



Procurement with Purpose

Improving Job Quality and Equity Through Public Procurement Reform

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About the Aspen Institute Economic Opportunities Program

The Economic Opportunities Program (EOP) advances strategies, policies, and ideas to help low- and moderate-income people thrive in a changing economy. We recognize that race, gender, and place intersect with and intensify the challenge of economic inequality, and we address these dynamics by advancing an inclusive vision of economic justice. For more than 25 years, EOP has focused on expanding individuals' opportunities to connect to quality work, start businesses, and build economic stability that provides the freedom to pursue opportunity.

We collaborate with national and local leaders across the US —nonprofit leaders, policymakers, labor leaders, business leaders, educators, academics, and more—and we actively seek input and ideas from individuals and communities affected by proposed approaches to address economic opportunity challenges. Through our leadership and fellowship programs, applied research and evaluation, data and analysis, and dialogue with diverse stakeholders, we work at both local and national levels to build understanding and galvanize action to address the challenge of economic opportunity in America.

EOP encompasses efforts engaging various approaches to expanding opportunity: the [Business Ownership Initiative](#), the [Future of Work Initiative](#), [Good Companies/Good Jobs](#), [UpSkill America](#), and the [Workforce Strategies Initiative](#). In addition, across these approaches EOP hosts the [Economic Opportunity Fellows Network](#) and the [Opportunity in America](#) event series. The EOP [Advisory Council](#) offers insights, strategic counsel, and guidance in support of our work.

Executive Summary

Now is the time for public procurement reform. The \$2.1 trillion in annual public procurement spending already affects job quality, and reforms can motivate greater efforts among employers that seek contracts. However, procurement systems are complex and slow to evolve. We believe that reforms are achievable and consistent with the systems' core functions and history of attention to some socioeconomic goals. This paper argues for procurement reforms focused on improving job quality and advancing racial and gender equity. And we recommend public procurement reforms that aim to ensure that more jobs are high quality, secure, and equitably accessible.

This discussion focuses on procurement through bid systems in which multiple vendors compete for the government's business. From early practice up to now, public procurement processes consider costs as a key factor—with contracts awarded to the least expensive supplier deemed capable of fulfilling the need. In lowest responsible bidder frameworks, considerations of job quality and diversity would be discouraged. However, public systems increasingly recognize the superiority of best value procurement (BVP) methods. Overall value becomes more important than lowest purchase price. BVP has become common in public procurement across all levels of government, and this framework opens opportunities to consider factors such as job quality and race and gender equity.

Precedents in procurement policy and practice pursue goals of job quality and equity. These include compensation standards, requiring certain worker benefits, and inclusion of women and minorities. This paper reviews relevant examples, and the reform recommendations build on these long-accepted practices and well-established goals.

We also recommend the following principles and ideas to spark discussion and inform procurement changes to incentivize job quality and equity:

1. Metrics Should Assess Outcomes for Workers Instead of Employer Inputs or Practices.

Outcome metrics focus on the ends that matter—rather than the means to those ends. Assessments of process changes or specific activities are at best indirect measures of change from the status quo. Outcome measures for workers should assess whether the intended results were achieved in terms of impacts that matter to workers. Measures of outcomes for workers clarify intended goals and provide flexibility for firms searching for pathways that are a better fit for them to achieve those goals.

2. Diversity, Equity, and Inclusion (DEI) Metrics Are Essential to Job Quality Assessments.

In too many occupations and sectors, job quality is low because accepted norms and practices devalue work performed by people of color and women. The economic toll is very high. More consequential, albeit less quantifiable, is the moral cost and loss of trust in institutions due to inequitable treatment. Progress on DEI can be accelerated by measuring and improving job quality while also assessing how different DEI groups do or do not share in improving job quality. Job quality and inclusion metrics should capture employment equity outcomes at all levels of an organization, not solely in its frontline workforce or in its ownership. The assessment for a bidding firm with good overall job quality should be

adjusted downward when job quality is not provided equitably across race, ethnicity, and gender groups. Scores should be raised when employers are achieving more comparable job quality across diverse groups in their workforce. With experience, relative weighting and scoring of these factors can be derived.

3. Measures Must Be Easy to Report and Understand. A few precisely defined outcomes that can be consistently reported from data that employers already regularly collect are superior to a more complex set of metrics. Data and analytics that are understandable and align with a clear set of goals are an advantage in gaining acceptance among contract competitors, the public, and other stakeholders.

4. Outcomes Metrics Should Assess Worker Earnings, Retention, and Internal Advancement. Based on our experience and reviewing others' work, we propose three key metrics.

Earnings: Wages and salaries are key contributors to economic stability and a critical component of job quality. In addition, earnings are often correlated with other components of job quality such as benefits packages. Although this measure is already in use in public-sector procurement, through prevailing wage and minimum wage requirements, more should be done to steer procurement awards to employers that pay sustainable wages.

Retention: A direct measure of workers' dignity, agency, and respect would be a challenge to implement, but these issues are critical to job quality. Assessing turnover and retention, however, is a good indirect measure that will show challenges in a workplace culture. Workers do "vote with their feet," moving away from poorer jobs and toward higher quality opportunities. Higher retention and lower quit rates are found at businesses that offer higher job quality. This measure is an important gauge of whether a firm is offering higher or lower quality jobs.

Internal Advancement: Opportunities for upward mobility are also a critical component of job quality. Workers value professional development opportunities. Training and skill development are valued, but the tangible benefits of actual advancement are the outcomes that matter to workers. A raise in earnings is a practical advancement measure, and all employers have the data already on hand to assess and report it. Based on earnings/pay data, an advancement measure could be the share of workers who received 1.5 times or more the average wage increases across all workers (e.g., a 7.5% jump would be the threshold when average increase is 5%).

5. New Systems for Assessing Job Quality and Diversity Must Minimize Reporting Burdens by Maximizing the Use of Employers' Existing Data. To facilitate participation and address potential resistance by firms that bid for public contracts, reporting burdens should be minimized as much as possible. The principle of simplicity facilitates the principle of low burden, but it is worth considering reporting burden in its own right. Implementing job quality and DEI assessment should emphasize the use of data most employers already have on hand. All but the smallest businesses use HR management information system (HRMIS) or payroll processing software. These systems can report worker identification codes along with earnings or wage rates. For equity data, businesses

with more than 100 workers are required to report to the Equal Employment Opportunity Commission (EEOC) through Form EEO-1. Employers must have individual worker-level data to develop these reports. We have found that an HRMIS makes it possible for employers to report their workers' race, ethnicity, and gender with ease.

6. Reporting Systems Must Secure Personally Identifiable Information. Many businesses may well be reluctant to share any more information than is currently required to bid on public procurement requests. Corporate officials are also hesitant to share employee-level data even if it is anonymized. A system for ingesting, analyzing, and reporting job quality and inclusion metrics must ensure data security.

7. Employer Ratings Might Begin as Confidential to Procurement Agencies and Later Transition to Public Disclosure. Procurement processes commonly protect trade secrets and confidential information from public disclosure. We expect that they will continue to do so. However, data related to job quality or DEI goals do not meet the standard of a trade secret, nor do summary data reveal individual confidential information. Nonetheless, it may be necessary to initially treat this information as confidential. This is a good time, however, to question whether employers should be able to bar disclosure of job quality and DEI outcome information. As this movement to include analyses of job quality—and especially job quality disaggregated by race, ethnicity, and gender in public procurement—is in its earliest stages, it may be expedient to offer confidentiality.

8. Pilot Projects Can Demonstrate the Proof of Concept for These Procurement Reforms. Including job quality and diversity as factors in public procurement would entail new policies and practices in a risk-averse system. To start out, public agencies could be required or encouraged to create pilot efforts. Pilot programs could guide public agencies to phase in the use of reformed approaches in procurement. The experience gained and any innovations generated could aid further job quality and DEI reporting for these and other contracted services.

Conclusion: Procurement requirements and reporting on job quality and DEI would reward exemplary employers and spur others to improve. The data needed are in the hands of employers, and rating protocols can gauge employers' performance. This is a uniquely important time to build from this strong foundation and incorporate new policies and practices to advance crucial job quality and worker diversity priorities.

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Introduction: Now Is the Time for Public Procurement Reform

A once-in-a-lifetime opportunity has emerged to bend a massive stream of public funding toward achieving a more just and equitable economy. Reforming public procurement can play an important role in improving job quality for millions of workers and extending opportunities equitably across race, ethnicity, and gender. With \$2.1 trillion in annual spending, public procurement can motivate change among employers that are awarded contracts. For example, the Infrastructure Investment and Jobs Act (IIJA) enacted in November 2021 was forecast to add, on average, 2 million jobs per year over a decade through \$550 billion in new funding.^{1,2} This moment presents an urgent opportunity to align key stakeholders behind a shared agenda to build job quality and equity into public procurement.

