

SYMPOSIUM RESPONSE PIECES

Uncle Sam’s Purchasing Power: How to Leverage Government Spending to Promote Good Jobs

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I.

INTRODUCTION

The federal government is failing to live up to its legal and moral obligations as a model employer. Through numerous laws and executive orders, American lawmakers have expressed a clear and long-standing

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objective to set high standards for the treatment of workers on government contracts.¹ Yet too often the jobs created through government contracting are substandard. Many pay very low wages—often below the poverty level—and involve poor working conditions where labor law violations are all too common.²

Not only is this bad for workers, but these kinds of working conditions can cause taxpayers to receive less than full value in government contracts. When workers are poorly compensated on the front end, taxpayers often bear additional costs on the back end because they receive low quality work and need to provide income assistance to low income families.

Due to massive increases in federal contracting coupled with inadequate oversight, the twin problems of contractors treating their workers poorly and failing to provide good value for taxpayers have grown in importance. While people may be aware that some federal contractors are excessively compensated and waste taxpayers' money, the problems of the contracted workforce, and how they are connected to taxpayers' interests, largely remain hidden from public view.

Our findings make clear that the contracting process needs significant reforms.

The reforms with the most potential to improve labor standards in contracted work include: careful review of decisions to contract out, rigorous responsibility screening of prospective bidders, high standards for wages and benefits, incentives to raise wages and benefits above the legal floor, strong post-award enforcement, and increased data collection and transparency. These reforms have proven successful when implemented in local, state, and federal contracts.

Today, more than ever, there is an opening to reform federal contracting in the United States. President Obama announced an effort to improve the federal contracting process on March 4, 2009, and the administration has begun to take significant steps toward reform.³ This much-needed modernization provides the federal government with an opportunity to generate good jobs through federal contracting. The federal government is moving towards adopting some of the practices recommended in this report and we anticipate that in the coming months it may adopt more of these practices.

1. See, e.g., The Davis Bacon Act, 40 U.S.C. §§ 3141-3148 (2006); The Service Contract Act, 41 U.S.C. §§ 351-358 (2006); Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24 1965).

2. See, DAVID MADLAND & MICHAEL PAARLBERG, CTR. FOR AM. PROGRESS ACTION FUND, MAKING CONTRACTING WORK FOR THE UNITED STATES: GOVERNMENT SPENDING MUST LEAD TO GOOD JOBS (2008) [hereinafter MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES]; GOV'T ACCOUNTABILITY OFF., FEDERAL CONTRACTING: ASSESSMENTS AND CITATIONS OF FEDERAL LABOR LAW VIOLATIONS BY SELECTED FEDERAL CONTRACTORS (2010).

3. Memorandum on Gov't Contracting, 2009 Daily Comp. Pres. Doc. 123 (March 4, 2009), available at <http://www.govexec.com/pdfs/030409e1.pdf>.

The structure of this paper is as follows: Section 1 recounts the history of federal policies created to protect workers and promote high labor standards among government contractors. Sections 2 and 3 describe how low standards in government contracting harm workers and taxpayers. Section 4 identifies our recommended reforms to promote higher labor standards in contracting. Section 5 describes the outcomes of similar federal, state and local contracting reforms. Section 6 presents our conclusions.

II.

HISTORY OF PROTECTING WORKERS

Recognizing the leverage of federal spending to promote higher labor standards, the federal government has sought to provide strong protections for federally contracted workers for well over a hundred years. The government has long taken a moral stand that contracting should not be merely a way to acquire goods and services cheaply, but rather as a way to establish itself as “a model employer to be emulated by the private sector.”⁴

As early as 1868, the National Eight Hour Law was enacted to require that all laborers, workmen, and mechanics “*employed by or on behalf of*” the federal government be required to work no more than eight hours per day.⁵ President Grant later issued two proclamations to ensure that this law was enforced without any reduction in workers’ pay.⁶

In 1917, Secretary of War Newton Baker warned, “The Government cannot permit its work to be done under sweatshop conditions, and it cannot allow the evils widely [associated with such production] to go uncorrected.”⁷ But without protections for workers, the government was compelled “to accept the lowest responsible bid regardless of the conditions of work under which the contract was performed,” and thus was “an unwilling collaborator with firms . . . that sought to get government business by cutting wages.”⁸

Congress and the executive branch have primarily promoted the interests of workers through prevailing-wage laws that set basic labor standards and wages in federal contract work based on the relevant labor market. In 1931, with the passage of the Davis-Bacon Act, which provided

4. WILLIAM G. WHITTAKER, CONG. RESEARCH CTR., FEDERAL CONTRACT LABOR STANDARDS STATUTES: AN OVERVIEW i (2006).

5. National Eight Hour Law of 1868, ch. 72, 15 Stat. 77 (1868).

6. Proclamation No. 3, 16 Stat. 1127 (May 19, 1869); Proclamation No. 10, 17 Stat. 955 (May 11, 1872).

7. EILEEN BORIS, HOME TO WORK: MOTHERHOOD AND THE POLITICS OF INDUSTRIAL HOMEWORK IN THE UNITED STATES 135 (Cambridge Univ. Press 1994).

8. HERBERT C. MORTON, PUBLIC CONTRACTS AND PRIVATE WAGES: EXPERIENCE UNDER THE WALSH-HEALEY ACT 8 (Brookings Inst. Press 1965).

that federally contracted construction workers would be paid a prevailing wage, the federal government firmly stated its intention to use government contracting to help workers.⁹ By enacting the Davis-Bacon Act, “Congress sought to end the wage-based competition from fly-by-night operators, to stabilize the local contracting community, and to protect workers from unfair exploitation.”¹⁰ “Employers could compete on the basis of efficiency, skill, or any other factor, except wages.”¹¹

Prevailing-wage protections were extended to contractors manufacturing goods for the federal government in 1936, with the passage of the Walsh-Healey Act. The Service Contract Act further expanded prevailing-wage laws to “employees of contractors and subcontractors furnishing services to or performing maintenance service for federal agencies” in 1965.¹² The SCA was intended to extend protections to those not covered by existing prevailing-wage laws and ensure that all low-wage federally contracted workers were protected by prevailing-wage laws.¹³

When lawmakers passed the SCA, they emphasized both the government’s moral obligations as an employer and the government’s interest in improving working conditions. Specifically, lawmakers cited the following arguments for setting labor standards in service contracts:

- **Service workers are the most vulnerable to low wages.** The SCA was designed to cover those workers in the industries that typically pay employees the least.¹⁴
- **Government purchasing can drive wages even lower.** The lowest-cost bid process for those wishing to win a government contract gives a natural advantage to those bidders who promise to pay their employees the least. Without prevailing-wage laws, this can cause wages in the market to spiral downward.¹⁵ This is especially true because of the federal government’s inordinate purchasing power, which has an enormous and potentially depressive effect on wages in labor markets.¹⁶ Far from a unique entity that operates apart from private markets, the government is often the largest buyer in the marketplace, and can effectively set the market rate for goods, services, and labor. The danger thus exists that the government could lower wage standards below that which would be paid by the market.

