

Testimony of
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House Committee on Armed Services

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Chairman Andrews and Ranking Member Conaway, I am David Madland, Director of the American Worker Project at the Center for American Progress Action Fund.

I am pleased to appear before the Panel on Defense Acquisition Reform today and applaud your efforts to ensure that federal contracting provides taxpayers with good value for the money. As the work of this panel, as well as many others in Congress and the administration has made clear, the federal contracting process needs to be reformed to limit waste and better ensure the government's interests are upheld.

While the Center for American Progress and Center for American Progress Action Fund have advocated for a range of reforms including: increasing competition, strengthening the acquisition workforce, improving transparency and oversight, and preventing the contracting out of essential government functions, I want to focus on a less well-known but equally critical issue: the pay, benefits and working conditions of the low-wage contract workforce.¹

As I will explain, the contracting process gives inadequate consideration as to how contractors treat their workforce, which can cause the Department of Defense to receive less than full value for its investments.

In my testimony, I want to make three main points:

First, many federally contracted workers have low-quality jobs. The workers I am talking about sew military uniforms, rebuild army bases, and provide security for secure facilities.

Second, while poor treatment of workers is an important problem in its own right, more to the point of this panel, low pay, limited benefits and poor working conditions impose costs on the government and taxpayers and make it hard for high-road companies to compete.

Third, promoting higher labor standards can be part of a strategy for ensuring better value in contracting.

I. Impact on workers

First, let me describe the scope of the problem of low-quality jobs in the federal contracting. I want to emphasize that the data are rough because the federal government neither keeps nor makes publicly available quality data. However, all the evidence points in the same direction of a widespread problem. Estimates from the Economic Policy Institute indicate that 20 percent of all federally contracted workers earn poverty-level wages and often do not receive benefits.²

That means that one in five workers on a federal contract do not earn enough to keep a family of four out of poverty.

And low wages are much more common in some contracted industries. Paul Light, a professor at the New York University's Wagner School of Public Service, estimates that 80 percent of service contract workers earn low wages, and often do not receive benefits.³ A 2006 survey by 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 \$6.55.⁴ Between 50 and 80 percent of workers at factories surveyed had no employer-provided health insurance, and none had an employer-provided retirement plan.

Not only is the pay quite low for many federally contracted workers, but working conditions are often of low quality, with contracting companies commonly violating labor laws.

- According to a study by the U.S. Government Accountability Office, in 2004 the Department of Labor conducted 654 Service Contract Act investigations called by workers or other whistleblowers and found that in more than 80 percent of cases—comprising 20,347 individual violations—employers were indeed failing to pay their employees the minimum wages and benefits owed them under the law.⁵
- According to another government study, 80 companies that had committed unfair labor practices in violation of the National Labor Relations Act received more than \$23 billion from more than 4,400 federal contracts, representing roughly 13 percent of all federal contract dollars in fiscal year 1993, the most recent year studied.⁶
- Companies with poor health and safety records also continue to receive federal contracts, according to GAO. 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.⁷

- The Center for American Progress Action Fund reviewed security contracts from four large federal agencies in 2006 that were awarded without competition—a total of \$1.7 billion in contracts. We found that of the 12 security companies awarded these contracts, 10 had records of labor abuse. While a few labor violations were relatively minor, others were much more significant, ranging from repeated safety and health violations and violations of the Fair Labor Standards Act to discrimination, sexual harassment, nonpayment of wages, and human rights violations.⁸
- A report by the Brennan Center for Justice found pervasive violations of prevailing-wage laws in New York City and concluded that: “Unscrupulous employers understand that there is a minimal risk of being caught for these violations, and even if they are caught, that they will likely pay no more than a portion of the wages they owe.”⁹

II. Taxpayer value

Second, 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, such as for Medicaid, Earned Income Tax Credit and food stamps.¹⁰ In practice, this amounts to something like a government subsidy for low-road companies, while high-road companies are placed at a competitive disadvantage.

Furthermore, research finds that when contractors cut corners with their workers, they often cut corners in the final product they deliver to taxpayers.