Reforming public procurement, however, may also be a once-in-a-lifetime challenge. Procurement systems are complex and slow to change. Securing changes that make a meaningful difference will take time and effort from within these systems and require a push for reforms by policymakers, advocates, and other influencers.

This paper argues for reforms to public procurement systems to improve job quality and advance racial and gender equity, beginning with an overview of the investigative approach. Next, we review the job quality and economic equity crises and how procurement policy reform can be a powerful lever to encourage higher quality jobs and more inclusive workplaces. The paper then summarizes the current policy framework that guides public procurement systems and reviews policies and practices that have been used to advance social goals through public procurement; we discuss their relevance to the job quality and equity challenges of today. We close with a set of principles and ideas for public procurement reform and a summary conclusion. The paper is intended to be of use to procurement professionals interested in bringing job quality and equity goals to their systems as well as to a variety of actors and activists interested in strategies, practices, and policies to improve job quality and economic equity.

Approach and Methodology

This paper reflects insights gained from the development of Working Metrics, a software platform used to benchmark companies against their peers on selected job quality and employment equity characteristics. Those efforts have also included working with public agencies and anchor institutions to test that system. The paper is also informed by an extensive literature review as well as interviews with experts and practitioners in the procurement field, who discussed policies and practices that offered models for procurement reform. We had substantive discussions with more than a dozen organizations interested in building job quality and equity considerations into their procurement processes. Interviewees included representatives from local and state agencies, hospital systems, and education institutions. Although several of these

organizations were interested in piloting the system, pandemic-related disruptions prevented all but two pilots from moving forward to implementation. Nonetheless, the many interviews and the literature review yielded significant insights into how procurement systems work, their potential for advancing social goals, and the obstacles to change.

The paper also draws on the extensive experience of the Good Companies/Good Jobs Initiative (GCGJ) at the Aspen Institute Economic Opportunities Program (EOP) and The Hitachi Foundation. The Initiative investigated business models that succeeded by developing jobs of higher quality than those of its industry peers. It yielded a range of insights into the factors that influence businesses' job design and job quality decisions. More specifically, the work enabled a deep understanding of the use of metrics in business decision-making and the variation across businesses in the availability and accuracy of key data elements. Our initial assumptions about the availability of data from employers were incorporated in early designs of Working Metrics and were subsequently confirmed when we tested the platform with employers that were diverse by sector, size, business form, and location.

We also circulated draft versions of the paper to experts to elicit feedback and reactions, and we made further revisions based on that input.

The Economic, Equity, and Job Quality Crises

There is a pressing need for new approaches that ensure far more jobs in our labor market are high quality, reasonably secure, and equitably accessible to all. Procurement policy reform presents tremendous potential to contribute to this goal.

The double blows of the COVID-19 pandemic and economic crises of 2020-21 are unique in the past century. The pandemic is the most severe global public health crisis the World Health Organization has ever declared.³ In the US alone, there have been almost 100 million cases and over 1 million deaths.⁴ The pandemic's rapid onset and shutdown measures also plunged the global economy into the most punishing recession of the post-WWII era.⁵ The economy was stung by the steepest and deepest drop since the US began keeping quarterly data in 1947.⁶ More than 22 million jobs were lost (a reduction of 14.7% across just three months).⁷ The pandemic exacerbated food insecurity: 54 million people were classified as food insecure, including 17 million who became food insecure during the pandemic.⁸ The Commonwealth Fund estimated that 14.6 million people—7.7 million workers and 6.9 million of their dependents—lost employer-sponsored health insurance in the midst of the century's greatest public health crisis.⁹

This economic blow compounded a four-decades-long slide in job quality. Martha Ross and Nicole Bateman's 2019 study concluded that 53 million individuals—44% of all workers ages 18 to 64 in the country—earn low wages.¹⁰ Those figures predate the pandemic and recession. The 2020-2022 recovery in employment helped relieve the economic pain.¹¹ Poor

job quality, however, was a primary engine of historic turnover levels—dubbed the “Great Resignation”—according to worker surveys.

Low job quality has also fallen disproportionately on workers of color and female workers. Structural racism’s persistent influence means that Black workers and families are more severely affected than other groups.¹² Female workers’ prospects have also been dimmed by discrimination and occupational segregation into traditionally lower quality jobs. Median household income is highest for white people and is lower for Hispanic people (by 26%) and Black households (by 39%). Female workers’ median earnings are 27% below those of male workers.¹³ And the working poor—because they rely more than other groups on industries endemic with poorer quality jobs, even in prosperous times—suffer some of the harshest impacts.

A Note on Job Quality

There are many job quality frameworks. We are using a definition developed by the EOP in partnership with the Families and Workers Fund.¹⁴ It draws on a synthesis of work on the topic and taps into a series of discussions with cross-sector leaders, focus groups with hourly workers, and feedback from a range of individuals and organizations.

This definition frames job quality around three principles that a job should fulfill: basic economic stability, opportunity for economic mobility, and equitable treatment and respect, including the ability to alter and improve working conditions and contribute to organizational effectiveness. Workplace culture that provides equitable treatment to all working people, regardless of race, gender, ethnicity, religion, country of origin, or any other demographic characteristic, is a fundamental component of job quality. We emphasize this principle here in recognition of the long history and current state of working conditions in which diversity, equity, and inclusion (DEI) are so often absent or inadequate. In the context of procurement, there is a history of including DEI goals with respect to business owner identities. With this definition of job quality, reforming public procurement to incorporate job quality considerations would extend the DEI goals beyond business owners to workers as well to foster equitable inclusion in high-quality employment opportunities. The figure that follows depicts our job quality framework.

Good Jobs: A Working Definition

Economic Stability

- ❑ Stable, family-sustaining pay
- ❑ Sufficient, accessible, and broadly available benefits
- ❑ Fair, reliable scheduling practices
- ❑ Safe, healthy, and accessible working conditions

Economic Mobility

- ❑ Clear and equitable hiring and advancement pathways
- ❑ Accessible, paid training and development opportunities
- ❑ Wealth-building opportunities



Equity, Respect & Voice

- ❑ Organizational and management culture, policies, and practices that:
 - ❑ are transparent and enable accountability
 - ❑ support a sense of belonging and purpose
 - ❑ advance DEIA*
 - ❑ and address discrimination.
- ❑ Ability to improve the workplace, such as through collective action or participatory management practices

*DEIA: diversity, equity, inclusion, and accessibility

Source: “Statement on Good Jobs.” The Aspen Institute Economic Opportunities Program

Some elements of job quality may be more easily measured than others. All are important—although some individuals may prioritize differently if forced to make trade-offs. It is important to measure job quality. Although measures are likely to be imperfect, recognizing what they might miss—in addition to what they can capture—can help employers select and use them to improve job quality. Further, jobs are not easily divided into “bad” and “good.” They can be better or worse along multiple dimensions. In the figure, we have the dimensions of job quality arrayed in a circle with shading to illustrate this nonlinear continuum; such treatment also makes clear that there are a variety of avenues for improving job quality.

The Power of Public Procurement

Public procurement at the federal, state, and local levels now exceeds \$2.1 trillion annually. This extraordinary level of spending has a massive economic impact as it courses out from agency budgets to vendors of goods and services.

There seems to be surprisingly limited attention to and advocacy for reforms to public procurement systems relative to the size of the potential impact such changes may have. According to Bloomberg Government, federal contract spending rose steadily over four years and was forecast to exceed \$600 billion in fiscal year 2020—a robust 6% rise over FY2019.¹⁵ The 90,000 units of US local and state governments spend an estimated \$4.1 trillion annually.¹⁶ And \$1.5 trillion of those budgets goes to purchasing goods and services through procurement.¹⁷ With US gross domestic product at \$24.5 trillion as of the first quarter of 2022,¹⁸ public procurement is equivalent to 8.6% of GDP.

Fiscal stimulus was one focus of the 2020-21 federal response to the pandemic and recession. Spending increased, and tax changes were made to drive demand for goods and services, reduce unemployment, and create more jobs. In 2020, Congress authorized \$3.5 trillion in new spending, including \$2 trillion alone in the CARES Act (Coronavirus Aid, Relief, and Economic Security Act).¹⁹ Much of this spending necessarily focused on immediate help. But there was more to be done.

