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AFL-CIO 1997 Convention

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1. **Labor Relations Costs.** Issue a directive elaborating on FAR Ch. 1 § 31.205-21 (Labor relations costs) as follows:

Under existing FAR cost principles, allowable labor relations costs are limited to those incurred in maintaining satisfactory relations between the contractor and its employees. Because they erode, rather than maintain, satisfactory labor relations, costs incurred for contractor activities related to influencing employees respecting unionization are unallowable, including costs incurred by the contractor, its officers, directors, or employees, any labor relations consultant, legal advisor, or other individual or entity with whom the contractor contracts or arranges for such activities.

2. **Unfair Labor Practice Defense Costs.** Issue a directive elaborating on FAR Ch. 1 § 31.205-47 (Costs related to legal and other proceedings) as follows:

Unfair Labor Practices. Costs incurred in connection with any proceeding involving a charge that the contractor has violated § 8(a) of the National Labor Relations Act, 29 U.S.C. § 158(a), are unallowable. For purposes of this section, costs include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of the proceeding which bear a direct relationship to the proceeding.

3. **Responsible Contractor Determination.** Issue a directive elaborating on FAR Ch. 1 § 9 et seq. as follows:

As part of determining whether a potential contractor is a responsible contractor, the contracting officer must determine whether the prospective contractor has "a satisfactory record of integrity and business ethics." FAR Ch. 1 § 9.104-1(d). The contracting officer must "possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104." § 9.105-1(a). In order to make the determination of whether a prospective contractor has a satisfactory record of integrity and business ethics such that it should be considered a responsible contractor, the following disclosure and evaluation must be made:

1. Prospective contractors shall disclose to the contracting officer information on all pending civil, criminal, and administrative proceedings relating to alleged violations of labor and employment laws, as well as any findings of liability for labor and employment law violations in the previous three years. This information shall be publicly available to

the maximum extent permitted by law.

"capability of carrying out K in acceptable manner"

2. In order to be deemed a responsible contractor with satisfactory business ethics, prospective contractors must demonstrate the existence of satisfactory labor relations with its workforce, including, consideration of the following factors:

a. Policies and practices concerning, and compliance with laws governing, safety and health conditions at the workplace;

b. Policies and practices concerning, and compliance with laws governing, wages, benefits, and other labor standards;

c. Policies and practices concerning, and compliance with laws governing, workers' rights to organize and collectively bargain; and

d. Policies and practices assuring a stable, well-trained workforce.

3. The contracting officer shall fully consider information provided to the contracting officer by individuals or organizations about a prospective contractor's record of business ethics, and shall, as appropriate, consult and meet with such individuals or organizations about the prospective contractor's record.

4. **Project Labor Agreements**. Issue an executive order directing agencies to consider utilizing project labor agreements where appropriate.

be of pro- or anti-
union organization

Meeting w/ WHC, DoL, AFL   2/5   already white

AFL

(1) Labor relations costs:
- costs for persuading activities non-allowable
- not new concept that gov't moneys not be spent on persuading activities (Headstart, Medicare)

(2) Labor practice defense costs:

defense against NLRB complaints unallowable (since EEOC treatment is the same)

Kelman: add onto existing FAR ... or amend FAR

Winslow: already apply under fraud proceeding (and other misconduct)

* agreement in concept to do this; question is how

(1) → Kelman: impossible to ~~administer~~ implement + audit
AFL: ~~some~~ concern w/ Medicare; deterrent for the parties (gov't money cannot be spent on persuader activities re: Medicare)
Samuels: we do this
Kelman: DoD does more cost-based auditing than HHS, Labor; this would be contentious

Wendy: govt can't get involved in labor disputes; must remain neutral under FAR;

APL'S ISSUE: GOVT PAY'TS TO CORP IN DISPUTE IS TAKING SIDE

Kelman: activity otherwise legal for company to take

Richard ORRP: Policy
: we pay all costs unless unreasonable, meaning quantum, or illegal

e.g., corp. reorg^Δ not allowable; alcohol purchase

|| "FAR cost principle" was method of changing cost rule on corp. reorg^Δ

AFL + Labor: persuader activities should fall under this policy rubric, and not be reimbursable costs

[Background: boards will allow or disallow certain costs being paid for by gov't.]

(3) Responsible Contractor Determ^n

APL: not addressing suspension + debarment

Velman: agencies don't look at business activities
- 2 non-responsibility findings (like crim. offenses) lead to debarment
- any time any civil, criminal issue, auditor ~~[illegible]~~ kicks up to higher level

APL: finding of unfair labor practice can't lead to debarment /susp.

Velman: yes it can; DoL could look @ unfair labor practice findings and raise issue to lead to debar't /susp.; hard to get suspension from civil complaint filed w/ admin. agency, not ~~[illegible]~~ dist. court

Velman: agencies have policy that follows:
- if bus. ethics, not non-respons. determin^n, but debarment determin^n. (automatic kicked-up to debar't)

Richard OFPP: non-resp. determinations too difficult to make by contracting officer

↓

2 non-resp. determ^s equals debar't/susp.
(agency has higher debar't/susp. officer)

AFL: not fair to debar company for all Gs based on 1 determin^ on one K

Kelman: agencies don't use "bus. ethics" for responsibility determ^s

AFL: why can't they do that?

- looking at K'or's or bidder's labor practices .... can agency determine, thru consult^ w/ DoL or NLRB, then "bus ethics" of company for respons. determin^

~~[illegible]~~
Richard: can do that
AFL: add to filing by corp, "employ't-related issues"
Kelman: now look @ convictions
or crim + civil charges

↓

(proceedings; viol^s)

Wendy: add language saying: "this includes ...."

AFL: that is what asking for essentially

John like

"we consider bus ethics to include labor-relations + how you treat workers"

→ practical result could be agreement on one specific K b/c bus. ethics problem on this front is called to attention of ~~offices~~ contracting officer

KW: short of directive, + short of reg change, way to convey this

possible sol solution

Kelman: ~~memo to officers~~ (not require notice + comment) from Kelman

AFL: just saying labor rel. is fed part of bus ethics won't mean much

KW: VP say letter ....

UW: Letter ⟶

Kelman: ~~S4~~ evidence of good labor practice taken into account; 2 cases of non-civil or crim conviction leading to finding, even.

Kelman never a respons determ on debarment/susp. made that did not stem from civil/criminal charge; keep objective

*

$\boxed{\text{sympathetic to findings by NCRB as sufficient to find nonresponsible or debar't/susp.}}$

OFPP could

not enough, AFL

AFL why can't IC officers assess labor relations?
Kelman these people can't make determ^n s
AFL if on strike, who assesses
Kelman responsib. determ^n person on issue of "capability"
AFL why can't they assess labor relations

Issue: how can treat't of ees be linked to "capability"

Kelman ⟶ will look @ capability

Velman this is polil use of capability determ^

how do labor relations
relate to capability ?

capability
financial ability
business ethics

} 3 factors

(4) Project Labor Ag'ts : Wendy thinks no issue here +
we can announce that
these are permissible

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR DAVID STRAUSS

FROM: KATHLEEN WALLMAN

SUBJECT: AFL-CIO SPEECH

DATE: JANUARY 23, 1997

COPIES: GENE SPERLING, ELENA KAGAN

Attached is a note concerning an idea that Elena Kagan and I are exploring to see whether it may be worthy of inclusion in the Vice President's remarks. I have asked the Counsel's office to work on the legal aspects of this and to work towards a possible executive order. If this works out, I believe that the announcement that the Vice President could make would be on par with the strikebreakers executive order of a few years ago in terms of its significance in labor law, and harder to challenge in court, too.

