
June 1989

**OCCUPATIONAL
SAFETY & HEALTH**

**OSHA Contracting for
Federal Rulemaking
Activities**





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

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June 16, 1989

The Honorable Joseph M. Gaydos
Chairman, Subcommittee on
Health and Safety
Committee on Education and Labor
House of Representatives

The Honorable Paul B. Henry
Ranking Minority Member,
Subcommittee on Health and Safety
Committee on Education and Labor
House of Representatives

You asked us to examine several issues concerning the allocation of Occupational Safety and Health Administration (OSHA) funds to contractor firms providing support to the OSHA standard-setting process. Specifically, we were asked to provide information on the following:

- what studies and other services OSHA obtains by contract during its rulemaking activities for federal health and safety standards,
- the amount of OSHA funds obligated for contracts during rulemaking in recent years, and
- the number of different contractors involved.

On March 10, 1989, we briefed your staffs on the results of our review and, at their request, subsequently provided a list of contractors funded by OSHA for fiscal years 1986, 1987, and 1988. As requested, we are providing this briefing report as a summary of our work on this subject.

To obtain this information we (1) reviewed the Department of Labor's annual budget justifications for fiscal years 1987 through 1990; (2) examined Labor's most recent Semiannual Regulatory Agenda, which lists the status of all its component agencies' rulemaking actions; (3) analyzed OSHA's listing of contract funds obligated during the most recent 3 fiscal years (1986, 1987, and 1988) for health and safety standards rulemaking activities; and (4) interviewed agency officials and personnel in OSHA's Directorates of

Administrative Programs, Health Standards Programs, Safety Standards Programs, and Policy. We also examined excerpts from the executive summaries of approximately 50 OSHA-funded contractor studies, as well as documentation related to OSHA contracts to obtain expert witness testimony at public hearings, federal interagency services (such as a federal mediator and access to a National Institutes of Health computerized data base), and other services. We did our work between January and March 1989.

In brief, OSHA reported obligations of \$11.3 million during fiscal years 1986-88 for a wide variety of contractor products and services related to various stages of rulemaking, primarily for health standards. Most of these funds (\$9.5 million) were obligated for regulatory analyses required by law. The largest obligation during this 3-year period involved rulemaking for a single health standard-- OSHA's January 19, 1989, Final Rule for Air Contaminants-- which established or revised permissible exposure limits for nearly 400 substances. That rulemaking action involved five major contractors as well as the National Institutes of Health computerized data base and cost \$4.0 million. OSHA also obligated funds for contractor studies and expert witnesses in connection with at least 20 other health standards and 15 other safety standards. Listed in appendix I are 18 contractors that OSHA records show received funds ranging from \$20,000 to \$3 million during the 1986-88 period, accounting for \$10.9 million (97 percent) of total contract funds obligated. Ranked in order by dollars obligated, the top 9 contractors received \$9.4 million (83 percent) of the total \$11.3 million obligated during the 3 years.

OSHA contract funds obligated for health and safety standards rulemaking increased from \$3.2 million in fiscal year 1986 to \$3.4 million in fiscal year 1987 and \$4.7 million in fiscal year 1988. The Air Contaminants standard's increase alone accounted for over 50 percent of the \$1.3 million increase between fiscal years 1987 and 1988. Nevertheless, the \$11.3 million OSHA obligated for contracts to support rulemaking constituted less than 2 percent of the total \$670 million appropriated to OSHA for the 3 fiscal years.

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As discussed with your staffs, we did not request written agency comments. We did, however, meet with OSHA officials to discuss the information we are providing, and we considered their comments in preparing our report. As arranged with your staffs, we are sending copies of this report to other interested congressional committees and other parties.

The major contributors to this briefing report are listed in appendix II.


William J. Gainer
Director of Education
and Employment Issues

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ABBREVIATIONS

OSHA	Occupational Safety and Health Administration
PEL	Permissible Exposure Limit(s)

**OCCUPATIONAL SAFETY AND HEALTH: OSHA CONTRACTING
FOR FEDERAL RULEMAKING ACTIVITIES**

BACKGROUND

In 1971, the Department of Labor established the Occupational Safety and Health Administration (OSHA) to administer the Occupational Safety and Health Act of 1970. The act authorizes Labor to develop federal standards for occupational safety and health and regulations (rules) applicable to employers and employees. This development process, referred to generally as rulemaking, involves three distinct stages: prerule, proposed rule, and final rule.

