



# Federal Contracting Doesn't Go Far Enough To Protect American Workers

4 Issues the Next Administration Must Alleviate

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By Karla Walter November 2020

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# Introduction and summary

There are millions of federal government contract workers in the United States—Americans who are not directly employed by the government but who play a pivotal role in the nation.<sup>1</sup> Federal contract workers provide essential goods and services relied on by everyday Americans across the country. These workers answer the public's questions on coronavirus safety measures at Centers for Disease Control and Prevention call centers; care for military veterans receiving VA benefits; prepare meals for members of Congress in House and Senate office buildings; and build roads and bridges across the United States. Federal contract spending can create jobs that are pathways to the middle class for Americans from all walks of life; support contractors that respect their workers; and help correct long-standing disparities among workers of color, women, LGBTQ workers, and workers with disabilities, thereby serving as a model for the private sector. Yet all too often, contract workers are paid poverty wages and have little power to speak out against unfair, unsafe, and discriminatory work conditions.

The federal government spends, on average, about half a trillion dollars annually on federal contracts.<sup>2</sup> For the better part of a century, federal lawmakers have recognized that the government is often the largest buyer in a marketplace and has the potential to shape labor market practices, depress wages, and erode standards. In response, policymakers have enacted reforms to ensure that companies receiving government contracts pay decent wages; allow Americans from all walks of life to attain and advance in safe jobs that are free from racism, discrimination, and harassment; and respect workers' voice on the job, as well as their right to come together in unions. These protections play a vital role in maintaining standards for workers and contractors.<sup>3</sup>

Yet too often, these laws and regulations fall far short of their promise. Some standards simply haven't kept up with the modern economy or leave out wide swaths of American workers. Other protections are undercut by a federal procurement system that preferences the lowest bid over other measures of quality; sidelines enforcement efforts; and silences workers' voices when they try to dispute unfair practices or negotiate for better conditions. As a result, contractors that violate workplace laws can beat out law-abiding companies by paying below-market wages and skirting various workplace laws. For example, a 2013 report from the U.S. Senate Health, Education, Labor,

and Pensions Committee Majority Committee Staff found that about one-third of the companies with the worst wage and safety violations continued to receive federal contracts with no safeguards to ensure future compliance with the law.<sup>4</sup>

These perverse incentives can leave workers—particularly women, people of color, LGBTQ workers, and workers with disabilities—inadequately protected, and companies that would invest in a stable, well-trained workforce and ultimately provide a better value to taxpayers are unable to compete. Moreover, these problems can undermine the government’s efforts to increase contracting with owners of small businesses and business owners who are otherwise disadvantaged, since it is difficult for emerging businesses to compete against larger, more established companies for service contracts with very small profit margins.

As the economy pulls out of its current recession, strengthening contract worker protections is more important than ever, since many Americans may be desperate for work and reluctant to report workplace violations and many law-abiding companies will struggle for survival. The federal contracting system provides inadequate protections for working Americans in four specific ways:

- 1. Many federal contract workers earn poverty wages and receive few benefits**
- 2. Contract workers are vulnerable to discrimination, harassment, and racism**
- 3. Companies win contracts with unrealistic bids that undercut standards**
- 4. Workers have little recourse or voice when their rights are undermined**

The next administration must use its administrative and executive powers to raise standards for workers; modernize and strengthen the enforcement of existing protections; give workers a voice to correct unfair and illegal practices; and provide good value to taxpayers. Indeed, President-elect Joe Biden has already endorsed reforms to raise pay for contract workers and ensure that corporations that receive government contracts respect workers’ right to form unions and comply with essential worker protections.<sup>5</sup> The next administration can help ensure that federal contract spending is a stabilizing force in the U.S. economy by taking these steps—and more—to allow workers to access good jobs, even the playing field for law-abiding companies, and uphold good value for taxpayers.