THE WHITE HOUSE

WASHINGTON

January 21, 1997

MEMORANDUM FOR GENE SPERLING

COPY: ELENA KAGAN

FROM: KATHLEEN WALLMAN

RE: AFL-CIO CONVENTION

As you know, the Vice President's office is working on a speech for the Vice President to deliver during Presidents' Day weekend at the AFL-CIO convention. This memorandum outlines an idea that should be explored for inclusion in the speech.

When Elena Kagan and I were in the Counsel's office, the AFL-CIO's General Counsel, John Hiatt, identified a concern that may be worth fixing. He said that he was aware of two situations in which major federal contractors are seeking and receiving reimbursement under their contracts for the costs of resisting union organizing efforts and for litigating unfair labor practices cases.

It may not be possible or appropriate for us to be involved in matters related to the specific contracts that Mr. Hiatt mentioned. However, he has raised a good question: Why should the companies be allowed to pass through the costs of fighting unionization? Other companies that do not hold federal contracts that allow this pass-through have to decide whether the costs of resisting unionization are worth incurring: Can they be absorbed by the enterprise, or can they be passed on to consumers in a competitive market, who may choose to do business elsewhere? Federal contractors' ability to pass through these costs may give them an advantage in negotiating with the unions that other companies don't have.

I would like to explore further whether my supposition that the AFL-CIO has a point here is correct. If Elena is willing, I would like to work with her on this since she is familiar with Hiatt's arguments.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR DAVID STRAUSS

FROM: KATHLEEN WALLMAN KW

SUBJECT: AFL-CIO

COPIES: GENE SPERLING, ELENA KAGAN, WENDY WHITE

DATE: January 30, 1997

In light of our meeting with John Hiatt and others, and a subsequent conversation with John, we are exploring whether we can equip the Vice President to make a broader announcement about the federal government maintaining neutrality in disputes between unions and federal contractors that goes beyond ending the practice of reimbursing expenses incurred in fighting the unions. We are looking at whether he could announce executive action to make sure that contracting agencies are able to take into account a bidder's labor practices record when awarding or renewing a contract, particularly where there is reason to believe that there is a pattern or practice of abusive labor practices.

We are also exploring whether we can equip the Vice President to announce executive action to encourage more expansive use of "project labor agreements"in federal construction contracts. These are labor agreements that cover a single construction project, and that define the labor terms that apply to the tradespeople hired by the winning bidder to do that particular construction job, such as a federal courthouse. Project labor agreements introduce union protections where none otherwise would exist, and using them more frequently in federal construction contracts would be an important step.

In my subsequent conversation with John Hiatt, I emphasized that we have a very short amount of time to get specific on these ideas. We will proceed quickly.

fax cc: Elena
Wendy White

DRAFT

Privileged and Confidential
For Discussion Only

December 20, 1996

MEMORANDUM FOR JACK QUINN
COUNSEL TO THE PRESIDENT

FROM: J. DAVITT MCATEER
ACTING SOLICITOR,
DEPARTMENT OF LABOR

As we have discussed, there has been concern expressed about possible labor law violations by Avondale Industries, a firm which has received numerous Navy contracts. In anticipation of further questions that may be directed to you, I have prepared a factual background of this issue as well as brief legal discussion of related issues. As you know, our office, your office, and the Office of Federal Procurement Policy recently met to discuss the general issues concerning procurement policy.

Concerns About Navy Contracts With Avondale Industries

Concerns may be raised about the awarding of Navy contracts to Avondale Industries, a large shipyard in New Orleans, that has been engaged in a lengthy battle to defeat a union campaign to represent its nearly 4,000 workers. The union involved in the election campaign alleges that the company is improperly carrying out its anti-union campaign with taxpayer dollars and has asked the Administration to intervene.

In June of 1993, the AFL-CIO Metal Trades Council won a representation election at Avondale by a vote of 1804-1263. The company filed objections to that election. Those objections are pending before the National Labor Relations Board. Unfair labor practices complaints have been filed by the union from that time until the present. Over 150 of those ULP complaints are being litigated before the National Labor Relations Board and, according to Board attorneys, the company has been resistant to settlement discussions. Resolution of these charges by the NLRB does not appear imminent, given the volume of the record. The union alleges that Avondale is using taxpayer dollars to litigate these NLRB disputes and thus has little incentive to settle.

The Wall Street Journal reported on Wednesday, December 18, that Avondale had won a Navy contract to build a new generation of amphibious assault ships with an initial value of $641 million, but a potential value of billions of dollars more.

Legal Issues

Two issues have been raised regarding government procurement contracts: 1) whether legal and other costs associated with alleged anti-union activities, especially those deemed to constitute unfair labor practices by the NLRB, are chargeable to the federal government; and 2) whether contractors who engage in such activities should remain eligible to receive federal dollars.

On the first issue, in cost-basis contracts, indirect costs associated with anti-union activities (particularly illegal activities) could be disallowed. Existing provisions of the FAR disallow certain legal costs, including those for defense of "fraud or similar misconduct." Additionally, such costs arguably may not be "reasonably" charged to the federal government. However, there are numerous issues that may come up in any audit of a federal contract--including the relevant contracting unit (i.e., whether such costs should be disallowed if included in the "general and administration" unit of the contractor, but not the "government" unit.) Additionally, it may be difficult for contract officers to identify these costs through audits. The Office of Federal Procurement Policy has committed to working with our offices to determine how existing procedures treat these costs and to examine the past practice.

Second, the question has been raised whether the federal government should contract with companies that have a record of unfair labor practices or other such behavior, similar to the manner EEO protections are treated. Under existing regulations, such considerations of a company's practices could play a role at two decision points--the "responsibility determination" (just prior to the award of a contract) and in any debarment or suspension proceeding. The "responsibility determination" is made by a contracting agency and includes the requirement that a company demonstrate a record of integrity and ethics. Similarly, a debarment proceeding can be instituted-against a company for unethical or illegal behavior. Upon receiving information of unethical or illegal behavior, a contracting agency might investigate a company's behavior before award or after, with an eye to debarment or suspension.

A final possibility is examining award criteria to determine whether responsible labor practices fit into existing criteria. Given the trend toward streamlining requirements for government contractors, this possibility may face considerable resistance in the procurement community.

We look forward to continued work on this issue. Please let me know if you need further information.

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C 20006
(202) 637-5000

MEMORANDUM

TO: John Podesta

FROM: Jon Hiatt JRH

DATE: December 20, 1996

RE: Avondale/NASSCO

At Gerry Shea's request, I am sending you this memo that attempts to summarize the disgraceful situations at the above two shipyards.

