

DECISION

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

FILE: B-217856**DATE:** September 18, 1985**MATTER OF:** C and C Roofing Company - Davis-Bacon Act -
Debarment**DIGEST:**

The Department of Labor (DOL) recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay 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 falsification of records was intentional. Therefore, the contractor is ordered debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated January 16, 1985, recommended that the names C and C Roofing Company (C and C), and Joseph Cholewa, individually and as its president and owner, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982). We concur in DOL's recommendation.

C and C performed work under contract number N62472-79-C-0143 with the United States Navy, doing roofing 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, specifying, among other things, wage rates paid for each worker.

The DOL alleged, as a result of an investigation, that employees were not paid the required Davis-Bacon Act minimum wages. Further, DOL alleged, as a result of its investigation, that C and C falsified certified

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payrolls to show the payment of wage rates higher than those actually paid. The DOL notified C and C by a certified letter dated September 8, 1982, of the nature and extent of the alleged Davis-Bacon Act violations with which it was charged, and that debarment was possible. C and C was also given an opportunity for a hearing on the matter before an administrative law judge. Such a hearing was requested.

The hearing was held on October 15, 1984. It resulted in a decision (C and C Roofing Company, Case No. 83-DBA-73, Office of Administrative Law Judges, United States Department of Labor (November 14, 1984) (Rippey, A.L.J.)) recommending debarment. The administrative law judge found that employees were not paid the required Davis-Bacon Act minimum wages. He also found that C and C falsified certified payrolls to show the payment of wage rates higher than those actually paid. The administrative law judge's opinion summarizes his findings and conclusions as follows:

"The undersigned is of the opinion that the Respondents should be debarred. Mr. Cholewa admitted to deliberately falsifying the payroll records to simulate compliance with the Act. This admission coupled with actual payment of wage rates less than those shown in the records and substantially lower than the wage rates required under the contract and the Act demonstrates a willful disregard of the statutory and contractual requirements. * * * Moreover, the record demonstrates that Mr. Chowela deliberately failed to cooperate in the investigation of the violation by withholding requested documents and by failing to meet with or return any of the Compliance Officer's phone calls. Mr. Cholewa's testimony that fear prohibited him from cooperating in the investigation is understandable in light of his admission that he falsified the payroll records but fear does not excuse his uncooperate [sic] behavior during the investigation; it only

demonstrates further his willful violation of the contract and the Act. Thus, where Respondents have admitted willful violations of the Act any subsequent compliance or restitution of backwages do not militate against a recommendation that Respondents be relieved from the ineligible list sanctions."

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 which show gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payrolls is a basis for debarment under the Davis-Bacon Act. See, e.g., J & B Painting Company, B-217327, June 7, 1985.

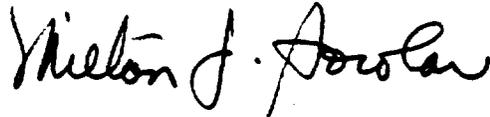
Based on the DOL administrative law judge's findings and conclusions, as well as our independent review of the record, we conclude that C and C disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by C and C's bad faith in the falsification of certified payroll records.

The record evidences that Mr. Joseph Cholewa signed the falsified payrolls. As president and owner of C and C, he exercised control and supervision of C and C's business and was responsible for employment practices and management policies. Therefore, we find that C and C Roofing Company, and Joseph Cholewa, individually and as its president and owner, have disregarded their obligations to employees under the Davis-Bacon Act. The names C and C Roofing Company, and Joseph Cholewa, individually and as its president and owner, are ordered included on a list to be distributed to all departments of the Government.

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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, the funds on deposit with our Office--\$18,000--are ordered to be disbursed to the wage claimants in accordance with established procedures.



Acting Comptroller General
of the United States