



Responsible Contracting and Good Jobs: A Challenge for New York

I. Introduction

The State of New York spends tens of billions of dollars annually on procurement and contracting for services and goods that range from port security to nursing uniforms to construction projects. Though the jobs financed by this contracting are supported with public dollars, their quality – as measured by wages, benefits and work conditions – is often poor. Compounding that challenge are legal and administrative hurdles that prevent localities from implementing living wages and raising the bar for labor standards generally. Thus the difficulties facing workers in contracting industries – a “race to the bottom” system that incentivizes shoddy labor practices – are reinforced by the difficulties of the most vulnerable non-union workers, who confront poverty wages and extreme job insecurity.

II. The challenges

The problems described above manifest themselves in the following ways:

- Bids of high road companies are passed over in favor of cheaper bids from low roaders, depressing industry standards and complicating organizing efforts. This occurs in part because there is no meaningful definition of “responsible” in bidding regulations and no incentive to implement high road practices like paid sick days, good family benefits and living wages.
- The practices of companies that do receive contracts are not adequately monitored to ensure compliance with existing rules. Wage misclassification and other unpunished violations are particular problems in construction.
- Minimum wage is too low to meet basic needs even of individuals; local governments face very significant obstacles to raising standards.

The above problems are mutually reinforcing. The prevalence of minimum wage jobs (in sectors such as building service, for example) makes the work of union organizing more difficult and weakens unions’ power generally. Similarly, “race to the bottom” standards for contracting companies – which should, by virtue of receiving public dollars, be taking the highest road – depresses labor practices overall. Improving the state’s process of procurement and contracting will be one key component of lifting working New York from the recession. Strengthening job standards (such as raising minimum wage) for low-wage non-union workers will be another.

III. Reforms to address the challenges

Reforms to address the above-named challenges are outlined below. This is not an exhaustive list of options, but an attempt to highlight a few.

Reform 1:

Meaningfully define “responsible contractor” and implement a real best value system.

Responsible contractors could be defined as those who, at minimum, provide a particular level of health insurance and other benefits, work with registered apprenticeship programs, ensure themselves against labor unrest and adhere to other specific high road practices around safety, training, etc.

The procurement process could award extra points to bidders who exceed the “responsible contractor” standards and also show dedication to environmental sustainability (small carbon footprint, good recycling practices, low emissions, etc.), and community benefits (willingness to enter into community benefit agreements with local grassroots groups when working on development projects, commitment to local hiring from targeted populations, etc.).

Precedents to the above reforms/ current work:

There have been numerous efforts on the part of cities and states across the country to raise the bar for contractors. Many examples are highlighted in a recent paper from NELP and the Center for American Progress, “Contracting that Works.”¹ They are too numerous to list here, but they include Maryland’s living wage law for public contractors and Houston’s and San Francisco’s requirement that contractors provide health benefits to their employees or pay into a fund to offset costs of services for uninsured workers.

Reform 2:

Raise the state minimum wage and/or enable localities to raise standards even higher than the state’s both with respect to contracting and minimum wages. Legally, this could be accomplished using a variety of tactics that range from passing a statute that authorizes localities to set local wages up to a specified amount to a statute that requires preemption to be explicitly stated. The messaging could emphasize local choices and efficient government rather than home rule. This would be a good corollary to a best value contracting law

Precedents/current work: Cities that have minimum wage laws that are higher than their states include San Francisco and Santa Fe. Also, while home rule campaign have been politically difficult, the NYS legislature did approve transfer of authority from the state to the city in the case of NYC’s schools -- the state allowed BOE to hand over control to the Mayor.

RWDSU’s campaign to raise minimum wage in NYC for workers on publicly funded projects is a good test case because the opposition is arguing, among other things, that RWDSU’s proposal violates preemption principles.

¹ “Contracting that Works: A Toolkit for State and Local Governments” (March 31, 2010) is available at <http://www.nelp.org/page/-/Justice/ContractingThatWorks2010.pdf?nocdn=1>

Reform 3:

Strengthen enforcement of existing rules against employee misclassification, wage theft, etc., and strengthen background checks on bidders before awarding contracts.

These reforms could include:

- Requiring contractors to submit weekly certifications of compliance with various labor and wage rules
- Automatically debarring contractors from future contracts after they've reached a particular threshold of non-compliance
- Soliciting anonymous feedback from contractors' employees
- Conducting regular spot checks, especially in industries prone to violations
- Solicit public input about bidder history and performance
- Conduct thorough evaluation of records of contractors *and* subcontractors on each bid
- Require that contractors certify proper worker classification and wage compliance before becoming eligible to bid

Increase transparency and public disclosure by centralizing data on contracting companies, allowing the public to access information on job quality, working conditions and past legal violations online.

Precedents /current work: Again, NELP's recent paper highlights work in these areas. Worcester, MA, for example, bars contractors with three or more violations from contracting with the city.

NYC's Vendex system provides some information online, but does not display details on contracting companies' performance or information on bidders.