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FOOD ASSISTANCE

School Milk Contract
Bid-Rigging

Statement of
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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to participate in your hearings on child nutrition programs and to discuss our October 1992 report on milk contract bid-rigging.¹ As you will recall, our report was done at the request of the previous Ranking Minority Member of the House Committee on Agriculture, who was also a Member of your full Committee. We were asked to examine bid-rigging on school milk contracts to determine whether there were any problems with agricultural legislation, or its administration, that allowed bid-rigging to occur. We were not requested to include any other food commodities in our study.

In response to this request we reported that:

- According to Department of Justice (DOJ) officials, federal programs designed to provide price stability in the dairy industry, by setting minimum prices, may create an environment that can foster improper collusion on milk prices. However, neither we nor DOJ officials identified any actual cases in which these agricultural programs were specifically responsible for improper bidding behavior.
- The Department of Agriculture (USDA) and DOJ, which share responsibilities for overseeing dairy cooperatives for improper collusion on prices, could benefit from a more systematic process for sharing information on their respective efforts in investigating bid-rigging. In this regard, we recommended that USDA and DOJ establish a more systematic process for coordinating information.
- USDA could be more aggressive in either suspending or debaring dairies indicted or convicted of bid-rigging from bidding on school milk contracts. At the time of our report, USDA had not suspended or debarred any dairies that had been indicted or found guilty of bid-rigging. We recommended that USDA, as appropriate, suspend or debar companies and individuals guilty of bid-rigging from participating in school milk contracts.
- USDA was providing little training to help state and local procurement officials detect bid-rigging. Because USDA was expanding its bid-rigging awareness training program, we did not make any recommendations in our report on this issue.

¹Food Assistance: School Milk Contract Bid-Rigging (GAO/RCED-93-5, Oct. 16, 1992).

In my testimony today, I will update you on DOJ's current milk contract bid-rigging investigations, DOJ's and USDA's responses to the findings and recommendations in our report, and our thoughts on whether bid-rigging extends to other contracts for food commodities purchased for federal school meal programs.

STATUS OF DOJ MILK CONTRACT BID-RIGGING INVESTIGATIONS

According to information provided by DOJ, as of July 1, 1993, its Antitrust Division had filed 96 criminal cases against 52 corporations and 64 individuals in the milk and dairy products industry. Cases have been brought in 13 states involving milk supplied to public schools participating in federally subsidized school lunch programs as well as to various military installations. According to DOJ data, 45 corporations and 48 individuals have been convicted and fines totaling about \$46.3 million have been imposed. Twenty-six individuals have been sentenced to serve jail terms averaging about 6 months each. In addition, 32 grand juries are currently investigating cases in 21 states.

DOJ AND USDA RESPONSES TO OUR FINDINGS AND RECOMMENDATIONS

As you know, federal agencies are required by law to provide a statement regarding actions they plan to take in response to GAO report recommendations to the Senate Committees on Governmental Affairs and Appropriations and to the House Committees on Government Operations and Appropriations. In their statements on our report, both departments have expressed general agreement with our findings and recommendations.

USDA agrees that debarments and suspensions may be warranted, however, it maintains that other factors need to be considered, such as the potential impact of these actions on local school operations before it takes such action. Accordingly, USDA has yet to debar or suspend any companies or individuals found guilty of bid-rigging.

Coordination Between DOJ and USDA in Pursuing Bid-Rigging Activity

In their responses to our recommendation that DOJ and USDA improve their procedures for sharing information on bid-rigging, both departments reiterated their position that they have worked together in the past on this issue. DOJ agreed with our conclusion that more formalized coordination would be beneficial. DOJ said that it would begin sending monthly reports summarizing the Department's Antitrust Division's investigations and prosecutions involving the dairy industry to USDA. The DOJ statement also said that the Department and

USDA's Food and Nutrition Service (FNS)--the USDA agency responsible for administering school meal and other federal food assistance programs--would develop more formalized procedures to ensure that both FNS and local school officials report signs of possible bid collusion to the appropriate authorities and share any reported information with DOJ.

In stating what action it was taking on our reports' recommendation, although not agreeing that a more formal system of coordination was needed between the two departments, USDA outlined the steps that FNS was taking to develop internal procedures to improve coordination with DOJ. USDA's response included cooperation in pursuing illegal bidding activity by dairy cooperatives as well as by other companies providing food to the Department's food assistance programs.

