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FEDERAL CONTRACTORS

Historical Perspective on Noncompliance With Labor and Worker Safety Laws

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Federal Contractors: Historical Perspective on Noncompliance With Labor and Worker Safety Laws

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to assist the Subcommittee in its examination of issues involving federal contractors' noncompliance with federal labor laws. The consideration of a contractor's compliance with federal laws during an agency's procurement procedure remains a controversial issue. In 1995, the administration issued an executive order, struck down in 1996 by the courts, that barred federal contractors from receiving contracts if they hire permanent replacements for striking workers.¹ In 1996, the administration issued an executive order that would bar contractors from hiring illegal immigrants. In early 1997, the administration had planned to issue an executive order requiring federal agencies to use Project Labor Agreements on their construction projects.² After considerable industry opposition, the administration issued an executive memorandum encouraging, but not requiring, agencies to use Project Labor Agreements on larger federal construction projects. Some representatives of the business community have voiced concern that efforts to encourage federal agencies to consider contractors' labor-management relations and health and safety records in awarding contracts could lead to the inappropriate "blacklisting of some employers as well as inflated procurement costs at the taxpayers' expense.

Today, we would like to shed some light on these issues by presenting information on the extent to which federal contractors have not complied with federal labor laws in the past. In particular, I will review our key findings from recent reports exploring federal contractors' noncompliance with the National Labor Relations Act (NLRA) during fiscal years 1993 and 1994 and with the Occupational Safety and Health (OSH) Act during fiscal year 1994.³ Because we have not had an opportunity to update our findings with data from fiscal year 1995 to the present, we are not in a position to revise the amount of contract dollars firms in noncompliance currently receive. I will also review the status of recommendations we made to the National Labor Relations Board (NLRB) and to the Occupational Safety and

¹Executive Order 12954, barring federal contractors from hiring permanent replacements, was struck down by the U.S. Court of Appeals for the District of Columbia.

²Project Labor Agreements are a form of pre-hire collective bargaining agreement between contractors, or owners on behalf of contractors, and labor unions in the construction industry. They are pre-hire agreements because they can be negotiated before the employees vote on union representation or before the contractor hires any workers. See *Project Labor Agreements: The Extent of Their Use and Related Information* (GAO/GGD-98-82, May 29, 1998).

³See *Worker Protection: Federal Contractors and Violations of Labor Law* (GAO/HEHS-96-8, Oct. 24, 1995) and *Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors* (GAO/HEHS-96-157, Aug. 23, 1996). See list of related GAO products at the end of this statement.

Health Administration (OSHA) in those reports involving the use of information on federal contractors to enhance work place health and safety and workers' rights to bargain collectively.

In summary, we found that federal contracts worth many billions of dollars had been awarded to employers who had been found in violation of the NLRA or the safety and health regulations issued under the OSH Act. We found that the 80 firms that had violated the NLRA during fiscal years 1993 and 1994 had received \$23 billion, or about 13 percent of the total dollar value of federal contracts awarded during fiscal year 1993. We also identified 261 federal contractors that had work sites at which OSHA assessed proposed penalties of \$15,000 or more for noncompliance with health and safety regulations. These firms received \$38 billion in federal contracts awarded during fiscal year 1994. Both of these totals probably underestimate the number of violators and contract dollars received during both years for reasons on which I will elaborate. In both cases, most of the contract dollars were awarded to violators that were large firms—with annual sales over \$500 million—and a majority of these firms were in manufacturing industries. About 75 percent of the dollar value of these awards came from the Department of Defense, although many dollars also came from the Department of Energy and the National Aeronautics and Space Administration (NASA).

Although agencies can consider employers' labor-management relations and health and safety records in the awarding of contracts under current procurement regulations, agency officials responsible for awarding contracts and debarring contractors from receiving future contracts have generally not taken actions against contractors with safety and health or labor-relations law violations. We found that this is at least partially because they do not have adequate information to determine those federal contractors in noncompliance with these laws, even when the contractors have been assessed severe penalties or remedies under the respective acts. In our reports, we made recommendations to both NLRB and OSHA that could enhance the effectiveness of their enforcement through the use of information on federal contractors. Although NLRB has taken action in implementing our recommendations, OSHA has not yet done so.

