

**DECISION**

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

**FILE:** B-222082**DATE:** April 9, 1986**MATTER OF:** Kim Frank Painting - Davis-Bacon Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor failed to pay its employees the minimum wages required by the Act and falsified certified payroll records. Based on an independent review of the record it is concluded that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation in that underpayment of employees and falsification of records was intentional. Therefore, the contractor is debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor, by letter dated July 11, 1985, recommended that Kim Frank Painting and Wall Covering (hereafter referred to as Kim Frank Painting), and Kim Frank, individually and as owner of Kim Frank Painting, be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For the reasons that follow, we concur with the Department of Labor's recommendation and order its implementation.

Kim Frank Painting worked as a subcontractor under Contract No. DAKF 03-83-C-0155, between Superior Electric Company and the U.S. Army, for renovation to be done on classrooms at Presidio of Monterey, California. The contract was explicitly subject to the Davis-Bacon Act requirement that certain minimum wages be paid. As a means of monitoring compliance with these provisions, and pursuant to 29 C.F.R. § 5.5(a)(3)(ii), Kim Frank Painting was required to submit weekly payroll records certified to be correct and complete.

The Army found as a result of an investigation of Kim Frank's performance on the contract that Kim Frank Painting failed to pay its employees the required prevailing wage rates. In this regard, according to the applicable

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wage decision (No. CA83-5112) employees performing work as Brush Painters were to receive an hourly rate of \$24.26, including fringe benefits. Instead, Kim Frank Painting paid Brush Painters an hourly wage of between \$10 and \$12.

Furthermore, the investigation disclosed that Kim Frank Painting submitted certified payrolls for the contract which falsely reflected compliance with the labor standards provisions. The certified payrolls indicated that the painters received between \$24 and \$25. Due to the failure of Kim Frank Painting to pay the prevailing rate, back wages for five employees were computed in the amount of \$8,602.69. After a final discussion between the investigator and the firm's legal counsel, full restitution was made to the employees. The firm did not deny falsification of the records.

By letter dated May 13, 1985, the Department of Labor notified Kim Frank Painting of the violations with which it was charged and admonished the firm that debarment was possible. The firm was given an opportunity for a hearing before an administrative law judge pursuant to 29 C.F.R. § 5.12(b) 1985, but did not respond. After reexamining the record, the Department of Labor recommended that Kim Frank Painting and Kim Frank as owner of Kim Frank Painting 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.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he finds to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2 (1982). 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., THP Plumbing and Mechanical, B-219703, December 17, 1985.

Based on our independent review of the record in this matter, we conclude that Kim Frank Painting and Kim Frank, individually and as owner of Kim Frank Painting disregarded their obligations to their employees in that the underpayment of employees was intentional as demonstrated by

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Kim Frank Painting's bad faith in falsification of certified payroll records.

Therefore, we order that the names Kim Frank Painting, and Kim Frank, individually and as owner of Kim Frank Painting 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.

A handwritten signature in black ink that reads "Henry R. Wray". The signature is written in a cursive, slightly slanted style.

Henry R. Wray  
Associate General Counsel