

Review of Katrina Federal Legislation: Contractor Preferences and Local Hiring

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*Chitra Aiyar, Annette Bernhardt and Paul Sonn, **Brennan Center for Justice**
Julian Gross and Sara Zimmerman, **Partnership for Working Families***

In this memo, we address the importance of attaching contractor preferences and local hire requirements to federally-funded Katrina rebuilding contracts. We suggest a framework that advocates can use to evaluate the quality and feasibility of proposed legislation in these two areas, followed by an overview of federal legislation currently pending.

I. Introduction

The post-Katrina rebuilding process offers this nation a unique opportunity to reverse the many years of neglect of Gulf Coast low-income communities of color. As of March 2006, Congress had approved appropriations of over 70 billion dollars in federal contracts for Gulf Coast rebuilding efforts. If wisely targeted, these contracts have the potential to revitalize the local small and minority-owned businesses that are the backbone of the Gulf Coast and generate quality jobs for tens of thousands of Katrina survivors.

As of yet, the federal government has promulgated no guidelines to ensure that Katrina survivors have the opportunity to participate in the upcoming economic boom. Legislators, labor groups and grassroots organizations deserve credit for having successfully pressured the President to reinstate Davis-Bacon prevailing wage and affirmative action hiring requirements for federally-funded rebuilding contracts, but this is far from sufficient. Without protections to ensure that hurricane survivors and small and minority-owned businesses are able to participate in the rebuilding process, billions of dollars in federal contracts and subcontracts will continue to be awarded to large national firms that recruit a predominantly out-of-town workforce.

How can we ensure that the federal funds approved by Congress are used to generate business and job opportunities for the predominantly low-income African-American community that bore the brunt of the hurricane? In this memo, we suggest two complementary approaches:

1. Award federal contracts and subcontracts to local businesses. Investment in local business has a ripple effect of benefits – generating jobs for local community members who will reinvest in their local community.
2. Require all businesses, whether they are local or not, to hire a local workforce as a condition for receiving a federal contract or subcontract.

II. The Framework

In evaluating legislation that proposes contractor preferences and local hiring, there are several questions that advocates should ask to determine whether the needs of the local community are being met.

A. Contractor Preferences

1. Which businesses are targeted for preferences?

It is important that advocates be mindful of the specific types of businesses they plan to target through the use of contractor preferences. While there is natural overlap among small, local, and minority-owned businesses, there are important differences as well among these categories. Policies that assist one type of business may not necessarily assist others.

Federal law and policy aimed at including disadvantaged businesses typically uses the categories established under the federal Small Business Act as administered by the U.S. Small Business Administration (SBA). We outline the federal definitions below, since these terms are used in many of the proposals summarized in this memo.

- A “small business” is a for-profit independently owned and operated business that is “not dominant in its field.” What is considered “dominant” is determined by the SBA for each industry using a variety of factors including number of employees and sales volume. Details for individual industries can be found on the SBA website at <http://www.sba.gov/size/>
- A “small business concern owned and controlled by socially and economically disadvantaged individuals,” commonly referred to as an 8(a) business or small disadvantaged business (SDB), is the federal government’s term for a minority-owned small business. The business must be at least 51% owned by socially and/or economically disadvantaged individuals. Socially disadvantaged individuals are persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group and include African Americans, Latinos, Native Americans, and Asian-Americans. More details about the program are available on the SBA website at <http://www.sba.gov/businessop/programs/8a.html>.
- “Local business” does not have a statutory definition under the Small Business Act. This means that the legislative proposals outlined below will each establish their own definitions for this term, which accordingly may vary. This makes it important to closely review the small business definitions to understand how they are targeted.

2. How do the preferences work?

The proposals outlined below generally use one of two approaches for ensuring that disadvantaged businesses receive a fair share of contracts:

1. Earmark a proportion of contracts for targeted businesses (e.g., 30% of contracts are reserved for 8(a) businesses).
2. Provide targeted businesses with an advantage in the bidding process (e.g., local businesses receive a 5% bidding preference, meaning that they will be awarded a contract if their bid is no more than 5% higher than the lowest bid submitted by a non-local business). One disadvantage of this latter approach is that makes it difficult to know for sure how many disadvantaged businesses will actually benefit.

To ensure that meaningful numbers of targeted businesses actually benefit from the preference, **it is important that the preference extend to subcontracts as well as contracts**. Because of their size, most small businesses cannot realistically compete for large prime contracts, but could readily perform many smaller subcontracts. Without the inclusion of subcontracts, the bulk of the opportunities for small businesses will be lost.

