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**Model Sweatfree Procurement  
Request for Proposal Language and Process**

*Version 1.0, 2013*

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## Model Sweatfree Procurement Process

This model sweatfree procurement process and the accompanying model language is intended to assist governmental entities in developing their own solicitation language for products made in decent working conditions. The language can be adopted in whole or in part consistent with government entities' own policies, statutes and regulations. The model process and language is a living document. We welcome feedback from government entities that use it or consider using it in their procurement.

1. The [government entity] releases a Request for Proposal (RFP) for a contract for sweatfree products with annual compliance reviews. The RFP specifies the sweatfree compliance requirements listed below and refers to the sweatfree procurement policy.

*See Appendix 4 for the Sweatfree Purchasing Consortium's model sweatfree procurement policy.*

2. Proposers or the apparent awardee submit a) compliance declarations and b) factory and wage disclosure statements to the government entity and/or the Sweatfree Purchasing Consortium (Consortium).
  - a. Proposers ("path 1") or the apparent awardee ("path 2") submit a declaration of full compliance, a declaration of delayed compliance, or proof that they or their suppliers participate in the Responsible Manufacturer Program. A delayed compliance declaration must list specific non-compliances to be addressed in a compliance plan prior to contract execution (Step 8a).

*See Appendix 5 for sample compliance declarations and Appendix 3 for the Responsible Manufacturer Program.*

- b. Unless they have presented proof of participating in the Responsible Manufacturer Program, proposers (path 1) or the apparent awardee (path 2) submit factory and wage information, as required, either through the government entity's own submittal process or through the Consortium. The Consortium's factory disclosure spreadsheet is available here: [http://buysweatfree.org/submit\\_data](http://buysweatfree.org/submit_data).
3. If applicable, the government entity's end users wear test sample garments submitted by proposers.
  4. The government entity or the Consortium verifies factory and wage information in disclosure statements. If the government entity chooses to have the Consortium verify factory and wage information, the government entity should provide notice of this process to proposers in the RFP document. Verification may require manufacturers to provide evidence of production or planned production in the disclosed factories, such as an invoice, a purchase order, or a bill of lading listing both the factory and the manufacturer. If the Consortium conducts verification, it holds such evidence in confidence and does not use it for purposes other than to verify production locations. In addition, the Consortium verifies that the disclosed wages

are consistent with legal minimum wage requirements, and will report any credible evidence that the disclosed wages are not accurate to the government entity.

5. If following “path 1”, all proposers are required to submit factory and wage information but only those proposers that are at least 50% compliant with this procedural requirement will be considered for further evaluation and/or invited to submit price proposals. This compliance threshold should increase each year. Only verified information, as defined in Step 4, will be included in the compliance calculation. The method for calculating compliance is defined in the model Request for Proposal language.
6. The government entity evaluates each eligible proposer. One of the evaluative criteria, worth at least 5% of total potential points, includes the proposer’s compliance beyond the stated compliance threshold and/or the volume of proposed items sourced from manufacturers participating in the Responsible Manufacturer Program.

*See Appendix 1 for a sample compliance scoring methodology.*

7. The highest scoring or ranking eligible proposer is awarded the contract.
8. Prior to executing the contract:
  - a. For “path2”: The apparent awardee shall submit compliance declarations and factory disclosure statements in their entirety according to the process defined in Step 2 and Step 4 unless already submitted. If the apparent awardee is unable to obtain the required documentation for a particular item, it shall offer a substantially similar product at the same price or same price point from an alternative, compliant supplier. If the apparent awardee cannot find a compliant supplier, the government agency may move on to the next highest scoring or ranking proposer or approve an exemption according to their policy.
  - b. For “path 1” and “path 2”: A compliance plan appropriate for the size of the contract and the volume of product provided by suppliers, or proof that they or their suppliers participate in the Responsible Manufacturer Program. Government entities should establish product volume thresholds that trigger the request for compliance plans or participation in the Responsible Manufacturer Program.
9. The government entity evaluates the integrity of the compliance plan and may consult outside experts so long as the use of outside experts is stated in the RFP document. The government entity retains sole authority to determine whether or not the compliance plan is adequate and may request an improved compliance plan as necessary. If the apparent awardee is unable to submit an adequate compliance plan for a particular item, it shall offer a substantially similar product at the same price or same price point from an alternative, compliant supplier. If the apparent awardee cannot find a compliant supplier, the government agency may move on to the next highest scoring or ranking proposer or approve an exemption according to their policy.
10. During the course of the contract the government entity works with the contractor to increase

the percent use of products manufactured by manufacturers participating in the Responsible Manufacturer Program. The government entity and contractor should establish goals and benchmarks to obtain the highest dollar volume items to be sourced from Level 2 or Level 3 Responsible Manufacturer Program participants.