While the two situations are quite distinct -- NASSCO concerns a long-time contract dispute in a unionized yard while Avondale involves a brutal anti-union campaign against workers who have been trying to unionize for the first time -- they are related to the extent that both companies are operating under and completely dependent upon contracts with the Federal Government.

It is our view that the Government could and should make clear to these contractors that it cannot accept the immoral and unlawful labor-relations policies that these two wholly dependent contractors are conducting, and that in both cases they must immediately work out their differences with the unions on mutually acceptable terms.

In one case -- NASSCO -- the yard has been unionized for decades. The problem involves a contract dispute that has been going on for several years, and where the main problem has been the company's resistance to retaining a union security provision that limits the rights of non-members to be free-riders, enjoying all of the contract's benefits without paying their fair share of the costs of contract negotiation or administration. This provision had been in the parties' contracts for years. At various stages of the negotiation process, NLRB administrative law judges have found the company to have engaged in unlawful, bad faith bargaining.

With regard to Avondale, the union won an NLRB election in May 1993, by a vote of approximately 1,800 to 1,200 in a unit of over 4,000. The company challenged several hundred ballots and filed 45 objections to the election. The NLRB hearing officer recommended dismissal of all the company's objections, and a resolution of the ballot challenges. It is believed that the counting of these ballots will only widen the margin of union victory.

Over three years have past, however, and the Board has yet to certify the results of the election. The company insisted on taking its challenged ballots and objections to 160 days of hearings. Briefs were filed in May of 1995, yet no decision has issued more than a year and one-half later.

In the meantime, the NLRB General Counsel investigated and found cause to issue complaints on over 200 unfair labor practice charges filed between March, 1993 and December, 1994, all of which were consolidated for a hearing which concluded this past summer. These include allegations of unlawful terminations, lay-offs, transfers, threats, intimidation, surveillance, and other discriminatory treatment. Another consolidated unfair labor practice trial consisting of some 85-100 charges occurring between December, 1994 and the present, is scheduled to be heard this winter.

Moreover, Avondale has signaled, in a bid prospectus that it submitted in seeking a multi-billion dollar contract for the Navy's LPD-17 semi-amphibious ship contract, that it plans to exhaust all available court appeals before even bargaining with the union, once the Board finally certifies.

Meanwhile, at both NASSCO and Avondale, Defense Agency auditors have been approving government reimbursement for millions of dollars of anti-union activities (such as captive audience speeches during the Avondale campaign) allegedly falling in the category of "indirect shipbuilding costs." They have apparently told Avondale that for any of the unfair labor practice cases that it wins, it will be reimbursed for its attorneys fees; for those it loses, no decision has yet been made.

It is impossible to imagine the Administration standing by if a major government contractor, over the course of three years, was found by the EEOC General Counsel to be engaging in a pattern of racial and/or sexual discrimination violations on 300 or more separate occasions. Why should this be any different?

Furthermore, as noted, the list of unfair labor practice charges deemed meritorious by the NLRB General Counsel includes some very serious discrimination allegations, including major discriminatory layoffs, discharges, job reassignments, etc.

For your information, I am attaching an excerpt from Avondale's LPD-17 bid prospectus summary that demonstrates the company's obvious intention to mount court challenges to any forthcoming NLRB certification. Also attached is a letter on the subject sent to President Clinton from several AFL-CIO affiliates' general presidents last May.

We should stress that as misguided as the Government's reimbursement policies are, the problems at both NASSCO and Avondale are of a much deeper nature. As indicated above, we believe the Government needs forcefully to make clear to these contractors that its anti-union policies are just as intolerable as Mitsubishi's sexual harassment record or Texaco's racial discrimination. And given NASSCO's and Avondale's near total reliance on the Government, the Administration should take whatever steps are necessary to promote a full settlement of these disputes.

In the case of NASSCO, that means dropping its insistence on an open shop to facilitate a settlement of the ongoing contract dispute; in the case of Avondale, it would mean no further opposition to the NLRB's certification of the Metal Trades Council as the exclusive bargaining representative, prompt negotiation of a first contract, and a resolution of the 300-400 outstanding unfair labor practice charges.

Thank you for your assistance in this matter.

Attachments

JOHN F. MEESE
President
General Offices:
AFL-CIO Bldg.
815 16th Street, N.W.,
Washington, D.C. 20006
Tele. 202-347-7255
FAX 202-347-0181

Metal Trades Department

American Federation of Labor and Congress of Industrial Organizations

May 20, 1996

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

As we write this letter, a long-overdue increase in the minimum wage is being debated by Congress, and if the noxious TEAM Act rider is dropped from the bill, millions of American workers will see some improvement in their living standards. At the same time, you are preparing, next week, to host a conference on the issue of corporate responsibility. These are just two examples of how your Administration has lived up to its promise to help American families, and to "level the playing field" for American workers.

You also have been a strong advocate for collective bargaining and the rights of American workers to join unions, if they choose. This is reflected in your appointments to the National Labor Relations Board, an Agency that, once again, is fulfilling its statutory mandate to protect workers who seek to organize and to promote the process of collective bargaining. Indeed, the Agency is doing an admirable job, with a reduced staff and budget, and in spite of being singled out for venomous and time consuming attacks by the Republican Congress.

This is the good news. We write today, however, because much of what your Administration has sought to accomplish in the area of worker rights is being undercut by an antiquated and blind system of awarding huge government contracts -- particularly defense contracts -- to companies with abysmal worker rights, health and safety, and collective bargaining records. This makes no policy sense, and, in these times, it certainly makes no fiscal sense.

We would like to relate to you one astonishing example of a company that receives most of its revenue from one federal government agency, the United States Navy, and then spends countless thousands of those same government procurement dollars fighting the orders and complaints of another federal government agency, the National Labor Relations Board.

Avondale Industries, Inc. operates a large shipyard in New Orleans, Louisiana, and is one of the Navy's premier contractors. In 1993, alone, the Navy awarded Avondale over $1 billion in new contracts. Also in 1993, Avondale employees sought union representation, and on June 25, 1993, the National Labor Relations Board conducted a representation election among a unit of Avondale's employees.

Despite an intense and intimidating anti-union campaign run by Avondale officials, approximately 2000 employees voted in favor of being represented by the Metal Trades Department, AFL-CIO. But this overwhelming vote in favor of representation did not deter Avondale officials from their commitment to preventing collective bargaining. Hundreds of ballots where challenged, and the Company filed dozens of objections to the conduct of the election -- a time-tested method by which employers try to defeat employee free choice.

Normally, election challenges and objections are heard in a matter of days at an NLRB hearing, with decisions quickly following. In this case, however, a high-priced team of Avondale attorneys dragged out the process for more than 84 days over a six month period Largely because of the volumes of materials filed by the Company, the NLRB Hearing Officer's Report, overruling Avondale's objections, did not issue for another year.