Background

Private sector companies receive billions of dollars annually in federal government contracts for goods and services. The General Services Administration (GSA) reports that federal contracts in fiscal year 1997 for \$25,000 or more were valued at \$165 billion. Approximately 17 percent of

the labor force—23 million workers—is employed by companies with federal contracts and subcontracts, according to fiscal year 1996 estimates of the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

Federal law and an executive order place greater responsibilities on federal contractors, compared with other employers, in some areas of work place activity. For example, federal contractors must comply with Executive Order 11246, which requires a contractor to develop an affirmative action program detailing the steps that the contractor will take and has already taken to ensure equal employment opportunity for all workers, regardless of race, color, religion, sex, or national origin. In addition, the Service Contract Act and the Davis-Bacon Act require the payment of the area’s prevailing wages and benefits on federal contracts in the service and construction industries, respectively. Furthermore, Labor may debar contractors in the construction industry under the Contract Work Hours and Safety Standards Act for “repeated willful or grossly negligent” violations of safety and health standards issued under the OSH Act.

Under federal procurement regulations, agencies may deny an award of a contract, or debar or suspend a contractor, for a variety of reasons, including safety and health compliance problems.⁴ Before awarding a contract, an agency must make a positive finding that the bidder is “responsible,” as detailed in federal procurement regulations. Also, federal agencies can debar or suspend companies for any “cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.” In determining whether a federal contractor is “responsible,” agency contracting officials can consider compliance with applicable laws and regulations, which could include the OSH Act or the NLRA.

To help foster consistency among agency regulations concerning debarment and suspension, Executive Order 12549, issued in February 1986, established the Interagency Committee on Debarment and Suspension, which consists of agency representatives designated by the Office of Management and Budget (OMB). This committee meets monthly and provides the opportunity for agency debarment officials to share information about companies that they are trying to either debar or suspend, or to bring into compliance, in order to avoid having to take an

⁴A list of the hundreds of firms on the federal debarment lists is issued monthly by GSA. See List of Parties Excluded From Federal Procurement and Nonprocurement Programs, as of May 15, 1998 (Washington, D.C.: Office of Acquisition Policy, May 1998).

adverse contracting action. At its monthly meetings, the committee also helps interpret regulations on debarment or suspension issued by OMB and determines which agency will take lead responsibility for any actions taken against a federal contractor.

Most firms—regardless of whether they are federal contractors—must comply with safety and health standards issued under the OSH Act of 1970, which was enacted “to assure safe and healthful working conditions for working men and women.” The Secretary of Labor established OSHA to carry out a number of responsibilities, including developing and enforcing safety and health standards; educating workers and employers about work place hazards; and establishing responsibilities and rights for both employers and employees for the achievement of better safety and health conditions.⁵ The NLRA provides the basic framework governing private sector labor-management relations. This act, passed in 1935, created an independent agency, NLRB, to administer and enforce the act. Among other duties, NLRB is responsible for preventing and remedying violations of the act—unfair labor practices (ULP) committed by employers or unions. NLRB’s functions are divided between its general counsel and a five-member Board. The Office of the General Counsel investigates and prosecutes ULP charges, while the Board reviews all cases decided by administrative law judges in NLRB’s 33 regions.

Before I review our findings, I would like to discuss the methodology we used in our 1995 and 1996 reports to identify federal contractors that violated either the NLRA or the OSH Act. For both laws, we used a similar manual matching procedure. To obtain information on firms that had violated the NLRA, we used the NLRB Executive Secretary’s database because it tracks all cases that go before the Board, excluding all cases that are dismissed, withdrawn, or settled informally. We reviewed these data for the 1,493 decisions that the Board reviewed and issued on ULP cases against firms. This was about 4 percent of all ULP cases received by NLRB over a 2-year period (fiscal years 1993-94).⁶ To obtain data on firms with significant violations of OSHA regulations, we used OSHA’s Integrated

⁵The act also authorized states to operate, with up to 50 percent federal funding, their own safety and health programs, and 23 states have chosen to do so. OSHA, however, is responsible for approving state programs and monitoring their performance to make sure they remain “at least as effective” as the program operated by OSHA.