- 11.** As applicable, the Consortium submits reports to the government entity every six months describing manufacturers' compliance activities and whether or not manufacturers are meeting the applicable requirements under the Responsible Manufacturer Program. The government entity reviews the dollar value of products actually purchased under the contract every six months to determine if manufacturers should move up to a higher level of the Responsible Manufacturer Program or if the compliance plan should include additional requirements.
- 12.** The government entity undertakes an annual compliance review to determine whether or not to continue the contract, using the same manufacturers, based, in part, on the Consortium's compliance reports. If a manufacturer is non-compliant under the Responsible Manufacturer Program, or fails to implement a compliance plan submitted under Step 8b, the government entity will require the contractor to provide a compliance plan that may include providing documentation, within a specified time periods, showing that the manufacturer has become compliant, or offering products from another compliant manufacturer.

## Model Sweatfree Procurement Request for Proposal (RFP) Language

This model Request for Proposal Language is based on the process described in the previous section. The language can be adopted in whole or in part consistent with government entities' own policies, statutes and regulations.

1. The successful proposer must provide apparel [and other applicable] products in accordance with the [government entity's] Sweatfree Procurement Policy, Code of Conduct for apparel [and other applicable] Contractors, and related Administrative Rules. Copies of these documents are available online at [URL] [or attached as Exhibits].
2. The [government entity's] Sweatfree Procurement Policy and Code of Conduct apply to the Contractor and all subcontractors and suppliers down to the cut and sew (point-of-assembly) level of the manufacturing process for the products provided under the resulting contract/price agreement.
3. Proposers must acknowledge receipt of the Sweatfree Procurement Policy and Code of Conduct in the proposer's response cover letter.
4. [If government entity has the Consortium verify factory and wage information] As part of the proposal evaluation [or prior to contract award – if following “path 2”], the factory location, wage information, and/or compliance plans may be reviewed by the Sweatfree Purchasing Consortium (SPC) to verify accuracy and completeness. The SPC may subsequently incorporate any of the reviewed factory location and wage information into its online factory database: Sweatfree LinkUp!
5. [If following “path 1”] Proposers must meet a minimum of 50% compliance by completing and submitting the following forms:
  - a. The [government entity] Full Compliance Form, Delayed Compliance Form, or proof that they or their suppliers participate in the Responsible Manufacturer Program; and
  - b. The [government entity] Factory Location Spreadsheet or the Sweatfree Purchasing Consortium Factory Location Spreadsheet.

Copies of these documents are available online at [URL] [or attached as Exhibits]. The compliance percentage rate will be calculated as follows:

- a. Item weight (I) equals the dollar value of item divided by the total dollar value of contract.
- b. Item scores 75 percent credit for accurate location (L) plus 25 percent credit for accurate wage details (W).
- c. (L plus W) times I equals weighted compliance points.
- d. Sum of all weighted compliance points equals total percent compliance.

[If wage disclosure is not required, the same formula applies except in step b) the item scores 100 percent for accurate location.]

