



Briefing Report to the Honorable
Steve Symms
U.S. Senate

May 1991

LABOR-MANAGEMENT RELATIONS

Construction Agreement at DOE's Idaho Laboratory Needs Reassessing



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General Government Division

B-243525

May 23, 1991

The Honorable Steve Symms
United States Senate

Dear Senator Symms:

This briefing report responds to your request for information on contract awards, wage rates, and hiring procedures under a Site Stabilization Agreement at the Idaho National Engineering Laboratory (INEL) of the Department of Energy (DOE). The Agreement sets working conditions and establishes wage rates at INEL.

On February 21, 1991, we briefed your office on the results of our work. As you requested, this report summarizes and updates information provided at that briefing.

Background

Most of DOE's research and development activities are carried out by contractors at government-owned facilities located throughout the country. INEL is one of these facilities. It consists of nuclear research facilities, spent waste recovery plants, and other facilities located on more than 890 square miles in southeastern Idaho.

Three DOE organizations fund research and development activities at INEL. They include the Idaho Operations Office (DOE-ID), the Pittsburgh Naval Reactors Office (Naval Reactors Facility), and the Chicago Operations Office (Argonne National Laboratory-West). The activities of these organizations at INEL require construction either to build new facilities or to modify existing facilities to meet the changing needs of the government. Construction at INEL for DOE-ID and the Pittsburgh Naval Reactors Office is managed by construction managers, who award subcontracts for the construction of facilities. (See app. I.)

Between November 1977 and October 1978, INEL experienced a number of work stoppages that resulted in about 7,000 staff days of lost work on construction projects. Beginning in 1980, in an effort to bring about labor stability at INEL, unions and union contractors initiated efforts to develop a Site Stabilization Agreement. By November 1984, the unions and union contractors signed the Agreement. It contains a no-strikes/no-lockouts clause and establishes wages, fringe benefits, and working conditions for construction work at INEL.

The Agreement applies specifically to all construction at INEL that is funded by DOE-ID. All union contractors must sign the Agreement; and, because the construction manager has signed, all nonunion contractors must also sign the Agreement.

The Agreement applies differently to the other two organizations funding work at INEL. The Pittsburgh Naval Reactors Office chose to adopt the Agreement for construction at the Naval Reactors Facility. The construction manager for work at this facility did not sign; therefore, nonunion contractors do not have to sign the Agreement. Even though nonunion contractors do not have to sign the Agreement, they must adhere to nine of its provisions. The Chicago Operations Office, on the other hand, chose not to adopt the Agreement; therefore, it does not apply to construction at the Argonne National Laboratory-West. (See app. II.)

The Agreement is to be incorporated into all DOE-ID construction contracts at INEL. The authority for this incorporation was the Secretary of Energy's January 1985 determination—made under Public Law 85-804 (50 U.S.C. 1431)—which provided that adherence to the Agreement was necessary to “facilitate the national defense.”

In addition to the Agreement at INEL, DOE has Agreements in place at five other field locations: the Nevada Test Site and Tonopah Test Range, Nevada; the Rocky Flats Plant, Colorado; the Hanford Site, Washington; the Savannah River Site, South Carolina; and the Oak Ridge Site, Tennessee. As agreed with you, we limited the scope of this review to INEL.

Objective, Scope, and Methodology

To respond to your request, we addressed the following three issues that nonunion contractors raised regarding the INEL Agreement:

- accessibility to DOE-ID construction contracts at INEL,
- costs to DOE resulting from wage rates paid under the Agreement, and
- the requirement to use union hiring halls and additional costs to some nonunion contractors resulting from double payments for pension and health and welfare benefits.¹

¹A hiring hall is a mechanism by which unions fill contractors' requests for workers. Unemployed workers report to the union and their names are placed on a list. The workers are assigned to contractors on a first-in, first-out basis.

To determine whether nonunion contractors had access to DOE-ID construction work, we reviewed the DOE-ID construction manager's bidding policies and procedures to determine whether any restrictions existed that might have precluded such contractors from bidding on construction contracts. To determine the extent that nonunion contractors had obtained contracts, we analyzed the number and value of contracts awarded to union and nonunion contractors for the period October 1, 1986, through December 31, 1990. We verified the accuracy of the information in this analysis by tracing selected contract information back to the records of the construction manager.