⁶It is important to note that the violation itself may have been committed more than a year before the Board decision because of the time it takes for cases to be processed by NLRB. We have found that the Board decided most cases within 1 year from the date the case was assigned to a Board member. However, about 10 percent of the cases have taken from over 3 to over 7 years to decide. See National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters (GAO/HRD-91-29, Jan. 7, 1991).

Management Information System (IMIS), which contains detailed information on all OSHA inspections conducted by federal OSHA or the state-operated programs. It includes detailed data on penalty amounts, the severity of the violation, the standards violated, whether fatalities or injuries occurred, and other information. In using OSHA's IMIS database, which includes many thousands of inspections annually, we focused only on those inspections resulting in significant penalties—proposed penalties of at least \$15,000—regardless of the amount of the actual penalty recorded when the inspection was closed.⁷ Using this definition, inspections involving significant penalties represented only 3 percent of the 72,950 inspections closed in fiscal year 1994.

We matched the NLRB case data and OSHA's IMIS inspection data with the database of federal contractors maintained by GSA, the Federal Procurement Data System (FPDS). FPDS tracks firms awarded contracts of \$25,000 or more in federal funding for products and services. Although it is difficult to estimate the number of federal contractors, GSA reports there may be as many as 60,000 federal contractors because this is the number of unique corporate identification codes in FPDS. FPDS contains a variety of information, including the contractor's name and location, agency awarding the contract, principal place of contract performance, and the dollar amount of the contract awarded. FPDS does not contain information on contractors' safety and health or labor relations' practices.

Because the lack of corporate identification numbers in both the NLRB and OSHA databases precluded our use of an automated matching procedure, we had to manually match these data. We manually compared each firm name from the Executive Secretary and IMIS databases and with the larger FPDS file, identifying those firms that were identical or nearly identical. After this manual match, to ensure that the firms listed in the Executive Secretary or IMIS databases were the same as those listed in the FPDS, we telephoned the firm at the location the OSHA or labor violation occurred. We then verified that the firm number and location identified in the Executive Secretary or IMIS database and the FPDS database referred to the same firm.

Several federal contractors we identified as OSHA violators have expressed concerns about the information we obtained from IMIS, particularly with

⁷The proposed penalty reflects an OSHA compliance officer's initial assessment of the seriousness of the violations. According to OSHA officials, proposed penalties were a better reflection of the severity of the citations than the actual penalties because actual penalties are a product of other factors, such as negotiations between the company and OSHA to encourage quicker abatement of work place hazards. Cases may be closed either because the employer accepted the citation or a contested citation was resolved.

regard to OSHA's characterization of information on its corporatewide or individual facility settlement agreements negotiated with employers. In response, we recommended to the Secretary of Labor that the quality of the IMIS data be assessed as they relate to settlement agreements, and that steps be taken to correct any detected weaknesses.⁸ Since that time, OSHA has taken some action to address these concerns, including its introduction of a special code to identify administrative actions taken under corporatewide settlements in IMIS, the inclusion of an additional field to flag cases that are atypical, and additional information added to the IMIS "report explanation" field about the treatment of penalties in certain cases.

It should be noted that our approach probably understated, in a number of ways, the number of federal contractors violating the laws. In some cases, firms had gone out of business or relocated, or the location information in the IMIS or FPDS databases was inaccurate or incomplete, or the employer refused or was unable to confirm or deny key information over the telephone, preventing us from verifying a potential match. In other instances, firms may have split, merged, changed names, or operated subsidiaries, so that different names would have appeared among the three databases, thus resulting in matches escaping our detection. We also focused our analysis on violations committed by primary contractors. We did not determine the extent to which contract dollars were awarded by primary contractors to subcontractors with violations, or the degree to which the contractors we identified were also subcontractors on other awards. Concerning IMIS in particular, many employers we identified as violators in OSHA's database were construction companies. Because construction work sites are temporary, the employer could not always remember whether the work place existed or when the inspection was conducted. Regarding the NLRB data, many firms were involved in cases that were withdrawn or settled and our analysis does not include such cases in assessing violations committed, remedies ordered, and number of workers affected.

⁸See OSHA's Inspection Database ([GAO/HEHS-97-43R](#), Dec. 30, 1996).