In 2021, infrastructure investments were a key to improving the economy in the nearer term and to “making our economy more sustainable, resilient, and just” in the longer term.²⁰ The new Infrastructure Investment and Jobs Act (also commonly known as the Bipartisan Infrastructure Law), enacted on November 15, 2021, marks the largest boost in infrastructure investment in nearly a century. The new law increases infrastructure spending over five years by \$550 billion.²¹ The plan will repair and build “hard infrastructure,” such as roads and bridges, public transit, airports, railways, water systems, and broadband capacity, and help as well to address climate change and other environmental issues.

This historic public investment will transform—from appropriations enacted in the Capitol’s marble meeting rooms to shovels in the dirt—our communities via federal, state, and local government procurement systems. This rising tide of investments offers significant opportunities to incentivize and reward companies that offer higher job quality to a diverse and inclusive workforce. Budget deficit and inflation concerns may affect future public-sector infrastructure spending. However, existing commitments, together with ongoing public procurement for this effort and others, present a substantial opportunity for procurement reform to be a powerful lever to advance job quality.

Aligning public procurement to advance job quality is likely to garner strong public support. Good jobs are popular with and important to the American public.²² Americans believe companies should help workers more. In a 2019 poll sponsored by JUST Capital, 80% of respondents believed that companies do not share enough of their success with employees, and 60% thought companies put shareholders above all else.²³ As for government’s role in helping to create more high-quality jobs, a March 2020 Ipsos/Public Agenda poll found that twice as many respondents strongly or somewhat agreed (49%) that government has this responsibility; roughly 22% somewhat or strongly disagreed. There was also strong and bipartisan support on a range of actions governments could take to encourage quality jobs, with 82% of respondents favoring upgrading infrastructure to create good jobs and boost the economy.²⁴

Public Procurement Systems: An Overview

Procurement systems are stewards of public dollars. Through procurement systems, federal, state, and local agencies purchase the variety of goods and services the public sector needs to operate. This paper focuses specifically on procurement done through a bid system, in which multiple vendors compete for a government contract and a vendor is selected based on a set of criteria that are intended to ensure taxpayer funds are well used.

Public procurement is governed by the accretion of guidelines set by legislative action, detailed implementation regulations, and agencies' experiences. These frameworks seek to lower costs and to augment accountability with protection against fraud, waste, bias, and corruption. The emphasis on accountability and preventing malfeasance tends to reduce the scope for discretion or innovation in public laws governing procurement.²⁵ In time, bureaucratic inertia can also become a constraint when agencies and their stakeholders are accustomed to processes operating in a certain way. Businesses that consistently win contracts have mastered a complex system and have a strong incentive to resist reforms. Government leaders, procurement officials, and suppliers all may lament the slow pace, complexity, and inefficiencies of procurement systems, but that does not necessarily equate to a desire for change. The entrenched status quo presents real obstacles to reform.

In both public and private procurement processes, proposal assessment and selection typically consider costs as a key factor. That encourages the award of contracts to the least expensive supplier deemed capable of fulfilling the need. Since the early 1800s, governments in the US often made purchases through relatively simple, lowest-bid processes of publicly advertised competition.²⁶ These "lowest-cost" or "lowest responsible bidder"²⁷ approaches require setting a minimum qualification threshold for suppliers and issuing awards based on the proposed costs of qualified suppliers. In lowest responsible bidder systems, incorporating additional social and economic considerations such as job quality and diversity within the bidding firm would generally be discouraged outright.

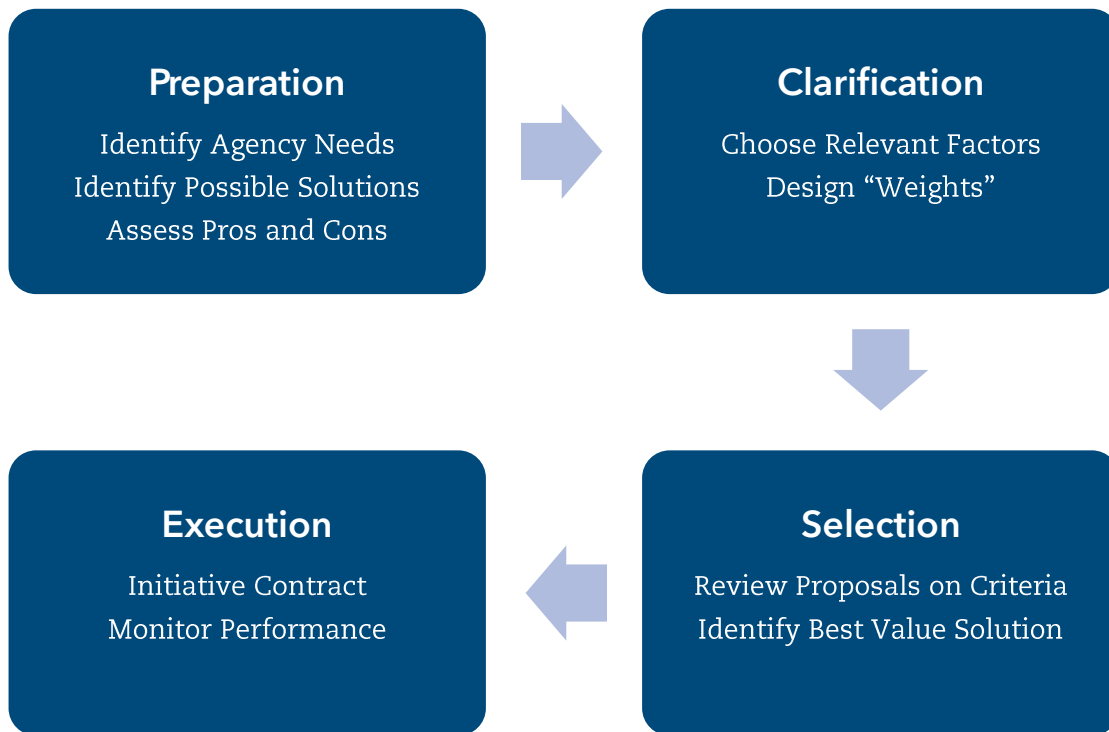
Over time, however, traditional lowest-cost procurement standards broadened to consider factors beyond price alone. Governments increasingly recognize that best value procurement (BVP) methods can ultimately improve the way they conduct business.²⁸ To ensure wise spending and good performance from public procurement, overall value becomes more important than *lowest purchase price*. BVP means evaluating purchase options including, but extending beyond, price alone. Typically, this effort involves weighing long-term value, evolving technologies, customer service, or other factors, and may also consider factors beyond price that can contribute to the total cost.

BVP is common in public procurement (as well as many private-sector decisions).²⁹ Federal procurement is guided by the Federal Acquisition Regulation (FAR), and BVP is allowed under FAR and federal statute 10 USC Section 2304. At the state level, a recent survey of procurement offices shows that BVP has replaced lowest-price requirements in all but three states.³⁰ How far local officials have gone in adopting value-based or BVP approaches is harder to gauge, but it appears that they are becoming more common.

The BVP process can be summarized as including four phases: preparation, selection, clarification, and execution.³¹ Contract specialists looking to guide procurement toward best value first identify the options, then select relevant factors, and finally assign weights to these factors. These officials assess such factors as quality, quantity, time, place, source, price, and risk. Other considerations may include reliability, past performance, and environmental, social, or economic benefit.³²

BVP systems afford more opportunities to consider factors such as job quality and race and gender equity in employment. Initiating the processes and criteria to weigh these issues,

however, may be sensitive for stakeholders and technically challenging as well. Disputes or appeals of public procurement decisions happen regularly and are costly and time consuming to public agencies and bidding firms alike.³³ Expanded consideration to encompass the quality of jobs and job equity at the worker level should account for how such expansion might increase administrative burdens, risks, and costs.



Precedents for Improving Job Quality and Diversity through Procurement

Requirements on government procurement to attend to socioeconomic goals have a long history. Since the late 19th century, public procurement in the US and other countries has been aligned to socioeconomic objectives.³⁴ The New Deal jobs programs as well as minority-, women-, and veteran-owned business set-aside initiatives are prominent US examples.

Over the past century, some legislators, policymakers, and advocates have worked to ensure more government procurement spending goes to create or support quality jobs. A variety of measures were adopted, such as prevailing wages and benefits laws as well as provisions to prevent discrimination, support equal pay, and ensure that workers can

exercise their right to form unions.³⁵ Other public procurement requirements target commitments to minority- and women-owned enterprises.

