



Contracting that Works

A Toolkit for State and Local Governments

David Madland and Karla Walter, Center for American Progress Action Fund
Paul Sonn and Tsedeye Gebreselassie, National Employment Law Project

March 2010

State and local governments finance millions of jobs across our economy with the hundreds of billions of dollars they spend each year to purchase goods and services. Yet jobs created through government contracting are often substandard, paying very low wages and involving poor working conditions where employment law violations are common.¹ Such jobs not only hurt America's workers; they also undermine the quality of goods and services delivered to government agencies and the public, and often result in significant hidden costs for taxpayers.

Growing numbers of state and local governments are therefore adopting “responsible contracting” reforms to improve the quality of jobs generated by their procurement spending. This report identifies the best practices in government contracting that are allowing state and local governments to significantly raise standards for workers and secure better value for taxpayers. They are accomplishing these goals by reducing the hidden costs taxpayers often bear when workers are paid poverty wages such as income assistance and health benefits for the uninsured, improving the quality of goods and services taxpayers receive, and increasing the number of companies competing for government contracts.²

This toolkit outlines reforms that can improve the quality of the jobs generated by government contracting and supplements other contracting reform blueprints that chiefly focus on improving transparency and accountability. The key strategies inventoried in the toolkit are:³

- Careful review of decisions to contract out
- Prescreening contractors for responsibility
- High standards for wages and benefits
- Incentives to raise wages and benefits above the legal floor
- Strong post-award enforcement
- Increased data collection and transparency

State and local governments can replicate and expand on these reform models that have been used successfully across the country to ensure that contracting delivers the best value for taxpayers, helps level the playing field for high-road businesses, and creates the types of good jobs communities need. Even governments that have pioneered the contracting practices cataloged here have opportunities to improve them further with the help of the resources in this toolkit.

Careful review of decisions to contract out

State and local governments seeking to protect taxpayers and workers and promote quality services should begin by requiring careful review of decisions to contract out government work to the private sector. Review processes should ensure that the government contracts out only those services that public employees cannot capably and cost effectively perform and that do not involve functions that should be performed by government for accountability or other public interest reasons.

Many governments have found that excessive use of contracting out has weakened their ability to oversee taxpayer-funded work, but few do enough to limit it sufficiently.⁴ Contracting out also frequently results in worse jobs for local communities since many of the industries where privatization has been prevalent—such as building services, food services, and laundries—are characterized by poverty wages and widespread violations of basic workplace laws.⁵

Governments should adopt consistent procedures for determining whether it is in the public interest to contract work out and then ensure that when privatization decisions are made, the process allows for strong government oversight, stakeholder input, and accurate analysis of the benefits and costs. Important factors to consider when deciding whether to contract out work include: the quality and long-term sustainability of privatized services; working conditions for contracted workers; and additional costs of contracting out such as monitoring and enforcing existing contracts, “fixing” poorly executed contracts, and providing public assistance to contractors’ workers who receive low wages and benefits.

Few governments have developed comprehensive reforms in this area, but many are taking first steps to increase oversight and rationalize procedures when deciding whether to contract out services. The city of San Jose has adopted two policies—the Service Delivery Evaluation Policy and the Public Private Competition Policy—that establish a clear process to guide outsourcing decisions. The new policies support

Resources for improving jobs created through government contracting

Madland, David, and Michael Paarlberg. 2008. “Making Contracting Work for the United States: Government Spending Must Lead to Good Jobs.” Washington: Center for American Progress Action Fund.

www.americanprogressaction.org/issues/2008/contracting_reform.html

Madland, David, and others. 2009. “Making Contracting Work: Promoting Good Workplace Practices in the Federal Procurement Process.” Washington and New York: Center for American Progress Action Fund and National Employment Law Project.

www.americanprogressaction.org/issues/2009/06/making_contracting_work.html

Sonn, Paul K., and Tsedeye Gebreselassie. 2009. “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services.” New York: National Employment Law Project.

www.nelp.org/responsiblecontracting2009

appropriate government delivery of services by allowing public agencies administering poorly performing programs to make readily achievable improvements before an agency may pursue privatization. The policies feature strong upfront oversight—soliciting public and city employee input and subjecting contracting decisions to council review—and require thorough evaluation of the ongoing costs of contracting out.