In response to our questions on whether wage rates associated with the Agreement were higher than rates generally paid in the vicinity, the Coordinator prepared a report for us in October 1990 comparing the composite wage rate for a hypothetical project at INEL with the composite wage rate under the Davis-Bacon Act (40 U.S.C. 276a (1976)).² This act establishes minimum wage rates for laborers and mechanics working on federal or federally financed construction projects. The minimum wage rates are to be based on wages determined by the Department of Labor to be prevailing in the locality of the proposed construction. Our analysis included an examination of the methodology used to develop the Coordinator's report. We also verified the wage rates used in the report by tracing them back to the Agreement and to the wage determinations made under the act. In addition, we compared the average wage rate under the Agreement and the Davis-Bacon Act for the 14 different crafts used by the Coordinator in his report.

To assess nonunion contractors' concerns about the union hiring hall and double benefit payment provisions, we interviewed 11 nonunion contractors who had expressed concerns about the Agreement. We also obtained supporting documents from them showing that they paid twice for the same employee benefit coverage. We analyzed information from six union officials on their hiring hall procedures and practices. We also obtained information on the time required to qualify for some of the unions' pension and health and welfare plans.

A number of lawsuits concerning the legality of Agreements were before the federal courts at the time of our review. In addition to three lawsuits over the hiring hall issue (two in Boise, Idaho, and one in Nashville, Tennessee), there was a fourth lawsuit, in Boise, Idaho, contending, among

²The Coordinator is a neutral party who is responsible for the day-to-day administration of the Agreement and provides advice and assistance to the unions and the contractors at INEL.

other things, that the Agreement violated the Sherman Anti-Trust Act and that DOE did not have authority under Public Law 85-804 to adopt the Agreement. We are expressing no opinions on any of the issues before the courts. However, we did review documents related to the lawsuits.

We also interviewed and obtained informal comments on the information contained in this report from union and nonunion contractors, union business agents, and DOE officials. Our review, which complied with generally accepted government auditing standards, was made during the period from July 1990 through March 1991.

Results

Nonunion contractors were able to both bid on and obtain DOE-ID construction contracts at INEL. Bidding policies and procedures for DOE-ID construction contracts show that any contractor, union or nonunion, could bid on construction projects at INEL. All DOE-ID contractors, however, had to sign the Agreement before being awarded a contract. Although 8 of 11 nonunion contractors we interviewed told us that they would not bid on DOE-ID work because they did not want to sign the Agreement, nonunion contractors were successful in bidding on 86 (30 percent) of 286 contracts awarded by DOE-ID from October 1, 1986, through December 31, 1990. (See app. III.)

In October 1990, the composite wage rate under the Agreement was 17 percent higher than the composite wage rate determined under the Davis-Bacon Act, according to the Coordinator's report. The difference increased to 21 percent based on the average wage rate. The higher wage rates were largely due to an allowance for construction workers' travel to and from INEL. Another factor that may explain the difference is that the two rates are adjusted at different times. Under the Agreement, these rates, which every contractor must pay, are determined on the basis of local area collective bargaining agreements between contractors and unions. In addition, in some cases unions allegedly were authorizing contractors to pay lower wage rates for private construction off-site than they were paying for DOE-ID construction. If the wages were paid pursuant to a change in the local collective bargaining agreements, then it would appear that under the Agreement, these lower wage rates should have been incorporated into the Agreement. (See app. IV.)

Nonunion contractors were opposed to the Agreement's union hiring hall provision requiring nonunion contractors to obtain new or replacement workers through union hiring halls. They said the union hiring hall

requirement could result in a breakup of their permanent nonunion work crews. In addition, nonunion contractors said they must pay into the unions' pension and health and welfare plans even when the nonunion contractors had their own plans for permanent workers. We found that double payments for health and welfare benefits had occurred in at least two cases. (See app. V.)

Conclusions

In November 1984, unions and union contractors adopted the Agreement in an effort to bring about labor stability at INEL. In January 1985, DOE determined that the Agreement was necessary to facilitate the national defense. While the Agreement may result in advantages to the government, unions, and union contractors, certain aspects of it have created problems and concerns for nonunion contractors.