This section reviews precedents in public procurement that address aspects of job quality as well as DEI. Two policy proposals—one federal and one state—that would make strides toward requiring assessment and disclosure of aspects of job quality and DEI are also considered.

Examples of Procurement Policies and Practices that Promote Job Quality and Equity

Although altering procurement practices may be difficult, it can be done. There is precedent for establishing policies to pursue goals related to job quality and some forms of equity. Methods include improving standards of compensation, ensuring women and minority groups are involved, and requiring tax dollars to be spent within specific jurisdictions. Examples of these approaches are described below.

Wage Protections

Wages are a key aspect of job quality. Prevailing wage laws (PWLs) adopted at the federal level, and also in force in about half of the states³⁶ and in some municipalities, are among the oldest labor market policies.³⁷ They aim to prevent the public sector's purchasing power in construction and other markets from undercutting wages and benefits in a community. Under some public contracts, covered employers must pay the wages and benefits in local labor markets for comparable work on similar projects. Compensation follows this prevailing rate, but a lowest-bidder or BVP system is also maintained. Although PWLs such as the Davis-Bacon Act have detractors arguing for repeal or revision,³⁸ a national study of the construction industry over a decade compared states without a PWL or weak laws to states with effective PWLs. It found that average wages were higher by 1 to 2% for workers in strong PWL states. PWLs had neither a positive nor a negative impact on total construction costs or industry growth.³⁹

The Davis-Bacon Act is perhaps the most widely recognized PWL. It applies to contractors and subcontractors performing on federally funded or assisted contracts exceeding \$2,000 for the construction, alteration, or repair of public buildings or public works.⁴⁰ Laborers and mechanics employed under the contract must be paid no less than the prevailing local wages and fringe benefits for corresponding work on similar projects in the area. The law benefits workers and firms that offer higher quality jobs. But compliance entails complexity—particularly for firms new to federal contracting.⁴¹ Beyond construction, the Service Contract Act (SCA) applies to procurement contracts “where the principal purpose is to furnish services.”⁴² Covered employers must also pay service employees no less than the wage rates and fringe benefits found prevailing in the locality or the rates contained in a predecessor contractor's collective bargaining agreement.⁴³ Combined, these PWLs cover much of the work under contract or aided by federal funding. For those contracts, the effect

is to dampen the influence of wages as a source of arbitrage⁴⁴ as an advantage in winning contract bids.

Minimum Wage for Federal Contracted Workers: Under the Federal Property and Administrative Act, the president may use executive orders to promote economy and efficiency in federal contracting. Presidents have relied on this authority to influence employment practices of federal contractors. For example, President Obama used an executive order in 2014 to raise the minimum wage for contracted workers to \$10.10 per hour. The 2014 order also indexed the wage requirement to inflation. Requirements that contractors provide workers with paid sick and family care leave followed in 2015.^{45,46} Through executive order, President Trump rolled back the minimum wage coverage for seasonal and recreational employees.⁴⁷ Other provisions raising the minimum wage and indexing it to inflation remained in force. In April 2021, President Biden set a \$15 minimum wage for workers employed under federal contracts, indexed the increase to inflation, and eliminated the tipped wage, also known as subminimum wage.^{48,49} However, the new policy implicitly recognizes that federal procurement changes unfold over time. The minimum wage was implemented in new contracts as of March 30, 2022, and the tipped minimum wage is not set to be eliminated until 2024. While federal executive authority can improve job quality for workers under federal contracts, gains may be reversed according to shifts in political priorities and ideological orientations.

Promoting Racial and Gender Equity

Goals to advance the economic inclusion of women and racial and ethnic minorities have been a regular feature of public procurement systems. These provisions applied to federally funded construction projects and other large contracts for more than 50 years.⁵⁰ Some state and local governments followed closely with similar efforts.⁵¹ Revisions in 1978 to the Small Business Development Investment Act⁵² expanded assistance and shifted the focus from businesses that created jobs for disadvantaged groups to preferences for small, minority- and women-owned business enterprises (MWBES) and other “disadvantaged” businesses. In 1988, Congress authorized for the first time governmentwide procurement goals of at least 20% for small businesses and 5% for disadvantaged firms. In 1994, Congress expanded the 5% minority procurement goal to specifically include businesses owned by women.^{53,54}

Disparities in procurement awards to MWBEs continue, however. A 2016 analysis of a range of studies concluded that the “needle has not moved” much in overcoming disparities.⁵⁵ In the 27 years since the adoption of the goal for women-owned businesses, the goals are only infrequently achieved. Across the federal government, the 5% goal was achieved in FY2019—but only for the second time since it has been tallied by the US Small Business Administration.⁵⁶ Significant changes in outcomes from procurement systems can take far more time than policymakers who champion those new targets anticipate. In 2021, the Biden Administration boosted the goals. In remarks memorializing the 100th anniversary of the Tulsa race riot, President Biden announced his intention to increase federal procurement with disadvantaged small businesses by 50%—an additional \$100 billion—over five years.⁵⁷

Ensuring Spending Benefits Specific Areas or Groups

Community Benefits Agreements: Either before or after a public procurement award, a community benefits agreement (CBA) can help define and target how the investment and the recipient firm can improve job quality and access to jobs or training for groups in the community. A CBA is typically negotiated between a developer or employer and the community, and it outlines the benefits that the employer or project will provide to the community or to identified groups. In return for this commitment, the community supports approval of the project and may have an ongoing relationship to assist an employer or developer in specific ways.

Jobs to Move America (JMA) illustrates how CBAs work. JMA is a strategic policy center working to transform public spending and corporate behavior to advance toward a fair and prosperous economy with good jobs and a healthier community.⁵⁸ Public funding for public transit and transportation projects is JMA's leverage point; the objective of these efforts is to secure CBAs that help ensure job quality, local hiring, training opportunities, and pathways for manufacturing jobs for underrepresented and underserved communities. For example, a legally binding CBA between JMA, SMART Local 105 (a local affiliate of Sheet Metal Workers International Association), and BYD Motors covering the Lancaster, California, plant, which builds electric buses, was created in 2017 and renewed in September 2020.⁵⁹

The plant employs more than 400 union workers. BYD Motors, among the world's largest electric vehicle manufacturers, agreed to invest in an apprenticeship and training program. The company also accepted a goal to hire 40% of its workers from populations facing significant barriers to employment—such as veterans and returning citizens. Groups historically excluded from the manufacturing sector, such as women and African Americans, will also be recruited and placed.^{60,61} The company exceeded its goal under the CBA of recruiting and hiring 40% of its workers from the targeted groups and worked with partners to tackle employment barriers such as language access and transportation. With the upswing in CBAs connected to infrastructure funds, the work of organizations like JMA to tie economic development or procurement projects to CBAs is an example other are likely to follow.⁶²

Madison BVP and Labor Provisions: The Wisconsin municipality has used BVP since 2008. Within BVP, the city also considers aspects of job quality and training availability. The ordinance requires that contract selection over a threshold amount must consider wages paid, workforce diversity, and the availability of apprenticeship positions. Contractors who demonstrate that they meet the requirements may be “prequalified”—an important advantage in the procurement process—to bid for future projects.⁶³

“Made in America” Executive Order: In the first weeks of the Biden Administration, the president issued a new executive order⁶⁴ to boost demand for American products, materials, and services by \$400 billion.⁶⁵ Considered part of then-candidate Biden's promise to create good jobs for workers, the initiative aims to generate more domestic manufacturing jobs. Manufacturing jobs, however, may not be good jobs and may not be available to many. The administration has not yet authorized job quality, DEI standards, or reporting requirements for the “Made in America” initiative.

Policies to Improve Disclosure of Information on Job Quality and Equity

Job quality is a material consideration for public procurement. The public interest extends to supporting quality jobs because this element aligns with better performance by companies working on procurement contacts. Constituents also believe that government and employers should do more to improve job quality and employment equity. In addition, creating more good jobs should also limit the expenses for public benefits that many working people in low-quality jobs are forced to rely on. A recent proposal from the California Future of Work Commission prompts disclosure on job quality and equity from large firms in the state.