# The importance of protecting government contract workers

Protections for government contract workers can make a real difference in the lives of working families. Research finds that prevailing wage laws raise wages, lower poverty rates, and reduce inequality in affected industries. According to a 2016 study, construction workers in states with strong or average prevailing wage laws made nearly \$12,000 more per year, on average, than construction workers in states with weak or no prevailing wage laws. The study controlled for other factors such as race, gender, and educational status.<sup>6</sup>

Similarly, federal interventions to prevent discrimination among federal contractors have proved successful. After President Lyndon B. Johnson adopted affirmative action requirements for federal contractors, studies show that employment of Black Americans and women increased significantly more in contractor establishments than in noncontractor establishments.<sup>7</sup>

Yet existing federal protections for contract workers are frequently inadequate for workers in the modern economy. Moreover, the Trump administration has exacerbated these problems with actions that allow lawbreaking contractors to escape accountability for workplace violations, reduce government oversight, and even ban high-road contractors from taking actions to help prevent discrimination.<sup>8</sup>

When corporations are permitted to violate workplace laws, research shows that taxpayers also receive poor value. As early as 1983, the Inspector General of the U.S. Department of Housing and Urban Development (HUD) found a “direct correlation between labor law violations and poor quality construction” on HUD projects and concluded that these quality defects contributed to excessive maintenance costs.<sup>9</sup> Similarly, research on states that have repealed prevailing wage laws has found that despite reductions in workers’ wages, overall contracting costs have remained the same and exposed incidents of cost overruns.<sup>10</sup> And according to a 2013 report from the Center for American Progress Action Fund, 1 in 4 contractors with the worst workplace violations had significant performance problems, such as contractors who submitted fraudulent billing statements, cost overruns and performance issues, and schedule delays that ended up costing taxpayers billions of dollars.<sup>11</sup>

Despite weak oversight, the Trump administration increased spending on federal contracts to a high of \$581 billion in fiscal year 2020—representing levels not seen since the United States was heavily involved in conflicts in Iraq and Afghanistan, and about a 16 percent increase since President Donald Trump took office.<sup>12</sup> Already, reporters are uncovering stories of companies that received lucrative COVID-19 response contracts failing to provide safe workplaces, participating in price gouging, and delivering poor-quality products.<sup>13</sup>

Indeed, reforms to raise standards for workers also support an efficient procurement system. For example, raising worker pay helps reduce turnover and improve workforce stability and thereby ensure high-quality services for taxpayers.<sup>14</sup> Similarly, contractors performing government work can attract the most qualified workforce, improve job commitment, and increase productivity by preventing workplace discrimination and ensuring appropriate accommodations for all workers.<sup>15</sup> Finally, by enacting protections to raise standards for workers, the federal government can ensure that all companies, particularly small and emerging businesses, that respect workers' rights can compete on an even playing field.

The next administration will have significant power to raise standards for contracted workers—and thereby support better value for taxpayers—by addressing the following problems.

# Many federal contract workers earn poverty wages and receive few benefits

Federal policymakers enacted the Davis-Bacon Act (DBA) and Service Contract Act (SCA) to set prevailing wage and benefit rates for contracted workers in the construction and service sectors at existing market levels, and thereby help ensure that federally supported work pays decent wages and supports competition on the basis of a contractor's skill and efficiency.<sup>16</sup> While prevailing wage rates for many jobs are family-supporting, too often, they undercut industry standards and even pay poverty wages.

For example, while an SCA-covered janitor in New York City earns more than \$27 per hour in wages—due to high union density and workers' ability to win strong standards through collective bargaining—a similar worker in Des Moines, Iowa, would earn only \$12.23 per hour in wages.<sup>17</sup> A typical contracted call center worker in Seattle, Washington, would earn \$17.65 per hour, while a typical, properly classified call center worker in Hattiesburg, Mississippi, would make less than \$13 per hour.<sup>18</sup>

Although President Barack Obama established minimum wage and paid sick leave protections for those working on federal contracts, today, the federal contractor minimum wage is only \$10.80.<sup>19</sup> This standard falls far short of producing a living wage in even the most affordable U.S. cities.<sup>20</sup>