9. The Davis Bacon Act, 40 U.S.C. 3141-3148 (2006).

10. WHITTAKER, *supra* note 4, at 4.

11. *Id.*

12. The Service Contract Act, 41 U.S.C. §§ 351-358 (2006).

13. WHITTAKER, *supra* note 4, at 15-21.

14. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2.

15. *Id.* at 7; Fort Hood Barbers Ass’n v. Herman, 137 F.3d 302, 308 (5th Cir. 1998).

16. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2, at 7.

- **Low wages are bad for the government and the economy as a whole.** At the time of the law's passage, then Solicitor of Labor Charles Donahue argued that it is "doubtful whether the Government gains in the long run by a policy which encourages the payment of wages at or below the subsistence level."¹⁷ He believed that "substandard wages must inevitably lead to substandard performance."¹⁸ Further, the economy as a whole suffers from the reduced purchasing power of workers. The present policy of low bid contract awards is one under which everyone loses—the employee, the Government, the responsible contractor—that is, everyone except the fly-by-night operator who is eager to profit from the under compensated toil of his workers."¹⁹

In addition to prevailing wage laws, the government has used other tools to raise standards for contracted workers. For example, during World War II, the National War Labor Board and War Production Board protected the rights of contracted workers and prevented violators of labor laws from receiving military contracts.²⁰ Currently, Executive Order 11246, signed by President Johnson in 1965, prevents discrimination among contracted employees, and general contracting rules emphasize that the government should work only with responsible contractors with a record of adhering to all laws.²¹

III.

CURRENT PROBLEMS FOR FEDERAL CONTRACT WORKERS

Despite the federal government's commitment to protect contracted workers and the ability of government spending to raise standards across the economy, its current policies are not effectively promoting high labor standards. Not all workers are covered by prevailing wage laws, and in some cases prevailing wages are poverty-level wages.²² The data and the processes for evaluating whether a company complies with existing law are woefully inadequate. These problems grew worse as government contracting significantly expanded under the Bush Administration without a

17. WHITTAKER, *supra* note 4, at 15.

18. *Id.*

19. *Id.*

20. Steve Fraser, *The Good War and the Workers*, AM. PROSPECT, Oct. 22, 2009 (Special Report), at A18.

21. 48 C.F.R. Part 9, Subpart 9.1 (2010) ("Responsible Prospective Contractors" details eligibility requirements for companies bidding on federal contracts, including satisfactory business ethics and compliance with applicable laws and regulation, and outlines contracting officers' duties in obtaining compliance information from bidders).

22. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2.

corresponding increase in contracting officers or scrutiny on the processes.²³

Government spending on contracted goods and services has been growing for some time but exploded under the Bush administration. In 2009, the federal government spent \$539.3 billion in contracts, more than 2.6 times the amount spent in 2000 (\$205.5 billion).²⁴ The amount spent on contracted goods and services by the government now represents 3.8 percent of the total U.S. economy, a sum that approaches the total economic output of Pennsylvania, and 43 percent of all employees who do the government's work are now employed by private businesses.²⁵

The federal government does not keep or make publicly available quality data, but all available evidence points towards a widespread problem. Estimates from the Economic Policy Institute indicate that nearly one in five workers on a federal contract do not earn enough to keep a family of four out of poverty and often do not receive benefits.²⁶

The greatest expansion of federal contract work has been in the typically low-wage service sector. One study of federal contractors from 2002 to 2005 found that, while the number of (comparably) higher-paying manufacturing jobs remained flat, the number of service jobs increased by nearly 2.5 million.²⁷

Approximately 80 percent of service contract workers earn low wages, and often do not receive benefits.²⁸ The union UNITE HERE! found that many textile employees working on military contracts earned a starting wage of less than \$5.50 an hour and an average wage of \$6.55 in 2006.²⁹ Between 59 and 86 percent of workers at the factories surveyed had no health insurance coverage, and none had an employer-provided pension plan.³⁰

In addition to low pay, many federally contracted workers face poor working conditions and frequent labor law violations.

23. *Id.*

24. See Welcome to USASpending.gov: Government Spending at your Fingertips, <http://www.usaspending.gov> (follow "Summaries" hyperlink; then change pull down menu to "FY 2009" or "FY 2000"; then check "Contracts") (last visited December 8, 2010).

25. US Department of Commerce Bureau of Economic Analysis: US Gross Domestic Product by State, <http://www.bea.gov/regional/gsp> (last visited June 24, 2010) and Kathryn Edwards & Kai Fillion, *Outsourcing Poverty: Federal Contracting Pushes Down Wages and Benefits*, ECON. POL'Y INST. BRIEFING PAPER 250 (2009).

26. *Id.*

27. PAUL LIGHT, BROOKINGS INST., FACT SHEET ON THE NEW TRUE SIZE OF GOVERNMENT (2006).

28. Jane Zhang, *How Government Adds to Ranks of Uninsured*, WALL ST. J., Mar. 25, 2008, at D1.

29. UNITE HERE!, CONDUCT UNBECOMING: SWEATSHOPS AND THE U.S. MILITARY UNIFORM INDUSTRY I (2006), available at <http://www.behindthelabel.org/pdf/ConductUnbecoming.pdf>.

30. *Id.* at 10.