3. How strong are the preferences?

Contracting preferences can take stronger or weaker forms. In assessing the likely impact of the proposals outlined below, it is important to carefully review the details. Are the preferences mandated or simply encouraged? Are there penalties for a federal agency or a prime contractor that fails to meet the target? Are there requirements that federal agencies or prime contractors report their records of awarding contracts and subcontracts to small, local or disadvantaged businesses?

B. Local Hiring

1. How many people will be affected?

We want to maximize the number of quality job opportunities that rebuilding contracts generate for local residents. Similar to contractor preferences, the standard approach is to establish a percentage hiring goal for the workforce employed on the rebuilding project (e.g., 25% of a contractor's total workforce will be recruited locally). Similar to contractor preferences, **it is critical that local hiring extends to subcontractors as well as prime contractors**.

2. How strong is the local hiring provision?

Similar to the contractor preferences, it is important to review the language in the legislation to assess whether local hiring is:

- required (i.e., local hiring is a condition of receiving the contract),
- incentivized (i.e., contractors that hire locally will receive a preference in the bidding process), or merely
- encouraged (i.e. federal agencies should make best efforts to ensure that local residents receive job opportunities under federal contracts).

In addition, it is important to assess the requirements for reporting and recordkeeping and the proposed enforcement mechanisms.

3. How will the program be implemented?

A local hiring requirement is unlikely to be effective if local workers are unable to take advantage of the opportunity. The following questions are suggested to help assess whether the proposal includes other elements that have proven important to successful local hiring programs.

a. Is there a “first source” provision?

The most successful local hiring programs combine a local hiring goal with a requirement that employers utilize a designated referral system as their “first source” to help them find qualified local workers to hire. An example of such a referral system might be a hiring hall operated by a community group. However, such a system is feasible only where the referral agency operates well and is able to provide employers with qualified local residents as needed.

b. Is there a training component?

The challenge of identifying local residents who are prepared to fill jobs on local rebuilding projects is likely to be greatest in construction – the industry that is also likely to comprise the bulk of the jobs created with federal rebuilding dollars. Experience with local construction jobs initiatives has shown that training programs that steer graduates directly into available jobs are the most effective approach for helping disadvantaged local residents with little construction work experience succeed in the building trades. These programs have also proven successful in recruiting women and people of color for careers in the skilled construction trades, by providing the preparation and support needed to succeed in apprenticeship programs.

Such programs require earmarked funding to establish pre-apprenticeship training together with a plan that links graduates with available jobs. Without pre-apprenticeship training, it is likely that less-skilled residents will be found ineligible for apprenticeship jobs or drop out soon after starting.

c. Is there a housing component?

The most significant obstacle to extending jobs to local residents on Gulf Coast rebuilding projects is likely to be housing. The serious shortage of replacement housing in the Gulf Region, and the fact that many displaced local residents have families that they must house, currently exclude many residents from reconstruction jobs. Advocates may therefore want to press for requirements that contractors provide or subsidize housing for workers as a means of facilitating local hiring.

III. Overview of Currently Pending Federal Legislation

With these principles as background, we now survey the Gulf Coast rebuilding proposals currently pending in Congress that include provisions on contractor preferences and local hiring

(see accompanying summary chart). All were introduced in the fall of 2005, and we anticipate that one or more of these bills will move this spring. We should emphasize that our analysis of these bills is limited to the contractor preferences and local hiring provisions only. In addition, we do not provide any analysis of the political feasibility of any of these individual bills.

A. House Bills

- **HR 3988**

Introduced by Bobby Jindal (R-LA) on October 6, 2005. Referred to Committee on Government Reform and Committee on Small Business. Currently 4 co-sponsors.

Contractor Preferences:

1. This bill reserves 30% of prime contracts and 40% of subcontracts for small local businesses.
2. There are no provisions for small disadvantaged businesses.
3. No details are provided about reporting requirements or penalties if the target proportion is not met.

Local Hiring: This bill contains no local hiring provisions.

- **HR 4197**

Introduced by Melvin Watt (D-NC) on behalf of the Congressional Black Caucus on November 2, 2005. Referred to the following House Committees: Ways and Means, Judiciary, Financial Services, Energy and Commerce, Transportation and Infrastructure, Education and the Workforce, Small Business, Government Reform, Budget. Currently 71 co-sponsors.

Contractor Preferences:

1. 30% of the contracts and subcontracts are reserved for local businesses.
2. 15% of prime contracts are reserved for small disadvantaged businesses
3. There are financial incentives to award subcontracts to small disadvantaged businesses. No details are provided on the nature of these incentives.
4. No details are provided about reporting requirements or penalties if the target proportion is not met.

