

# **Guide to Sweatfree Procurement**

## **1. Introduction—Welcome to Sweatfree Procurement**

Your administration or executive or legislative authority has decided that taxpayer dollars cannot be spent on products made in sweatshop conditions. As a purchaser for a public authority you are responsible for the developing the rules of implementation and monitoring compliance with such a procurement directive. But what do you do? You learn quickly that there is no list of approved “sweatshop-free” products to purchase, nor even a list of companies to avoid. Avoiding sweatshop products seems easier said than done.

The good news is that you do not need to start from scratch in meeting this challenge. Many of your colleagues in cities, states, counties, towns, and school districts across the country are facing similar challenges to buy only products made in decent, non-sweatshop conditions, and some of us have come together as the Sweatfree Purchasing Consortium to share experiences and pool resources and expertise. This Guide to Sweatfree Procurement is a product of years of cumulative experience and collaboration to buy sweatfree. It is intended to make your job a little easier, and to make you, as buyer, a little more effective in reaching your goal of avoiding sweatshop products.

Our experience tells us that the market can be moved progressively to providing increasingly sweatfree compliant products and suppliers. We are convinced that this is a worthy challenge. Buying sweatfree is a matter of responsible stewardship of taxpayer dollars. It gives community members confidence that we are using public funds responsibly. It is good for business, helping to level the playing field by eliminating child labor, forced labor, and sweatshop labor as a competitive advantage. It strengthens and reflects community values as Americans by and large would want to spend their own money on sweatfree products if they could.

By meeting the challenge together we lower the cost of compliance monitoring and enforcement, and more effectively realize our policy goals. We invite you to find out more about Sweatfree Purchasing Consortium and join us.

## **2. Definitions**

Public authorities have their own customs and guidelines for terminology that defines different entities with which they do business. For the purposes of this guide, the following definitions apply:

- “Contractor,” “Vendor,” or “Bidder” means a company or entity that competes for procurement contracts and/or sells applicable goods or services to the public authority or its employees.
- “Factory,” “Production Facility,” or “Subcontractor” means a company or other entity that manufactures or produces the goods or services covered by the policy of the public authority. For apparel products, this is an entity that cuts, sews, finishes, warehouses, launders, or engages in any other process that contributes significantly to the finished product. “Subcontractor” means a company or other entity that enters into a contract with another Factory or Production Facility to perform some of the production.
- “Manufacturer” means a company or other entity that owns the brand name of the goods or services that are sold to the public authority. A manufacturer is often an intermediary in the supply chain, selling these goods through a Contractor or Vendor, and engaging a Factory or Production Facility to manufacture the goods.
- “Worker” means those persons engaged directly in the manufacturing or production of the goods or services covered by the policy of the public authority.
- “Independent Monitor” means an organization with expertise in monitoring factory working conditions that is not owned or controlled in whole or in part by, nor obtains any revenue from, any Contractor or other entity that derives its primary income from the sale of any product or service covered by this policy. The public authority and/or the Consortium may designate and/or contract with an Independent Monitor to carry out monitoring functions.

### **3. Policy Goal**

While the ultimate policy goal should be that tax dollars are not spent on products made in sweatshop conditions (i.e., in factories that do not comply with the code of conduct), the policy should be based on the understanding that labor violations are the industry norm and that this goal will be achieved incrementally. The policy should establish a pragmatic approach to encourage marketplace participants to move toward sweatfree production facilities. The policy should also recognize that factories, buyers, and other supply chain participants all hold responsibility for labor violations at production facilities, and that a concerted cooperative effort addressing both labor practices and business relationships is often necessary to achieve compliance.

Public authorities may evaluate their sweatfree procurement policies according to the following benchmarks of progression:

- Bidders, vendors, and contractors know and accurately disclose which factories will produce the goods under a contract or purchase order.
- Bidders, vendors, and contractors know and accurately report on compliance with the code of conduct.

- ☑ The public authority is aware of risks of violations in a certain production region or factory proposed or already producing under a contract or purchase order.
- ☑ Workers and factory managers know their rights and responsibilities under the code of conduct.
- ☑ Workers can safely and anonymously complain that their rights under the law and code of conduct have been violated, and those complaints are investigated by an independent monitoring organization.
- ☑ Workers, factory management, an independent monitor, local authorities, and other stakeholders work collaboratively to remedy violations.
- ☑ Compliant factories produce orders for the public authority.

