



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-219697

January 21, 1986

Sylvester L. Green, Director  
Contract Standards Operations  
U. S. Department of Labor  
Room S3518  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Dear Mr. Green

Subject: Spinazzolo Systems, Inc.  
Hampton, Virginia  
Contract No. DACA65-82-C-0027  
Your File NO. VA-85-213

By a letter dated June 18, 1985, you requested that we distribute funds in the amount of \$3,185.46 to 23 employees of Spinazzolo Systems, Inc. (Spinazzolo). These funds were withheld for violations of the Davis-Bacon Act, 40 U.S.C. § 276a to 276a-5 (1982). With regard to the issue of debarment you stated that in view of the circumstances surrounding these violations you did not consider further administrative actions to be necessary.

These violations arose in connection with the performance of contract number DACA65-82-C-0027 between Bayport Construction Corporation (Bayport) and the United States Corps of Engineers. Spinazzolo Systems, Inc., was a subcontractor to Bayport. The contract was for E.C.I.P. Window Treatment and Insulation at Fort Eustis, Virginia and Spinazzolo's subcontract with Bayport was for installation of an exterior insulation finish system. These contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), these wages were required to be paid based upon the classification of work actually performed -- except for apprentices and trainees.

During a routine labor compliance check in August 1982, the Department of Labor (DOL) found that Spinazzolo was paying employees performing all job duties associated with the installation of the exterior insulation finish system at the

unskilled laborer's hourly rate of \$7.45. The DOL concluded that the employees should have been paid at the plasterer's rate of \$12.91 based on the fact that the local unions agreed that the work fell under the plasterer's trade. The DOL recognized the collective-bargaining agreements in the Fort Eustis, Virginia area as prevailing and adopted the classification definitions contained in those agreements or practices followed by parties to those collective-bargaining agreements.

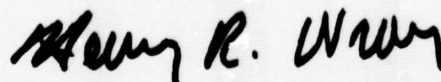
Spinazzolo took the position that the installation of the exterior finish installation system fell under a separate and distinct classification from the plasterer's trade and submitted a request for the establishment of a new trade and apprenticeship program in October 1982. In response to this request the State Director of the U. S. Department of Labor Apprenticeship Bureau informed the DOL Norfolk District and Spinazzolo that his research revealed that the installation of the exterior insulation finish system was properly classified as a part of the plasterer's trade. In December 1982 Spinazzolo agreed to classify and pay its employees as plasterers and plasterer apprentices while they were doing the work in question.

In February 1983 the Norfolk District received proof of restitution to employees but found that the payment did not reflect the existing conditions on the job site. After investigation, the Norfolk District concluded that an additional 23 employees were due restitution in the amount of \$3,185.46. Because Spinazzolo alleged that it was unable to locate these employees, the money was forwarded to the General Accounting Office for direct payment to the employees.

Based on our independent review of the record, we conclude that there were violations of the Davis-Bacon Act in that the wage claimants were underpaid - not paid the required minimum wages. However, we also conclude that these violations were the result of legitimate disagreement concerning classification. 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 the employees under the Act. 40 U.S.C. § 276a-2. Legitimate disagreement concerning classification is a basis for deciding not to debar under the Davis-Bacon Act. Circular Letter B-3368, March 19, 1957, Prime Roofing, B-217725, August 12, 1985. In accord with your recommendation, we decline to debar Spinazzolo.

Furthermore, since we find no reason to object to the payment of the wage claimants, the funds on deposit with our Office - \$3,185.46 - are ordered to be disbursed in accordance with established procedures.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Henry R. Wray". The signature is fluid and cursive, with the first name "Henry" being more prominent.

Henry R. Wray  
Associate General Counsel

cc: Joseph E. Spinazzolo, President  
Spinazzolo Systems, Inc.  
501-A Howmet Drive  
P. O. Box 9345  
Hampton, Virginia 23670