Nonunion contractors said they believe that the Agreement puts them at a disadvantage by requiring them to go through union hiring halls and, in some cases, make double payments for certain employee benefits. Their reluctance to bid on DOE contracts because of these provisions in the Agreement may reduce the level of competition, thereby resulting in increased costs to the taxpayer. Also, questions may arise whether the wage rates required under the Agreement and the alleged union practice of allowing contractors to charge lower wage rates for private construction outside INEL are in the best interest of the government.

While we do not mean to imply that DOE is doing anything improper, we believe these aspects of the Agreement should be reviewed from two perspectives: legal and public policy. In the legal realm, some of the issues raised here are in litigation and may be resolved by the courts. But regardless of the legal issues, we believe the Agreement's provisions that are troublesome to nonunion contractors and raise questions in terms of costs should be evaluated by DOE from a public policy perspective. While DOE has agreed to look into some of the Agreement's provisions, we believe a broader evaluation from a public policy perspective is especially appropriate because DOE has not reassessed the need for the Agreement since 1985.

Recommendation to the Secretary of Energy

We recommend that the Secretary of Energy determine whether provisions in the Agreement, as discussed in this report, remain desirable from a public policy perspective.

DOE and Others' Views

We obtained informal comments on the information contained in this report from DOE officials, union and nonunion contractors, and union business agents. These officials generally agreed with the factual information presented in this report but did suggest some clarifications, which we made. DOE officials, however, expressed the general concern that our conclusions and recommendation were misleading because they implied that DOE was doing something improper or could direct unions and the construction manager to make changes to the Agreement. We have considered DOE's concern and believe that our conclusions and recommendation are still applicable.

Regarding the issue of whether the Agreement's provisions dealing with union hiring halls and double payments are adversely affecting non-union contractors, a DOE official stated that DOE does not have legal authority to direct changes to the Agreement to eliminate these provisions. However, he said that its Idaho Operations Office would continue ongoing discussions with the unions, their benefit trusts, and Agreement employers in a cooperative effort to resolve these questions. We believe that such discussions can serve as a good starting point to address these questions.

Regarding the issue of Agreement wage rates being above Davis-Bacon wage rates, DOE officials said that it was not illegal to pay wage rates higher than Davis-Bacon wage rates. They also said that the difference in the two rates was partly due to a time lag in making adjustments to the Davis-Bacon wage rates. It was not our intent to imply that DOE was doing anything improper. We have revised the report to clarify this point. We continue to believe, however, that DOE should reassess whether the wage rate difference remains in the best interest of good public policy.

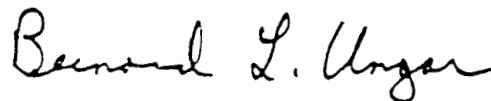
In regard to lower wage rates for private construction outside INEL, a DOE official said that article XVIII of the Agreement is not clear. His understanding was that the article is intended to ensure uniformity among the provisions of collective bargaining agreements negotiated by the various crafts and the provisions of the Agreement. He did not agree that the language was intended to require that the provisions of unique, project-specific agreements be incorporated within the Agreement. However, he said that the Idaho Operations Office would work to interpret article XVIII. Regardless of the intent of article XVIII, we believe the government's interest needs to be protected so that it is not discriminated against in the wages it pays.

The DOE official said that several of the issues discussed in our report concerning requirements for nonunion contractors to follow provisions of collective bargaining agreements may be answered by certain court cases in progress at the time of our review. He said DOE would wait to take action until after the courts have ruled on these issues. We believe this approach is reasonable.

As arranged with your office, we plan no further distribution of this report until 30 days after the date of issuance, unless you publicly announce its contents earlier. At that time, we will send copies to the Secretary of Energy and other interested parties and make copies available to others upon request.