#### **4. Policy Principles**

A sweatfree procurement policy should be based on the following principles:

- Fair and impartial treatment of all bidders, vendors, and contractors.
- A framework of feasible and meaningful compliance.
- Supply chain transparency as a tool for compliance.
- Incentives for complete disclosures of factories; truthful reporting of non-compliance with labor standards; no incentives for false statements.
- Cooperative relations with contractors and vendors to improve labor compliance.
- Independent investigations to verify compliance.
- Sanctions as necessary to compel compliance.

In designing a compliance process public authorities should recognize that most companies do not comply and cannot certify compliance with the code of conduct given the prevalence of sweatshop conditions at the factory level. As an alternative to requiring immediate compliance with the code of conduct, public authorities should consider requiring bidders, contractors and vendors to comply with certain procedural requirements that relate to transparency, monitoring, worker education, purchasing practices, and remediation of violations. Those procedural requirements should become increasingly rigorous over time and be designed with clear and meaningful benchmarks towards the goal of achieving full labor compliance over a defined and reasonable period of time.

#### **5. Code of Conduct**

The first step in sweatfree purchasing is a code of conduct: a set of human rights and labor rights standards intended to guarantee decent working conditions for workers who make the products public authorities buy. Rather than developing new standards, public authorities should expect factories to comply with a code of conduct that reflects and reinforces standards that enjoy international consensus and the will of the people of the nation and region of production.

This means that factories should comply with all national and regional legal requirements where they operate. In many garment producing countries labor laws afford workers strong protections on paper, but are not properly enforced. By requiring compliance with labor law and applicable health and safety regulations, public authorities can use their marketplace clout to prompt better enforcement.

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The Consortium can provide sample codes of conduct and a methodology for calculating non-poverty wages in garment producing countries.

Factories should also comply with the core conventions of the International Labor Organization (ILO), a tripartite United Nations agency that brings together governments, employers, and workers of its member nations to promote decent working conditions throughout the world. ILO core conventions regarding freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in respect of employment and occupation are universal human rights, fundamental to the rights of human beings at work irrespective of countries' levels of development. All 183 ILO member nations have an obligation to implement and abide by these fundamental labor rights whether or not they have ratified the specific conventions since these rights are part of the ILO charter. All ILO member nations are also committed to promoting the Declaration on Fundamental Principles and Rights at Work, which restates the core conventions as more loosely worded principles, whether or not they have ratified the core conventions.

Finally, public authorities should consider setting standards for wages beyond the legally required minimum wage in the country of production. Studies show that garment workers worldwide are mostly young women, and often mothers who are the sole providers for their family. Their wages should be sufficient to lift themselves and their children out of poverty. This is rarely the case even when they are paid according to law. The provision of “an adequate living wage” is endorsed in the ILO Constitution and affirmed by the United Nations’ Universal Declaration of Human Rights.

## **6. Administrative Rules**

### **6.1. Scope and application**

Public authorities should consider applying the code of conduct to certain types of procurement, points in the supply chain, and kinds of products.

- **Types of procurement:** The code of conduct should apply to as many different types of procurement as possible, including products that are competitively bid and those purchased centrally without competition. It is prudent to set a threshold value for the term of the

contract above which the code of conduct applies. Individual public employees who purchase uniforms or other products with vouchers or purchase cards can also be encouraged to apply the code of conduct as a purchasing criterion.

- **Points in the supply chain:** The code of conduct should apply to labor-intensive assembly factories where workers are most at risk of sweatshop violations. In the case of apparel and uniforms, these are the “cut and sew” or “readymade garment” factories where workers cut the fabric, sew the apparel, apply finishing marks and emblems, launder, and package the finished product. If those factories contract all or part of the production to subcontractors, the code should apply to those entities as well. However, as a matter of functionality public authorities may wish to exclude parts suppliers, such as fabric, button, thread, or zipper suppliers in the case of apparel at least in the initial stages of implementation. Furthermore, the code can only be binding on the specific factories that make the goods under contract and only for the duration of the contract, not on other factories that may produce the same or other goods for the same contractor or vendor.
- **Kinds of products:** Public authorities may wish to phase in the code of conduct over time, beginning with uniforms and other types of apparel, but expanding the policy scope to other products that often are made in poor working conditions and purchased in large volumes, such as electronics and food products.