California’s Proposed “Uplifting Employers That Advance Job Quality Act”: Chartered by Governor Newsom, the California Future of Work Commission aimed to “develop a new social compact for California workers based on an expansive vision for economic equity that takes work and jobs as the starting point.”⁶⁶ The commission’s charge included recommending ways to promote better job quality, wages, and security. Upon the release of the commission’s report, discussions led to new legislative proposals. For example, the proposed California “Uplifting Employers that Advance Job Quality Act”⁶⁷ would create an employer certification program to “incentivize exemplary behavior by businesses and develop a new social compact for workers based on an inclusive vision in which everyone shares in economic growth.”⁶⁸ Very large firms with 1,000 or more employees in the state would collect and report job quality and diversity metrics for assessment.⁶⁹ Categories of data submitted annually would include the following:

- Number of full-time, part-time, hourly, and salaried workers
- Pay, hours, benefits, and scheduling
- Percentage of salaried manager positions filled by internal promotion
- Ratio of nonsupervisory employees to contractors and temporary workers
- Safety
- Annual turnover rates
- Equity measured as pay ratios across groups and share of salaried managerial positions held according to race, ethnicity, and gender

The examples in this section illustrate how procurement and other policies could advance job quality and DEI. There’s still much room for greater progress. The Century Fund concluded that the potential of public procurement to advance social goals has not yet been tapped, noting that the federal government “has never followed a systematic, comprehensive use of procurement policy tools.”⁷⁰ Despite the potential in leveraging public purchasing power, “this spending has not been robustly tied to key economic and social challenges.”⁷¹ Although some states and local governments have innovated in these areas, much more can be done at all levels to better align public procurement with the commitment to improve job quality and job equity.

Some public procurement experts express concern that linking contract awards to “less objective and measurable criteria” may discourage bidders in some circumstances from competing. Construction contractors, for example, may have significant costs in estimating a project, preparing a bid, allocating finite bonding capacity, and other requirements.

Confidence in the process and metrics is a factor that may influence whether a firm will incur the costs to submit bids.⁷²

Environmental, Social, and Governance (ESG) and Disclosure on Human Capital

(HC): ESG investing⁷³ and disclosure on HC issues might seem to be distant from efforts to achieve impact through public procurement. However, these topics are essential, because developments in ESG and HC reporting will influence procurement in the public sector and beyond by molding definitions, measures, and reporting protocols. As the ESG field develops and shapes the policies of publicly traded corporations, common practices and standardized metrics will be likely be applied in public sector impact procurement initiatives. What is measured matters. For example, Harvard Business School Economist Rebecca M. Henderson argues that “accountants hold the key to saving civilization. Even tiny changes in accounting rules can change behavior in profound ways.”⁷⁴ Much of Henderson’s book addresses shortcomings she sees in ESG measurement and offers recommendations for improvement. A key challenge is that the social impact included in ESG is described in varying ways: as social issues, labor standards, human rights, social dialogue, pay equity, workplace diversity, access to health care, racial justice, data security, industrial relations, or supply-chain issues.⁷⁵ At its core, however, the “S” includes the treatment of a company’s workers and the people or institutions outside of it. And treatment of workers is also crucial in influencing procurement.

In recent years and accelerating in 2022, the Securities and Exchange Commission (SEC) has considered human capital disclosure requirements for companies under its jurisdiction. Then-Chairman Jay Clayton noted in August 2020 that the SEC’s new provision would begin to modernize public company disclosure rules “essentially for the first time in over 30 years.”⁷⁶ The SEC’s approach in 2020, however, involved more soft guidance than rigorous prescription. For example, covered companies apply their judgment (without SEC guidance) in describing any HC measures and any HC objectives that the firm focuses on in managing its business. Key terms—such as “human capital” and “issues in managing the business”—were not defined.⁷⁷ In fact, little changed in the reporting on HC issues: “Some filers provided only a single paragraph...some took three pages... and the average length was one full page.”⁷⁸ Most information was qualitative, and specific data were typically limited “to underscore and explain one or more portions of the narrative.” However, the new SEC leadership is signaling that further action on disclosure rules is likely. In May 2021, SEC Chair Gary Gensler announced that a new rule on disclosing HC metrics would soon be proposed.⁷⁹ The commission has been collecting comments on a petition for rulemaking to require disclosure on these issues,⁸⁰ and there is some indication that release of a proposed rule may be targeted for the first half of 2023 Any SEC action on HC disclosure requirements will merit close consideration, because it may have implications for procurement initiatives across sectors.⁸¹

Principles and Ideas for Public Procurement Reform

The size and scope of public procurement spending, including the 2021 adoption of a historic increase in federal infrastructure investments, suggest it should be a focus for reforms. Reforms should align with a commitment to achieving socioeconomic goals—specifically, improving the quality of jobs for working people and ensuring equitable access to desirable employment opportunities. As businesses with higher job quality and diversity tend to outperform their peers, this social goal can be advanced while also maintaining and likely improving value delivered for public agencies and taxpayers. The following principles and ideas are intended to spark discussion and inform procurement system changes that incentivize job quality and equity.

Accuracy and Efficiency of Analytics and Reporting: A system to define job quality and employee diversity, and the metrics for tracking both elements, could rely on bidding firms to generate the data, conduct the required analytics, and report the results. This approach would entail specifying many details of the analytics and relying on firms that have a stake in the outcome to conduct the calculations and to report them accurately. A better approach is to require bidding firms to report the required data through a secure system operated by the public agency or a third-party independent vendor. This system would standardize and automate the analytics and allow for the results to be shared with both the bidding firm and the procurement agency. In our experience, this approach significantly reduces the time commitment and reporting burden for employers. It is also conducive to minimizing errors in calculation or analysis that could significantly alter firm-level results. Finally, secure systems provide the underlying data to the procurement agency for potential auditing or investigation of inaccuracy or fraud.

1. Metrics Should Assess Outcomes for Workers Instead of Employer Inputs or Practices.

Outcome measures focus on ends that matter rather than on the means to those ends. Although assessments of process shifts or a performance of a specific activity are indirect measures of changes to the status quo, such appraisals may not capture whether the intended result was achieved. For example, employer-provided training might be expected to lead to outcomes such as improved workplace safety, productivity and earning, employee retention, internal advancement, or other goals. Employer-provided Training activity may be measured by variations in training budgets or by the number of employees participating in or completing training. But such measures will not reveal whether any change was achieved in the desired outcomes of improved worker safety, higher worker earnings, greater rates of internal promotion, or other goals. Prioritizing outcomes has two advantages: it clarifies the intended goals but does not require a specified path for achieving them. This flexibility incentivizes employers to find the better pathways to

achieving desired worker outcomes. What works for one business may not be the best approach for another. One employer may improve worker safety through better training, while another may do so by redesigning a production process. A third may realize that what it needs is improved communications protocols. As the business maxim goes, “only what is measured gets managed.” Measurement efforts in public procurement need to prioritize outcomes rather than the activities that may or may not achieve them. Specific outcome measures are recommended in the next section.

2. DEI Metrics Are Essential to Job Quality Assessments. In too many occupations and sectors, job quality is low because societal norms and accepted practices devalue work done by women and people of color. The economic toll is very high. A San Francisco Federal Reserve study concludes that US GDP is reduced by \$2.6 trillion annually due to race and gender disparities.⁸² More consequential, albeit less quantifiable, is the moral cost and loss of trust in institutions from such continued inequitable treatment. Progress on DEI can be accelerated when it is combined with measuring and improving job quality. Improving job quality will help reduce long-standing social divisions that tend to pit demographic groups against one another for access to a scarce pool of decent-quality jobs. So, public incentives should drive employers to enhance job quality and inclusivity *at the same time*. Improvements in hiring practices that result in a more diverse workforce should not result in that workforce being paid less or other diminishments in job quality, as has too often been the case. Job quality and inclusion metrics should capture employment equity outcomes at all levels of an organization, not solely in its frontline workforce or in its ownership.

The data needed for such assessments are readily available from bidding firms. However, small firms with few employees may encounter some practical difficulties disaggregating data by demographic group. Tailoring reporting requirements according to firm size, however, makes clear that DEI performance is important, and that data will be examined more closely as firms grow.

In implementation, procurement systems may need to consider the relative treatment of a firm that has higher job quality overall but a lower job quality for the diverse segments of its workforce, when compared with a firm with the opposite results. The choice highlights a possible tension; an algorithm can set scoring or rating guidance by adjusting point awards or weighting these factors. The assessment for a bidding firm with good overall job quality should be adjusted downward where job quality is not provided equitably to workers of color and women. The overall rating or score of companies should be boosted where the employer is achieving more comparable job quality across the race, ethnicity, and gender groups. It will take experience to assess the relative weighting of these factors that works best to incentivize equitable job quality improvement, but that can begin only with bidding firms reporting the data to public procurement systems.