The major contributors to this briefing report are listed in appendix VI. If you or your staff have any questions about the report, please call me on (202) 275-5074.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

Contents

Letter		1
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Appendix I		12
Applicability of the	All DOE-ID Contractors Must Sign Agreement	13
Site Stabilization	DOE-Pittsburgh Naval Reactors Office Contractors Do Not	14
Agreement to	Have to Sign Agreement	
Construction Work at	DOE-Chicago Operations Office Did Not Adopt Agreement	14
the Idaho National		
Engineering		
Laboratory		
<hr/>		
Appendix II		15
Applicability of the	Nine Provisions Apply to Nonsignatory Contractors	15
Site Stabilization	All Provisions Apply to Signatory Contractors	16
Agreement to		
Nonsignatory and		
Signatory Contractors		
<hr/>		
Appendix III		17
Accessibility to DOE-	Nonunion Contractors Were Permitted to Bid on DOE-ID	17
ID Construction	Contracts	
Contracts at the Idaho	Nonunion Contractors Received DOE-ID Contracts	18
National Engineering		
Laboratory		

<hr/>		
Appendix IV		20
Higher Wage Costs	Wage Rates at INEL Were Higher Than Davis-Bacon Rates	20
Resulting From the	DOE Not Receiving Benefit of Reduced Off-Site Rates	21
Site Stabilization		
Agreement at the		
Idaho National		
Engineering		
Laboratory		
<hr/>		
Appendix V		22
Nonunion Contractors'	Nonunion Contractors Opposed to Union Hiring Halls	22
Concerns About the	Hiring Hall Provision May Break Up Regular Work Crews	23
Union Hiring Hall and	Double Payments for Fringe Benefits	23
Fringe Benefit		
Provisions		
<hr/>		
Appendix VI		24
Major Contributors to		
This Report		
<hr/>		
Figures		
	Figure I.1: Map of the Idaho National Engineering Laboratory	12
	Figure I.2: Applicability of the Agreement	13
	Figure II.1: Major Provisions of the Agreement	15
	Figure III.1: Nonunion Contractors Are Able to Obtain Contracts	17
	Figure III.2: Number of Construction Contracts Awarded	18
	Figure III.3: Percentage of Dollars Awarded for Construction Contracts	19
	Figure IV.1: Higher Costs Associated With the Agreement	20
	Figure V.1: Concerns About Union Hiring Halls and Benefit Payments	22

Abbreviations

DOE	Department of Energy
DOE-ID	Department of Energy-Idaho Operations Office
INEL	Idaho National Engineering Laboratory

Applicability of the Site Stabilization Agreement to Construction Work at the Idaho National Engineering Laboratory

Figure I.1:

