United States General Accounting Office

GAO

Report to Congressional Requesters

November 2002

# GOVERNMENT CONTRACTING

# Adjudicated Violations of Certain Laws by Federal Contractors


GAO-03-163

# Contents

## Abbreviations

| | |
|---|---|
| ALJ | Administrative Law Judge |
| CERCLA | Comprehensive Environmental Response, Compensation and Liability Act |
| CFR | Code of Federal Regulations |
| CPSC | Consumer Product Safety Commission |
| DOJ | Department of Justice |
| DOL | Department of Labor |
| DUNS | Data Universal Numbering System |
| EIN | Employee Identification Number |
| EPA | Environmental Protection Agency |
| EPCRA | Emergency Planning and Community Right-to-Know Act |
| ERISA | Employee Retirement Income Security Act |
| FAR | Federal Acquisition Regulation |
| FLSA | Fair Labor Standards Act |
| FMLA | Family and Medical Leave Act |
| FPDS | Federal Procurement Data System |
| FTC | Federal Trade Commission |
| GSA | General Services Administration |
| IRS | Internal Revenue Service |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| NLRA | National Labor Relations Act |
| NLRB | National Labor Relations Board |
| OFCCP | Office of Federal Contract Compliance Programs |
| OMB | Office of Management and Budget |
| OSHA | Occupational Safety and Health Administration |
| PWBA | Pension and Welfare Benefits Administration |
| TIN | Taxpayer Identification Number |
| TSCA | Toxic Substances Control Act |
| WHD | Wage and Hour Division |

GAO
Accountability * Integrity * Reliability

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

November 15, 2002

The Honorable Tom Davis
Chairman, Subcommittee on Technology
and Procurement Policy
Committee on Government Reform
House of Representatives

The Honorable Stephen Horn
Chairman, Subcommittee on Government Efficiency,
Financial Management, and Intergovernmental Relations
Committee on Government Reform
House of Representatives

Each year the federal government awards billions of dollars in contracts for goods and services. By statute, federal agencies are required to award contracts to "responsible sources."[1] This statutory requirement has been implemented in the Federal Acquisition Regulation (FAR), which requires that government purchases be made from, and government contracts be awarded to, responsible prospective contractors only.[2] In accordance with the statutory definition of "responsible source,"[3] the FAR establishes "a satisfactory record of integrity and business ethics" as one of the general standards a prospective contractor must meet to be responsible. In December 2000, amidst considerable controversy, a revision to the FAR ("the FAR rule") was promulgated through the regulatory rulemaking process to clarify what constituted "a satisfactory record of integrity and business ethics."[4] This now-revoked FAR rule stated that a satisfactory record of integrity and business ethics includes a record of satisfactory compliance with the law, specifically environmental, labor and employment, antitrust, consumer protection, and tax laws. It also required prospective contractors to certify in their bids or proposals submitted in response to government contract solicitations as to their compliance with these laws within the past 3 years. Specifically, for federal government

[1]10 U.S.C. § 2305(b) (3) and (4) (C); 41 U.S.C.§ 253b (c) and (d) (3).

[2]FAR, 48 C.F.R. § 9.103(a).

[3]41 U.S.C. § 403(7).

[4]Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 Fed. Reg. 80,256-80,266 (Dec. 20, 2000).

contracts expected to exceed $100,000, prospective contractors were to certify whether, relative to these areas of law, they have been convicted of a felony (or have felony indictments pending against them), have had a federal court judgment in a civil case brought by the United States rendered against them, or have had an adverse decision by a federal administrative law judge (ALJ), board, or commission indicating a willful violation of law. The FAR rule also provided guidance to agency contracting officers when considering a prospective contractor's compliance history.

Although the FAR rule was revoked in December 2001, prospective contractors are still required by statute and the FAR to be responsible sources (including having a satisfactory record of business ethics and integrity). As a result of the FAR rule revocation, the FAR itself does not provide specific guidance to contracting officers on applying the standard for a satisfactory record of business ethics and integrity (bid protest decisions from courts and our Office that address the standard do, however, continue to provide guidance). Also, prospective contractors no longer have to certify, as they did under the FAR rule, as to their compliance with environmental, labor and employment, antitrust, consumer protection, and tax laws.

Because of your interest in this area, you asked that we address the following questions:

- To what extent have federal contractors violated federal environmental, labor and employment, antitrust, consumer protection, and tax laws (the areas of law specified in the FAR rule)?

- What FAR rule implementation issues were identified in our work in response to the first question?

To determine the extent of contractor violations, we gathered information on contractors that were awarded new federal contracts of at least $100,000[5] in fiscal year 2000 and federal enforcement agency[6] cases closed

[5]For our purposes, each individual contract had to be a new contract awarded during fiscal year 2000 with $100,000 or more obligated against it at that time.

[6]We identified pertinent enforcement agencies by referring to statutes and regulations in the environmental, labor and employment, antitrust, consumer protection, and tax areas; consulting with agency officials; and reviewing the *U.S. Government Manual* enforcement agency Web sites and our past products.

during fiscal years 1997 through 1999 (October 1996 through September 1999).[7] These were the types of contracts and cases that would have been covered by the FAR rule's contractor certification requirement had it been applied beginning with fiscal year 2000,[8] the last full fiscal year for which contractor data were available at the start of our work.

We then matched the names of contractors listed in the Federal Procurement Data System (FPDS)—which is maintained by the General Services Administration (GSA)—shown as having new federal contracts awarded in fiscal year 2000 to names in enforcement agency cases closed during fiscal years 1997 to 1999. These names were in the databases maintained by seven federal agencies responsible for enforcing or administering many federal environmental, labor and employment, antitrust, consumer protection, or tax laws.[9] However, the name-matching process was sometimes imprecise because contractor names can vary widely due to such factors as spelling, name combinations, and parent/subsidiary relationships. Nevertheless, this was generally the only viable method available for identifying contractors involved in these cases because, usually, common numeric identifiers were not available. Therefore, due to name variations, we likely did not identify all of the contractors involved in the cases in the databases maintained by the

[7]The total number of enforcement agency cases includes all cases closed by those agencies during the applicable time period. However, for some agencies not all of the cases involved enforcement actions. For example, DOJ's Executive Office for U.S. Attorneys tracks other types of cases handled by local U.S. Attorneys reflecting the wide variety of types of litigation in which the United States is necessarily involved. Further, for some agencies, not all of these cases involved determinations of law violations. For example, Environmental Protection Agency (EPA) "Superfund" cases included in the total number of enforcement agency cases we reported typically do not involve determinations of law violations but rather the assessment of liability for hazardous waste cleanup costs under the Comprehensive Environmental Response, Compensation and Liability Act.

[8]We limited our review to cases closed by enforcement agencies because these cases reflected final dispositions and because of limitations in obtaining information relating to ongoing litigation or enforcement actions. Some cases that may have been covered by the FAR rule, such as adverse district court or administrative law judge rulings, may have remained open in an enforcement agency's records where the contractor was appealing the decision or continuing with further adjudicatory proceedings. Such cases were not included in our review.

[9]The laws involved are those enforced or administered by the seven federal agencies we identified and which provided us data on their closed cases. The seven federal agencies are EPA, the Department of Labor (DOL), the Department of Justice (DOJ), the National Labor Relations Board (NLRB), the Federal Trade Commission (FTC), the Consumer Product Safety Commission (CPSC), and the Internal Revenue Service (IRS).

enforcement agencies we examined. Conversely, we found some false matches—companies with similar names involved in the cases but which were not the same companies as the contractors. Where we detected false matches, we eliminated them. See appendix I for further information about the accuracy of the matches.

When we matched a name associated with a closed case involving a federal enforcement agency with the name of a contractor, we reviewed the disposition of the case as characterized by the agency in its database. Where a case resulted in an actual decision by a court or an administrative adjudicator finding that a violation (including convictions and plea agreements in criminal cases) had occurred, we reported the numbers of such cases under the "violation found" column in tables 2 through 5 of this report corresponding to the areas of law for which the enforcement agencies are responsible. Adjudicated violations were the type of information on violations of laws that contracting officers were instructed by the FAR rule to give the greatest weight in making their responsibility determinations. For cases that did not result in an actual decision (such as those that were dismissed, withdrawn, or settled) or for cases that generally could not have resulted in a determination of a law violation (such as Environmental Protection Agency (EPA) "Superfund" cases involving the assessment of liability for cleanup costs), we reported the total number of such cases under the "other/resolved before decision" column of the respective tables because such cases were resolved either through a process that did not involve a law violation determination or without an actual adjudicated determination of a law violation.

To identify FAR rule implementation issues from our work in response to the first objective, we analyzed information from the enforcement agency cases we matched to federal contractors and considered what information the contractors would have had to certify under the FAR rule's certification requirement. Additionally, we discussed FAR rule implementation issues and concerns with (1) contracting officers and other officials from the federal agencies included in our review and (2) contractors involved in the cases we selected for detailed review. Finally, we requested comments on the results of our work from officials from the seven federal agencies, DOD, NASA, and GSA, and the Administrator for Federal Procurement

Policy.[10] We conducted our work from July 2000 through October 2002 in accordance with generally accepted government auditing standards. A more detailed description of our scope and methodology is included in appendix I.

## Results in Brief

We identified 39 contractors among the 16,819 contractors that were awarded new federal contracts in amounts of at least $100,000 during fiscal year 2000 and that were found by a federal court or adjudicated administrative decision to have violated one or more federal environmental, labor and employment, or antitrust laws in enforcement agency cases that were closed during fiscal years 1997 through 1999. Of these 39 contractors, 7 had been convicted of a crime in federal court; 5 had a federal court judgment in a civil case brought by the federal government rendered against them, and 27 had an adverse decision by a federal ALJ, board, or commission indicating a violation of law.[11] We did not identify any contractors that were found by a federal court or adjudicated administrative decision to have violated consumer protection or tax laws. We also identified another 3,403 contractors that were involved in enforcement agencies' cases (not including IRS tax penalty assessments) covered by our review and closed during this 3-year period. However, most of these cases that involved alleged law violations were resolved before a decision by a court or administrative adjudicator was reached as to whether a violation of law had occurred. In most instances, these cases were resolved through some form of "administrative agreement" or "settlement" with the government in which the contractor typically did not admit—and sometimes specifically denied—the violation charged and which did not constitute a judgment or adjudicated administrative decision that a violation had actually occurred.

[10]The FAR is prepared, issued, and maintained; and the FAR system is prescribed jointly by the Secretary of Defense, the Administrator of GSA, and the Administrator of the National Aeronautics and Space Administration (NASA), who, with the Administrator for Federal Procurement Policy, are the members of the FAR Council. The FAR system was established for implementing uniform policies and procedures for acquisitions by all executive agencies.

[11]Appendix II provides a description of criminal cases from enforcement agencies where the contractor pled guilty (or no contest), a plea agreement was reached, or the contractor was otherwise convicted, and civil and administrative cases from enforcement agencies where a violation of law was determined by a court or adjudicated administrative decision.

We identified several FAR rule implementation issues through our work in determining the incidence of contractor violations in response to the first question. First, the FAR rule's contractor certification requirement focused on only certain types of law violations. As a result—on the basis of our conceptual application of the certification criteria specified in the revoked FAR rule—only 7 of the 39 contractors we identified as being found by a court or administrative decision to have violated the law would have been required to report the violations in their certifications if they were prospective contractors submitting an offer. The remaining 32 contractors with violations found by a court or administrative decision, as well the 3,403 contractors whose cases were otherwise resolved, would not have been required to report any noncompliance with the law. Further, although many cases were resolved through administrative agreements (settlements)—and the FAR rule stated that contracting officers should take such information into consideration—the FAR rule did not require prospective contractors to report such agreements. Second, we found that contracting officers would face significant difficulties in verifying or obtaining contractor compliance history information. Third, the FAR rule may have required additional record keeping for some prospective contractors in order for them to track their companies' compliance with applicable laws and accurately certify as to their compliance when submitting their offers. Of the 43 federal contractors who provided us information on the issue of tracking their compliance history, 18 told us that they did not have the capability to identify or track all of the various types of enforcement actions that may have been taken against them.

The federal agencies involved in our review either had no comments or provided us technical comments on a draft of this report. We made changes to this report based on these technical comments where appropriate.

## Background

Prior to January 2001, the FAR had not provided any elaboration on what it means for a prospective contractor to have "a satisfactory record of integrity and business ethics." The FAR simply restated the statutory language that a "responsible source" is one that has a "satisfactory record

of integrity and business ethics."[12] In December 2000, the FAR Council issued a final rule, effective January 19, 2001, to clarify what constituted "a satisfactory record of integrity and business ethics" in making contractor responsibility determinations,[13] including satisfactory compliance with the law, specifically environmental, labor and employment, antitrust, consumer protection, and tax laws. According to the FAR Council, the lack of guidance in the FAR as to what constitutes a satisfactory record of integrity and business ethics had caused contracting officers to be extremely reluctant to exercise their discretion in making this determination; and, as a result, the government continued to award contracts to firms that have violated procurement and other federal laws, in some cases repeatedly. In promulgating the FAR rule, the FAR Council surmised that by giving contracting officers a clearer basis for declining to contract with such businesses, the government could improve the integrity of the contracting process, reduce the risk of fraud or noncompliance, and encourage standards of integrity and compliance with the law. According to the FAR Council, by ensuring that its contractors possess a satisfactory record of compliance with the law, the government increases its confidence that a contractor is a responsible, reliable company that will perform the contract in an efficient, responsible, and timely manner and should also reduce the risk that compliance issues will interfere with performance of the contract.

[12]The term "responsible source" is defined at 41 U.S.C. § 403(7) as a prospective contractor who has (or has the ability to obtain) adequate financial resources to perform the contract, the necessary organization, experience, accounting and operational controls, and technical skills, as well as the necessary production, construction, and technical equipment and facilities; is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and is otherwise qualified and eligible to receive an award under applicable law and regulation. Under the FAR, no purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. The FAR requires that in the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. Further, the FAR states that a prospective contractor must affirmatively demonstrate its responsibility.

