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DECISION



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

FILE: B-218740

DATE: October 21, 1985

MATTER OF: C.E.S. Engineering, Inc. -
Davis-Bacon Act Debarment

DIGEST:

The Department of Labor 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 nonpayment of employees and subsequent falsification of records was intentional. The contractor further demonstrated bad faith by refusing to cooperate in the compliance investigation. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated November 15, 1984, recommended that C.E.S. Engineering, Inc. (C.E.S.) and Robert E. LaZar, individually and as President of C.E.S., 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

C.E.S worked as a contractor for painting and refinishing floors under two contracts with the United States Air Force. Contract Number F27604-83-C0009 called for work to be done on Military Family Housing at Pease Air Force Base, New Hampshire. The other contract, Number F27604-83-C0015, called for work to be done on the Base Office Buildings, also at Pease Air Base. Both contracts were explicitly subject to the Davis-Bacon Act requirement

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that certain minimum wages be paid. The wage rate determinations applicable were Numbers 83-NH-4 and NH-83-3011. These determinations required that painters working on Military Family Housing receive at least \$6.16 an hour, while those working on Base Office Buildings were required to be paid at least \$12.10 an hour. As a means of monitoring compliance with the minimum wage provisions, and pursuant to 29 C.F.R. § 5.5(a)(3)(ii) (1984), C.E.S. was required to submit payroll records certified to be correct and complete.

DOL found, as a result of an investigation, that about 30 employees of C.E.S. who had worked on the Pease Air Force Base contracts were not paid the minimum wages required by the applicable prevailing wage rate determinations. Nine painters on the Base Office Building contract were paid the lower Military Family Housing contract rate of \$6.16 an hour. Five painters on the Military Family Housing contract were not paid for all of the hours they worked. At least 16 underpaid employees were paid with checks which were nonnegotiable due to insufficient funds. Additionally, DOL found that payrolls certified by Mr. LaZar, President of C.E.S., did not accurately reflect the number of hours worked or the rates paid. The failure of C.E.S. to segregate the payrolls by contract compounded these inaccuracies. Mr. Lazar, when confronted with these allegations in the course of the investigation, vehemently denied them and did not cooperate with the compliance officer in order to remedy the apparent inconsistencies between the allegations in the record and his denial.

By certified letter of July 11, 1984, DOL notified C.E.S. and Mr. LaZar of the apparent violations and of the possibility of debarment. In that same letter C.E.S. 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. The DOL has reported to us that their letter was received but no hearing has been requested. The DOL has therefore reexamined the record and found that C.E.S. violated the Davis-Bacon Act and that no circumstances weigh against debarment of the contractor 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). 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. 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. Even absent an intentional violation, gross carelessness on the part of an employer in fulfilling Davis-Bacon Act obligations may be a substantial violation. Family Construction Company, B-217330, June 7, 1985, 64 Comp. Gen. _____. Furthermore, the failure of the contractor to cooperate in the compliance investigation is an indication of bad faith. B-217330, supra.

While Mr. LaZar denied the alleged violations of the Davis-Bacon Act by C.E.S., evidence in the record points to both blatant underpayment of employees and a complicated, systematic falsification of certified payrolls to conceal underpayments of hourly wages and to avoid overtime payments. Employees' statements and check stubs support the allegations of underpayments, nonpayment, and payment with nonnegotiable checks. Finally, Mr. LaZar's refusal to cooperate with the compliance officer in the course of the investigation demonstrates bad faith in C.E.S.'s failure to comply with the Act.

CONCLUSION

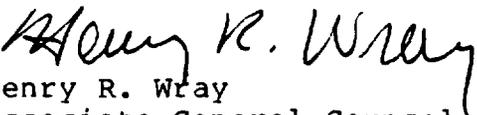
Based on our independent review of the record in this matter, we conclude that C.E.S. Engineering, Inc. disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by C.E.S.'s bad faith in the falsification of payrolls certified by Mr. LaZar and in his refusal to cooperate in the compliance investigation.

Therefore, the names of C.E.S. Engineering, Inc. and of Robert E. LaZar, individually, and as President of C.E.S., 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)

B-218740

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.

Finally, we find no reason to object to the payment of the workers involved. Accordingly, application of this decision will be further effected by directing our Claims Group to disburse the funds on deposit with our Office in accordance with established procedures.


Henry R. Wray
Associate General Counsel