

2004-4 Anti-Sweatshop Procurement Policy

EXECUTIVE ORDER

Commonwealth of Pennsylvania
Governor's Office

Date:

March 18, 2004

WHEREAS, the Commonwealth, as a major purchaser of goods and services, must be cognizant of fair labor conditions in its actions as a market participant; and

WHEREAS, the *Commonwealth Procurement Code* instructs the Department of General Services and the Office of the Budget to participate in the management and maintenance of a contractor responsibility program as directed by the Governor; (62 Pa. C. S. Sections 321(6) and 327(b)); and

WHEREAS, the Commonwealth has a compelling interest in assuring that the apparel it procures from vendors is manufactured and laundered in compliance with applicable laws relating to workplace conditions and by workers who receive fair wages for their work; and

WHEREAS, legitimate providers of apparel and apparel laundering services are placed at a competitive disadvantage when forced to bid for state procurement contracts against businesses that utilize sweatshop conditions; and

WHEREAS, the public interest requires that the Commonwealth use its stature and leadership as a market participant to promote fair treatment of the workforce and the elimination of sweatshop conditions.

NOW, THEREFORE, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order as follows:

1. Scope. This order shall apply to all apparel procured by or for Commonwealth agencies and all laundering services provided through contract to Commonwealth agencies. This order shall not apply to apparel manufactured by, or laundered by, inmates of any Pennsylvania Department of Corrections correctional institution and provided to Commonwealth agencies for their use.

2. Contractor Certification. A Commonwealth agency shall not enter into a contract for the procurement of apparel or apparel laundering services unless and until the contractor certifies and agrees that every employee engaged in the manufacture of the apparel, or the laundering of apparel, shall be or has been:

a. compensated by his/her employer at an hourly rate at least equivalent to the poverty threshold; and

b. provided with working conditions that meet or exceed the International Labor Organization (ILO) Conventions' standards governing forced labor, child labor, payment of wages, hours of work, occupational health, occupational safety, and nondiscrimination and that are in compliance with all applicable federal, state, and local laws of the locality of manufacture, except where such a condition is preempted by federal or state law.

In the alternative, the contractor can certify that a collective bargaining agreement is in effect, and will remain in effect, during the manufacture of the apparel between the operator of the manufacturing facility and the employees engaged in the manufacture of the apparel and that the employees are represented by a responsible organization that is not influenced or controlled by management.

3. Contents of Bids and Proposals. A Commonwealth agency shall require that each bid or proposal submitted for a contract for the procurement of apparel or apparel laundering services shall include:

a. a list of each proposed facility to be utilized in the manufacture of the apparel or the laundering of the apparel, including any subcontractors, with the business name, address, contact person, and telephone number for each facility; and

b. the certification required by Paragraph 2 of this order.

The information provided by bidders and offerors in response to the requirements of this Paragraph 3 will be made available to the public (excluding other offerors and their representatives and agents) when requested, but subject to nondisclosure requirements.

4. Responsibility Determination. A Commonwealth agency shall not enter into a contract for the procurement of apparel or apparel laundering services unless and until the agency determines that the apparel will not be manufactured in a facility that utilizes sweatshop conditions. In making the determination, the Commonwealth agency may:

a. consider the contractor certifications required by Paragraph 2 of this order;

b. request further information and documentation from the contractor or the manufacturing or laundering facility; and

c. seek and receive information from workers, labor unions, manufacturers, consumer groups, international organizations and groups, and other parties.

5. Notice of Changes During Contract Term. A Commonwealth agency shall contractually require that each vendor awarded a contract to furnish apparel or apparel laundering services shall provide written notice to the purchasing Commonwealth agency of any changes during the term of the contract to the information provided in compliance with Paragraph 3.

6. Remedies and Sanctions. The Department of General Services shall pursue appropriate remedies and sanctions against a bidder, contractor, manufacturer, or other party for:

- a. failure to comply with the requirements of bid or the contract;
- b. false certifications;
- c. any retaliation or attempt to retaliate against employees who report alleged violations of this order or noncompliance with a contract; and
- d. any other violation of this order.

Remedies may include rejection of a bid or proposal, termination of an award or contract, and collection of damages. Sanctions may include suspension and/or debarment from the privilege of contracting with any Commonwealth agency and possible criminal prosecution. A bidder may escape sanctions if, prior to submission of its bid, it obtains signed certifications from its subcontractors, meeting all the requirements under Paragraphs 2. This will not, however, limit the Commonwealth agency's ability to terminate the award or the contract, upon 30 days notice of violation of this order, after giving the vendor a reasonable right to cure.

7. Applicable Law. Unless otherwise specified, applicable laws for purposes of this order shall be determined as follows:

- a. Employers in Pennsylvania shall be in compliance with applicable Pennsylvania law and federal law.
- b. Employers based in other states in the United States shall be in compliance with applicable laws of their states and federal law.
- c. For employers whose locations for manufacture or assembly are outside the United States, those employers shall be in compliance with applicable laws of countries where the facilities are located.

8. Waiver. Specific requirements of this order may be waived by the head of any Commonwealth agency where it is determined, in writing, that there is no vendor able to meet those specific requirements.

9. Definitions.

a. Apparel. Products manufactured, woven, cut, sewn or otherwise similarly processed by mechanical or human effort from fabrics, leather, or cloth made for use as clothing, shoes, or other attire.

b. Commonwealth agency. An executive or independent agency as defined by *Section 105* of the *Commonwealth Procurement Code, 62 Pa. C. S. Section 103*.

c. Employer. The operator of a facility at which individuals are employed in the manufacture and/or laundering of apparel.

d. Poverty threshold. The poverty threshold for a family of three, as published by the United States Department of Health and Human Resources, plus an additional 20 percent in wages if health benefits are not provided, and reduced by

any mandatory deductions in employee pay for housing, transportation, meals, or required job equipment. For non-United States facilities, the Commonwealth purchasing agency may, in its discretion, adjust the United States Department of Health and Human Resources' poverty threshold to reflect the country's level of economic development by using a factor such as purchasing power parity or relative standard of living.

e. Procure. To buy, purchase, rent, lease or otherwise acquire through an employee uniform allowance or voucher program.

f. Sweatshop conditions. Work conditions, as determined by the purchasing Commonwealth agency, where:

(1) employees are compensated by their employer at an hourly rate below the poverty threshold; and

(2) employees are not provided with working conditions that meet or exceed the International Labor Organization (ILO) Conventions' standards governing forced labor, child labor, payment of wages, hours of work, occupational health, occupational safety, and nondiscrimination and that are in compliance with all applicable federal, state, and local laws of the locality of manufacture, except where such a condition is preempted by federal or state law.

g. Working conditions. Conditions in the workplace such as hours of employment, cause for termination of employment, child labor, discrimination, environmental health and safety, freedom of association and assembly, and all applicable building and fire codes.

10. Effective Date. This *Executive Order* shall be effective for all Invitations for Bids and Requests for Proposals issued after the date of issuance of this *Executive Order* and for all contracts awarded 30 days or more after the date of issuance of this *Executive Order*.