[13]Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 Fed. Reg. 80,256 – 80,266 (Dec. 20, 2000). The FAR rule was based on an earlier proposed rule (65 Fed. Reg. 40,830 – 40,834 (June 30, 2000)), which replaced the proposed rule published on July 9, 1999 (64 Fed. Reg. 37,360 – 37,361). The FAR rule would have also revised cost principles to disallow charging to the government the costs of influencing unionization decisions and litigating proceedings brought by the government if there is a finding that the contractor violated law or regulation. These cost principle provisions are not addressed in this report.

The FAR rule provided guidance to contracting officers on the application of the integrity and business ethics standard. Specifically, the FAR rule stated that a contracting officer's determination that a prospective contractor has a satisfactory record of integrity and business ethics in order to receive a government contract "can be made by examining a prospective contractor's record of compliance with the law." The guidance further stated that in making a responsibility determination based upon integrity and business ethics, contracting officers "must consider all relevant credible information" but should give the greatest weight to violations of laws that have been adjudicated within the last 3 years preceding the prospective contractor's offer.[14] The guidance stated that normally, a single violation of law will not give rise to a determination of nonresponsibility, but evidence of repeated, pervasive, or significant violations of the law may indicate an unsatisfactory record of integrity and business ethics. The guidance instructed contracting officers to give consideration to any administrative agreements entered into with prospective contractors who take corrective action after disclosure of law violations by an enforcement agency (i.e., after an initial charge or complaint is filed against the contractor by the agency alleging a law violation). The FAR rule specified that these prospective contractors, despite findings of law violations by the enforcement agency, may continue to be responsible contractors because they had corrected the conditions that led to the alleged misconduct. On the other hand, according to the FAR rule, failure of a prospective contractor to have complied with the terms of an administrative agreement is evidence of a lack of integrity and business ethics.

The FAR rule required contracting officers to consider information based on the following, in descending order of importance.

- Convictions of and civil judgments rendered against the prospective contractor for
    - commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract;

[14]The term "offer" means the "bid" or "proposal" submitted by a prospective contractor in response to a solicitation issued by the government.

- violation of federal or state antitrust statutes relating to the submission of offers; or

- commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receipt of stolen property.

- Indictments for the above offenses.

- Relative to tax, labor and employment, environmental, antitrust, or consumer protection laws

  - federal or state felony convictions;

  - adverse federal court judgments in civil cases brought by the United States;

  - adverse decisions by a federal ALJ, board, or commission indicating violations of law; or

  - federal or state felony indictments.

Finally, the FAR rule stated that contracting officers might consider other relevant information, such as civil or administrative complaints or similar actions filed by or on behalf of a federal agency, board, or commission, if such action reflects an adjudicated determination by the agency.

To provide a mechanism for contracting officers to consider a prospective contractor's compliance history, the FAR rule amended existing certifications[15] required to be included in solicitations where the contract value is expected to exceed the simplified acquisition threshold

[15]FAR, 48 C.F.R. § 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters for noncommercial item solicitations, and FAR, 48 C.F.R. § 52.212-3(h), Certification Regarding Debarment, Suspension or Ineligibility for Award for commercial item solicitations.

($100,000).[16] Specifically, under the existing certification,[17] the prospective contractor is to certify, by checking the appropriate box on the form, whether, to the best of its knowledge and belief, it or its principals[18]

- are or are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
- have or have not, within the preceding 3 years, been convicted of or had a civil judgment rendered against them for
  - commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government contract or subcontract;
  - violation of federal or state antitrust statutes relating to the submission of offers; or
  - commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, tax evasion, or receiving stolen property;
- are or are not presently indicted for, or otherwise criminally or civilly charged by a government entity with commission of any of these offenses.

The FAR rule added to this existing certification whether the prospective contractor or its principals have, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws:

- been convicted of a federal or state felony (or have federal or state felony indictments pending against them);

[16]The FAR authorizes certain simplified acquisition procedures for the acquisition of supplies and services the aggregate amount of which does not exceed the simplified acquisition threshold of $100,000.

[17]This existing certification predates the FAR rule, was effective concurrently with (as modified by) the FAR rule, and still currently applies to prospective contractors notwithstanding the revocation of the FAR rule.

[18]"Principals" for purposes of the certification means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (such as a general manager).

- had a federal court judgment in a civil case brought by the United States rendered against them; or

- had an adverse decision by a federal ALJ, board, or commission indicating a willful violation of law.

The FAR rule specified that a contractor needed to provide additional detailed information only upon request of the contracting officer and generally only when that contractor was the apparent successful offeror.

In January 2001, immediately after its effective date, several agencies suspended their implementation of the FAR rule under an authorized FAR "class deviation" procedure.[19] After further review, the FAR Council temporarily set aside the rule in April 2001 because the 30-day effective date did not give contractors and the government sufficient time to meet the new obligations and responsibilities imposed by the rule.[20] Specifically, the FAR Council stated that government contracting officers had not had sufficient training, and prospective contractors had not had sufficient time to establish a system to track compliance with applicable laws and keep it current in order to properly fill out the certification. The FAR Council recognized that it would take more time than it had anticipated for businesses to put the systems in place. After further consideration and public comment, the FAR Council revoked the FAR rule in December 2001.[21] According to the FAR Council, the benefits of the FAR rule were outweighed by the burdens imposed. The FAR Council stated that it was not clear that there is a justification for including the added categories of covered laws in the rule and its implementing certification, that the rule provided sufficient guidelines to contracting officers to prevent arbitrary or abusive implementation, or that the rule was justified from a cost-benefit perspective.

In revoking the FAR rule, the FAR Council stated that it fully supports the proposition that government contracts should be awarded to law-abiding

[19]FAR, 48 C.F.R. § 1.404. GSA and several other agencies issued individual class deviations under this authority.

[20]The stay had the effect of restoring the previous FAR language, including the earlier version of the certification.

[21]See 66 Fed. Reg. 17,754-17,760 (stay and proposed revocation) (Apr. 3, 2001); 66 Fed. Reg. 66,984-66,991 (termination of stay and revocation) (Dec. 27, 2001).

entities and that the government should do business only with those entities willing and able to comply with the laws enumerated in the FAR rule. According to the FAR Council, the problem lies in the means for ensuring that the entities with which the government conducts business are good corporate citizens and adhere to the myriad of regulations and laws. The FAR Council determined that the existing suspension and debarment process is the proper vehicle to accomplish this goal. Specifically, the FAR Council noted that the suspension[22] and debarment[23] rules contain well established and defined decision-making criteria and due process safeguards, which have evolved through case law precedent and agency practices. The FAR Council noted that an agency debarring official is authorized to consider a company's responsibility at any time whether the company is a current competitor for a government contract or not; and if the debarring official should determine that the company is not responsible, the official may impose a debarment of the company. This debarment is effective with regard to all federal agencies as well as to many state and local governments that choose to use a debarment list of their own. According to the FAR Council, when a question of a company's honesty and integrity is raised, reliance on debarment and suspension remedies provides effective intervention.

While the decision to debar or suspend a contractor is made within the discretion of the agency involved, the determination of a contractor's responsibility (including whether it has a satisfactory record of business ethics and integrity) continues to be mandatory for each contract award. Although the FAR rule was revoked, the statutory standard of a satisfactory record of business ethics and integrity remains one of the standards required for a prospective contractor to be considered a responsible source for the award of a government contract. This standard continues to be implemented in the FAR. However, as a result of the FAR rule revocation, the FAR itself no longer provides specific guidance to contracting officers on applying the standard. Nonetheless, contracting officers are not entirely without guidance since they do have available legal interpretations from the courts and the Comptroller General as to the application of the

[22]Suspension means action taken by the government under FAR procedures to temporarily disqualify a contractor from government contracting and government-approved subcontracting. The causes for suspension are listed in FAR, 48 C.F.R. § 9.407-2.

[23]Debarment means action taken by the government under FAR procedures to exclude a contractor from government contracting and government-approved subcontracting for a reasonable, specified period. The causes for debarment are listed in FAR, 48 C.F.R. § 9.406-2.

standard. These interpretations are in the context of bid protest decisions addressing challenges to responsibility determinations in the award of government contracts.[24] Also, while prospective contractors no longer (as a result of the FAR rule revocation) have to specifically certify as to their compliance with environmental, labor and employment, antitrust, consumer protection, and tax laws, prospective contractors must still certify as to debarment, suspension, and the offenses listed in the existing certifications. A contracting officer must still check whether a prospective contractor is suspended or debarred before awarding a contract.

We issued two reports several years ago that addressed the issue of federal contractors who had violated nonprocurement-related laws.[25] Our October 1995 report identified federal contractors found by the NLRB to have violated the National Labor Relations Act (NLRA), and our August 1996 report identified contractors charged with Occupational Safety and Health Act violations by the Occupational Safety and Health Administration (OSHA). In the first report, we found that 80 firms with over 4,400 federal contracts valued at over $23 billion in fiscal year 1993 had violated the NLRA as determined in adjudicated decisions of the NLRB. These contractors accounted for 2 percent of the nearly 200,000 federal contracts in effect in fiscal year 1993 that were being performed by over 57,000 parent firms. However, 6 of the 80 firms with NLRA violations accounted for almost 90 percent of the $23 billion in contracts. In the second report, we identified 261 firms that had federal contracts in effect in fiscal year

[24]For example, the U.S. Court of Federal Claims recently referred to the more extensive debarment regulations for guidance in considering the application of the standard for a satisfactory record of business ethics and integrity. *Impresa Construzioni Geom. Domenico Garufi v. U.S.*, 52 Fed. Cl. 421, 425 (May 3, 2002). The Comptroller General has also issued a number of legal decisions over the years that consider the application of the business ethics and integrity standard. See, for example, *Blocacor, LDA*, B-282122.3, Aug. 2, 1999, 99-2 CPD ¶ 25 (agency reasonably would have found firm nonresponsible for illegal dumping of hazardous materials containing asbestos during performance of earlier contract); *Service Deli, Inc.*, B-276251, Mar. 14, 1997, 97-1 CPD ¶ 110 (determination by contracting officer that offeror, should it be in line for award, would be nonresponsible for lack of integrity is reasonable because of criminal conviction in connection with obtaining, attempting to obtain, or performing a public contract); *Standard Tank Cleaning Corp.*, B-245364, Jan. 2, 1992, 92-1 CPD ¶ 3 (contracting agency reasonably determined firm was nonresponsible based upon information from various state agencies that showed a history of environmental violations).

[25]U.S. General Accounting Office, *Federal Contractors and Violations of Labor Law*, GAO/HEHS-96-8 (Washington, D.C.: Oct. 24, 1995); and *Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors*, GAO/HEHS-96-157 (Washington, D.C.: Aug. 23, 1996).

1994 that had been "initially charged" with OSHA violations that carried a possible fine or penalty of more than $15,000 for noncompliance with health or safety regulations. We did not include or discuss the resolution of any of these cases in the report, such as the adjudicated outcome.

## Thirty-Nine Federal Contractors Had Adjudicated Violations of Federal Environmental, Labor, or Antitrust Laws

We identified 39 federal contractors (involved in 47 cases), among the 16,819 contractors awarded new federal contracts in amounts of at least $100,000 during fiscal year 2000, that had been found by a federal court or adjudicated administrative decision to have violated one or more federal environmental, labor or employment, or antitrust laws in cases closed by enforcement agencies during fiscal years 1997 through 1999. As table 1 shows, 7 of these 39 contractors had been convicted of a crime in federal court;[26] 5 had a judgment in a civil case brought by the federal government in federal court rendered against them; and 27 had an adverse decision by a federal ALJ, board, or commission finding a violation of law.[27] These 39 contractors had 39 different contracts of $100,000 or more totaling approximately $855 million.[28] We did not identify any contractors that were found by a federal court or adjudicated administrative decision to have violated consumer protection or tax laws during this time frame.

[26]Since we only used closed cases, we did not review pending federal indictments in criminal cases (the FAR rule required pending felony indictments in the five areas of law to be reported by a prospective contractor and considered by a contracting officer). We also limited our review to federal criminal convictions (including plea agreements) reported in agency databases. The FAR rule encompassed state felony convictions and indictments as well. Because of time and resource constraints, we did not attempt to match contractor names with names of parties indicted or convicted in state criminal proceedings.

[27]In the administrative enforcement area an adverse decision could include charges or complaints by an enforcement agency alleging a law violation that the contractor does not contest through the adjudicatory process and that become final orders of the administrative tribunal. However, all the cases with adjudicated violations that we matched to contractors involved contested allegations resulting in actual administrative decisions on the merits.

[28]GSA's database showed that in fiscal year 2000, 82,622 contractors had a total of 162,212 federal contracts in effect for goods and services valued at over $203 billion. Of these, 16,819 contractors were awarded 29,032 new federal contracts in fiscal year 2000 in amounts of at least $100,000 for each contract, totaling approximately $62 billion.

**Table 1: Number of Federal Contractors with Adjudicated Violations of Federal Environmental, Labor, Antitrust, Consumer, or Tax Laws**

| | Number of contractors by type of adjudication | | | |
|---|---|---|---|---|
| **Area of law** | **Criminal (federal court)** | **Civil (federal court)** | **Administrative (federal ALJ, Board, or Commission)** | **Total violators** |
| Environmental | 7 | 2 | 2 | **11** |
| Labor and employment[a] | 0 | 2 | 25 | **27** |
| Antitrust | 0 | 1 | 0 | **1** |
| Consumer protection | 0 | 0 | 0 | **0** |
| Tax | 0 | 0 | 0 | **0** |
| **Total** | **7** | **5** | **27** | **39** |

[a]Because the table reports on the number of contractors with adjudicated violations, we listed the one contractor with violations adjudicated in both federal court and administratively only under Civil (federal court).

Source: GAO analysis of enforcement agency data.