3. Measures Must Be Easy to Report and Understand. A few precisely defined outcomes that can be consistently reported from data that employers already regularly collect are superior to a more complex set of metrics. Data and analytics that are understandable and that align with a clear set of goals are an advantage in gaining acceptance among contract

competitors, administrators, the public, and others. Bidding firms must understand the new reporting criteria and marshal an internal capacity to report new information. A simple set of measures that draws on data that employers already collect avoids straining firms' capacity, and a system with a limited number of metrics minimizes opportunities for evasion or obfuscation. Before they can be fully supportive, elected leaders and the public must also understand the intention of these changes. Job quality and equity have a great impact on people's lives and livelihoods. A few key measures that unmistakably align with the expectation of improving the lives of working people will be easier for busy public officials to understand, explain to their constituencies, and support.

4. Outcome Metrics Should Assess Worker Earnings, Retention, and Advancement. Many factors influence job quality, but as noted previously, a simple set of measures is needed. Earnings, retention, and internal advancement correlate well with key components of job quality: economic stability, economic mobility, equity, respect, and voice.

Earnings: Wages and salaries are a key contributor to economic stability, a critical component of job quality. In addition, earnings are often correlated with other components of job quality that contribute to economic stability, such as adequate benefits packages. This measure is also already in use in procurement in the public sector—for example, by requiring a higher minimum wage for employees of federal contractors and an adherence to PWLs. But more should be done to steer procurement funding toward high-road employers that pay sustainable wages. The Working Metrics approach to workers' earnings has two advantages. First, it focuses on gross pay without complications that would also require much more data at the individual-worker level on pay rate and hours worked. Second, earnings are already reported to the unemployment insurance system and, as such, are easy for employers to access, report, and analyze. However, hourly pay is an alternative to relying on earnings and would make the most sense where a higher wage standard is to be encouraged through procurement. For example, a bidding firm might be required to report the number or share of workers paid less than a living wage in their region or to document that the employer complies with a state or local minimum wage that exceeds the federal wage requirement or minimum wage for employees of federal contractors' standards.

Retention: A direct measure of workers' sense of dignity, agency, and respect in the workplace would be challenging to implement, but these issues are nonetheless critical to job quality. An indirect indicator of problems in workplace culture, however, is turnover. Workers do "vote with their feet," moving away from poorer jobs and toward higher quality opportunities—and stay longer. This was particularly true during the recovery from the 2020 recession (the so-called Great Resignation). Low-road employers and poorer-quality jobs see low retention rates compared to peer firms. Bureau of Labor Statistics data demonstrate that job tenure with the current employer is lowest for occupations associated with poorer job quality. Shortest tenure was found for food preparation (1.9 years), health care support (2.8 years), personal care (3.1 years), retail sales (3.3 years), warehouse/transportation (3.3 years), services (3.4 years), and sales and office occupations (3.7 years). Tenure was highest for management, professional, and business occupations (4.9 years). Higher retention and lower quit rates are found at businesses that offer higher job quality. This measure is an important gauge of whether a firm is offering higher or

lower quality jobs. Retention rates also can be defined in detail, and businesses have ready access to data to calculate and report their rates. Context is key, however, as retention and turnover vary significantly by industry. The Job Opportunity and Labor Turnover Survey (JOLTS), conducted by the Bureau of Labor Statistics, contains data that can be used to benchmark industry segments. The retention and turnover rates reported by bidding firms in the same industry segment can be simply compared. If the competitors span business sectors, benchmarks can be derived to give further context and allow adjustment, if appropriate, to the ratings or scores.

Internal Advancement: Opportunities for upward mobility also are a critical component of job quality. Workers value professional development opportunities. In a May 2022 Conference Board survey of employers and employees 58% of workers said they were likely to leave their company if they don't get professional development opportunities. The figures were higher for Black, Latinx, Asian, younger workers, and particularly female workers. Training and skill development are valued, but the tangible benefit of *actual* advancement—rather than training to *possibly* progress—matters to workers. Changes in title, occupational category, and job responsibilities could all be advancement indicators. In our experience, however, these indicators would be challenging to measure and assess consistently across firms. Within industries and even within the same employer, we've noted inconsistencies in titles, pay rates, occupation designation, and work responsibilities. That challenge is compounded by data availability and reporting hurdles. This information may be available for some employers from their HRMIS. But for many other businesses—particularly small and medium firms—there isn't a database to readily draw on. A raise in pay or earnings is an outcome associated with worker advancement. Based on earnings/pay data, a practical advancement measure could be the share of workers who received equal to or more than 1.5 times the average wage increase across all workers; a 7.5% jump would be the threshold when the average increase is 5%.

Gaming Metrics and Rating Systems: There are challenges to implementing a workable and low-burden system of measures and ratings around job quality and employee equity. And just as in other systems, some companies bidding for public procurement contracts may be expected to try to “game the system.” The phrase generally means to exploit or manipulate the rules to one’s advantage. It does not extend to falsifying information or outcomes; that would be addressed by prohibitions and penalties that already exist in public procurement for fraud, dishonesty, and abuse. Rather, in these cases, firms follow the rules—but not in a fashion that they were meant to be—or firms obscure the facts. Consider two firms competing for a contract to deliver manufactured goods. Company A may undertake all the production and efforts related to the contract through its own workers. Company B may rely significantly on workers who are not direct employees, such as people employed by a temporary firm or other contractor company. Company B’s strategy in many cases could make it appear to offer higher quality jobs if positions with lower pay, higher turnover, and few chances for advancement are categorized separately from the firm’s employees. This matter could be addressed by requiring disclosure of such data during the selection process and monitoring changes during the performance of the contract.

5. New Systems for Assessing Job Quality and Diversity Must Minimize Reporting Burdens by Maximizing the Use of Employers’ Existing Data. To facilitate participation and address potential resistance among businesses that bid for public contracts, the reporting burden should be minimized to the greatest degree possible. The principle of simplicity facilitates the principle of low burden, but it is worth considering reporting burden in its own right. Implementing job quality and DEI assessments should emphasize the use of data most employers already have on hand. All but the smallest businesses use HRMIS or payroll processing software. These systems can report worker identification codes along with earnings or wage rates. These systems facilitate required reporting, such as the reporting on earnings that employers must make to their state unemployment insurance administrators. In terms of equity data, businesses with more than 100 workers are required to report annually to the Equal Employment Opportunity Commission (EEOC) through Form EEO-1. US businesses with 100 employees or more account for just over 67% of all employment. Employers’ EEO-1 includes summary-level data for covered groups. To generate those summary reports, however, employers must have individual worker-level data. We have found that HRMIS makes reporting workers’ race, ethnicity, and gender easier for employers. Smaller businesses without HRMIS data on these factors have also drawn on other sources—for example, hiring and application paperwork, benefits registration, and onboarding files—to fulfill their diversity reporting requirement data without much burden.

6. Reporting Systems Must Secure Personally Identifiable Information. Many businesses may well be reluctant to share any more information than is currently required to bid on public procurement requests. Corporate officials are also hesitant to share employee-level

data even if the data are anonymized. For example, DEI information has long been considered sensitive. Even the summary-level DEI data employers report to the EEOC are barred by law from public disclosure. A system for ingesting, analyzing, and reporting job quality and inclusion metrics must ensure data security. Software security and data handling protocols should be well documented and presented in ways that are understandable and convincing to businesspeople in general and to their IT security and HR experts.

7. Employer Ratings Might Begin as Confidential to Procurement Agencies and Later Transition to Public Disclosure. Procurement processes commonly protect trade secrets and confidential information from public disclosure. We expect that they will continue to do so. However, business performance data related to job quality or DEI goals do not generally meet the standard of a trade secret, nor do summary data reveal individual confidential information. Nonetheless, it may be necessary at the start to treat this information as confidential unless authorized by the reporting firm. Conversely, this is a good time to question whether employers should be empowered to bar disclosure of information on their job quality and DEI outcomes. Revealing such information should be a significant advantage to firms offering good jobs to an inclusive workforce. Disclosure would incentivize other firms to improve their performance on job quality and inclusion. Concerns that this type of information could make an employer look bad aren't much of a reason to claim that the firm might be put at a competitive disadvantage. However, when new systems roll out, confidentiality in the early implementation stage can be important to de-risk the process of doing something new and to allow all parties to become comfortable that the system is working as intended. In addition, because this movement to include analyses of job quality—and especially job quality disaggregated by race, ethnicity, and gender in public procurement—is in its earliest stages, it may be expedient to offer confidentiality on the underlying data and resulting analyses. That said, maintaining confidentiality after the system is established should be considered carefully because there is a strong case for public funds being used in ways that are accountable to the principles of job quality and equity in the workplace. As business confidence is established in the use and assessments from this data, the disclosure question should be revisited. A timetable for revisiting this question should signal the intent of the provision and ensure that it is not continually delayed.

