

DECISION

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

McCain
PLM-I

31374

FILE: B-217349

DATE: June 7, 1985

MATTER OF: Frankmar, 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. 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 and falsification of payroll records was intentional. Therefore, the contractor will be debarred under the Act.

The Acting Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated October 24, 1984, recommended that the names Frankmar, Inc. (Frankmar), and Frank Rodgers, individually and as President, and William DeMary, individually and as Secretary 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. For reasons that follow, we concur in DOL's recommendation.

Frankmar performed construction work as a subcontractor on contract number DACA51-81-C-0186, with the Corps of Engineers for renovation of a building at Fort Monmouth, New Jersey. The contract was subject to the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-5 (1982)) and Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332 (1982)) which require that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the contractor was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act, and overtime compensation as required by the Contract Work Hours and Safety Standards Act. Further, DOL found that certified payrolls were falsified, employees were misclassified, and the contractor

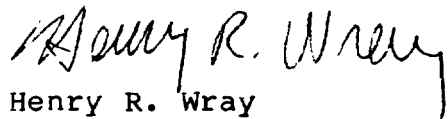
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employed apprentices in excess of the ratio allowed by the apprenticeship program. DOL informed us that Frankmar was given notice in detail of the violations with which it was charged, and that debarment was possible. Further, Frankmar was given an 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 these letters were received, no hearing was requested. After reexamining the record, DOL found that Frankmar violated the Davis-Bacon and Contract Work Hours and Safety Standards Acts without any factors militating against debarment. Therefore, DOL recommended that the names Frankmar, Inc, and Frank Rodgers, individually and as President, and William DeMary, individually and as Secretary, 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. 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. Further, as stated above, the DOL recommended debarment. In B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are 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., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Frankmar, Inc., and Frank Rodgers, individually and as President, and William DeMary, individually and as Secretary, disregarded their obligations to their employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Frankmar's bad faith in the falsification of certified payroll records. See Bryant Paint Contracting, Inc., B-217337, May 23, 1985.

Therefore, the names of Frankmar, Inc., Frank Rodgers, individually and as President of Frankmar, Inc, and William DeMary, individually and as Secretary of Frankmar, Inc., will be placed on the debarred bidders list to be distributed to all departments and agencies 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.



Henry R. Wray
Associate General Counsel