

***Principles of Responsible Contracting for Gulf Coast
Infrastructure & Community Rebuilding***

Federal Reforms

**Laborers' International Union
of North America**

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I. Current Environment

With massive Katrina relief and reconstruction efforts now underway in the Gulf region, immediate action is needed to: 1) *protect taxpayer dollars from waste, fraud and abuse*; 2) *require contracts to be let to qualified, reputable and, preferably, local firms*; and 3) *ensure local workers obtain safe, productive employment with just compensation*.

The need for action is critical. Reports of potential fraud and mismanagement are mounting, as are concerns about lucrative contract awards to firms that are politically connected, disreputable or simply unqualified.

- A comprehensive and independent review of the initial \$1.5 billion in federal spending revealed 80% was awarded under no-bid contracts or with only limited competition, according to a recent New York Times report (9/27/05).
- Local companies, which have the gravest need for this work, are being by-passed by large, out-of-state firms. A Washington Post survey (10/5/05) showed that 90% of the first \$2 billion in funding was awarded to firms outside the affected region.
- Additional reports reveal questions about inflated pricing for Katrina contracts and the use of firms with questionable backgrounds and/or inadequate qualifications.¹

There is also growing alarm over exploitation and mistreatment of workers employed in the rebuilding effort:

- Stories are emerging about hazardous site conditions that workers are being exposed to due to inadequate training, protective equipment and other essential safety protections.
- The current contracting system does not have adequate procedures in place to promote the hiring of displaced, local residents – residents who desperately need employment from the Katrina rebuilding contracts.
- The recent suspension of federal prevailing wages to Katrina projects removes minimal employment protections. Compounding these problems, new concerns are being raised about contractor schemes designed to cheat workers out of wages altogether.

II. Responsible Contracting Principles: Overview

At the heart of these problems lies the federal government's contracting and procurement system. Simply stated, this system is not up to the job. Existing policies are incapable of handling unprecedented challenges created by Katrina. To address this crisis, the federal government should immediately institute a new set of mandatory *Responsible Contracting Principles*. These principles, detailed below, include:

1. Single Point Accountability
2. Performance Qualifications & Fair Employment Standards
3. Effective Oversight/Program Transparency

¹See *Firms Hired in Katrina's Wake*, Wall Street Journal (9/22/05); *Katrina Contracts Worth Billions Raise Worries About Waste*, Seattle Times (9/29/05); *Roof Firms Make a 'Stinking Killing' off Katrina*, Knight Ridder (9/30/05).

The following recommendations may generally be effected through regulatory reform or policy initiatives. Legislation is not needed, but could be considered to compel administrative action. Most of these reforms could be implemented through the use of a basic 1-2 page verified Contractor Qualification Statement and would NOT unduly burden or delay the contracting process.

Moreover, these reforms could be incorporated into the applicable contracting process, regardless of specific procurement methods used (e.g., lowest responsible bidder, best value/RFP, sole source/emergency). The essential goal is to balance speed and urgency with proper due diligence and to create good local jobs for devastated local communities while rebuilding the region's infrastructure.

III. Principles of Responsible Contracting

Principle #1: Single Point Accountability

There is a critical need in the current rebuilding program for better coordination, more efficient management and greater accountability in the performance of both government agencies and outside contractors. Accordingly, the federal government should establish a single source of authority for managing the relief/recovery/rebuilding efforts to ensure single point accountability.

A. Designate GSA Lead Program Manager: The U.S. General Services Administration (GSA) should be designated as the lead authority for management and accountability and assigned total contracting responsibility for the Katrina rebuilding program.

- Massive funding for the rebuilding program -- \$200 Billion+ -- will be channeled through hundreds, if not thousands of contracts over the next several years.
- Multiple federal agencies, including GSA, the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers and others are being deployed to the region to perform a vast array of services throughout the affected area.
- Multiple agencies utilize multiple policies and procedures. Diffusing power over such a major program prevents government from maintaining clear lines of accountability and evaluating the program's overall performance and effectiveness.
- Centralized control is essential to ensure proper contract administration, management and oversight. GSA should be given this control since it is the federal government's chief procurement agency and it is the agency with the most extensive experience and expertise in civil public works construction.

