

Contract Killers

Government Agencies Award Taxpayer Dollars to Contractors That Disregard Worker Health and Safety

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Acknowledgments

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Introduction: Governments Award Contracts to Unsafe Companies

Taxpayer dollars should reward only those companies that safeguard their employees from dangerous work conditions. Yet throughout the United States, government agencies at the state, local, and federal levels award contracts for bridge repair, sewer installation, school renovation, and other construction projects to irresponsible companies that endanger their employees' lives. When government agencies fail to properly assess construction companies' health and safety performance, the results can be both deadly and expensive.

Construction is a dangerous business that accounts for more fatal injuries than any other industry. Workers are exposed to heavy machinery, speeding traffic, and toxic chemicals like asbestos. In 2010 alone, 751 construction workers died on the job.¹ Construction companies reported an additional 230,000 cases of serious, non-fatal injury to the federal government that same year.² But these figures merely represent the tip of the iceberg: many injuries are never reported,³ and the official statistics do not include many cases of work-related cancers, lead poisoning, or most other occupational illnesses.

Nearly all occupational injuries, illnesses, and fatalities among construction workers are preventable. Over the past few decades, increased regulation and knowledge of worker health and safety has resulted in declines in injury and fatality rates. But progress has stalled in recent years. Fatality rates in construction have not changed significantly over the past decade.⁴ There are still plenty of employers who treat their workers as expendable and fail to implement basic safeguards.

While the Occupational Safety and Health Administration (OSHA) can fine irresponsible employers, the agency has never been given enough power to truly deter scofflaws. A construction company may go years without an inspection. When workplaces are inspected, OSHA fines are often so low that employers factor the penalties into their cost of doing business instead of correcting hazards.⁵ Construction workers and the families who depend on them need more protection than OSHA can offer by itself.

One form of additional protection should come in the form of federal and state laws that would require government agencies to reject bids for construction contracts from a company that does not take basic health and safety precautions, such as developing injury

¹ Bureau of Labor Statistics, *Census of Fatal Occupational Injuries* (2010).

² Bureau of Labor Statistics, *Occupational Injuries and Illnesses: Industry Data* (2010).

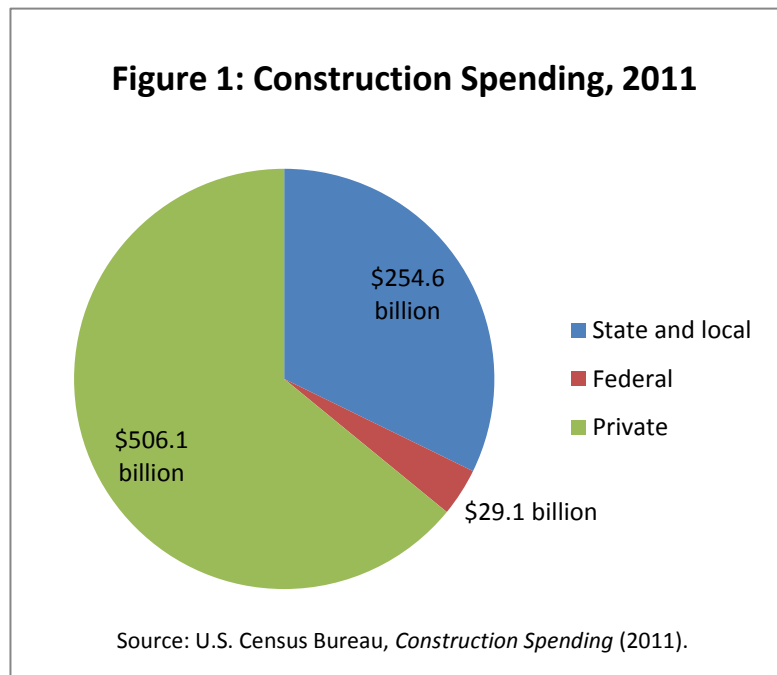
³ Xiuen Sue Dong, et al., *Injury underreporting among small establishments in the construction industry*, 54 AMERICAN JOURNAL OF INDUSTRIAL HYGIENE 339-349 (2011).

⁴ Bureau of Labor Statistics, *Census of Fatal Occupational Injuries: Fatality Rates (2001 - 2010)*.

⁵ David Weil, *Assessing OSHA performance: New evidence from the construction industry*, 20 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 651 (2001).

prevention plans, providing worker training, and maintaining personnel practices that protect whistleblowers.