In addition, we identified another 3,403 contractors involved in another 6,705 cases[29] closed during the 3-year period covered by our review and listed in the databases of one or more of the agencies responsible for enforcing or administering federal environmental, labor and employment, antitrust, consumer protection, or tax laws (not including IRS tax penalty assessments, which are discussed below). However, most of these cases that involved alleged law violations were resolved before a court or adjudicated administrative decision was made as to whether a violation of law had occurred. The resolution usually involved some kind of "administrative agreement" (settlement). Although the agreements reflect that the enforcement agency charged the contractor with a violation, the contractor typically did not admit (or deny)[30] any wrongdoing, and sometimes the agreement actually contained language whereby the contractor specifically denied any violation. In these cases, the parties

[29]We identified a total of 3,442 contractors involved in the 6,752 cases closed during fiscal years 1997 to 1999. As mentioned earlier, due to name variations, we likely did not identify all of the contractors involved in the enforcement agency cases (see app. I).

[30]We did not construe contractors as conceding or admitting to law violations in the administrative agreements we reviewed.

reached some alternate resolution, usually involving the contractor taking corrective action, assuring compliance with the law, and agreeing to make some form of payment to the government. Many of these agreements also provided for penalties and remedies if the contractor did not abide by the agreement. Even though a federal court or an administrative adjudicator, such as an ALJ, typically approved the agreement (i.e., through a consent order) and the case was considered "adjudicated" on that basis, this approval did not constitute an adjudicated decision that a violation had actually occurred. We recognize, of course, that enforcement agencies often attempt to reach agreements with alleged violators to achieve compliance instead of litigating cases to the point of an adjudicated decision. As set out below, we report on the number of cases that were resolved before an adjudicated decision was reached or that were otherwise resolved—cases that include agreements between enforcement agencies and alleged violators for achieving compliance.

## Eleven Federal Contractors Had Adjudicated Violations of Federal Environmental Laws

EPA has administrative law enforcement authority in the majority of federal environmental statutes, including (1) the Clean Air Act (regulates air emissions and authorizes EPA to establish air quality standards to protect public health and the environment); (2) the Clean Water Act (regulates discharges of pollutants into the waters of the United States by giving EPA authority to implement pollution control programs and to set water quality standards and by prohibiting the discharge of any pollutant from a point source into navigable waters unless a permit is obtained); (3) the Resource Conservation and Recovery Act (authorizes EPA to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste); and (4) many others, such as the Toxic Substances Control Act, the Emergency Planning and Community Right-To-Know Act, and the Federal Insecticide, Fungicide, and Rodenticide Act. EPA may issue administrative orders assessing civil penalties and directing compliance.[31] EPA may also bring civil or criminal enforcement actions, in

[31]These administrative actions are subject to a formal administrative adjudication process.

which case the Environment and Natural Resources Division of the DOJ or local U.S. Attorneys handle the matter.[32]

EPA and DOJ also handle cases under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which provides a federal "Superfund" to clean up hazardous-waste sites. Actions under CERCLA typically involve the assessment of liability of responsible parties for cleanup costs rather than the determination of a statutory or regulatory violation. Where EPA performs a cleanup, it will seek to recover the cleanup costs from financially viable parties once a response action has been completed. However, CERCLA can be violated, for example, where a party fails to comply with an order or agreement or fails to report hazardous substance releases as required.

We matched 443 contractors (involved in 698 cases) to cases closed by EPA during fiscal years 1997 through 1999. We also matched 75 contractors (involved in 124 cases) to cases closed by DOJ during this period. Further, as shown in table 2, contractors involved in 11 of the cases were found by a court or adjudicated administrative decision to have violated one or more environmental laws. These 11 cases involved 11 contractors.

[32]The U.S. Army Corps of Engineers has environmental protection responsibilities for wetlands and waterways under the Rivers and Harbors Act and the Clean Water Act that it implements through the issuance of permits. Although the Corps has an administrative hearing process, these proceedings are not formal adjudications under the Administrative Procedure Act. Accordingly, we did not match with federal contractor names the parties involved in those proceedings. However, the Corps can pursue further civil or criminal action by referring matters to the local U.S. Attorney for litigation. Such legal proceedings would have been captured in our matching of DOJ environmental compliance cases. Civil or criminal cases referred to DOJ by other federal agencies with specific environmental law enforcement responsibilities, such as the Fish and Wildlife Service of the Department of the Interior (endangered species) and the Department of Commerce (marine sanctuaries) would also be included in the DOJ cases.

**Table 2: Disposition of EPA and DOJ Environmental Law Cases Involving Federal Contractors Closed during Fiscal Years 1997 through 1999**

| Environmental laws | Violation found[a] | Other/Resolved before decision[b] | Total |
|---|---|---|---|
| **Responsible agency/case disposition** | | | |
| **Environmental Protection Agency** | | | |
| Criminal | 4 | 1 | **5** |
| Civil[c] | 0 | 295 | **295** |
| Administrative[c] | 2 | 396 | **398** |
| **Subtotal** | **6** | **692** | **698[d]** |
| **Department of Justice[e]** | | | |
| Criminal | 3 | 0 | **3** |
| Civil[c] | 2 | 119 | **121** |
| **Subtotal** | **5** | **119** | **124** |
| **Total** | **11** | **811** | **822** |

[a]Violation found – A federal court or adjudicated administrative decision found a violation of law.

[b]Other/Resolved before decision – Cases that did not involve a determination of law violation (such as liability for hazardous waste cleanup under CERCLA), cases where no violation was found, cases closed before a decision was made by a federal court or an administrative adjudicator (such as administrative agreements and consent orders), and cases that were otherwise closed/resolved.

[c]Only selected cases were reviewed and verified.

[d]We excluded from this analysis 11 additional cases involving federal contractors because EPA's data showed that the cases were combined with other cases and did not show the cases' final disposition and 81 other cases involving federal contractors because EPA's data did not show the disposition of the cases.

[e]DOJ environmental cases managed by DOJ's Environment and Natural Resources Division or U.S. Attorneys.

Source: GAO analysis of enforcement agency data.

## Twenty-Seven Federal Contractors Had Adjudicated Violations of Federal Labor and Employment Laws

NLRB administers the National Labor Relations Act, the primary federal law governing relations between labor unions and employers in the private sector. The act guarantees the right of employees to organize and to bargain collectively with their employers or to refrain from such activity. NLRB's statutory mission is to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions. The agency does not act on its own motion but processes charges or allegations of unfair labor practices against an employer or labor organization. If, after an investigation, the NLRB finds reasonable cause to believe a violation of the

law has occurred, the agency can seek a voluntary settlement to remedy the violation. If settlement efforts fail, a formal complaint can be issued and the case is heard by an ALJ. The case can be appealed to the full Board for a final agency determination.

The U.S. Department of Labor (DOL) is responsible for enforcing federal labor and employment laws. We focused our work on the following DOL offices:

- The Wage and Hour Division (WHD) works to enhance the welfare and protect the rights of the nation's workers through enforcement of the federal minimum wage, overtime pay, record keeping, and child labor requirements of the Fair Labor Standards Act; the Family and Medical Leave Act; and employment standards and worker protections provided in certain other laws. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis-Bacon Act, the Service Contract Act, and other statutes applicable to federal contracts for construction and for the provision of goods and services.

- The Pension and Welfare Benefits Administration (PWBA) is responsible for promoting and protecting the pension, health, and other benefits of the over 150 million participants and beneficiaries in over 6 million private sector employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA).

- The Office of Federal Contract Compliance Programs (OFCCP) enforces equal opportunity standards and affirmative action for women, minorities, Vietnam era veterans, and persons with disabilities employed by more than 200,000 contractors and subcontractors that participate in the federal procurement process. Applicable authorities include Executive Order 11246 (Equal Opportunity in Federal Employment), the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and the Americans With Disabilities Act of 1990.[33]

[33]Because OFCCP's mission specifically involves equal employment opportunity issues among federal contractors, we did not include in our review the Equal Employment Opportunity Commission (EEOC), which has related jurisdiction over laws prohibiting discrimination in the workplace and, in particular, laws prohibiting discrimination in compensation. We did, however, match one contractor to a civil case brought by EEOC and tracked by DOJ. This case is reported in appendix II.

- The mission of OSHA, as defined in its enabling legislation, the Occupational Safety and Health Act, is to "[a]ssure so far as possible every working man and woman in the Nation safe and healthful working conditions." This mandate involves standards development, enforcement (such as through workplace inspections), and compliance assistance so that employers maintain safe and healthful workplaces.

These agencies have formal administrative adjudication processes for complaints filed in enforcing the laws for which they are responsible. Under certain circumstances, DOL may also debar contractors for violations of certain labor laws or declare them ineligible for failure to satisfy the equal opportunity or affirmative action obligations of federal contracts.

For the time period covered by our review, we matched 29 contractors (involved in 34 cases) to cases closed by NLRB; 2,847 contractors (involved in 5,128 cases) to cases closed by DOL; and 6 contractors (involved in 6 cases) to cases closed by DOJ —3 of the DOJ cases were handled by DOJ's Civil Rights Division, and 3 cases were handled by U.S. Attorneys. As shown in table 3, contractors involved in 30 of the NLRB cases, 4 of the DOL cases, and 1 of the DOJ cases were found to have violated one or more federal labor or employment laws by a federal court or adjudicated administrative decision. In total, 27 different federal contractors were involved in these 35 cases identified as having labor and employment law violations. The remaining cases were resolved with a wide range of outcomes, including consent agreements and orders, before a decision by a court or administrative adjudicator was reached as to whether a violation of law had occurred.[34]

[34]For example, if a compliance review or complaint investigation by OFCCP indicates a material violation of the equal opportunity clause of a federal contract and if the contractor is willing to correct the violation or deficiency, a written conciliation agreement may be entered into providing for necessary remedial action. According to OFCCP, when a federal contractor agrees through a conciliation agreement to correct the compliance issue, that contractor is deemed to be in compliance.

**Table 3: Disposition of NLRB, DOL, and DOJ Labor and Employment Law Cases Involving Federal Contractors Closed during Fiscal Years 1997 through 1999**

| Labor and employment laws | Violation found[a] | Other/Resolved before decision[b] | Total |
|---|---|---|---|
| **Responsible agency/case disposition** | | | |
| **National Labor Relations Board** | | | |
| Administrative[c] | 30 | 4 | **34** |
| **Subtotal** | **30** | **4** | **34** |
| **Department of Labor** | | | |
| Civil | 1 | 1 | **2** |
| Administrative[d,e] | 3 | 5,123 | **5,126** |
| **Subtotal** | **4** | **5,124** | **5,128[c]** |
| **Department of Justice[f]** | | | |
| Civil[c] | 1 | 5 | **6** |
| **Subtotal** | **1** | **5** | **6** |
| **Total** | **35** | **5,133** | **5,168** |

[a]Violation found – A federal court or adjudicated administrative decision found a violation of law.

[b]Other/Resolved before decision – Cases that did not involve a determination of law violation, cases where no violation was found, cases closed before a decision was made by a federal court or administrative adjudicator (such as administrative agreements and consent orders), and cases that were otherwise closed/resolved.

[c]NLRB administrative cases include ALJ and Board decisions (we did not include cases for which the NLRB, under its statutory authority, obtained injunctive relief in federal court because these cases are still pending full review by the Board or enjoin conduct the Board has already found unlawful).

[d]Only selected cases were reviewed and verified.

[e]We excluded from this analysis 557 additional cases involving federal contractors because DOL's data did not show the disposition of the cases. We also excluded another 67 DOL cases that were decided by an ALJ, Review Commission, or appeals court ruling because the cases were not included in our case selection and the final disposition of the cases could not be determined.

[f]Labor and employment compliance action cases managed by the DOJ's Civil Rights Division or U.S. Attorneys.

Source: GAO analysis of enforcement agency data.

## One Federal Contractor Was Convicted in Federal Court of Violating Federal Antitrust Laws

The Bureau of Competition of the Federal Trade Commission (FTC) and DOJ's Antitrust Division enforce the federal antitrust laws. FTC enforces the Federal Trade Commission Act, which prohibits unfair methods of competition. DOJ's Antitrust Division has responsibility for enforcing the Sherman Antitrust Act, which prohibits conspiracies or agreements that restrain trade, fix prices, divide market territories or groups of customers, boycott other firms, or use coercive tactics with the intent and effect of

injuring competition. Both FTC and DOJ have jurisdiction under the Clayton Antitrust Act, which prohibits mergers and acquisitions of stock or assets that may substantially lessen competition or that tend to create a monopoly and which bars certain forms of price discrimination. Both agencies also are responsible for reviewing proposed corporate mergers under the Hart-Scott-Rodino Act. FTC uses both administrative and judicial remedies to enforce the law through litigation before administrative law judges or in federal court. DOJ investigates and prosecutes criminal violations of federal antitrust laws; and where criminal prosecution is not appropriate, DOJ may institute a civil action seeking a court order forbidding future violations of the law and requiring steps to remedy the anticompetitive effects of past violations.

We matched 22 contractors (involved in 25 cases) to cases closed by FTC and 7 contractors (involved in 7 cases) to cases closed by DOJ during fiscal years 1997 through 1999. As shown in table 4, in 1 of the 32 cases the contractor was convicted of violating federal antitrust laws in federal court after pleading guilty in a case prosecuted by DOJ.[35] This case is described in appendix II. None of the other 31 cases—including proposed merger reviews[36]—involved a decision by a federal court or administrative adjudicator that a violation of antitrust law had or had not occurred; i.e., the contractors and the government settled or the case was otherwise resolved.

[35]One of the charges in this case (see app. II for a case description) involved bid rigging on government contracts, which is a criminal antitrust violation. A prospective contractor would currently have to report such a criminal conviction in the certification accompanying its offer notwithstanding the revocation of the FAR rule certification.

[36]In merger cases where the merger is challenged and the competitive concerns are resolved before the merger is consummated (such as through consent orders), no law violation has occurred.

**Table 4: Disposition of FTC and DOJ Antitrust Law Cases Involving Federal Contractors Closed during Fiscal Years 1997 through 1999**

| Antitrust laws | Violation found[a] | Other/Resolved before decision[b] | Total |
|---|---|---|---|
| **Responsible agency/case disposition** | | | |
| **Federal Trade Commission[c]** | | | |
| Civil | 0 | 1 | **1** |
| Administrative | 0 | 24 | **24** |
| **Subtotal** | **0** | **25** | **25** |
| **Department of Justice[d]** | | | |
| Criminal | 1 | | **1** |
| Civil | | 6 | **6** |
| **Subtotal** | **1** | **6** | **7** |
| **Total** | **1** | **31** | **32** |

[a]Violation found – A federal court or adjudicated administrative decision found a violation of law.