All contracts should be awarded under uniform procedures established by GSA (see below) and let directly by GSA, Alternatively contract awards by other agencies should at least be overseen and approved by a GSA.

As a first step, issue an immediate directive to prohibit the use of "no-bid" sole source contracts or, at the very least, order that such contracts should be kept to an extreme minimum for dire situations commanding immediate action for to preserve life safety. Previous "no-bid" contracts should be re-bid under full and open public competition.

B. Establish GSA Lead as Oversight Office: GSA should also establish an ombudsman's office to provide single point accountability in contract oversight.

- This office could be the central point for receiving reports of alleged contract fraud, waste and abuse and/or complaints by contract workers for violations of applicable laws and employment standards (as specified below).
- Information received could be forwarded to appropriate agencies for law enforcement actions and could also be used to guide additional reforms in future contracting and procurement policy.

Principle #2: Performance Qualifications & Fair Employment Standards

The federal government can achieve many of its key goals in the rebuilding effort by instituting specific contracting procedures that require all contractors to meet basic standards relating to technical qualifications, past performance, business integrity and fair employment obligations.

A. Central Contractor Registration Program: To ensure the use of qualified, reputable firms, a new *Responsible Contractor Registration Program* should be created and run by GSA and applied to all projects located within the disaster area.

This program would require all contractors and subcontractors to be qualified and approved through standard, uniform responsibility-screening procedures applicable to all contracts and all agencies.

Under this program all firms employed on Katrina projects should be required to submit a standard certified application – prior to performing contract work -- verifying, under penalty, compliance with the following conditions:

- (1) **Debarments/Terminations:** The firm shall affirmatively verify that it has not been debarred, suspended, terminated, defaulted, disqualified or otherwise prevented from doing business by *any federal, state or local agency* in the past three years.
- (2) **Legal Compliance:** The firm shall affirmatively verify that they have complied with Local, State and Federal Laws and that there have been no convictions or charges against the firm, its officers, partners or principle owners in connection with any contracting business in the past three years. Observance of Local, State and Federal laws and regulations shall include, but not be limited to, those pertaining to criminal violations, insurance, withholding taxes, employment law, health and occupational laws and wage laws.
- (3) **Bonding/Licensing/Resources:** The firm shall affirmatively verify that it meets all bonding and licensing requirements of applicable federal, state and local law and that it has all required resources, including financial, technical and personnel, to successfully perform the contract work.
- (4) **Insurance Coverage:** The firm shall affirmatively verify that it will provide workers compensation insurance and unemployment insurance for contract workers and that

it will meet all other insurance requirements, required by law or contract specifications, including those for general liability.

- (5) **Local Employment:** The firm shall affirmatively verify that, for the duration of the contract work, it will participate in a program offering first preference employment to workers who are residents of the disaster area.
- (6) **Sustainable Wages:** Federal Davis-Bacon prevailing wage requirements should be reinstated for all Katrina contracts. In the absence of this, the firm shall affirmatively verify that it will pay a minimum “sustainable” wage of \$15 per hour to workers employed under the contract, unless its employees are covered by an applicable collective bargaining agreement between the contractor and a bona fide labor organization.
- (7) **Room & Board:** The firm shall affirmatively verify that it will provide room and board as necessary to employ residents of the disaster area, the value of which shall be at least equal to current per diem rates established by federal regulations, unless its employees are covered by an applicable collective bargaining agreement between the contractor and a bona fide labor organization.
- (8) **Safe Work Environment:** The firm shall affirmatively verify that it will take all action necessary to ensure safe working conditions for all workers employed under the contract by providing, as needed, safety training, safety protective equipment and other required safety measures. The firm shall supply documentation regarding safety training of employees and certification for work being performed by employees.
- (9) **Apprenticeship Training:** The firm shall affirmatively verify that it participates in *bona fide apprenticeship training programs* for all crafts in which it employs contract workers; such programs shall be registered with the U.S. Department of Labor and/or a State Apprenticeship Council.
- (10) **Health Insurance:** The firm shall affirmatively verify that it will provide benefits to employees, including but not limited to, employer-paid family health care coverage, pension benefits. Alternatively, as regards health insurance, offer additional wages equal to the cost of employer-paid health care.

