



Issue Date: 02 April 2020

Case Nos.: 2019-DBA-00008

In the Matter of

Disputes concerning the payment of prevailing wage rates and fringe benefits
by:

SHANNON A. SMITH, INC.
Prime Contractor

With respect to laborers employed by

BROWN'S BUILDING SERVICE, LLC

The First-Tier Subcontractor on Contract No. M-201503,
the Renovations to Jackson Tower-JT Development-Phase 2

FINAL ORDER APPROVING CONSENT FINDINGS

This matter arises under Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 40 U.S.C. § 3145; the Davis-Bacon Act ("DBA"), 40 U.S.C. § 3141 *et seq.*; the Contract Work Hours and Safety Standards Act ("CWHSSA"), 40 U.S.C. § 3701 *et seq.*; and the applicable regulations issued at 29 C.F.R. Parts 5 and 6.

On March 31, 2020, counsel for the Administrator submitted the parties' executed *Consent Findings and Order*.

The parties' filing contains the following stipulations which I hereby approve as consent findings:

1. At all relevant times, Respondent Shannon A. Smith Electrical and Mechanical, Inc., has been a corporation organized under the laws of the Commonwealth of Pennsylvania and has been engaged in the business of construction.
2. The Contract between Harrisburg Housing Authority (the "Authority") and Respondent incorporates by reference the Davis Bacon Act ("DBA") and the regulations governing DBA-related Acts.
3. The applicable Department of Labor ("DOL") wage determination required a prevailing wage of \$31.90 per hour plus \$23.81 per hour for fringe benefits (\$55.71 per hour total).

4. Respondent subcontracted part of the performance of the Contract with the Harrisburg Housing Authority for the construction of Project Renovation Jackson Tower Phase 2 (“Project”). Respondent subcontracted insulation work to Browns’ Building Services (“Browns”) on the Project.

5. Under the Davis-Bacon Act, as amended (40 U.S.C. § 3141, *et seq.*), and the Related Acts, as listed in 29 C.F.R. § 5.1, Respondent is liable for non-compliance by any subcontractor. 29 C.F.R. § 5.5(a)(6).

6. During the performance of the contract, Browns failed to pay certain laborers and mechanics the minimum monetary wages and fringe benefits required by the Davis Bacon Related Act. As a result, Respondent is responsible for the underpayment of Browns’ employees in the amount of \$73,000.00.

7. To satisfy the liability set forth above in part, Respondent has agreed to assign to the DOL its right to receive payment of the sum of \$66,058.00 from the Authority for Respondent’s work on the Project. Upon execution of this assignment, the DOL shall be responsible for ensuring that the \$66,058.00 is collected from the Authority and Respondent shall have no further liability for this amount.

8. Respondent shall pay the remaining sum of \$6,942.00 within 30 days to the DOL through one of the following means. Payment may be online by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or www.pay.gov. Alternatively, payment may be in the form of a certified check, bank check, or money order made payable to the order of “**Wage and Hour Division – Labor,**” and mailed to:

**U.S. Department of Labor
Wage & Hour Division
The Curtis Center, Suite 850 West 170
South Independence Mall West
Philadelphia, PA 19106-3317**

The check or money order shall bear the following reference: **Case IDs# 1800683.**

9. Respondent’s assignment of its right to payment of the \$66,058.00 from the Authority as set forth pursuant to paragraph 7 above and payment of the sum of \$6,942.00 to the DOL pursuant to paragraph 8 above shall satisfy in full all liability of the Respondent with respect to the above-captioned matter and Project.

10. Upon receipt of the assignment as set forth in paragraph 7 above and payment as set forth in paragraph 8 above, the DOL shall advise the Authority in writing that the above-referenced Wage and Hour Claim has been satisfied in full and the DOL has lifted all remaining holds on payment to Respondent.

11. Respondent hereby withdraws its contest to WHD’s Order of Reference in

this matter.

12. Anti-Retaliation Provision: Respondent will not discharge or in any way discriminate against any employee because such employee has complained, provided information, or otherwise asserted rights (including cooperating with WHD or staff in an internal or WHD investigation) to the U.S. Department of Labor, any other federal, state or local government agencies, or any subcontractor relating to this Agreement or the requirements of the Acts.

13. This Agreement does not waive WHD's right to: 1) conduct investigations under the Acts or any other law enforced by WHD; or 2) seek appropriate enforcement action and remedies with respect to any violations disclosed by such investigations.

14. This Agreement does not relieve the Respondent of any obligations under the Acts, state and local laws, or any other law or regulation.

15. Pursuant to 29 C.F.R. § 18.71, the parties agree that:

- i. this Order has the same effect as one made after a full hearing;
- ii. the entire record on which this final order is based consists of the Order of Reference and this Consent Findings and Order;
- iii. all further procedural steps before the Administrative Law Judge waived by all parties; and
- iv. the right to challenge or contest the validity of this Consent Findings and Order, is waived by all parties.

16. Respondent represents that it is currently in compliance with the Davis Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act and that it will continue in compliance therewith. Respondent further agrees to comply with all applicable regulations under the Davis Bacon Act, and the Davis Bacon Related Acts, including, but not limited to, 29 C.F.R. Sec. 5(a)(6).

17. Each party agrees to bear its own attorneys' fees, costs, and other expenses incurred in connection with any stage of this case, including, but not limited to, any fees and costs which may be available under the Equal Access to Justice Act.

I adopt the parties' stipulations as set forth above as my findings of fact. Accordingly, this matter is hereby **CLOSED**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey