

# Delivering for Taxpayers: Taking on Contractor Fraud and Abuse and Improving Jobs for Millions of America's Workers

**T**he federal government spends more than \$500 billion on contracts each year for a broad range of goods and services.<sup>1</sup> The U.S. Department of Labor has estimated that approximately 24,000 businesses have federal contracts, employing about 28 million workers—which works out to just over one in five of our nation's private-sector workers.<sup>2</sup> We can and should leverage these investments to create good jobs for workers and their families. In fact, Congress has enacted laws to provide that taxpayer-supported jobs are not driving down wages and working conditions across entire industries.

**But despite these protections, too many workers on federal contracts—and especially women workers—have low-quality jobs.**

Federal contractors (and would-be contractors) face tremendous pressure to cut costs to win new contracts, especially as agencies increasingly turn to lowest-bidder contracting.<sup>3</sup> This “race to the bottom” undermines federal contracting law's intent by driving down wages. According to a 2014 Dēmos analysis of firms that receive a significant portion of their revenue from federal funds, well

more than one-third of jobs at those firms pay poverty or near-poverty wages.<sup>4</sup> Women in particular make up 71 percent of the low-wage workers on these jobs—about 5.6 million workers.<sup>5</sup> Worse yet, a series of recent reports have shown that too many federal contractors go so far as to break the law by stealing workers' wages and cutting corners on health and safety or other core workplace protections just to win contracts or raise their profits.<sup>6</sup>

When federal contracting agencies do business with companies that break the law, there are a lot of losers:

- **Workers and their families** take home less pay and work in unsafe conditions—leaving taxpayers footing the bill for bad (and potentially dangerous) jobs. In the extreme case, some large federal contractors have paid back tens of millions of dollars in stolen back wages, and others have been assessed more than a million dollars in penalties for their safety and health violations.<sup>7</sup>

## THE SCALE OF FEDERAL CONTRACTING

- \$500 billion in annual contracts
- Contracting companies employ 25% of U.S. workforce

- Contractors that don't pay their workers are likely to be the same ones that fail to perform for **taxpayers**. Time after time, the contractors who shortchange their workers are the same ones who don't deliver for taxpayers.<sup>8</sup>
- And **responsible contractors** themselves struggle to compete against those who don't play by the rules, pushing down wages and workplace standards across the industry.

We need a variety of legal and policy reforms to better protect workers, responsible contractors, and taxpayers alike. But in advance of such larger policy initiatives, **there are steps that federal contracting officers can and should take right now to protect our nation's workers and federal contractors who play by the rules.**

## **Taxpayer-Supported Jobs Should Be Good Jobs**

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Government contracting has a long history as the “primary—if sometimes unintended—driver of economic, industrial, social, and scientific development.”<sup>9</sup> Likewise, government contracting can and should be driving the creation of good jobs for workers across our economy.

Federal contractors are subject to the core labor and employment laws that cover most employers in the United States, including the Fair Labor Standards Act (establishing minimum wage and overtime requirements); the Occupational Safety and Health Act (protecting workers health and safety in the workplace); Title VII of the Civil Rights Act of 1964 (barring discrimination in employment on the basis of race and sex); the Americans with Disabilities Act (doing the same with respect to disabilities); and the National Labor Relations Act (encouraging collective bargaining and prohibiting certain unfair labor practices).

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But government contractors are also subject to a range of longstanding labor standards and protections above and beyond most other employers, depending on the type of contract, ranging from the Davis Bacon and Related Acts (prevailing wages in construction) and the Service Contract Act (prevailing wages in services) to the Public Contracts Act (prevailing wages for suppliers of certain goods and supplies) and equal employment opportunity and affirmative action requirements (applying to most contractors who do more than \$10,000 in government business each year).<sup>10</sup> The Obama administration established additional protections to prevent the displacement of employees when federal contracts switched hands, a \$10.10 minimum wage for federal contract workers, paid sick leave for federal contractors, and additional equal employment opportunity protections barring discrimination on the basis of sexual orientation, gender identity, or national origin.<sup>11</sup>

Laws like the Service Contract Act exist precisely to help ensure that government jobs do not drive down wages and working conditions, not only for taxpayer-supported jobs themselves

but across entire industries. In the August 1965 hearings on the SCA, then-Solicitor of Labor Charles Donahue identified the core problem that the law intends to solve:

While I do not wish to imply that low-wage rates are universal in the service industry, the fact that they exist at all is indefensible, particularly where Government contracts are involved... Since labor costs are the predominant factor in most service contracts, the odds on making a successful low bid for a contract are heavily stacked in favor of the contractor paying the lowest wage.<sup>12</sup>

To achieve its purpose, the SCA empowers the Department of Labor to establish prevailing wages for workers on federal contracts. The bill passed with overwhelming support—by a voice vote in the House—and was signed by President Lyndon Johnson.<sup>13</sup>

These laws have certainly had some impact. The equal employment opportunity protections applicable to federal contract workers have resulted in a more diverse workforce. By the mid-1980s, economic research based on workforce diversity disclosures suggested that “both minority and female employment have increased faster at establishments subject to [the] affirmative action” requirements of Executive Order 11246.<sup>14</sup> No doubt there is room for improvement in terms of the distribution of opportunities. A 2014 Dēmos study found that 35 percent of taxpayer-supported workers are people of color, including 45 percent of the low-wage subset of those workers.<sup>15</sup> Women constitute 61 percent of taxpayer-supported workers, and 71 percent of the low-wage subset of those workers.<sup>16</sup>

And while wages for federal contract workers beat private-sector medians, the Dēmos study reveals substantial room for improvement on this front as well, especially on the low end:

One-third of [taxpayer-supported] workers earn less than the private sector median wage of \$15.84 per hour (\$32,900 annually), and 38 percent earn poverty or near-poverty wages, earning less than 150 percent of the federal poverty threshold for a family of four.<sup>17</sup>

Still, taken together, federal contracting laws hold the promise of driving better employment across the federally contracted workforce and our broader economy—so long as these protections are actually enforced.