Black or African American, Hispanic or Latino, and women workers are disproportionately harmed by these shortcomings in the federal contracting system. (see text box below) Due to occupational segregation, women and people of color are over-represented in industries that the federal government contracts out and that in many regions pay very low wages. Many of the top occupations currently held by women of color in the United States—including registered nurses, customer service representatives, nursing assistants, secretaries and administrative assistants, and personal care aides—are in these contracted industries.<sup>21</sup> Research shows that regardless of skill or educational attainment level, occupations with more women and workers of color typically receive lower pay.<sup>22</sup>

## Women and people of color are overrepresented in many contract industries<sup>23</sup>

**Building services:** The federal government spent \$2.05 billion on services to buildings and dwellings in FY 2019—an industry with a workforce that is 41 percent Hispanic or Latino, 13 percent Black or African American, and 56 percent women.

**Administrative services:** The federal government spent \$875 million on administrative services in FY 2019—an industry with a workforce that is 45 percent women, 12 percent Black or African American, and 21 percent Hispanic or Latino.

**Security services:** The federal government spent \$4.5 billion on security contracts in FY 2019—an industry with a workforce that is 26 percent Black or African American, 18 percent Hispanic or Latino, and 23 percent women.

**Nursing care:** The federal government spent \$709 million on contracts for nursing care facilities in FY 2019—an industry with a workforce that is 84 percent women, 28 percent Black or African American, and 13 percent Hispanic or Latino.

**Meat and food processing:** The federal government spent \$1.2 billion on meat, poultry, and fish processing in FY 2019—an industry with a workforce that is 22 percent Black or African American, 35 percent Hispanic or Latino, and 39 percent women.

As is evidenced by the wide geographic variation in pay for these jobs, there is nothing inherent in these occupations that makes them low wage. Increasingly, progressive cities and states are working to broaden the reach of prevailing wage protections and ensure that prevailing wages are calculated in ways that support decent wages and amplify the effects of strong local unions. While President Obama took an important step in this direction—by extending contractor minimum wage protections to new groups of workers, including those providing services in federal buildings and parks—prevailing wage protections reach only a fraction of workers whose jobs are funded through federal spending.

Moreover, policies enacted more than 40 years ago by the Reagan administration significantly weakened the ability of prevailing wage laws to extend strong standards throughout sectors. While prevailing wages previously could be set at the wage paid to 30 percent of workers in an industry in a locality, the Reagan administration increased the threshold to 50 percent.<sup>24</sup>

The Biden administration can ensure contract workers earn decent wages by modernizing the way prevailing wages are calculated so that they support fair market wages, raising the contractor minimum wage to \$15 per hour, strengthening other essential benefits, and covering more types of spending with these protections.

# Contract workers are vulnerable to discrimination, harassment, and racism

President Franklin Delano Roosevelt signed the first anti-discrimination protections for contract workers nearly 80 years ago to ensure that the companies enlisted to supply World War II opened their factory floors to Black workers.<sup>25</sup> Despite actions during the intervening years to ensure that companies receiving contracts provide equal opportunity for Americans from all walks of life, the federal contracting system too often allows and even enshrines workplace discrimination, and its enforcement capacity has never been sufficient to catch all lawbreakers. Moreover, President Trump has had a particular focus on weakening anti-discrimination protections for federal contract workers.

The federal government requires affirmative action and bans contractors from discriminating against their employees on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or status as a protected veteran.<sup>26</sup> These protections apply not only to the positions directly funded through federal spending but also to all employees of companies with federal contracts, regardless of a contractor's size or whether its work was funded through procurement spending.