- In 2004 the Department of Labor conducted 654 Service Contract Act investigations called by workers or other whistleblowers and found minimum wage and benefit violations in more than 80 percent of cases—comprising 20,347 individual violations.³¹
- In FY1993, the most recent year studied, 80 companies that had committed unfair labor practices in violation of the National Labor Relations Act received more than 4,400 federal contracts, worth over \$23 billion—representing roughly 13 percent of all federal contract dollars in fiscal year 1993.³²
- Companies with poor health and safety records continue to receive federal contracts. In the most recent survey year, 1994, 261 federal contractors administered facilities that had been cited for 5,121 violations of the Occupational Safety and Health Administration's safety and health regulations. Those contractors received a total of \$38 billion, representing 22 percent of all federal contract dollars. Eighty-eight percent of those worksites inspected were found to have one or more violations that posed a risk of death or serious physical harm to workers. In 69 percent of cases, OSHA found the employer to have intentionally and knowingly committed the violation.³³
- In 2006, four large federal agencies awarded security contracts without competition—a total of \$1.7 billion in contracts. Of the 12 security companies that received these contracts, 10 had records of labor abuse. While a few labor violations were relatively minor, others were much more significant, ranging from persistent safety and health violations and violations of the Fair Labor Standards Act to discrimination, sexual harassment, nonpayment of wages, and human rights violations.³⁴

31. U.S. GOV'T ACCOUNTABILITY OFF., SERVICE CONTRACT ACT: WAGE DETERMINATION PROCESS COULD BENEFIT FROM GREATER TRANSPARENCY, AND BETTER USE OF VIOLATION DATA COULD IMPROVE ENFORCEMENT 3 (2005).

32. *Federal Contractors: Historical Perspective on Noncompliance with Labor and Worker Safety Laws: Hearing before the Subcommittee on Oversight and Investigations of the H. Comm. on Education and the Workforce*, 105th CONG. 2 (1998) (statement of Cornelia M. Blanchette, Associate Director, Education and Employment Issues, Health, Education, and Human Services Division, GAO), available at <http://www.gao.gov/archive/1998/he98212t.pdf>.

33. *Id.*

34. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2, at 17. CAPAF reviewed security companies contracted in 2006 by four large federal agencies that do significant amounts of contracting: the Departments of Homeland Security, Energy, Justice, and Health and Human Services.

IV. TAXPAYER VALUE

Poor working conditions for employees of government contractors can cause taxpayers to receive less than full value in government contracts. Low-wage workers who do not receive health insurance from their employers often rely on Medicaid and other public health programs for medical care. The poorest may qualify for food stamps, the Women, Infants and Children program that provides money for special supplemental nutrition, and other in-kind welfare benefits. When an employer pays low wages and benefits to its workers, the taxpayer picks up the difference through public assistance services for low-income Americans. In practice, this amounts to a government subsidy for low-road companies, which places high-road companies at a competitive disadvantage.

Many studies have been conducted on the hidden public cost of low-wage work. A 2004 study found that the state of California spends \$10.1 billion every year in public assistance for working families with full-time jobs that paid less than \$8 per hour—nearly half of the state's total expenses on these programs.³⁵

Federal apparel contractors commonly had to supplement their incomes with federal assistance programs such as Medicaid, food stamps, and tax credits under the Earned Income Tax Credit. The report estimated that a 100-person factory qualified for a total of \$292,280 worth of public assistance programs per year.³⁶

Furthermore, research finds that when contractors cut corners with their workers, the final product they deliver to taxpayers often suffers. As early as the 1980s, an audit by the U.S. Department of Housing and Urban Development found a “direct correlation between labor law violations and poor quality construction” on HUD projects, and that these quality defects contributed to excessive maintenance costs. HUD's Inspector General concluded that “[T]his systematic cheating costs the public treasury hundreds of millions of dollars, reducing workers' earnings, and driving the honest contractor out of business or underground.”³⁷

More recently, a survey of New York City construction contractors by New York's Fiscal Policy Institute found that contractors with workplace

35. CAROL ZABIN, ARINDRAJIT DUBE & KEN JACOBS, U.C. BERKELEY INST. FOR LABOR & EMP., *THE HIDDEN PUBLIC COSTS OF LOW WAGE JOBS IN CALIFORNIA* 13 (2004).

36. UNITE HERE!, *supra* note 29, at 22.

37. U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF THE INSPECTOR GEN., *AUDIT REPORT ON MONITORING AND ENFORCING LABOR STANDARDS* (1983), p. 13, *cited in* DALE BELMAN & PAULA VOOS, INST. FOR WISCONSIN'S FUTUREM PREVAILING WAGE LAWS IN CONSTRUCTION: THE COSTS OF REPEAL TO WISCONSIN (1995), p. 10.

law violations were more than five times as likely to have a low performance rating than contractors with no workplace law violations.³⁸

Of the top 50 contractors cited as the most wasteful by the Project on Government Oversight, 28 had reported labor violations including religious, racial, age, and disability discrimination, retaliation against worker complaints, workplace safety violations, harassment, unfair termination, nonpayment of overtime, and radioactive contamination of workers.³⁹

Recent research by the Center for American Progress Action Fund found a similar correlation between contractors' failure to adhere to basic labor standards and wasteful practices and sometimes even a correlation between this failure and illegal activity.⁴⁰

Similarly, according to the GAO, contracting companies have hired security guards for Army bases with criminal records. "At two separate installations," the GAO found, "a total of 89 guards were put to work even though they had records relating to criminal offenses, including cases that involved assault and other felonies."⁴¹ Recent investigations of the U.S. Embassy in Kabul, Afghanistan found that "serious understaffing, bullying by management, petty corruption and abusive work conditions" among contracted security guards "threatened the security of the compound."⁴²

V. BEST PRACTICES

The Center for American Progress Action Fund and our allies have identified reforms the federal government can adopt to ensure that contracting delivers quality services and value for the taxpayers, helps level the playing field for high-road businesses, and creates the types of good jobs that communities need. Many of these best practices are modeled after the policies of American state and local governments, which have led the way in promoting higher standards for the treatment of contract workers.⁴³

38. MOSHE ADLER, FISCAL POL'Y INST., PREQUALIFICATION OF CONTRACTORS: THE IMPORTANCE OF RESPONSIBLE CONTRACTING ON PUBLIC WORKS PROJECTS 5 (2003), available at <http://www.columbia.edu/~ma820/prequalification.doc>.

39. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2. See PROJECT ON GOV'T OVERSIGHT, FEDERAL CONTRACTOR MISCONDUCT DATABASE, <http://www.contractormisconduct.org> (last visited December 8, 2010).

40. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2.

41. U.S. GOV'T ACCOUNTABILITY OFFICE, CONTRACT SECURITY GUARDS; ARMY'S GUARD PROGRAM REQUIRES GREATER OVERSIGHT AND REASSESSMENT OF ACQUISITION APPROACH (2006), available at <http://www.gao.gov/new.items/d06284.pdf>.

42. Ginger Thompson & Mark Lander, *Company Kept Kabul Security Contract Despite Record*, N.Y. TIMES, Sept. 11, 2009, at A1.

43. DAVID MADLAND, KARLA WALTER, PAUL K. SONN, & TSEDEYE GEBRESELASSIE, CTR. FOR AM. PROGRESS & NAT'L EMP. LAW PROJECT, CONTRACTING THAT WORKS: A TOOLKIT FOR STATE AND

For example, more than 140 cities and one state—Maryland—have adopted “living wage” laws ensuring that public contractors pay their workforces a non-poverty wage;⁴⁴ New York City has become a model of transparency with its public Vendex database containing important information about contracting companies;⁴⁵ California is a leader for its rigorous pre-screening process;⁴⁶ and the city of El Paso uses bid scoring to promote healthcare coverage among contracted workers.⁴⁷ The federal government can and should replicate reforms that have been successfully implemented by cities and states.

Today, more than ever, there is an opening to reform federal contracting. President Obama has announced a commitment to curbing waste, fraud and abuse in government contracting, and has begun to take significant steps to overhaul the contracting process.⁴⁸ This much-needed modernization provides the federal government with an opportunity to generate good jobs through federal contracting by adopting the best practices outlined here:

A. Careful review of decisions to contract out

The U.S. government can protect taxpayers and workers and promote quality service through careful review of decisions to contract out work in the first place. Government should contract out to the private sector only those services that public employees cannot perform capably and cost-effectively and which do not involve functions that, for accountability reasons, should only be performed by government.

Currently, there is significant evidence that many inherently governmental functions, such as policymaking, procurement, and budgeting are being performed by contractors.⁴⁹ President Obama acknowledged that

LOCAL GOVERNMENTS, (2010) [hereinafter MADLAND ET AL., CONTRACTING THAT WORKS], available at http://www.americanprogressaction.org/issues/2010/03/contracting_that_works.html.

44. NAT’L EMP. L. PROJECT, LIVING WAGE LAWS, http://www.nelp.org/index.php/site/issues/category/living_wage_laws (last visited Oct. 27, 2010); for background on Maryland’s State Living Wage Law, see <http://dllr.maryland.gov/labor/prev/livingwage.shtml>.

45. MADLAND ET AL., CONTRACTING THAT WORKS, *supra* note 43, at 8.

46. *Id.* at 4.

47. DAVID MADLAND, KARLA WALTER, PAUL K. SONN & TSEDEYE GEBRESELASSIE, CTR. FOR AM. PROGRESS ACTION FUND & NAT’L EMP. LAW PROJECT, MAKING CONTRACTING WORK: PROMOTING GOOD WORKPLACE PRACTICES IN THE FEDERAL PROCUREMENT PROCESS (2009) [hereinafter MADLAND ET AL., GOOD WORKPLACE PRACTICES], available at http://www.americanprogressaction.org/issues/2009/06/pdf/government_contracting.pdf.

48. Memorandum on Gov’t Contracting, *supra* note 3.

49. *Responsibility in Federal Homeland Security Contracting: Hearings Before the House Committee on Homeland Security*, 110th Cong. (2007) (testimony of Scott Amey, Gen. Counsel On Gov’t Oversight), available at <http://www.homelandsecurity.house.gov/SiteDocuments/20070420152245-66206.pdf>; *Inherently Governmental Functions: Government Agency vs. Private Sector Management*, BALANCED SCORECARD INST., available at <http://www.balancedscorecard.org/>

“the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined.”⁵⁰

The Obama administration should identify consistent procedures for determining whether contracting work out is in the public interest and ensuring that privatization decisions have appropriate oversight, stakeholder input, and accurate analysis of the benefits and costs. Important factors to consider when determining the long term costs of contracting out work are: the quality and long-term sustainability of privatized services, as well as the costs of monitoring and enforcing existing contracts, “fixing” poorly executed contracts, and provision of public assistance to the workforces of the many contractors that provide low wages and benefits.

The Office of Management and Budget has released a draft policy letter to provide guidance on when governmental outsourcing for services is and is not appropriate.⁵¹ The draft letter is an important step forward in ensuring that “inherently governmental” activities are not outsourced, but it should be strengthened to guarantee that existing contracts are not jeopardizing the public interest; the new limitations on jobs that may not be contracted out cover all inherently government functions and those that approach this category; and strong, ongoing oversight be used to monitor contracts post-award.⁵²

B. Pre-screening for responsible contractors

Making sure that workers and taxpayers are protected requires strong oversight. The federal government can improve the quality of companies that it does business with by instituting more rigorous screening of prospective vendors to weed out companies with histories of violating workplace laws and other important regulatory protections.

Officials at individual government agencies are supposed to evaluate every company's responsibility record before awarding contracts or conducting other types of transactions. Contracting rules require federal

BSCResources/ArticlesWhitePapers/InherentlyGovernmentalFunctions/tabid/110/Default.aspx; *see also* FAR 7.503 (2010).

