

“HIGH ROAD” STATE PROCUREMENT: PROMOTING RESPONSIBLE LABOR STANDARDS

A Policy Brief by the Center for State Innovation

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DISCUSSION

Many states unnecessarily confine the use of their sizeable purchasing power to buying the goods and services needed by governmental agencies based solely on price. Smart buying must of course remain states’ top priority in procurement. But states too often fail to use their purchasing power to leverage other important state goals—such as ending workplace exploitation, creating high-wage jobs with good benefits, or curbing energy consumption and pollution.

State governments purchase billions of dollars of products and services each year. Linking state procurement to responsible labor standards is a smart way to make the taxpayers’ dollars do “double duty.” Without undermining the core principles of the state’s procurement policy (i.e., buying high-quality products and services at the lowest price the market will bear), state executives can take a variety of steps to link their purchases to vendors’ treatment of their employees, including the creation of family-supporting jobs that pay well, offer good benefits, and “pay back” the taxpayers by increasing the number of stable, middle-class families across the state.

Effective procurement policies and processes offer not only cost-effective, quality products and services essential to government operations, but also the opportunity to further a state’s economic growth and workforce development goals. These goals can be met by a “responsible contractor” policy that takes into consideration factors other than price. These include the past performance of the vendor (whether it has fulfilled bids on time and budget); whether the vendor complies with employment laws related to health and safety, workers compensation, and unemployment insurance; and whether the vendor pays the prevailing or a living wage.

Taking factors like this into consideration changes the goal of procurement from lowest price to best value. Best value means going beyond a narrow focus on initial low bid to the true, lifetime cost of a project. (For example, the cheapest light bulb that consumes more electricity and requires frequent replacement is not as good a value as a more costly light bulb that uses less electricity, lasts longer before it must be replaced, and thus, over time, costs less.)

As part of a reformed contracting process, many states have adopted pre-qualification requirements that weed out unscrupulous employers with a history of workplace or environmental violations.

Responsible contractor policies may be criticized for reducing the raw number of competing contractors, but they actually save money by helping states avoid the types of scandals and cost-overruns that result from dealing with contractors who lack the integrity that should be part of performing public work.

States can also save money by denying contracts to firms that “dump” their employees’ into taxpayer financed health insurance programs like Medicaid or the State Children’s Health Insurance Program (SCHIP) rather than providing good work-based health insurance.

Finally, states that procure services from responsible contractors help protect taxpayers by building a broad middle-class through good wages and good benefits.

About CSI

The Center for State Innovation (CSI) believes every state can achieve shared prosperity, environmental sustainability, and efficient democratic government. We offer evidence-based, outcome-measured, fiscally prudent strategies for doing so.

A non-partisan, not-for-profit institution, CSI provides many types of assistance to state executives interested in implementing progressive policies.

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COSTS

Procurement standards produce money-saving benefits. Low-bidding vendors often cut costs by neglecting safety or other labor standards, or by paying poverty-level wages to their employees. This results in increased state spending in administrative enforcement actions and state supported health programs.

Poor safety performance, for example, can lead to delays, bad publicity, and even criminal liability, all of which can add significantly to the real cost of the project. In 2002, Virginia's Department of Transportation suspended the state's largest road project (\$650 million) after two workers were killed within two weeks. In 2000, a businessman in Idaho was sentenced to 17 years in prison and fined \$6 million for exposing employees to life-threatening hydrogen cyanide gas during a state clean-up project.

Poor wages and benefits for employees mean greater dependence by low-income individuals on public subsidies, such as taxpayer funding for Medicaid, SCHIP, and childcare. For example, a recent study by the Center on Wisconsin Strategy found that working families represent 45 percent of families enrolled in public assistance programs. Many of these working poor individuals are concentrated in industries (i.e., the health care industry) where the state is a primary purchaser of services. Studies in California and Illinois have presented similar findings.