In the meantime, in July, 1994, the NLRB began prosecuting a series of unfair labor practice complaints against the Company encompassing literally hundreds of unfair labor practice charges. To date, there have been 160 days of trial and over 2000 exhibits introduced concerning charges of unlawful discharge and discrimination against union supporters, interrogations and threats, and other egregious and unlawful conduct. The cost of prosecuting these cases is incalculable but it may well be one of the most expensive cases ever brought by the NLRB.

And, who is financing Avondale's shameless misconduct and "spare-no-expense" resistance to its employees union organizing efforts? The United States Government! Mr. President, there is something seriously wrong with this picture.

Let us be clear. The Metal Trades Department, its affiliated unions, and the Avondale employees we represent are not asking the Navy to withhold contracts won by Avondale after a competitive bidding process. We are painfully aware that any reduction in orders could well result in a loss of work to Avondale employees. But the status quo is unacceptable.

Previous complaints about this situation resulted in a cursory Defense Contract Audit Agency (DCAA) review allowing Avondale to charge its anti-union meetings and activities as an allowable "indirect cost" to be reimbursed by the federal government. At the very least, Avondale should be required to fund its anti-union campaign out of non-federal revenues. This is only one step that should be considered. We implore you to help find others.

We ask that you immediately convene a high level meeting among officials at the Departments of Labor and Defense, the National Labor Relations Board, Avondale's President and CEO, and the leadership of the unions involved. We think the personal involvement of Secretary of Labor Reich is essential.

We also suggest that a Task Force be created to consider the ongoing problem of the federal government awarding taxpayer financed contracts to companies which then use that taxpayer money to fight the orders of other government agencies. In view of the uncertain legal status of executive orders debarring federal labor law violators, other options should be considered. At a minimum, there should be government-wide enforcement of "collection by administrative offset" — the procedure which permits the federal government to withhold money from a federal contractor if that contractor has failed to comply with an NLRB order to restore : or benefits.

We appreciate your immediate attention to this problem. Avondale's employees deserve the level playing field that your Administration has begun to achieve for so many American workers. American taxpayers deserve a financially sound and sensible federal contracting system.

Sincerely yours,

John F. Meese, President
Metal Trades Department, AFL-CIO

Mr. Doug McCarron, President
United Brotherhood of Carpenters and Joiners, AFL-CIO

Mr. John J. Barry, President
International Brotherhood of Electrical Workers, AFL-CIO

Mr. Jake West, President
International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO

Mr. George J. Kourpias, President
International Association of Machinists and Aerospace Workers, AFL-CIO

Mr. Frank Hanley, President
International Union of Operating Engineers, ALF-CIO

Mr. A. L. "Mike" Monroe, President
International Brotherhood of Painters and Allied Trades, AFL-CIO

Mr. Marvin J. Boede, President
United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO

Mr. Arthur A. Coia, President
Laborers International Union of North America, AFL-CIO

Mr. Arthur Moore, President
Sheet Metal Workers International Association, AFL-CIO

Mr. William G. Bernard, President
International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO

cc: Honorable Robert Reich
Honorable William J. Perry
Honorable William Gould
General Counsel Fred Feinstein

JFM/skb

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by the more detailed information and financial data appearing elsewhere in this Prospectus and in the Consolidated Financial Statements, including the Notes thereto, and other documents that are included elsewhere herein or incorporated herein by reference. For descriptions of certain vessels and definitions of certain terms used herein, see "Glossary of Selected Industry Terms" appearing elsewhere herein. Unless otherwise indicated, the information in this Prospectus assumes that the Underwriters' over-allotment option is not exercised.

THE COMPANY

GENERAL

Avondale is one of the largest shipbuilders in the United States, specializing in the design, construction, conversion, repair and modernization of various types of ocean-going vessels for the military and commercial markets. A majority of Avondale's contracts in recent years has been for the construction of U.S. Navy surface ships, although it has secured two large commercial contracts in the past year for the construction or conversion of double-hulled product carriers. Management believes the Company's low cost structure, experienced and skilled work force, sophisticated construction processes and extensive experience gained over the past 25 years in building a variety of military and commercial vessels, position the Company as one of the most cost-efficient and versatile shipbuilders in the United States. At December 31, 1995, the Company's shipbuilding backlog (the "firm backlog") was approximately $1.4 billion, exclusive of unexercised options aggregating $485 million held by the U.S. Navy for additional ship orders (including contract escalation) and a commercial contract subject to financing. Of the firm backlog, approximately $1.3 billion was attributable to contracts to build ships for the U.S. Navy.

To assure that its shipyard remains among the most modern in the world, Avondale regularly reviews and assesses its construction and production processes. In the early 1980s, the Company was the first U.S. shipyard to successfully implement modular construction techniques that had previously been perfected by Japanese shipbuilders. Management believes these techniques were a major factor in Japan's dominance of the commercial shipbuilding market during the 1970s. Avondale obtained its modular construction capabilities and "know-how" pursuant to an agreement with one of Japan's largest shipbuilders, which worked with Avondale to change its manufacturing processes and to train Avondale's employees. Modular construction afforded Avondale significant production efficiencies in the installation of ship systems, largely due to the greater ease with which such systems could be installed in open modules rather than closed-in hulls.

The Company has also embarked on a modernization program to enhance its ability to build and deliver vessels at a lower cost. In 1994 the Company entered into a technology sharing agreement with Astilleros Espanoles S.A. ("AESA") of Spain, regarded as an innovative and successful world-class shipyard. After an on-site review of Avondale's shipyard by AESA, as well as a review by Avondale of current shipbuilding technology in other countries, Avondale invested $20 million in capital improvements designed to increase efficiency by improving production flow. In particular, the Company integrated certain assembly-line techniques with its modular construction processes. To that end, the Company has built a covered facility that houses two production lines dedicated to military vessels and two lines for commercial vessels. Avondale believes that sheltering the production process and separating the unit lines will enhance production efficiencies and lower unit production costs.

The principal executive offices of the Company are located at 5100 River Road, Avondale, Louisiana 70094 (telephone no. (504) 436-2121).

U.S. MILITARY OPPORTUNITIES

During the past 25 years, Avondale has built 72 vessels for the U.S. Navy and other branches of the military, ranging from vessels such as AOs and T-AGs that principally require large-scale steel fabrication at

INSURANCE

The Company maintains insurance against property damage caused by fire, explosion and similar catastrophic events that may result in physical damage or destruction to the Company's premises and properties. The Company also maintains general liability insurance in amounts it deems appropriate for its business. The Company is self-insured for workers' compensation liability and employees' health insurance except for losses in excess of $1.0 million per occurrence, for which the Company maintains insurance in amounts it deems appropriate.

ENVIRONMENTAL AND SAFETY MATTERS

General. Avondale is subject to federal, state and local environmental laws and regulations that impose limitations on the discharge of pollutants into the environment and establish standards for the treatment, storage and disposal of toxic and hazardous wastes. Stringent fines and penalties may be imposed for non-compliance with these laws and regulations, and certain environmental laws impose joint and several "strict liability" for remediation of spills and releases of oil and hazardous substances rendering a person liable for environmental damage, without regard to negligence or fault on the part of such person. Such laws and regulations may expose the Company to liability for the conduct of or conditions caused by others, or for acts of the Company which are or were in compliance with all applicable laws at the time such acts were performed. The Company is covered under its various insurance policies for some, but not all, potential environmental liabilities. See Note 10 of the Notes to Consolidated Financial Statements.

