



Sweatfree Model Policy¹

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¹ This model policy was prepared for the Sweatfree Purchasing Consortium by the Harrison Institute for Public Law at Georgetown Law.

Sweatfree Purchasing Consortium Sweatfree Model Policy

1. Introduction

This model policy is designed to assist governmental entities in developing their own sweatfree policies. It is intended to alert governmental entities to issues that affect the procurement of apparel, textiles, and laundry services, and guide governmental entities as they develop policies governing those procurements. This model policy is not intended to serve as an exhaustive treatment of requirements and rules for application. Rather, governmental entities should feel free to use it as a starting point for development of a specific policy that complies with their own policies, statutes and regulations.

2. Intent

a. *Findings*

The following findings are based on research into global apparel supply chains and the procurement of apparel that are available from a variety of sources. These findings do not represent a final determination or policy of any specific governmental entity member of the Sweatfree Purchasing Consortium (the “Consortium”). Rather they serve as a framework for development of this model policy. Additional information on the sources of these findings can be obtained by contacting the Consortium at www.buysweatfree.org.

- (1) *Global supply chains* – Procurement of apparel has changed over the past several decades. Contractors rarely make the apparel they sell, and they are less likely to own the companies that produce the goods. Increasingly, Contractors manage distribution services at the end of global supply chains in which independent factories compete with each other.
- (2) *Sweatshop conditions* – In the absence of effective standards for competition, global supply chains have increasingly acquired their apparel from “sweatshops” that violate domestic standards on wages, hours, workplace safety, and health, as well as international standards on freedom of association and prohibition of forced labor, child labor, and discrimination with respect to employment. Domestic standards vary based on national law. International standards are shared by 183 countries, including the United States, that are parties to the 1998 Declaration of Fundamental Principles and Rights at Work, an instrument of the International Labor Organization (ILO).
- (3) *Competitive bidding* – Under these conditions, governments unwittingly expand the market for sweatshops when they purchase uniforms, specialized work garments, and athletic equipment through competitive bidding. Contractors can gain a competitive advantage from sourcing their production in sweatshops with the lowest-cost labor in the least-regulated locales. When labor-law violators have an advantage, they discourage law-abiding producers – who ensure decent and humane working conditions – from competing for public contracts. Contractors who source from sweatshops undermine the integrity of the competitive bidding process.
- (4) *Labor law compliance* – [This jurisdiction] enforces its labor laws, and supports businesses that provide decent, safe and humane working conditions. But as some global supply chains compete with illegal sweatshop labor, they place [this jurisdiction’s] businesses at a competitive disadvantage. Procurement of apparel

without labor standards undermines the efficacy of labor laws both locally and globally.

- (5) *Authority* – [*This jurisdiction*] has the legal authority to preserve the integrity of its procurement process for apparel. Courts have long recognized that a responsible bidder is one who complies with the law and competes fairly. Consistent with applicable laws, [*this jurisdiction*] may evaluate bidders’ and contractors’ capacity to deliver apparel and distribution services fairly. Such an evaluation includes review of their capacity to ensure compliance with domestic labor laws in the country of production and international standards of decent work.

b. Purpose

[*This jurisdiction*] adopts a “sweatfree” procurement policy to avoid purchasing sweatshop goods and –

- (1) *Preserve the integrity of competitive bidding.* Only by applying supply chain labor standards in the procurement process can [*this jurisdiction*] safeguard competition from lawful bidders who ensure that their goods are made under decent working conditions.
- (2) *Develop long-term business relationships.* As a market participant, [*this jurisdiction*] seeks to develop long-term relationships with contractors who have the capacity to educate, monitor and manage their supply chains to ensure compliance with labor standards.
- (3) *Comport with standards of public morality.* The unfettered market conditions that may lead [*this jurisdiction*] to purchase goods – on behalf of its citizens – that are made under abusive conditions offends our sense of decency in government and business. As a market participant, [*this jurisdiction*] is no less committed to upholding standards of public morality in apparel markets than are the hundreds of private-sector companies and institutions that have adopted sweatfree standards.
- (4) *End taxpayer support for sweatshops.* As the steward of taxpayer funds, [*this jurisdiction*] aims to expand the market for decent work and eventually end taxpayer support for sweatshops.
- (5) *Reduce cost of administration.* By joining the Sweatfree Purchasing Consortium of state and local government entities, [*this jurisdiction*] plans to develop and share supply chain resources, expertise, technology, training, monitoring services, and help create economies of scale for sweatfree procurement.