Minnesota requires state agencies to certify that they have publicized a contract and made reasonable efforts to determine that no state employee or agency could have effectively performed the work before contracting out professional or technical services.⁶ The San Diego City Council supported a reform requiring an open public review of work to be privatized in July 2008.⁷

And at the federal level, the Obama administration has recognized that “overreliance on contractors can lead to the erosion of the in-house capacity that is essential to effective government performance” and has outlined new “in-sourcing procedures” to ensure that agencies consider using federal employees to perform both new functions and functions that are currently being performed by contractors. The president is expected to soon offer further guidance on how to determine whether work is inherently governmental and should only be performed by government either for accountability reasons or because it is intimately related to the public interest.

Prescreening contractors for responsibility

State and local governments have sought to improve the quality of their contractor pools over the past decade by instituting more rigorous screening of prospective vendors. Their aim is to do a better job of weeding out those companies with histories of violating workplace laws and other important regulatory protections. States and localities have found that adoption of such programs—often termed “prequalification” or “responsible bidder” programs—results in higher quality and more reliable services; increased competition among responsible contractors; reduced project delays and cost overruns; reduced monitoring, compliance, and litigation costs; and stronger incentives for compliance.⁸

Best practices incorporate a front-end prescreening process before selection of a winning bid—a more reliable approach than a responsibility review conducted only for the lowest cost or presumed winning bidder. The prescreening should involve a review of offerors’ compliance and financial records, and proof of insurance and licensing.⁹ Governments should also allow for public input during the review process, evaluate the records of both contractors and subcontractors on each bid, and provide clear criteria on what constitutes disqualifying nonresponsible behavior so that contracting officers have adequate guidance in evaluating potential bidders.

The strongest state and local screening policies are focused on public works and apparel procurement, but service contractors should also be subject to upfront responsibility review.

California’s Department of Industrial Relations has developed a [model prequalification questionnaire](#) that is used by several state agencies for public works contracts. The questionnaire inquires into prospective bidders’ past legal violations, histories of suspensions and debarments, past contract performance, and financial history. The department provides agencies with a model scoring system for evaluating a firm’s answers to these questions and recommends a minimum passing score. Firms that pass then become eligible to bid on public works projects. The California policy should be strengthened, however, by requiring review of subcontractors’ responsibility records. Further, the public’s access to this information is limited—only the names of applicants but not their completed questionnaires or financial records are subject to public disclosure.¹⁰ Allowing full transparency would facilitate stakeholder input and make responsibility screening more effective.

Some state and local laws aimed at reducing the use of sweatshop labor take important steps to evaluate contractor responsibility across complex supply chains and facilitate public review of contractors’ responsibility records. [Milwaukee](#) requires apparel contractors to submit affidavits for themselves and subcontractors, including production facilities, distributors, and laundries, stating that they comply with responsibility requirements. The city posts this information [online](#), though not before winning bids are selected when the public can influence which bid is chosen. [New Jersey](#) makes similar information on bidders for apparel contracts available to the public no less than 30 days before a final award decision is made.

Dozens of cities and states have [responsible bidding ordinances](#) that require prospective contractors to certify that they properly classify their workers as employees and comply with prevailing wage, workers’ compensation, and unemployment tax laws before they are eligible to bid for public works projects.¹¹ The [National Alliance for Fair Contracting](#) has compiled many of these laws on their website.

High standards for wages and benefits

Cities and states, concerned about the poverty wages and limited benefits that many government contractors provide their workforces, have begun to adopt baseline wage and benefits requirements to protect contracted workers in low-wage sectors. In doing so, these state and local governments are working to ensure that when they contract with private companies to provide services for the government, they create quality jobs in the process by mandating wage and benefits standards—both through living wage laws and the extension of prevailing wage laws to low-wage service workers.