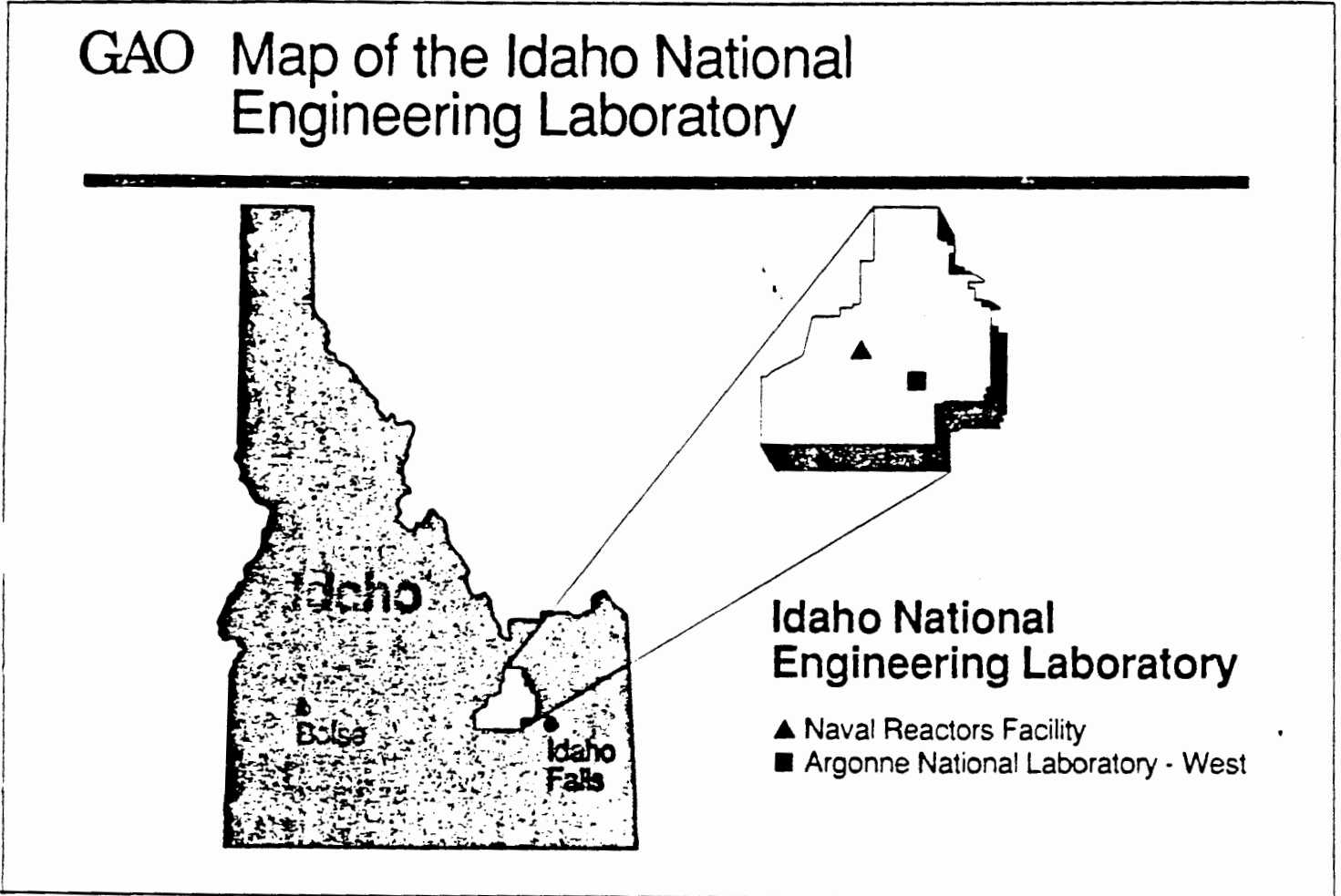


Figure I.2:

GAO Applicability of the Agreement

- For DOE-ID contracts, contractors have to sign
- For DOE-Pittsburgh Naval Reactors Office contracts, contractors do not have to sign
- For DOE-Chicago Operations Office contracts, Agreement does not apply

There are three different organizations involved in construction work at INEL. The Agreement applies differently to each organization, as shown in the following sections.

All DOE-ID Contractors Must Sign Agreement

The construction manager for DOE-ID signed the Agreement. Therefore, under the subcontracting provision, all subcontractors must sign the Agreement and meet all of its provisions. (See app. II.)

**DOE-Pittsburgh Naval
Reactors Office
Contractors Do Not
Have to Sign
Agreement**

The Naval Reactors facility is under the operational control of DOE's Pittsburgh Naval Reactors Office. The construction manager for the Pittsburgh Naval Reactors Office did not sign the Agreement. Consequently, its subcontractors had the option of either signing or not signing the Agreement.

**DOE-Chicago
Operations Office Did
Not Adopt Agreement**

The Argonne National Laboratory-West facility is under the operational control of DOE's Chicago Operations Office. The Chicago Operations Office did not adopt the Agreement. Consequently, none of the provisions apply to construction work done at the Argonne National Laboratory-West facility.

Applicability of the Site Stabilization Agreement to Nonsignatory and Signatory Contractors

Figure II.1:

GAO Major Provisions of the Agreement

- Nine provisions apply to nonsignatory contractors
- All provisions apply to signatory contractors

Nine Provisions Apply to Nonsignatory Contractors

The nine provisions that apply to nonsignatory contractors include such things as equal employment opportunity, DOE contracting rights, work rules relating to employee and employer conduct, hours of work, wage rates, wage rate changes, and procedures for notifying employees of closing down some or all operations. In addition, the Agreement establishes a Coordinator position and a Standing Board of Adjustment, which also has application to nonsignatory contractors.¹

¹This board is made up of the Coordinator and representatives of signatory contractors and unions. It is required to meet not less than once a month to discuss alleged violations of the Agreement and any practice that might lead to a misunderstanding or a dispute.