50. Memorandum on Gov't Contracting, *supra* note 3.

51. Notice of Proposed Policy Letter, 75 Fed. Reg. 16188 (Mar. 31, 2010).

52. *See, e.g.*, SCOTT AMEY, PROJECT ON GOV'T OVERSIGHT, POGO ADVOCATES FOR ADDITIONAL PROTECTIONS WHEN CONSIDERING WORK PERFORMED BY GOVERNMENT OR CONTRACT EMPLOYEES (2010), *available at* <http://www.pogo.org/pogo-files/letters/contract-oversight/co-gp-20100601.html>; OMB WATCH, COMMENTS ON NOTICE OF PROPOSED OFPP POLICY LETTER, WORK RESERVED FOR PERFORMANCE BY FEDERAL AND GOVERNMENT EMPLOYEES, 75 Fed. Reg. 61 (Mar. 31, 2010), *available at* http://www.ombwatch.org/files/budget/OMB_Watch_Inherently_Governmental_Comments.pdf.

agencies to restrict contracting to responsible companies that “have a satisfactory record of integrity and business ethics.”⁵³

Yet inadequate information and guidance on how to determine responsibility hampers contracting officers and other agency officials’ ability to implement these rules. As a result, rather than a thorough pre-screening, the responsibility process is more of a check-the-box exercise that allows serious and persistent lawbreakers to continue receiving contracts.⁵⁴

Also, even though various enforcement agencies—such as the Internal Revenue Service, Environmental Protection Agency and Occupational Safety and Health Administration—maintain databases tracking companies’ legal track records, this information has been difficult for contracting officers making responsibility determinations to access and interpret.⁵⁵

The federal government recently developed a new contractor responsibility database that, if improved (see “*Increased data collection and transparency*” section below), could substantially improve access to responsibility records.⁵⁶ However, without clear guidelines and rigorous analysis to supplement current regulations, contracting officers may continue to treat responsibility determinations as a formality.

The administration may soon take steps to improve responsibility guidance. Vice President Biden’s Middle Class Task Force issued its annual report in February, 2010 announcing that it is “looking at ways to improve the procurement process by making it less likely that irresponsible businesses will get Federal contracts.”⁵⁷

The federal government can ensure that the front-end responsibility prescreening process includes rigorous review of companies’ responsibility records by providing clear criteria on what constitutes disqualifying behavior, as well as analysis and data so that contracting officers have adequate guidance in evaluating whether or not to do business with a particular company.

53. 48 C.F.R. § 9.104-1 (2010).

54. DAVID MADLAND & KARLA WALTER, CTR. FOR AM. PROGRESS ACTION FUND, REIN IN IRRESPONSIBLE OIL DRILLERS: GOVERNMENT SHOULDN’T HAVE BEEN DOING BUSINESS WITH BP IN THE FIRST PLACE (2010), available at http://www.americanprogressaction.org/issues/2010/06/bp_contracts.html.

55. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2, at 21.

56. Federal Awardee Performance and Integrity Information System, <http://www.ppirs.gov/fapiis.html> (last visited Nov. 27, 2010).

57. VICE PRESIDENT OF THE UNITED STATES, ANNUAL REPORT OF THE WHITE HOUSE TASK FORCE ON THE MIDDLE CLASS (2010), available at <http://www.whitehouse.gov/sites/default/files/microsites/100226-annual-report-middle-class.pdf>.

C. Set high standards for wages and benefits

Government can protect vulnerable workers from unfair exploitation and prevent unscrupulous contractors from competing on the basis of wages by instituting strong wage standards. These standards must be high enough so that when the government contracts with private companies to provide services for the government, they create quality jobs in the process.

The three major prevailing-wage laws—Davis-Bacon, Service Contract, and Walsh-Healy—were intended to combine to protect comprehensively federally contracted workers from low wages.⁵⁸ But because of court rulings and statutory and administrative exemptions, many contracted workers are excluded from the protection of prevailing-wage laws.⁵⁹

Also, for many jobs, the minimum prevailing-wage and benefits allowed are below a living wage.⁶⁰ While prevailing wages have helped millions of workers, the prevailing wages for some jobs are quite low.⁶¹ For all Walsh-Healy contracted jobs, the prevailing-wage is the federal minimum wage, and for some Davis-Bacon and Service Contract Act jobs, the prevailing wage is not a living wage. Also, some federally contracted workers do not receive benefits, such as health care.⁶² While employers are required to pay the cash-equivalent of prevailing benefits, this may not be enough to purchase benefits—in some cases the value of the prevailing benefits is \$0.⁶³ Finally, the highly technical process of determining prevailing wages has been criticized by businesses, labor groups, and the federal government itself and may not always accurately reflect actual market conditions, in part because of infrequent updates.⁶⁴

Federal law should be reformed so that all contract workers are at least covered by prevailing-wage laws, and businesses and workers can count on accurate prevailing-wage determinations that pay living wages and adequate benefits.

D. Provide incentives to raise wages and benefits above the legal floor

Government can also develop 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

58. WHITTAKER, *supra* note 4.

59. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2, at 1-2, 18.

60. *Id.* at 1-2.

61. *Id.* at 10.

62. *Id.*

63. See Wage Determinations OnLine.gov, <http://www.wdol.gov/> (last accessed June 24, 2010) to calculate examples.

64. GAO, *supra* note 31, p. 16.

can encourage companies to raise standards even further and ensure that government contracting leads to high-quality work for taxpayers by giving extra consideration in the contractor selection process to employers that provide good jobs.⁶⁵

Currently, most government agencies award contracts based on a best value approach in which they consider both price and a number of other non-cost factors that may include the strength of a bidder's past performance, small business subcontracting plan, technical approach, and managerial capacity.⁶⁶ The primary aim of this bid evaluation process is for the federal government to obtain the "best value," but it also serves to advance social policy goals, such as promoting small businesses or directing contracting to underserved areas. Occasionally, the federal government has also considered the wages and benefits paid to contracted workers when evaluating negotiated bids.⁶⁷

The administration may soon take steps to encourage contractors to raise their wages and benefits. Vice President Biden's Middle Class Task Force issued its annual report in February 2010, which announced that it is now looking at ways to improve the procurement process by "allowing procurement officers to consider job quality when awarding contracts while not raising the quality-adjusted costs of contracts."⁶⁸

By requiring contracting officers to evaluate bidders' labor practices—and thereby increasing the likelihood that companies with better practices will win contracts—companies will be motivated to adopt more positive workplace practices. In evaluating contractor proposals, significant weight should be given to employers with highroad workforce practices such as low turnover rates, provision of livable wages, or availability of quality benefits or paid leave.

Moreover, these incentives can potentially have a broad reach. The government could raise job standards throughout the private sector by evaluating job quality across a contractor's entire American workforce, rather than just for contracted workers.

65. MADLAND ET AL., GOOD WORKPLACE PRACTICES, *supra* note 47, p. 1.

66. *Id.* at 2.