More than 140 cities and one state (Maryland) have adopted “living wage” laws requiring that public contractors pay their workforces a nonpoverty wage, usually set in the range of \$10 to \$15 per hour.¹² This is typically defined using a multiple of the federal poverty guidelines. For example, Saint Louis defines its living wage as 130 percent of the federal poverty guidelines for a family of three, which as of 2009, translated to \$14.57 per hour for workers who were not provided health insurance.¹³

Other states and cities, such as Connecticut, New Jersey, New York state, and New York City have taken another approach by extending prevailing wage laws—long used to protect contracted construction workers—to low-wage service sector contractors. This approach requires contractors to pay at least the prevailing industry wage for the type of job in the region where the contract is being performed.¹⁴ Prevailing wage standards typically focus on industries such as building services and construction where, in many cities and states, the going rate paid by better employers is higher than the level of most living wage laws. These laws require that contractors pay their workers at least what the majority of companies pay their workers in the same industry and occupation, and therefore ensure that state and city purchasing does not support employers that are driving down job standards in the sector.

Some cities are beginning to extend prevailing wage coverage even further to reach other jobs that are created by city taxpayer dollars. For instance, Pittsburgh recently enacted a service worker prevailing wage law that covers grocery, hotel, food service, and building service workers in economic development projects that receive \$100,000 or more in city subsidies.¹⁵

Other communities have focused on ensuring that public contractors provide quality, affordable health benefits to their employees. These governments have responded to the hidden costs to taxpayers and the public health care system generated by workers without health insurance coverage. Houston and San Francisco require contractors to provide health benefits to their employees or pay into a fund to offset the cost of services for the uninsured workers. New Mexico also requires contractors to offer insurance to their New Mexico employees, but does not set minimum benefit standards and allows contractors to include workers receiving coverage from the state’s publicly financed health programs. Living wage and prevailing wage laws, such as Orlando’s ordinance, generally require contractors that do not provide health benefits to pay their workers an additional hourly wage supplement to help them purchase health insurance on their own.

Cities and states that have adopted wage and benefit standards for public contracts have found that they not only deliver better jobs for workers, but the higher wages result in reduced staff turnover and increased productivity, improving the quality and reliability of contracted services.¹⁶ Analyses have generally found that living wage and health benefit requirements have increased contracting costs only modestly, if at all.¹⁷ Maryland found that adopting the living wage requirement improved competition for state contracts by attracting more “high-road” vendors—nearly 30 percent more bidders on average—to

submit bids for government work.¹⁸ Nearly half of contracting companies interviewed in a report assessing the impact of Maryland’s living wage law reported that the new labor standards encouraged them to bid for state contracts because it leveled the playing field.¹⁹

The [National Employment Law Project](#) provides technical assistance to cities and states seeking to enact such laws, and the Wayne State University’s Labor Studies Center has created a [toolkit](#) for grassroots groups organizing to pass living wage laws in their communities.

Incentives to raise wages and benefits above the legal floor

Some governments are also developing ways to give extra consideration in the contractor selection process to employers that create good jobs. Baseline requirements set the floor, while incentives for “high-road” labor practices can encourage companies to raise standards even further.²⁰

Government agencies frequently evaluate bidders’ proposals based on the strength of a bidder’s technical ability and past performance record as they seek contractors that will provide the best value for the taxpayers, not simply the lowest price. They should use the same type of system to evaluate contractors on the quality of their workplace practices. Basing bidders’ scores in part on the quality of workplace practices—and thereby increasing the likelihood that companies with better practices will win contracts—will motivate companies to improve working conditions.

Government should give significant weight when evaluating bidders’ proposals to those employers that pay a livable wage; provide quality, affordable health and retirement benefits; and offer paid leave to their employees. Specific types of contracts could also include additional labor evaluation factors—for example, construction contracts could evaluate each bidder based on the proportion of its skilled workers who are graduates of a state-certified apprenticeship program.

