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**DECISION**



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

**FILE:** B-222108

**DATE:** May 30, 1986

**MATTER OF:** D & S Concrete Construction - Davis-Bacon  
Act Debarment

**DIGEST:**

The Department of Labor recommended debarment of a subcontractor and its owners/partners under the Davis-Bacon Act because of underpayment of wages to its employees and falsification of certified payroll records. Based on our independent review of the record in this matter, we find that there was a substantial violation of the Act in that the underpayment was intentional. Therefore, the subcontractor and one of its partners will be debarred under the Act. The other partner will not be debarred. The record shows that he severed his relationship with the firm part way through the contract performance period and there is nothing in the record to demonstrate his involvement in those violations.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), has submitted a recommendation that the name of a business firm and its owners be placed on the ineligible bidders list for violation of the Davis-Bacon Act, 40 U.S.C. § 276a - 276a-5 (1982). Those names are D & S Concrete Construction, Guy J. Daniel and Larry Smith, individually and as Partners. For reasons that follow, we concur, in part, with that recommendation.

The record shows that D & S Concrete Construction (D & S) performed work as a subcontractor to Primeco, Inc., under contract No. DACA63-82-C-0127, with the Corps of Engineers at Carswell Air Force Base, Texas. This contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid.

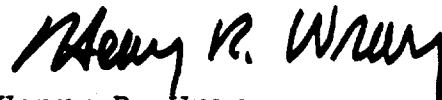
As a result of an investigation, it was found that employees of D & S were not paid the required minimum wage and the certified payrolls were falsified. We note that all of the payroll certifications in the record before us were

signed by Guy J. Daniel. Upon completion of that investigation, D & S was given notice, by letter of December 7, 1984, of the violations, possible debarment and the opportunity to respond. Although it was indicated that Mr. Daniel attempted to rebut the allegations, his arguments were found to be insufficient. By letter dated February 15, 1985, the offer of a hearing was reiterated, but no further reply was received from him.

It was determined that the back wages due the wage claimants totaled \$10,373.02. According to the investigative report, the prime contractor, Primeco, Inc., has already paid all of the affected employees.

Based on our independent review of the record in the case, we find that there was a substantial violation of the Act in that the underpayment of employees by D & S Concrete Construction was intentional. Therefore, we conclude that the firm and Guy J. Daniel disregarded their obligation under the Act. However, we cannot so conclude with regard to Larry Smith. We understand that part way through the contract performance period, he severed his relationship with the company and the partnership was dissolved. Further, all timesheets in the record before us were signed by Guy J. Daniel. We also note that there is nothing in the record to indicate that Larry Smith received notice of the possible debarment. In view of the fact that there is nothing in the record to demonstrate that Larry Smith was involved in these violations, we decline to debar him.

Accordingly, the names D & S Concrete Construction, and Guy J. Daniel, individually and as Owner, will be included on the list of ineligible bidders to be distributed to all departments of the Federal government. Pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to that firm or to Guy J. Daniel, or to any firm, corporation, partnership or association in which Guy J. Daniel has an interest until 3 years have elapsed from the date of publication of such list.



Henry R. Wray  
Associat General Counsel