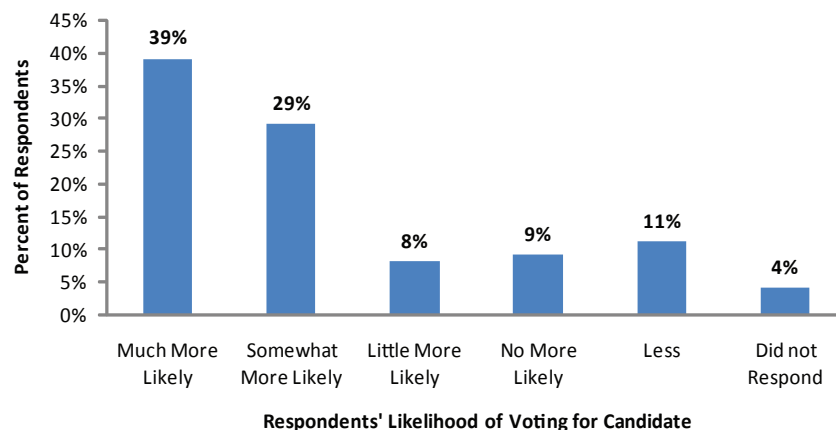
In short, the direct increased cost of purchasing is more than made up for with reductions in other, seemingly unrelated, parts of a state budget.

PUBLIC PERCEPTION

The public has demonstrated support for reforms to federal procurement and contracting practices based on a fair labor standard. In a 2007 Democracy Corps Poll, 69% of surveyed voters would be much or somewhat more likely to back a congressional candidate who supported a competitive bidding process for federal government contracts. Additionally, Americans are critical of awarding government contracts to companies that avoid taxes with offshore tax shelters. Fifty-eight percent of surveyed Americans opposed this unfair practice.

CHART

Support for Candidate in Favor of Competitive Bidding



Source: 2007 Democracy Corps Poll

Legislative debates over procurement rules also provide some insight into the sources of opposition and support.

For example, in 2007, a bill that required a living wage for state contractors' employees garnered widespread support in the Maryland General Assembly. Records of debates in the Assembly Economic Matters Committee show that opposition to the bill was limited to business groups, including the National Federation of Independent Business, the Baltimore Metro Chapter of the Associated Builders and Contractors, and the Maryland Chamber of Commerce. Support came from a wide range of groups, including the NAACP, the AFL-CIO, the American Federation of State, County and Municipal Employees (AFSCME), the Maryland chapter of the National Organization for Women, the Montgomery County Council, the Economic Policy Institute, and the Archdiocese of Washington.

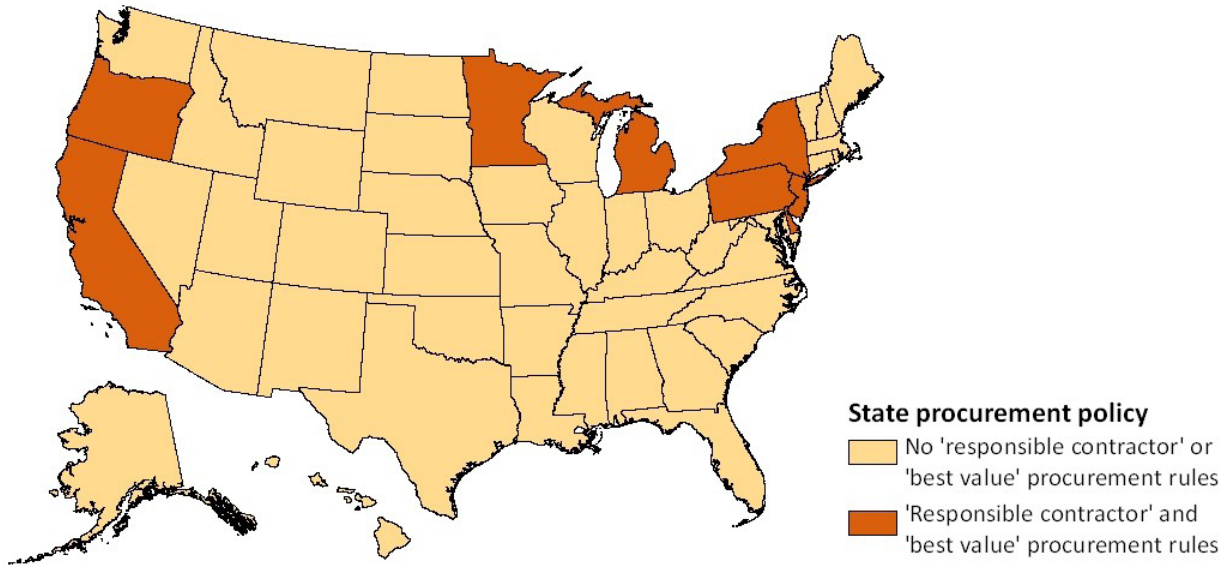
TALKING POINTS

Won't cumbersome labor standards hamper a state's ability to save money by not always going with the lowest bidder?