The Company is also subject to the federal Occupational Safety and Health Act ("OSHA") and similar state statutes. The Company has an extensive health and safety program and employs a staff of safety inspectors and industrial hygiene technicians, whose primary functions are to develop Company policies that meet or exceed the safety standards set by OSHA, train supervisors and make daily inspections of safety procedures to insure their compliance with Company policies on safety and industrial hygiene. All supervisors are required to attend safety training meetings at which the importance of full compliance with safety procedures is emphasized.

Waste Disposal. Avondale's operations produce a limited amount of industrial waste products and certain hazardous materials. The Company's industrial waste products, which consist principally of residual petroleum, other combustibles and blasting abrasives, are shipped to third party disposal sites that are licensed to handle such materials.

EMPLOYEES

Since September 1985, when all of its outstanding Common Stock was purchased by the ESOP from Ogden Corporation, Avondale has been owned principally by its current and former employees. At December 31, 1995, Avondale had approximately 5,300 employees, many of whom have been employed by the Company for many years.

None of Avondale's employees is currently covered by any collective bargaining agreement. However, on June 23, 1993 an election was conducted to determine whether certain of the New Orleans area employees desired to have union representation. A total of 3,914 workers cast votes, of which approximately 850 votes were challenged by the NLRB and union organizers on a variety of grounds. Although the union did receive a majority of the unchallenged ballots, challenged ballots (which remain under seal) in numbers sufficient to determine the outcome of the election remain uncounted awaiting the NLRB's decision. The Company has filed objections with the NLRB seeking to have the election set aside. The NLRB is currently reviewing the challenged votes and evaluating the Company's objections to the election. The hearing officer assigned to the case has recommended to the NLRB that certain of the disputed votes be counted and that the Company's objections be rejected. If the NLRB upholds the election and certifies the union, and that decision is not overturned by subsequent judicial proceedings, the Company would be required under the federal labor laws to bargain in good faith with the union on matters such as wages, hours and other working conditions. Even though Avondale will only agree to bargaining demands that can be economically justified, union certification may result in an increased risk that the union will engage in potentially disruptive activities such as strikes or picketing, or that the Company may incur higher labor and operating costs.

The union has also filed numerous unfair labor practice charges with the NLRB alleging that Avondale has committed a variety of violations of the National Labor Relations Act principally involving claims that employees were wrongfully disciplined or discharged. Although the Company disputes these claims and is waging a vigorous defense, if there is a finding against the Company, depending on the facts of each case, the employee would be entitled to back pay from the time of his or her claim until the resolution of the case. However, even if there is a finding in favor of some of the claimants with respect to one or more of the unfair labor practice claims, management believes that any judgment would not have a material impact on Avondale's financial condition, results of operations or cash flows.

February 4, 1997
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OPTIONS MEMO: PROCUREMENT REFORM

This memorandum addresses two areas of concern: 1) cost-accounting, i.e., federal dollars being used to support anti-union activity and/or challenges to NLRB unfair labor practice charges; and 2) consideration of labor relations practices, i.e., federal dollars supporting contractors who engage in illegal or unethical labor practices. The second area is addressed first, although any policy could encompass either or both.

A. Responsibility Determinations, Suspension and Debarment.

1. Presidential Memorandum or Directive on "Responsible Contractors." (Could be styled as an executive order, but probably more appropriate as memorandum/directive). Order that the heads of all agencies, in conjunction with the OFPP, take all steps necessary to ensure that a contractor's labor relations record (particularly, NLRB violations) be considered in making responsibility determinations, and in egregious cases, in making suspension or debarment decisions. Following the issuance of this Presidential Directive or Memorandum, OFPP could issue a Procurement Policy Letter clarifying the importance of reviewing a contractor's record and suggesting specific criteria to be applied (e.g., a pattern of significant NLRB violations rather than a single instance). OFPP then would work with agencies to ensure adherence to the Memorandum or Directive.

This directive could be issued on the basis of existing statutes and regulations. For instance, the FAR currently includes a requirement that a "responsible contractor" have "a satisfactory record of integrity and business ethics." 48 CFR 9.104-1(d). Additionally, poor labor relations records also could affect the FAR's requirement of a satisfactory past performance record. 48 CFR 9.104-1(c). The FAR's criteria for suspension and debarment include catch-all provisions ("any cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor"). Additionally, there is language describing "offense(s) indicating a lack of business integrity or business honesty" in both suspension and debarment criteria, although that language seems to contemplate criminal convictions or civil judgments, rather than administrative charges.

Another route would be to clarify the importance of these considerations through specific amendments to the FAR.

2. Modify Existing Selection Criteria to Reflect A Prospective Contractor's Labor Relations Record. While it is possible to foresee circumstances in which a labor relations record is relevant to existing criteria for competitive bids (i.e., that labor relations problems significantly raised price or delayed performance), it is most likely that labor relations records will not be covered by existing FAR criteria. Changing the criteria to add a labor relations criterion (similar

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to the environmental objectives criterion) almost certainly would require either regulatory change or more problematically, an Executive Order (similar to 11246--affirmative action).

B. Cost-Accounting to Disallow Certain Anti-Union Activities.

1. Presidential Memorandum or Directive to Clarify Scope of Appropriate Labor Relations Costs. (A memorandum or directive seems preferable to an executive order, although the latter option could be explored in greater detail). Order that the heads of all agencies, in cooperation with the OFPP, take all steps necessary to ensure that only reasonable costs of labor relations be compensated by the federal government. As with Option A1, OFPP would expand upon the directive with a procurement policy letter and more specific guidance.

This directive also could be issued on the basis of existing statutes and regulations. Not only does the FAR compel agencies to remain impartial in labor disputes, but it expressly states that contractor labor policies "are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in fixed-price contracts if they result in unreasonable (emphasis added) costs to the Government." 48 CFR 22.101-2(a). While the FAR allows the recoupment of labor relations costs, it disallows certain costs of legal proceedings, including criminal and civil proceedings. It does not appear that the FAR on its face disallows all costs of defending against NLRB charges (unless "fraud or similar misconduct" are interpreted to encompass such charges).

Enforcement of this Directive would depend on contractor agency audits of "reasonable costs" and could be difficult. These audits, most likely enforceable with respect to cost-reimbursement contracts, would require extensive inquiry (since the costs might not be clearly segregated), but could save money. Perhaps most significantly, notice of the renewed attention might well deter contractors from using federal money in this way.

2. Amend FAR to Disallow Costs Associated with Defense of NLRB Charges.

This option would have the advantage of specificity, but would involve delay and considerable public comment.