The code of conduct should be applied in three different phases of procurement, summarized here and explained further in subsequent sections.

First, the code of conduct should be incorporated in the contract’s **technical specifications**—the minimum requirements for the product—to ensure all offers conform to the code of conduct. Using the code of conduct as an award criterion, but not a technical specification, does not guarantee code compliant procurement; in effect, it would mean that code compliance is preferred but not obligatory.

Second, the code of conduct should be incorporated in the **supplier evaluation** if applicable. Public authorities may wish to exclude certain contractors from consideration on the grounds of severe labor violations or award points based on their capacity to comply or verify compliance with the code of conduct.

Finally, contractors should be required to take specific steps to ensure code compliance and responsible supply chain management as **contract performance conditions** that are specified in the original call for bids or request for proposals. Performance conditions should include ongoing self-monitoring and reporting on how contractors are implementing the requirements and any difficulties they have in fulfilling the conditions.

Public authorities should also have procedures in place to independently monitor contractor and vendor compliance with performance conditions during contract delivery. Independent investigations are necessary for credible compliance information. When there are difficulties in

fulfilling the conditions, a first step should be cooperation with contractors to improve compliance. Sanctions, including termination of contract, should be possible in severe cases.

In certain circumstances public authorities may consider exemptions from the sweatfree procurement policy. For example, if there are no compliant bidders available and the acquisition is essential and time-sensitive, an exemption is prudent to ensure other functions of government are not impeded.

## **6.2. Implementing the code of conduct in different phases of procurement**

### **6.2.1. Advertising**

Public authorities may consider conducting a targeted advertising campaign to declare their intent to allocate public funds to purchase goods and services that are produced in safe, fair and humane working conditions. In doing so, public authorities can refer to commonly held community values of promoting decent working conditions, responsible stewardship of taxpayer money, and leveling the playing field for vendors to ensure nobody gains competitive advantage from sweatshop, forced, or child labor. The advertising should also promote the opportunity for vendors and/or contractors to come forward and present the company's intent and capacity to produce products in a sweatfree environment.

For each bid opportunity that is advertised, the agency should declare upfront, either in the summary, in the purpose, or in the bid title that the procurement is for sweatfree products. The bid should encourage bidders and vendors to submit products that they know are made in compliant factories or products made by manufacturers or brands who are known to be actively seeking to improve the industry as a whole.

### **6.2.2. Optional prequalification**

If permitted by law, public authorities may want to require or encourage vendors to sign an agreement to comply with the code of conduct prior to submitting a bid. Such an affidavit of compliance, described in detail below, could be a prequalification for bidding and a necessary condition for further evaluation of the bidder's capacity and intent to comply with the code. Vendors that are not themselves manufacturers should obtain the affidavit of compliance from the relevant manufacturers to become prequalified for bids, proposals, or quotations.

### **6.2.3. Solicitations of bids, proposals, and quotations**

Public authorities should not enter into a purchase agreement or execute a contract exceeding the threshold for covered products unless vendors and bidders satisfy the following requirements:

- Unless already prequalified, vendors and bidders must sign an affidavit of compliance on a form approved by the public authority; the company's own code of conduct is not a valid substitute. Those vendors and bidders that are not themselves manufacturers must obtain affidavits of compliance from the manufacturers to

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In order to streamline and simply the affidavit of compliance process public authorities can choose to accept the consortium's affidavit of compliance in lieu of their own. Bidders go to the Consortium's website to download the generic affidavit of compliance and list factories that will be used for a certain contract to produce certain products. (Those factories are available for download from the Consortium's database as long as the brand or manufacturer has uploaded them). The Consortium seeks independent verification that factories listed on affidavit produce the applicable product. If the verification is successful the Consortium provides a verified affidavit to the bidder and the applicable public authority by uploading it in the Consortium database. If there are problems the Consortium seeks clarification or additional information from the bidder and offers recommendations to the public authority.

