

DECISION



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

FILE: B-215953

DATE: August 29, 1985

MATTER OF: Brent Greenwood Painting -- Davis-Bacon Act
Debarment - Reconsideration

DIGEST:

1. The Department of Labor (DOL) recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay its employees 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 contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and subsequent falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

2. DOL requested reconsideration of our previous decision not to debar subcontractor. At the time this case was originally decided, there was nothing in the record to indicate that the subcontract contained the labor standards provisions of the prime contract or that DD Form 1566, which incorporates these labor standards provisions into the subcontract was executed. With its letter requesting reconsideration, DOL has enclosed a copy of DD Form 1566 signed by the subcontractor. Thus, DOL has shown that the subcontract was subject to the requirements of the Davis-Bacon Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated January 9, 1985, has asked that our Office reconsider our previous conclusion in B-215953-O.M., October 15, 1984, that there was no proper basis for debarment of Brent Greenwood Painting (Greenwood), and its owner,

C. Brent Greenwood. For reasons that follow, we have reconsidered it, and we now concur with DOL's recommendation that Greenwood should be debarred and we order its implementation.

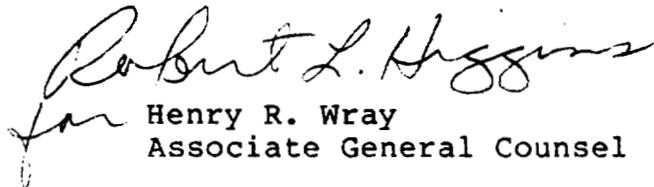
In regard to our previous decision in this matter, the record at that time contained nothing to indicate that the subcontract entered into by Greenwood contained the labor standards provisions of the prime contract or that DD Form 1566, which incorporates these labor standards provisions into the subcontract, was executed. As an enclosure to its letter requesting reconsideration, DOL has supplied a copy of DD Form 1566 signed by C. Brent Greenwood, which acknowledges that the subcontract included the Davis-Bacon Act prevailing area wage and payroll reporting requirements. Thus, DOL has shown that Greenwood's contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, Greenwood was required to submit weekly payroll records certified as to correctness and completeness.

Greenwood performed work as a subcontractor under contract number F42650-82-C-3503, with the Department of the Air Force for repair of a building at Hill AFB, Utah. The DOL found as a result of an investigation that Greenwood failed to pay certain of its employees (painters), the prevailing area wage rates for all their hours of work on the contract. Greenwood also failed to pay overtime compensation to four employees who were entitled to it for work in excess of 8 hours per day. Further, DOL found that Greenwood's certified payrolls, which were signed by C. Brent Greenwood, were falsified and incomplete. The DOL notified Greenwood of the violations with which it was charged by certified letter, together with an admonition that debarment was possible. Further, Greenwood was given an opportunity for a hearing before an administrative law judge pursuant to 29 C.F.R. § 5.12(b). The DOL reported to us that while the record indicates that the letter was received, no hearing was requested. After reexamining the record, DOL found that Greenwood violated the Davis-Bacon Act without any factor militating against debarment. Therefore, DOL recommended that Greenwood and C. Brent Greenwood, individually and as owner of Greenwood, 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. We concur in this recommendation. We note that the record indicates that Greenwood has made restitution to the affected employees.

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 Greenwood and C. Brent Greenwood, individually and as owner of Greenwood, disregarded their obligations to their employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayments of employees was intentional as demonstrated by Greenwood's bad faith in the falsification of certified payroll records, which were signed by C. Brent Greenwood. In addition, the record indicates that Greenwood failed to pay the required minimum wages and overtime compensation.

Therefore, we order that Brent Greenwood Painting and C. Brent Greenwood, individually and as owner of Brent Greenwood Painting, 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.


for Henry R. Wray
Associate General Counsel