67. Evaluation of wages and benefits has been upheld. *E.g.*, Northrop Grumman Tech. Servs., Inc.; Raytheon Tech. Servs. Co., B-291506 (Comptroller Gen., Jan. 14, 2003) (In awarding a contract for the operation of the U.S. Army Kwajalein Atoll-Ronald Reagan Ballistic Missile Defense Site, the U.S. Army Space and Missile Defense Command evaluated bidders' proposed staffing levels, wages and benefits to determine whether they were realistic for the positions being filled and effective in both recruiting and retaining personnel. In a review of the bid process, the U.S. Comptroller General supported Army's decision to downgrade the losing bidders' evaluations based on insufficient staffing, and low pay and benefits); *see also*, General Security Servs. Corp., B-280959 (Comptroller Gen., Dec. 11, 1998) (approving bid award requiring security guard contractor to pay wages above rates set by Service Contract Act in order to assure service quality and continuity).

68. VICE PRESIDENT OF THE UNITED STATES, *supra* note 57.

E. Strong post-award enforcement

Protecting workers and taxpayers requires continued oversight once bids have been awarded. Government must have the capacity to monitor continuously post-award legal compliance—especially in high-violation industries and locations—and to make sure that potential lawbreakers know that their ability to obtain future contracts is jeopardized by serious non-compliance. Best practices include periodic evaluation of contractors' performance, targeted enforcement, and innovative partnerships.

For too long, the Department of Labor, which is responsible for enforcing prevailing-wage laws, did not adequately enforce labor laws, in part because it was underfunded and understaffed.⁶⁹ For example, instead of targeting industries or geographic regions that were known to contain a preponderance of SCA violators, the DOL investigated only when someone filed a complaint—even though employees may not have known they were being cheated or may have been afraid to file a complaint.⁷⁰

However, the Obama administration and Congress have placed renewed focus on enforcement of labor and employment laws.⁷¹ The FY2010 budget and the American Recovery and Reinvestment Act increased funding for enforcement staff.⁷² The President's Secretary of Labor Hilda Solis has dubbed herself the "new sheriff in town," vowing that the department "will not rest until the law is followed by every employer, and each worker is treated and compensated fairly."⁷³

The DOL is also using its regulatory powers to increase transparency, protect workers and responsible business owners, and prevent workplace violations such as inadequate safety protections, discrimination, minimum wage, and child labor violations.⁷⁴ With this new strategy, the DOL is attempting to change the culture of compliance so that all employers and others in the department's regulated communities understand that the

69. DAVID MADLAND & KARLA WALTER, CTR. FOR AM. PROGRESS ACTION FUND, ENFORCING CHANGE: FIVE STRATEGIES FOR THE OBAMA ADMINISTRATION TO ENFORCE WORKERS' RIGHTS AT THE DEPARTMENT OF LABOR 17 (2008), available at <http://www.americanprogressaction.org/issues/2008/pdf/dol.pdf>.

70. GAO, *supra* note 31.

71. DAVID MADLAND & KARLA WALTER, CTR. FOR AM. PROGRESS ACTION FUND, DATA MATTERS: HOW THE NATION'S TOP LABOR COP CAN USE DATA TO DRIVE ENFORCEMENT AND PROTECT AMERICAN WORKERS, (2010), available at http://www.americanprogressaction.org/issues/2010/03/data_matters.html; Sam Hananel, *Labor Moves Quickly on Job Safety, Workers' Rights*, ASSOCIATED PRESS, Jan. 1, 2010, available at <http://abcnews.go.com/Business/wireStory?id=9460816>.

72. OFFICE OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOV'T, FISCAL YEAR 2010; American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

73. Hananel, *supra* note 71.

74. Labor Rules: U.S. Dep't of Labor Spring 2010 Regulatory Agenda, Panel discussion at the Center for American Progress (Apr. 26, 2010), available at <http://www.americanprogress.org/events/2010/04/UnifiedAgenda.html>.

burden is on them to obey the law—not on the DOL to catch them violating the law.⁷⁵

For example, the department is considering regulations that would require employers to develop proactive plans for protecting their workers' rights and safety.⁷⁶ Employers would need to implement those plans, submit them to DOL enforcement agencies, and ensure that the plans do what they are designed to do.⁷⁷

While these are promising developments, it is of particular concern that the top Wage and Hour Division administrator—who would offer important guidance in enforcing prevailing wage laws—still has not been appointed to head the division.⁷⁸

F. *Increased data collection and transparency*

Good data collection, analysis, and public disclosure—including information about working conditions and past legal violations—can help ensure that contractors are complying with the law and promote public confidence in government decision making. Government can strengthen contractor accountability and reduce wasteful and abusive practices by centralizing the collection of contractor responsibility data into a single database and requiring contracting officers to consult such data when evaluating bids.

The federal government maintains many databases tracking contractors. This includes several contracting databases designed to track contractors' past performance and records of debarment. Enforcement agencies, such as the IRS, EPA and OSHA, also maintain databases tracking companies' legal track records.⁷⁹ However, too often important information about contractors' records is difficult to access and interpret, and contracting officers do not effectively use the data.

In an important step forward, Congress required the creation of a contractor responsibility database in the 2009 National Defense Authorization Act.⁸⁰ The new database collects information on contractors'

75. *Id.*

76. *Id.*

77. *Id.*

78. President Barack Obama announced his intent to nominate Leon Rodriguez for Wage and Hour Division Administrator in December, 2010. Mr. Rodriguez currently serves as Deputy Assistant Attorney General and Chief of Staff in the Civil Rights Division of the U.S. Department of Justice. This will be the President's second nomination for the Wage and Hour Division's top position. But the Senate has failed to confirm an administrator. Nancy J. Leppink, Deputy Wage and Hour Administrator, has been leading the Wage and Hour Division since September 2009.

79. MADLAND ET AL., MAKING CONTRACTING WORK FOR THE UNITED STATES, *supra* note 2, at 21.

80. Duncan Hunter National Defense Authorization Act of Fiscal Year 2009 § 872, 41 U.S.C.A. § 417b (West 2010).

past performance and legal violations. Contracting officers are required to access this information when assessing contractor performance and responsibility.⁸¹ Also, language included in the recently enacted 2010 Supplemental Disaster Relief and Summer Jobs Act requires the database to be accessible to the public, allowing public comment when data is incorrectly recorded and raise concerns regarding irresponsible bidders.⁸²

Previously, if a contracting officer wanted to evaluate a company's track record, she had to look through dozens of different government sources. Companies could be listed differently under each system, and there were no universal identification numbers linking firms throughout all the databases.