## **Cut One Corner, Cut Them All**

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The challenge is that too many contractors are routinely breaking these laws. In a 2010 study, the Government Accountability Office found that 25 of the 50 largest Wage and Hour Division assessments over a five-year period involved 20 companies with federal contracts in 2009.<sup>18</sup> GAO also found that eight of the largest safety and health penalties assessed over the same period involved seven other companies with federal contracts in 2009.<sup>19</sup> Likewise, the Senate Health, Education, Labor and Pensions Committee Majority Staff released a report in 2013 finding that federal contractors made up almost 30 percent of the top violators of wage-and-hour laws, and that federal contractors accounted for 18 of the 100 largest penalties issued by the Occupational Safety and Health Administration between 2007 and 2012.<sup>20</sup> And the problem persists: Just last year, Senator Elizabeth Warren released a report

finding that 66 of the largest 100 federal contractors—representing nearly \$240 billion in taxpayer dollars in 2015—have violated federal labor laws.<sup>21</sup> Dēmos has estimated that contractors’ violations in wage-and-hour laws alone result in their workers losing up to \$2.5 billion each year.<sup>22</sup>

## CONTRACTOR SPOTLIGHT: GENERAL DYNAMICS

General Dynamics Corporation is the third-largest recipient of federal contracts in the nation.<sup>23</sup> Last year alone, federal agencies obligated more than \$15 billion in contracts to the company.<sup>24</sup> On top of that, General Dynamics receives hundreds of millions of dollars in government subsidies nationwide.<sup>25</sup>

But representatives of the Communications Workers of America report that General Dynamics pays wages as low as \$10.35 per hour to workers at call centers covered by the Service Contract Act.<sup>26</sup> Worse yet, the company has an established record of employment law violations. For example, after a 2011 acquisition of Vangent, the company’s General Dynamics Information Technology (GDIT) unit operates numerous call centers for federal agencies.<sup>27</sup> Since 2007, an analysis of publicly available enforcement data reveals that GDIT and Vangent have agreed to pay at least \$4.2 million in back wages assessed by the Labor Department’s Wage and Hour Division (WHD), including \$3.8 million in back wages for violations of the Service Contract Act and \$439,000 for violations of the Fair Labor Standards Act.<sup>28</sup>

WHD records obtained through the Freedom of Information Act provide additional context for the cases resulting in the back wages listed above, and for the continuing allegations of violations despite promises of future compliance. For instance, WHD investigated GDIT’s call center in Coralville, Iowa for failing to pay for pre- and post-shift work between 2010 and 2012.<sup>29</sup> WHD found that the company tracked employees’ work time through its telephone systems and did not record all hours worked.<sup>30</sup> Also, according to WHD interviews, “employees were advised by supervisors not to report time before and after their shift when they were working but not answering telephone calls.”<sup>31</sup> In 2013, the company agreed to pay 719 employees a total of \$372,588 and promised to comply in the future.<sup>32</sup> A year after closing the Iowa investigation, WHD subsequently found that GDIT failed to pay its employees for preliminary work at a smaller call center in Las Cruces, New Mexico.<sup>33</sup> In total, GDIT agreed to pay \$23,318 in back wages to its employees between 2013 and 2014 and promised to comply in the future. Once again, just this year, a group of more than 100 GDIT employees have joined a collective-action lawsuit alleging that GDIT’s shoddy timekeeping and failure to pay for all hours worked continued for several more years.<sup>34</sup>

More troubling, a recent analysis by the Communications Workers of America suggests that GDIT could owe its workers as much as \$107 million more in back wages.<sup>35</sup> CWA has called on WHD to investigate the systematic misclassification and underpayment of more than 10,000 GDIT workers employed at the call centers that the company operates under contracts for the Centers for Medicare and Medicaid Services.<sup>36</sup> CWA has filed related complaints with the WHD involving GDIT call centers in eight states, providing evidence that GDIT has classified these workers at lower pay rates than their actual duties require under the SCA.<sup>37</sup> For example, at its call center in Hattiesburg, Mississippi, CWA has alleged that thousands of current and former employees were classified into the wrong positions, leading to GDIT underpaying its full-time employees there by amounts ranging from \$3,682 to \$6,572 per year.<sup>38</sup> Other federal data suggest that the affected workforce is disproportionately made up of women, and many affected worksites have large shares of workers who are people of color.<sup>39</sup>

A contractor's employment and labor violations could reveal just the tip of the iceberg when it comes to the company's business practices. A 2013 report by the Center for American Progress built upon the 2010 GAO study to show that "the companies with the worst records of harming workers were also often guilty of shortchanging taxpayers through poor performance on government contracts and similar business agreements in ways that defraud the government or otherwise provide a bad value of taxpayers."<sup>40</sup> The report found that among the 28 companies that had the largest health-and-safety or wage-and-hour workplace violations (by dollar value) between 2005 and 2009 and then received federal contracts, one quarter had "significant performance problems" ranging from fraudulent billing to cost overruns to falsifying test results and even an oil-rig explosion.<sup>41</sup>

### CONTRACTOR SPOTLIGHT: XPO LOGISTICS

Industry publications have named XPO Logistics the top logistics company in the nation.<sup>42</sup> *Forbes* ranks it the 67<sup>th</sup> largest employer in the nation across all industries, by number of employees,<sup>43</sup> reportedly around 97,000.<sup>44</sup> One analysis by the International Brotherhood of Teamsters suggests that the company's total federal outlays since 2016 could total almost \$219 million with all options values factored in.<sup>45</sup>

But courts and administrative agencies alike have repeatedly found XPO and companies affiliated with XPO liable for a range of employment and labor law violations in recent decades, including misclassifying drivers as independent contractors rather than employees. Federal and state courts have decided as a matter of law that drivers at these companies were employees—not independent contractors—under both California and Massachusetts law in wage-and-hour litigation leading to more than \$18 million in one final judgment and two settlements.<sup>46</sup> The California Division of Labor Standards Enforcement has issued two other decisions against these companies, initially awarding about \$1.8 million in damages to misclassified drivers for labor code violations, with both cases currently on appeal.<sup>47</sup> According to federal enforcement data, XPO and its current subsidiaries have agreed to pay more than \$300,000 in back wages assessed by WHD for federal wage-and-hour violations since 2006, including \$30,621.50 for 23 employees in Service Contract Act violations.<sup>48</sup> And just this past February, a class-action lawsuit was filed in California state court, alleging that XPO conducted a "deliberate scheme to misclassify their truck drivers as independent contractors, thereby denying them the fundamental protections due to employees under California law."<sup>49</sup>

XPO and its subsidiaries have faced labor and employment law claims beyond wage-and-hour violations as well. Courts have enforced against XPO three decisions in which the National Labor Relations Board found that the company refused to bargain after workers voted to form unions.<sup>50</sup> Previously, in 2015, a federal appeals court affirmed a jury verdict for \$1.5 million in compensatory and punitive damages against an XPO acquisition called New Breed Logistics for sexual harassment and retaliation in a case brought by the Equal Employment Opportunity Commission.<sup>51</sup> Similar claims are alleged to be ongoing: this year, 11 women filed EEOC charges against XPO for sexual harassment, several of whom work in the same Memphis, Tennessee warehouse where the prior illegal discrimination took place.<sup>52</sup>

One concrete and high-profile example involves CGI Federal, the company tasked with building healthcare.gov, the website for individuals to enroll for coverage under the Affordable Care Act. That website's rocky rollout in the fall of 2013 was well documented, to say the least.<sup>53</sup> But as the Senate HELP Report showed, the company had a history of employment law violations that was telling. While CGI Federal itself had two wage-and-hour

violations totaling \$134,149 in liability, its parent company and similarly named entities had a significant record of violations totaling \$1.7 million between 2007 and 2012, including four wage-and-hour violations and nine safety and health violations.<sup>54</sup> Federal contracting officers should be able to use a company's labor and employment law violations as a "canary in the coalmine" to identify possible performance problems later, because contractors who cut corners on employment protections are the same ones likely to cut corners elsewhere on contracts.

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## The Rise and Fall of the Fair Pay Executive Order

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The Obama administration recognized the importance of carefully examining companies competing for government contracts to ensure that taxpayer dollars aren't being used to reward companies that are cutting corners. President Obama signed the Fair Pay and Safe Workplaces Executive Order on July 31, 2014, building on the longstanding principle of procurement law that federal agencies may only award contracts to "responsible prospective contractors."<sup>55</sup> The Fair Pay Order created a mechanism for prospective contractors to disclose their labor and employment law violations, and for agency contracting officers to review those disclosures prior to approving contracts.

Entrenched government contractors fiercely opposed this commonsense reform. No wonder, since the Senate HELP Report found that 49 federal contractors alone were cited for 1,776 separate labor and employment law violations, totaling \$196 million in penalties and assessments during the relevant time period.<sup>56</sup> The Fair Pay Order promised to reset incentives so that contractors would stop shortchanging workers or exposing them to harms.

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## Government contractors who cut corners on employment protections are likely to cut corners elsewhere on contracts.

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A single federal judge preliminarily enjoined the government from implementing the Fair Pay Order in October 2016.<sup>57</sup> Early the following year, Congress passed and President Trump signed a resolution disapproving the federal procurement regulations implementing the Fair Pay Order, effectively mooting further litigation.<sup>58</sup> President Trump further rescinded the Fair Pay Order itself on the same day.<sup>59</sup>

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## Contracting Officers Can Still Engage in Due Diligence

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Federal regulations have long required that contracting officers make an "affirmative determination of responsibility" before awarding a contract.<sup>60</sup> The Fair Pay Order created a mechanism to ensure that federal contracting officers had access to key information and guidance about labor law violations to facilitate this "responsibility determination." Even though the Fair Pay Order was rescinded, contracting officers have the same authority *and responsibility* that they had previously to account for a potential contractor's record of employment law violations when determining whether to enter into a federal contract, at least when they have information of such violations. In the absence of constructive action by

the Trump administration, NELP has published a separate guidance to contracting officers explaining this authority.<sup>61</sup>

As more fully explained in NELP's guidance, well-established principles of procurement law require contracting officers to make an "affirmative determination of responsibility" before awarding a contract.<sup>62</sup> Absent information "clearly indicating" responsibility, the contracting officer must make a "determination of non-responsibility."<sup>63</sup>

As Congress recently noted in a conference report, the Federal Acquisition Regulation (FAR) expressly requires that contractors must have adequate "safety programs applicable to materials to be produced or services to be performed" in order to be responsible.<sup>64</sup>

In fact, contracting officers have a long history of exercising their discretion to account for a range of employment law violations when they know about those violations prior to making a responsibility determination.<sup>65</sup> As early as 1976, an Air Force contracting officer determined that a prospective contractor was not responsible because it had failed to pay prevailing wages and benefits on six prior service contracts.<sup>66</sup> In 1985, an Army contracting officer likewise found a bidder to be non-responsible after learning that the contractor had not paid the prevailing wage in the construction of a prior project.<sup>67</sup> In both of these cases, subsequent bid protests were denied.

As a practical matter, even absent the disclosures required in the Fair Pay Order, contracting officers already have a clear path to more systematically evaluating employment law violations when they are making responsibility determinations for new contracts. First, they can quickly search the small number of widely available government enforcement databases that list enforcement actions involving particular employers, or even just one of the government or non-governmental databases that aggregate these datasets.<sup>68</sup> Second, they should continue to evaluate any relevant information that is provided to them, as they long have done so routinely.<sup>69</sup>

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**Contracting officers continue to have the authority *and responsibility* to take into account a potential contractor's record of employment law violations when determining whether to enter into a federal contract.**

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Contracting officers can use these same resources to make responsibility determinations when awarding task orders or delivery orders under indefinite delivery vehicles (IDVs) such as indefinite delivery/indefinite quantity contracts. IDVs are now used for approximately half of total contract obligations by federal agencies.<sup>70</sup> It is a best practice, consistent with the FAR, to make an affirmative determination of responsibility before placing each additional task or delivery order under an IDV.<sup>71</sup>

Contracting officers who more systematically account for employment law violations in their procurement decisions would have multiple positive impacts:



- They create incentives for federal contractors to comply with important labor and employment protections and ensure that government contracts aren't creating bad jobs;
- They alleviate the downward competitive pressure on responsible contractors who follow the law, and who currently find themselves competing with contractors who are willing to cut corners on labor and employment protections to outbid them; and
- They identify contractors who have not complied with labor and employment laws in the past and who may have performance problems in the future.

## We Still Need Federal Reforms

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Beyond these first steps, key policy reforms would ensure that federal contracts lead to family-sustaining jobs for our nation's workers:

- Labor laws should be strengthened to give more workers the freedom to join together. Under the current labor law regime, employers can violate the law with relative impunity.<sup>72</sup> These reforms would have the greatest impact in creating good jobs. Unionized workplaces, with their ability to do ongoing monitoring and their built-in whistleblower protections, are more likely to follow the law,<sup>73</sup> not to mention to provide higher wages and better benefits.<sup>74</sup>
- Federal procurement laws and policies should be reformed to ensure that government contracting delivers the best value for taxpayers by rewarding employers that invest in their workforces with quality jobs.<sup>75</sup> Jobs to Move America's U.S. Employment Plan provides a compelling model for procurement reform that rewards "equipment manufacturers who commit to creating good jobs, invest[] in domestic manufacturing facilities, and provid[e] training to people facing barriers to employment."<sup>76</sup> Indeed, a 2016 UCLA Law School analysis of that plan's implementation found that "there is no evidence that [this plan] has unduly inhibited competition [in terms of] the pool of potential bidders or the ultimate contract price."<sup>77</sup> Studies of raising standards through living-wage laws have suggested that agencies could actually lower costs; for example, a case study of San Francisco International Airport showed that instituting a living wage lowered turnover from 94.7 to 18.7 percent annually, saving employers more than \$4,200 per employee in turnover costs, and boosted morale and customer service.<sup>78</sup>
- Even without additional legal authority, the Office of Management and Budget could provide guidance to contracting officers on how to consider labor and employment law violations in making responsibility determinations, and at minimum, offer training on how to access relevant federal databases that track such violations. Moreover, the federal government could invest in tools and resources to compile and share information more effectively about contractors' records of legal compliance and their track record in fulfilling their contractual duties. These sorts of improvements would help contracting officers provide better value to taxpayers alongside important transparency around a major source of federal spending.
- Likewise, federal contracting agencies should make better use of existing administrative remedies to block contractors who skirt the rules, including suspension and debarment.<sup>79</sup>



It is important to note that systemic reforms must be paired with additional resources for implementation. Contracting agencies need those resources to adequately implement these requirements.

## RECENT PROGRESS

Even after the Fair Pay Executive Order was disapproved by the current Congress, advocates have continued to pursue policies that promote contractors' compliance with employment laws:

- Congress enacted a provision of the National Defense Authorization Act for 2018 that included a provision requiring a report on how the defense department considers safety and health violations in making responsibility determinations,<sup>80</sup> in addition to report language “direct[ing] the Secretary of Defense to ensure that contracting officials award contracts consistent with federal acquisition regulations, including those required safety elements.”<sup>81</sup>
- The City of Boston adopted an ordinance in December 2016 providing that permitting officers may deny an application for, revoke, or suspend any permit involving a contractor with a history of “engaging in unsafe, hazardous or dangerous practices based on work safety histories or concerns,” including OSHA violations.<sup>82</sup>
- Other lawmakers across the country are considering similar protections. Travis County, Texas, has passed a version of this law, and lawmakers from the State of Massachusetts are considering their own.<sup>83</sup>

## Additional Resources

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- Deborah Berkowitz, *The Massachusetts Act Relative to Workplace Safety Is Good for Law Abiding Businesses, Workers, and Taxpayers*, (New York, NY: National Employment Law Project, 2017), accessed Aug. 25, 2018, <https://www.nelp.org/publication/the-massachusetts-act-relative-to-workplace-safety-is-good-for-law-abiding-businesses-workers-and-taxpayers/>.
- Catherine Ruckelshaus and Caitlin Connolly, *Responsible Contracting: Best Practices*, (New York, NY: National Employment Law Project, 2017), accessed Aug. 25, 2018, <https://www.nelp.org/publication/responsible-contracting-best-practices/>.
- Office of Senator Elizabeth Warren, *Breach of Contract: How Federal Contractors Fail American Workers on the Taxpayer's Dime*, (Washington, DC: 2017), accessed Aug. 25, 2018, [https://www.warren.senate.gov/files/documents/2017-3-6\\_Warren\\_Contractor\\_Report.pdf](https://www.warren.senate.gov/files/documents/2017-3-6_Warren_Contractor_Report.pdf).
- Robert Hiltonsmith and Lew Daily, *Underwriting Good Jobs: How to Place Over 20 Million Americans on a Pathway to the Middle Class Using Federal Purchasing Power*, (New York, NY: Dēmos, 2014), [https://www.demos.org/sites/default/files/publications/UnderwritingGoodJobs\\_2.pdf](https://www.demos.org/sites/default/files/publications/UnderwritingGoodJobs_2.pdf).

- Health, Education, Labor & Pensions Committee Majority Staff, *Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk*, (Washington, DC, 2013), accessed Aug. 25, 2018, <https://www.help.senate.gov/imo/media/doc/Labor%20Law%20Violations%20by%20Contractors%20Report.pdf>.
- Karla Walter and David Madland, *At Our Expense: Federal Contractors that Harm Workers Also Shortchange Taxpayers*, (Washington, DC: Center for American Progress Action Fund, 2013), accessed Aug. 25, 2018, <https://www.americanprogressaction.org/issues/economy/reports/2013/12/11/80799/at-our-expense/>.
- U.S. Government Accountability Office, *Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, GAO-10-1033 (Washington, DC, 2010), accessed Aug. 25, 2018, <https://www.gao.gov/products/%20GAO-10-1033>.
- Paul K. Sonn and Tsedeye Gebreselassie, *The Road to Responsible Contracting: Lessons From States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services*, (New York: National Employment Law Project, 2009), accessed Aug. 25 2018, <https://www.nelp.org/wp-content/uploads/2015/03/responsiblecontracting2009.pdf>.

## Endnotes

<sup>1</sup> Federal records report \$507.9 billion in contracts awarded in FY 2017, including more than \$329B for the Department of Defense, \$27 billion for the Department of Energy, \$26 billion for the Department of Veterans Affairs, and \$24.5 billion for the Department of Health and Human Services. See “Contract Explorer Sunburst,” USASpending.gov, accessed Aug. 25, 2018, <https://datalab.usaspending.gov/contract-explorer.html>.

<sup>2</sup> See “Fact Sheet: Fair Pay and Safe Workplaces Executive Order,” White House, July 31, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/07/31/fact-sheet-fair-pay-and-safe-workplaces-executive-order> (28 million workers); “Employment, Hours, and Earnings from the Current Employment Statistics Survey (National),” Bureau of Labor Statistics, <https://data.bls.gov/timeseries/CES0500000001> (listing 117.2 million private-sector workers in July 2014). A recent study released by Dēmos suggests a smaller, but still significant, share of workers employed by such firms: “In total, federally-supported firms employ nearly 16 million workers, which is almost 14 percent of the entire private sector workforce. Notably, federal purchasing accounts for 29 percent of total revenue for employers in the federal purchasing footprint.” Robert Hiltonsmith and Lew Daily, *Underwriting Good Jobs: How to Place Over 20 Million Americans on a Pathway to the Middle Class Using Federal Purchasing Power*, (New York, NY: 2014), [https://www.demos.org/sites/default/files/publications/UnderwritingGoodJobs\\_2.pdf](https://www.demos.org/sites/default/files/publications/UnderwritingGoodJobs_2.pdf).

<sup>3</sup> See, e.g., James Bach, “Is ‘Lowest Price, Technically Acceptable’ Buying Toxic to Industry, or a Red Herring?,” *Washington Business Journal*, (Sep. 15, 2015), accessed Aug. 25, 2018 [https://www.bizjournals.com/washington/blog/fedbiz\\_daily/2015/09/is-lowest-price-technically-acceptable-buying.html](https://www.bizjournals.com/washington/blog/fedbiz_daily/2015/09/is-lowest-price-technically-acceptable-buying.html) (“A recent report by Herndon-based Deltek determined that from fiscal 2009 to fiscal 2014, [lowest-price, technically acceptable]-related procurement grew 55 percent within civilian agencies and 24 percent with the Department of Defense... Ed Jesson, president and CEO of Tysons Corner-based OBXTek Inc., said it has the toxic effect of not only shrinking margins but adding downward wage pressures to workers.”).

<sup>4</sup> Hiltonsmith and Daily, 15.

<sup>5</sup> Hiltonsmith and Daily at Dēmos find that women make up 71.2 percent of low-wage workers in the federally supported workforce. *Ibid*, 18. They also estimate that 8 million workers are in the low-wage portion of this workforce overall. *Ibid*, 2.

<sup>6</sup> Office of Senator Elizabeth Warren, *Breach of Contract: How Federal Contractors Fail American Workers on the Taxpayer's Dime*, (Washington, DC: 2017), accessed Aug. 25, 2018, [https://www.warren.senate.gov/files/documents/2017-3-6\\_Warren\\_Contractor\\_Report.pdf](https://www.warren.senate.gov/files/documents/2017-3-6_Warren_Contractor_Report.pdf); Health, Education, Labor & Pensions Committee Majority Staff, *Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk*, (Washington, DC, 2013), accessed Aug. 25, 2018,

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<https://www.help.senate.gov/imo/media/doc/Labor%20Law%20Violations%20by%20Contractors%20Report.pdf>; Karla Walter and David Madland, *At Our Expense: Federal Contractors that Harm Workers Also Shortchange Taxpayers*, (Washington, DC: Center for American Progress Action Fund, 2013), accessed Aug. 25, 2018,

<https://www.americanprogressaction.org/issues/economy/reports/2013/12/11/80799/at-our-expense/>; U.S. Government Accountability Office, *Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, GAO-10-1033 (Washington, DC, 2010), accessed Aug. 25, 2018, <https://www.gao.gov/products/%20GAO-10-1033>.

<sup>7</sup> Office of Senator Elizabeth Warren, 6-8.

<sup>8</sup> Walter and Madland.

<sup>9</sup> Sandy Keeney, “The Foundations of Government Contracting,” *Journal of Contract Management*, (Summer 2007), accessed Aug. 25, 2018, [http://www.ago.noaa.gov/acquisition/docs/foundations\\_of\\_contracting\\_with\\_the\\_federal\\_government.pdf](http://www.ago.noaa.gov/acquisition/docs/foundations_of_contracting_with_the_federal_government.pdf).

<sup>10</sup> “Compliance Assistance – Government Contracts,” Wage and Hour Division, accessed Aug. 25, 2018, <https://www.dol.gov/whd/govcontracts/> (labor standards), “Compliance Assistance,” Office of Federal Contract Compliance Programs, accessed Aug. 25, 2018, <https://www.dol.gov/ofccp/regs/compliance/ofcccomp.htm>.

<sup>11</sup> See Celine McNicholas and Heidi Shierholz, *Republicans are Poised to Repeal Important Worker Protections, Starting with the Requirement that Federal Contractors Play Fair*, (Washington, DC: Economic Policy Institute, 2017), accessed Aug. 25, 2018, <https://www.epi.org/publication/republicans-are-poised-to-repeal-important-worker-protections-starting-with-the-requirement-that-federal-contractors-play-fair/> (providing a comprehensive list of Obama Administration protections for federal contractors).

<sup>12</sup> William G. Whittaker, *Federal Contract Labor Standards Statutes: An Overview*, (Washington, DC: Congressional Research Service, 2005), 16, accessed Aug. 25, 2018, [https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1207&context=key\\_workplace](https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1207&context=key_workplace).

<sup>13</sup> *Ibid*, 16.

<sup>14</sup> Jonathan S. Leonard, “The Impact of Affirmative Action on Employment,” *Journal of Labor Economics* 2, no. 4 (1984), 439-463, accessed Aug. 25, 2018, <https://www.jstor.org/stable/2534808>. See also Fidan Ana Kurtulus, “Affirmative Action and the Occupational Advancement of Minorities and Women During 1973-2003,” *Industrial Relations* 52, No. 2 (2012) 213-246, accessed Aug. 25, 2018, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-232X.2012.00675.x>; William M. Rodgers III and William E. Spriggs, “The Effect of Federal Contractor Status on Racial Differences in Establishment-Level Employment Shares: 1979-1992,” *The American Economic Review* 86, no.2 (1996), 290-293, accessed Aug. 25, 2018, <https://www.jstor.org/stable/2118139> (finding that federal contractors had 1.36 percentage points more African-American workers than non-contractors in 1992, but 0.45 percentage points fewer Hispanic workers).

<sup>15</sup> Hiltonsmith & Daily, 18.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*, 15.

<sup>18</sup> U.S. Government Accountability Office (2010).

<sup>19</sup> *Ibid*.

<sup>20</sup> Health, Education, Labor & Pensions Committee Majority Staff.

<sup>21</sup> Office of Senator Elizabeth Warren.

<sup>22</sup> Amy Traub, *Don't Let Government Contractors Cheat Working Americans* (New York, NY: Dēmos, 2016), 1, accessed Aug. 25, 2018, <https://static1.squarespace.com/static/591dd51215cf7dcccdaaec8c/t/5925a93d46c3c4d80cfa664/1496903399569/FPSWReport>.

<sup>23</sup> “Top 100 Contractors Report FY 2017,” Federal Procurement Data System – Next Generation, accessed Aug. 25, 2018, <https://www.fpds.gov/fpdsng/cms/index.php/en/reports/62-top-100-contractors-report>.

<sup>24</sup> *Ibid*.

<sup>25</sup> “Subsidy Tracker Parent Company Summary: General Dynamics,” Good Jobs First, accessed Aug. 25, 2018, <https://subsidytracker.goodjobsfirst.org/prog.php?parent=general-dynamics>.

<sup>26</sup> Daniel Bass, e-mail message to author, August 27, 2018 (on file with author). Until recently, the pay was as low rate as \$9.64 per hour. *Ibid*.

<sup>27</sup> General Dynamics, “General Dynamics to Acquire Vangent, Inc., from Veritas Capital,” News release, Aug. 16, 2011, accessed Aug. 25, 2018, <https://www.gd.com/news/press-releases/2011/08/general-dynamics-acquire-vangent-inc-veritas-capital>.

<sup>28</sup> Communications Workers of America, “Complaints of Systemic Wage Theft at GDIT: CWA Estimates Federal Contractor May Owe \$107 Million in Back Wages,” News release, Jan. 31, 2018, accessed Aug.

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25, 2018, <https://www.cwa-union.org/news/releases/complaints-of-systemic-wage-theft-gdit-cwa-estimates-federal-contractor-may-owe-107>.

<sup>29</sup> Wage and Hour Division, “Compliance Action Report and Case Narrative for WHD Case ID 1676237,” October 12, 2017 (on file with author). Note that General Dynamics acquired Vangent during the period of the Wage and Hour Division’s investigation, and General Dynamics owned Vangent at the conclusion of the investigation.

<sup>30</sup> *Ibid*, 13

<sup>31</sup> *Ibid*, 7.

<sup>32</sup> *Ibid*, 13-14.

<sup>33</sup> Wage and Hour Division, “Compliance Action Report and Case Narrative for WHD Case ID 1731624,” November 20, 2017 (on file with author).

<sup>34</sup> See *Mills v. General Dynamics Information Technology*, No. 8:18-cv-00855 (M.D. Fla. Apr 10, 2018).

<sup>35</sup> Communications Workers of America (Jan. 31, 2018).

<sup>36</sup> *Ibid*.

<sup>37</sup> See Danielle Paquette, “Huge Federal Contractor ‘Failed’ to Pay Workers \$100 Million in Wages, Union Says,” *Washington Post* (Apr. 23, 2018), accessed Aug. 25, 2018, [https://www.washingtonpost.com/news/wonk/wp/2018/04/23/huge-federal-contractor-failed-to-pay-workers-100-million-in-wages-union-says/?utm\\_term=.f01d78c45f01](https://www.washingtonpost.com/news/wonk/wp/2018/04/23/huge-federal-contractor-failed-to-pay-workers-100-million-in-wages-union-says/?utm_term=.f01d78c45f01); Communications Workers of America, “CWA Uncovers More Evidence of Wage Theft at General Dynamics Information Technology Call Centers,” News release, April 26, 2018, accessed Aug. 25, 2018, <https://www.cwa-union.org/news/cwa-uncovers-more-evidence-of-wage-theft-general-dynamics-information-technology-call-centers>.

<sup>38</sup> Communications Workers of America (Jan. 31, 2018).

<sup>39</sup> Author’s analysis of OFCCP inspections dated August 8, 2013 (Vangent-Chester); August 28, 2013 (Vangent-Lawrence); May 26, 2015 (Vangent-Phoenix); October 7, 2015 (Vangent-Riverview); February 8, 2018 (GDIT-Bogalusa); February 23, 2018 (GDIT-Chester). See “Enforcement Data,” United States Department of Labor, accessed Aug. 25, 2018, <https://enforcedata.dol.gov/views/results.php>.

<sup>40</sup> Walter and Madland, 1.

<sup>41</sup> *Ibid*.

<sup>42</sup> “Top 50 Logistics,” Transport Topics, accessed Aug. 27, 2018,

<http://www.ttnews.com/top50/logistics/2017>.

<sup>43</sup> XPO Logistics, “XPO Logistics Advances to Number 67 on Ranking of Largest U.S. Employers,” News release, May 23, 2018, accessed Aug. 27, 2018, <https://news.xpo.com/en-us/news/791/xpo-logistics-advances-to-number-67-on-ranking-of-largest-us-employers>.

<sup>44</sup> “Our Company,” XPO Logistics, accessed Aug. 27, 2018, <https://www.xpo.com/about-us/our-company>.

<sup>45</sup> Terrence Witherspoon, e-mail message to author, August 29, 2018 (on file with author).

<sup>46</sup> The Ninth Circuit has held that these delivery drivers were employees under California law. *Ruiz v. Affinity Logistics Corp.*, 754 F.3d 1093, 1105, *cert. denied* 135 S. Ct. 877 (2014). The *Affinity* litigation arose during a time period before Affinity Logistics was finally acquired by XPO after a series of transactions in 2013, but the trial court subsequently approved a \$13.9 million settlement between 261 class members and an XPO affiliate. *Ruiz v. Last mile Inc.*, slip op., 2017 BL 456071, 2017 WL 6513962 (S.D. Cal. Dec. 20, 2017). In a second case, more than three years after the company was acquired by XPO in 2014, Pacer Cartage was found by a California state appellate court to have illegally misclassified seven drivers as independent contractors under California law. *Miranda v. Pacer Cartage, Inc.*, No. D069425, 2017 BL 304953, 2017 WH Cases 2d 304953 (Cal. App. 4th Dist. Aug. 30, 2017), *appeal denied*, No. S244793, 2017 BL 449495 (Cal. Nov. 29, 2017); XPO Logistics, “XPO Logistics Completes Acquisition of Pacer International,” News release, April 1, 2014, accessed Aug. 27, 2018, <http://investors.xpo.com/phoenix.zhtml?c=204615&p=irol-newsArticle&ID=1914384>. The trial court issued a final judgment in January 2018, awarding those seven drivers a total of \$2.3 million. *Miranda v. Pacer Cartage, Inc.*, No. 37-2014-00008552-CU-JR-CTL (Cal. Sup. Ct. Feb. 6, 2018) (filing the second amended judgment entered on January 29, 2018). Finally, a federal court in Massachusetts found that a company acquired by XPO in 2013, 3PD, had misclassified employees as independent contractors under the Massachusetts independent contractor statute. See *Martins v. 3PD, Inc.*, No. 11-CV-11313, 2014 BL 83870, \*2 & \*10 (D. Mass. Mar. 27, 2014); XPO Logistics, “XPO Logistics Completes Acquisition of 3PD,” News release, Aug. 16, 2013, accessed Aug. 27, 2018, <http://investors.xpo.com/phoenix.zhtml?c=204615&p=irol-newsArticle&ID=1848130>. That case ultimately settled for just under \$2.2 million on December 2, 2015. *Martins v. 3PD, Inc.*, No. 11-CV-11313 (D. Mass. Nov. 2, 2015) (proposed settlement); *Martins v. 3PD, Inc.*, No. 11-CV-11313 (D. Mass. March 2, 2016) (entering order approving class action settlement and dismissing case).

<sup>47</sup> See *Ramirez v. Pacer Cartage, Inc.*, No. 2:15-cv-03830, 2017 BL 165618 (C.D. Cal. May 16, 2017) (finding that the company had misclassified five drivers and ordering the company to pay \$958,659.27 plus fees and costs) (currently pending appeal to the Ninth Circuit, Nos. 17-55848 & 17-55935 (9th Cir.

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Jun 16, 2017)); *Avalos v. XPO Cartage, Inc.*, No. 2:17-CV-03906, 2017 BL 271522 (C.D. Cal. Aug. 02, 2017) (remanding to state court XPO's appeal of California Labor Commissioner's order to pay more than \$855,000 in damages).

