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DECISION



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

FILE: B-219696

DATE: January 16, 1986

MATTER OF: Joseph Terrio Company - 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, and failed to pay its employees minimum wages and proper overtime compensation. 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 was intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated June 5, 1985, recommended that Joseph Terrio Company, and Joseph Terrio, individually and as owner, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982). For the reasons that follow, we concur with DOL's recommendation and order its implementation.

Joseph Terrio Company performed work under a contract (GS-05BC-82728) with the General Services Administration. The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Furthermore, pursuant to 29 C.F.R. § 5.5(a) (1985), 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. Further, DOL found that certified payrolls were falsified, and that employees were not paid overtime compensation at the rate prescribed by the Contract Work Hours and Safety Standards Act. The DOL notified

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Joseph Terrio Company of the violations with which it was charged by certified letter, together with an admonition that debarment was possible. Further, Joseph Terrio Company was given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b). The DOL reported to us that although this letter was received by Joseph Terrio Company, no hearing was requested.

After reexamining the record, DOL found that Joseph Terrio Company had violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Joseph Terrio Company and Joseph Terrio, individually and as owner, be placed on the debarred bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We note that the record indicates that restitution has been made.

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. In Circular Letter 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 this matter, we conclude that Joseph Terrio Company disregarded its obligations to 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 Joseph Terrio Company's bad faith in the falsification

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of certified payroll records. In addition, the record shows that Joseph Terrio Company failed to pay its employees proper overtime compensation.

Accordingly, we order that the names Joseph Terrio Company and Joseph Terrio, individually and as owner, be included on a list to be distributed to all departments 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
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