Simply by using taxpayer dollars more prudently, federal, state, and local government agencies can play an important role in protecting construction workers. Money from state and local governments accounted for a third of all construction spending during 2011; federal spending accounted for an additional 4 percent.⁶ By leveraging their considerable purchasing power, government agencies can raise the bar for health and safety performance across the entire construction industry. The agencies can assess companies by having them disclose past OSHA violations and by having them complete a checklist evaluating each company's use of written health and safety plans, employee training, whistleblower protections and other practices. The agencies should only award contract to companies that meet a basic level of health and safety competency.



I. Existing Policies Allow Unsafe Companies to Win Contracts

Throughout the United States, there are very few jurisdictions that require construction companies to meet minimum standards for health and safety practices. When agencies do conduct health and safety assessments, the reviews are often inadequate, depending upon unreliable information such as workers' compensation rates or injury incidence rates. This system rewards bad employers that produce better numbers because they prevent their employees from reporting injuries or accessing workers compensation.⁷ Additionally,

⁶ U.S. Census Bureau, *Construction Spending* (2011).

⁷ Underreporting of injury and illness is a widespread problem in the construction industry. One study found that small construction companies failed to report 40% of injuries for white workers and a staggering 75% of injuries for Latino workers. See Xiuen Sue Dong, et al., *Injury underreporting among small establishments in the construction industry*, 54 AMERICAN JOURNAL OF INDUSTRIAL HYGIENE 339-349 (2011). Practices that discourage injured workers' use of workers compensation are also widespread, particularly among low-wage immigrant workers. Though quantitative data are not available for the construction industry, a study of urban

injury and workers compensation rates are “lagging indicators” – they describe a company’s history but ignore practices that may or may not be in place to protect workers on the next project.

Even when public agencies assess contractor health and safety, they do so based on internal policies rather than statutory requirements. There are very few jurisdictions with laws mandating contractor safety reviews.⁸ As a result, requirements can vary widely between agencies. An agency may even bend the rules as it pleases by allowing unsafe companies to bid on contracts anyway, as in the case of Xcel Energy Cabin Creek disaster cited below.

II. Inadequate Assessment of Contractors Can Result in Disaster

When government agencies award construction contracts to companies that disregard worker health and safety, the results can be disastrous. Unfortunately, such incidents are all too common throughout the United States. The following synopses are cases in which government agencies hired construction companies with demonstrated health and safety problems.

1. The RPI Coating, Inc. Bridge Incidents and Power Plant Explosion

RPI Coating, Inc., also known as Robinson Prezioso, Inc., is a California-based painting company that works as a contractor on heavy construction, often on publicly financed projects. As of 2007, it was one of the largest specialty painting companies in the United States, with 275 employees and \$13.5 million in annual sales.⁹ The corporation has a long history of safety violations, which have resulted in severe harm to workers, passersby, and the environment. Despite its record, government agencies and public utilities continued to allow the company to work on their projects for decades.

RPI Coating first attracted public attention in 2000, when state public health officials in California announced that they had identified nine cases of lead poisoning among bridge workers, six of whom were employed by RPI on a project to earthquake-proof the Bay Bridge connecting San Francisco to Oakland, which, like many bridges, was coated with lead paint.¹⁰ The bridge retrofit was a five-year venture costing \$170 million and financed

low-wage workers in a variety of industries found that only 8% of those seriously injured on the job eventually received workers' compensation. See Annette Burnhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009). Available online at <http://www.unprotectedworkers.org/brokenlaws>.

⁸ Fairfax County, Virginia is one such jurisdiction. The county’s Construction Safety Resolution, passed in 2003, disqualifies companies with certain OSHA violations from bidding on public construction contracts.

⁹ US Chemical Safety and Hazard Investigation Board, *Investigation Report: Xcel Energy Hydroelectric Plant Penstock Fire* (2010).