B. Performance Database/Compliance Check: Once a firm qualifies under the above-referenced certification process, it should be entered into a central contractor registry maintained by GSA.

- (1) Prior to contract award, a firm’s status should be verified by the appropriate contracting agency; no firm should work on federal-funded projects unless its approved status is verified in the contractor registry.
- (2) State and local government agencies involved in Katrina rebuilding should be given full and immediate access to the contractor registry.
- (3) Additional contractor review procedures should be developed to prevent unqualified or disqualified firms from attempting to use different names or identifies to gain access to the contractor registry.

Principle #3: Effective Oversight & Program Transparency

- A. Performance Evaluation System:** To ensure effective oversight of Katrina spending, a uniform contractor performance evaluation system should be created to gather critical performance information AFTER contract awards. This system should be established, managed and coordinated by GSA.
- (1) **Centralized Database:** A centralized performance database should be created to track and record contractor performance in uniform 1-page reports for all key areas including: (i) Cost /Schedule, (ii) Quality/Safety, (iii) Law Compliance, and (iv) Local Hiring and Training.
- (2) **Performance Check:** Contracting officials should be required to review and consider performance records created in this database PRIOR to issuing any new contract awards; firms failing to perform satisfactorily should be removed from registry and debarred from future work.
- (3) **GAO Review:** Performance reports developed in this database should be immediately forwarded to the Government Accountability Office (GAO), as well as to other federal procurement offices. The GAO should be directed to conduct fast-track reviews of the data accumulated and develop reports for Congress.
- (4) **Public Review:** Performance data on government contracts funded by public tax dollars is inherently public information. Performance reports on Katrina contracts developed by this system should be immediately available for public review; this transparency would serve as another check and balance on the contracting system.
- B. Inspector General Coordination:** The GSA should also be given central control over the oversight activities of the Inspector General (IG) Offices of all agencies involved in the Gulf rebuilding to: 1) allow IG oversight activities to be properly coordinated; 2) avoid duplication of effort; and 3) establish one central point for collecting information on contract abuses so corrective actions can be developed in a concerted manner.
- C. Use of Federal Whistleblower Laws:** Some of the most effective weapons against contract waste, fraud and abuse are whistleblower laws. Chief among these is the federal False Claims Act, 31 U.S.C. 3729, et. seq.
- This law, also known as the “*Qui Tam*” Act, essentially offers bounties or financial rewards to persons who help expose fraud and abuse in connection with federal contracts and/or federal grant programs. The “*Qui Tam*” Act should already apply to virtually all of the federal funding being provided for Katrina assistance.
 - Action should also be taken to ensure that the “*Qui Tam*” Act can and will be used to fight contracting abuses; all affected stakeholders should be fully informed of this law, including federal agencies involved in the relief effort, project contractors and subcontractors, project workers and the general public.

- In addition to the Qui Tam law, several other federal whistleblower laws may apply, including various environmental laws, to Katrina projects; these laws provide strong whistleblower protection for employees who suffer retaliation or other unjust treatment for reporting illegal and improper activities.
- Information on the “Qui Tam” Act and other applicable whistleblower laws should be disseminated and key aspects of these laws -- including employee protections and the availability of financial rewards -- should be widely publicized.
- Various media forums should be used to educate the public and all stakeholders about the existence of key laws in this area and particularly information regarding employee rights. At a minimum, contractors should be required to inform their workers of these laws and employee rights under these laws.

IV. Conclusion

The Gulf rebuilding program is shaping up to be the largest civil infrastructure project ever undertaken in the United States. To protect the interests of taxpayers from contract abuse and to ensure the rebuilding effort becomes an effective engine of local economic redevelopment that benefits the local communities and residents most in need, serious reforms to our current contracting and procurement system are needed. The reforms recommended above would prove to be a good start.

This document was prepared by the Laborers' International Union of North America to advance responsible contracting principles. For further information please contact Donald Kaniewski, Legislative and Political Director, 202-942-2211, dkaniewski@liuna.org.