The Trump administration has taken numerous steps to undermine the effects of these standards. One of President Trump's first acts in response to the coronavirus crisis was to announce that the government would grant exemptions and waivers to some anti-discrimination protections that require contractors receiving coronavirus relief funds to make affirmative efforts to hire protected workers.<sup>27</sup> In September, President Trump signed an executive order banning government agencies and federal contractors from training their workforce on racial bias and the impacts of systematic racism in the workplace.<sup>28</sup>

In addition, the Trump administration has granted the U.S. attorney general the authority to enact religious exemptions from these protections, as well as proposed regulations that would go even further by allowing for-profit companies to be granted religious exemptions.<sup>29</sup> It also rescinded obligations enacted by President Obama that required companies to disclose to the government information on how much workers are paid—a key step in allowing the government to track and enforce laws that prevent occupational segregation and institutionwide discrimination.<sup>30</sup>

Worse still, the government continues to permit federal contractors to segregate contract workers on the basis of disability and pay these workers at rates below the prevailing wage. Although President Obama took the critical step of extending the contractor minimum wage to these workers, in FY 2019, the federal government spent more than \$3.4 billion on contracts at companies operating so-called sheltered workshops.<sup>31</sup> These firms—and others operating outside of AbilityOne contracting programs—may receive special exemptions to pay workers less than Service Contract Act wage rates if the corporation argues that an employee’s disability limits their ability to perform the job. These policies are another legacy of the New Deal but are now viewed as “a policy relic from the 1930s when discrimination was inevitable because service systems were based on a charity model, rather than empowerment and self-determination.”<sup>32</sup>

The next administration must provide all Americans with the opportunity to access and advance in federal contract jobs. This will require rolling back the discriminatory actions of the Trump administration; granting people with disabilities all the rights and protections enjoyed by other workers, including opportunities for competitive integrated employment; and strengthening the government’s and workers’ ability to enforce these protections.<sup>33</sup>

# Companies win contracts with unrealistic bids that undercut standards

All too often, federal contracting procedures encourage a race to the bottom in which companies compete on the basis of the lowest possible cost rather than the best possible quality. Among service contractors, these problems are particularly egregious since most contract cost comes from the cost of labor and, as a result, low-ball bids can translate directly into lower pay and worse standards for workers.

Despite protections in law to ensure that federal contractors provide decent work and fair wages, the federal government typically does not evaluate whether proposed bids are sufficient to cover total contract costs and permits companies to bid at rates lower than overall contract costs.<sup>34</sup> As a result, bidders that pay decent wages are placed at a competitive disadvantage and emerging businesses are encouraged to take risks that could ultimately lead to failure.

Cities and states have adopted standards to prevent low-road bidders from winning contracts on the basis of unrealistic cost assessments that could likely result in wage theft or noncompliance with other standards. For example, several New Jersey jurisdictions help ensure compliance with wage standards by requiring that bidders submit data and making price adjustments.<sup>35</sup> Cities and states have also found that raising standards for contract workers helps ensure that businesses that respect their workers can compete on an even playing field and, as a result, taxpayers get a good value for their investment. After Maryland implemented a contractor wage standard, for example, the average number of bids from companies for state contracts increased nearly 30 percent.<sup>36</sup> Nearly half of contractors said that the new standards encouraged them to bid because they leveled the playing field.

The federal government already conducts cost assessments for a small portion of bidders. Federal regulations require contracting officers to conduct so-called cost realism analyses to determine whether bidders' cost estimates are unrealistically low on contracts that require the government to reimburse a contractor for its costs.<sup>37</sup> Yet for the vast majority of federal contracts, the existing review process does not even allow

sufficiently detailed evaluations of bids to occur. The Biden administration can help prevent wage theft and ensure that law-abiding companies can compete for federal contracts by requiring more bidders to submit cost estimates and requiring agencies to evaluate whether contract bids are sufficient to allow legal compliance.

# Workers have little recourse or voice when their rights are undermined

When federal contractors violate the rights of workers, the U.S. Department of Labor is charged with rectifying violations and working with contracting agencies to prevent future violations. Yet loopholes in existing regulations allow contracting corporations to undermine the intent of key worker protections. As a result, even the worst violators of contract laws typically face few penalties and workers have little recourse to ensure that their rights are protected.

