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DECISION



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

FILE: B-219705 **DATE:** January 16, 1986

MATTER OF: V. J. Esper, Inc. - Davis-Bacon Act
Debarment

DIGEST:

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had underpaid employees and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the subcontractor 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 April 30, 1985, recommended that the names V. J. Esper, Inc. (Esper), V. J. Esper Sheet Metal and Furnace Works, Inc., and Albert C. Deslippe, individually and as President, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982). For the following reasons, we concur with DOL's recommendation and order its implementation.

Esper performed work as a subcontractor 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. Further, 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. The DOL notified Esper of the violations with which it was charged by certified letter, together with an admonition that debarment was possible.

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Further, Esper 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 Esper, no hearing was requested.

After reexamining the record, DOL found that Esper had violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names V. J. Esper, Inc., V. J. Esper Sheet Metal and Furnace Works, Inc., and Albert C. Deslippe, individually and as President, 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 note that the record indicates that restitution has been made.

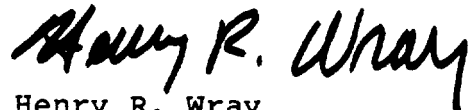
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence 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 the record in this matter, we conclude that Esper 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 Esper's bad faith in the falsification of certified payroll records.

Accordingly, we order that the names V. J. Esper, Inc., V. J. Esper Sheet Metal and Furnace Works, Inc., and Albert C. Deslippe, individually and as President, be included on a list of ineligible bidders to be distributed

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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 such publication.

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