¹⁰ Janet Wells, “Lead Poisoning Found in Nine Bridge Workers”, San Francisco Chronicle (Oct. 10, 2000).

by the California Department of Transportation. One RPI employee's blood lead level was among the highest ever reported in the state, and he suffered serious health problems as a result.¹¹ Removing lead paint requires a high level of attention to occupational health controls to prevent worker exposure. RPI was cited for failing to provide proper respirators; in comments to the press, the company denied it had a legal responsibility to protect its employees, and instead blamed the worker for using his own respirator.¹²

Still working on the Bay Bridge, RPI Coating stayed in the news over the next two years. In February 2001, RPI worker James Clemons was seriously injured after falling 80 feet off a scaffold.¹³ In September of 2001, RPI Coating scaffolding fell onto the roadway and killed Anthony Menolascino, a motorist passing over the bridge.¹⁴ In January of 2002, an 18,000-pound scaffold collapsed, killing Darryl Clemons, James Clemons's son, and injuring three of his co-workers.¹⁵ By 2002, OSHA had cited RPI Coating multiple times for its work on the bridge. The citations prompted a spokesman from California's state OSHA to express concern over the company, saying, "For the size of this project, it's not unusual to find violations – but it is unusual to see the types of accidents and fatalities that we've seen."¹⁶ The safety incidents caused multiple delays on the bridge retrofit project.

In addition to the incidents connected to worker safety on the Bay Bridge, RPI Coating was also cited for improper handling of hazardous waste while working as a contractor for the US Navy in Hawai'i in August, 2001.¹⁷ Again in 2006, the company was cited for illegal disposal of toxic waste in connection with the Bay Bridge.¹⁸

Despite its performance on the Bay Bridge, RPI Coating continued win contracts, and even performed work for the US Air Force in 2005.¹⁹ The company's worst disaster would not occur until 2007, while performing work for public utility Xcel Energy at a hydroelectric plant in Georgetown, Colorado. Xcel Energy needed to recoat the plant's penstock – a gigantic structure that controls water intake to the plant's electricity-generating turbine.

While owned by a private company, the Georgetown hydroelectric plant was a highly regulated public utility subject to oversight by the Colorado Public Utilities Commission. Nevertheless, there was no legal requirement for Xcel to review its contractors' health and safety performance. Xcel typically conducted such reviews on its own initiative. RPI Coating

¹¹ *Ibid.*

¹² *Ibid.*

¹³ "Robinson-Prezioso, Inc. Safety Violations", Denver Post (Dec. 3, 2008).

¹⁴ *Ibid.*

¹⁵ Suzanne Herel, "Death Delays Bridge Work", San Francisco Chronicle (Jan. 5, 2002).

¹⁶ *Ibid.*

¹⁷ "Robinson-Prezioso, Inc. Safety Violations", Denver Post (Dec. 3, 2008).

¹⁸ *Ibid.*

¹⁹ US Chemical Safety and Hazard Investigation Board, *Investigation Report: Xcel Energy Hydroelectric Plant Penstock Fire* (2010).

scored a zero on the assessment and should have been disqualified under Xcel's review process.²⁰ But in order to cut costs, Xcel simply waived its prequalification procedures and awarded RPI the contract because it was the lowest bidder.²¹

Early on during the project, RPI employees raised safety concerns because they were made to work in a confined space with fire risks and only one exit.²² On October 2, 2007, a highly flammable solvent the workers were using ignited, causing a flash fire that trapped workers inside of the penstock.²³ After being trapped for forty five minutes, five workers succumbed to smoke inhalation and died.²⁴ An investigation by the U.S. Chemical Safety Board found that RPI failed to implement basic worker safety measures.²⁵ Though the federal government rarely brings criminal cases against corporations, it did so against RPI Coating. The corporation pleaded guilty to criminal charges in 2011; it was put on probation for five years and agreed to pay workers and their families a total of \$1.5 million.²⁶

2. Triangle Grading and Paving, Inc. Workers Suffocate in Manhole

Triangle Paving and Grading, Inc. is a North Carolina-based contractor specializing in a variety of heavy construction projects, such as sewer installation and street repair. In 2011, the company won a contract to work on sewers in Durham, North Carolina.

When the City of Durham awarded Triangle Paving and Grading the sewer contract in 2011, the company had a poor safety record. In 1997, one of the company's employees was burned to death after a poorly maintained hydraulic line on the worker's bulldozer ruptured and ignited.²⁷ Between 1997 and 2011, OSHA cited the company more than 60 times for construction-related safety violations.²⁸ While performing work on the Fort Bragg military installation, the company was cited for placing workers in a hazardous trench.²⁹

But Durham did not conduct an evaluation of Triangle Paving and Grading's health and safety record when it awarded the company a contract for sewer work in June of 2011.³⁰

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ John Ingold, "RPI Coating Inc. to pay \$1.55 million in Georgetown power plant deaths", Denver Post (Dec. 19, 2011).

²⁷ Charlotte Huffman, "Company defends safety record after workers die in Durham manhole", NBC 17 (June 10, 2011).