Local Hiring:

1. Prime contractors are required to hire 40% of their workforce locally.
2. There are financial incentives for subcontractors to hire locally, but no requirement. There are no details about these financial incentives – how they would work or how they would be funded.
3. The bill includes a provision to fund Youthbuild, a construction training program for young people. There are no details about how the training would link up with the local hiring.

- **HR 4234**

Introduced by Nydia Velazquez (D-NY) on November 4, 2005. Referred to Committee on Small Business. Currently no co-sponsors.

Contractor Preferences: This bill contains four specific provisions:

1. 30% of both contracts and subcontracts are reserved for small local businesses.
2. Non-construction small local businesses receive a 10% bidding preference and small local construction businesses receive a 5% bidding preference. A targeted business can be awarded a contract even if its bid is not the low bid, as long as it is within 10% (or 5% construction) of the low bid.
3. Competition may be restricted to small disadvantaged businesses if the contracting officer has a “reasonable expectation that two or more socially and economically disadvantaged small business concerns will submit offers”
4. Contracts between \$2,500 and \$1 million are exclusively reserved for small businesses if at least two small businesses with competitive pricing apply

Local Hiring: This bill contains no local hiring provisions.

Senate Bills

- **S 1763**

Introduced by Barbara Boxer (D-CA) on September 22, 2005. Referred to Senate Committee on Health, Education, Labor, and Pensions. Currently no co-sponsors.

Contractor Preference/Local Hiring:

1. Rather than a preference for a specific type of business, the bill proposes preferences for contractors who have a 25% local workforce. There are no details about how the preference would work.
2. There is no mention of subcontracts.

- **S 1807**

Introduced by Olympia Snowe (R-ME) on September 30, 2005. Referred to the Senate Committee on Small Business and Entrepreneurship. Currently 9 co-sponsors.

Contractor Preferences:

1. 30% of prime contracts and 40% of subcontracts are reserved for small businesses.
2. There is no reference to either local businesses or small disadvantaged businesses.

Local Hiring: This bill contains no local hiring provisions.

- **S 1925**

Introduced by Edward Kennedy on October 26, 2005. Referred to the Senate Committee on Health, Education, Labor, and Pensions. Currently 13 co-sponsors.

Contractor Preferences:

1. The bill establishes a 5% bidding preference for local businesses for both prime contracts and subcontracts under a “lowest responsible bidder” system.
2. Federal agencies are encouraged to maximize opportunities for small businesses.
3. Although the title of Section Six of the legislation refers to small disadvantaged businesses, there is no specific provision made for them.

Local Hiring: This bill mandates that 50% of a contractor’s and subcontractor’s workforce be local residents as a condition of receipt of funds.

An Overview of Federal Katrina Legislation Focused on Contractor Preferences and Local Hiring

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	Jindal HR 3988	Watt HR 4197	Velazquez HR 4234	Boxer S 1763	Snowe S 1807	Kennedy S 1925
Contractor Preferences	<p>1 30% of prime contracts and 40% of subcontracts are reserved for small local businesses.</p> <p>2 There are no provisions for small disadvantaged businesses.</p>	<p>1 30% of contracts and subcontracts are reserved for local businesses</p> <p>2 15% of contracts are reserved for small disadvantaged businesses.</p> <p>3 There are financial incentives to award subcontracts to small disadvantaged businesses.</p>	<p>1 30% of contracts and subcontracts are reserved for small local businesses.</p> <p>2 Small local construction businesses receive a 5% bidding preference and non-construction businesses receive a 10% bidding preference.</p> <p>3 Competition may be restricted to small disadvantaged businesses if there is a "reasonable expectation" that 2 or more will submit offers.</p> <p>4 Contracts between \$2,500 and \$1 million are exclusively restricted to small businesses if at least 2 small businesses with "competitive pricing" apply</p>	<p>1 There is a contract award preference for businesses whose workforce consist of at least 25% local residents. There are no details on how the preference would operate.</p> <p>2 There is no provision for subcontracts.</p>	<p>1 30% of contracts and 40% of subcontracts are reserved for small businesses.</p> <p>2 There are no provisions for local or small disadvantaged businesses.</p>	<p>1 There is a 5% bidding preference for local businesses for contracts and subcontracts</p> <p>2 Federal agencies are encouraged to maximize opportunities for small businesses.</p>
Local Hire Provisions	No local hire provision	There is a 40% local hire requirement on contracts and financial incentives for subcontractors that use local residents.	No local hire provision	No local hire provision	No local hire provision	50% of a contractor's and subcontractor's workforce must be local residents as a condition for receipt of funds.