6. Evaluative points will be awarded for the proposer’s compliance beyond the stated compliance threshold and/or the volume of proposed items sourced from manufacturers participating in the Sweatfree Purchasing Consortium’s Responsible Manufacturer Program.
7. Prior to executing the contract:
  - a. [For “path 2”] The apparent awardee shall submit compliance declarations and factory disclosure statements in their entirety according to the process defined in Step 4
  - b. [For “path 1” and “path 2”] A compliance plan appropriate for the size of the contract and the volume of product provided by suppliers, as defined by [the government entity], or proof that suppliers participate in the Responsible Manufacturer Program. The compliance plan shall, at minimum, include provisions for:
    - i. Expeditious remediation of non-compliances identified in a delayed compliance declaration, as necessary.
    - ii. A purchasing plan that includes price terms and delivery schedules that allow factories to pay the costs associated with all legal requirements and make a profit.
    - iii. Communicating the requirements of the government entity Code of Conduct, including relevant domestic laws and international labor standards, to subcontractors, factory-suppliers, and workers.
    - iv. Confidential reporting of Code of Conduct violations by workers and their representatives.
    - v. Access to all relevant factory records and to factory premises for an investigation by the government entity or its designee.
    - vi. Other procedures specified by the [government entity.]
8. During the course of the contract, the Contractor will be expected to increase the percent of contract apparel items that are manufactured by manufacturers participating in the Responsible Manufacturer Program. On a semi-annual basis, the Contractor will review the current contract items and submit to the [government entity] those items they propose to either a) switch to an equivalent product manufactured by a Responsible Manufacturer Program participant; or b) collaborate with the [government entity] to advocate to the current manufacturer to join the Responsible Manufacturer Program. This review shall also identify the highest spend products and the Contractor will submit a plan for sourcing these products from Level 2 or 3 Responsible Manufacturer Program participants.
9. In order to demonstrate continued compliance with the [government entity’s] Sweatfree Procurement Policy and Code of Conduct, upon request by the [government entity] the Contractor shall:
  - a. Submit detailed usage reports that at minimum include the amount of contract spend per product, listed as brand and product code.
  - b. Provide Sweatfree Procurement Policy and Code of Conduct compliance documentation for any covered product.
  - c. Cooperate with any monitoring, investigation, or educational effort by the

[government entity] or its designee, and make a best-faith effort to ensure that subcontractors cooperate with any monitoring, investigation, or educational program. Cooperation includes unrestricted access to all factories and workers; and access to all records concerning those factories and workers.

10. The [government entity] reserves the right to investigate all evidence reasonably necessary to determine whether the Contractor is in full compliance with the [government entity]'s Code of Conduct, including on-site audits by [government entity]-approved independent third-party monitors of manufacturing facilities producing covered products.

### Appendix 1: Sample Compliance Scoring

Path 1: Scoring for compliance with 50% gate (Step 5)

Proposer A's Manufacturers			% COMPLIANT (to determine if proposers meet 50% gate requirement)			
			FACTORY LOCATION	WAGE	COMPLIANCE SCORE	% COMPLIANT
			L	W	F + W	(L+W)*I
\$ Amount of Purchases	I					
Mfgr 1	\$5,000.00	29%	0.75	0.00	0.75	0.22
Mfgr 2	\$2,000.00	12%	0.75	0.25	1.00	0.12
Mfgr 3	\$7,000.00	41%	0.75	0.00	0.75	0.31
Mfgr 4	\$3,000.00	18%	0.00	0.25	0.25	0.04
	\$17,000.00	100%				<b>0.69*100=69</b> <b>%(MIN. 50%)</b>

Evaluation scoring (Step 6)

Proposer A's Manufacturers			Path 1 and Path 2: Evaluation, Part 1				
			RMP Level 1	RMP Level 2	RMP Level 3		
			P	P	P	I x P	
\$ Amount of Purchases	I						
Mfgr 1	\$5,000.00	29%	50			14.5	
Mfgr 2	\$2,000.00	12%		75		9	
Mfgr 3	\$7,000.00	41%	50			20.5	
Mfgr 4	\$3,000.00	18%			100	18	
	\$17,000.00	100%				62	Total points

Path 1 and Path 2: Evaluation, Part 2			The proposer with the most points for RMP compliance gets the maximum 5 points. Other proposers receive a percentage of the maximum points in proportion to their RMP Compliance score. In this case Proposer A gets 5 points.
	Points	Additional Points	
Proposer A	62	5	
Proposer B	45	3.64	
Proposer C	50	4.05	