[b]Other/Resolved before decision – Cases that did not involve a determination of law violation, cases where no violation was found, cases closed before a decision was made by a federal court or administrative adjudicator (such as administrative agreements and consent orders), and cases that were otherwise closed/resolved.

[c]FTC has independent authority to litigate all but civil penalty and criminal antitrust cases. FTC administrative cases include ALJ and Commission decisions.

[d]Antitrust cases managed by DOJ's Antitrust Division or U.S. Attorneys.

Source: GAO analysis of enforcement agency data.

## No Federal Contractors Had an Adjudicated Violation of Federal Consumer Protection Laws

The mission of federal agencies that enforce federal consumer protection laws is generally to either ensure consumer product safety or stop deceptive or unfair trade practices against consumers. The Consumer Product Safety Act of 1972 consolidated federal safety regulatory activity for consumer products within the Consumer Product Safety Commission

(CPSC), whose jurisdiction encompasses about 15,000 types of products.[37] CPSC can impose civil penalties and take other enforcement action for violations of federal consumer product safety standards through administrative adjudication and judicial processes. Protecting consumers against unfair, deceptive, or fraudulent practices is a mission of FTC under the Federal Trade Commission Act. FTC is also responsible for enforcing several laws, such as the Truth-in-Lending Act and the Fair Credit Reporting Act, that prohibit specifically defined trade practices. FTC enforces its consumer protection mandate (as well as trade regulations issued by the Commission) through administrative actions and federal court litigation.

We matched no contractors to the cases that were closed by CPSC during fiscal years 1997 through 1999. We matched 12 contractors (involved in 13 cases) to FTC consumer protection cases closed during this period. As shown in table 5, all of these cases were resolved before a court or the FTC reached any adjudicated decision as to a violation of consumer protection law. Specifically, FTC and the contractors settled all the cases through the use of administrative agreements.

[37]Several other federal agencies have roles ensuring consumer product safety. For example, certain food products, drugs, and cosmetics are covered by the Food and Drug Administration of the Department of Health and Human Services; and automobiles and trucks are within the jurisdiction of the National Highway Traffic Safety Administration of the Department of Transportation. However, because CPSC's jurisdiction is so broad, we limited our review to that agency.

**Table 5: Disposition of CPSC and FTC Consumer Protection Cases Involving Federal Contractors Closed during Fiscal Years 1997 through 1999**

| Consumer protection laws | Violation found[a] | Other/Resolved before decision[b] | Total |
|---|---|---|---|
| **Responsible agency/case disposition** | | | |
| **Consumer Product Safety Commission** | 0 | 0 | **0** |
| **Federal Trade Commission** | | | |
| Civil | 0 | 4 | **4** |
| Administrative[c] | 0 | 9 | **9** |
| **Total** | **0** | **13** | **13** |

[a]Violation found – An adjudicated federal court or administrative decision found a violation of law.

[b]Other/Resolved before decision – Cases that did not involve a determination of law violation, cases where no violation was found, cases closed before a decision was made by a federal court or administrative adjudicator (such as administrative agreements and consent orders), and cases that were otherwise closed/resolved.

[c]FTC administrative cases include ALJ and Commission decisions.

Source: GAO analysis of enforcement agency data.

## No Federal Contractors Had an Adjudicated Violation of Federal Tax Laws

The Internal Revenue Service (IRS) is a branch of the Department of the Treasury and administers the Internal Revenue Code enacted by Congress. IRS records as unpaid taxes or assessments amounts that taxpayers have identified that they owe but have not paid in tax returns they file, and amounts it determines are owed by taxpayers through its various enforcement programs. IRS can make formal deficiency assessments of tax, penalties, and interest.

Penalties levied by IRS are meant to encourage voluntary compliance with the Internal Revenue Code. By law, IRS imposes penalties against taxpayers for such things as failure to properly deposit employment taxes, failure to pay tax by the applicable due date, failure to file a tax return, and underpaying quarterly estimated taxes. Taxpayers may choose to pay the penalty, challenge the penalty assessment within IRS, negotiate a

compromise, or await enforcement action through the judicial process.[38] IRS levies these penalties administratively; but the assessment itself is not the result of an administrative adjudication process, such as through an ALJ.

IRS does not handle civil or criminal tax law cases; this is done by DOJ, which maintains the records on all closed cases, whether adjudicated in the U.S. Tax Court, the Court of Federal Claims, or the U.S. District Court. IRS does, however, track the payment status of those taxpayers owing taxes or assessed penalties in its accounts receivables. These are the data we matched against GSA's FPDS list of contractors to identify contractors with at least one tax-related penalty.[39]

During tax periods covering fiscal years 1997 through 1999, 7,864 of 13,058 contractors[40] were assessed at least one penalty by IRS during this period. IRS assessed the penalties against the 7,864 contractors administratively; but because these assessments themselves were not the result of formal adjudication, we did not count these cases in our tally of enforcement agency cases. However, we searched the DOJ data for tax cases it handled. We matched no contractors to tax cases that were closed by DOJ during fiscal years 1997 through 1999 where a court decision found the contractor had violated federal tax laws. We matched one contractor, a security services company, to a case handled by DOJ where a stipulated judgment was entered in federal court in which the company, as successor-in-interest of the taxpayer (whose assets and business had been acquired

[38]Prior to making a formal deficiency assessment of tax, penalties, and interest, IRS sends the taxpayer several notices of the proposed assessment, including a 90-day statutory notice, giving the taxpayer an opportunity for Tax Court review. During this period, IRS may not take action to collect the deficiency.

[39]The IRS data we used included only penalties outstanding at the time of our matching because penalties are dropped from this data system once they are paid. Due to privacy issues concerning IRS taxpayer information, we did not review contractor cases in which IRS assessed penalties.

[40]The universe of 13,058 contractors was different from the universe of contractors matched to the other agencies' case data because we were able to match company taxpayer identification numbers (TIN), instead of company names, between IRS and GSA's FPDS databases. Although matching this common denominator between the databases was more precise, the number of contractors meeting our criteria, which is described in appendix I, was smaller because, among other things, contractors or subsidiaries with different names may have the same TIN. As a result, the number of contractor names was larger than the number of TINs.

by the company), agreed to pay $170,000 in full satisfaction of its predecessor's unpaid tax liability.

According to an IRS chief counsel official, large corporations, which include many government contractors, almost universally run afoul of some tax law provision, which could result in a penalty assessment. Of the 7,864 contractors we matched to a penalty, 75 percent had each been assessed one or more penalties totaling under $11,000. The median amount that contractors were assessed for one or more penalties was $1,944. About 2 percent, or 138 of the 7,864 contractors, had been assessed more than $1 million in penalties—one-fourth of these were Fortune 500 companies, and one-fifth were state and local agencies or universities.[41]

## FAR Rule Implementation Issues Identified in Determining Incidence of Law Violations by Contractors

The numerous public comments on the FAR rule, as well as the FAR Council's published analysis and discussion of these comments, identified and addressed numerous FAR rule implementation issues. However, in this report we are limiting our analysis and reporting of implementation issues under the revoked FAR rule to those we identified in determining the incidence of contractor law violations. We found that few contractors in our review would have actually had to report past violations in the FAR rule certification accompanying their offers. Additionally, contracting officers would face significant difficulties in verifying or obtaining contractor compliance history information. Moreover, the FAR rule may have created the need for additional record keeping by contractors in order to monitor their compliance histories.

As described earlier, the objective of the FAR rule was to provide clarifying revisions to the existing regulatory language in the FAR about what constitutes a satisfactory record of integrity and business ethics. The FAR rule stated that a satisfactory record was one that included satisfactory compliance with the law, specifically environmental, labor and employment, antitrust, consumer protection, and tax laws. The FAR rule also instructed contracting officers to consider all relevant credible information, giving the greatest weight to violations that have been adjudicated within the last 3 years preceding the prospective contractor's offer. To provide this information to contracting officers, the FAR rule

[41]These amounts are totals of outstanding accumulated assessments incurred by the taxpayer and may remain on IRS's records for extended periods, depending on the status of collection efforts.

included a certification requirement that required prospective contractors to indicate whether they had or had not, within the past 3 years, relative to environmental, labor and employment, antitrust, consumer protection, or tax laws:

- been convicted of a federal or state felony (or had any federal or state indictments currently pending against them); or
- had a federal court judgment in a civil case brought by the United States rendered against them; or
- had an adverse decision by an ALJ, board, or commission indicating a willful violation of law.

## Few Certifications Would Have Indicated Law Violations

As discussed earlier in this report, 6,752 enforcement agency cases that were closed during fiscal years 1997 through 1999 involved federal contractors that were awarded new federal contracts of at least $100,000 in fiscal year 2000. From these cases, we identified 39 contractors that were found by a court or ALJ, board, or commission decision to have violated federal law in the areas specified by the FAR rule. However, most of these contractors would not have been required to report the law violations to the contracting officer in the certification in their offers (that is, by checking the box in the certification indicating that the prospective contractor or its principals have had a violation) if they had been prospective contractors. As shown in table 6, based on our conceptual application of the revoked FAR rule's certification criteria, 7 of the 39 contractors would have been required to report their violations in the certification accompanying their offers. The violations by the other 32 contractors did not meet the FAR rule criteria for reporting and thus would not have been required to be reported. For example, misdemeanor criminal convictions would not have been reported because the FAR rule required only felony convictions and indictments to be reported. Similarly, most of the adjudicated decisions by an ALJ, board, or commission would not have been reported because the decisions did not find a "willful" violation of the law, the criterion in the FAR rule certification. Willfulness is a specific legal standard that excludes less serious or inadvertent violations of law. For example, in 30 of the 34 NLRB cases we matched to contractors, NLRB determined that there were violations of law, yet none of these violations were specifically determined to be "willful" violations. Indeed, our review indicated that in the majority of the enforcement agencies' administrative cases, the determination of "willfulness" was not involved at all.

**Table 6: Federal Contractors That Would Have Been Required to Report a Law Violation in the Certification in Their Offers under Our Conceptual Application of the FAR Rule**

| Areas of law covered by the FAR rule | Number of contractors matched with violations[a] | Number of matched contractors with reportable violations[b] |
|---|---|---|
| Environmental | 11 | 5 |
| Labor and employment | 27 | 1 |
| Antitrust | 1 | 1 |
| Consumer protection | 0 | 0 |
| Tax | 0 | 0 |
| **Total** | **39** | **7** |

[a]Violations found by a federal court or adjudicated administrative decision.

[b]Violations found by a federal court or adjudicated administrative decision that also met the FAR rule certification criteria.

Source: GAO analysis.

In addition, administrative agreements or settlements resolving cases were not reportable under the FAR rule's certification requirement. Even if such agreements were incorporated into a judicial or administrative order, they did not constitute a decision rendered against the contractor by a court or administrative adjudicator finding a violation of law; rather, they constituted the contractor's and the government's agreement on resolving the matter—typically without an admission of wrongdoing by the contractor. Although the FAR rule guidance stated that contracting officers should give consideration to any administrative agreements entered into with prospective contractors who take corrective action after disclosure of an alleged law violation (in the initial charge or complaint filed by the enforcement agency), the FAR rule did not specifically require prospective contractors to report such agreements. Thus, it is unclear how contracting officers would have become aware of such agreements in making their responsibility determinations.

The FAR Council indicated that the certification intentionally was not as broad as the FAR's responsibility standard of "a satisfactory record of integrity and business ethics." The FAR Council considered the certification as an implementation measure designed to provide the contracting officer with the information that the FAR Council anticipated would be most useful in making the responsibility determination. Thus, the FAR Council recognized the "relatively narrow focus" of the certification

and stated that it reflected the FAR Council's attempt to craft a certification that is clear and that does not impose an undue reporting burden on prospective contractors. However, it is unclear whether the "relatively narrow focus" of the certification was intended to be as narrow as it actually would have been in practice—at least in regard to adjudicated administrative decisions and administrative agreements and settlements. Further, it is not clear how contracting officers were supposed to consider all relevant credible information about a prospective contractor's compliance history, even that limited to adjudicated decisions, when such limited information would have been required to be reported by contractors.

## Contracting Officers Would Face Significant Difficulties Verifying or Obtaining Contractor Compliance Histories

The FAR rule required contracting officers to consider all relevant credible information regarding a contractor's compliance history in determining whether a prospective contractor had a satisfactory record of integrity and business ethics in order to make a responsibility determination. As discussed above, the FAR rule established a certification in which prospective contractors report certain compliance information. However, unless reported by prospective contractors themselves, contracting officers would face significant difficulties obtaining or verifying compliance history information on prospective contractors that are eligible for competing for government contracts.

A large majority of the 32 contracting officers we contacted from the agencies covered by our review reported that they did not have timely access to enforcement agency databases that captured prospective contractors' compliance history information. Although a large majority of these contracting officers also reported that they use GSA's list of debarred contractors[42] as a source of information for evaluating a prospective contractor's record of compliance with laws and regulations, this list does not contain compliance history information on prospective contractors that have not been debarred or suspended, that is, those that are eligible to compete for government contracts (the vast majority of prospective

[42]"List of Parties Excluded from Federal Procurement and Nonprocurement Programs." This list is compiled and published by GSA and searchable online at http://epls.arnet.gov. It contains the names of parties that are currently (or have been) suspended or debarred from doing business with the federal government as well as other relevant information, such as the cause of the debarment. Contracting officers are required to check this list prior to awarding a contract.

contractors).[43] Some compliance information is accessible by the public on the World Wide Web (Web) sites maintained by some enforcement agencies, such as EPA, NLRB, OSHA, CPSC, and FTC. Although we were able to use some of these Web sites, few of the contracting officers reported that they routinely used such sites. A contracting officer would have to first know which agency was responsible for an enforcement area and then spend time locating the relevant portion of the Web site before attempting to locate compliance information or to perform a query.

