



BETTER BUILDER PROGRAM COMMUNITY POWER & VALUES-ALIGNED ENTERPRISE

Context and Need

The construction industry in Texas is booming. In 2019, it accounted for nearly \$100 billion of the state economy,¹ employing 1.2 million people.² However, Texas construction workers (the majority of whom are people of color and immigrants) have not shared in the industry's prosperity. More construction workers die in Texas than in any other state.³ These workers also face lower wages than their counterparts in other states, despite the high cost of living in major Texas cities, and according to a 2013 study by the University of Texas, over half of construction workers in Texas earn poverty-level wages.

A recent study by University of California at Berkeley found that *nearly half* of construction worker families (46 percent) in Texas were enrolled in one or more safety net programs.⁴ Formal training opportunities are rare, and 60 percent of workers report that they have never received basic Occupational Safety and Health Administration (OSHA) training. Additionally, one in five workers has experienced wage theft at some point in their career.⁵

These problems disproportionately affect undocumented immigrants, who comprise as much as 50 percent of Texas' construction workforce.⁶ These jobs are easily accessible to immigrants and racialized individuals due to consistent high demand for construction labor, but too often they lead to poverty and injury rather than economic mobility.

Texas has a weak regulatory environment, with wages tied to the national minimum wage and a dearth of legal protections. Texas does not guarantee a right to overtime pay, to rest breaks, or have a state agency to oversee worksite safety, leaving safety enforcement to the woefully understaffed federal OSHA. Furthermore, Texas remains the only state in the country that does not require workers compensation coverage, even for a dangerous industry like construction. These low standards undermine responsible construction businesses who cannot compete against employers whose profits are built on low wages and failing to invest in training and safety for their workforce.

Local Workers Rights Innovations in a Conservative Anti-Worker State

The statewide political environment has much to do with these challenges. Texas is viewed as a "red state", although in the 2020 presidential cycle the statewide vote gap narrowed to less than six points, down from

nine points in 2016 and 16 points in 2012. Democrats have not won a statewide election since 1994. But the conservative and anti-regulatory environment at the state level is increasingly offset by the fact that Texas'



About this Case Study. This case study was commissioned by the Independent Resource Generation (IRG) Hub, which seeks to position independent resource generation as a vehicle for community power building organizations to develop and embody a political leadership role with financial independence, and to strengthen social justice infrastructure that supports the evolution of independent community and worker power.

large metropolitan areas and their suburbs have been shifting toward more progressive local governance. While the state has failed to protect construction workers from dangerous and deadly conditions, local organizations have been able to work with more progressive city and county governments to enact local worker protections.

Because of these dynamics, Texas has served as a testing ground for innovative approaches

to improving working conditions at the local level. Workers Defense Project (WDP) is a worker center that seeks to improve the living and working conditions of immigrant construction workers and their families in Texas. With offices in Dallas, Houston, and Austin, and a membership base of over 4,000 construction workers and their families, WDP has been at the forefront of advocating for and winning protections for construction workers since its formation in 2002.

INNOVATION: THE BETTER BUILDER PROGRAM

History and Legal Structure

In 2010, construction worker members of WDP came together to strategize how to address the dangerous and deadly conditions and widespread abuses that they faced at work. WDP had a long history of using direct action and legal advocacy to resolve wage theft and safety violations on individual worksites, and had begun to make policy demands to systematically address issues including winning a water break policy in Austin in 2010 and OSHA safety training requirements on sites located in the city of Austin. However, demands like higher wages, workers compensation coverage, safety training, and job training programs on private sites had fallen flat: the state prohibited local governments from requiring higher standards.

Worker members and organizers at WDP knew that they needed a strategy to allow progressive local governments to go beyond the limitations imposed on them by the state government. Thus, the Better Builder® program was born.

The Better Builder® program invites construction developers or end users (i.e., government entities and affordable housing developers) to sign a pledge that commits them to a list of higher standards: paying a living wage, providing workers compensation

coverage and OSHA training, meeting goals for hiring workers in local training programs, and most importantly, third party independent worksite monitoring to ensure that these standards are met. In order to fulfill the pledge, developers must work with a Better Builder® accredited worksite monitor, who conducts regular onsite worksite inspections and confirms that the program's standards are met throughout the lifetime of the project.

Third party monitors are trained and accredited by WDP to perform worksite monitoring up to the standards of the Better Builder® program. They receive monitoring oversight support from WDP and must be accredited annually. These third party monitors are separate legal entities, and can be incorporated as an LLC or other legal structure. WDP and its construction worker members retain control of the Better Builder® standards.

