

Model Code of Conduct and Sweatfree Procurement Policy 5.0

1. Findings

The [public entity] finds that:

- a. The [public entity] spends [dollars] in public funds on garments, uniforms, materials, and other equipment, materials, and supplies provided by private Contractors and Manufacturers.
- b. "Sweatshop" conditions in garments and other labor intensive industries in the United States and overseas are well documented. Sweatshops typically violate both domestic law and internationally recognized labor rights and human rights. Sweatshop conditions include below-subsistence wages; excessively long working hours; unhealthy and unsafe working environments; child, indentured, and prison labor; disregard for fundamental women's rights; and repression of workers' rights to associate and bargain collectively.
- c. Sweatshop conditions in the global garment industry are so widespread that they can be considered the norm and not the exception. Both public and private sector actors have already invested significant resources in addressing the problem of garment industry sweatshops.
- d. The [public entity] recognizes that the public morals, and order, and safety are served by avoiding expenditures of tax dollars to Contractors that maintain sweatshop working conditions.
- e. In its role as a market participant, the [public entity] seeks to assure that the integrity of the procurement process is not undermined by Contractors that engage in sweatshop practices. Contractors that use sweatshop labor are able to underbid responsible Contractors that pay fair wages and maintain humane work environments and conditions. Such practices place responsible Contractors at a competitive disadvantage, which may dissuade them from participating in the [public entity's] procurement process.
- f. The [public entity] must be cognizant of the working conditions it may support by its actions as a major market participant. Better working conditions assure consistently better quality goods for the [public entity], by assuring fewer disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer workplace injuries, less turnover of workers, and greater incentive to perform.
- g. The [public entity] recognizes the rights of its residents to information about working conditions and choice with regard to the expenditure of its tax money.
- h. Local interests in avoiding procurement from sweatshops and protecting workers' labor rights and human rights are also shared international concerns as evidenced by the 181 nations that have signed the International Labor Organization Constitution and the consensus Declaration of Fundamental Principles and Rights at Work. In these documents, core labor standards and non-poverty wages are recognized as fundamental human rights. The Declaration of Fundamental Principles and Rights at Work declares that core labor standards are "necessary to maintain the link between social progress and economic growth" and to enable workers to "freely claim ... their fair share of wealth which they have helped generate."
- i. As a participant in the marketplace, the [public entity] seeks to protect the interests of local residents, workers, and businesses, while respecting international concerns to protect workers' labor rights and human rights, by exercising its proprietary powers to establish a "sweatfree" procurement policy and code of conduct through the least discriminatory means available. The sweatfree procurement policy and code of conduct ensures that items of apparel, garments and corresponding accessories, and other equipment, materials, and supplies procured by the [public entity] be produced in workplaces free of sweatshop conditions.

2. Scope and Phase-In

This policy applies to the procurement and laundering of apparel, garments and corresponding accessories, and the procurement of equipment, materials, and other supplies for the [public entity], its agencies, or its employees. Procurement includes contract, purchase, rental, lease, or allowance and voucher programs. During the first full fiscal year after the effective date of this Chapter, the [public entity] shall target for enforcement only purchases and contracts for apparel, garments and corresponding accessories, materials, supplies or equipment, and laundry services. Other goods and services shall be targeted for enforcement, sector by sector, based on the recommendations of the Sweatfree Procurement Advisory Group and the process set forth in Section 6.

3. Definitions

- a. "Consortium" means the Sweatfree Purchasing Consortium.
- b. "Contractor" means a person or entity that provides applicable goods or services to the [public entity].
- c. "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, Subcontractor, Production Facility, or any other entity that derives its primary income from the sale of any product or service covered by this policy. The [public entity] and/or Consortium may designate and/or contract with an Independent Monitor to carry out the functions authorized by this Chapter.
- d. "Production Facility" means the facility that manufactures (including cutting and assembly by weaving, sewing, knitting or felting), finishes, applies marks, warehouses, launders, or engages in any other processes that contribute significantly to the finished apparel and other products.
- e. "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with a Contractor or another Subcontractor for provision of all or some of the goods and services covered by this policy.
- f. "Worker" means those workers engaged in the production of the goods or services covered by this policy.

4. Prohibition of Sweatshop Conditions

The [public entity] shall only procure goods and services covered by this policy from Contractors that ensure that all Production Facilities adhere to or exceed the following sweatfree code of conduct in their practices and policies regarding applicable Workers.