3. Presidential Memorandum or Directive Interpreting Impartiality to Require Neutrality with Regard to Union Activities.

Modeled on existing statutory language in laws including JTPA, the President could issue a directive or memorandum ordering the heads of agencies and OFPP to take all steps necessary to require neutrality (neither "assist, promote or deter union organizing") with respect to union activities in the expenditure of federal contract dollars. The directive or memorandum could note that this action is necessary to effectuate the purpose of "impartiality" already recognized in the FAR, 48 CFR 22.101, and is consistent with other labor laws, including the NLRA. (This directive also might be styled as an executive order, although doing so may have disadvantages.) OFPP could interpret this directive with a policy procurement letter.

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We will need to examine more closely the question of existing authority to take this course.

4. Amend the FAR to Require Neutrality.

Instead of interpreting existing regulations, which do allow the "costs of maintaining satisfactory relations between the contractor and its employees," the FAR could be amended to outlaw federal contract dollars for assisting, promoting or deterring union organizing. This route might win bipartisan support.

PROPOSED ELEMENTS OF GOVERNMENT CONTRACTING REFORM

1. Reimbursement Reforms

A. Amend FAR to expressly disallow any and all expenses related to influencing employees regarding unionization, both in evaluating bids for fixed price contracts as well as evaluating expenses in cost reimbursement contracts. Require bidders and contractors to maintain separate records on all such expenses.

A number of statutes presently prohibit the use of government funds to promote, assist or deter union organizing. See, e.g., Job Training Partnership Act, 29 U.S.C. § 1553(c)(1), the National and Community Service Act, 42 U.S.C. § 12634(b)(1), Head Start, 42 U.S.C. § 9839(e). The Medicare statute limits provider reimbursement to "reasonable" costs and expressly provides that "[i]n determining such reasonable costs, costs incurred for activities directly related to influencing employees respecting unionization may not be included." 42 U.S.C. § 1395x(N). Because an employer's ideological activities are unrelated to the provision of goods and services to the government, they should not be recognized or reimbursed by the government. In order to incorporate this principle of neutrality into government contracting practice, the Federal Acquisition Regulation's provision on "labor relations costs", 48 CFR Ch. 1 § 31.205-22, should be amended to state that costs incurred for activities related to influencing employees respecting unionization are not allowable. This should include costs incurred by the contractor, its officers, directors, or employees, any labor relations consultant, legal advisor, or other individual or entity with whom the contractor contracts for such services.

B. Amend FAR to expressly disallow any and all costs related to or resulting from unfair labor practice charges or complaints, both in evaluating bids for fixed price contracts as well as evaluating expenses in cost reimbursement contracts. Require bidders and contractors to maintain separate records on all such expenses.

The FAR presently disallows defense costs for a variety of criminal and civil proceedings brought by the government, as well as penalties resulting from these proceedings. However, the civil proceedings for which costs are disallowed are limited to those in which a monetary penalty is, or could have been, imposed. Because the National Labor Relations Act does not include monetary penalties, the current regulations could be construed as allowing defense costs for unfair labor practice proceedings brought by the General Counsel of the National Labor Relations Board.[1] The FAR should be amended to make clear that any and all costs relating to defending unfair labor practice charges and

[1] The Board of Contract Appeals has in some instances disallowed fees relating to defense of NLRB complaints alleging unfair labor practices.

complaints are not allowable, both in evaluating bids for fixed price contracts as well as reimbursement for cost reimbursement contracts. "Costs" should be broadly construed to include all costs incurred by a contractor, whether before or after the commencement of any such proceeding, including administrative and clerical expenses, legal services, including legal services performed by an employee of the contractor, cost of accountants and consultants, and pay of directors, officers and employees for time devoted to the proceeding. (This language tracks existing statutory and regulatory language regarding disallowance of defense costs for certain proceedings.) Similarly, back pay awards or monetary fines or penalties stemming from such proceedings should be disallowed.

2. **Responsible Contractor Determination**

The government's current contracting policy is to do business only with responsible contractors -- those contractors with the financial resources and ability to perform the contract, as well as a satisfactory performance record and business ethics. See 48 CFR Ch. 1 § 9.104-1 et seq. These "responsible contractor" requirements should be expanded to expressly take into account a bidder's compliance with federal and state law, on the ground that those contractors with a record of non-compliance are less likely to respect the legal requirements imposed on them by a government contract, resulting in increased monitoring and compliance costs by the federal government. In addition, the definition of "responsible contractor" should be amended to specify that only those contractors who are able to demonstrate an ability to ensure a skilled, trained and stable workforce throughout the term of the contract shall be considered "responsible contractors."

A. **Pre-Qualification Disclosure**.

Prospective contractors should be required to disclose and certify information regarding any and all criminal, civil, and administrative proceedings commenced or pending against the contractor or its principals by federal or state governments in the previous three years for alleged violations of federal or state law. Such information shall be made publicly available to the maximum extent permitted by law.

B. **Evaluation of Disclosed Information**

The prospective contractor's past and present compliance record should be taken into account in awarding government contracts, with violations of different types weighted as appropriate. In any case, any prospective contractor who has been held in contempt of court for violation of a substantive court order entered to remedy a violation of a federal statute shall not be considered a responsible contractor.

C. **Prerequisites for Award**

As a condition of being awarded a government contract, prospective contractors must demonstrate that they have in place a set of employment policies, including hiring policies, training policies, pay policies, and promotion policies designed to provide a skilled, trained and stable workforce throughout the term of the government contract, and specifically including:

1. Policies ensuring that employees will not be disciplined or discharged except for good cause;

2. Policies ensuring that decisions regarding employee retention, promotion, and transfer are made with due regard to the tenure and experience of such employees; and

3. Other policies to reduce employee turnover and facilitate the development of a skilled, experienced, and trained workforce.

3. Regulations on Labor Disputes

The FAR presently contains provisions regarding the government's official policy of impartiality in labor disputes. Although the regulations claim to implement a policy of neutrality, in reality, they are extremely lopsided in favor of the contractor. For example, the regulations recognize as allowable certain costs related to fighting a strike, such as the cost of guards and extra legal fees. These and other aspects of the regulations on labor disputes should be amended to better reflect a policy of neutrality.

BRIEFING PAPER ON "PROJECT LABOR AGREEMENTS" FOR FEDERAL CONSTRUCTION PROJECTS

PROBLEM: Federal agencies are resistant to using Project Labor Agreements, a lawful and effective construction management tool that has served the private sector well for decades in securing timely and cost-effective performance of major construction projects. Whether through lack of information or misunderstanding of the applicable law, individual agencies have unjustifiably deprived the federal government of the benefits and savings that could be achieved through appropriate use of such Agreements.

PROPOSAL: By Executive Order, the President could instruct all federal departments and agencies regarding the propriety and benefits of lawful, nondiscriminatory Project Labor Agreements for the management and execution of construction projects, direct agencies to consider specifying a lawful Project Labor Agreement on a case-by-case basis, as each project is formulated, and direct agencies to specify that construction work be performed under a Project Labor Agreement in each case where its use is deemed appropriate.

