among them. Kruger Aluminum & Brass Foundry, Inc., B-217170-O.M., February 13, 1985. Finally, as requested by DOL, we also order that the foregoing names be placed on the debarred bidders list for violations of the CWHSSA and the Copeland Act in addition to the violations of the Davis-Bacon Act.


for Henry R. Wray
Associate General Counsel