However, even with access to enforcement agency databases and Web sites, contracting officers would still run into some of the same challenges we faced matching contractors to enforcement cases. The case information contained in enforcement agency databases and Web sites was not posted for the specific purpose of assisting contracting officers in considering federal contractors' compliance records. Generally, the only common identifier between federal enforcement agencies and prospective contractors for matching purposes is the company name. The name-matching process can be imprecise (described in detail in app. I) and requires us to perform numerous sorts/matches to test and compare numerous variations in the spelling or configuration of company names. Further, the amount of relevant enforcement case information varied widely and was often limited.

There is no comprehensive and centralized resource providing contracting officers with compliance history information on prospective contractors eligible to compete for government contracts.[44] While enforcement agency databases and Web sites may be available in some cases that can be used for obtaining or verifying prospective contractors' compliance history, the attempted use by contracting officers of such resources (especially on a routine basis) could be, based on our experience, difficult and extremely

[43]Contracting officers themselves also provide certain information to the Federal Procurement Data System, a database of federal contractors maintained by GSA that contains a variety of information, such as the contractor's name and location, agency awarding the contract, principal place of contract performance, and dollar amount of the contract awarded. This database does not contain information on contractors' compliance histories.

[44]This does not necessarily mean that contracting officers are unable to obtain relevant contractor compliance history information. For example, besides sources already mentioned, a contracting officer may become aware of such information through other channels, such as from other contracting officers. See U.S. General Accounting Office, *National World War II Memorial: Construction Contractor Selection*, GAO-02-247R (Washington, D.C.: Nov. 30, 2001) at page 6.

time consuming. This is because of the numerous enforcement agencies involved, the difficulties inherent in the matching process, the varying amounts of information available, and any necessary follow-up and analysis of compliance information from such sources that a contracting officer would have to make in determining a prospective contractor's responsibility.

## Additional Record Keeping by Contractors May Have Been Necessary

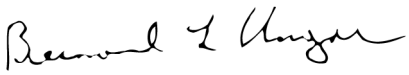
The FAR rule would have amended the existing "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters," which covers such things as whether the prospective contractor or its principals are presently debarred or have had a conviction for contract fraud. This certification contains language informing prospective contractors that nothing in the certification should be construed to require establishment of a system of records in order to render, in good faith, the required certification. However, the FAR Council, in addressing the paperwork burden of the rule, acknowledged that implementation of the FAR rule would probably require most large businesses and some small businesses to establish a new system or to augment a current system to track compliance with applicable laws. Further, as described above, in later suspending the rule, the FAR Council stated that the rule's effective date did not give prospective contractors sufficient time to establish such a system and keep it current in order to properly fill out the certification. In fact, 18 of the 43 federal contractors who responded to our attempts to verify their involvement in enforcement agency cases reported that they did not currently have the capability to identify or track the various types of enforcement actions taken against them.

# Agency Comments and Our Evaluation

We provided copies of a draft of this report to the heads of DOL, EPA, DOJ, FTC, CPSC, NLRB, IRS, DOD, NASA, and GSA and to the Administrator for Federal Procurement Policy, OMB, for their review and comments. DOJ (Civil Division, Civil Rights Division, Executive Office for U.S. Attorneys, Environment and Natural Resources Division, and Criminal Division), CPSC, IRS, DOD, NASA, GSA, and OMB had no comments. Program officials in DOL, EPA, DOJ's Antitrust Division, FTC, and NLRB provided written or oral technical comments that we incorporated in this report as appropriate.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of its contents until 30 days from the date of this report. We will then send copies of this report to the Chairman and Ranking Minority Member, House Committee on Government Reform; Ranking Minority Member, Subcommittee on Technology and Procurement Policy; and Ranking Minority Member, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, House Committee on Government Reform; Chairman and Ranking Minority Member, Senate Committee on Appropriations; Chairman and Ranking Minority Member, House Committee on Appropriations; and Chairman and Ranking Minority Member, Senate Committee on Governmental Affairs. Copies of this report will also be sent to the Director of OMB; the Secretary of Labor; the Administrator of EPA, the Chairman of FTC, the Commissioner of Internal Revenue, the Chairman of NLRB, the Chairman of CPSC, and the Attorney General. We are also sending copies to the Administrator for Federal Procurement Policy and the Secretary of Defense, the Administrator of NASA, and the Administrator of GSA. Copies will be made available to others upon request. In addition, this report will be available at no charge on the GAO Web site at http://www.gao.gov. If you have any questions, please contact me at (202) 512-2834 or ungarb@gao.gov.

Major contributors to this report are acknowledged in appendix III.



Bernard L. Ungar
Director, Physical Infrastructure Issues

# Objectives, Scope, and Methodology

As discussed in this report, the objectives of this assignment were to determine:

- the extent to which federal contractors had violated federal environmental, labor and employment, antitrust, consumer protection, and tax laws; and

- issues surrounding the implementation of the now-revoked Federal Acquisition Regulation rule ("the FAR rule") on contractor responsibility[45] that we identified in response to the first objective.

To quantify the extent to which federal contractors had violated federal environmental, labor and employment, antitrust, consumer protection, and tax laws, we did the following:

- We focused on contractors that were awarded new federal contracts in amounts expected to be at least $100,000 per contract and federal enforcement agency cases closed during fiscal years 1997 through 1999[46] because these were the types of contracts and cases that would have been covered by the FAR rule's contractor certification requirement if it had been applied beginning with fiscal year 2000, and

- We used federal court or administrative decisions in determining whether a case involving a contractor resulted in an actual adjudicated determination of a violation of federal environmental, labor and employment, antitrust, consumer protection, or tax laws[47] because these were the types of adjudicated decisions contracting officers were instructed by the FAR rule to give the greatest weight in making their responsibility determinations.

[45]Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 Fed. Reg. 80,256 – 80,266 (Dec. 20, 2000).

[46]These were cases provided by federal enforcement agencies in response to our request for data on closed cases brought by these agencies to enforce or administer the laws for which they are responsible. We identified the pertinent enforcement agencies by referring to statutes and regulations in the five areas of law; consulting with agency officials; and reviewing the *U.S. Government Manual*, enforcement agency Web sites, and our past products.

[47]The laws involved are those enforced or administered by the agencies we identified and which provided us data on their closed cases (see previous note).

Using these criteria, we performed computerized matches between contractors (names or numeric identifiers where available) listed in the Federal Procurement Data System (FPDS) maintained by the General Services Administration (GSA) as having new federal contracts awarded in fiscal year 2000 and names or identifiers in cases closed during fiscal years 1997, 1998, and 1999 listed in the databases maintained by seven federal agencies responsible for enforcing or administering federal environmental, labor and employment, antitrust, consumer protection, or tax laws.[48] Although the FAR rule also included the consideration of certain state law violations, as agreed with the requestors, we included only federal law violations in our review based on federal court and administrative adjudications.

Our matching process involved three steps: (1) identifying and obtaining the appropriate databases and assessing the reliability of these databases, (2) performing computerized matches of contractors, and (3) verifying the accuracy of selected matches. We then reviewed a selection of cases in detail to provide descriptions and examples of these cases.

- Identifying and obtaining the databases: From each relevant agency or division, we obtained data dictionaries describing the variables maintained in the database or databases used to track enforcement cases and reviewed these dictionaries for variables relevant to the process of matching cases to the FPDS database of contractors. From this review, along with discussions with officials at each agency, we determined the records and types of variables needed from each database for fiscal years 1997 through 1999, including the following:

  - variables to aid in matching names of parties in enforcement agency cases to the contractor database (i.e., name, address, taxpayer identification number (TIN) or data universal numbering system (DUNS) number);

  - variables to aid in identifying the particular case in question for further review (i.e., case identification number, court docket number, case opening and closing dates); and

[48]The seven federal agencies are the Environmental Protection Agency (EPA), Department of Labor (DOL), Department of Justice (DOJ), National Labor Relations Board (NLRB), Federal Trade Commission (FTC), Consumer Product Safety Commission (CPSC), and Internal Revenue Service (IRS).

- variables to aid in describing the nature and severity of the case (i.e., type of alleged violation, outcome of case, penalties or fines assessed, any available narrative description of the alleged violation and case).

We clarified any uncertainties about appropriate processing of the databases and interpretation of the variables through discussions with agency and division contacts. For agencies without appropriate electronic data available, we obtained case information through agency Web sites or from hard copies of reports.

To assess the reliability of the data used for matching purposes in our report, including the FPDS, we (1) reviewed existing documentation related to the data sources and (2) electronically tested the data to identify obvious problems with completeness or accuracy. We determined that the data were reliable enough for the purposes of this report. GSA has stated that the figures produced from the FPDS are only as accurate, timely, and complete as the data provided by the reporting agencies.

- The matching process: In an effort to determine the number of contractors with adjudicated violations of federal environmental, labor, antitrust, consumer protection, and tax laws in fiscal years 1997 through 1999 and that received a federal contract in fiscal year 2000, we matched each enforcement agency's case data for fiscal years 1997 through 1999 against the FPDS fiscal year 2000 contractor data. The fiscal year 2000 FPDS data maintained by GSA consisted of 162,212 unique contracts; 82,622 unique contractor names; 58,711 TINs and 67,275 DUNS numbers. From the database received, we selected new contracts awarded in fiscal year 2000 that had total obligations of at least $100,000 during the fiscal year by summing the dollar amounts for all such records having the same contract number. This database contained 29,032 unique contracts; 16,819 unique contractor names; 14,318 unique TINs; and 16,506 unique DUNS numbers.[49]

[49]The database from IRS was matched to the FPDS database using only TINs. Unique TINs (13,072) used to match against IRS' database were derived by selecting new contracts worth at least $100,000 and then selecting contractors that had unique TINs. The number of unique contractors and unique TINs differ because there could be several different contractor names per TIN, and any cases with invalid TINs were not used in the match. The different names per TIN occur from misspellings, mistakes, and subsidiaries using the parent company's TIN.

Before matching, we checked agency data to ensure the case closed dates were within the period fiscal years 1997 through 1999 and checked the validity of certain fields, such as the fields containing the TINs, DUNS, or closed dates. We further examined the agencies' data and had additional discussions with agencies' officials to determine which variable(s) should be used to perform the matches and manipulated the databases as needed to obtain final databases with one name or identifier per record.

When available in an agency database, we matched on numeric identifiers, that is, TINs, DUNS, or both.

When matching contractors' names, we found a wide variation in the way names were spelled and abbreviated across databases. To compensate for these variations, we developed computer programs aimed at making these names as standard as possible by removing words—such as "Inc.," "Co.," "Company," "Jr.," "LTD," etc.—at the end of a field for all databases in the name-matching process. Removing such words increased the chance of a match between FPDS and agency data. Specifically, matches resulted when a name in the FPDS database was spelled exactly like the name in the agency database. If the company name was not spelled identically in both databases, it would not have been identified as a match. For example, if one database contained the name "ABC" and another contained "A Better Company," a match would not have been identified. Due to time and resource limitations, we could not correct inconsistencies, misspellings or abbreviations to improve the matching process.[50]

For each agency we determined the base numbers of identifiers used for matching: the number of unique names (i.e., companies' names) in federal enforcement agency cases after our standardization process, the number of unique DUNS numbers, and the number of unique TINs. For agencies that tracked criminal, civil, and/or administrative cases separately (EPA, DOL's Pension and Welfare Benefits Administration, DOJ's Environment and Natural Resources Division, and the Executive Office for U.S. Attorneys),

[50]We explored other options to enable us to match contractor and names in enforcement agency cases that were similar and possibly the same company. These procedures required standardization of each word in each name and, ideally, a second identifier (such as state or ZIP code) in addition to a name to help narrow possible matches to those more likely to be the same company. However, a second identifier was rarely available in these databases. We found that a large amount of false matches occurred in the absence of a second identifier, and we were unable to develop procedures to reduce the number of false matches, given the time and resources available.

we processed these case types separately. After the matching process, we determined the number of matches with a unique identifier (name or number) and the number of unique contractor/case matches. Databases often contained more than one name considered to be part of one case; in those instances, we determined the number of matches on the case level. Within the agencies or divisions that tracked criminal, civil, and/or administrative cases separately, we added the matches found. Therefore, for these agencies or divisions, there could be duplicate contractors within the matched cases.

- Verifying the accuracy of selected matches: For most agency databases used in this analysis, there was no common numeric identifier available for matching federal contractors to names in enforcement agency cases. The matching process therefore was often limited to attempting name matches. Due to the imprecise nature of name matching, we know that we have errors, both in missing true matches that are likely in the database, and in calling two companies a match when in fact they are not the same company. This latter error can occur for a variety of reasons as well, such as two distinct companies actually having the same name, or abbreviations or misspellings of one company name making it look identical to another when in fact it is not. Even when we were able to match using numbers, such as DUNS or TIN, errors in data entry—for either agency or FPDS data—could lead to missing true matches or identifying false matches. Although there is no way to determine how many true matches we missed—if we could determine them, we would then be able to call them matches—it is possible, and perhaps useful, to make some kind of assessment of our "false positives," that is, name matches that were in fact not the same company.

Although verification of a representative sample of the matches would be desirable, this approach was untenable, given the time and resources available. However, we looked at the false positive cases we found in doing our case file reviews (see below for methodology details of this review). For all cases in which it appeared that the contractor was found by an federal court or adjudicated administrative decision to have violated the law, as well as for a selection of the remaining enforcement agency cases (involving compliance actions) chosen on the basis of the highest dollar contract award amounts for fiscal year 2000, we determined whether we had made a valid match between contractor and enforcement agency case by contacting the named contractor. This match rate, however, cannot be viewed as an unbiased estimate because the selection of cases was not

randomly chosen and, for most agencies, was not a large enough selection of cases. The rate, however, does provide some information for understanding how successful our matching process was. Table 7 summarizes the number of false matches found in these case file reviews.