To date, the Better Builder® program has improved working conditions for over 38,000 construction workers on over \$2 billion of construction across central Texas. For many workers, employment on a Better Builder® site means access to safety training, higher wages, and workers compensation coverage for the first time in their careers.

Challenges that Better Builder Seeks to Solve

Anemic Worker Protections in Texas and State Preemption

With Texas' meager legal protections for workers and open hostility to additional regulatory oversight for employers, WDP members quickly realized the limitations to demanding stronger worker protections from the state, which even went so far to prohibit local governments from establishing higher wages or workers compensation coverage standards than the state law. Furthermore, local policy victories like rest breaks and paid sick leave quickly came under attack at the state legislature, with disgruntled industry associations lobbying to take away these local worker protections and filing legal challenges in the Texas court system (with elected judges who are deeply partisan). In many cases, even if local elected officials supported policies that would improve working conditions, they would find that state preemption would tie their hands from doing so.

Costly Delays for Developers Due to Labor Disputes

Worksite accidents and injuries are widespread in the industry and can cause costly delays for developers and construction companies. Labor disputes can further disrupt work delivery timelines. Construction firms are focused on delivering a project on time and on budget, and many construction employers put less emphasis on investing in worker safety and ensuring that rules are followed. Values-aligned end users like affordable housing developers, and city and county governments may want to ensure that their construction sites create good jobs but do not have the capacity to focus on that in the face of budget and time constraints.

Regulatory Failure in the Texas Construction Industry

Texas construction workers also face ineffective enforcement of the existing protections they do have under state and federal law. Existing federal agencies like the Department of Labor or OSHA are woefully underfunded and understaffed to enforce federal law on hundreds of thousands of Texas worksites. The Texas Workforce Commission only conducts desk investigations of wage theft cases on a complaint driven basis. By contrast, on Better Builder® sites, the independent third party monitor is already present on the site and quickly identifies and resolves any issues that occur.

Through worksite interviews and site-wide informational meetings called "toolbox talks," all workers on a Better Builder® site know what workplace standards they should be receiving and who to go to if they are not. The Better Builder® program resolves issues before they ever rise to the level of a formal complaint to overburdened government agencies, and the accredited monitor has a regular presence on the worksite that makes all the difference in ensuring that standards exist on the worksite and not just on paper.

Lack of Sustainable Earned Revenue Opportunities

Nonprofit organizations often rely mainly on restricted revenue from foundation funding. Like many nonprofit organizations, WDP seeks to diversify funding streams to support organizing and advocacy work. In particular, WDP seeks to diversify revenue streams from unrestricted sources including individual donors, major donors, and fees for service.

Benefits of the Model

Raises Standards Without Changing State Labor Laws

The Better Builder® program provides an alternative strategy to improve construction worksite standards that isn't limited by state and federal pre-emption. The Better Builder® standards are a pledge by an individual developer or construction end-user to commit to standards beyond the paltry minimum wage and payday protections afforded by the state. Ultimately, the developer is responsible for hiring the independent monitoring entity to uphold the standards they have committed to on their worksite.

Reflects Local Progressive Values

Even with conservative state leadership, the Better Builder® program provides an option for local officials to require a respected standard for construction projects built with public investment or on public land. Progressive local elected officials see the Better Builder® program and independent monitoring entities as value-aligned social enterprises that help local governments ensure that local development creates construction jobs that meet a higher standard for safety and economic mobility.

Sustainable Source of Earned Revenue

Accredited third party monitors, who earn revenue to cover their costs of operation, must make payments for licensing, accreditation, and monitoring oversight to WDP throughout the year. These monitoring oversight services ensure the integrity of the Better Builder® brand and that the monitoring entities are upholding the standards of the program. It also provides them with licensing rights to advertise their services as Better Builder® accredited. This revenue is modest but unrestricted fee for service income for WDP.

Construction Workers Retain Control of the Better Builder® Standards

The legal structure of the Better Builder® program ensures that the standards themselves are determined by construction worker members of WDP. While the monitoring is performed by an external entity, the standards are governed and periodically updated by individuals with first-hand experience with construction working conditions who can identify the biggest challenges facing workers and periodically update the Better Builder® standards to reflect changing conditions.