8. Pilot Projects Can Demonstrate the Proof of Concept for These Procurement Reforms. Including job quality and diversity considerations in public procurement would entail adopting new policies and practices in a system that can be risk averse. As one idea to begin the change process, public agencies could be required or encouraged to create pilot efforts. Agencies across all government levels contract for services such as janitorial services. This occupation has more than 2.3 million workers but relatively poor job quality; median pay is barely above \$13 per hour nationally, and the industry has low retention and high turnover rates. Pilot programs could guide public agencies to phase in use of reformed procurement approaches for these services. The experience gained and any innovations generated can aid further job quality and DEI reporting for janitorial and other contracted services.

Conclusion

Public procurement systems serve multiple purposes, and those have included efforts to achieve socioeconomic goals. The public and public leaders support efforts to boost job quality, diversity, and inclusion. And reforming public procurement with such goals in mind is garnering growing support. Given the scale of spending—more than \$2.1 trillion annually—public procurement has great potential to create powerful incentives for change. Procurement requirements and reporting on job quality and DEI would reward exemplary employers and spur others to confront these issues and make improvements. The adoption of the new federal infrastructure bill is the largest investment in these systems in a generation. Over many years, an enormous increase in funds will flow out through procurement systems at the federal, state, and local levels. This puts pressure on adopting public procurement reforms right now.

The path to public procurement reform to expand scrutiny of job quality and diversity and equity may be challenging to negotiate. To alter procurement systems, advocates must overcome inertia and status quo bias, rigidity in laws and implementation, and fulfillment of public accountability requirements. They must also deal with entrenched interests that will claim assessing job quality is too difficult. The data needed are in the hands of employers, and metrics and assessment or rating protocols can be developed to gauge performance by employers. Employers already maintain basic employment and earnings data, as required by the unemployment insurance system, and reporting can be disaggregated by race, ethnicity, and gender to advance inclusion goals. This specific disaggregated data is a strong foundation on which greater detail could be built. Good work has been done in the realm of impact investing to understand and measure publicly traded and other companies' performance on job quality and inclusion objectives. Given the urgency to build better jobs and address the economic divides of race, gender, and location, now is the time to reform and innovate in public procurement systems.

Endnotes

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²⁴ “America’s Hidden Common Ground on Creating Good Jobs: Results from a Public Agenda/USA Today/Ipsos Snapshot Poll,” Public Agenda, March 6, 2020, <https://www.publicagenda.org/wp-content/uploads/2020/03/HCG-Good-Jobs-Snapshot-Final-1.pdf>. The poll was conducted February 20-21, 2020, with a sample of roughly 1,007 adults ages 18 and older.

²⁵ Erica Bosio, “Rules vs. Discretion in Public Procurement,” *Let’s Talk Development* (blog), World Bank Group, June 1, 2020, <https://blogs.worldbank.org/developmenttalk/rules-vs-discretion-public-procurement>.

²⁶ James Nagle, *A History of Government Contracting*, Washington, DC: George Washington School of Law. 1992.

²⁷ This statement is accurate in a historical view of government procurement, which did emphasize least cost/price. However, these approaches evolved. In commodity supplies, low bid remains a primary determinant of contract awards. For many construction contracts, quantity, quality, and time of delivery are specified, and contracts are awarded to the responsible bidder with the lowest responsive bid. In public procurement for IT and professional services, health care, education, environmental regulation, among others, low price is seldom the most important factor. The procurement process begins with a request for proposals. Bidders are required to submit technical and financial proposals. Technical and other factors are weighted differently depending on material to be procured.

²⁸ John Walton, Patricia Innocenti, Theodore Lucas, H. Arthur Roberson, and Tureen Partner, *Best Value in Government Procurement: Concepts and Practices*, ed. Brent Mass (NIGP: The Institute for Public Procurement, 2013). <https://www.nigp.org/resource/position-papers/Best%20Value%20in%20Government%20Procurement%20Position%20Paper.pdf?dl=true>.

²⁹ Eric Almquist, Jamie Cleghorn, and Lori Sherer, “The B2B Elements of Value,” *Harvard Business Review*, March-April 2018, <https://hbr.org/2018/03/the-b2b-elements-of-value>.

³⁰ Liz Farmer, “How State Procurement Offices are Learning to Buy Better,” Washington, DC: Governing Institute, July 2019. <https://www.farmersfieldonline.com/magazine-features/2019/7/1/how-state-procurement-offices-are-learning-to-buy-better>.

³¹ A summary list of phases is presented. A broader description of activities in the public appropriation life cycle would also include appropriations, assessment of agency needs, drafting of solicitation, providing materials and

answering inquiries from potential bidders, receiving and managing bids/proposals, evaluating offerings, awarding contracts, assessing contract performance, and resolving disputes such as bid protests and contract claims.

³² Minnesota Department of Transportation, “[Best Value Procurement Manual](#),” May 2017; Smith, Currie, and Thomas J. Hancock, Thomas E. Abernathy IV, Hubert J. Bell Jr., and Hancock LLP Smith, “Federal Government Construction Contracts: A Practical Guide,” San Francisco, CA: Wiley. 2010.

³³ GAO’s Annual Report to Congress on Bid Protests documented that 2,017 bid protest cases were closed in FY2021 alone. Bid protests have been tracked over the prior four fiscal years and the total of all protests exceeded 2,000. In an article in *The Regulatory Review*, Christopher Yukins noted that “unsatisfied vendors routinely challenge federal officials’ procurement decisions through bid protests.” One of our reviewers with extensive experience in state and local procurement law emphasized that companies may be deterred from shouldering the costs and risks of bidding if the criteria for selection are changed or the award decisions could be subject to more challenges or protests. See Christopher R. Yukins, “Rethinking Discretionary Bid Protests,” *The Regulatory Review*, May 27, 2021, <https://www.theregview.org/2021/05/27/yukins-bid-protests>.

³⁴ Christopher McCruden, *Buying Social Justice: Equality, Government Procurement and Legal Change*. Oxford, UK: Oxford University Press, September 17, 2007.

³⁵ Karla Walter, *Infrastructure Investment Must Create Good Jobs for All*, Washington, DC: Center for American Progress, April 2019. Page 2.

³⁶ Twenty-six states have and 24 states do not have PWLs. “[Prevailing Wages Resources](#),” Washington, DC: 2021. National Conference of State Legislatures.

³⁷ Karla Walter, Malkie Wall, and Alex Rowell, “A How-to Guide for Strengthening State and Local Prevailing Wage Laws,” Center for American Progress, December 22, 2020, <https://www.americanprogress.org/issues/economy/reports/2020/12/22/494146/guide-strengthening-state-local-prevailing-wage-laws/>.

³⁸ Alex Bolt, “The Case for Repealing the Davis-Bacon Act,” *Competitive Enterprise Institute Blog*, July 31, 2014, <https://cei.org/blog/the-case-for-repealing-the-davis-bacon-act>.

³⁹ The analyses conclude that “weakening or repeal of PWLs would come only at a significant cost in declining job quality, productivity, and increases in demand for public assistance programs for construction workers.”

⁴⁰ US Department of Labor, Wage and Hour Division, “Davis -Bacon and Related Acts,” accessed November 11, 2022, <https://www.dol.gov/agencies/whd/government-contracts/construction>.

⁴¹ And penalties for noncompliance can be significant — spanning from withholding contract payments sufficient to satisfy underpayment liabilities, contract termination (including liability for costs to the government), and debarment for up to three years from future contracts.

⁴² US Department of Labor, Wage and Hour Division, “Fact Sheet 67: The McNamara-O-Hara Service Contract Act (SCA),” revised July 2009, <https://www.dol.gov/agencies/whd/fact-sheets/67-sca>.

⁴³ Other provisions of the SCA require that in contracts less than \$2,500, contractors and subcontractors must pay the federal minimum wage. For prime contracts exceeding \$100,000, contractors and subcontractors must pay time and one-half for time at work over 40 hours in a workweek. See “Fact Sheet 67”.

⁴⁴ Arbitrage in general takes advantage of price differences in different markets for the same asset. With labor arbitrage, employers may see price differences in two markets for labor of the same quality. In some cases, however, labor arbitrage has become synonymous with outsourcing to a low-cost area, without necessarily weighing whether the quality is the same.

⁴⁵ President Obama. Executive Order 13685: [Establishing a Minimum Wage for Contractors](#) and President Obama. Executive Order 13706: [Establishing Paid Sick Leave for Federal Contractors](#).