3. Definitions

- a. “Commodity supplier”** means a person or business entity that makes natural fiber or cloth used to produce goods that this policy covers. Suppliers include, but are not limited to, farms, ranches and factories where natural-fiber or cloth is grown, produced, woven, knitted or felted. The term applies only to persons or business entities that supply a contractor, as distinct from those that do not, even if they are owned by the same company.
- b. “Consortium”** means the Sweatfree Purchasing Consortium. It is a nonprofit organization; its members are state and local governments that collaborate on implementing sweatfree-purchasing policies.

- c. “**Contract**” includes a purchase order, lease, rental or other agreement to acquire or use goods or services.
- d. “**Contractor**” means a person or business entity that provides goods or services to the department.
- e. “**Department**” means the unit of government that purchases goods and services.
- f. “**Factory**” means a facility that manufactures or otherwise contributes significantly to a product. For apparel, the factory is the facility that manufactures the product by cutting and assembling through sewing, weaving, knitting, or felting, and may also include the facility that finishes, applies marks, warehouses, or launders the product.
- g. “**Subcontractor**” means a person or business entity that produces or supplies to the contractor goods or services covered by this policy.” The term applies only to factories that supply a contractor, as distinct from those that do not, even if they are owned by the same company.
- h. “**Worker**” means a worker who provides goods or services that this policy covers.
- i. “**Workplace**” includes a place under the direct or indirect control of a contractor or subcontractor, including but not limited to a factory, housing, or place for dining, meeting or recreation.

4. Scope of coverage

a. *Goods and services*

This policy applies to:

- (1) Contracts for [\$xx,000] or more for a one-time purchase or use of apparel, related equipment or textiles.
- (2) Contracts for [\$xx,000] or a term of more than three months for:
 - (a) distribution of apparel, related equipment, textiles, or
 - (b) laundry services.
- (3) For purposes of this section,
 - (a) “Apparel” includes but is not limited to uniforms (such as sports, school, and public employee uniforms), footwear (such as athletic shoes and work boots), sweatshirts, caps and hats, hospital gowns, academic regalia, lab coats, and other clothing whether or not imprinted with a name or logo.
 - (b) “Related equipment” includes items that people wear such as utility belts, body armor, and protective visors.
 - (c) “Textiles” include, but are not limited to sheets, towels, blankets and spreads, pillows, cleaning cloths, laundry bags, mattress and bed pads, dust and wet mops, pillow cases, mats, mop heads, and washcloths.
 - (d) “Laundry services” include washing, dry cleaning, pressing, packaging, delivery and other related services.

b. *Exceptions*

This policy does not apply if the department affirms in writing that:

- (1) Goods or services are needed for an emergency.
- (2) A contract is with a government.
- (3) Application of this policy is inconsistent with a grant agreement.
- (4) Application of this policy is inconsistent with a law or regulation.
- (5) Covered goods are incidental to other purchases, and the value of the goods is less than 10 percent of the total contract that includes other purchases.