- a. Legal Requirements. Production Facilities shall comply with all applicable domestic labor, employment, health and safety, environmental, and building laws; the "core" conventions of the International Labor Organization, including those regarding forced and child labor, non-discrimination, and freedom of association and collective bargaining; and other internationally recognized labor rights, including those regarding health and safety, maternity leave, hours of work, wages, and homework.
- b. Wages and Benefits. Production Facilities shall pay a non-poverty wage. In the United States, the non-poverty wage is the level of wages required for a full-time worker to produce an annual income equal to or greater than the United States Department of Health and Human Services' most recent poverty guideline for a family of three plus an additional 20% of the wage level paid either as hourly wage, health benefits, or pension benefits. Outside the United States, a non-poverty wage is a comparable nationwide wage and benefit level, adjusted to reflect the local cost of living, sufficient to raise a family of average size out of poverty.

- c. Hours of Work and Overtime. Production Facilities shall not require hourly and quota-based workers to work more than 48 hours per week or the limits on regular hours allowed by the law of the country of manufacture, whichever is lower. In addition, Production Facilities shall provide at least one day off in every seven-day period, as well as holidays and vacations. Production Facilities shall ensure that all hours worked beyond the limits on working hours are voluntary, except as provided for by both national law and a bona fide collective bargaining contract. Required overtime should only be permitted when each of the following conditions exists: a) national law permits mandatory overtime; b) the facility is party to a collectively negotiated contract with a representative labor union and this contract permits mandatory overtime, and; c) mandatory overtime does not exceed the amount allowed by the collective contract. In addition to their compensation for regular hours of work, hourly and quota-based workers shall be compensated for overtime hours at such a premium rate as is legally required in the country of manufacture or, in those locations where such laws do not exist, at a rate at least one-and-one-half their regular hourly compensation rate.
- d. Discrimination and Women’s Rights. Production Facilities shall not discriminate in employment - including in hiring, salary, benefits, advancement, discipline, termination, retirement, or any other term or condition of employment or employer practice - on the basis of gender (including pregnancy), race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin. Production Facilities shall not require pregnancy tests as a condition of employment, nor demand pregnancy tests of employees. Women workers shall receive equal remuneration, including equal pay, benefits, treatment, and opportunity to fill positions open to male workers.
- e. Harassment and Abuse. Production Facilities shall not harass or abuse workers sexually, psychologically, or verbally, or use corporal punishment.
- f. Freedom of Association. Production Facilities shall respect workers' rights to freedom of association, collective bargaining, striking or other concerted protest, and filing of grievances.

5. Requirements – Contractor Affidavits, Public Records and Reporting

- a. Refusal to Contract. The [public entity] shall not enter into contracts with a Contractor if based on information submitted by the Consortium, an Independent Monitor, or other employees or agents authorized to assist in the implementation, administration, or enforcement of this Chapter, the [public entity] finds that the Contractor or one of its Subcontractors violates any requirement enumerated in this Chapter and that the Contractor refuses or fails to take all reasonable steps to ensure that the violation is expeditiously remedied; or the Contractor fails to submit the information required in the affidavit described in Section 5 (b).
- b. Affidavits. In order to qualify for a contract, purchase order, rental, or lease agreement for provision of goods or services covered by this Chapter, the Contractor must submit affidavits that include the information set forth in Section 5 (b) to the Purchasing Agent. To ensure public access and confidence the Purchasing Agent shall post this information on its internet website as soon as possible but not more than 14 days after final award of a contract. The information shall include:
 - i. The names, complete physical addresses, phone numbers, and contact persons of each production facility to be involved in the production of goods or provision of services.
 - ii. A statement by the Contractor indicating the following:
 - 1. The Contractor understands its obligation to ensure that all applicable Production Facilities adhere to the sweatfree code of conduct as defined in Section 4;
 - 2. The Contractor understands that if the [public entity] finds any of its applicable Production Facilities to be out of compliance with any of the provisions of Section 4, and the

Contractor fails to take all reasonable steps as specified by the [public entity] and/or its designee(s) to compel the facility to remedy the non-compliance within a time period specified by the [public entity], the Contractor will be deemed out of compliance with the sweatfree code of conduct as defined in Section 4.

3. The Contractor has furnished a copy of the sweatfree code of conduct as defined in Section 4 of this Chapter to each relevant Subcontractor, and instructed each Subcontractor to furnish the code of conduct to each relevant Production Facility.
 - iii. Any other information deemed necessary by the Purchasing Agent for the administration and enforcement of this policy.
- c. Updated Information. If any information provided by the Contractor pursuant to this section changes during the specified time period of the contract, the Contractor shall submit or cause to be submitted to the Purchasing Agent affidavits with the updated information.

