

RAISING THE BAR FOR PUBLIC CONTRACTORS PROCUREMENT

Analysis:

Every year state and local governments spend billions of dollars in contracts with private companies to purchase goods and services in connection with providing essential services to the public. For example, health and human service providers are contracted with to run group homes and day programs for developmentally and mentally impaired adults and private companies receive taxpayer money to repair and build roads and schools. States and communities can take steps to ensure that companies that receive scarce taxpayer dollars to provide government programs are not allowed to squander those dollars for unintended purposes not related to the public service being provided.

Rationale:

Many states continue to hand out taxpayer monies without holding companies accountable. With states facing immense budget shortfalls, it is more important than ever to make sure that taxpayers get their money's worth by making contractors accountable for the way they spend taxpayer dollars and that they raise, not lower, the living standards of working families. These legislative measures ensure that companies chosen to perform construction work, produce goods and provide services are responsible, qualified, law-abiding, and trustworthy and that they provide quality jobs that meet minimum labor standards. These requirements protect taxpayer dollars and level the playing field for contractors who are responsible and law-abiding. Some laws apply generally to all contracts and some target a particular sector or industry. Which approach will be most effective in any given state or community will depend on a number of factors, including the details of the overall contracting system, political realities, legal constraints, affiliate-interest and other considerations.

Types of Legislation:

Project Labor Agreements These are multi-employer, multi-union pre-hire agreements designed to systemize labor relations at a construction site which typically require that all contractors and subcontractors agree to abide by a master collective bargaining agreement and that wages, hours, and other terms of employment be coordinated or standardized across the many different unions and companies working on the project. PLA's can include procedures for resolving jurisdictional disputes, guarantees against strikes and lockouts, measures to ensure a reliable source of skilled and experienced labor, employment opportunities for local residents, and the lowest qualified responsible bidder standards.

Responsible Contractor Laws: Many states and localities have “responsible contractor” laws that require contractors to meet minimum standards for quality, capability, and ethics and integrity, including compliance with the law. Contractors much qualify as “responsible” according to specified criteria, such as resources, performance history, integrity, and others.

Best Value Contracting and Prequalification: The state of California has adopted a law under which a model prequalification questionnaire and standard evaluation system were developed by the state for use by cities and counties wishing to adopt them. Cal. Pub. Contract Code Section 20101. Contractors must submit a completed questionnaire and other information in advance and be evaluated and placed on a list of qualified contractors. Delaware subjects contractors to pre-qualification or pre-award scrutiny of past performance, including any civil judgments and criminal history, and a review of the adequacy of their supply of “craft labor.” 29 De. C. § 6962; New Jersey includes similar provisions in its “Educational Facilities Construction & Financing Act.” but also requires pre-award disclosure of any violation of federal, state or local law. P.L. 2000, Chapter 72.

Procurement/Anti-sweatshop Requirements: States and communities contract for supplies, materials, services, insurance, utilities, financing, equipment, and other items they need. Procurement legislation may be generally applicable to all public contracts or target a particular sector or industry. It ensures that public contracting is conducted in an open and fair manner; that the state or community does not contract with vendors who violate state and federal laws; and that vendors demonstrate integrity, responsibility, and ability to perform as required. Vendors might be required to meet minimum labor standards.

Anti-Sweatshop Requirements: Anti-sweatshop legislation requires that all purchases of clothing, footwear and textiles come from non-sweatshop sources. Typically, specific standards must be met and the manufacturers must disclose the location of any subcontracted work, including the demographics of the workers performing work either directly for the contractor and for any subcontractors.

Living Wage and/or Prevailing Wage: Dozens of municipalities have enacted living wage laws requiring recipients of city funds, or companies operating within a specific area, to pay employees, as a minimum, a pre-determined wage, together with benefits or a wage premium if benefits are not offered. Such legislation may include other basic labor standards as well, such as worker retention or mandatory leave days for sickness and vacation.

Elements:

Training/Apprenticeship

Contractors must commit to hiring skilled employees who have completed a state certified apprenticeship program.

Worker Retention

Requires that contractors who either replace state-run programs or take over from a predecessor contractor keep the existing workforce, under certain circumstances. These provisions help to insure the continuity and quality of government services by protecting the current workforce from being displaced every time contracts change hands.

Local Hiring/Hiring Hall

Provides that hiring be accomplished through a community-run hiring hall and/or that a commitment be made to hire from the local community so that public monies given to fund a project are used to provide jobs for local residents.

Dispute Resolution

Contractors must provide employees with a fair and neutral procedure for resolving work-related issues, except that such procedure cannot be used to waive employees' statutory rights and remedies.

Collective Bargaining Opt-out

Parties to a collective bargaining agreement can agree to waive the legislative requirements if the waiver is expressly stated in their agreement.

Reporting

Contractors must provide specific information about their operations: address and identifying information on every contractor and sub-contractor involved in the project; total number of individuals employed on the project; number of new jobs to be created; average hourly wage to be paid to all current and new employees working on the project; type and amounts of health care coverage to be provided; information as to whether or not the project involves the relocation of work from another location; other relevant information, including disclosure of any violations of OSHA, environmental, prevailing wage, workers compensation, and other laws.

Compliance with Local and State statutes

Requires that the contractor or developer be law-abiding, report any violations, and certify that it will not commit such violations. Included statutes are typically local, state and federal laws

governing wages and hours, discrimination, health and safety, and local building and fire codes.

Examples:

Responsible Contractor Laws

Oregon, O.R.S. Section 279.029

California, Cal. Pub. Contract Code Section 1103

Best Value Contracting and Prequalification

California, Cal. Pub. Contract Code Section 20101

Delaware, 29 De. C. Section 6962 [CHECK THIS]

New Jersey, P.L. 2000, Chapter 72

Procurement

Michigan Procurement of Goods and Services --

Executive Order No. 2003-1

Anti-Sweatshop

Maine anti-sweatshop statute

Financial Accountability

California AB 1889

New York

Living Wage and/or Prevailing Wage

San Jose, CA

Berkeley Marina District