²⁸ *Ibid.*

²⁹ Charlotte Huffman, "Two men found dead inside manhole in Durham", NBC 17 (June 8, 2011).

³⁰ Charlotte Huffman, "NBC-17 Investigates: Inside the Durham Manhole Disaster: How considering safety records in bid process protects workers", NBC 17 (Jul. 13, 2011).

During the project, workers Luis Castaneda Gomez and Jesús Martinez Benitez died in a manhole, apparently suffocated by a lack of oxygen in the space.³¹ After the death, Gomez's wife told reporters, "Luis didn't want to work for the company... He would say they would force him to do stuff that was dangerous."³²

Though the investigation is ongoing, Durham's Water Management Director believes the incident occurred because the company failed to provide a gas detector, a harness, and other required safety equipment.³³ The incident caused the project to be delayed 30 days and cost the city \$410,000 in additional spending.³⁴

Shortly after the Durham sewer project, the North Carolina Department of Transportation awarded Triangle Paving and Grading a \$1.5 million contract resurface streets.³⁵ A state transportation department representative said his agency could not take the latest OSHA violation into account because the Durham incident was still under investigation.³⁶ Even discounting the most recent violation, however, the transportation department could have assessed the company's health and safety practices and disqualified the company if it was found unsatisfactory. But there is no legal requirement for the department to do so.

3. Bontrager Excavating Repeatedly Exposes Workers to Trenching Hazards

In Ohio, Jackson Township awarded a \$1.2 million contract to Bontrager Excavating to install a sewer in 2010.³⁷ The company had a history of violations related to placing workers in trenches without proper protection from cave-ins. One cave-in incident killed a worker in 1992.³⁸ After the fatality, Bontrager continued to subject its workers to improperly protected trenches. The company was cited five times for inadequate trenching protection in the five years before Jackson Township awarded the sewer contract.³⁹ While installing the sewer in the township, the 15-foot trench collapsed, entrapping Scott K. Beatty, a 50-year old construction worker, along with his 24-year-old son Scott Beatty.⁴⁰ The son narrowly escaped death – he was injured and buried up to his neck but rescuers

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ Steve Sbraccia, "Durham Council extends contract with Triangle Grading and Paving", NBC 17 (Aug. 1, 2011).

³⁵ Steve Sbraccia, "Durham Representative objects to awarding of new contract to firm involved in manhole accident", NBC 17 (Sept. 1, 2011).

³⁶ *Ibid.*

³⁷ Benjamin Duer, "Workers Identified in Trench Collapse", The Repository (Dec. 28, 2010).

³⁸ *Ibid.*

³⁹ Inspection data from OSHA Integrated Management Information System retrieved Mar. 7, 2012.

⁴⁰ Benjamin Duer, "Workers Identified in Trench Collapse", The Repository (Dec. 28, 2010).

were able to remove him. His father was killed, however, after the cave-in buried him entirely.⁴¹

OSHA proposed nearly \$160,000 in fines and added Bontrager Excavating to its Severe Violators Enforcement Program, a designation assigned to only a handful of companies in the United States that OSHA considers to have the worst safety performance in the United States.⁴² Despite the designation, Bontrager continued to win public contracts, including one for a sewer repair job in Canal Fulton, Ohio in late 2011.⁴³

4. Company with Scaffolding Violations Awarded Second Contract

In Maryland, the Maryland Transportation Authority (MdTA) awarded a contract to the Marksmen Company, also known as the M. D. Miller Company, to repair the eastern span of the Chesapeake Bay Bridge in 2009. During the project, a worker was hospitalized with serious injuries after falling 15 feet onto a concrete surface when scaffolding collapsed.⁴⁴ The incident triggered an OSHA investigation and the company was cited for three violations, all classified as serious, for failing to follow scaffolding regulations.⁴⁵ In June of 2011, OSHA conducted another inspection of Marksmen. The agency again cited Marksmen with a serious violation; its workers were not given harnesses to protect them from falling off scaffolding.⁴⁶ Nonetheless, later that year the MdTA awarded Marksmen a \$3.7 million contract to repair the western span of the Chesapeake Bay Bridge.⁴⁷ MdTA, which does not use any prequalification procedures for its contractors, selected Marksmen because the company offered the lowest bid.⁴⁸

5. Well Digger Worker Dies, Company Hired by Public Water District

In rural Washington state, a worker died in 2008 when he was pinned by a large steel pipe that fell off the truck in front of him.⁴⁹ In response, OSHA fined the employer, Nicholson Drilling, Inc., because the company did not have a written injury and illness prevention plan, nor did it meet the state's general requirements for maintaining a safe construction

⁴¹ *Ibid.*

⁴² OSHA, "US Labor Department's OSHA cites Bontrager Excavating in Uniontown, Ohio, after one worker killed, another injured in trench cave-in" (Jun. 20, 2011).

