



Issue Date: 28 February 2019

**Case No.: 2018-DBA-00002
2018-DBA-00003**

In the Matter of:

**Disputes concerning labor standards violations and
Proposed debarment for labor standards violations by:**

**SCHADSONS CORPORATION D/B/A SCHADSONS,
Respondent.**

**With respect to laborers and mechanics employed
by SCHADSONS CORPORATION on Contract
Nos. W912HN-10-D-0044-0002 and W912HN-
10-D-0044-0005, for HVAC work on two
Standard design initial Entry Combat Training
Battalion Barracks and a running track; and for the
Construction of McBride Elementary School at
Fort Benning, Georgia.**

DECISION AND ORDER APPROVING CONSENT FINDINGS

This matter arises under the Reorganization Plan No. 14, 64 Stat. 1267, the Davis-Bacon Act, 40 U.S.C. §3141 et seq., the Contract Work Hours and Safety Standards Act, 40 U.S.C. §3701 et seq., and is governed by the implementing regulations found in the Code of Federal Regulations, Title 29, Parts 5 and 6. The Parties successfully resolved the pending issues.

On February 26, 2019, pursuant to 29 CFR 18.71 (b), the Parties jointly filed "Consent Finding." They stated that they "have negotiated and executed these Consent Findings ... [for] full and final resolution of this action of issues raised by the Administrator's Determination Letters issued to Respondent on May 11, 2017. The Parties agreed to the following in their Consent Findings:

JURISDICTION AND PROCEDURAL HISTORY

1. This action arises under the Reorganization Plan No. 14 of 1950, 64 Stat. 1267, (1950 U.S. Code Cong. Serv. 1435-1436); the Davis-Bacon Act ("the Act"); the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327, et seq. ("CWHSSA"); and the implementing

Regulations found at 29 C.F.R. Part 5. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by 29 C.F.R. § § 5.11, 5.12.

2. The issues resolved by these Consent Findings and Order were identified initially during two investigations conducted by the Wage and Hour Division ("WHD"). The first investigation (BTCB project) covered the period of January 26, 2013 through January 24, 2014. The second investigation (McBride Elementary Project) covered the period of July 12, 2014 through February 13, 2016.

3. On May 11, 2017, the Administrator issued two Determination Letters to Respondent identifying WHD's findings and computed back wages. The Determination letters also notified Respondent that WHD sought to debar Respondent. Specifically, the Administrator determined that while engaged in two projects, the Basic Training Complex Barrack (BTCB) project and the McBride Elementary School project ("McBride Elementary project"), respectively, with the prime contractor, Caddell Construction, Inc., the Respondent willfully misclassified employees, failed to pay the proper prevailing wage rate, failed to pay fringe benefits and failed to pay overtime. The Administrator also found a willful and aggravated failure by Respondent to comply with the Act's recordkeeping requirements with respect to certified payroll records.

4. Respondent denied that it willfully misclassified employees, that it failed to pay the proper prevailing wage rate, and that failed to pay fringe benefits and failed to pay overtime. Respondent further denied that there was a willful and aggravated failure by the Respondent to comply with the Act's recordkeeping requirements with respect to certified payroll records.

5. The Administrator directed the United State Army Corps of Engineers to hold in escrow the total amount of \$265,000.00.

6. Within the time provided by 29 C.F.R. § § 5.11, 5.12, Respondent filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letters.

7. The parties conferred and engaged in settlement proceedings before an appointed settlement judge, pursuant to 29 C.F.R. § 18.13, and have executed these Consent Findings and Order which resolve the back pay owed to twenty-one (21) employees, including overtime pay, and debarment under 29 C.F.R. § 5.12 (a)(1) as described in paragraph three (3) of these Consent Findings and Order.

GENERAL PROVISIONS

8. These Consent Findings and Order, disposing of this proceeding with respect to the issues referenced in paragraphs three (3) and five (5), shall have the same force and effect as an Order made after a full hearing.

9. The entire record forming the basis on which these Consent Findings and Order is entered shall consist of the Determination Letters and the provisions and amendment contained herein.

10. The parties hereby waive all further procedural steps between themselves before the

Administrative Law Judge with respect to the issues raised in paragraphs three (3) and five (5).

11. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.

12. The violations alleged in the Determination Letters and referenced in paragraphs three (3) and five (5) are and shall be deemed fully resolved by these Consent Findings and Order with regard to all parties. With these Consent Findings and Order, there are no remaining issues for litigation.

13. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

SPECIFIC PROVISIONS

14. Respondent agrees to pay \$195,000.00 to the twenty-one (21) affected workers as outlined below in paragraph fifteen (15). Respondent agrees to the release of \$195,000.00 currently withheld, in escrow, by the United State Army Corps of Engineers. Respondent shall be responsible for paying employer's share of the F.I.C.A. and other applicable taxes arising from back wages paid hereunder.

15. The chart listed in paragraph 15 of the Consent Findings, shall be incorporated herein with the list of 21 affected workers, and the amounts to be paid to each, for a total of \$195,000.00.

16. It is hereby ordered that the United State Army Corp of Engineers release \$195,000.00 to the Administrator for payment of back wages as outlined in paragraph fifteen (15). Any monies in excess of the \$195,000.00 currently withheld shall be returned to the appropriate entity. The Administrator shall send each affected worker a W-2 detailing the amounts paid pursuant to this Order. The W-2s shall be issued under the Respondent's tax identification number. The Administrator shall retain twenty-five percent (25%) of all amounts to be paid to the affected workers for the payment of Federal, but not State taxes plus the equivalent statutory rates for FICA. In addition, the Administrator shall issue Respondent with a 941X Report detailing the employee back wages paid the previous quarter pursuant to this Order. Within thirty (30) calendar days from the entry of these Consent Findings and Order, Respondent shall provide the Administrator with a schedule showing the Employer I.D. number and the last known address and social security number of each person listed in the table found in paragraph fifteen (15).

17. In the event that any of such monies (the \$195,000.00) cannot be so distributed within the period of three (3) years from the date hereof, because of inability to locate the proper persons or because of such persons' refusals to accept them, such amounts shall be deposited into the Treasury of the United States as miscellaneous receipts.

18. In the interest of resolving all matters, Respondent, without admitting liability, agrees to a debarment period of one and a half years pursuant to applicable law and Regulations found at 29 C.F.R. §§5.12 and 6.35.

19. Pursuant to 29 C.F.R. §§ 5.12 and 6.35, the Administrator shall forward to the Comptroller General, Schadsons Corporation for inclusion in and publication of the list of persons and firms who shall be ineligible (together with any firm, corporation, partnership, or association in which Schadsons Corporation holds a substantial interest) to be awarded any contract with the United States until one and a half (1 ½) years has elapsed from the date of such publication by the Comptroller General.

20. Respondent withdraws the Requests for Hearing filed in these matters with respect to the issues raised in paragraphs three (3) and five (5).

REPORTING AND ENFORCEMENT

21. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

22. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.

23. Each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to attorney's fees, which may be available under the Equal Access to Justice Act, as amended.

24. These Consent Findings and Order shall constitute the final Administrative Order in this case with respect to the issues raised in paragraphs three (3) and seven (77).

SO ORDERED.

Dana Rosen
Administrative Law Judge

DR/mjw
Newport News, Virginia