<sup>48</sup> Author's analysis of WHD enforcement actions involving XPO Logistics (Nos. 1727257, 1770679, 1739817, New Breed Logistics (1692789, 1565010, 1485146, 1434588), 3PD (1545378, 1553578, 1527279), and BirdDog Logistics (1579434). See "Enforcement Data," United States Department of Labor, accessed Aug. 25, 2018, <https://enforcedata.dol.gov/views/results.php>. In addition to the acquisitions previously listed, XPO announced the acquisition of New Breed on September 2, 2014. XPO Logistics, "XPO Logistics Completes Acquisition of New Breed," News release, Sept. 2, 2014, accessed Aug. 27, 2018, <http://investors.xpo.com/phoenix.zhtml?c=204615&p=irol-newsArticle&ID=1962948>. Bird Dog Logistics was acquired in October 2012. XPO Logistics, "XPO Logistics Announces Third Quarter 2012 Results," News release, Nov. 5, 2012, accessed Aug. 27, 2018, <http://investors.xpo.com/phoenix.zhtml?c=204615&p=irol-newsarticle&ID=1754396>.

<sup>49</sup> See *Alvarez v. XPO Logistics, Inc.*, No. 2:18-cv-03736 (C.D. Cal. June 29, 2018) (denying plaintiffs' motion to remand this case to state court under an exception to the Class Action Fairness Act, under which it was removed to federal court in May 2018). See also James F. Peltz, "Class Action Suit Alleges Port Trucking Firm Exploits Drivers," *Los Angeles Times* (Feb. 26, 2018), accessed Aug. 28, 2018, <http://www.latimes.com/business/la-fi-port-truckers-suit-20180226-story.html>.

<sup>50</sup> *XPO Logistics Freight, Inc.*, 365 NLRB No. 42, 209 L.R.R.M. (BNA) 1028 (Mar. 10, 2017), *enfd. sub nom XPO Logistics Freight, Inc. v. NLRB*, 720 Fed.Appx. 3, D.C. Cir. (Apr. 03, 2018); *Con-Way Freight Inc.*, 363 NLRB No. 53, 204 L.R.R.M. (BNA) 2191 (Nov. 27, 2015), *enfd. sub nom Con-way Freight, Inc. v. Nat'l Labor Relations Bd.*, 838 F.3d 534, 536 (5th Cir. 2016), *cert. denied sub nom. Con-Way Freight, Inc. v. N.L.R.B.*, 138 S. Ct. 60 (2017); *XPO Logistics Freight, Inc.*, 365 NLRB No. 105 (July 6, 2017), *enfd. sub nom XPO Logistics Freight, Inc. v. Nat'l Labor Relations Bd.*, No. 17-1177, 2018 WL 2943938 (D.C. Cir. May 25, 2018). XPO announced that it had acquired Con-Way Freight in the fall of 2015. XPO Logistics, "XPO Logistics to Acquire Con-Way," News release, Sep. 9, 2015, accessed Aug. 27, 2018, <http://investors.xpo.com/phoenix.zhtml?c=204615&p=irol-newsArticle&ID=2086660>; XPO Logistics, "XPO Logistics Acquires Con-Way," News release, undated, accessed Aug. 27, 2018, <https://uk.xpo.com/en/news/xpo-logistics-acquires-con-way>.

<sup>51</sup> *EEOC v. New Breed Logistics*, 962 F. Supp. 2d 1001 (W.D. Tenn. 2013) (denying New Breed's motion for judgment as a matter of law or a new trial after a jury returned a verdict against New Breed on the EEOC's claims of sexual harassment and retaliation, and awarded compensatory and punitive damages, following a trial held from April 30, 2013 to May 7, 2013), *affirmed*, 783 F.3d 1057, 1061 (6th Cir. 2015). Note that XPO acquired New Breed in September of 2014, after the facts arising leading to this case.

<sup>52</sup> See Mike Snider, "At a Warehouse Shipping Phones for Verizon, Women Say Sexual Harassment Was Common," *USA Today* (May 3, 2018), accessed Aug. 27, 2018, <https://www.usatoday.com/story/tech/news/2018/05/03/verizon-investigates-complaints-contractor-enabled-sexual-harassment/576591002/>; Mica Soellner, "Toiling Over a 'Puddle of Blood': Why These Warehouse Workers Are Standing up to Abuses," *In These Times* (Apr. 23, 2018), accessed Aug. 27, 2018,

<http://inthesetimes.com/working/entry/21085/xpo-logistics-labor-teamsters-death-abuses-memphis>.

<sup>53</sup> See, e.g., Adrienne Jeffries, "Why Obama's Healthcare.gov Launch Was Doomed to Fail," *The Verge* (Oct. 8, 2013), accessed Aug. 25, 2018, <https://www.theverge.com/2013/10/8/4814098/why-did-the-tech-savvy-obama-administration-launch-a-busted-healthcare-website>.

<sup>54</sup> See Health, Education, Labor & Pensions Committee Majority Staff, xv.

<sup>55</sup> Federal Acquisition Regulation 9.103(a), accessed Aug. 25, 2018, <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>.

<sup>56</sup> See Health, Education, Labor & Pensions Committee Majority Staff, 1.

<sup>57</sup> *Associated Builders and Contractors of Southeast Texas v. Rung*, No. 1:16-CV-425 (E.D. Tex. Oct. 24, 2016), accessed Aug. 25, 2018, <https://jlaaffirmativeactionlawadvisor.lexblogplatformthree.com/wp-content/uploads/sites/602/2016/10/order-granting-pi.pdf>.

<sup>58</sup> *Disapproving the Rule Submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, Relating to the Federal Acquisition Regulation*, Public Law 115-11 (Mar. 27, 2017), accessed Aug. 25, 2018, <https://www.congress.gov/bill/115th-congress/house-joint-resolution/37>.

<sup>59</sup> Executive Order 13,782, 82 Fed. Reg. 15,607 (Mar. 30, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-03-30/pdf/2017-06382.pdf>.

<sup>60</sup> Federal Acquisition Regulation 9.103(b).

<sup>61</sup> National Employment Law Project to Interested Parties, memorandum, Sep. 6, 2017, "Authority of Federal Contracting Officers to Consider Labor and Employment Law Violations When Making Legally Required Responsibility Determinations," <https://www.nelp.org/publication/authority-federal->



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[contracting-officers-consider-labor-employment-law-violations-making-legally-required-responsibility-determinations/](https://www.nelp.org/publication/authority-federal-contracting-officers-consider-labor-employment-law-violations-making-legally-required-responsibility-determinations/).

<sup>62</sup> Federal Acquisition Regulation 9.103(b).

<sup>63</sup> *Ibid.*

<sup>64</sup> U.S. Congress, House, *National Defense Authorization Act for Fiscal Year 2018: Report (to Accompany HR 2810)*, 115th Cong., 1st sess., H. Rep. 115-\_\_\_, 1916, accessed Aug. 25, 2018, <https://docs.house.gov/billsthisweek/20171113/HRPT-115-HR2810.pdf> (quoting 48 C.F.R. 9.104-1).