Unfortunately, the responsibility database omits significant legal violations—including violations of labor and employment law and information on recipients' private sector compliance history that is tracked in existing government databases.⁸³ Contracting officers will not be given sufficient guidance to evaluate bidders' legal records.

While the new responsibility database is an important step in the right direction, all significant legal violations should be included in the database.⁸⁴ Also, this data needs to be properly analyzed in order to be used effectively. Although contracting officers are required to review the records contained in the new database before making responsibility decisions, the process will not provide meaningful analysis of legal violations. Without sufficient analysis of past legal violations, contracting officers will be forced to undertake the difficult and inefficient process of sifting through millions of legal records and making decisions about whether past violations are enough to find a contractor not responsible.

VI.

POLICY OUTCOMES

Past federal and local government contracting reforms demonstrate that the reforms outlined here can be successful. Similar contracting reforms have improved labor standards, increased competition among bidders, and decreased government waste.⁸⁵ Also, these reforms have not had the

81. *Id.*

82. Supplemental Disaster Relief and Summer Jobs Act of 2010 § 3010, 41 U.S.C.A. § 417b(e)(1) (West 2010).

83. Letter from David Madland, Dir., American Worker Project, Center for American Progress Action Fund, to Hada Flowers, Supervisor, Regulatory Secretariat, General Services Administration (Nov. 4, 2009), available at http://www.americanprogressaction.org/issues/2009/11/pdf/ndaa_letter.pdf.

84. *Id.*

85. See, e.g., MICHAEL REICH, PETER HALL & KEN JACOBS, U.C. BERKELEY INST. OF INDUSTRIAL RELATIONS, LIVING WAGES AND ECONOMIC PERFORMANCE: THE SAN FRANCISCO AIRPORT MODEL (2003), available at http://www.irl.berkeley.edu/research/livingwage/sfo_mar03.pdf; Jonathan S.

negative impacts their opponents claim: studies indicate that they have not decreased employment or significantly increased government costs.⁸⁶

At the federal level, Executive Order 11246—requiring all individuals working for federal contractors have an equal opportunity for employment—has made the contracted workforce significantly more diverse.⁸⁷ Signed by President Johnson in 1965, this procurement policy has been key to creating equal opportunity and has promoted a dramatic increase in the percentage of women and minorities who are managers at firms that contract with the federal government.⁸⁸

For example, studies show that both minority and female employment increased significantly faster in contractor than in non-contractor establishments—12 percent faster for black females, 3 percent faster for white females, 4 percent faster for black males, and 8 percent faster for other minority males.⁸⁹

Many local governments across the country have instituted living wage laws to promote higher standards for the treatment of contract workers. These efforts have significantly raised wages and benefits for contracted workers and in some cases there is evidence of ripple effects on the wages of workers not covered by the mandated living wage.⁹⁰

For example, adoption of a living wage ordinance at the San Francisco International Airport had a significant effect on the wages of both covered and uncovered positions.⁹¹ The proportion of San Francisco airport non-managerial ground workers earning under \$10 per hour fell from 55 percent to 5 percent, and the average pay of workforce increased by 22 percent (or \$56.6 million). Of this, \$34.6 million were direct wage increases benefiting workers covered by the living wage policy, \$9.9 million was related to general market-based increases that would have occurred without the living wage policy, and \$12.1 million were ripple effect wage increases received

Leonard, *The Impact of Affirmative Action on Employment*, 2 J. LAB. ECON 439 (1984); DEP'T OF LEGISLATIVE SERVS., OFFICE OF POLICY ANALYSIS, *IMPACT OF THE MARYLAND LIVING WAGE* (2008), available at <http://www.chamberactionnetwork.com/documents/LivingWage.pdf>.

86. See, e.g., PAUL SONN & TSEDEYE GEBRESELASSIE, NAT'L EMPLOYMENT LAW PROJECT, *THE ROAD TO RESPONSIBLE CONTRACTING: LESSONS FROM STATES AND CITIES FOR ENSURING THAT FEDERAL CONTRACTING DELIVERS GOOD JOBS AND QUALITY SERVICES* (2009), available at http://nelp.3cdn.net/985daceb6c3e450a10_pzm6brsaa.pdf; T. William Lester, *The Impact of Living Wage Laws on Urban Economic Development Patterns and the Local Business Climate* (Sept. 10, 2009) (UC Berkeley Inst. For Research on Labor and Employment, Working Paper Series), available at <http://escholarship.org/uc/item/9313w788>.

87. Leonard, *supra* note 85, p. 440.

88. *Id.*, p. 459.

89. *Id.* at 451.

90. REICH, ET. AL., *supra* note 85; DAVID CHAPMAN & DAVID THOMPSON, ECON. POL'Y INS., EPI BRIEFING PAPER 170 (2006); David Fairris, *The Impact of Living Wages on Employers: A Control Group Analysis of the Los Angeles Ordinance*, 44 INDUS. REL. 84, 97 (2005); Mark D. Brenner, *The Economic Impact of the Boston Living Wage Ordinance*, 41 INDUS. REL. 59 (2005).

91. REICH, ET. AL., *supra* note 85, p. 9.

by workers not covered by the policy but still affected by it. Evidence suggests that employers not covered by the living wage policy raised wages at a faster rate than they otherwise would have in order to keep employees from leaving for higher pay jobs covered by the ordinance and to match the new wage norms.⁹²

Moreover, the claims from opponents of contracting standards raising costs have proven to be significantly overstated. Such reforms, as shown below, have increased competition for government contracts, ensured that taxpayers get good value for their money, and have not weakened the labor market.

Local governments have also demonstrated that improving labor standards for the contracted workforce can create cost savings efficiencies for firms and government. A review of these practices by the National Employment Law Project finds, “. . . better paid workforces typically enjoy decreased employee turnover (with corresponding savings in re-staffing costs), increased productivity, and improvements in the quality and reliability of the services that they provide.”⁹³ Turnover rates for security screeners at the San Francisco airport, for example, fell by 80 percent after adoption of the living wage ordinance, from 94.7 to 18.7 percent.⁹⁴ Firms have also reported lower their profits as a means of addressing higher labor costs. In Boston, nearly 40 percent of affected firms reported doing so after passage of a living wage ordinance.⁹⁵

State and local governments that have adopted similar policies have experienced negligible increases in contracting costs. Living wage law studies—even without factoring in the laws’ ability to increase quality and reduce the costs of providing income assistance to low-wage contract workers—typically find minimal, if any, increases in contracting costs.⁹⁶

92. *Id.* at 37-40.