USDA Suspensions and Debarments

USDA, as of July 10, 1993, still has neither suspended nor debarred any of the companies or individuals found guilty of milk contract bid-rigging from bidding on school milk contracts. The Department has taken the position, both in responding to our report and in its March and April 1993 testimonies before the House and Senate Appropriations Committees, that it would consider debarment or suspension of companies and individuals from bidding on school milk contracts. However, before taking this action, it stated that it would also consider (1) the present responsibility of the companies and individuals involved and (2) the potential impact of such actions on local program operations, such as a school's ability to obtain food supplies from suppliers. In response to our report, USDA said that it would pursue such actions to the extent that the interests of the public and the federal government need to be protected.

In testimony, FNS officials stated that the actual damages from milk bid-rigging fall on the schools and that USDA's primary concern is for schools to recover these damages. The strategy is to work with the states and DOJ through criminal or civil actions to recover damages. This strategy includes working with the Defense Logistics Agency, which has suspended or debarred suppliers convicted of bid-rigging on sales of milk to military installations, to come up with monitoring and payment schemes so that companies can continue to sell milk to schools.

In our view, higher school meal costs that result from bid-rigging could also ultimately impact the federal government's school meal programs. The federal government underwrites the costs of school meals (which include milk) that are provided free or at reduced price to economically disadvantaged children. A number of school officials have told us that the costs of providing these meals exceeds the federal reimbursement rate. USDA currently has a nationwide study

under way examining the costs to provide school meals. Illegal bidding activity may have been a factor in the increase in school meal costs. This increase has the potential to (1) lead to increased pressure on the federal government to increase school meal reimbursement rates or (2) cause schools to drop out of federal school meal programs.

In our view, USDA could take stronger action by suspending or debarring those found guilty of bid-rigging on school milk contracts. Although it may be appropriate for USDA to consider the potential impact of a suspension or a debarment on a program, we believe that USDA must carefully balance the deterrent value of such actions against the possible short-term detrimental impacts they may create for some schools or school districts. We believe that the deterrent value of suspension and debarment actions is only meaningful if those dairies that bid-rig have a reasonable expectation that, if caught, they will be suspended or debarred from federally funded programs.

Training to Detect Bid-Rigging

In the draft of our report, we discussed the limited amount of bid-rigging awareness training that USDA had provided to state and local school food procurement officials. At the time of our review, USDA had provided such training in only one of FNS's seven regions across the United States--its Southeastern region. USDA, DOJ, and Department of Defense officials we talked to during our review told us that such training is essential for helping procurement officials recognize bid-rigging. In commenting on the draft, USDA stated that it was expanding its bid-rigging awareness training to other jurisdictions. Because USDA committed itself to action on this issue, we did not make a recommendation in our report.

Since we issued our report, USDA has expanded training to at least two additional FNS regions. We continue to believe that training in detecting what may be illegal bidding activity is essential for those awarding contracts for school food purchases. USDA should continue its efforts to expand training to additional locations.

POSSIBILITY OF BID-RIGGING RELATING TO OTHER FOOD COMMODITY CONTRACTS

Our review focused only on milk contract bid-rigging--we did not look at the possibility that bids are being rigged on contracts for other food commodities sold to schools. Since we issued our report, however, there have been a number of media reports asserting that illegal contracting activities involving other school-purchased food commodities--such as

chicken nuggets, hot dogs, and bakery products--may be occurring. We have not examined the accuracy of these claims. Both DOJ and USDA officials, however, indicated to us during our review that products, such as bakery goods and fresh fruits and vegetables, were especially susceptible to improper contracting practices.

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In summary, there is a lot of good news with respect to federal milk bid-rigging enforcement efforts, but more work needs to be done. On the plus side, DOJ continues to aggressively pursue milk bid-rigging investigations and has taken legal action against a number of violators. Also, USDA and DOJ apparently agree that a more systematic process for sharing information on bid-rigging activities is warranted, and they are investigating ways to improve the lines of communication between the two departments. We continue to believe that the two departments need to work closely together to exchange bid-rigging information. In addition, USDA is expanding its training in detecting bid-rigging to other areas of the country. We believe it is necessary to ensure that those responsible for soliciting bids for food items and awarding contracts have the training needed to detect what may be suspicious bidding patterns and report them to the appropriate investigative authorities.

On the down side, however, USDA seems hesitant to suspend or debar dairy companies and individuals found guilty of bid-rigging. We believe that suspension and debarment actions can be meaningful deterrents to bid-rigging activity. However, if USDA does not exercise these options, their effectiveness as deterrents is lost.

Mr. Chairman, this completes my prepared statement. I would be pleased to respond to any questions that you or Members of the Subcommittee may have.

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