

DECISION



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

TWTC/MSS
PLM-1

FILE: B-218861

DATE: November 4, 1985

MATTER OF: Kap Coating, Inc. - Davis-Bacon Act Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records and forged employee receipts. 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.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated February 25, 1985, recommended that the names Kap Coating, Inc. (Kap Coating), Kathleen A. Peckham, individually and as Owner, and William Peckham, individually and as Manager, 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. We concur in DOL's recommendation.

Kap Coating worked as a subcontractor, doing painting and related work, under two contracts (DACA-09-82-C-0043, U.S. Army Corps of Engineers, and FO4684-82-C-0030, U.S. Air Force). These contracts were subject to the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982). Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the firm was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees of Kap Coating were not paid the minimum wages required by the Davis-Bacon Act. Further, DOL determined that no certified payrolls were submitted under contract DACA-09-82-C-0043; that those certified payrolls submitted under contract FO4684-82-C-0043 were falsified; and that employee receipts for wages paid in cash submitted under

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contract FO4684-82-C-0043 were forged. The DOL also found a minor violation of the Contract Work Hours and Safety Standards Act based on Kap Coating's failure to pay employees proper overtime compensation. By certified letter dated January 7, 1985, DOL gave Kap Coating detailed notice of the violations with which it was charged, including a statement that debarment was possible. The certified letter also gave Kap Coating an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). 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 Kap Coating violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Kap Coating, Inc., Kathleen A. Peckham, individually and as Owner, and William Peckham, individually and as Manager, 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. For the reasons that follow, we concur in this recommendation.

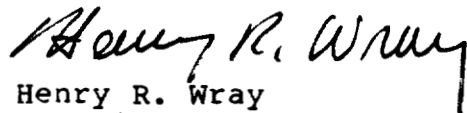
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations," not requiring debarment, and "substantial violations," requiring debarment. We noted that "technical violations" result from inadvertence or legitimate disagreement concerning classification while "substantial violations" result from intentional actions exhibiting bad faith or gross carelessness in observing the minimum wage obligations to employees. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Bryant Paint Contracting, Inc., B-217337, May 23, 1985, 64 Comp. Gen. ____.

Based on our independent review of the record in this matter, we conclude that Kap Coating disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Act in that the underpayments of employees were intentional as demonstrated by Kap Coating's bad faith in the falsification of

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certified payroll records and forgery of employee receipts. The evidence shows that Ms. Peckham and Mr. Peckham participated in these activities.

Therefore, the names Kap Coating, Inc., Kathleen A. Peckham, individually and as Owner, and William Peckham, individually and as Manager, will be included 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.


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