93. SONN & GEBRESELASSIE, *supra* note 86, at 3.

94. REICH, ET. AL., *supra* note 85, p. 10..

95. Brenner, *supra* note 90, at 78.

96. *See, e.g.*, MARK WEISBROT & MICHELLE SFORZA-RODERICK, PREAMBLE CENTER FOR PUBLIC POLICY, BALTIMORE'S LIVING WAGE LAW: AN ANALYSIS OF THE FISCAL AND ECONOMIC COSTS OF BALTIMORE CITY ORDINANCE 442 (1996) , *cited in* Mark Brenner, U. MASS. POL. ECON. RESEARCH INS., “The Economic Impact of Living Wage Ordinances, (2004)” ; Christopher Niedt, Gret Ruiters, Dana Wise & Erica Schoenberger, *The Effects of the Living Wage in Baltimore* 9 (Econ. Pol’y Inst., Working Paper No. 119, 1999); ANDREW ELMORE, BRENNAN CTR. FOR JUSTICE, LIVING WAGE LAWS & COMMUNITIES: SMARTER ECONOMIC DEVELOPMENT, LOWER THAN EXPECTED COSTS 6-8 (2003); MARK BRENNER & STEPHANIE LUCE, U. MASS. POL. ECON. RESEARCH INS., LIVING WAGE LAWS IN PRACTICE: THE BOSTON, NEW HAVEN AND HARTFORD EXPERIENCES 24-26 (2005). Two separate studies of Baltimore’s living wage law, conducted by the Preamble Center for Public Policy and the Economic Policy Institute, found that after adjusting for inflation, the real cost of city contracts actually decreased after the law took effect. A 2003 Brennan Center for Justice study of 20 cities and counties that had adopted living wage ordinances found that in most municipalities “contract costs increased by less than 0.1 percent of the overall local budget in the years after a living wage law was adopted.”

Contrary to the expectations of some economists who predict that contracting regulations will cause negative employment effects, many researchers have found that adoption of living wage ordinances have little impact on employment levels.⁹⁷ An Institute for Research on Labor and Employment Relations report examining the effects of the 19 living wage laws in California jurisdictions found that the laws are not associated with reductions in employment or establishments in directly related industries, and do not harm cities' business climates when companies make location or relocation decisions.⁹⁸

Just as importantly, promoting higher standards encourages highroad companies to bid on projects. For example, after Maryland implemented a living wage standard, the average number of bids for contracts in the state increased nearly 30 percent—from 3.7 to 4.7 bidders per contract.⁹⁹ Nearly half of the contractors interviewed by the state of Maryland said that the new labor standards encouraged them to bid on contracts because it leveled the playing field. Several companies commented that in the future they will only bid on living wage contracts because of the leveling effect it has on competition. One current contractor noted that her contract was the first state procurement for which her firm had submitted a bid. She explained that without strong labor standards, “the bids are a race to the bottom. That’s not the relationship that we want to have with our employees. [The living wage] puts all bidders on the same footing.”¹⁰⁰

Other studies of local efforts to raise labor standards in contracting have found similar effects. A study of the Boston, Hartford and New Haven living wage laws found that “competitive bidding remains strong under living wage ordinances, and that such laws may even boost the number of bidders on city contracts.”¹⁰¹ And a review of the San Francisco Public Utilities Commission responsible contracting “prequalification” system has increased the pool of highly experienced firms willing to bid for

Finally, the Political Economy Research Institute study of living wage ordinances in three New England cities found that the overall costs of contracting only rose in one city.

97. See, e.g., CHAPMAN & THOMPSON, *supra* note 90; Lester, *supra* note 86; Brenner, *supra* note 90, at 73-75. Studies by David Neumark and Scott Adams are an exception to the general findings on employment effects, reporting significant decreases in employment as a result of cities adopting living wage policies. However, these studies have been criticized for using data and methods that vastly overstate the number of workers eligible under the living wage law. Also, Neumark and Adams report that the negative employment effect is driven by laws that extend the living wage requirement to firms that are recipients of business assistance (such as grants and tax breaks), and that laws covering only employees of contractors do not have significant impacts on employment. See Scott Adams & David Neumark, *When Do Living Wages Bite?*, 44 INDUS. REL. 164, 164 (2005).

98. Lester, *supra* note 86, at 30.

99. OFFICE OF POLICY ANALYSIS, IMPACT OF THE MARYLAND LIVING WAGE, *supra* note 85, at 10.

100. *Id.*

101. BRENNER & LUCE, *supra* note 96, at 15.

its work and created an environment in which firms of similar caliber compete against one other for agency contracts.¹⁰²

VII.

CONCLUSION

The Obama administration and leaders in Congress have expressed the desire to reform the federal procurement system to curb waste, fraud and abuse, protect taxpayers and serve once more as a model for the private sector. The contractor responsibility database passed in the 2009 National Defense Authorization Act offers an important opportunity to improve contractor responsibility standards, and President Obama's efforts to reform government contracting are an important step forward in ensuring that inherently governmental activities are not outsourced.

However, reforms to ensure quality jobs require further action by both the executive and legislative branch. Some of the best practices outlined in this paper—such as reform of prevailing wage laws—will require action by Congress. However, others can be achieved through executive action—such as instituting incentives to raise wages and benefits above the legal floor, and improved guidance for contracting officers on how to evaluate the responsibility records of bidders.

The government has long taken the moral stand that contracting should not merely be a way to acquire goods and services cheaply. Rather, it has viewed contracting as a way to establish itself as a model employer and a positive example to the private sector. This report has laid out concrete, achievable reforms in order for government contracting to do so.

These best practices would significantly improve the federal contracting process and help reduce the amount of money the federal government spends providing services. They would also ensure that companies that treat their workers well can compete on a level playing field. And most importantly, this improved bid evaluation process would help raise the pay and benefits of many federally contracted workers who are struggling to get by, and thus take an important step toward rebuilding the middle class.

102. SONN & GEBRESELASSIE, *supra* note 86, at 3.

