



**Issue Date: 30 November 2018**

**Case Number: 2019-SCA-00005**

*In the Matter of:*

**LOUIS BERGER, U.S. INC. and  
THE LOUIS BERGER GROUP, INC.**

*Respondents.*

**NOTICE OF DOCKETING  
AND ORDER APPROVING CONSENT FINDINGS**

On November 28, 2018, the Regional Solicitor, U.S. Department of Labor, in New York, New York counsel for Wage and Hour Division (“Plaintiff”), simultaneously filed a *Complaint* and *Consent Findings* with the Office of Administrative Law Judges (“Office”) against the above-named Respondents based on violations of the McNamara-O’Hara Service Contract Act of 1965 (“SCA”), 41 U.S.C. §§ 6701-6707, as amended, and the Contract Work Hours and Safety Standards Act (“CWHSSA”), 40 U.S.C. 3701-3708, and the implementing regulations at 29 C.F.R. Parts 4 and 5.

**Background**

The United States Government awarded Respondents contract number W911WN-15-D-0001 (“Contract”) to furnish temporary emergency power as part of the recovery efforts in response to Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands (“Contract”) during the period including, but not limited to, October 22, 2017 to March 31, 2018. The Complaint alleges that Respondents failed to pay the minimum monetary wages and fringe benefits required, resulting in underpayments totaling \$5,030,449.85 due to 993 employees and/or laborers and mechanics employed by subcontractors of Respondent who worked on the Contract (“employees”). The Consent Findings provide that Respondents represent “they are currently in compliance with the SCA, CWHSSA, and applicable regulations at 29 C.F.R. Parts 4 and 5 and that they will remain in compliance, on the Contract.” The Consent Findings further provide that Respondents have paid the back wages owed to the employees employed.

The parties agree that: (i) the Enhanced Compliance Agreement (“Agreement”) attached to the Consent Findings as Exhibit A is incorporated into the Consent Findings; (ii) at the time of filing, Respondent has fully complied with the Agreement; (iii) Respondent authorizes the U.S. Department of Labor to distribute the \$5,030,449.85 to the 993 affected employees<sup>1</sup>; and (iv) if, within three years of the

---

<sup>1</sup> The Consent Findings provide that the Administrator, Wage and Hour Division, shall distribute the back wages, less the appropriate deductions for social security and withholding taxes, to the employees, or their legal representatives, in amounts to be determined by the Department of Labor. Any such money which remains

date the consent findings are approved, Louis Berger materially breaches any term of the this Order or the Compliance Agreement, Plaintiff may reinstitute litigation of this case, to include seeking debarment. The parties further agree to the procedural terms required by the regulations at 29 C.F.R. § 6.18(b) and 18.71(b);<sup>2</sup> and that each party shall bear its own fees and expenses.

### Applicable Law

The SCA rules of practice for administrative proceedings are set forth in 29 C.F.R. Parts 6 and 8. Section 6.18(c) provides that if the presiding Administrative Law Judge is satisfied with the “form and substance” of an agreement, he shall “accept such agreement by issuing a decision based upon the agreed findings and order.” In cases where the respondent is found to have violated the SCA, the decision of the Administrative Law Judge shall include “whether the respondent is to be relieved from the ineligible list.” If relief is ordered, the decision must include “findings of the unusual circumstances, within the meaning of section 5(a) of the Act” that are the basis for the relief. No relief may be ordered unless back wages are paid in full. 29 C.F.R. § 6.19(b)(2).

The Administrative Review Board (ARB) has described the SCA regulatory scheme for debarment as follows:

Under SCA Section 5(a), persons or firms that violate the SCA are subject to debarment, that is, ineligible to receive federal contracts for a period of three years unless the Secretary otherwise recommends because of unusual circumstances. Debarment is presumed once a violation of the Act has been found, with the burden of proof falling to the violating contractor to prove that “unusual circumstances” exist. As the ARB has recognized, Section 5(a) is a particularly unforgiving provision of a demanding statute. A contractor seeking an ‘unusual circumstances’ exemption from debarment must, therefore, run a narrow gauntlet. The legislative history of the SCA makes clear that debarment of a contractor who violated the SCA should be the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.

*Administrator, Wage and Hour Div., USDOL v. Ares Group, Inc.*, ARB No. 12-023, ALJ No. 2010-SCA-6 at 5 (ARB Aug. 30, 2013) (internal citations omitted). The ARB has articulated a three-part test in accordance with 29 C.F.R. § 4.188(b) for determining whether relief from debarment is warranted.

Under the first part of this test, the contractor must prove the non-existence of the aggravating factors listed in 29 C.F.R. § 4.188(b)(3)(i), such as willful, deliberate, aggravated, or culpable conduct. Second, the contractor must prove it met the prerequisites listed in 29 C.F.R. § 4.188(b)(3)(ii), essentially a good compliance history. Third, where the first two parts are met, the contractor must then satisfactorily address “other factors” listed in 29 C.F.R. § 4.188(b)(3)(ii). To meet its burden of proving

---

undistributed after three (3) years from the date of this Order because of the parties’ inability to locate the employee or representative shall be deposited with the Treasurer of the United States.

<sup>2</sup> The parties agree that the Consent Findings shall have the same force and effect as an order made after full hearing; that the entire record on which my Order Approving Consent Findings is based consists solely of the Complaint and the Consent Findings; that they waive any further procedural steps before this Office or the Administrative Review Board; and that they waive any right to challenge or contest the validity of the Consent Findings or this order.

“unusual circumstances,” the violating contractor must meet all three parts of the test to be relieved from the debarment sanction.

*Id.* at 6.

**Findings of Fact and Conclusions of Law**

After reviewing the terms of the agreement, I am satisfied that the agreement conforms to the requirements set forth in § 6.18(b)(1)-(4) and is a satisfactory resolution of the issues contested.<sup>3</sup>

**Order**

The terms of the *Consent Findings* are hereby adopted and incorporated into this order. This matter is hereby DISMISSED with prejudice.

SO ORDERED:

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

---

<sup>3</sup> I find that the circumstances enumerated in the Consent Findings constitute unusual circumstances warranting relief from the ineligible list.