5. Labor standards

a. *Domestic labor standards*

Contractors must comply with domestic labor law in the countries where they produce goods or services under this policy. They must ensure that their subcontractors comply as well. For purposes of this section, domestic labor law includes international standards that are applicable to employers under domestic law. Examples of these laws include, but are not limited to, those regulating:

- (1) health and safety;
- (2) wages and benefits, including overtime compensation;
- (3) hours of work, public holidays and leave
- (4) discipline, violence, harassment and abuse;
- (5) contracts for both short-term and long-term workers;
- (6) freedom of association and collective bargaining;
- (7) prohibition of forced labor;
- (8) prohibition of child labor; and
- (9) prohibition of discrimination.

b. *International labor standards*

All contractors must respect the four fundamental principles articulated in the International Labor Organization’s 1998 Declaration on Fundamental Principles and Rights at Work. They must also ensure that their subcontractors respect the four principles and that their commodity suppliers respect the fundamental principles related to “elimination of all forms of forced or compulsory labor” and “abolition of child labor.”

- (1) *Freedom of association and the right to collective bargaining.* A contractor must not interfere with the freedom of association and the right to collective bargaining and must ensure that their subcontractors do not interfere with the freedom of association and the right to collective bargaining. Examples of violations include, but are not limited to the following. A contractor or subcontractor must not:

- (a) Interfere with a workers’ organization or its efforts to organize workers. Examples of non-compliance include, but are not limited to:
 - i. Promoting the formation of a workers’ organization to compete against an existing workers’ organization.
 - ii. Interfering with, manipulating or controlling a workers’ organization.
 - iii. Limiting the freedom of workers to meet without management present.
 - iv. Restricting access of workers’ representatives to workers in the workplace.
- (b) Discriminate against a member of a workers’ organization. Examples of non-compliance include, but are not limited to:

- i. Using membership in, or activities with, a workers' organization as a factor when making hiring decisions.
 - ii. Using a blacklist of members of a workers' organization to ensure that they are not employed.
 - iii. Offering or providing any incentive to workers to keep them from joining, or participating in the activities of, a workers' organization.
 - iv. Threatening, intimidating or harassing workers who join, or participate in the activities of, a workers' organization.
- (c) Refuse to bargain collectively in good faith on any issue or fail to implement any term in a collective bargaining agreement. Examples of non-compliance include, but are not limited to:
- i. Refusing to bargain collectively.
 - ii. Refusing to bargain in good faith with worker representatives.
 - iii. Limiting the issues that can be negotiated during collective bargaining.
 - iv. Failing to implement any provision of a collective bargaining agreement in force.
- (d) Interfere with an otherwise lawful strike by workers or retaliate against any worker for striking. Examples of non-compliance include, but are not limited to:
- i. Hiring new workers to replace striking workers.
 - ii. Punishing any worker for participating in a strike.
 - iii. Failing to reinstate all eligible workers after a strike.
 - iv. Using security guards, the police or armed forces to break up a peaceful strike or to arrest any striking worker.
- (2) *Elimination of all forms of forced or compulsory labor.* A contractor must not use any form of compulsory labor and must ensure that their subcontractors and commodity suppliers do not use any form of compulsory labor. Examples of violations include, but are not limited to the following. A contractor, subcontractor, or commodity supplier must not:
- (a) Use bonded labor. Examples of non-compliance include, but are not limited to requiring payment of a debt to the employer or a third party in order to leave employment.
 - (b) Abuse prison laborers. Examples of non-compliance include, but are not limited to:
 - i. Using a prisoner for work without that prisoner's consent.
 - ii. Treating prisoners less favorably than non-prisoners with respect to wages, hours of work, or health and safety protections.
 - (c) Prevent a worker from freely leaving employment or a workplace. Examples of non-compliance include, but are not limited to:
 - i. Preventing a worker from voluntarily leaving a workplace, including dormitories or industrial areas.
 - ii. Locking all exits of a workplace or dormitory.
 - iii. Refusing to return any personal document to a worker upon request.
 - iv. Using or threatening to use violence, deportation, visa cancellation, immigration action or arrest to force a worker to work.