**Table 7: Percent of False Matches for Cases Reviewed**

| Enforcement agency/division responsible for enforcing federal environment, labor/employment, antitrust, consumer protection and tax laws | Number of contractors matched to enforcement agency cases | Number of matched contractors' cases reviewed | Number of false matches in reviewed cases | Percent of false matches for cases reviewed |
|---|---|---|---|---|
| **Department of Labor Offices:** | | | | |
| Safety and Health Administration | 1,156 | 41 | 11 | 27 |
| Federal Contract Compliance Programs | 178 | 24 | 0 | 0 |
| Wage and Hour Division | 1,531 | 16 | 0 | 0 |
| Pension and Welfare Benefits Administration | 1 | 1 | 0 | 0 |
| **Subtotal** | **2,866** | **82** | **11** | **N/A** |
| **Department of Justice Divisions:** | | | | |
| Antitrust | 5 | 5 | 1 | 20 |
| Environment and Natural Resources | 70 | 18 | 1 | 6 |
| Civil Rights | 3 | 3 | 0 | 0 |
| Executive Office of the U.S. Attorneys | | | | |
| Criminal[a] | 22 | 36 | 26 | 72 |
| Civil | 40 | 23 | 4 | 16 |
| **Subtotal** | **140** | **85** | **32** | **N/A** |
| **Environmental Protection Agency** | | | | |
| Criminal[a] | 12 | 27 | 11 | 41 |
| Civil | 148 | 16 | 1 | 6 |
| Administrative | 290 | 29 | 0 | 0 |
| **Subtotal** | **450** | **72** | **12** | **N/A** |
| **National Labor Relations Board[a]** | 32 | 37 | 3 | 8 |
| **Consumer Product Safety Commission** | **2** | **2** | **2** | **100** |
| **Federal Trade Commission[a]** | **37** | **38** | **3** | **8** |
| **Internal Revenue Service** | **N/A** | **N/A** | **N/A** | **N/A** |
| **Total[b]** | **3,527** | **316** | **63** | **20** |

[a]The number of cases reviewed is larger than the number of contractors matched because some contractors had multiple cases reviewed.

[b]Represents the total number of times each contractor is listed in each of the agency databases; thus, contractors listed in more than one database will be counted more than once in this total number. As reported earlier in this report, we matched 3,442 unique contractor names to 6,752 cases.

Source: GAO analysis of GSA and enforcement agency data.

- Detailed case review: For a selection of the federal contractors matched with enforcement agency cases during the time frame, we contacted matched contractors in order to verify the match, request information regarding the case, and gather information regarding implementation issues surrounding the FAR rule as it would have applied to federal contractors. We also requested information about the cases from each enforcement agency. Within the matched cases from each agency's database, we reviewed (1) all cases where it appeared that the contractor would have been required to certify to its noncompliance with the law under the FAR rule and (2) a selection of at least 10 contractor cases chosen on the basis of the highest dollar contract award amounts during fiscal year 2000. Contract award amounts reflected the total dollars obligated for a new contract awarded to a contractor in fiscal year 2000, based on the FPDS database. For those databases where there were only a small number of matches, such as in the case of the DOJ's Antitrust Division, all cases were reviewed rather than those showing the highest total dollars obligated.

  We also attempted to verify enforcement agency case information with contractors and to obtain more detailed information about the case characteristics from them. We called the company and asked for the contracting and/or procurement office. In some cases, we were referred to the company's legal department. After explaining our mission, we set up an appointment with the cognizant official from each company that agreed to discuss the matter with us. To prepare the official for the interview we faxed a list of questions, and, upon request, a copy of the Federal Register notice of the FAR rule. We then interviewed each official via telephone and in some cases received written responses. During the telephone interviews, we verified the company's information, including its address and DUNS number, the contract information we had obtained from the FPDS, and the case information we had obtained from our respective enforcement agencies. When a match was determined to be correct, we used the case in describing the characteristics of the enforcement agency cases involving contractors that had been closed during fiscal years 1997 through 1999.

To identify issues surrounding the implementation of the FAR rule from our work, we compared the names in enforcement agency cases that we matched to the federal contractors covered by our review to the FAR rule certification requirement. We also considered conceptually whether the contractors would have been required to report the violations in the certifications accompanying their offers if they had been prospective contractors. Additionally, we discussed implementation issues regarding the FAR rule with (1) agency contracting officers and other officials from the seven federal enforcement agencies included in our review and (2) contractors involved in the enforcement agency cases that we selected for detailed review. Through these discussions, we identified access that contracting officers have to the compliance history of prospective contractors and contractor record keeping as implementing issues arising from the FAR rule. Finally, we discussed the results of our work with officials from the seven federal enforcement agencies and OMB, as well as with FAR Council members. We conducted our work from July 2000 through October 2002 in accordance with generally accepted government auditing standards.