A smart procurement goal would be choosing the best value, not the lowest unit price. Best value contracting goes beyond a narrow focus on initial low bid to the true, lifetime cost of a project. Procurement policies that reward contractors with a good track record in safety practices and other responsible labor standards not only reflect a state's economic and workforce development priorities but represent "best value purchasing" by saving the state money in the long run. The state has a vital interest in ensuring that its procurement helps create stable, high-quality jobs so that the employees of public contractors are not forced to participate in state supported programs, but can instead help build the state's middle class.

Aren't wage and labor standards already protected through unions?

While unions undoubtedly help to promote responsible labor standards, the majority of workers are not covered by unions. According to the Union Membership and Coverage Database, in 2007, unions represented only 8.2 percent of private sector employees and 39.8 percent of public sector employees. Unionization rates also vary significantly across industry, occupation, and geographic location. Because of states' heavy investment in public works projects such as state highways or university facilities, state procurement rules have historically focused on the construction industry. In 2007, however, unions represented only 15.6 percent of construction workers, meaning that a large majority of workers remain unprotected by union-negotiated labor standards. In short, while unions can—and do—take strong action to protect their members, states themselves must act to extend labor standard protections to the majority of workers. States' refusal to contract with irresponsible employers creates substantial incentive for employers to adopt fair labor practices, regardless of whether or not workers are unionized. Through the use of procurement rules, states have the capacity to indirectly generate union-level benefits throughout an entire labor market, regardless of the degree of union coverage in that sector.



WHO ELSE IS DOING IT?

According to the National Alliance for Fair Contracting, sixteen states have adopted responsible contractor laws and best value procurement rules including California, Delaware, Illinois, Indiana, Massachusetts, Nebraska, New Mexico, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington and West Virginia.

It should be noted that over 30 states have implemented prevailing wage laws that require the payment of specified minimum wages to workers on public construction projects.

SPOTLIGHT ON INNOVATION

Illinois: In 2005, Illinois Executive Order 5 established a sweatshop-free procurement policy. The order held that all apparel and textiles procured by the state must be manufactured and laundered in facilities that (1) meet International Labor Organization standards for working conditions, (2) pay above-poverty-level wages, (3) adhere to fair hiring and firing practices, (4) guarantee a minimum amount of time off per week and per year, and (5) maintain and provide accurate wage and hour records for each worker.

Ohio: In October 2008, Ohio also adopted a sweatshop free procurement policy. Ohio governor Ted Strickland signed a 2008 Executive Order that prohibits the state from purchasing goods made in sweatshop conditions.

New Jersey: In 2006, New Jersey began to implement the New Jersey State Building Services Contract Act, which sets wage standards for service workers employed in buildings owned or leased by the state. New Jersey also has a prequalification requirement for contractors that want to bid on school facilities projects. (N.J. Statutes, Chapter 18A:7-G forward).

Maryland: In 2007, Maryland Governor Martin O'Malley made history by signing 2007 Maryland Chapter 284, the first statewide 'living wage' law. The law requires that all companies that have a contract with the state valued at more than \$100,000 must pay workers a wage that will cover all of the basic expenses of life. The new wage rates range from \$8.50 an hour in rural areas to \$11.30 an hour in the Washington-Baltimore corridor.

WHAT CAN YOU DO?

Recent experience shows a number of ways in which state executives can use state procurement policy to promote responsible labor practices:

Establish uniform procedures for vetting potential vendors

- State executives can issue executive orders to (a) require agencies to obtain a wide array of relevant background information on vendors, or (b) establish a state board, like Connecticut's State Contracting Standards Board, to prepare a uniform procurement code. Some procurement policies apply to all contracts, while some apply to a specific industry or sector.
- As part of its law on best value contracting, the California Department of Industrial Relations has created a model prequalification questionnaire for use by county and municipal governments.

Require prevailing wages to be paid under state contracts

- Prevailing wage laws require government-sponsored projects to pay workers wages equal to or greater than the most commonly found wage rate in a given local labor market. Prevailing wage laws prevent the government from putting downward pressure on average wage rates. Traditionally, prevailing wage laws have been applied to public works construction projects. More recently, however, states have begun to adopt prevailing wage laws, which include protections for service workers as well.
- Enacted in 1998, the Illinois Procurement Code requires that prevailing wages be paid to all service employees working on a state contract.
- Similarly, the New Jersey State Building Services Contract Act, which went into effect in 2006, sets wage standards for service workers employed in buildings owned or leased by the state.