Several regulatory loopholes weaken the government's ability to enforce requirements on corporations to respect workers' bargaining rights and prevent labor disruptions. Although the SCA specifies that collectively bargained wage and benefit rates prevail when contract workers unionize and requires successor contractors to abide by these wage and benefit levels,<sup>38</sup> existing regulations permit a company providing services in a follow-on contract to evade these protections by relocating. This loophole is particularly problematic when a contract may be performed in any location—such as call center work or IT support.

President Trump also weakened these successorship protections by revoking requirements that follow-on service contractors provide a right of first refusal to workers employed on the previous contracts.<sup>39</sup> And despite an Obama-era executive order to encourage federal agencies to enter into project labor agreements (PLAs) on large construction projects, to date there is little evidence of agencies using PLAs to promote labor peace.<sup>40</sup>

In addition, workers have incredible difficulty asserting their legal rights. During the Trump administration, agencies charged with overseeing worker protections have been beset by backlogs and enforcement has not been targeted to the industries and occupations in which violations are most frequent.<sup>41</sup> Instead, the onus is on workers to know their rights and be willing to report violations, despite significant risk of retaliation for coming forward. For example, workers in approximately half of all complaints filed with the Office of Federal Contract Compliance Programs in FY 2019 alleged that they were retaliated against for reporting discrimination.<sup>42</sup>

Even when widespread violations are proven, the penalties may be little more than a slap on the wrist compared with the lucrative government contracts that companies continue to receive. Several government reports have found that government contractors are often among the top violators of workplace laws.<sup>43</sup>

For example, the 2013 report from the Senate Committee on Health, Education, Labor, and Pensions reviewed the 100 largest penalties and assessments for both wage and safety law violations over a five-year period, finding that nearly 30 percent of the worst violators of workplace laws continued to receive federal contracts.<sup>44</sup> According to the same report, of the nearly \$518 billion in federal contracts awarded in FY 2012, \$81 billion made its way to the contractors with the worst records.<sup>45</sup>

Yet President Trump signed legislation that weakened the Department of Labor's ability to work with contracting agencies to ensure corporations come into compliance.<sup>46</sup> And while state and local governments are increasingly partnering with worker and community organizations to educate workers about their rights and ensure that vulnerable workers feel comfortable coming forward to report violations, most often, the best federal contract workers can hope for is a federally mandated breakroom poster informing them of their various workplace rights.<sup>47</sup>

The next administration can make contract worker protections real by reasserting the government's role in enforcing strong standards; closing legal loopholes and rescinding Trump-era rollbacks that allow contractors to undermine worksite stability and workers' collective bargaining rights; and partnering with community and worker organizations to ensure that workers know their rights and feel comfortable coming forward.

# Conclusion

Contracting laws and regulations have long aspired to ensure that the federal government, with its massive spending footprint, serves as a model for the private sector. Yet all too often, the government falls short by allowing contractors to pay poverty wages, discriminate against workers, and violate labor laws, as well as by failing to deliver good value to taxpayers.

The Biden administration will have authority to raise standards for workers by enacting reforms across the life cycle of a federal contract. This should include reforms to raise wages and expand the reach of prevailing wage protections and ensure that workers from all walks of life benefit from procurement jobs. In order to ensure workers' rights are enforced and companies that respect their workers can compete on an even playing field, the federal government must also close regulatory loopholes that undermine existing bargaining protections, build enforcement capacity across the government, and ensure that workers have sufficient voice and power to come forward to report violations.

Indeed, delivering these sorts of protections will be all the more important as the United States emerges from the unprecedented COVID-19 pandemic and recession. Many Americans will be desperate for income and willing to accept jobs from low-road employers that are willing to break the law or pay below-market wages. By enacting the reforms discussed in this report, the next administration can help ensure that the federal government provides decent work for Americans and, in doing so, support stability in the federal contracting system.

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## About the author

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## Endnotes

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