Federal rulemaking agencies like OSHA prepare an annual statement of their proposed regulatory policies, goals, and objectives, along with information concerning significant regulatory actions they propose to undertake. These submissions are published in the Regulatory Program of the United States Government. Executive Order 12291 and the Regulatory Flexibility Act require rulemaking agencies to also prepare a Semiannual Regulatory Agenda for publication in the Federal Register during April and October each year. The Semiannual Regulatory Agenda describes all proposed regulations that the agency has issued or expects to issue, as well as all regulations under review that are currently in effect. OSHA's most recent agenda, in April 1989, for example, lists 2 regulations in the prerule stage, 28 regulations in the proposed rule stage, and 19 regulations in the final rule stage.

Within OSHA, four major organizational components (directorates) are responsible for various functions associated with rulemaking activity: (1) the Directorate of Administrative Programs, which includes program budgeting, planning, and financial management; (2) the Directorate of Health Standards Programs, which develops and updates occupational health standards and regulations; (3) the Directorate of Safety Standards Programs, which develops and updates occupational safety standards; and (4) the Directorate of Policy, which includes the Office of Regulatory Analysis.

Labor's most recent budget justification for fiscal year 1989 showed \$6.8 million for OSHA salaries and expenses associated with safety and health standards rulemaking. For additional "advisory and assistance services," such as risk assessment studies and industry profiles, regulatory studies and analyses, environmental impact statements, and a variety of professional services, the justification showed \$3.6 million.

GAO Issues Addressed

- What does OSHA obtain by contract?
- How much contract money was obligated?
 - for safety standards?
 - for health standards?
- How many different contractors received funds?

OBJECTIVES, SCOPE, AND METHODOLOGY

Joseph M. Gaydos, Chairman of the Subcommittee on Health and Safety, House Committee on Education and Labor, and Subcommittee Ranking Minority Member Paul B. Henry asked us to examine how OSHA's approved funds are allotted. They expressed particular concern about the amount of funds directed to contractor firms and what OSHA was getting for those funds. In subsequent discussions with the subcommittee staffs, we agreed to provide them with information on (1) what products and services OSHA obtains by contract during its rulemaking for health and safety standards, (2) how much contract money OSHA obligated for rulemaking in recent years, and (3) how many different contractors were involved in providing products or services.

We limited our review to funds for contracts in support of rulemaking and did not address other rulemaking costs, such as agency staff resources. To obtain data that might indicate any trends or changes in recent years, our review covered the most recent, complete 3 fiscal years, 1986, 1987, and 1988. We

GAO Scope of GAO's Analyses

- OSHA contracts for safety and health standards (rulemaking)
- Fiscal years 1986, 1987, 1988
- Funds obligated and contractors used

examined only the funds obligated and contractors used, not the quality of the products or services received.

We asked OSHA's Directorate of Administrative Programs to provide a list of all contractors used and contract funds obligated for safety and health standards rulemaking during the 3 years covered by our review. We also obtained selected excerpts (tables of contents and executive summaries) from approximately 50 OSHA-funded contractor studies and other contract documentation to (1) identify the products and services OSHA received, the purpose of the contracts, and which and how many contractors were used; (2) analyze by stages of rulemaking, contractor support and situations such as concentration of funds obligated for certain contractors; and (3) develop an overview of contractor involvement in OSHA safety and health standards rulemaking. We compared the study excerpts and other supporting documentation--provided by the Directorates of Health Standards Programs, Safety Standards Programs, and Policy (Office of Regulatory Analysis)--with the contractor and contract obligation data--provided by the Directorate of Administrative Programs.

time constraints imposed by our agreement to orally review results not later than the end of March 1989, verify the accuracy or completeness of the contractor obligation data (that is, by tracing such data to documents or examining agency contract files). Our of supporting documentation and independent with officials in the four OSHA directorates, however, provided no basis for us to question the accuracy or completeness of the obligation data or information about contractors.

We obtained the contractor, obligation, and supporting information from OSHA headquarters officials; in addition, we reviewed background documents, such as Labor's annual budget justifications of appropriation estimates for OSHA for fiscal years 1987-90, Semiannual Regulatory Agendas, and the Regulatory Program of the United States Government for the period ending March 31, 1989.

