



Senate Report Urges Compliance-Based Government-Contract Awards

Insights

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The U.S. Senate's Committee on Health, Education, Labor, and Pensions has released a report concluding that there are "widespread labor law violations among major government contractors." The publication, entitled "Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk", stated that 49 federal contractors receiving more than \$81 billion in contract payments in 2012 alone had been the targets of nearly 1,800 U.S. Labor Department enforcement actions over a six-year period. These violations were said to have arisen under the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act, among other laws.

Report's Recommendations

The report mostly advocates increased attention to awarding federal contracts only to "responsible contractors that comply with federal law" by "improv[ing] the process for making the determination whether a particular company is a responsible contractor." The proposals sidestep legislative measures and instead consist principally of suggested agency actions and Executive Orders.

Among the recommendations are these:

- Expanding relevant federal databases to include more information on "each type of labor law violation" and civil penalty "assessed". This information would include violations unrelated to performance on or under a federal contract and apparently would also identify transgressions of state and local laws. There is no articulated standard for what would count as a "violation" (would this include non-admission settlements, for example?), and the report does not address whether there would be a reliable tracking of such things as an employer's having filed penalty exceptions or its successfully having penalties reduced or eliminated.
- Although the report refers repeatedly to such things as "compliance", "violations", and "labor laws", another recommendation urges an Executive Order requiring contracting officers to seek guidance as to the more-nebulous proposition of what constitutes a contractor's "satisfactory record of integrity and business ethics in this regard."
- The report also included the prospect of an Executive Order paving the way for "additional requirements" to ensure compliance, such as a contractor's having to agree to "voluntary inspections" as a condition of continuing or renewing a contract.

- Returning to a recurring USDOL theme of recent years, the report also calls for more-regular, more-rigorous, and more-widespread publicity about employers' compliance histories.

The Bottom Line

Employers working on or considering bidding on contracts implicating federal employment laws like the Davis-Bacon Act or the Service Contract Act (and many others) should be on the lookout for any developments provoked by this report. For one thing, management would be well-advised to comment upon any forthcoming specific regulatory proposals (Executive Orders are unlikely to invite any public input).

Moreover, employers should not be surprised to see a higher level of compliance-history scrutiny where contract awards or renewals are concerned, whether or not the report's recommendations have been officially implemented. Also, as we previously anticipated, there has already been an increase in USDOL investigative activity involving government contractors and subcontractors; the Committee's report might spur even more intense USDOL efforts in this regard.