**Appendix 2: Sweatfree Procurement Process Flow Chart**

	<b>Path 1</b>	<b>Path 1 &amp; 2</b>	<b>Path 2</b>
<i>Step 1</i>		Government entity releases RFP	
<i>Step 2</i>	<b>BIDDING</b> Proposers submit compliance declarations and disclosure statements or proof of manufacturer participation in the RMP		
<i>Step 3</i>		End user wear tests samples if applicable	
<i>Step 4</i>	Government entity or Consortium verifies disclosure statements		
<i>Step 5</i>	Government entity calculates compliance to determine if proposers meet 50% threshold		
<i>Step 6</i>	<b>EVALUATION</b>	Government entity evaluates each eligible proposer, including manufacturer participation in the RMP	
<i>Step 7</i>		Highest scoring or ranking proposer is apparent awardee	

<i>Step 8</i>	<b>PRIOR TO CONTRACT EXECUTION</b>	The apparent awardee submits compliance plan or proof of manufacturer participation in the RMP	The apparent awardee submits compliance declaration and factory disclosure statements or proof of manufacturer participation in the RMP. Government entity or Consortium verifies disclosure statements
<i>Step 9</i>		Government entity or Consortium evaluates compliance plan	
<i>Step 10</i>	<b>AFTER CONTRACT AWARD</b>	Government entity works with contactor to increase volume of RMP products	
<i>Step 11</i>		Consortium reports on manufacturer compliance; government entity reviews dollars spent and determines additional compliance requirements	
<i>Step 12</i>		Government entity undertakes annual compliance review	

## **Appendix 3: Responsible Manufacturer Program**

### **Introduction**

The Sweatfree Purchasing Consortium (<http://buysweatfree.org/>) is a vital collaboration of U.S. cities, states, and other public entities working to ensure their purchases of apparel and other products are manufactured in decent working conditions. The Consortium's Responsible Manufacturer Program is a partnership between the Consortium and manufacturers to ensure labor rights compliance in factories that make uniforms and other apparel public agencies buy.

Cities, states, counties, and schools across the United States, Canada, and Europe have adopted sweatfree purchasing policies and created demand for decent working conditions in the supply chain. The policies require vendors to ascertain compliance with labor rights standards in the supply chain, which can be a challenging task. Vendors are often small distributors at the end of global supply chains, many steps removed from, and without direct influence over, the factories where the products they sell are made. They may be ill equipped to conduct compliance research. When a contract requires vendors to certify that factories are compliant with applicable labor standards, they may feel pressure to declare compliance without sufficient evidence. Manufacturers, on the other hand, are usually in a better position to develop and maintain the supply chain management tools necessary to verify and maintain labor rights compliance in factories that make their products. The Responsible Manufacturer Program appropriately shifts the burden of compliance work from vendors to manufacturers.

The Responsible Manufacturer Program is not just a factory auditing effort to monitor compliance, as auditing alone does not help to rectify violations and improve conditions. Instead, we seek to work proactively towards sustainable solutions, based on five principles of social compliance:

- Transparency: because public scrutiny goes hand in hand with accountability.
- Worker education; because workers must know their rights to claim their rights. Workers should be empowered to monitor and report on labor violations and safety risks.
- External factory inspections independent of the industry.
- Long-term sustainable relationships between buyers and suppliers: because this relationship influences the factory's ability to comply with labor standards.
- Mandatory compliance for factories as well as manufacturers and vendors.

### **Advantages**

This partnership between manufacturers and the Consortium offers several advantages for manufacturers and increases the likelihood that vendors will compete successfully for public agency contracts when they sell products made by participating manufacturers. Public agencies will offer this advantage in different ways. They can:

- Write a contract specification for Responsible Manufacturers. That means vendors can demonstrate compliance and meet part of the technical specifications of the contract simply

by offering the products of manufacturers that participate in the Responsible Manufacturer Program. Working with these Responsible Manufacturers can save vendors considerable time and effort, allowing them to expand their markets and meet short bid or proposal deadlines.

- Using a Request for Proposals process, award points for Responsible Manufacturers during the evaluation stage, giving vendors that sell products of those manufacturers a leg up on the competition.
- Offer a price preference for vendors that use Responsible Manufacturers.
- Expect vendors to increase purchasing from Responsible Manufacturers from year to year on a multi-year contract.

As increasing numbers of public agencies require proof of compliance with sweatfree standards, increasing numbers of vendors will ask manufacturers for specific compliance information. By participating in this program, manufacturers can avoid responding separately to each request for information as the vendors can access the relevant information online through the Consortium database, Sweatfree LinkUp!