Earlier GAO work on OSHA rulemaking includes a 1987 report on OSHA's field sanitation standard.¹ That report is a case study of OSHA costs, including a contractor study and expert witness costs, associated with developing a health standard.

We did our work between January and March 1989 in accordance with generally accepted government auditing standards.

¹Occupational Safety and Health: Federal Costs Incurred in Developing Field Sanitation Standard (GAO/HRD-88-15FS, Nov. 27, 1987).

GAO What OSHA Obtains by Contracting

- Studies of:
 - "significant risk"
 - economic and technological feasibility
 - economic and environmental impacts
 - cost-effectiveness
- Expert witnesses for hearings
- Services such as mediation

KINDS OF PRODUCTS AND SERVICES OBTAINED BY CONTRACT

During the rulemaking process, OSHA obtains a wide variety of products and services through contracts with firms and individuals. Typical products delivered by firms under contract include (1) estimates of the extent or degree of risk posed to workers if certain practices or substances remain unregulated or inadequately regulated, (2) reports and studies containing analyses of markets and industries potentially affected by proposed or revised health standards, (3) economic and environmental impacts, (4) costs and benefits associated with the proposed rulemaking, and (5) the cost-effectiveness of alternatives to the regulation. Typical services obtained from individuals under contract include their testimony as expert witnesses during OSHA public hearings on proposed standards and rules, consultative expertise, and assistance in developing final rules.

Other services contracted for during fiscal years 1986-88 included interagency agreements with (1) the Federal Mediation

GAO Kinds of Rulemaking
Efforts Funded

- Air Contaminants health standard for 600 substances
 - \$4.0 million
 - 6 contractors
 - Final rule issued 1/19/89
- At least 15 other safety and 20 other health standards in various rulemaking stages

and Conciliation Service, for expenses associated with mediated rulemaking efforts for the chemical 4,4'-Methylenedianiline, and (2) the National Institutes of Health, for access to a computerized data base associated with OSHA's revision of the Air Contaminants standard. That standard, sometimes referred to as the PEL standard, covered 600 total substances and established or revised the Permissible Exposure Limits (PEL) for nearly 400 substances. (The PEL for over 200 other substances remained unchanged.)

OSHA used contractor firms and individuals to provide products and services for rulemaking associated with at least 21 health and 15 safety standards during fiscal years 1986-88. These included proposed or final health standards covering such (1) substances as asbestos, benzene, cadmium, dichloromethane, ethylene oxide, formaldehyde, glycol ethers, lead, methylene chloride, wood dust, and (2) subjects as toxic substances in laboratories, analysis of economic and chemical use, hepatitis B, and AIDS. The proposed (or final) safety standards that OSHA developed with contractor support included such subjects as compressed gases, confined work spaces, electrical work

GAO Contract Funds Obligated,
FY86-FY88 (millions)

	Safety	Health	Total
Regulatory analysis	\$ 1.88	\$ 7.61	\$ 9.49
Safety standards	.16		.16
Health standards		.86	.86
Interagency agreements		.40	.40
Service contracts	.06	.09	.15
Expert witnesses	.05	.18	.23
Total	\$ 2.15	\$ 9.14	\$11.29

practices, flammable and combustible liquids, grain handling, longshoring operations, oil well drilling, personal protective equipment, shipbuilding, and trenching (excavating). The single largest use of contracting during the 3-year period primarily involved five firms and a National Institutes of Health computerized data base for OSHA's final rulemaking for the PEL standard. This final rule cost \$3.8 million for the major contractors and \$200,000 for OSHA access to the computerized data base.

AMOUNT OF FUNDS OBLIGATED
BY OSHA COST CATEGORY

According to the Directorate of Administrative Programs, OSHA obligated \$11.3 million during fiscal years 1986-88 for contractor firms' and individuals' products and services related to various stages of OSHA rulemaking. For each fiscal year, OSHA gave us a detailed listing with contract number, contractor name, proposed rule subject, and amount of funds obligated for six cost categories: (1) regulatory analysis, (2) safety standards, (3) health standards, (4) interagency agreements,

GAO Observations about Contract Funds

- Less than 2 percent of OSHA appropriations

- Funds have increased
 - FY86: \$3.2 million
 - FY87: \$3.4 million
 - FY88: \$4.7 million

- Permissible Exposure Limit standard accounted for much of FY88 increase

(5) service contracts, and (6) expert witnesses. Regulatory analysis is a generic term applied to a broad range of analyses that may include risk assessment studies, cost analyses, and feasibility and impact determinations. These analyses are required by law. The analyses are intended to improve the cost-effectiveness of major federal regulations by requiring agencies to fully consider the consequences of alternative strategies.