BACKGROUND

A. THE NATURE OF PROJECT LABOR AGREEMENTS

The private sector has long used Project Labor Agreements to obtain cost-effective completion of construction projects, and such Agreements have played a key role in federal and state public works for many decades. A Project Labor Agreement ("PLA") is a comprehensive master agreement, often specified by the project owner and/or the owner's designated construction manager, that sets wages, benefits and working conditions for all categories of construction workers and all contractors and subcontractors involved in the project. Typically, the PLA forbids strikes, slowdowns or job disruptions, provides for an efficient dispute resolution process, and stabilizes job conditions, for the life of the particular project, which may go on for many years. Bidding on the project is open to contractors on whatever basis the owner would ordinarily award work (e.g., competitive bidding, invitation-only bidding, negotiated bids), but whoever is awarded work must commit to and implement the PLA as a condition of working on that project.

B. PROJECT LABOR AGREEMENTS ARE AUTHORIZED AND FREELY PERMITTED UNDER THE NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act, which covers labor relations in the private sector, makes it lawful for construction industry employers to negotiate and enter into advance contracts with labor organizations that fix the wages, hours and working conditions that will apply on upcoming jobs. Under Section 8(f) of the NLRA, the parties to these so-called "pre-hire agreements" have great flexibility to tailor their arrangements to the varying needs of construction users and contractors.

For example, 8(f) agreements may be negotiated between one employer and one or more labor organizations, or between several contractors and one or more labor organizations; they can be structured to cover only a single project or to cover all work performed in a designated area; they may forbid strikes, walkouts or slowdowns; they may mandate Alternative Dispute Resolution processes, in lieu of litigation, to resolve all disputes ranging from individual grievances to jurisdictional conflicts; the employers can take all responsibility for recruting workers, or the agreement may specify a nondiscriminatory hiring hall agency for referring job candidates to employers, or the parties may allocate recruitment in some other fashion; and the agreement's duration may be tied to the duration of a project or may run for a fixed period of time. Project owners and/or construction managers may choose to become actual parties to a particular agreement, or they may simply specify the terms and conditions that must be included.

Though 8(f) agreements can be negotiated in advance of a project, the parties are still subject to the usual federal law prohibitions against discrimination on such grounds as race, sex, age, ethnicity, religion, disability, union or non-union sympathies, and other specified factors. The standard federal law applies to the parties' enforcement and administration of their 8(f) agreements, except for two special advantages given to employees and employers (but not to labor organizations): (1) employees working under an 8(f) contract have the special right to petition for NLRB elections during the contract term--for example, to decertify the union, whereas NLRB elections are ordinarily barred during a collective bargaining agreement; and (2) employers who sign an 8(f) agreement do not thereby incur any future duty to bargain with any labor organization for a new agreement after that contract expires, whereas the usual collective bargaining relationship requires continued dealings.

C. GOVERNMENTAL PURCHASERS OF CONSTRUCTION MAY USE PROJECT LABOR AGREEMENTS WITHOUT INFRINGING ON THE NLRA

1. According to the U.S. Department of Labor, Project Labor Agreements have historically been a feature of some of this country's most prominent public and private sector construction projects, including the Grand Coulee Dam and the New York World's Fair facilities. Indeed, during and after World War II the federal government encouraged the use of Project Agreements by its own agencies in the construction of atomic energy and other important defense installations, for reasons of efficiency.[1]

PLA's proliferated further during the 1970's, and the success of PLA's on major private sector undertakings of that era--including the Alaska Pipeline and Walt Disney World projects--encouraged state and local governments to take greater advantage of that construction management tool in their public work projects. The use of PLA's at the state and municipal level grew for many years despite some unresolved questions about a possible conflict with the National Labor Relations Act, under broad NLRA preemption doctrine.

2. The Supreme Court finally removed any doubt three years ago, with its unanimous decision in the Boston Harbor case (Building and Construction Trades Council v. Associated Builders and Contractors, 113 S.Ct. 1190 (1993)). The Boston Harbor decision makes it clear that that when a public agency undertakes a public works project, that government agency acting as a "proprietor" and "purchaser" has at least the same prerogatives to establish the labor relations policy and working conditions on its project through an 8(f) Project Labor Agreement as would a private owner. In the Court's words, "[t]o the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity *as purchaser* should be permitted to do the same." 113 S.Ct. at 1198 (emphasis in original).

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[1] See U.S. Department of Labor, Labor Management Services Administration, *The Bargaining Structure in Construction: Problems and Prospects* 14 (1980); 2 NLRB, *Legislative History of the Labor Management Reporting and Disclosure Act of 1959,* at 1578 (memorandum of Representatives Udall and Thompson, also cited in Woelke & Romero Framing Co.v. NLRB, 456 U.S. 645, 662 n. 2 (1982)). The Government's Brief to the Supreme Court in Boston Harbor, infra, summarizes at greater length the history of PLA's on state and federal public works projects, including Congressional hearing testimony from contractors and others involved in major projects for, e.g., the Atomic Energy Commission, the Army Corps of Engineers, the Department of the Navy, and the General Services Administration. Brief for Petitioners at 14, 30-32 and nn. 15, 16.

3. Because the Boston Harbor case involved a PLA enforced on a state public works project by a state agency, the Supreme Court did not directly rule on whether federal government entities, procuring federal construction work, have the same prerogatives under the NLRA as state and local governments and private project owners. But to the extent that the applicable NLRA preemption doctrine applies to federal as well as state agencies, the logic of Boston Harbor dictates the same result whether the "purchaser" is a federal or state government entity.

4. In particular, under the doctrine of Machinists v. Wisconsin Employment Relations Commission, the NLRA might arguably limit a federal agency's attempt to "regulate" activities that Congress intended to be left solely to "the free play of economic forces." 427 U.S. 132, 140 (1976). But the use of PLA's on public works projects does not implicate the Machinists doctrine, for the Supreme Court in Boston Harbor clearly ruled that a government entity acts only as a "proprietor," not a "regulator," by specifying a PLA when procuring public construction. The Court specifically distinguished that situation from a case where a public agency effectively "regulated" in the NLRA area by basing its procurement decisions on "conduct unrelated to the employer's performance of contractual obligations to the state," in order "to deter NLRA violations." Boston Harbor, 113 S.Ct. at 1197, discussing Wisconsin Dept. of Industry v. Gould, Inc., 475 U.S. 282 (1986)(NLRA preempted state debarment statute disqualifying NLRA repeat violators from awards of state contracts).