Incentives can potentially play a useful role in improving job standards beyond the contracted workforce and reward employers that successfully create quality jobs. Cities and states can encourage employers to improve job standards broadly by evaluating job quality across a bidder’s entire workforce located within the jurisdiction, rather than only evaluating standards for contracted workers.

One city that gives extra consideration in the procurement process to high-road workplace practices is El Paso, Texas, which makes employer-provided health benefits a positive evaluation factor—along with price, reputation, and past performance—in making contract award decisions.²¹ The health benefits prospective contractors provide their employees are evaluated on a sliding scale, and the resulting score represents a portion of the overall score for the bid, with price remaining the most significant factor.

The city of San Jose, California evaluates labor practices as part of its bidder selection process, as well. The city's living wage policy requires covered contracts to undergo a "[Third Tier Review](#)" where the city evaluates whether offerors' employees receive paid leave and if bidders give adequate assurances of labor peace. The city also [evaluates](#) in competitions between public sector workers and private bidders, bidders' provision of employee benefits, employee complaint procedures, and compliance with state and federal workplace standards.

The [Center for American Progress Action Fund](#) and [National Employment Law Project](#) are advocating for the federal government to evaluate bidders based in part on the wages and benefits they provide to their workforces. The White House Task Force on the Middle Class' [Annual Report](#) and recent coverage by [The New York Times](#) indicate that the Obama administration will soon offer guidance to implement some of these types of reforms.²²

Strong postaward enforcement

State and local governments have also found that protecting workers and taxpayers requires continued oversight after bids have been awarded. Governments must have the capacity to continuously monitor postaward legal compliance—especially in high-violation industries and locations—and to make sure that potential lawbreakers know that their ability to obtain future contracts will be jeopardized by serious noncompliance. Best practices include requiring companies to certify that they are complying with the law as well as adopting targeted enforcement strategies and innovative partnerships with workers and other jurisdictions.

Some governments require contractors to submit certifications on a weekly basis, showing that they have complied with a range of labor, employment, and tax laws. Contractors that fail to comply face sanctions, including removal from the project. Contractors with three or more violations in Worcester, Massachusetts, for example, are permanently barred from receiving municipal contracts.²³ The [National Alliance for Fair Contracting](#) has compiled many of these enforcement ordinances, along with sample legislative language and other helpful documents.

Cities and states are also using innovative strategies to catch lawbreaking contractors. Los Angeles, for example, uses a [Joint Labor Compliance Monitoring Program](#) to enforce its prevailing wage laws. The city's Bureau of Contract Administration trains and gives workers credentials to interview employees of contractors and subcontractors at their worksites to ensure that they are being paid the legal minimum. It is also considering a [policy](#) that will require the Community Redevelopment Agency to periodically evaluate contractors' performance, respond to valid and verifiable complaints that a contractor is violating the terms of its contract, and impose monetary penalties on contractors that fail to disclose or update responsibility information.

In another model, the [Sweatfree Purchasing Consortium](#) brings together nine state and local jurisdictions—including Maine; New York; Pennsylvania; Wisconsin; Ashland, Oregon; Austin, Texas; Milwaukee, Wisconsin; Portland, Oregon; and San Francisco, California—that have passed laws barring companies that use sweatshop labor from receiving government contracts to share the costs of monitoring contractors and enforcing “sweatfree” requirements. The consortium will work to improve compliance in the apparel industry by working with factories to verify compliance, and coordinating with brands and vendors to ensure responsible business practices, including fair pricing, reasonable production scheduling, and long-term business commitments.

Increased data collection and transparency

Good data collection, analysis, and public disclosure—including information about working conditions and past legal violations—can help ensure compliance with responsible contracting policies and promote public confidence in government decision making.

State and local governments can strengthen contractor accountability and reduce wasteful and abusive practices by centralizing the collection of contractor responsibility data into a single or relatively small number of databases, requiring contracting officers to consult such databases when evaluating bids, and allowing the public to access this information online so that it can note when data is incorrectly recorded and raise concerns regarding irresponsible bidders.