# Agency Cases Where a Law Violation Was Found by a Federal Court or Adjudicated Administrative Decision

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| **Environmental laws** | | | | | | |
| **Cases from the Environmental Protection Agency:** | | | | | | |
| **Criminal cases** | | | | | | |
| Poultry company | 1994 to 1995 | The Environmental Protection Agency's (EPA) Criminal Investigation Division received a complaint from the U.S. Fish and Wildlife Service that the company's chicken manure processing plant had been directing its runoff toward vernal pools located in an adjacent national wildlife refuge. An investigation revealed that the pollution was the result of a broken pipe that had been used to convey storm water from a manure storage yard to farm grounds used to store storm water. Polluted water containing ammonia, nitrogen, and other byproducts of the chemical decomposition of chicken manure leaked through cracks in the pipe, flowed into vernal pools at the refuge, and killed tadpole shrimp and other aquatic life. | 1998 | Under the January 1998 plea agreement, the company pled guilty in U.S. District Court to a two-count information charging it with (1) negligent and unlawful discharge of approximately 11 million gallons of storm water polluted with decomposed chicken manure into the wildlife refuge in violation of the Clean Water Act, and (2) the knowing and unlawful taking of an endangered species in violation of the Endangered Species Act (by discharging polluted water which eliminated a protected species of tadpole shrimp from pools on the refuge). The company was required to pay fines totaling $485,684 to the National Fish and Wildlife Foundation (to be used in restoration efforts) and an assessment of $14,315 as restitution for the natural resource damage costs incurred by the U.S. Fish and Wildlife Service during the investigation of this case. The company had also agreed to make improvements in the amount of $750,000 to its storm water retention and distribution system. The case was also referred to EPA's Suspension and Debarment Division, and the company's facility was declared ineligible (for about a year) for federal grants, loans, contracts or subcontracts. | Jan. 1998 | $1,630 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| **Type of company** | **Date** | **Description** | **Date case opened** | **Resolution of case** | **Date case closed** | **Fiscal year 2000 federal contract amount ($000)[a]** |
| Aircraft support and maintenance company | July 1993 | Company and an individual indicted in May 1998 for two counts each of violating the Clean Water Act and the Resource Conservation and Recovery Act for a discharge of paint stripping waste. The discharge was discovered during an evacuation of the company's facility (located at an airport) due to a break in a nearby river levee. Law enforcement officers observed a fluorescent green liquid streaming from a transportable tanker on the tarmac. The officers described the odor as a strong paint stripper smell and estimated 100 gallons was on the tarmac surface along with more having already emptied into a storm drain. | May 1998 | Company pled guilty in October 1998 in a pretrial settlement to a misdemeanor (one count) for violating the Rivers and Harbors Act and agreed to pay a $125,000 penalty and received 1 year of probation. The U.S. Attorney provided the individual involved pretrial diversion and his indictment was dismissed. | Jan. 1999 | $12,618 |
| Water-related services and products company | 1997 | Charges filed against an individual in February 1998 and the company in May 1998 for allegedly causing an illegal discharge of ammonium hydroxide into a river, killing 200 fish, and for failing to file the required notification under the Emergency Planning and Community Right-To-Know Act. | Feb. 1998 | Under the October 1998 plea agreement, the company was sentenced to a fine of $25,000 and a special assessment of $125. The individual reached a plea agreement in October 1998 and was sentenced to 12 months' probation and a $500 fine. | Oct. 1998 | $114 |
| Ammunition manufacturer | Jan. 1992 | Company charged with negligently introducing zinc, in excess of amounts set forth in the federal pretreatment regulations, into a public sewer system, violating its industrial wastewater discharge permit under the Clean Water Act. | Nov. 1995 | Under the February 1996 plea agreement, the company was sentenced to a $35,000 fine and a special assessment of $325. | Apr. 1997 | $1,160 |
| **Administrative cases** | | | | | | |
| Electronics manufacturer | Jan. 1988 to Nov. 1990 | Company charged with discharging wastewater, which contained copper in excess of the amount allowed by law, into navigable waters, which violated the Clean Water Act. | Aug. 1991 | Under the March 1997 administrative decision and order, the company was assessed a civil penalty of $125,000. | Mar. 1997 | $2,832 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Technical services company | Apr. 1992 to Jul. 1994 | Company charged with distribution of an unregistered pesticide to two other companies in the United States and with exporting the pesticide to two companies located in a foreign country without a bilingual label in violation of the Federal Insecticide, Fungicide, and Rodenticide Act. | Nov. 1994 | Under the March 1998 final administrative order, the company was assessed a penalty of $13,000. | Mar. 1998 | $241 |
| **Cases from the Department of Justice:** | | | | | | |
| **Criminal cases** | | | | | | |
| Safety equipment manufacturer | Mar. 1993 to Dec. 1994 | An investigation by the EPA's Criminal Investigation Division involving the Federal Bureau of Investigation (FBI) and Defense Criminal Investigation Service led to a one-count charge against the company for the illegal storage of highly toxic and explosive chemical sludge and waste at its chemical division without a permit in violation of the Resource Conservation and Recovery Act (RCRA). The hazardous waste originated from an experimental high-energy fuel the company's chemical division produced for the U.S. Air Force in the late 1950s. In 1985, the company repurchased waste fuel from the military and reprocessed it. After ceasing the reprocessing operation, the company stored the resulting waste at an unpermitted area at the chemical division for a period of years. Under RCRA, hazardous waste must be moved off site within 90 days or moved to a permitted hazardous waste facility. The company failed to designate the waste as hazardous at the time it was generated and did not store or dispose of it in a timely manner, as required. | Apr. 1997 | In April 1997, the company pled "nolo contendere" (no contest) to the charge it illegally stored hazardous waste in violation of RCRA and was sentenced to a $350,000 fine. | Apr. 1997 | $6,384 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Aircraft repair and refurbishment company | 1990 to 1993 | Following an investigation by EPA's Criminal Investigation Division involving the FBI, the company was charged with knowingly disposing of hazardous waste and causing hazardous waste to be disposed of on and into the ground at its facility without the required permit, in violation of RCRA. The company used chemical degreasers and strippers on engine parts in the cleaning process, and the hazardous waste generated was regulated under RCRA. The government alleged that the company disposed of hazardous waste chemicals through a drain in its engine-room floor and dumped ignitable hazardous waste into a septic tank designed to leach its contents into the ground. | Aug. 1996 | In October 1996, the company pled guilty in U.S. District Court to a felony charge for the illegal disposal of the hazardous waste and was sentenced to pay a $75,000 fine and required to sponsor a 1 day free seminar on hazardous waste laws for industries engaged in paint stripping and engine cleaning operations. | 1998 | $316 |
| Waste disposal company | 1989 to 1992 | A 4-year investigation by EPA's Criminal Investigation Division and the FBI revealed that approximately 4,591 truck loads (each containing about 5,000 gallons of waste) were illegally disposed on approximately 1,577 days at municipal sewage treatment plants by the company. The company collected sludge and grease from customers and hauled it to four publicly owned treatment plants. In order to dispose of the waste at certain plants and to avoid paying higher disposal fees, the company directed employees to provide false or unrepresentative samples of their loads and falsely record the loads as raw sewage. | Nov. 1996 | Company pled guilty in December 1996 to one count of conspiracy to violate the Clean Water Act, one count of mail fraud, and one count of violating the Clean Water Act and agreed to pay a fine of $3 million. The company also agreed to make a remedial contribution of $1.5 million to programs/ organizations that address environmental concerns in the areas affected by the case and pay $642,312 in restitution to treatment plants affected by the crimes. Based on cooperation with the government, the employees involved received probationary sentences ranging from 1 to 2 years and fines ranging from $3,000 to $25,000. | Mar. 1998 | $761 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| **Civil cases** | | | | | | |
| Food industry company | Not available | In a civil action seeking injunctive relief and assessment of civil penalties, the United States alleged that the company and two others discharged pollutants into navigable waters in violation of the Clean Water Act. | Dec. 1996 | In August 1997, a U.S. District Court imposed a civil penalty of $12.6 million against the company and two others for thousands of violations of the Clean Water Act at two pork slaughtering and processing plants. The court had earlier ruled that the companies could be held liable for over 5,000 violations of phosphorus limits, as well as 500 more violations of other limits on discharges from the plants. In addition, the court had entered an order holding the companies responsible for the submission of at least 15 false monthly reports and the destruction of over 2 years worth of records. Companies appealed but the appeals court affirmed lower court ruling that companies were liable and, with one exception, affirmed the calculation of the penalty. The appellate court remanded the case back to the lower court to correct the amount of money the companies saved by not installing the necessary pollution control equipment. After remand, the parties stipulated that the final penalty was $12,361,315, which the defendants paid. | Sept. 1997 | $965 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Dredging company | 1993 | The United States, on behalf of the National Oceanic and Atmospheric Administration, brought action for damages against a dredging company for a violation of the National Marine Sanctuaries Act (which imposes strict liability for damage or injury to any sanctuary resource). Tugboats from the dredging company and another firm towed rafts with 500-foot lengths of dredge pipe along the Florida coast. While proceeding through a marine sanctuary, one of the pipes dragged the sea bottom, creating a pipe scar about 13 miles long. The flotilla also went off course and one of the tugs went aground in 7 feet of water in the sanctuary. The grounding and efforts to extricate the boat left behind a channel 120 meters long, 8-10 meters wide, and 2 meters deep, destroying 7,495 square meters of sea bottom consisting of turtle grass, manatee grass, and finger coral. | Aug. 1997 | In April 1999, a federal district court found the dredging company strictly liable for the damage caused by the violation of the National Marine Sanctuaries Act and awarded the United States compensatory damages as well as response and assessment costs. The company appealed the judgment and the United States cross-appealed on the issue of damages. In July 2001, the appeals court affirmed the judgment against the company and remanded the issue of damages to the district court. | 1999 | $40,354 |
| **Administrative cases** | | | | | | |
| **None** | | | | | | |
| **Labor and employment laws** | | | | | | |
| | | | | | | |
| **Cases from the Department of Labor:** | | | | | | |
| **Civil cases** | | | | | | |
| Heavy equipment manufacturer | July 1992 | An employee was severely injured when he was struck in the head by a bolt thrown from a flywheel during maintenance operations; the company was issued citations for violating the Occupational Safety and Heath Administration (OSHA) standards regarding machine guarding. | Jan. 1993 | The U.S. Court of Appeals affirmed the OSHA citation and upheld the penalty assessment of $49,000. | June 1999 | $21,912 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| **Administrative cases** | | | | | | |
| Construction company | Nov. 1996 | Issued two citations for not complying with OSHA standards regarding eye and face protection and scaffold requirements. Employees were observed atop wooden scaffolds, which did not have standard guardrails on either end; and an employee was drilling holes in metal frames without wearing eye protection. | Nov. 1996 | The Occupational Safety and Health Review Commission affirmed one citation for an OSHA violation but reclassified the violation as de minimis and declined to assess a penalty or enter an abatement order. A second citation was vacated. | May 1999 | $12,793 |
| Heavy equipment manufacturer | Mar. 1994 | As a result of two accidents where employees had fingers amputated, the company was issued citations for violating OSHA standards regarding machine guarding by not providing a pneumatic press with a guard or device to keep the operator's hands from the point of operation. | July 1994 | Under the OSHA administrative law judge decision, the company was assessed a penalty of $9,020. | Mar. 1999 | $21,912 |
| Heavy equipment manufacturer | Aug. 1993 | Company was issued citations for violating OSHA standards regarding machine guarding of five of the company's hydraulic presses. | Aug. 1993 | The Occupational Safety and Health Review Commission affirmed the citation and the assessment of $22,000 in penalties. | Dec. 1998 | $21,912 |
| **Cases from the National Labor Relations Board (NLRB):** | | | | | | |
| **Administrative cases** | | | | | | |
| Grocery store company | July to Sept. 1995 | Complaint alleged that the company violated the National Labor Relations Act (NLRA) by (1) disparately enforcing its no-solicitation policy, thereby assisting employees in filing a decertification petition by permitting antiunion solicitation by employees in violation of company rules while prohibiting prounion solicitations and by (2) engaging in surveillance of employees' union activities by confiscating prounion materials from employees and copying them. | Mar. 1996 | In a February 1997 decision, the NLRB adopted the Administrative Law Judge's (ALJ) September 1996 decision that the company had violated the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from its unfair labor practices and (2) post notice of the order at its facility and file a sworn certification of a responsible official attesting to the steps taken to comply. | 1997 | $145 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Electrical contractor | July 1996 | Complaint alleged that contractor violated NLRA by refusing to hire a union organizer and by advising an employee that the contractor would not hire anyone who had anything to do with the union. | Aug. 1996 | In an April 1998 decision, the NLRB adopted the ALJ's April 1997 decision that the contractor had violated the NLRA and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from its unfair labor practices and (2) offer the union organizer employment and make him whole for any loss of earnings and benefits suffered as a result of the discrimination, post notice of the order at its place of business, and file a sworn certification attesting to the steps taken to comply. | 1998 | $157 |
| Propane company | Apr. to May 1996 | Complaint alleged that, after the union notified the company that it was engaged in an organizing campaign at the company's facility, the company violated the NLRA by reducing work schedules of employees who supported union activities, threatening to close the facility if the employees selected the union as their collective bargaining agent, and laying off an employee as retaliation for the selection of the union as the employees' collective bargaining agent. | Apr. 1996 | In an October 1997 decision, the NLRB adopted the ALJ's February 1997 decision that the company had violated the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from its unfair labor practices and (2) notify the union of any decision affecting the terms and conditions of employment, restore the seniority and other benefits of the laid off employee, make certain employees whole for any loss of earnings and benefits suffered as a result of the discrimination, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | Oct. 1997 | $411 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Food services and uniform company | Mar. 1997 | Complaint alleged that the company violated the NLRA by refusing the union's request to bargain following the union's certification as the exclusive collective-bargaining representative of the employees. | Mar. 1997 | In a June 1997 decision, the NLRB granted the NLRB General Counsel's motion for summary judgment and concluded that the company's refusal to bargain constitutes an unfair labor practice in violation of the NLRA and ordered the company to (1) cease and desist from refusing to bargain and (2) bargain with the union, post notice of the order at its facility, and file a sworn certification attesting to the steps taken to comply. | 1997 | $386 |
| Electrical construction company | Feb. 1996 | Complaint alleged that the company, in violation of the NLRA, terminated several employees when they were engaged in protected activities. The employees walked off the job in protest of a supervisor that they had complained about in earlier encounters. | Mar. 1996 | In a March 1997 decision, the NLRB affirmed the ALJ's earlier decision that the termination of the employees for the walkout was an unfair labor practice in violation of the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from discharging or disciplining employees for engaging in concerted protected activities and (2) reinstate the employees to their former jobs and make them whole for loss of earnings and benefits, remove any reference in personnel files to the unlawful discharges, post notice of the order at its facility, and file a sworn certification attesting to the steps taken to comply. | 1997 | $116 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Dairy products company | July 1998 | Complaint alleged that the company failed to bargain with the union as the exclusive collective bargaining agent in violation of the NLRA. | Aug. 1998 | In a September 1998 decision, the NLRB granted the NLRB General Counsel's motion for summary judgment and concluded that the company's refusal to bargain with the union was an unfair labor practice in violation of the NLRA and ordered the company to (1) cease and desist from refusing to bargain and (2) bargain with the union on terms and conditions of employment, post the order at its facility, and file a sworn certification attesting to the steps taken to comply. | 1998 | $11,802 |
| Telecommunications company | Oct. 1995 | Complaint alleged that the company discontinued a paycheck-cashing service (that was provided to employees during working time) without first negotiating with the union as required under its collective bargaining agreement, in violation of the NLRA. | Feb. 1996 | In a November 1997 decision, the NLRB adopted the ALJ's July 1997 decision that the company violated the NLRA (because the unilateral discontinuation of the check-cashing service was an unfair labor practice) and adopted the ALJ's recommended order that the company (1) cease and desist from the practice without first giving the union notice and an opportunity to bargain and (2) restore the check-cashing services and bargain collectively with the union, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1998 | $67,063 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Tire retread company | Mar. 1996 | Complaint alleged that company violated the NLRA by prohibiting its employees from talking with other employees in an effort to discourage union activity, making unilateral changes to an employee self-improvement training program without notifying the union and giving it an opportunity to bargain, and failing to provide certain employee-related information requested by the union. | May 1996 | In a May 1998 order, the NLRB adopted the ALJ's February 1998 decision that the company violated the NLRA by engaging in unfair labor practices and adopted the ALJ's recommended order that the company (1) cease and desist from prohibiting its employees from talking in order to discourage union activity, from refusing to bargain in good faith with the union by unilaterally changing established terms and conditions of employment, and failing and refusing to furnish the union with the requested information and (2) restore certain labor practices, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1998 | $100 |
| Automotive plastic parts manufacturer | Jan. to Mar. 1996 | Complaint alleged that the company held a union steward to a higher standard for disciplinary purposes by strictly interpreting and enforcing its work rules against union stewards. The company allegedly issued numerous written disciplinary warnings and suspended a union employee to discourage union activities in violation of the NLRA. | Apr. 1996 | In a November 1997 order, the NLRB adopted the ALJ's September 1997 decision that the company violated the NLRA (by holding union stewards to a higher standard for disciplinary purposes and issuing numerous written disciplinary warnings and suspending the union steward because of his union activities in order to discourage union activities) and adopted the ALJ's recommended order that the company (1) cease and desist from its unfair labor practices and (2) make the union steward whole for losses incurred as a result of the discrimination, remove from the employee's personnel file any reference of the unlawful disciplinary action, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1998 | $160 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Heavy equipment manufacturer | Oct. 1993 | Complaint alleged that the company, in violation of the NLRA, unlawfully suspended an employee for engaging in a protected activity (wearing a button advertising his position on a matter relating to a labor dispute), threatened employees with indefinite suspension for exercising their lawful right to strike in protest, and refused to accept the unconditional offer of employees to return to work after striking to protest the suspension. | Not available | In a December 1996 decision, the NLRB affirmed the ALJ's June 1996 decision that the company violated the NLRA and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from prohibiting employees from or disciplining them for wearing union buttons or insignia, threatening to indefinitely suspend employees for engaging in protected, concerted strikes, and refusing to accept employees' unconditional offer to return to work from a strike and (2) make the suspended employee and employees who engaged in the strike whole for any loss in earnings or other benefits, remove any reference of the unlawful suspension in the personnel file of the suspended employee, post notice of the order, and file a sworn certification attesting to the steps taken to comply. The NLRB also agreed with the ALJ that these and earlier violations of the NLRA in other cases warranted the issuance of a broad remedial order that the company cease and desist from any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by the NLRA. | 1997 | $21,912 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Software company | Mar. 1993 | Complaint alleged that company violated the NLRA by interrogating employees of a subcontractor concerning their union membership and activities, threatening subcontractor employees with termination of the subcontract (which would effectively result in their discharge) because of union membership and activities, promising the employees certain benefits if they would discontinue their union membership and activities, and by warning the employees that the company would not recognize or bargain with the union and that union membership and activities were futile. | June 1993 | In an August 1997 decision, the NLRB affirmed the ALJ's March 1996 decision that the company violated the NLRA (through various interrogations, promises, threats, and warnings related to union membership and activities) but reversed the ALJ's separate finding of a violation concerning the discharge of several union-represented employees. The NLRB remanded the case to the ALJ for further action and held in abeyance the Board's issuance of an order remedying the unfair labor practices pending action on the remand. | 1997 | $44,658 |
| Nut processing company | 1993 | Complaint alleged that company discriminatorily assigned a returning striker to a low-paying job cracking and inspecting nuts, rather than to a job in her prestrike position as a forklift driver because of concerns arising from her participation in the strike. The discriminatory job assignment continued for 2 weeks preceding a representation election among striking and replacement employees, which the union lost. | Not available | On remand from an appeals court, the NLRB found that the proximity of the discriminatory job assignment (which it held violated the NLRA) to the election increased the likelihood that it had an impact on the employees' choice during the election. The NLRB set aside the election and ordered a new election. | 1998 | $4,773 |
| Armored car company | May 1998 | Complaint alleged that company violated the NLRA by refusing the union's request to bargain following the union's certification as the exclusive collective bargaining representative of the employees. | June 1998 | In a September 1998, decision, the NRLB found that the company's failure and refusal to bargain with the union violated the NLRA and ordered the company to (1) cease and desist from refusing to bargain with the union, and (2) recognize and bargain on request with the union on terms and conditions of employment, as well as post notice of the order at its facility and file a sworn certification to the steps taken to comply. | 1998 | $132 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Power company | Apr. 1995 | Complaint alleged that the company unilaterally changed its employee retirement benefits without affording the union the opportunity to bargain over the changes, in violation of the NLRA. | May 1995 | In a March 1998 decision, the NLRB adopted the ALJ's February 1997 decision that the company violated the NLRA by failing to fulfill its bargaining obligation (because the future retirement benefits of currently active unionized employees are subject to mandatory bargaining), and adopted the ALJ's recommended decision, as modified, that the company (1) cease and desist from making unilateral changes in employee retirement benefits without providing the union notice and an opportunity to bargain and (2) bargain on request with the union, restore retirement benefits to their previous level, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1998 | $12,050 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Fire protection systems company | Apr. 1994 | Complaint alleged that the company engaged in unfair labor practices by, among other things, laying off an employee because of his insistence on being paid subsistence pay to which he was entitled under the collective bargaining agreement, calling an employee a "troublemaker" and telling him that he would be laid off for pursuing a grievance, telling employees they would lose their jobs if they refused to cross a picket line, and refusing to meet and bargain in good faith with the union. | June 1994 | In a May 1999 decision, the NLRB affirmed the ALJ's January 1997 decision, with certain modifications, that the company violated the NLRA and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from coercing employees by calling them "troublemakers" and telling them they will be laid off for pursuing grievances, telling employees they will lose their jobs if they refuse to cross a picket line, telling employees they have to resign from the union to continue working and/or promising additional benefits if they do, and a number of other unfair labor practices, and (2) bargain in good faith with the union concerning terms and conditions of employment, restore to employees the terms and conditions of employment applicable before the strike and make them whole for any losses suffered as a result of the unlawful unilateral changes, offer a laid-off employee reinstatement to his former job and make him whole for any loss of earnings and benefits, remove any reference to the unlawful layoff from the employee's personnel files, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1999 | $230 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Telecommunications company | Aug. 1994 | In 1993 the company began a testing procedure for a new customer service position. An employee applying for the position did not pass the structured interview test and the union filed a grievance on her behalf. Subsequently, the union requested specific information about the testing procedure, which the company refused to provide citing the possibility of compromising or impairing the validity of the interview process. Complaint alleged unfair labor practices under the NLRA. | Oct. 1994 | In a September 1999 decision, the NLRB affirmed the ALJ's October 1995 decision that the company violated the NLRA (by failing to provide the union with the requested testing information relevant to processing the grievance) and adopted the ALJ's recommended order that the company (1) cease and desist from refusing to bargain in good faith with the union, and (2) bargain collectively in good faith with the union regarding the requested information, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1999 | $177 |
| Electrical contractor | Feb. 1995 | Complaint alleged that supervisor told employees that current or past membership in a union is a "big strike" against employees' chances of being hired and threatened to discharge employees if the union succeeded in organizing, in violation of the NLRA. | Feb. 1995 | In a June decision, the NLRB affirmed the ALJ's November 1996 decision that the company violated the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from telling employees that union membership is a "big strike" against their chances of being hired and from telling employees that referrals of applicants who are union members will not be pursued because the company does not want to hire union personnel and (2) post notice of the order and file a sworn certification attesting to the steps taken to comply. | 1997 | $1,696 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Concrete company | Apr. to May 1997 | Complaint alleged that company committed numerous unfair labor practices in violation of the NLRA, including threatening employees with loss of benefits and vacations, loss of employment, loss of jobs, unspecified reprisals, transfer, violence, and closure of the business if employees selected the union as their representative for purposes of collective bargaining, interrogating employees about their union activities, creating the impression of surveillance of employee union activities, etc. | May 1997 | In a September 1999 order, the NLRB adopted the ALJ's July 1999 decision that the company violated the NLRA by engaging in serious unfair labor practices and adopted the ALJ's recommended order that the company (1) cease and desist from threatening its employees for engaging in union activities, interrogating its employees about union activities, creating the impression it is engaging in surveillance of employee union activities, threatening to sell the business in retaliation of employee support for the union, threatening its employees with loss of economic benefits to persuade them to reject the union, disparately treating employees who support the union and permitting abusive conduct against them, giving a larger than normal hourly wage increase during the period preceding the representation election to persuade employees to reject the union and (2) post notice of the order and file a sworn certification attesting to steps taken to comply. | 1999 | $161 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Telecommunications equipment company | Dec. 1995 to May 1997 | Complaint alleged that the company did not provide information requested by the union necessary for and relevant to the union's performance of its duties as exclusive bargaining representative, namely the processing of a grievance regarding the recall rights of a laid-off employee. | May 1997 | In an April 1998 order, the NLRB adopted the ALJ's March 1998 decision that the company violated the NLRA and adopted the ALJ's order that the company (1) cease and desist from failing and refusing to furnish, and delaying the furnishing of, information requested by the union necessary for and relevant to the union performance of its collective bargaining duties and (2) post notice of the order at its facilities and file a sworn certification attesting to steps taken to comply. | 1998 | $69,257 |
| Electrical contractor | Jan. to Mar. 1995 | Complaint alleged that company violated the NLRA by interrogating employees about their affiliation with and/or membership in the union, threatening denial of employment because of union activities, and isolating, transferring, and laying off employees because of union affiliation or support. | May 1995 | In a March 1997 decision, the NLRB affirmed the ALJ's October 1996 decision that the company violated the NLRA, and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from threatening employees with nonhire because of their union affiliation, terminating employees because of their union support or affiliation, and refusing to accept applications from employees and refusing to hire employees because of their union affiliation and (2) offer reinstatement to certain employees to their former positions, offer to hire certain applicants, make certain employees and applicants whole for any loss of earnings and other benefits, remove reference to the unlawful discrimination from personnel files, post notice of the order at its facility, and file a sworn certification attesting to steps taken to comply. | 1997 | $278 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Building maintenance company | July 1996 to Jan. 1998 | Complaint alleged that company engaged in numerous unfair labor practices designed to thwart union's organizational efforts, including discharging employees, prohibiting employees from wearing union insignia while at work, and threatening employees because of their support for the union. | Not available | In an August 1998 order, the NLRB adopted, with modifications, the ALJ's May 1998 decision finding that the company violated the NLRA, and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from discharging and/or not recommending employees for rehire because they engage in union activities, prohibiting employees from wearing union insignia at work, threatening employees that they will not get work, will be terminated, or will be the object of reprisals if they support the union, and from numerous other actions and (2) reinstate an employee to her former job, offer certain applicants employment to jobs to which they applied, make certain employees whole for any loss of earnings or benefits, remove any reference to the unlawful discharges or refusals to hire from personnel files, post notice of the order, and file a sworn certification attesting to the steps taken to comply. | 1998 | $566 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Automobile parts painting company | Feb. to Apr. 1996 | Complaint alleged that company engaged in unfair labor practices in violation of the NLRA by setting up surveillance to record union organizing activity and interfering with the right of employees to organize and by engaging in certain acts to discourage union membership, including the discharge of union supporters, from the date certain employees presented an organizing petition to the plant manager to the date of the election (which the union won) and thereafter. | Not available | In an October 1997 decision, the NLRB adopted, with modifications, the ALJ's May 1997 decision that the company had violated the NLRA, and adopted the ALJ's recommended order, as modified, that the company (1) cease and desist from creating the impression that employees' union activity is under surveillance, prohibiting employees from distributing union literature in nonwork areas on nonwork time, threatening employees with reprisals for engaging in union activity, and from several other actions, and (2) remove from personnel files any reference to unlawful warnings given certain employees, post notice of the order at its facility, and file a sworn certification attesting to the steps taken to comply. | 1998 | $100 |
| Blood services organization | July 1996 | Complaint alleged that the organization announced wage increases to employees the day prior to a union representation election in order to influence the outcome of the voting. | July 1996 | In an August 1997 decision, the NLRB affirmed the ALJ's March 1997 decision that the organization violated the NLRA (by announcing the wage increase the day prior to the election) and adopted the ALJ's recommended order that the organization (1) cease and desist from announcing a wage increase in order to dissuade employees from selecting the union as their collective bargaining representative and (2) post copies of the order and file a sworn certification attesting to the steps taken to comply. | 1997 | $4,216 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Security services company | May 1998 | Complaint alleged that the company refused the union's request to bargain in violation of the NLRA following the union's certification as employees' exclusive collective bargaining agent. | May 1998 | In a July 1998 decision granting the NLRB General Counsel's motion for summary judgment, the NLRB found that the company violated the NLRA and ordered it to (1) cease and desist from refusing to bargain with the union and (2) bargain on request with the union and to post notice of the order at its facilities and file a sworn certification attesting to the steps taken to comply. | 1998 | $62,158 |
| Energy products company | Mar. to Apr. 1995 | Complaint alleged that the company violated the NLRA when it permanently laid off the collective bargaining unit employees and subcontracted the work in order to cut costs, which was prohibited by the collective bargaining agreement. | Apr. 1995 | In an August 1998 decision, the NLRB affirmed the ALJ's August 1996 decision finding a violation of the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from subcontracting work of employees and permanently laying them off during the term of the collective bargaining agreement, and (2) reinstate employees to their former jobs, make whole the employees for loss of earnings and benefits, comply with the respective collective bargaining agreements and bargain in good faith and obtain the consent of the union before making changes in the terms and conditions of employment, post notice of the order at its facilities, and file a sworn certification attesting to steps taken to comply. | 1998 | $323,340 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Food services and uniform company | May 1997 | Complaint alleged that the company refused to bargain with the union following the union's certification as the exclusive bargaining representative of the employees, in violation of the NLRA. | May 1997 | In a July 1997 decision, the NLRB granted the NLRB General Counsel's motion for summary judgment and concluded that the company's refusal to recognize and bargain with the union violated the NLRA and ordered the company to (1) cease and desist from refusing to bargain and (2) bargain on request with the union, and to post notice of the order and file a sworn certification attesting to the steps taken to comply. | 1997 | $386 |
| Tire retread company | Sept. 1996 | Complaint alleged that the company violated the NLRA by refusing to bargain with the union following the union's certification as the exclusive bargaining representative of the employees. | Oct. 1996 | In a December 1996 decision, the NLRB granted the NLRB General Counsel's motion for summary judgment and concluded that the company's refusal to bargain with the union violated the NLRA and ordered the company to (1) cease and desist from refusing to bargain and (2) bargain on request with the union and to post notice of the order at its facility and file a sworn certification attesting to the steps taken to comply. | 1997 | $100 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | | |
|---|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Heavy equipment manufacturer | Nov. to Dec. 1993 | Complaint alleged that the company unfairly restricted an employee's union activities and suspended and discharged the employee for his protected union activities, and committed various acts of threats, surveillance, and intimidation, in violation of the NLRA. | Not avail. | In December 1996 decision, the NLRB affirmed the ALJ's May 1995 decision that the company violated the NLRA and adopted, as modified, the ALJ's recommended order that the company (1) cease and desist from restricting the display of union materials from an employee's toolbox, restricting employees who are union officials from walking around and talking with other employees in the work area, interfering with an employee's right to talk to a union officer on nonworktime, threatening employees with discharge for having engaged in protected activity or for wearing union insignia, and suspending or discharging employees because of the protected activity and (2) rescind the "gag order" imposed on an employee, offer full reinstatement to the employee to his former position, make the employee whole for any loss of earnings or benefits, remove from the employee's personnel file any references to the unlawful discharge, post notice of the order at its facility, and file a sworn certification attesting to steps taken to comply. | 1997 | $21,912 |