All Provisions Apply to Signatory Contractors

In addition to having to comply with the nine provisions, contractors who sign the Agreement must comply with its remaining provisions. Some of these provisions include a no-strikes/no-lockouts clause, authorization for union representatives to have access to job sites, procedures for handling grievances, a requirement for subcontractors to sign the Agreement and pay into union pension and health and welfare plans, and a requirement to obtain workers through union hiring halls.

Accessibility to DOE-ID Construction Contracts at the Idaho National Engineering Laboratory

Figure III.1:

GAO Nonunion Contractors Are Able to Obtain Contracts

- Policies and procedures allow any contractor to bid
- From 10-1-86 through 12-31-90, nonunion contractors received:
 - 30 percent of the contracts
 - 8 percent of the total dollar value of the contracts

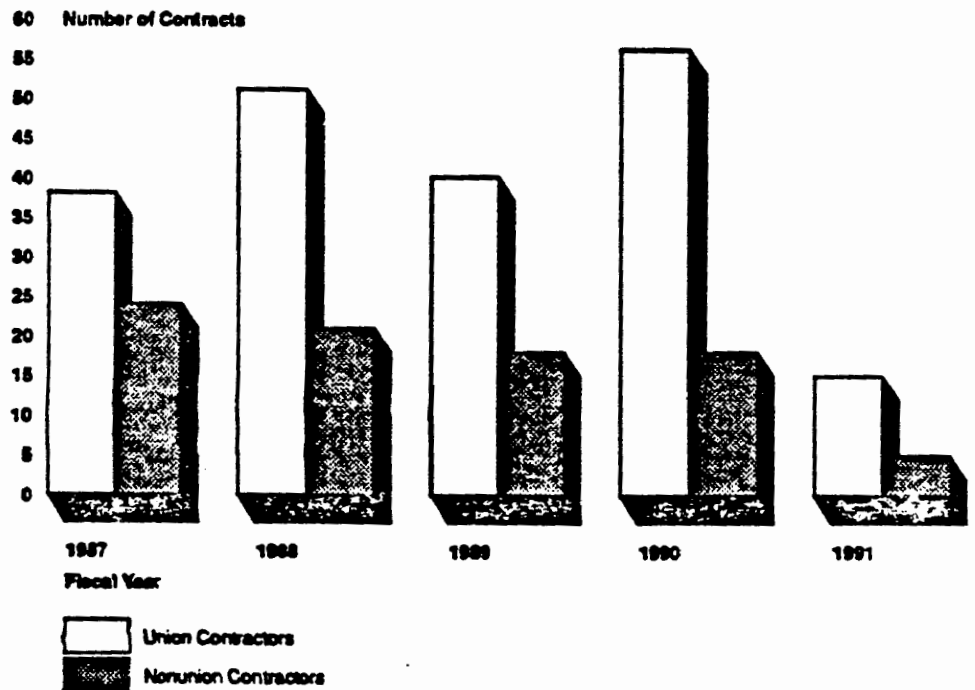
Nonunion Contractors Were Permitted to Bid on DOE-ID Contracts

The Agreement did not preclude nonunion contractors from bidding on DOE-ID construction work at INEL. In addition, the policies and procedures used by DOE-ID's construction manager to obtain bids for subcontract work at INEL showed that any contractor could submit bids. However, a contractor awarded a subcontract was required to sign the Agreement. Eight of 11 nonunion contractors we spoke with told us they would not bid on DOE-ID work because they did not want to sign the Agreement.

Nonunion Contractors Received DOE-ID Contracts

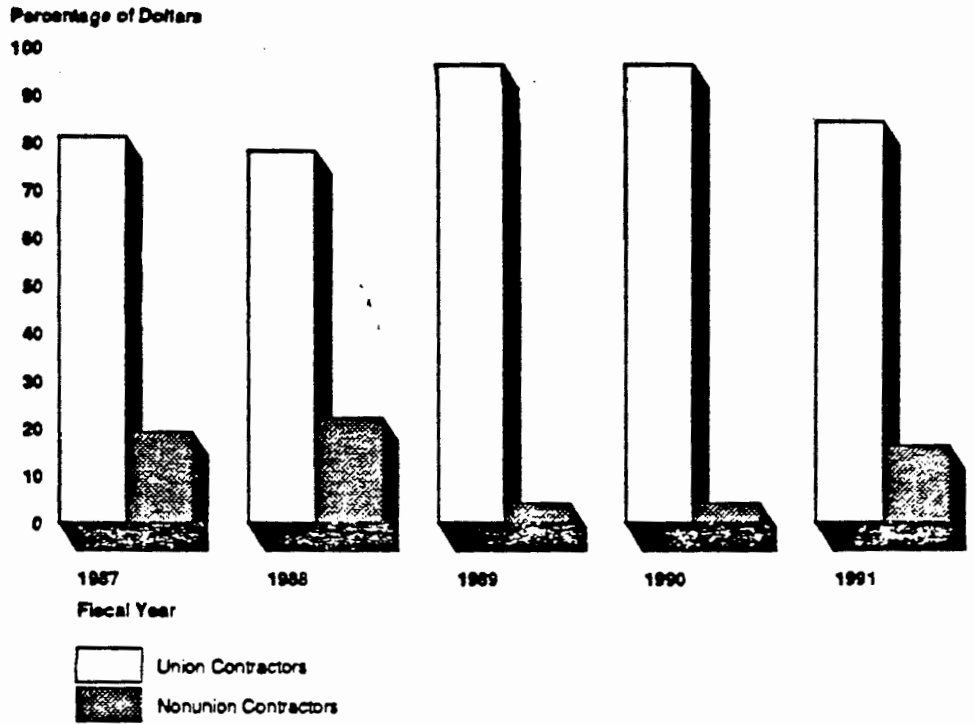
The requirement for signing the Agreement did not deter all nonunion contractors from bidding on and receiving DOE-ID contracts. From October 1, 1986, through December 31, 1990, nonunion contractors—those working predominantly as nonunion contractors outside the INEL boundaries—received 86 (30 percent) of the 286 INEL contracts awarded and 8 percent of the total dollar value of the contracts. Thus, nonunion contractors were able to bid on and obtain DOE-ID work at INEL. Figures III.2 and III.3 show the number of DOE-ID contracts and the percentage of dollars awarded for construction at INEL during the period from October 1, 1986, through December 31, 1990. We did not evaluate the reasons for the differences in dollar amounts of contracts awarded to union and nonunion contractors.

Figure III.2: Number of Construction Contracts Awarded



Note: Fiscal year 1991 data are through December 31, 1990.

Figure III.3: Percentage of Dollars
Awarded for Construction Contracts



Note 1 Fiscal year: 1991 data are through December 31, 1990

Note 2 One contract in fiscal years 1989 and 1990 represented 70 and 67 percent respectively of the total

Higher Wage Costs Resulting From the Site Stabilization Agreement at the Idaho National Engineering Laboratory

Figure IV.1:

GAO Higher Costs Associated With the Agreement

- Composite wage rate was 17 percent higher than Davis-Bacon wage rate
- Average wage rate was 21 percent higher than Davis-Bacon wage rate
- Unions allegedly were not passing lower off-site rates on to DOE, as required by the Agreement

Wage Rates at INEL Were Higher Than Davis-Bacon Rates

The Agreement, as incorporated into DOE contracts, requires all contractors and subcontractors, whether they signed the Agreement or not, to pay the wage rates and provide employee fringe benefits as specified in the Agreement. These rates and fringe benefits were determined on the basis of local area collective bargaining agreements made by contractors and unions. When wage changes were made in these local agreements, the Agreement was to be modified to incorporate such changes.

In October 1990, the Coordinator, who was responsible for the administration of the Agreement, compared the composite wage rate for a hypothetical project across 14 different construction crafts at INEL with the

composite wage rate established for the same crafts under the Davis-Bacon Act. Under this act, the Secretary of Labor is required to establish minimum wage rates for federal or federally funded construction projects on the basis of prevailing rates in the vicinity. The Coordinator found that the composite wage rate for INEL was 17 percent higher than the same rate established using Davis-Bacon rates. If the Coordinator had compared the average wage rate for the same 14 crafts at INEL with the average wage rate under Davis-Bacon, the difference would have been 21 percent.