- (d) Use economic coercion in conjunction with forced overtime. Examples of non-compliance include, but are not limited to:
 - i. Requiring overtime work in order for a worker to make a legally mandated minimum wage.
 - ii. Compelling a worker to work hours beyond legal limits by threatening to terminate employment or eliminate overtime hours.
- (3) *Abolition of child labor.* A contractor must not use unlawful child labor and must ensure that their subcontractors and commodity suppliers do not use unlawful child labor. Examples of violations include, but are not limited to the following. A contractor, subcontractor or commodity supplier must not:
 - (a) Fail to keep adequate records of workers under 18 years of age. Examples of non-compliance include, but are not limited to:
 - i. Failing to verify the age of a worker appearing to be under 18 years of age with available documentation.
 - ii. Failing to keep a registry of all workers under 18 years of age.
 - (b) Employ a worker under 18 years of age in a way that is hazardous to health, safety or morals. Examples of non-compliance include, but are not limited to:
 - i. Allowing a worker under 18 years of age to work overtime or at night.
 - ii. Allowing a worker under 16 years of age to do physically hazardous work.
 - iii. Allowing a worker between 16 and 18 years of age to do physically hazardous work without adequate safety training.
 - iv. Frequently shouting at, insulting, or hitting a worker under 18 years of age.
 - (c) Employ any worker under 15 years of age or the age of completion of compulsory schooling, except as allowed by domestic law.
- (4) *Elimination of discrimination in respect of employment or occupation.* A contractor or subcontractor must not discriminate against a worker.
 - (a) Examples of non-compliance include, but are not limited to the following. A contractor or subcontractor must not:
 - i. Recruiting in a way that expresses a discriminatory preference.
 - ii. Discriminating in a decision regarding: hiring, conditions of work, pay, opportunities for promotion, access to training, or termination.
 - iii. Harassing a worker in a way that discriminates, including sexual harassment.
 - iv. Requiring a worker to undergo a pregnancy test or to use contraception.
 - (b) For purposes of this section, “discriminate” means to treat a worker differently based on that worker’s age, gender, race, color, origin, religious affiliation, sexual orientation, or political affiliation during any phase of employment, including, but not limited to: advertising for hiring, hiring, at work, discipline or promotion, termination, or in connection with benefits after termination.
- c. *Conflict between domestic and international standards***

As an exception to section 5.b, this policy does not require a contractor, subcontractor or commodity supplier to perform an act that violates a domestic law in a country of production. However, they must still honor international principles by:

- (1) permitting all activities related to freedom of association that are not prohibited by domestic law, and
- (2) avoiding practices that violate international standards under section 5.b unless a practice is mandated by domestic law.

d. *Living wage*

- (1) Contractors should work with their subcontractors to pay workers a wage that increases incrementally toward the goal of a living wage.
- (2) In evaluating bids, the department may award a contract using a tie-breaker or preference to favor the bid with the highest reported wages. The department may evaluate bids based on wages paid or proposed using a comparison such as a wage ladder or point system.
- (3) The department may establish a wage ladder, which is a chart or graph that the department can use to evaluate bidders by comparing the lowest wages paid by a contractor with:
 - (a) the domestic minimum wage of the country of manufacture;
 - (b) the average wage for apparel workers in the country of manufacture;
 - (c) a living wage; and
 - (d) other benchmarks the department chooses.
- (4) The department may set its own incremental wage benchmarks towards the payment of a living wage in order to encourage contractors to work with their subcontractors to gradually increase their wages as provided in section 6(b)(2).
- (5) The department should use the wage ladder to:
 - (a) promote competition among bidders based on paying decent wages and improving capacity to perform contracts without labor turnover or disruption;
 - (b) provide a framework for the department to work with other governments to harmonize the living wage standard; and
 - (c) provide a framework for the department to work with other governments to purchase sweatfree goods collectively from a bidder that complies with this code.
- (6) Consistent with U.S. Department of Justice guidelines, if the department discloses its wage ladder to the public, it must:
 - (a) collect and publish the wage data itself or through another third party;
 - (b) wait at least three months after collecting the wage data before publishing the wage ladder; and
 - (c) combine the wage data to include five or more factories per country or region so that individual factory or contractor wages are not identifiable.
- (7) For purposes of this section, a living wage is the piece-rate or hourly equivalent of what a full-time worker needs to earn in annual income that exceeds the poverty threshold for a family of three.
 - (a) In the United States, the living wage is based on the poverty threshold set by the U.S. Department of Health and Human Services for a family of three plus an additional 20 percent to provide for expenses that include healthcare, childcare, education, travel, and retirement savings. The department may recognize other

employer contributions if the bidder provides evidence of the value of the contribution to workers.