6. Verification and Compliance

- a. It shall be the responsibility of Contractors to ensure compliance with the sweatfree code of conduct as defined in Section 4 of this Chapter in all Production Facilities. Contractors must establish and implement, and/or cause Subcontractors to establish and implement, managerial systems, rules, procedures, and audits sufficient to effectively ensure such compliance. Contractors must also ensure that their, and/or their Subcontractors', business and sourcing practices effectively ensure such compliance.
- b. Each Contractor shall cooperate fully with any investigation of the [public entity's relevant enforcement official or agency] or the [enforcement official's or agency's designee], including without limitation agents authorized to assist in the implementation, administration or enforcement of this Chapter. Each Contractor shall also ensure that each Subcontractor and Production Facility cooperates fully with investigations. Refusal of a Contractor to facilitate monitoring by, or to cooperate fully in the monitoring process of the [public entity] or authorized agents may result in disqualification for bidding, in termination of a contract, or in other sanctions at the discretion of the Purchasing Agent.
- c. The [public entity] shall join the Sweatfree Purchasing Consortium in order to cooperate with other public entities for the purpose of ensuring the most effective enforcement of the labor and human rights standards enumerated in Section 4 of this Chapter.
- d. The [public entity] shall establish a Sweatfree Procurement Advisory Group to assist in the implementation and enforcement of this Chapter. The Sweatfree Procurement Advisory Group shall consist of advocates for garment workers and other workers experiencing sweatshop working conditions, representatives of uniformed unions of employees of the [public entity], representatives of agencies that employ uniformed personnel, administrators responsible for implementing this Chapter, and other interested parties. The purpose of the Sweatfree Procurement Advisory Group shall be to:
 - i. Receive and assess evidence of bidders', Contractors', and Subcontractors' non-compliance with the Sweatfree Code of Conduct from the Consortium, an Independent Monitor, workers, labor unions, governments, businesses, non-government organizations, or human rights advocates.
 - ii. Provide advice on bidding guidelines, dissemination of information to Workers, and collaboration with other public entities.
 - iii. Evaluate the implementation of this Chapter.
 - iv. Evaluate industries engaged in manufacture and sale of goods other than apparel and garments to determine whether procurement of goods, in addition to apparel and garments, should be subject to this Chapter, and make recommendations for expanding the scope of implementation of this Chapter to [the relevant agency]

7. Violations and Enforcement

- a. Complaints. Any person may complain that the sweatfree code of conduct (Section 4) of this Chapter has been or is being violated. At the request of the party submitting the complaint, or when deemed necessary by the [public entity], the [public entity] agrees to keep confidential the name and contact information of the complainant. The [public entity] shall ensure that the merits of each complaint are investigated and may utilize the services of the Consortium and/or an Independent Monitor for this purpose.
- b. Remediation. Upon determination of a violation of the sweatfree code of conduct at a Production Facility of a Contractor or its supplier, including all Subcontractors, the [public entity], authorized agents, the Contractor, and relevant Subcontractors shall consult for the purpose of agreeing to a remediation plan. The intention is for the situation to be corrected in order to comply with the sweatfree code of conduct. The [relevant enforcement official or agency] may impose sanctions if the [public entity] or its authorized agents finds (a) that the Contractor or one of its Subcontractors violates any requirement enumerated in this Chapter, and (b) that the Contractor refuses or fails to take all reasonable steps to ensure that the violation is expeditiously remedied. [The public entity's relevant enforcement official or agency] may terminate the contract without notice and without liability for unpaid amounts that otherwise would have been payable, impose a monetary penalty not to exceed [amount] for each violation, or remove the Contractor from the bidder's list for a period of [time], in accordance with the [public entity's laws and regulations for imposition of sanctions on Contractors that violate conditions on contracting]. The appeals process for Contractors found to violate any provisions of this Chapter shall be in accordance with [relevant code].

8. Preemption

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal law. Nothing in this Chapter shall be interpreted to preempt any law of a political subdivision of the [public entity].

9. Severability

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

10. Legislative Objectives

- To end taxpayer support for sweatshops.
- To protect the basic labor rights and human rights of workers who produce apparel and other goods for the public entity.
- To level the playing field for ethical contractors.
- To reduce cost to the public entity and minimize the work of policy implementation and enforcement for government officials by collaborating with other public entities and making available the services of an independent factory monitor.
- To create a sweatfree procurement policy consistent with federal law and United States trade obligations.