Enact a 'living wage law' for all major state contracts

- 2007 Maryland Chapter 284 is the first statewide 'living wage' law, and it can serve as model state legislation.
- The National Employment Law Project provides model legislation on living wage ordinances that could be adapted to fit state laws.
- Adopt responsible contractor laws and best value procurement rules
- Delaware has both a prevailing wage law and a prequalification requirement for large public works contracts. Potential bidders must include information on experience with other public works projects, performance reviews from those projects, a list of civil and criminal judgments against the bidder, whether the bidder has been debarred or suspended by a governmental agency, whether the bidder has ever had a license suspended or revoked, and whether the bidder has ever filed for bankruptcy.

RESOURCES

Policy Reports

California Department of Industrial Relations

- "Pre-Qualification of Contractors Seeking to Bid on Public Works Projects"
http://www.dir.ca.gov/od_pub/prequal/PubWksPreQualModel.pdf

Center on Wisconsin Strategy

- "When Work Doesn't Pay: The Hidden Cost of Low-Wage Jobs in Wisconsin"
<http://www.cows.org/pdf/rp-low-wage-jobs.pdf>

FairContracting.org

- State by State Responsible Bidder/Prequalification Ordinances
<http://www.faircontracting.org/pdf/f.php>
- Online Responsible Bidder/Prequalification Resource Manual
<http://www.faircontracting.org/pdf/index.php>

Laborers-Employers Cooperation and Education Trust

- Best Value Contracting & Responsible Employer Ordinances
http://www.lecet.org/Clearinghouse_Public/LECET/bestvalue/bestvalue.htm

Laborers' Health and Safety Fund of North America

- "Best Value Contracting Opens Opportunities for Union Sector"
<http://www.lhsfna.org/index.cfm?objectID=9DDFCC96-D56F-E6FA-9D7C3D814DDBFB87>

National Alliance for Fair Contracting

- Online Responsible Bidder/Prequalification Resource Manual
<http://www.faircontracting.org/pdf/index.php>

National Employment Law Project

- Model Ordinance on Living Wages
http://nelp.3cdn.net/6303e58062184877ea_etm6bnhwj.pdf

Union Membership and Coverage Database

- <http://www.unionstats.com>

University of California Institute for Labor and Employment

- "The Hidden Public Costs of Low-Wage Jobs in California"
<http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1037&context=il>
- "The Hidden Public Cost of Low-Wage Work in Illinois"
<http://www.uic.edu/cuppa/uicued/Publications/RECENT/HiddenPublicCostMain.pdf>

Opinion Polls

Democracy Corps and Greenberg Quinlan Rosner Poll

- Likely Voter Survey February 14-February 19, 2007
http://www.gqrr.com/articles/1863/2696_Democracy_Corps_February_14-19_2007_Survey.pdf

Time, Cable News Network and Harris Interactive

- December 30-January 1, 2004
http://www.harrisinteractive.com/harris_poll/

State Programs

Connecticut

- Connecticut State Contracting Standards Board
<http://www.ct.gov/SCSB/site/default.asp>

State Legislation and Executive Orders

Delaware

- Delaware Code, Title 29, Chapter 69, Subchapter IV
<http://delcode.delaware.gov/title29/c069/sc04/index.shtml#TopOfPage>

Illinois

- Illinois Procurement Code
<http://www.state.il.us/agency/idol/rates/rates.HTM>
- 2005, Illinois, Executive Order on Sweatshop Free Procurement
<http://www.illinois.gov/Gov/pdfdocs/execorder2005-5.pdf>

Maryland

- 2007, Maryland, Living Wage Law, Chapter 284
http://mlis.state.md.us/2007RS/chapters.noln/Ch_284_hb0430E.pdf

New Jersey

- New Jersey State Building Services Contract Act
http://lwd.dol.state.nj.us/labor/wagehour/lawregs/state_building_service_contracts_law.html

Ohio

- 2008, Ohio, Executive Order on Sweatshop Free Procurement
<http://www.governor.ohio.gov/News/PressReleases/2008/October2008/News101608/tabid/871/Default.aspx>