Many state and local governments consider legal violations in determining contractor responsibility, but the value of this information can be strengthened by sharing it among government agencies and across jurisdictions. Contracting officers should not rely only on bidders’ self-reporting of legal compliance; they should also have access to information from their government’s other enforcement databases. As discussed above, the Sweatfree Purchasing Consortium allows jurisdictions to share responsibility data.

Many state and local governments make contract and legal compliance data publicly available, but the data’s comprehensiveness and ease of access to it varies significantly. For example, Massachusetts maintains the online [Comm-pass](#) database that allows the public to browse through active and inactive contracts and search for contracts by keyword, date ranges, and contract type. The database includes summaries of the contracts, including price and detailed vendor information. At the local level, New York City maintains [Vendex](#)—a centralized database that provides information online on the number, cost, awarding agency, and start and end dates of a firm’s contracts and subcontracts. Neither database displays information on job quality, working conditions, or past legal violations online. But New York City allows access to more detailed information on past performance and legal violations at the Mayor’s Office of Contract Services Public Access Center.

The city of San Jose makes “Third Tier Review” reports for winning bids available to the public, but the data is not currently published online. These reports evaluate bidders on a variety of factors including employee benefits and compliance with workplace standards—as discussed in the “incentives to raise wages and benefits above the legal floor” section of this memo.

More information on states and localities that disclose contract data online is available at the [Sunshine Review](#) wiki, a website that grades communities on the transparency of their government websites.

Conclusion

The reforms in this toolkit present state and local governments with an opportunity to improve the quality of the jobs generated by contracting and help ensure that contracting delivers quality services and value for taxpayers. These best practices—which governments are increasingly implementing across the country—provide proven models for guaranteeing that public spending delivers maximum benefit for taxpayers and workers alike.

Endnotes

- 1 David Madland and Michael Paarlberg, “Making Contracting Work for the United States: Government Spending Must Lead to Good Jobs” (Washington: Center for American Progress Action Fund, 2008); Paul Sonn and Tsedeye Gebreselassie, “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring that Federal Contracting Delivers Good Jobs and Quality Services” (New York: National Employment Law Project, 2009); Kathryn Edwards and Kai Filion, “Outsourcing Poverty” (Washington: Economic Policy Institute, 2009).
- 2 Peter Philips and others, “Losing Ground: Lessons from the Repeal of Nine Little Davis-Bacon Acts.” Working Paper (University of Utah Department of Economics, 1995); Carol Zabin, Arindrajit Dube, and Ken Jacobs, “The Hidden Public Costs of Low Wage Jobs in California” (Berkeley: University of California Institute for Labor and Employment, 2004); UNITE HERE! “Conduct Unbecoming: Sweatshops and the U.S. Military Uniform Industry” (New York: UNITE HERE!, 2006); U.S. Department of Housing and Urban Development, Office of Inspector General, “Audit Report on Monitoring and Enforcing Labor Standards” (1983); and Office of Policy Analysis, “Impact of the Maryland Living Wage” (Annapolis: Maryland Department of Legislative Services, 2008), available at <http://www.chamberactionnetwork.com/documents/LivingWage.pdf>.
- 3 David Madland and others, “Making Contracting Work: Promoting Good Workplace Practices in the Federal Procurement Process” (Washington and New York: Center for American Progress Action Fund and National Employment Law Project, 2009); Sonn and Gebreselassie, “The Road to Responsible Contracting;” Madland and Paarlberg, “Making Contracting Work for the United States: Government Spending Must Lead to Good Jobs.”
- 4 Madland and Paarlberg, “Making Contracting Work for the United States: Government Spending Must Lead to Good Jobs;” and AFSCME, “Legislative Approaches to Responsible Contracting,” available at <http://www.afscme.org/issues/1517.cfm>.
- 5 San Diego’s Center on Policy Initiatives recently launched a new website—<http://www.InthePublicInterest.org>—that documents the risks of excessive use of contracting out and contracting with irresponsible companies, and serves as a national clearinghouse and resource center for activists, lawmakers and the media.
- 6 Minn. Stat. § 16C.08.
- 7 Center for Policy Initiatives, “Protect City Services!,” available at <http://www.onlinecpi.org/article.php?list=type&type=233>. The San Diego City Council voted to open the “managed competition” process (governing city privatization decisions) to public review in July 2008 by a 7-1 vote. But before the council took the second and final vote on the amendment, a Public Employees Relations Board judge ruled that the city had not negotiated how the “managed competition” process would be conducted in good faith, and ordered that the entire process be renegotiated. Negotiations between the City Council and the mayor are ongoing, but draft “managed competition” guidelines include the requirement for an open public review of work to be privatized (on file with authors). Once the council and mayor come to an agreement, the City Council must adopt the new procedures.