⁴⁶ “A First Step to Fifteen: Raising Wages for All Federal Contract Workers,” Economic Policy Institute and National Employment Law Project, November 12, 2020, <https://www.epi.org/publication/a-first-step-to-fifteen/>.

⁴⁷ Executive Order 13838 was signed by President Trump on June 1, 2018. <https://www.federalregister.gov/documents/2018/06/01/2018-11936/exemption-from-executive-order-13658-for-recreational-services-on-federal-lands>.

⁴⁸ White House, “Fact Sheet: Biden-Harris Administration Issues an Executive Order to Raise the Minimum Wage to \$15 for Federal Contractors,” news release, April 27, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/27/fact-sheet-biden-harris-administration-issues-an-executive-order-to-raise-the-minimum-wage-to-15-for-federal-contractors/>.

⁴⁹ This executive authority has rarely been used to reduce the benefit to workers of minimum wage requirements for federal contractors. However, President Donald Trump issued Executive Order 13838 in May 2018 and his action led to a revised USDOL rule in September 2018 that exempted workers in “seasonal and recreational services or

seasonal recreational equipment rentals” from coverage of the minimum wage increases adopted in the prior administration. Coverage of this specific group has been controversial and subject to litigation.

⁵⁰ “Minority Contracting and Affirmative Action for Disadvantaged Small Businesses: Legal Issues,” Congressional Research Service, April 2010, <https://www.everycrsreport.com/reports/RL33284.html>.

⁵¹ For example, Maryland adopted in 1978 (42 years ago) the first statewide Minority Business Enterprise procurement preference, <https://purchase.umd.edu/vendors/business-diversity/minority-business-enterprise-mbe-program>.

⁵² [The Small Business and Capital Ownership Development Act of 1978](#).

⁵³ “S.1587—Federal Acquisition Streamlining Act of 1994,” accessed November 14, 2022, <https://www.congress.gov/bill/103rd-congress/senate-bill/1587/text>.

⁵⁴ A women-owned enterprise must be 51% owned by a woman who is a US citizen and have a place of business in the US. To qualify as economically disadvantaged for the procurement goal, these women-owned enterprises must also meet three added criteria: the woman's total assets, net worth, and annual income caps must be under \$6 million (<https://www.sba.gov/blog/its-big-deal-be-women-owned-small-business>). Similar definitions and limits apply for minority-owned businesses to be designated as disadvantaged: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business>.

⁵⁵ “Contracting Barriers and Factors Affecting Minority Business Enterprises: A Review of Existing Disparity Studies,” US Department of Commerce, Prepared for Minority Business Development Agency by Premiere Quantitative Consulting, December 2016. https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/ContractingBarriers_AReviewofExistingDisparityStudies.pdf.

⁵⁶ “Federal Government Exceeds Small Business Contracting Goals by Awarding Record-Breaking \$132.9 Billion to Small Business,” US Small Business Administration, August 12, 2020, <https://www.sba.gov/article/2020/aug/12/federal-government-exceeds-small-business-contracting-goals-awarding-record-breaking-1329-billion>.

⁵⁷ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/02/remarks-by-president-biden-commemorating-the-100th-anniversary-of-the-tulsa-race-massacre/>

⁵⁸ <https://jobstomoveamerica.org/>. Website accessed July 17, 2021.

⁵⁹ “BYD Renews Community Benefits Agreement with Jobs to Move America California Coalition,” Mass Transit, September 10, 2020, <https://www.masstransitmag.com/management/press-release/21153767/byd-motors-llc-byd-renews-community-benefits-agreement-with-jobs-to-move-america-california-coalition>.

⁶⁰ The agreement specifically refers to “returning citizen” and that term is preferred in project descriptions authored by Jobs to Move America. This group is also referred to as previously incarcerated or returning former prisoners.

⁶¹ “Labor and Community Groups Sign Landmark Agreement with Electric Bus Manufacturer BYD in Los Angeles, July 17, 2017. <https://jobstomoveamerica.org/press-release/labor-and-community-groups-sign-landmark-agreement-with-electric-bus-manufacturer-byd-in-los-angeles/>. Website accessed July 17, 2021.

⁶² Tools and frameworks to develop community benefit agreements can be found in the [Economic Opportunity Program's Job Quality Tools Library](#). Note the Community Framework Agreements: A Framework for Success by the Partnership for Working Families as well as the discussion of a community development agreement in Milwaukee that used a CBA with the Milwaukee Bucks and partners to improve service and hospitality jobs.

⁶³ Best Value Contracting, City of Madison, <https://www.cityofmadison.com/business/pw/BestValueContracting.cfm>. Website accessed June 2021. Also Joel Rogers and Satya Rhodes-Conway, “[Cities at Work: Progressive Local Policies to Rebuild the Middle Class](#),” Washington, DC: Center for American Progress, February 2014.

⁶⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/>

⁶⁵ Tom Porter, “Biden Plans Executive Order to Force the Government to Buy More Products Made in the US”, Washington, DC: Insider. January 25, 2021. <https://www.businessinsider.com/biden-to-sign-executive-order-to-boost-us-manufacturing-2021-1>.

⁶⁶ “Future of Work Commission,” Labor & Workforce Development Agency, accessed November 14, 2022, <https://www.labor.ca.gov/labor-and-workforce-development-agency/fowc/>.

⁶⁷ The proposal was introduced initially and designated as AB 1095 in 2021. The bill was not adopted by the close of the legislative session. In early 2022, a proposal was resubmitted and designated as [AB 2095](#).

⁶⁸ California proposed Assembly Bill 1192, Section 1 (a).

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1192.

⁶⁹ “High-Road Employer Certification Initiative,” Drucker Institute, accessed November 14, 2022,

<https://www.drucker.institute/programs/employer-certification/>.

⁷⁰ Madeline Janis, Roxana Aslan, and Katherine Hoff, “Harnessing Government Spending to Revitalize Good Manufacturing Jobs,” Washington, DC: The Century Foundation, page 9.

⁷¹ The Century Fund, page 2.

⁷² These key points were emphasized in commentary to earlier drafts of the paper by state and local procurement law expert Scott A. Livingston.

⁷³ ESG began in the 1960s primarily with investors motivated by ethical considerations. They sought to align their investment decisions with their values. The field has expanded dramatically since then—in assets under management as well as in complexity and diversity of strategies. “Values investors” are now joined by others who consider traditional financial analysis as well as incorporate ESG factors in the investment process. See also Alison Bevilacqua, “ESG 101: What Is Environmental, Social and Governance Investing?” <https://1919ic.com/library/esg-101-what-is-environmental-social-and-governance-investing/>. Accessed August 11, 2021.

⁷⁴ Rebecca M. Henderson, *Reimagining Capitalism in a World on Fire*, New York, NY: PublicAffairs, 2020.

⁷⁵ Jason Saul, “Fixing the S in ESG: How to Move from Net Zero to Net Impact,” Stanford Social Innovation Review, February 22, 2022, p. 2, https://ssir.org/articles/entry/fixing_the_s_in_esg.

⁷⁶ U.S. Securities and Exchange Commission, “SEC Adopts Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K,” news release, August 26, 2020, <https://www.sec.gov/news/press-release/2020-192>.

⁷⁷ Marc Siegel, “The SEC’s New Human Capital Disclosures: Year 1,” FEI Daily, EY. May 10, 2021, www.financialexecutives.org/FEI-Daily/May-2021/The-SEC’s-New-Human-Capital-Disclosures-Year-1.aspx.

⁷⁸ Marc Siegel, “The SEC’s New Human Capital Disclosures: Year 1.” Page 3.

⁷⁹ Katanga Johnson, “U.S. SEC Chair Planning New Workforce Data Disclosures for Public Companies,” Reuters, May 14, 2021, <https://www.reuters.com/business/sustainable-business/us-sec-chair-planing-new-workforce-data-disclosures-public-companies-2021-05-13/>.

⁸⁰ <https://www.sec.gov/comments/4-711/4-711.htm>

⁸¹ For further information, note the submission of the Working Group on Human Capital Accounting Disclosure, June 7, 2022, <https://www.sec.gov/rules/petitions/2022/petn4-787.pdf>.

⁸² Shelby R. Buchman, Laura Y Choi, Mary C. Daly, and Lily M. Seitelman, “The Economic Gains from Equity,” Federal Reserve Bank of San Francisco Working Paper 2021-11. <https://doi.org/10.24148/wp2021-11> Accessed December 2, 2022.