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18318 PHILLIPS
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-201627

May 29, 1981

FINDING

In the matter of Top Electric Company, Inc.,
and Mr. William E. Toll, its president.

Section 1(a) of the Davis-Bacon Act of August 30, 1935, 49 Stat. 1011, 40 U.S.C. § 276a (1976), provides in part as follows:

"The advertised specifications for every contract in excess of \$2,000, to which the United States * * * is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States * * * and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics * * * and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics * * *."

Section 3(a) of the act provides that--

"* * * the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms

whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms."

Contract No. DACA51-75-C-0183, in excess of \$2,000 for an addition to the United States Army Cold Storage Research and Engineering Laboratory, Hanover, New Hampshire, was awarded by the Department of the Army on June 30, 1975, to the Edward R. Marden Corporation, Alston, Massachusetts. The contract contained the stipulations and representations required by section 1 of the Davis-Bacon Act.

A subcontract was awarded to Top Electric Company, Inc., on July 11, 1975, for the furnishing of electrical work. The stipulations and representations required by the Davis-Bacon Act were incorporated by reference.

An investigation conducted by the Department of Labor as the result of a complaint by one of the subcontractor's employees disclosed that the subcontractor, Top Electric Company, Inc., having full knowledge of its statutory and contractual responsibilities, did nevertheless disregard these obligations as evidenced by the deliberate payment of subminimum wage rates to persons employed by it on the subject project. As a result of this investigation it was determined that five employees were classified and paid as apprentices when, in fact, only one of these employees was registered in a bona fide apprenticeship program. Consequently, it was determined that since the other four employees were not registered in an approved apprenticeship program, they had been underpaid. The fact that one of its employees was registered in an approved apprenticeship program coupled with the fact that the subcontractor had, in 1975, been investigated for alleged violations of the Davis-Bacon Act and found to be in compliance,

indicates that the subcontractor was aware of the requirements of the Davis-Bacon Act, but chose not to comply with these requirements. The subcontractor refused to make restitution.

By certified letter dated May 16, 1979, the Deputy Administrator, Wage and Hour Division, United States Department of Labor, notified the subcontractor in detail of the nature and extent of the labor standards violations charged against the firm. Although the certified mail receipt indicates that the Department of Labor's letter had been received, no facts in rebuttal or argument against debarment were submitted by the subcontractor in response to the letter.

We, therefore, find that Top Electric Company, Inc., and Mr. William E. Toll, individually, have disregarded "obligations to employees" within the meaning of the Davis-Bacon Act. Accordingly, these names will be included on a list for distribution to all agencies of the Government pursuant to statutory requirements and no contract shall be awarded to them or to any firm, corporation, partnership, joint venture or association, in which they or either of them has an interest until 3 years have elapsed from the date of publication of such list.

Milton J. Rosler
Acting Comptroller General
of the United States



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

B-201627

May 29, 1981

Mr. William E. Toll
President
Top Electric Company, Inc.
14 Avon Road
Norwood, Massachusetts 02062

Dear Mr. Toll:

Enclosed is a copy of our finding of today that Top Electric Company, Inc., and Mr. William E. Toll, individually, have disregarded obligations to employees within the meaning of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), in the performance as a subcontractor on contract No. DACA51-75-C-0183 at the United States Army Cold Storage Research and Engineering Laboratory, Hanover, New Hampshire.

Pursuant to the provisions of section 3(a) of the act, the names of the above firm and individual shall be included on our next published list of ineligibles and no Government contract will be awarded to either of them or to any firm, corporation, partnership, or association in which they or either of them has an interest until 3 years have elapsed from that date.

Sincerely yours,

Shilton J. Sourlas

Acting Comptroller General
of the United States

Enclosure

18318

Indorsement

B-201 27-O.M.

May 29, 1981

Associate Director, AFMD-Claims Group

Returned. Top Electric Company, Inc., and its president, Mr. William E. Toll, individually, are being notified of debarment for violation of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), in accordance with the attached letter and finding (copies), and these names should be included on the next published list of ineligibles.

The funds on deposit with your office should be disbursed to the aggrieved workers in accordance with established procedures.



Acting Comptroller General
of the United States

Attachments - 3



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RECEIVED
GAS - INDEX & FILES

DIVISION OF FINANCIAL AND
GENERAL MANAGEMENT STUDIES

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The Comptroller General

We are forwarding the file pertaining to the apparent violations of the Davis-Bacon Act, 40 U.S.C. 276a, by Top Electric Co. Inc., Subcontractor to Edward R. Marden, Corp., which performed work under Corps of Engineers contract No. DACA51-75-C-0183 at U.S. Army Cold Storage Research and Engineering Laboratory, Hanover, New Hampshire.

Details of the violations and administrative recommendations concerning debarment are contained in the attached investigative report and Department of Labor transmittal letter.

We propose with your approval to disburse to the 4 underpaid employees the amount of \$6,182.40 currently on deposit. Our proposal and the matter of whether the contractor's name should be placed on the debarred bidders list for violations under the Davis-Bacon Act are forwarded for your consideration and instructions.

For further information, please contact Mr. Ken Schutt on extension 53218.

J. W. Hart
Chief, Payment Branch