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.”¹¹

More recently, a survey of New York City construction contractors by New York’s Fiscal Policy Institute found that contractors with workplace law violations were more than five times as likely to have a low performance rating than contractors with no workplace law violations.¹²

Of the top 50 contractors cited as the most wasteful by the Project on Government Oversight, 28 had reported labor violations ranging from religious, racial, and age discrimination, retaliation against worker complaints, workplace safety violations, harassment, unfair termination, nonpayment of overtime, violations of the Americans with Disabilities Act, and radioactive contamination of workers.¹³

Research by the Center for American Progress Action Fund finds that there is a correlation between contractors' failure to adhere to basic labor standards and wasteful practices and sometimes even a correlation between this failure and illegal activity.¹⁴ 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."¹⁵ And recent investigations of the U.S. Embassy in Kabul, Afghanistan found that contracted security guards suffered from "serious understaffing, bullying by management, petty corruption and abusive work conditions ... [that] threatened the security of the compound."¹⁶

III. Promotion of higher labor standards

Third, promoting good workplace practices can be a good value for taxpayers. Not only can doing so reduce the government's unintentional "subsidies" for low-road companies, but it also can promote increased competition and reduce the likelihood that companies will operate in a wasteful fashion.

As a review of state and local contracting 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."¹⁷

Perhaps even more importantly, promoting higher standards encourages high-road 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.¹⁸ Nearly half of contracting companies 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."¹⁹

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.”²⁰ 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 its work and created an environment in which firms of similar caliber compete against one other for agency contracts.²¹

Over the past decade, as the federal government’s contracting problems have been mounting, state and local governments have been leading the way to promote higher standards for the treatment of contract workers, as an excellent report by the National Employment Law Project makes clear.²² New York City has become a model of transparency with its public Vendex database containing important information about contracting companies, California is a leader for its rigorous pre-screening process, and the city of El Paso uses bid scoring to promote health care coverage among contracted workers. These and other governments have implemented the kinds of reforms that the federal government can and should replicate.

Recommendations

While there are many steps that Congress and the administration can and should take to improve the treatment of the contracted workforce and promote better value for taxpayers, I want to highlight two of the most important reforms.

First, to limit the number of contracts that are awarded to low-road companies, the federal contracting process should do a better job screening companies based on their overall regulatory record, including the company’s compliance with labor laws.²³ To do so will require clarifying standards for evaluating whether bidders demonstrate “a satisfactory record of integrity and business ethics,” and thus are responsible.²⁴ It will also require creating better tools to help contracting officers make this determination, such as improving the centralized contracting database that is being created to better capture labor law violations—many of which currently are not included because labor law violations are often below the database’s monetary threshold and are often resolved without acknowledgment of fault.

Second, the contracting process should promote higher labor standards by evaluating proposals based in part on the quality of jobs that contractors provide their workers.²⁵ Many federal, state, and local government contracting processes already promote high standards by evaluating offers based on price as well as whether companies provide good jobs or meet other social objectives. The federal government can adopt the best features of these bid evaluation systems and weigh, for example, whether companies pay decent wages and provide good benefits.

These reforms would not only be the right thing to do for workers, but they would also improve accountability, increase transparency, limit wasteful contracting and help ensure value for taxpayers.

I want to thank the panel for its time and consideration and express my willingness to work with you as you seek to reform the contracting process.

Information about the American Worker Project: The American Worker Project conducts research to increase the wages, benefits, and security of American workers and promote their rights at work. It is a project of the Center for American Progress Action Fund, a progressive think-tank dedicated to improving the lives of Americans through ideas and action.

Endnotes

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² Kathryn Edwards and Kai Filion, “Outsourcing poverty: Federal contracting pushes down wages and benefits,” (Washington: Economic Policy Institute, 2009).

³ Jane Zhang, “How Government Adds to Ranks of Uninsured,” *The Wall Street Journal*, March 25, 2008.

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⁶ Federal Contractors: Historical Perspective on Noncompliance with Labor and Worker Safety Laws. Testimony before the Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, House of Representatives, 105 Cong. 2 sess., (Washington: Government Printing Office, 1998).

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¹⁸ Maryland Department of Legislative Services, “Impact of the Maryland Living Wage,” Annapolis, 2008.

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²⁰ Mark D. Brenner and Stephanie Luce, “Living Wage Laws in Practice: The Boston, New Haven and Hartford Experiences,” (Amherst: University of Massachusetts, Political Economy Research Institute, 2005), available at http://www.peri.umass.edu/fileadmin/pdf/research_brief/RR8.pdf.

²¹ Sonn and Gebreselassie, “The Road to Responsible Contracting.”

²² Ibid.

²³ Ibid.

²⁴ 41 U.S.C. § 403(7); 48 C.F.R. § 9.104-1.

²⁵ Madland and others, “Making Contracting Work.”