- (b) For other countries of production, the department may adjust the U.S. living wage to reflect a different cost of living by using an index for purchasing power parity, which is calculated by the World Bank.

6. Procurement process

a. Requesting bids

- (1) *Notice to prospective bidders.* When the department requests bids, it must give notice to prospective bidders of:
 - (a) Required information that a bidder must provide before the department may consider the bidder.
 - (b) The criteria that it will use to evaluate the capacity of a bidder to comply with the labor standards under section four.
 - (c) The performance conditions that this policy requires under this section.
- (2) *Required information.* Before the department may consider a bidder, the bidder must:
 - (a) State the names and locations of subcontractors and factories that the bidder proposes to use.
 - (b) State whether the contractor and subcontractors have or do not have the present capacity to comply with labor standards under section 5.
 - (c) If lacking the present capacity to comply, propose a plan to achieve full compliance with labor standards as provided under section 6(b)(2).

b. Awarding contracts

- (1) *Exclusion of non-responsible bidders.* Before evaluating bids, the department may exclude a bidder on grounds that:
 - (a) The bidder has provided insufficient information to evaluate capacity of the bidder to comply with labor standards under this policy.
 - (b) There is credible evidence from a third party that a bidder has not accurately disclosed its capacity to comply with labor standards. If this occurs, the department must provide the bidder with notice and an opportunity to rebut the evidence.
 - (c) There is credible evidence from a third party that a bidder will use a commodity supplier that is violating the relevant labor standards in 5(b)(2) or 5(b)(3) above. If this occurs, the department must provide the bidder with notice and an opportunity to rebut the evidence or change suppliers.
- (2) *Evaluation criteria.* The department must evaluate the bidders based on their capacity to ensure compliance with labor standards, both directly and indirectly through their subcontractors. Evaluation criteria include:
 - i. *Awareness of labor standards* – For example, a bidder may provide a schedule of labor standards with which the bidder or proposed subcontractors must comply in the country of production.
 - ii. *Capacity to comply with labor standards* – As noted in section 6(a)(2), a bidder must state whether or not it has the present capacity to comply with labor standards. The bidder may submit a plan to continue or achieve compliance that includes, for example, systems for:

- (A) Communication of labor standards.
 - (B) Maintenance of records regarding inspections, violations, and corrective action.
 - (C) Monitoring of compliance.
 - (D) Confidential communication of worker complaints.
 - (E) Using factories, subcontractors and commodity suppliers that have been certified by an independent third party to be in compliance with some or all of the labor standards.
- iii. *Capacity to improve wages*
- (A) In compliance with applicable law, the department may exercise a preference for a bidder that pays or offers to pay the highest wages to workers on average if that bidder is tied or within [x] percent of the lowest bidder in terms of price or evaluation points.
 - (B) A bidder may initially submit a third-party certification of compliance with minimum wage laws. Should the bidder win the contract, the bidder must submit wage data as required by the department.
 - (C) In compliance with applicable law, a bidder that does not currently pay a living wage may propose a plan to increase wages in comparison to their current wage rates.
 - (D) If applicable law allows the department to create a wage ladder as provided under section 5(d), a bidder may propose incremental increases using benchmarks of the wage ladder as points of comparison.

c. *Conditions of contract performance*

After the department awards a contract, it must include the following conditions to ensure that contractors comply with this policy. A contractor must:

- (1) Comply with, and ensure that its subcontractors and commodity suppliers comply with, the labor standards under section 5 unless the contractor has:
 - (a) Stated that the contractor or its subcontractors do not have the present capacity to comply, and
 - (b) Proposed a plan to achieve full compliance.
- (2) Implement the plan that the contractor proposes to continue or improve compliance with labor standards under section 5. The contractor must update this plan annually during the term of the contract.
- (3) Implement proposed wage increases as provided by section 6(b)(2).
- (4) Report the lowest wages earned and benefits received by workers at all factories used by the contractor or subcontractors as disclosed under section 6(a)(2). The bidder should collect this data prior to submitting a bid or at a time the department specifies. The contractor must report to the department any changes to worker benefits or wages in any factory in its supply chain.
- (5) Pay a fee of one percent of the total amount of the contract to implement this policy. If the value of the contract is not known at the time of award, the department may estimate an initial payment and subsequent installments.

- (6) Cooperate with any monitoring, investigation, or educational effort by the department or its designee. A contractor must also ensure that its subcontractors cooperate with any monitoring, investigation, or educational program. Cooperation includes:
 - (a) unrestricted access to all factories and workers; and
 - (b) access to all records concerning those factories and workers.
- (7) Not create any false records related to wages, benefits, or labor standard compliance.
- (8) Purchase the product under terms, including prices and delivery dates, which support and enable production of the product in a manner that is consistent with the labor standards in section 5.

7. Monitoring and enforcement

a. *Complaints*

- (1) Any person or organization may make a complaint that a contractor, subcontractor or commodity supplier has been or is failing to comply with a contract or this policy.
- (2) The department may keep any information about a complainant confidential to the extent legally possible.

b. *Investigations*

The department must either investigate a complaint or violation or designate the Sweatfree Purchasing Consortium or another organization to do so.

c. *Violations*

- (1) If an investigation shows that a contractor, subcontractor, or commodity supplier violated this policy, the department should attempt to negotiate with that contractor in an effort to bring it into compliance before pursuing remedies. By negotiating, the department does not give up the right to any legal remedy for the violation.
- (2) If the contractor does not negotiate or cannot comply with this policy, the department may take any action as provided by law, rule or contract.

d. *Sweatfree Advisory Group*

- (1) The department must establish a Sweatfree Advisory Group to assist in the implementation and enforcement of this policy, or it must ensure that an existing body takes on this role.
- (2) The department must appoint to the advisory group advocates for workers who experience sweatshop-working conditions, administrators who implement this policy, including individuals with expertise in public procurement and finance, representatives of public employee unions, and others with expertise or interest in this policy. The department must also establish the terms of service for individual members and the frequency of meetings of the advisory group.
- (3) The purpose of the advisory group is to:
 - (a) Provide advice on bidding guidelines, dissemination of information to workers, and collaboration with other public entities.
 - (b) Evaluate the implementation of this policy.
 - (c) Evaluate industries engaged in manufacture and sale of goods other than apparel, textiles, and laundry services to determine whether procurement of goods, in addition to apparel, textiles and laundry services should be subject to this policy, and make recommendations for expanding the scope of implementation of this

policy to the department.

e. *The Sweatfree Purchasing Consortium*

- (1) The department must join the Sweatfree Purchasing Consortium (SPC).
- (2) The department must pay the dues of SPC and participate in its governance.
- (3) The department may share information with the SPC about implementation of this policy, compliance of contractors, supply chain resources, technology, training, monitoring services, and ways to create economies of scale for sweatfree procurement.

8. Legal effect

- a. *Rulemaking and interpretation.*** The department may interpret, make rules and create documents to implement this policy.
- b. *No preemption.*** [*if adopted at the state level*] This policy does not preempt or displace any policy of a local government that aims to promote compliance with labor standards by contractors in public purchasing.
- c. *Severability.*** The provisions of this policy are severable. If a court finds that any portion of this policy is invalid, the remaining portions remain in effect.