

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-219723**DATE:** April 7, 1986**MATTER OF:** All Seasons Plumbing -  
Davis-Bacon Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor 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, we conclude that the subcontractor disregarded its obligations to its employees under the Act. There were substantial violations of the Act in that the underpayment of employees and subsequent falsification of records were intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated June 21, 1985, recommended that the names of All Seasons Plumbing, and Jeffrey W. Rayl, individually and as President and owner, be placed on the ineligible bidders list for having committed violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under section 3(a) of the Act. For the reasons stated later, we concur with the recommendation made by DOL.

All Seasons Plumbing performed plumbing work as a subcontractor under contract No. V610C-341 for the Veterans Administration (VA) Medical Center in Marion, Indiana. This contract was subject to the provisions of the Davis-Bacon Act, as amended. By virtue of the provisions of section 3(a) of the Davis-Bacon Act, 40 U.S.C. § 276a-2(a) (1982), All Seasons Plumbing was required to pay the various classes of laborers and mechanics employed under the VA contract certain minimum wages and to submit payroll records certified as to correctness and completeness. These requirements were also included in the specifications set forth in the contracts.

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Based upon its investigation, DOL concluded that All Seasons Plumbing did not pay its plumbers and laborers prevailing wage rates for classifications of work they performed as required by the Davis-Bacon Act. Further, DOL found that the subcontractor employed two apprentices on the project who were not registered in accordance with the provisions of 29 C.F.R. § 5.5(a)(4). In addition, All Seasons Plumbing submitted certified payroll records which falsely reflected the payment of the required wage rates. The payroll records were certified as being correct and complete by Jeffrey W. Rayl as President.

The DOL has informed this Office that by certified letter to Mr. Rayl dated April 12, 1985, All Seasons Plumbing was given notice, in detail, of the violations with which it was charged and that debarment could result if it did not respond within thirty (30) days of the date of the letter. The subcontractor was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b). The DOL reported that although the subcontractor received this letter, no hearing was requested. The DOL also reported that the prime contractor has made full restitution of the back wages due the underpaid employees.


After reexamining the record, DOL determined, as applicable here, that All Seasons Plumbing and Mr. Rayl violated the provisions of the Davis-Bacon Act, without stating any factors which might militate against debarment. The DOL therefore recommended the debarment action as outlined earlier.

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 were 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., Steel Erectors, Inc., 64 Comp. Gen. 591 (1985) and Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based upon our independent review of the record in this matter, we conclude that All Seasons Plumbing and Jeffrey W. Rayl, individually and as President and owner, disregarded their obligations to their employees under the Davis-Bacon Act. The underpayment of employees as evidenced by the failure to pay the prevailing wage rates for the classifications of work performed was intentional as demonstrated by bad faith on the part of All Seasons Plumbing in the falsification of certified payroll records. Further, All Seasons Plumbing employed two apprentices who were not properly registered.

Therefore, the names of All Seasons Plumbing, and Jeffrey W. Rayl, individually and as President and owner, will be included on a list to be distributed to all departments of the Government. 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.

Inasmuch as the prime contractor has made full restitution of back wages due the employees who were underpaid, no distribution of funds is required.

  
Henry R. Wray  
Associate General Counsel