Of the two basic kinds of OSHA rulemaking (health and safety), the majority of funds were used for developing health standards. Our analysis shows that OSHA obligated \$9.1 million (81 percent) of its total \$11.3 million for health standards and \$2.2 million (19 percent) of its total for safety standards.

We noted that OSHA's \$11.3 million, obligated for contracts for health and safety standards rulemaking, constituted less than 2 percent of the total \$670 million appropriated to OSHA for fiscal years 1986-88. OSHA increased its obligated funds significantly, from \$3.2 million in fiscal year 1986 to \$4.7 million in fiscal year 1988. The 1989 final PEL standard contract cost increased over \$687,000 between fiscal years 1987 and 1988. This increase

GAO Contractors and Expert Witnesses Used

- 18 major contractors and over 35 expert witnesses
- Major contractors' funding ranged from \$20 thousand to \$3 million
- Top 9 contractors: \$9.4 million (83% of total)
- Expert witnesses generally \$10 thousand or less

accounted for over 50 percent of OSHA's total \$1.3 million increase, from \$3.4 million obligated in fiscal year 1987 to \$4.7 million in fiscal year 1988.

NUMBER OF CONTRACTORS AND EXPERT WITNESSES USED

OSHA identified 18 contractors, among them three federal agencies, for which the obligated funds ranged from approximately \$20,000 to \$3 million during fiscal years 1986-88. We termed these contractors "major contractors" to distinguish them from the over 35 expert witnesses and service contracts we identified in OSHA supporting documentation. Such documentation indicated that expert witness contracts generally did not exceed \$10,000. Ranked in order by amount of funds obligated, the 18 major contractors are listed in appendix I. We noted that the top 9 contractors received \$9.4 million (83 percent) of the total \$11.3 million obligated for all contracts, and the 18 major contractors received \$10.9 million (97 percent) of the total.

18 MAJOR CONTRACTORS FUNDED BY OSHA
FOR SAFETY AND HEALTH STANDARDS ACTIVITIES
(FISCAL YEARS 1986-88)

<u>Rank</u>	<u>Contractor</u>	<u>Total funds obligated</u>
1	Meridian Research, Inc.	\$ 3,012,809
2	Consad Research Corp.	1,945,694
3	Kearney/Centaur Division	982,446
4	Eastern Research Group	935,201
5	JACA Corp.	784,475
6	Centaur Associates, Inc.	521,784
7	JRB Associates	406,580
8	PEI Associates	390,608
9	Charles River Associates, Inc.	388,788
10	Jack Faucett Associates	369,729
11	Fu Associates, Inc.	275,000
12	National Institutes of Health	211,000
13	ICF, Inc.	198,390
14	National Academy of Sciences	155,000
15	The Washington Consulting Group	126,288
16	Federal Mediation and Conciliation Service	100,000
17	U. S. Coast Guard	90,000
18	Research Triangle Institute	<u>19,950</u>
	Total	<u>\$10,913,742</u>

Note: The term "major contractors" includes all OSHA contracts for all OSHA cost categories (regulatory analysis, safety and health standards, and interagency agreements) except service contracts and expert witnesses, which were generally \$10,000 or less.

MAJOR CONTRIBUTORS TO THIS BRIEFING REPORT

Human Resources Division, Washington, D.C.

William J. Gainer, Director of Education and Employment Issues,
(202) 275-5365

Carlotta J. Young, Assistant Director

Dennis M. Gehley, Evaluator-in-Charge

RELATED GAO PRODUCTS

Occupational Safety and Health: California's Resumption of Enforcement Responsibility in the Private Sector (GAO/HRD-89-82, Apr. 17, 1989).

Occupational Safety and Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

OSHA's Resumption of Private Sector Enforcement Activities in California (GAO/T-HRD-88-19, June 20, 1988).

OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

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