⁴³ City of Canal Fulton, "City Council Meeting Agenda" (Oct. 4, 2011). Available online at <http://www.cityofcanalfulton-oh.gov/uploads/MayorCouncil-20110930180748.pdf>.

⁴⁴ OSHA, "Accident Investigation Summary: Number 202599221" (2009).

⁴⁵ Inspection data from OSHA Integrated Management Information System retrieved Mar. 7, 2012.

⁴⁶ *Ibid.*

⁴⁷ MdTA, "Maryland Transportation Authority Monthly Meeting" (Nov. 30, 2011). Available online at http://www.mdta.maryland.gov/MeetingSchedules/Meeting_Minutes/MDTA_Board_Minutes_11-30-11.pdf.

⁴⁸ *Ibid.*

⁴⁹ OSHA, "Accident Investigation Summary: Number 202367579" (2008).

site.⁵⁰ Nicholson Drilling had also been cited for four violations during a 2005 inspection in which the agency found that the company exposed workers to noise levels that may result in hearing loss.⁵¹ Despite the recent death and spotty health and safety record, the publicly owned West Sound Utility District awarded a \$107,000 contract to Nicholson Drilling in 2009 to deepen a municipal well.⁵²

III. Recommendations

Government agencies are not doing enough to prevent taxpayer dollars from going to construction companies with poor health and safety performance. But there are simple steps that agencies can take to assess contractors. There are also measures that OSHA can take to better assist all levels of government to this end.

1. Government Agencies Should Assess Safety Before Allowing Contract Bids

Many government agencies permit companies to bid on contracts only if they meet certain prequalification requirements. Prequalification procedures typically involve assessment of a company's reputation, finances, and insurance coverage. Agencies should add health and safety criteria to this process, setting a minimum score for health and safety performance and disqualifying contractors that do not meet it.

Before a company is allowed to submit a bid for a construction project, the government agency should require it to disclose past OSHA violations and fill out a checklist detailing current health and safety practices. Using information on the checklist, the agency should award points for management involvement in health and safety, employee training, hazard communication activities, health and safety planning, whistleblower protections, and other practices. If the company has a record of particularly egregious OSHA violations or does not meet the minimum score on the assessment, the agency should deny it prequalification.

The assessment should not evaluate a company's reported injury rates or workers' compensation experience modifiers because, as mentioned above, companies can manipulate those numbers by influencing workers not to report injuries or access workers' compensation. Instead, agencies should rate a company's use of written health and safety plans, practices for communicating hazards to workers, training of employees, involvement of management in health and safety matters, and recent record of OSHA violations. The assessment should also ensure that the company's personnel practices encourage workers

⁵⁰ Inspection data from OSHA Integrated Management Information System retrieved Mar. 7, 2012.

⁵¹ *Ibid.*

⁵² West Sound Utility District, "Minutes of Regular Meeting of the Board of Commissioners" (Jul. 6, 2009). Available online at http://www.wsud.us/pdf_documents/WSUD%20MN%20070609.pdf.

to report unsafe conditions and grant them the authority to stop working if they encounter severe hazards.

2. OSHA Should Assist Governments in Health and Safety Prequalification

OSHA can take simple measures to assist governments in developing proper health and safety prequalification assessments. One measure involves data collection: OSHA inspection, accident and fatality reports should include the name of the government agency financing the project. This way, government agencies, researchers, and the public can see if tax dollars are rewarding scofflaws. OSHA should also develop model guidelines for safety prequalification that federal, state, and local governments can follow.

3. Legislation Is Needed to Ensure Enforcement

Congress, state legislatures, and local governments should pass laws that set minimum health and safety review requirements and prohibit irresponsible companies from bidding on construction contracts. Legislation is the only way to ensure that the wide variety of government agencies that award construction contracts – from transportation departments to school districts to prison bureaus – share a set of criteria for health and safety review, and that irresponsible or reckless companies are not rewarded with taxpayer dollars. Legislation requiring health and safety review will protect employees working on public construction projects and raise the bar for the entire industry.