<sup>65</sup> In October 2016, a federal judge in the Eastern District of Texas preliminarily enjoined the application of the Fair Pay and Safe Workplaces Executive Order and its implementing regulations and guidance. *Associated Builders and Contractors of Southeast Texas v. Rung*, No. 1:16-CV-425 (E.D. Tex. Oct. 24, 2016), accessed Aug. 25, 2018,

<https://jlaaffirmativeactionlawadvisor.lexblogplatformthree.com/wp-content/uploads/sites/602/2016/10/order-granting-pi.pdf>. That ruling directly applied to Fair Pay Order—and its particular disclosure mechanism and application to certain interim determinations, not to mention its pay transparency requirement and forced arbitration bar—but the court did not squarely address the underlying question of contracting officers' authority to make responsibility determinations. Furthermore, the litigation never proceeded beyond the preliminary injunction stage to full and final consideration on the merits. See National Employment Law Project to Interested Parties, memorandum, Sep. 6, 2017, "Authority of Federal Contracting Officers to Consider Labor and Employment Law Violations When Making Legally Required Responsibility Determinations," <https://www.nelp.org/publication/authority-federal-contracting-officers-consider-labor-employment-law-violations-making-legally-required-responsibility-determinations/>.

<sup>66</sup> *Greenwood's Transfer & Storage Co., Inc.*, B-186438, 76-2 CPD ¶ 167 (Comp. Gen. Aug. 17, 1976).

<sup>67</sup> *General Painting Co.*, B-219449, 85-2 CPD ¶ 530 (Comp. Gen. Nov. 8, 1985) 3.

<sup>68</sup> "Enforcement Data," U.S. Department of Labor, accessed Aug. 25, 2018,

<https://enforcedata.dol.gov/homePage.php>; "Case Search," National Labor Relations Board, accessed Aug. 25, 2018, <https://www.nlr.gov/search/cases>. See also "Violation Tracker," Good Jobs First, accessed Aug. 25, 2018, <https://www.goodjobsfirst.org/violation-tracker>.

<sup>69</sup> A 2013 Congressional Research Service report describes the extraordinary breadth of the discretion that contracting officers have to consider the information that they need in making responsibility determinations, citing to Comptroller General opinions. Kate M. Manuel, *Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures*, (Washington, DC: Congressional Research Service, 2013), 11, accessed Aug. 25, 2018,

<https://fas.org/spp/crs/misc/R40633.pdf>. In short, so long as they consult the Federal Awardee Performance and Integrity System (FAPIS), "what other information, if any, contracting officers consider remains within their discretion." *Ibid.* In two bid protests previously outlined, for example, neither contracting officer received notice of the respective violations from the prospective contractor directly. See *Greenwood's Transfer & Storage Co., Inc.*; *General Painting Co.*

<sup>70</sup> U.S. Government Accountability Office, *Contracting Data Analysis: Assessment of Government-wide Trends*, GAO-17-244SP (Washington, DC, 2017), accessed Aug. 25, 2018, <https://www.gao.gov/assets/690/683273.pdf>.

<sup>71</sup> Guidance from the Defense Acquisition University describes the importance of making an affirmative determination of responsibility before placing each additional task or delivery order under a multi-award contract. "Ask a Professor: Determination of Responsibility," Defense Acquisition University, May 20, 2014, accessed Aug. 25, 2018,

<https://www.dau.mil/aap/pages/qdetails.aspx?cgiSubjectAreaID=3&cgiQuestionID=119941>.

<sup>72</sup> Kate Bronfenbrenner, *No Holds Barred—The Intensification of Employer Opposition to Organizing*, (Washington, DC: Economic Policy Institute: 2009), <https://www.epi.org/publication/bp235/>.

<sup>73</sup> See, e.g., David Weil, "Enforcing OSHA: The Role of Labor Unions," *Industrial Relations* 30, no. 1 (1991), accessed Aug. 25, 2018, <http://www.fissuredworkplace.net/assets/Weil.Enforcing-OSHA-Role-of-Unions.IR.1991.pdf>.

<sup>74</sup> See, e.g., George I. Long, "Differences Between Union and Nonunion Compensation, 2001-2011," *Monthly Labor Review* (Apr. 2013), accessed Aug. 25, 2018, <https://www.bls.gov/opub/mlr/2013/04/art2full.pdf>.

<sup>75</sup> See generally Sonn and Gebreselassie.

<sup>76</sup> "U.S. Employment Plan Resources," Jobs to Move America, accessed Aug. 25, 2018, <https://jobstomoveamerica.org/resources/us-employment-plan-resources-2/>.

<sup>77</sup> Professor Scott L. Cummings, University of California, Los Angeles, to Molly J. Moran, Acting General Counsel, U.S. Department of Transportation, memorandum, Dec. 7, 2016, "Effect of U.S. Employment Plan on Competitive Bidding," [https://jobstomoveamerica.org/wp-content/uploads/2018/04/Cummings\\_Moran\\_Memos.pdf](https://jobstomoveamerica.org/wp-content/uploads/2018/04/Cummings_Moran_Memos.pdf).

<sup>78</sup> Sonn and Gebreselassie, 3. This report also lists other examples of the benefits of high-road contracting for taxpayers.

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<sup>79</sup> 2 C.F.R. 180.5 et seq. (nonprocurement debarment); 48 C.F.R. 9.400 et seq. (procurement debarment). See, e.g., U.S. Government Accountability Office, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved*, GAO-11-739 (Washington, DC, 2011), accessed Aug. 25, 2018, <https://www.gao.gov/assets/590/585277.pdf>.

<sup>80</sup> *To Authorize Appropriations for Fiscal Year 2018 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Military Personnel Strengths for Such Fiscal Year, and for Other Purposes*, Public Law 115-91 (Dec. 12, 2017), Section 814, accessed Aug. 25, 2018, <https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf>.

<sup>81</sup> U.S. Congress (Nov. 2017), 1916.

<sup>82</sup> Boston Code of Ordinances, Ch. 16-A1.2, accessed Aug. 25, 2018, [http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/cityofbostonmunicipalcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:boston\\_ma](http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/cityofbostonmunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:boston_ma).

<sup>83</sup> Massachusetts Bill H. 4811, <https://malegislature.gov/Bills/190/H4811> (Massachusetts); Caleb Pritchard, "Commissioners Court Approves Better Better [sic] Builder Program," *Austin Monitor* (May 23, 2018), accessed Sep. 2, 2018, <https://www.austinmonitor.com/stories/whispers/commissioners-court-approves-better-better-builder-program/> (Travis County), citing Caleb Pritchard, "Commissioner Court Delays Action on Worker Safety Recommendations," *Austin Monitor* (Apr. 23, 2018), accessed Sep. 2, 2018, <https://www.austinmonitor.com/stories/2018/04/commissioners-court-delays-action-on-worker-safety-recommendations/>.

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## About NELP

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, visit [www.nelp.org](http://www.nelp.org).

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