include with the bid, proposal, or quotation. Signing the code of conduct should be a legally binding commitment (i.e., a formally witnessed and sworn statement) to comply with the code of conduct in specific production facilities that have been used or will be used for manufacturing and assembly in the performance of the contract or purchase order. However, signing the code of conduct does not need to signify compliance with all parts of the code of conduct at the time of bid, proposal, or quotation. Instead, vendors and bidders should be invited to declare either full or partial compliance with the code. Those who are not in full compliance at the time of bid, proposal, or quotation should be required to submit a specific list of non-compliances and make a binding commitment to correct those non-compliances. In order to provide incentive for full and frank disclosures of non-compliances public authorities may consider scoring declarations of full and partial compliance equally as long as the bidder also submits an acceptable corrective action plan.

- Vendors and bidders should provide the supply chain information necessary for supplier evaluation and code of conduct enforcement. In addition to possible non-compliances with the code of conduct, this includes a list of all production facilities and subcontractors to be used in product manufacturing and assembly in the performance of the contract or purchase order. This list should specify company names, owners or officers, complete physical addresses, the nature of the business, and the volume of production for the public authority at the production facilities. Public authorities should take care to request this information in specific and defined terms to ensure clear communication.
- If the product is to be manufactured by a third party, vendors and bidders should also provide a legally binding statement committing to purchasing the product under terms, including prices and delivery dates, that support and enable the manufacturing of the product in code-compliant conditions. The business relationship between an apparel company and its suppliers influences working conditions. Pricing, volume requirements, and turnaround time

affect a factory's ability to pay decent wages, maintain legal and just working hours, and provide job security (see also section 8.1).

- Finally, vendors and bidders should declare that they understand that making knowingly false statements will be penalized and that they are willing to cooperate with compliance monitoring and remediation plans on request of the public authority or its designated independent monitor.

#### 6.2.4. Supplier evaluation

Bidders' and vendors' capacity to comply and verify compliance with the code of conduct can be an additional award criterion. Public authorities can administer a labor compliance questionnaire to obtain information from bidders and vendors regarding labor-related policies and procedures. Criteria for evaluation can include:

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The Consortium can administer and analyze a labor compliance questionnaire designed to measure how well contractors understand the labor standards required to sell products to a certain public authority. Contractors provide information about wages, working hours, benefits, and the overtime policy in factories they propose to use. The Consortium compares this information to standards required by law and the code of conduct, and provides recommendations to the contractors and public authorities.

- Capacity and commitment to correct violations. In case bidders or vendors declared partial compliance with the code of conduct, do they have an acceptable plan of corrective action which outlines the reasons for non-compliances and specific steps to come into full compliance within a reasonable period of time?
- Capacity to verify compliance with the code of conduct. Is compliance monitoring conducted by an independent monitor, as defined in this guide, or by an independent union that represents workers in the production facility?
- Labor compliance records. Convictions of grave misconduct concerning labor standards may be grounds for excluding bidders and vendors from consideration. Any such decision should take into consideration the proportionality and materiality to the contract or purchase order. While a minor breach at one supplier site should not be enough to disbar a vendor, a violation on a high profile issue such as forced labor or child labor may be relevant.
- Knowledge of relevant labor laws and regulations. Do bidders and vendors demonstrate full grasp of the labor standards requirements to achieve compliance with the code of conduct?
- Purchasing practices. Do bidders and vendors utilize purchasing practices that support decent working conditions (see section 8.1).

Public authorities may also consider other methods to ascertain information about convictions or misconduct of potential bidders, including questions in the bidding documents about legal

convictions and information supplied by other relevant bodies, including government bodies, non-governmental organizations, unions, and monitoring organizations.