(Continued From Previous Page)

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| Type of company | Date | Description | Date case opened | Resolution of case | Date case closed | Fiscal year 2000 federal contract amount ($000)[a] |
| Heavy equipment manufacturer | June 1993 | Complaint alleged that the company changed its grievance procedures and implemented an employee cash award program without bargaining with the union, in violation of the NLRA. | Not available | In a January 1997 order, the NLRB adopted the ALJ's October 1996 decision that the company's refusal to designate any member of management to meet union officials at certain grievance meetings violated the NLRA and adopted the ALJ's recommended order that the company (1) cease and desist from unilaterally eliminating a step of the grievance procedure (by failing and refusing to designate a representative of management to participate) and from making any cash award to any member of the bargaining unit without reaching agreement or impasse with the union, and (2) post at its facility notice of the order and file a sworn certification attesting to the steps taken to comply. | 1997 | $21,912 |
| Heavy equipment manufacturer | Jan. 1994 | Complaint alleged that the company engaged in unfair labor practices when it removed union notices from bulletin boards and walls. | June 1994 | In an August 1997 decision, the NLRB affirmed the ALJ's decision of July 1996 that the company violated the NLRA and adopted, with modification, the ALJ's recommended order that the company (1) cease and desist from removing posted union notices and signs advertising union events, and (2) post notice of the order at its facilities and file a sworn certification attesting to the steps taken to comply. | 1997 | $21,912 |

*(Continued From Previous Page)*

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| **Type of company** | **Date** | **Description** | **Date case opened** | **Resolution of case** | **Date case closed** | **Fiscal year 2000 federal contract amount ($000)[a]** |
| **Cases from the Department of Justice:** | | | | | | |
| **Civil cases** | | | | | | |
| Aerospace, munitions, & defense systems company | Not available | In an employment discrimination case brought by the U.S. Equal Employment Opportunity Commission (EEOC), the EEOC alleged that the company and the employee's union failed to accommodate the employee's religious beliefs, violating Title VII of the Civil Rights Act of 1964 (which makes it illegal for employers and labor unions to discriminate against any individual because of his religion). Specifically, a union security clause required company employees to pay "union fees" even if they did not join the union and the employee objected and requested his fee be paid to a charity instead based on religious grounds. The company did not agree to the proposed accommodation because it was contractually bound to collect his "union fees" and the union refused since it believed the employee's objection to paying union fees was not recognized under current labor law. | Feb. 1998 | In September 1998, a U.S. District Court granted partial summary judgment to EEOC and the employee, finding that the company and the union failed to reasonably accommodate the employee's religious beliefs under Title VII; the subsequent appeal was dismissed in August 1999 after the parties stipulated in March 1999 to a settlement which gave the employee the requested religious accommodation and a payment of $20,000. | 1998 | $148,248 |

*(Continued From Previous Page)*

| | Date(s) and description of alleged incident | | | | | |
|---|---|---|---|---|---|---|
| **Type of company** | **Date** | **Description** | **Date case opened** | **Resolution of case** | **Date case closed** | **Fiscal year 2000 federal contract amount ($000)[a]** |
| **Antitrust laws** | | | | | | |
| **Cases from the Federal Trade Commission:** | | | | | | |
| **Cases from the Department of Justice:** | | | | | | |
| **Criminal cases** | | | | | | |
| Military insignia retailer | 1990 to 1993 | Under the one-count felony charge filed in U.S. District Court, the company was alleged to have conspired to fix prices and rig bids for military insignia sold to the Army Air Force Exchange Service for resale to U.S. military personnel, in violation of the Sherman Act, which prohibits conspiracies in restraint of trade. The company carried out the conspiracy by discussing with other companies the prospective bids for bulk insignia contracts, designating the company that would be the low bidder, and submitting intentionally high bids. The company also conspired with other military insignia companies by discussing and agreeing on the level of price increases on the Exchange Service contract that covered some 4,000 different military insignias. | July 1996 | Pursuant to the plea agreement, the Antitrust Division of the Department of Justice and the company jointly recommended to the court, and the court imposed, a fine of $300,000 for the violation. | Nov. 1996 | $209 |

Note: This appendix lists criminal cases from enforcement agencies where the contractor pled guilty (or no contest), a plea agreement was reached, or the contractor was otherwise convicted, and civil and administrative cases from enforcement agencies where a violation of law was determined by a court or adjudicated administrative decision.

[a]Fiscal year 2000 federal contract amount is the total dollars (in thousands) obligated during fiscal year 2000 as shown in GSA's Federal Procurement Data System file information.

Source: GAO analysis of enforcement agency data.

# GAO Contacts and Staff Acknowledgments

## GAO Contacts

Bernard L. Ungar (202) 512-2834
Sherrill H. Johnson (214) 777-5600

## Acknowledgments

In addition to those named above, Michael Rives, Tyra DiPalma-Vigil, Syrene Mitchell, Derrick Collins, Adam Couvillion, Ray Occhipinti, Bill Scott, Elwood White, Adam Vodraska, Delois Richardson, Michele Fejfar, Susan Wallace, and Donna Leiss made key contributions to this report.

## GAO's Mission

The General Accounting Office, the investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to daily E-mail alert for newly released products" under the GAO Reports heading.

## Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

## Public Affairs

Jeff Nelligan, managing director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

**United States**
**General Accounting Office**
**Washington, D.C. 20548-0001**

**Official Business**
**Penalty for Private Use $300**

**Address Service Requested**

**Presorted Standard**
**Postage & Fees Paid**
**GAO**
**Permit No. GI00**