Labor-Management Relations Law Violators Received Over \$23 Billion in Federal Contracts in Fiscal Year 1993

A total of 80 firms that violated the NLRA received over \$23 billion from more than 4,400 federal contracts during fiscal year 1993—about 13 percent of total fiscal year 1993 contract dollars. These contract dollars were concentrated among only a few violators, with six such firms receiving about \$21 billion. Firms receiving more than \$500 million each in contracts got about 90 percent of these federal contract dollars. About 73 percent of the \$23 billion was awarded by the Department of Defense, with NASA and the Department of Energy as the other major sources of these contract moneys. About two-thirds of these dollars went to manufacturing firms. Most of the violators were large firms. Of the 77 violators for which data on workforce size were available, 35 had more than 10,000 employees. Of the 64 violators for which sales data were available, 32 had over \$1 billion in sales, and 10 firms had over \$10 billion in sales.

In 35 of the 88 NLRB-related cases we identified as involving the 80 federal contractors, the Board required firms to reinstate workers or restore workers to their prior positions as the remedy for violations. In 32 of these 35 cases, firms were ordered to reinstate unlawfully fired workers. In 6 of the 35, firms were ordered to restore workers who had been subjected to another kind of unfavorable change in job status. An unfavorable change in job status could mean that the worker, for example, was suspended, demoted, transferred, or not hired in the first place because of activities for or association with a union. Some cases involved both an order to reinstate fired workers and an order to restore workers who were subjected to another kind of unfavorable change in job status.

These remedies affected a sizable number of specific individual workers and a far larger number of workers who were part of a particular bargaining unit. The Board ordered firms to reinstate or restore 761 individual workers to their appropriate job positions. In 44 of the 88 cases, the Board ordered the firm to pay back wages to 801 workers and ordered the firm to restore benefits to 462 workers in 28 cases. In most cases, back wages or benefits were owed to individual workers who had been illegally fired or subjected to another kind of unfavorable change in job status. However, in 12 cases, wages or benefits were ordered restored to all workers in the bargaining unit because the firm failed to pay wages or benefits as required under its contract with the union. Some cases involved both a remedy for individual workers owed back wages or benefits as well as the same type of remedy for the entire bargaining unit.

The Board also ordered other types of remedies in many of these 88 cases. For example, in 33 cases, the Board ordered the firm to bargain with the

union.⁹ In 24 cases, firms were ordered to stop threatening employees with the loss of their jobs or the shutdown of the firm. Firms were ordered in 33 cases to stop other kinds of threats, such as interrogating employees and circulating lists of employees associated with the union. To facilitate the bargaining of a contract, the Board ordered firms to provide information to the union in 16 cases.

Contractors With OSHA Violations Received \$38 Billion in Fiscal Year 1994

We found 261 federal contractors that were the corporate parents of facilities that had received proposed penalties of \$15,000 or more from OSHA for violations of safety and health regulations in fiscal year 1994. These contractors received \$38 billion in contract dollars, about 22 percent of the \$176 billion in federal contracts, valued at \$25,000 or more, awarded that year. About 75 percent of the total dollar value of these contracts was awarded by the Department of Defense, with large amounts of contract dollars also awarded by the Department of Energy and NASA. About 5 percent of these 261 federal contractors (12 firms) each received more than \$500 million in federal contracts in fiscal year 1994. In total, this group received over 60 percent of the \$38 billion awarded to violators.

A majority of the 345 work sites (56 percent) penalized for safety and health violations were engaged in manufacturing. An examination of the violators' standard industrial classification codes showed that many of these work sites manufactured paper, food, or primary and fabricated metals. Although most violators were engaged in manufacturing, a significant percentage of work sites (18 percent) were engaged in construction. Many (68 percent) of the work sites where the violations occurred were relatively small, employing 500 or fewer workers. Just over 15 percent of the work sites employed 25 or fewer workers. Although few work sites employed large numbers of workers, the federal contractors that own these work sites often employed large numbers of workers in multiple facilities across the country.