### **6.2.5. Performance monitoring**

Contractors should be required to take specific steps to ensure code compliance and responsible supply chain management throughout the duration of the contract as a condition for contract continuation and/or renewal. Each contract for a covered product should include a clause that requires the contractor to:

- Comply with the requirements of the sweatfree procurement policy, including the code of conduct and any approved corrective action plan, and self-monitor compliance.
- Report regularly on compliance monitoring activities and findings, including:
  - Labor compliance indicators and records as specified by the public authority. Public authorities should restrict requests for records and information to that required for compliance monitoring to place the minimum burden on the contractor.
  - An updated list of production facilities to be used in the performance of the contract if and when necessary.
  - Any new instance of non-compliance with the code of conduct within thirty days of having knowledge of the non-compliance.
  - A corrective action plan that will remedy the new non-compliance within 120 days or prior to receipt of half the total remaining value of the contract, whichever comes first.
- Provide a copy of the code of conduct and sweatfree procurement policy to each production facility and require each production facility to affirm in writing that it will: a) comply with the code of conduct and implement any approved corrective action plan and b) inform workers verbally and in writing of the requirements of the code of conduct and sweatfree procurement policy.
- Cooperate fully in providing reasonable access to the contractor's and production facility's records, persons, or premises if requested by the public authority or its designated independent monitor for the purpose of providing labor rights education to workers and managers at production facilities or determining whether any product furnished under the contract is manufactured under conditions that violate the code of conduct.
- Pay a contract winner fee equal to one percent fee of the total amount of the contract (see section 7.4.) to the Sweatfree Purchasing Consortium. The fee will be applied to the costs of enforcing the code of conduct, including monitoring of production facilities. Payment of the fee should be made separately by the contractor, exclusive of the cost of the contract, within 30 days of the end of each calendar quarter on the amount purchased under a term contract during that quarter.

### **6.2.6. Independent third party monitoring**

While the first step in performance monitoring is for the contractor itself to report on its performance according to indicators specified by the public authority, contractor reporting cannot on its own provide credible assurance of code compliance at the supplier site. Third party independent monitoring paid for by the Consortium, not by the contractors, is an essential verification and code compliance tool. Although not all factories can be monitored by a third party, all factories that have production for the public authority must be available for monitoring and inspection, and refusal should be grounds for contract termination.

***The Sweatfree Purchasing Consortium can help.***

The Consortium can assist with compliance monitoring in several ways. It identifies risks of labor violations in certain regions and factories by researching labor rights reports, administering a labor compliance questionnaire to contractors, and conducting spot-check worker interviews. Following the risk analysis, the Consortium offers recommendations to the public authority, including, as appropriate, contractor or brand investigations of alleged violations, reporting, and remediation activities. Results of preliminary investigations and contractor and brand responses are uploaded in the members-only section of the Consortium database.

The Consortium also works with approved independent factory monitors to conduct full investigations following a risk analysis or substantiated worker complaint of a labor violation in a factory that produces goods for at least one member or analysis demonstrating significant risk of violations in such a factory. Throughout the investigation and remediation process, the Consortium provides ongoing reports and recommendations to members, brands, contractors and other stakeholders. Preliminary and intermediary monitoring reports are posted in the members-only section of the database. The final report is publicly available.

Third party independent monitoring should be carried out by an entity with expertise in monitoring factory working conditions that is not owned or controlled in whole or in part by any contractor, subcontractor, production facility, or any other entity that derives its primary income from the sale of any product or service covered by the sweatfree procurement policy. The monitoring methodology should include unannounced factory visits; cooperation with local organizations that workers trust to conduct interviews; confidential and thorough worker interviews in the local language without managers and supervisors present and in settings that allow free dialogue.

The independent monitor should strive to work collaboratively with supply chain partners to achieve and maintain code compliance.

## **7. Sweatfree Purchasing Fees**

The Sweatfree Purchasing Consortium has developed an online supply chain database and an industry fee structure to support and fund the factory data collection, verification, and monitoring activities required to properly implement and enforce sweatfree procurement policies as described in section 6.2. In combination with membership dues, which public authorities pay to the Consortium, industry fees provide the foundation for a public-private partnership in which all participants pay a little to solve a large problem. The industry fees take the following forms:

### **7.1. Vendor registration fee**

Annual vendor registration fees of \$100 provide companies access to the Consortium database. The registration fee allows vendors to:

- Search Consortium member bid opportunities and/or receive automatic email notification of such opportunities.
- Access the affidavit of compliance functionality in order to submit bids, proposals, or quotations.
- Create a log-in, manage its profile, and upload product and factory data.