Externalizes the Monitoring Activity from Workers Defense Project

WDP is a fierce advocate for addressing labor abuses in the construction industry and dedicates its energies to ensuring the best standards possible are available to workers in target industries. Rather than also try to conduct monitoring itself, WDP decided that it is better for worksite monitoring to be conducted by an independent third-party monitor. To ensure the true independence and integrity of the third party monitor, it is accredited by WDP annually, and is therefore held accountable or risks losing Better Builder® accreditation – even though the independent monitor is paid by the developer.

Privileges Responsible Construction Companies

Once a developer has pledged to meet Better Builder® standards, they are responsible for ensuring that all construction firms on their worksite adhere to the standards laid out in that pledge. Construction firms that pay higher wages, properly classify their workers, provide OSHA safety training and workers compensation coverage are better positioned to win a contract on a Better Builder® site through the competitive bidding process. Firms that do not have these practices will either be unlikely to win the bid or will adapt their practices to adhere to the standards.

Key Considerations for the Model

Local Policy Levers of Power

Better Builder® has enjoyed success at a level of scale in Austin and central Texas due to several local policies that have required that construction projects built with public investment or that receive some type of public benefit must meet a higher standard reflecting the local value of creating good construction jobs. For example, Better Builder® or similar standards have been required on projects developed through third party agreements, projects that receive tax incentives, or those that are built on publicly owned land. Another policy innovation is the Expedited Permitting policy which requires any project above a specific value and square footage threshold that receives an expedited permit from the City of Austin to meet the Better Builder® standards. These policy levers help to require or encourage developers to participate in the Better Builder® program. WDP, construction workers, and community allies have led local policy advocacy resulting in the creation of these policies that set a higher standard – the Better Builder® standard – on both publicly and privately owned construction sites.

Scale and Marketability is Required for Profitability of Independent Entity

Independent monitoring entities must operate as profitable businesses in order to generate adequate revenue to cover their expenses and pay for accreditation and oversight fees. This requires that they monitor a given number of Better Builder® sites throughout the year which means that community demands for Better Builder® and elected official support needs to generate a sufficient pipeline of projects to create sustainable revenue for the monitoring entity and to cover the costs of being accredited as a Better Builder® monitor.

Scalability of Accreditation Model

The structure of the Better Builder® program enables WDP to accredit multiple entities in order to monitor the Better Builder® standards. This would allow the program to

expand into other cities with construction worker organizing that would benefit from an established model for raising worksite standards. Growth into other Texas cities over the next few years is the top priority, with the potential to expand the program into other southern states with similar challenges and political profile to Texas.

Affiliated 501(c)4 Organizations Elects Values-Aligned Local Candidates

A progressive local political environment is critical to the success of the Better Builder® program. WDP has an affiliated 501c4 partner, the Workers Defense Action Fund (WDAF), that advocates for policies and supports local candidates who are committed to advocating for safer and more dignified working conditions for construction workers. WDAF members choose to support candidates who share their values and by helping them to get elected, create a political environment in which a program like Better Builder® can flourish. WDAF members build power with local elected officials and candidates who share their values about improving working conditions for construction workers and ensuring that local taxpayer dollars create good, safe jobs. WDAF affiliated organizations have helped to elect candidates who are deeply committed to worker justice or in some cases even come out of the worker organizing movement. When elected officials have a deep commitment to worker justice and an understanding of the experiences that construction workers face, they can be powerful allies in innovating at the local level.

Local Worker Power

The success of Better Builder® is rooted in the political power that WDP and WDAF construction worker members have built in Austin and central Texas. As the program contemplates growth into new geographies, it will be important that there is a local worker organization or labor organization with a strong worker base to anchor demands for higher standards to local elected officials.

Endnotes

1. Bureau of Economic Analysis, [SAGDP2N Gross domestic product \(GDP\) by state 1](#), accessed 12/2/2021.
2. US Census Bureau, ACS 2019 1-year estimates, table [C24070](#), Industry By Class Of Worker For The Civilian Employed Population 16 Years And Over. "People employed in construction" excludes self-employed in their own incorporated business. Accessed 12/2/2021.
3. Bureau of Labor Statistics, 2019. Accessed online. <https://www.bls.gov/>
4. Jacobs, Ken et al. The Public Cost of Low Wage Jobs in the Texas Construction Industry. <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-texas-construction-industry/#edn6> Accessed 2/17/22.
5. Division of Diversity and Community Engagement, University of Texas, Austin. Build a Better Texas: Construction Working Conditions in the Lone Star State. 2013.
6. Division of Diversity and Community Engagement, University of Texas, Austin. Build a Better Texas: Construction Working Conditions in the Lone Star State. 2013.