- 8 Sonn and Gebreselassie, "The Road to Responsible Contracting," p. 8-12.
- 9 Note that responsibility review should, for example, analyze employers' health and safety records in terms of legal compliance rather than accident rate. High-road firms that comply with reporting requirements and encourage workers to report accidents may have recorded injury rates higher than low-road firms that frequently ignore reporting laws and discourage workers from reporting injuries.
- 10 Cal. Pub. Cont. Code § 20101(a).
- 11 See, for example, Salem, Mass. Municipal Code Ch. 2, Div. 2 Sec. 2-1861, "Conditions for bidding on public construction contract," available at http://www.faircontracting.org/pdf/salem_machusetts_section_c1.pdf.
- 12 National Employment Law Project, "Living Wage Laws," available at http://www.nelp.org/index.php/site/issues/category/living_wage_laws/; for background on Maryland's State Living Wage Law, see <http://dllr.maryland.gov/labor/livingwage.shtml>.
- 13 St. Louis, Mo. Ordinance No. 65597 §3(B), available at <http://www.mwdbe.org/livingwage/LivWageOrd.pdf>; and St. Louis Living Wage Adjustment Bulletin, available at <http://www.mwdbe.org/livingwage/LvgWgAdjustment09.pdf>.
- 14 Conn. Gen. Stat. Ann. § 31-57(f) (prevailing wage for certain service occupations); N.J. Stat. Ann. 34:11-56.58 (prevailing wage for building service employees); New York City Admin Code § 6-109 (prevailing wage for certain service occupations); N.Y. Lab. Law § 230 (prevailing wage for building service employees).
- 15 Pittsburgh, Pa. Code § 161.40 (City of Pittsburgh Service Worker Prevailing Wage Ordinance), available at <http://pittsburgh.legistar.com/LegislationDetail.aspx?ID=644162&GUID=4600AAD3-EFA3-465A-A5D6-C57C9BDE75D2&Options=ID|Text|&Search=prevailing>.
- 16 See, for example, Sonn and Gebreselassie, "The Road to Responsible Contracting," p. 14 (compiling studies).
- 17 For a survey of studies examining the costs of living wage laws, see *Ibid.* For a recent study on the cost impact of health benefits requirements for public construction contractors, see David May and C. Jeffrey Waddoups, "Construction Procurement Policies That Address Health Insurance: A Cost Analysis" (Concord, New Hampshire: New Hampshire AFL-CIO EAP Services, Inc., 2010), available at <http://www.plaswork.org/Files/Documents/Construction-Procurement-Policies-That-Address-Hea.aspx>.
- 18 Office of Policy Analysis, "Impact of the Maryland Living Wage," available at <http://www.chamberactionnetwork.com/documents/LivingWage.pdf>.
- 19 *Ibid.*
- 20 Madland and others, "Making Contracting Work: Promoting Good Workplace Practices in the Federal Procurement Process."
- 21 Sample city of El Paso request for proposal (on file with authors).
- 22 Steven Greenhouse, "Obama Aims to Use Federal Contracts as a Way to Lift Wages," *The New York Times*, February 26, 2010, p. A1, available at <http://www.nytimes.com/2010/02/26/business/26procure.html>.
- 23 Worcester, Mass Rev. Ordinances ch. 2, § 35(e), available at <http://www.ci.worcester.ma.us/finance/purchasing/responsible-employer-ordinance>.