The number and nature of the violations for which these 261 federal contractors were cited, the fatalities and injuries associated with their 345 inspections, and the high penalties assessed, suggest that workers were at substantial risk of injury or illness in the work places of some federal contractors. The 261 federal contractors were cited for 5,121 violations. Most of the inspections of the work sites involved at least one violation that OSHA classified as serious (88 percent)—posing a risk of death or

⁹The Board's decision might also declare that the firm must recognize the union or honor the bargaining agreement.

serious physical harm to workers, or willful (69 percent)—situations in which the employer intentionally and knowingly committed a violation. At work sites of 50 federal contractors, a total of 35 fatalities and 85 injuries occurred. Most of the violations (72 percent) were of general industry standards, including failure to protect workers from electrical hazards and injuries resulting from inadequate machine guarding.

OSHA compliance officers assessed a total of \$24 million in proposed penalties and \$10.9 million in actual penalties for all violations in these 345 inspections. In some cases, these federal contractors were assessed proposed penalties that were especially high. In 8 percent of the 345 inspections, the contractor was assessed a proposed penalty of \$100,000 or more. In addition, some of these 261 federal contractors were assessed a significant penalty more than once in fiscal year 1994 for violations that occurred at different work sites owned by, or associated with, the same parent company. Finally, a search for prior inspections of the same work sites that had been assessed significant penalties for safety and health violations revealed a number of additional inspections of parent company facilities, including some additional significant penalty inspections.

We did not evaluate the general safety and health inspection records of federal contractors. However, some of the contractors who were assessed significant penalties also operated facilities with exemplary health and safety records, while others maintained facilities that participated in other OSHA-sanctioned voluntary compliance programs that suggest a proactive approach to work place safety and health.

NLRB Implemented GAO Recommendations, but OSHA Has Not Yet Taken Action

In our report on federal contractors who violate the NLRA, we noted that NLRB could improve its enforcement efforts by obtaining information on violators who receive federal contracts. In particular, the NLRB could withhold contract payments from federal contractors who have failed to comply with a Board order to restore wages or benefits. This means of collection is referred to as an administrative offset. However, NLRB does not currently use a corporate identifier in any of its databases that could be recognized by GSA to identify federal contractors, although agency officials acknowledged the usefulness of such an identifier. Consequently, we recommended that NLRB coordinate with GSA to identify violators with federal contracts. Since that time, the enactment of the Debt Collection and Improvement Act has permitted NLRB to take advantage of administrative offset through coordination with the Treasury's Financial

Management Services Department, which is developing its comprehensive database on federal contractors.

In our report on federal contractors who violated OSHA regulations, we concluded that contracting agencies could use information on a contractor's safety and health record during the procedure for the awarding of federal contracts as a vehicle to encourage a contractor to undertake remedial measures to improve work place conditions.¹⁰ However, agency contracting authorities have not done so, at least partially because they did not have the information to determine those federal contractors who are violating safety and health regulations, even when they have been fined significant penalties for willful or repeated violations. Thus, we recommended that the Secretary of Labor direct OSHA to develop and implement policies, in consultation with GSA and the Interagency Committee on Debarment and Suspension, on how safety and health records of federal contractors could be shared to better inform agency awarding and debarment officials in their decisions. We noted, however, that OSHA should work closely with the contracting agencies to help them interpret and use inspection information effectively. We also recommended that OSHA consider the appropriateness of extending these policies and procedures to cover companies receiving other forms of federal assistance such as loans and grants. Finally, we urged OSHA to develop procedures on how it will consider a company's status as a federal contractor in setting its own priorities for inspecting work sites. At this time, OSHA officials have stated that the agency has conducted discussions with members of the Interagency Committee on Suspension and Debarment regarding possible policies and procedures for sharing safety and health records, although no final decisions have yet been made.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or Members of the Subcommittee may have.

¹⁰Occupational Safety and Health: Violations of Safety and Health by Federal Contractors (GAO/HEHS-96-157, Aug. 23, 1996), p. 34.

Related GAO Products

Project Labor Agreements: The Extent of Their Use and Related Information ([GAO/GGD-98-82](#), May 29, 1998).

Beverly Enterprises, Inc. ([GAO/HEHS-97-145R](#), June 3, 1997).

OSHA's Inspection Database ([GAO/HEHS-97-43R](#), Dec. 30, 1996).

Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors ([GAO/HEHS-96-157](#), Aug. 23, 1996).

Worker Protection: Federal Contractors and Violations of Labor Law ([GAO/HEHS-96-8](#), Oct. 24, 1995).

National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters ([GAO/HRD-91-29](#), Jan. 7, 1991).

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