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

MAR 18 1981

B-200451

Debarment for Violations of Davis-Bacon Act

FINDING

In the matter of Intercontinental Construction Inc., Ms. Geraldine Krushelnisky, its president-treasurer, Ms. Dianne Krushelnisky, its vice president, and Sandra Krushelnisky, its secretary.

Section 1(a) of the Davis-Bacon Act of August 30, 1935, 49 Stat. 1011, 40 U.S.C. § 276(a) (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

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> 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."

During 1976 and 1977, contracts Nos. DACA84-76-C-0099, DACA84-76-C-0197, DACA84-77-C-0165 and DACA84-77-C-0182, all in excess of $2,000, for construction work in the State of Hawaii were awarded to Intercontinental Construction Inc. (hereafter ICC) by the United States Army Corps of Engineers (hereafter Corps). The above contracts were subject to the Davis-Bacon Act and contained the stipulations and representations required by section 1 of that act.

As the result of the investigations conducted by the Corps, it was determined that ICC employees performing on the above contracts were not paid the full amounts specified in the wage determination for fringe benefits, nor were the full amounts paid into approved fringe benefit plans or funds, even though these amounts were deducted from the employees' wages. The certified payrolls indicated that the amounts withheld for fringe benefits were being paid into approved fringe benefit funds or plans, when, in at least one instance, the plan or fund did not exist at the time of contract performance and no escrow fund was established for the amounts withheld from the employees' wages. For example, ICC's pension fund did not become effective until March 14, 1977, when ICC made its first contribution to the fund and was not conditionally approved by the Department of Labor (DOL) until March 29, 1979. However, contract No. DACA84-76-C-0099, awarded April 30, 1976, and contract No. DACA84-76-C-0197, awarded September 27, 1976, were both completed prior to the effective date of ICC's pension fund. The record also indicates that ICC did not have all of its employees covered by its medical plan, nor were they covered during all periods of the contract. Although, beginning in late 1976, ICC was repeatedly requested to furnish documentation to support the fringe benefit payments, ICC persisted in its dilatory tactics of submitting incomplete documentation,

even though it had been carefully explained to responsible officials of ICC what was required in the way of documentation. It was not until July 1978 that ICC submitted sufficient documentation to calculate underpayments to employees by reason of fringe benefit deductions and then to credit employees with actual contributions made to fringe benefit plans. The record indicates that while ICC did make some contributions to fringe benefit funds for some of its employees, ICC made no effort to make total restitution. As a result of the Corps' investigations, it was determined that ICC underpaid 35 of its employees a total of $13,790.53.

In addition to the above violations, there were two infractions or violations of laws and regulations which in and of themselves would not warrant debarment, but when coupled with the above violations do tend to establish a pattern of bad faith and willful intent to violate the Davis-Bacon Act. First, ICC declared all contributions to its pension plan to be "employer contributions" and, therefore, the contributions would not vest until after the employee had worked for 4 years. However, since the contributions were deducted from the employees' wages, the contributions should have been designed as "participant contributions," in which event they would have vested 100 percent immediately. This designation by ICC indicates that ICC might have violated 29 C.F.R. § 5.26, which prohibits the diversion of fringe benefits to the use of the contractor or subcontractor. Second, ICC continually violated 29 C.F.R. § 3.4 by being late in transmitting its weekly certified payrolls to the Corps.

By letter of December 12, 1979, DOL detailed the extent and nature of the violations and offered ICC an opportunity to rebut the allegations. Although DOL's certified mail receipts indicate that ICC received the letter, ICC did not submit any facts in rebuttal or arguments against debarment action.

It is clear, based on a review of the complete record, that good faith was not shown in complying with the Davis-Bacon Act. Both the Department of the Army and the Department of Labor have recommended imposition of debarment sanctions.

We therefore find that Intercontinental Construction Inc., Ms. Geraldine Krushelnisky, its president-treasurer, Ms. Dianne Krushelnisky, its vice president, and Ms. Sandra Krushelnisky, its secretary, 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 and, pursuant to statutory direction, 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.

MILTON J. SOCOLAR

Acting Comptroller General
of the United States

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WASHINGTON, D.C. 20548

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Miss Geraldine Krushelnisky
President-Treasurer
Miss Dianne Krushelnisky
Vice President
Miss Sandra Krushelnisky
Secretary
Intercontinental Construction Inc.
8841 36th Avenue, N.W.
Seattle, Washington 98126

Dear Misses Krushelnisky:

Enclosed is a copy of our finding of today that Intercontinental Construction Inc. and Geraldine Krushelnisky, Dianne Krushelnisky and Sandra Krushelnisky, individually, have disregarded obligations to employees within the meaning of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), in the performance of contracts Nos. DACA84-76-C-0099, DACA84-76-C-0197, DACA84-77-C-0165 and DACA84-77-C-0182 for construction work in the State of Hawaii.

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

Sincerely yours,

MILTON J. SOCOLAR

Acting Comptroller General
of the United States

Enclosure

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