5. Though the Supreme Court has not yet addressed PLA's on federal projects, the U.S. Court of Appeals for the Sixth Circuit did resolve that issue in a case involving the use of a PLA on a DOE project, Phoenix Engineering v. MK-Ferguson of Oak Ridge Co., 966 F.2d 1513 (6th Cir. 1992). The Court of Appeals specifically concluded that the Department of Energy acted as a "purchaser" rather than a "regulator" with respect to a PLA that addressed the economic need to avoid disruptive strikes on the jobsite. Accordingly, the NLRA could not foreclose the agency's negotiation of a PLA with a local area building trades council.[2]

6. Finally, the use of PLA's on federal construction projects would not conflict with the D.C. Circuit's recent decision in Chamber of Commerce v. Reich, which invoked NLRA preemption doctrine to set aside President Clinton's Executive Order debarring

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[2] The Court of Appeals also concluded that Congress did not intend to leave construction industry prehire agreements completely "unregulated," but, rather, specifically provided for such agreements under Section 8(f) of the NLRA. For this reason as well, the Machinists preemption doctrine was found inapplicable. 966 F.2d at 1523-1524.

contractors that permanently replaced their striking employees. 74 F.3d 1322, reconsideration denied, 83 F.3d 439, rehearing en banc denied, 83 F.3d 442 (D.C. Cir. 1996). Though the reasoning and result in that case are at odds with the Supreme Court's Boston Harbor decision and the D.C. Circuit's own controlling precedent in AFL-CIO v. Kahn, 618 F.2d 784 (D.C. Cir.)(en banc), the Executive Order at issue in that case can be distinguished in any event.

First, the Supreme Court made clear in Boston Harbor, inclusion of a PLA in a bid specification *does not disqualify or debar any employer* from seeking the award of work. 113 S.Ct. at 1198. Moreover, a policy of considering use of PLA's in each case, and specifying them where the procuring agency finds it appropriate, for reasons related to the performance of contractual obligations to the government, does not rise to the level of "regulation." As the Supreme Court has repeatedly "emphasized," impermissible "regulation" does not occur merely because governmental purchasing decisions are "influenced by labor considerations." Boston Harbor, 113 S.Ct. at 1197.

D. FEDERAL PROCUREMENT LAW AND RULES

1. Use of PLA's in federal construction projects should not conflict with the Competition in Contracting Act of 1984, 41 U.S.C. §§ 251-260, which seeks to maximize competition in federal procurement of property and services, or with the recently enacted Federal Acquisition Streamlining Act of 1994, P.L. 103-355.

Those statutes arguably do not apply in situations where a federal agency retains a construction manager or general contractor, and that firm negotiates and enters into a PLA without binding the federal government. See Phoenix Engineering, 966 F.2d at 1525-1526.

In any event, there is nothing inherently anti-competititve in stabilizing labor relations on a project and securing conditions beneficial to the government, through specification of or negotiation of a PLA. As the Supreme Court explained in Boston Harbor, such action does not artificially restrict the pool of eligible contractors, since no prospective bidder is excluded from the oppportunity to bid on or apply for a government contract. Moreover, obtaining a federal contract award is a privilege, not an entitlement, and federal law does not mandate that the government ignore its own sound business considerations when determining the specificiations for its contracts. Not every basis on which seekers of contracts might theoretically "compete" with each other would provide a substantial benefit to the federal government, and eliminating disputes over certain factors would not jeopardize the statutory goals.

2. The Federal Acquisition Regulation, similarly, should not apply to a retained construction management firm's negotiating and entering into a comprehensive PLA on a federal project. And no provision in the FAR has been shown categorically to prohibit federal agencies from specifying use of a lawful, nondiscriminatory PLA where, in the agency's view, the PLA would further the government's interests in obtaining cost-effective performance of the project.

3. Additionally, any argument that current procurement rules or policies *preclude* specification and use of Project Labor Agreements on federal construction projects would seem to raise the same "preemption" or NLRA conflict problem identified by the D.C. Circuit in Chamber of Commerce v. Reich, supra. Indeed, the Court of Appeals in that case cited as potentially unlawful the Bush Administration's prohibition on PLA's, which was subsequently revoked: "we must doubt the legality of President Bush's Executive Order 12,818...that banned government contractors from entering into pre-hire agreements under §8(f)." 74 F.3d at 1337. If the Executive Branch could not lawfully preclude PLA's through a Presidential directive because of conflict with the NLRA, the NLRA would logically prevent the Executive from achieving the same result through other administrative action, such as interpretation (or misinterpretation) of its regulations and policies.

Moreover, the same "NLRA preemption" problem would arise if federal agencies were to construe procurement statutes as categorical impediments to the use of PLA's that the NLRA specifically permits. Indeed, the D.C. Circuit in Chamber of Commerce v. Reich confronted and specifically rejected the government's argument that subsequently enacted federal procurement legislation "trumps" the NLRA. Citing the "cardinal rule that repeals by implication are not favored," the Court of Appeals explained that the subsequent procurement legislation could not be construed to override the earlier NLRA unless it "expressly contradicts the original act," or unless such a construction is "absolutely necessary" in order to give "any meaning at all" to the later enactment. 74 F.3d at 1333 (citations and internal punctuation omitted). The Circuit Court found no hint of that justification, for "[t]he Procurement Act was designed to address broad concerns quite different from the more focused question of the appropriate balance of power between management and labor in collective bargaining"--indeed, "nothing in the Procurement Act...addresses labor relations." 74 F.3d at 1333.

E. SAMPLE FEATURES OF PROJECT LABOR AGREEMENT SPECIFICATIONS

There are a variety of ways in which public agencies may formulate lawful

Executive Orders permitting specification of Project Labor Agreements for appropriate projects, as well as bidding specifications for PLA's. Attached to this Briefing Paper are some illustrative documents, including the Executive Order promulgated by Governor Whitman of New Jersey. While particular specifications and PLA's vary, the following components are a few of the features that might reasonably be considered for a federal program:

1. Open and non-discriminatory bidding

No potential bidder is required to be party to a Project Labor Agreement (or to any other form of collective bargaining agreement) as a condition of obtaining an award. Nor is any bidder given an advantage solely by virtue of having a PLA or other labor agreement in effect. Rather, competition for a contract award is open to all candidates on the same basis, without regard to their status as "union" or "non-union" employers. Thus the bid specification in itself neither restricts the pool of competition nor grants a "union labor" preference.

2. Nondiscrimination in hiring

Employers must refrain from unlawful discrimination in hiring, including discrimination on the basis of an employee's union or non-union affiliation or sympathies. To the extent the PLA calls for employers to hire workers from a labor referral source such as a union hiring hall, that referral agency must be open to all qualified applicants on a fair and equal basis and must operate in a fair and nondiscriminatory manner. Lawful affirmative action requirements may also be specified. PLA's may build in lawful hiring preferences for workers from the surrounding community or other defined geographic area, and they may establish special training opportunities to expand the labor pool and increase opportunities for participation by disadvantaged and low income workers.

3. No-strike commitment and effective dispute resolution mechanisms

PLA's typically ban strikes and work stopppages for the duration of the project. Labor-management disputes are relegated to a binding dispute resolution process such as arbitration. Expedited ADR procedures may be provided to increase savings and efficiency.

4. Establishment of wages and benefits

Under the PLA, uniform levels of wages and benefits would be fixed for all classifications of workers needed on the project. The PLA could help to control costs further by specifying at the outset that the designated rates remain in place for the duration of the project, regardless of market increases.

5. Labor-Management Cooperation

A PLA may provide for ongoing labor-management cooperation and involvement through such vehicles as joint productivity, safety and/or training committees, partnership initiatives, and other programs found to be effective in maintaining a high performance workplace.