



In the Matter of:

**BHATT CONTRACTING  
COMPANY, INC., Contractor**

**ARB CASE NO. 97-068**

**and**

**ALJ CASE NO. 93-124**

**VIJAY A. BHATT  
Individually and as President**

**DATE: January 26, 1998**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

### **FINAL DECISION AND ORDER**

This case arises under the Davis-Bacon and Related Acts (DBRA) and 29 C.F.R. Part 7. Bhatt Contracting Company, Inc. and Vijay Bhatt (collectively, Bhatt) filed a petition pursuant to 29 C.F.R. §5.12(c) requesting removal of their names from the debarred bidders' list. For the reasons set forth below the decision of the Acting Administrator is reversed and the petition for reinstatement is granted.

### **BACKGROUND**

In 1993, the Acting Administrator, Wage and Hour Division charged Bhatt with certain violations of the DBRA. On August 14, 1995 those charges were settled pursuant to the agreement of the parties. Consent Findings and Order of Dismissal (Consent Order), August 14, 1995. Bhatt thereby voluntarily agreed to debarment under the DBRA and 29 C.F.R. §5.12(a)(1). The Consent Order stated that "[Bhatt] shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided [in pertinent portions of §5.12]) to receive any contracts or subcontracts subject to any statutes listed in §5.1." The Secretary's regulations state that the Acting Administrator "promptly shall forward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations ...." 29 C.F.R. §6.35.

On or about February 15, 1996, Bhatt requested removal from the debarment list. Bhatt was informed approximately one month later that the Acting Administrator had not promptly forwarded their names to the Comptroller General as required by 29 C.F.R. §6.35. On April 5, 1996, Bhatt filed a petition with the Office Of Administrative Law Judges arguing that the

Acting Administrator should be prohibited from placing them on the ineligible list. Bhatt argued that a *de facto* debarment had already occurred because of the Acting Administrator's delay in forwarding their names to the Comptroller General. The Acting Administrator responded by arguing that, despite the delay in placing them on the ineligible list, Bhatt was not eligible for relief under §5.12(c) and would not be eligible for relief from debarment until they have been on the list for six months. The assigned Administrative Law Judge denied Bhatt's petition.

We reviewed the matter and issued a decision holding that the Acting Administrator had breached a material duty of the consent decree by not promptly placing Bhatt on the ineligible list. *Bhatt Contracting Co. Inc.*, ARB Case No. 96-124 (ALJ Case No. 93-DBA-65), Sept. 6, 1996. We declined to grant Bhatt's requested remedy of immediate removal from the ineligible list because the record did not contain sufficient evidence to determine whether the requirements of 29 C.F.R. §5.12 (c) had been met. We reviewed the standard remedies for the Acting Administrator's breach and found them to be lacking. *Bhatt* at 4-5. Noting that Bhatt would soon be eligible to seek relief from debarment, we ordered the Administrator to "commence immediately, and fully complete within thirty days, the review required by [the regulations]. . . [and] issue the decision as to whether Bhatt should be granted relief from debarment immediately upon receipt of such a request." *Bhatt* at 5.

On November 27, 1996, Bhatt filed a request for early removal from the ineligible list. Seventy-eight days later, in a letter dated February 13, 1997, the Acting Administrator denied Bhatt's request. Bhatt now requests review of that determination.

## DISCUSSION

The regulation governing debarment under the Davis-Bacon Related Acts is found at 29 C.F.R. §5.12(a)(1) and provides:

Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions . . . , such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list . . . ) to receive any contracts or subcontracts subject to any of the statutes listed in [29 C.F.R.][sec] 5.1.

29 C.F.R. §5.12(c) provides that "[a]ny person or firm debarred under §5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list." When such a request is made the Administrator is required to:

[E]xamine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or

firm has demonstrated a current responsibility to comply with the [DBRA] . . . . Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor[ 's] . . . attitude towards compliance and the past compliance history of the firm. In no case will such removal be effected unless the Acting Administrator determines after an investigation that such person or firm is in compliance with . . . other labor statutes providing wage protection, such as . . . the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 C.F.R. part 7.

29 C.F.R. §5.12(c).

In our previous ruling in this case we ordered the Acting Administrator “to issue the decision as to whether Bhatt shall be granted relief from debarment immediately upon receipt of such a request.” *Bhatt* at 5. The Acting Administrator did not ask for additional time to comply with the Board’s order, or indicate in any way that the time frame set out therein was not realistic. Just as waiting to perform a ministerial act for nine months cannot be held to be “prompt,” waiting to issue a decision for seventy-eight days is not “immediate.” Our order to rule immediately upon Bhatt’s renewed request for relief from the ineligible list was not complied with by the Acting Administrator.

The Acting Administrator breached a material term of the consent decree by not placing Bhatt on the ineligible list for nine months. The Acting Administrator then failed to take advantage of the remedial nature of our prior ruling by not “immediately” issuing a decision regarding Bhatt’s renewed request for relief, or seeking additional time within which to comply.

In exercising our discretion to hear and decide appeals, the Board “shall consider, among other things, *timeliness*, the nature of the relief sought, matters of undue hardship or injustice, or the public interest.” 29 C.F.R. §7.1(c) (emphasis added). “The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.” 29 C.F.R. §7.1(d). For the reasons set out above, we reject the untimely decision of the Acting Administrator. Bhatt’s November 27, 1996, “Renewed Petition for Reinstatement,” which sets out facts sufficient to comply with 29 C.F.R. §5.12(c), is **GRANTED**.

**SO ORDERED.**

**DAVID A. O’BRIEN**

Chair

**KARL J. SANDSTROM**

Member