Most (58 percent) of the difference between the INEL and Davis-Bacon composite wage rate was attributable to the inclusion in the INEL rate of an allowance for travel to and from INEL, which was not included in the Davis-Bacon rate. Another factor that may explain the difference is that the two rates were adjusted at different times. Unions sent wage rate changes directly to the Coordinator who promptly adjusted the rates in the Agreement while the Department of Labor took longer to make adjustments to Davis-Bacon rates. Consequently, Davis-Bacon rates tended to be lower than the INEL rates.

DOE Not Receiving Benefit of Reduced Off-Site Rates

A nonunion contractor told us that, in addition to the higher wage rates associated with the Agreement, unions had not granted DOE lower wage rates established for a construction project off the INEL site. The Coordinator confirmed that some unions allowed contractors to reduce rates on selected projects outside the INEL boundaries. For example, on a private project in Idaho Falls to build a malting plant, unions allegedly allowed the contractor to reduce wage rates 10 percent below the wage rates in the Agreement. If wage rates for private construction projects are different from wage rates being charged for government construction projects without the government having the benefit of the lower rate, we believe it would be contrary to the Agreement. Article XVIII of the Agreement states that any changes in wage rates pursuant to a change in the local collective bargaining agreement should be incorporated into the Agreement. Our interpretation of article XVIII of the Agreement is that unions were to grant DOE the same wage rates given to contractors for off-site work, if the rates arose through a change in the local collective bargaining agreements.

We discussed this practice with a DOE official. He disagreed with our interpretation of article XVIII but added that it was not clear what was intended. He said, however, that the Idaho Operations Office would work to seek an interpretation of article XVIII.

Nonunion Contractors' Concerns About the Union Hiring Hall and Fringe Benefit Provisions

Figure V.1:

GAO Concerns About Union Hiring Halls and Benefit Payments

- Philosophically opposed to union hiring halls
- Can result in breaking up regular work crews
- Can result in paying twice for pension and health and welfare benefits

Nonunion Contractors Opposed to Union Hiring Halls

The Agreement specifies that contractors and subcontractors who have signed the Agreement be bound by the hiring procedures of the local unions who also have signed the Agreement. The unions, in turn, agree to furnish qualified journeymen and apprentices to the contractors and subcontractors.

Nonunion contractors are philosophically opposed to union hiring halls. They maintain they dislike the hiring hall provision of the Agreement and contend that because Idaho is a right-to-work state and they choose

to be nonunion, they should not be forced to obtain workers from union hiring halls.

Hiring Hall Provision May Break Up Regular Work Crews

The business agents for two of the six unions we contacted said that nonunion contractors must obtain workers from union hiring halls. Nonunion contractors said that obtaining workers from the hiring halls might break up their regular work crews that have worked for them off-site for long periods of time.

However, according to the four other union business agents, nonunion contractors can take permanent employees to jobs on the site without placing them on the halls' out-of-work list. Only workers replaced or added to permanent crews must go on the halls' out-of-work list and be dispatched by the unions on the basis of the hiring hall list. These business agents said that this practice of allowing nonunion contractors to take permanent workers directly to the site is not part of their written procedures for dispatching workers but rather is done informally.

Double Payments for Fringe Benefits

As we noted in appendix IV, the Agreement establishes wage rates and fringe benefits that all contractors at INEL must pay. The fringe benefits include, among other things, a requirement that payments be made into union pension plans and health and welfare plans.

Nonunion contractors said that the Agreement could require them to pay twice for health and pension benefits for their permanent workers—once through their own plan and once through the union's plan. They also expressed concerns that their permanent workers may not receive benefits from the union plan because they may not work long enough to take advantage of these benefits. Our review of requirements for five union plans showed that for health and welfare plans, from 250 to 450 hours of work were required before workers were entitled to receive benefits. For pension plans, from 5 to 10 years were required before a worker could receive benefits.

We found that two nonunion contractors had made double payments for health and welfare benefits. A third nonunion contractor was being sued in Federal District Court to make payments to a union pension and health and welfare plan even though the contractor had made payments into his own plan.

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