

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-219712**DATE:** April 11, 1986**MATTER OF:** Capitol City Painting Corp. -  
Davis-Bacon Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay its employees the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record, 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 subsequent falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated June 21, 1985, recommended that the names of Capitol City Painting Corp. (Capitol City), and Leo W. Gilbert and Anita R. Gilbert, individually and as President and Vice President, respectively, be placed on the ineligible bidders list for having committed violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under section 3(a) of the Act. For the reasons stated later, we concur with the recommendation made by DOL under the Davis-Bacon Act.

Capitol City performed painting work as a contractor under contracts Nos. V500-C-333 and V101-C-951 for the Veterans Administration (VA) Medical Center in Albany, New York, and contract No. NY-28-11 with the Department of Housing and Urban Development. These contracts were subject to the provisions of the Davis-Bacon Act. By virtue of section 3(a), 40 U.S.C. § 276a-2(a) (1982), Capitol City was required to pay the various classes of laborers and mechanics employed under these contracts certain minimum wages and to submit payroll records certified as to correctness and completeness. These requirements were also

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included in the specifications set forth in the contracts.

The evidence of record discloses that Leo W. Gilbert, as President of Capitol City, was in control of the day-to-day operations of the firm, i.e., he hired and fired persons who worked for the firm, estimated and bid on jobs, assigned work and performed quality control checks. Therefore, Mr. Gilbert knew or should have known of the falsification of the certified payroll records. The record shows that the payroll records were certified as being correct and complete by Anita R. Gilbert as Vice President.

Based upon its investigation, DOL concluded that Capitol City did not pay its painters the minimum wage rates set forth in the applicable Wage Decision as required by the Davis-Bacon Act. Further, DOL found that Capitol City submitted certified payroll records which falsely reflected the payment of the required wage rates.

The DOL has informed this Office that by certified letter dated April 3, 1985, Mr. and Mrs. Gilbert and Capitol City were given notice, in detail, of the violations with which they were charged and that ineligibility sanctions would be imposed if they did not respond within thirty (30) days of the date of the letter. The contractor was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1985). The DOL reported that although the contractor received this letter, no hearing was requested. The DOL also reported that Capitol City has made full restitution of the back wages due the underpaid employees.

After reexamining the record, DOL determined, as applicable here, that Capitol City and Mr. and Mrs. Gilbert violated the provisions of the Davis-Bacon Act, without stating any factors which might militate against debarment. The DOL therefore recommended debarment as outlined earlier.

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 were 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., Steel Erectors, Inc., 64 Comp. Gen. 591 (1985) and Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based upon our independent review of the record in this matter, we conclude that Capitol City Painting Corp., and Leo W. Gilbert and Anita R. Gilbert, individually and as President and Vice President, respectively, of Capitol City Painting Corp., 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 the falsification of certified payroll records. Therefore, the names of Capitol City Painting Corp., Leo W. Gilbert and Anita R. Gilbert, individually and as President and Vice President, respectively, will be included on a list to be distributed to all departments of the Government. 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.

Inasmuch as the contractor has made full restitution of back wages due the employees who were underpaid, no distribution of funds is required.

*Henry R. Wray*

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