### **7.2. Factory affidavit fee**

Annual factory affidavit fees of \$75 per factory allow bidders to download factory and product data from the database and efficiently create a contract-specific affidavit for submission to the public authority. The Consortium verifies that the factory location information in the affidavit is accurate.

### **7.3. Manufacturer database access fee**

Manufacturers can access the Consortium database for an annual fee of \$500. This access fee allows manufacturers to input their factory information directly, thus facilitating the use of their products by contractors and vendors. The access fee also allows manufacturers to:

- Edit vendor data specific to the manufacturer.
- Create a log-in, manage its profile, and upload product and factory data.

### **7.4. Contract winner fee**

A one percent fee of the total amount of the contract pays for code of conduct enforcement activities, such as factory monitoring and investigations as needed.

Public authorities should direct companies to register with the Consortium and use the Consortium database to submit bids, proposals, or quotations. Payment of the one percent winner's fee should be a contract performance condition (see section 6.25).

## 8. Beyond Monitoring

### 8.1. Addressing purchasing practices

Factory monitoring and investigations alone are not sufficient to eliminate sweatshop labor practices from public procurement supply chains if root causes of sweatshops remain. Buyers' purchasing practices can be one of those root causes: pricing, order volume, turnaround time requirements, and frequent changes in specifications affect a factory's ability to pay decent wages and benefits, maintain restrictions on working hours, and provide job security. These purchasing practices should be addressed in corrective action plans to ensure there is not an unreasonable burden on factories to remediate violations for which the factories' customers are also responsible. Public authorities should work with vendors and contractors to address the following practices:

- **Pricing.** Competitive public procurement practices are valuable in ensuring public funds are prudently spent, but should not result in prices that underwrite or foster sweatshop conditions. Competition must rest on lawful wages, while aspiring to living wages. Because it costs more, in general, to manufacture apparel under fair and lawful labor conditions than in sweatshops, public authorities should recognize that meaningful implementation of sweatfree standards may result in modest cost increases for the purchase of these goods in the competitive marketplace.
- **Production scheduling.** Public authorities should ensure that their own and their contractors' and vendors' order placement and delivery schedules allow for reasonable production scheduling such that factories can fulfill orders without compelling excessive, or involuntary overtime.
- **Business commitments.** Public authorities should encourage stable and long-term relations between buyers and suppliers. Factories will have little incentive to invest in meeting sweatfree standards unless their customers are willing to reward compliance with ongoing business.
- **Distribution of production in supplier factories.** In order to achieve labor compliance it may become necessary for companies to consolidate production into a smaller number of factories that will have a greater incentive to comply with sweatfree standards and can be more easily monitored. Public authorities should discuss the distribution of production with contractors and vendors as necessary to achieve code compliance.

### 8.2. Education and training programs

Public authorities should also ensure or encourage all stakeholders, from workers to public employees, to understand their rights and responsibilities to achieve and maintain code compliance. For example, public authorities may consider:

- Working with their larger contractors and vendors to provide labor-rights education to workers and managers in factories where goods under contract are made.
- Educating their contractors and vendors on their responsibilities under the code of conduct and resources available to them.
- Training procurement staff on code of conduct implementation.
- Communicating with the public—for example, through informational flyers distributed at public meetings or events—to increase understanding of and commitment to sweatfree procurement.

***The Sweatfree Purchasing Consortium can help.***

The Consortium can arrange worker and management education with non-governmental organizations in the region of production. Education and training programs are designed to ensure worker know their rights and how to complain that their rights are violated, and managers understand their responsibilities to protect workers' rights.

When a contractor is awarded a significant contract with a Consortium member, the Consortium provides it with literature about the Consortium, workers' rights, and the complaints process. Public authorities can request the contractor to provide this information to a bona fide democratically elected union representative, worker committee representative, or a specially designed Consortium worker liaison at applicable factories. The factory should then invite Consortium staff, a Consortium-approved monitoring organization, or a local partner organization to give a presentation to workers and managers about their rights under the law and codes of conduct. The Consortium notifies applicable public authorities if the training program is or is not successfully completed.

**9. Appendixes**

Sample statements of legislative intent/codes/policies/compliance forms