



paul.k.savage@us.andersen.com  
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To: Jennifer Wood Inforeg/OMB/EOP@EOP

cc:

Subject: Federal project bidding

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Last year I assisted as an attorney defending a man accused of violating labor laws for assisting in employing people on federal projects at "less than the prevailing wage." The defendant was just a job foreman for a sub contractor. The prime contractor, a large and well-known firm that receives numerous federal construction projects, puts out the subcontracts for competitive bid and plays the subcontractors off of each other until he gets the lowest possible bid. The problem is that prevailing wage laws make it impossible to get the bid and abide with the law. So subcontractors find themselves routinely paying employees off of the books and often at less than the prevailing wage. In our case, a different foreman was in violation of the law for hiring his 16 year old son at \$8.00 per hour to run errands instead of paying the higher rates required by law.

My inquiry into the system revealed rampant problems at the subcontractor level and the prime contractor was the major beneficiary of the savings, because the subcontractors themselves have such small margins that they usually just work for wages anyway. But even to earn wages, they run the risk of prosecution for how they have to run a portion of their payrolls off the books. The problem is that almost all costs at this subcontractor level are labor-related. At mandated rates, there is no way to differentiate yourself from competitors unless it is through being willing to shave off some of the payroll expenses through illegal means (including hiring illegal aliens, etc.). This is a major problem for small businesses trying to compete for a share of federal projects.

There is no quick fix, but either the whole "prevailing wage" philosophy needs to be rethought or prime contractors need to itemize their subcontractor costs and stick to those amounts without being able to play subcontractors off each other in a bidding war in order to drive the subcontractor prices down to below what is realistic.

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