The Consortium will publicize a list of participating manufacturers and promote the program to its members and other public entities, the community of vendors, and the public at large on its various print and web-based media.

## **Program**

The Responsible Manufacturer Program is designed in three, cumulative levels. Recognition for participation in higher levels requires completing the lower level requirements as well. For example, a manufacturer seeking recognition at Level 3 will also need to complete the requirements of the lower levels. Typically, public agencies will require participation at a specific level and/or award additional consideration for those manufacturers that achieve a certain level of recognition.

## **Level 1: Commitment to Labor Rights**

**>The first steps towards better working conditions. You disclose factories, conduct a self-assessment, and develop a compliance plan.**

*This is what you do:*

1. Disclose the factories where products that you sell or propose to sell to government agencies are made. You can choose to disclose the factories that make one of your products, some of your products, or all of your products. It is up to you. You submit factory data using the spreadsheet located here: [http://buysweatfree.org/submit\\_data](http://buysweatfree.org/submit_data)
2. Provide evidence of production or planned production in the disclosed factories, such as an invoice, a purchase order, or a bill of lading listing both the factory and the manufacturer. The Consortium holds such evidence in confidence and does not use it for purposes other than to verify production locations.
3. Provide an estimate of a range of the total annual volume you purchase from the factories, and the percentage of total factory production those purchases represent.
4. Declare your capacity to comply with the Consortium Code of Conduct or equivalent in the disclosed factories. At a minimum the Code must include all applicable legal standards in the country of production and the core labor principles promulgated by the International Labor Organization (ILO) in the Declaration of Fundamental Principles and Rights at Work, which all ILO member states have committed to implement. The Consortium Code of Conduct is here: [http://buysweatfree.org/model\\_policy](http://buysweatfree.org/model_policy)
5. Complete the Consortium's confidential self-assessment questionnaire regarding compliance with applicable site-of-production laws, international labor standards, and monitoring and verification methodology. There will be one questionnaire for each region or country of production that correspond to a different set of standards. You only need to complete the questionnaire once.
6. Submit a confidential compliance plan. The compliance plan must include provisions for:
  - 6.1. Purchasing of products under terms, including prices and delivery dates, which support and enable production of the product consistent with the Code of Conduct requirements.
  - 6.2. Communicating the requirements of the Code of Conduct, including relevant domestic laws and international labor standards, to subcontractors, factory-suppliers, and workers.
  - 6.3. Confidential reporting of Code of Conduct violations by workers and their representatives.
  - 6.4. Access to all relevant factory records and to factory premises for an investigation by the Consortium or by a Consortium member.
  - 6.5. Expedient remediation of non-compliances identified in Step 5. Non-compliances must generally be remediated within thirty days of having knowledge of the non-compliance.

*This is what the Consortium does:*

1. Reviews your spreadsheet and accompanying evidence of production, requests clarification as necessary, and uploads the spreadsheet in the database.
2. Marks the factories as verified production locations in Sweatfree LinkUp!
3. Reviews your self-assessment questionnaire and compliance plan and requests follow-up reports to ensure you accomplish remediation in a timely fashion.
4. Recognizes you as a Level 1 participant.

Cost: One-time \$500 company registration fee and \$75/factory annual registration fee.

### **Note on confidentiality of information**

Only the names and locations of the factories you disclose become public knowledge. The types of products you make there and how much is not. While public entity members of the Consortium have access to the product information disclosed to the Consortium, they are not bound to share it by public information or public access laws as long as the information was not disclosed directly to them.

You may request that the Consortium keeps your factory information confidential to ensure other manufacturers cannot get access to it. We will grant this request for a period of 12 months if you can demonstrate that your business will suffer harm because the name and location of factories are publicly accessible. We will extend the confidentiality of your factory information if you continue to demonstrate that your business would suffer harm from public factory disclosure. However, in the interest of worker access to justice, we will always share the factory information with labor rights partner organizations and with public entities that buy products made at the relevant factories.

\* \* \*

## **Level 2: Education and Grievance Process**

**> If workers don't know their rights, they have no rights. You make sure they do, and that that they can safely complain that their rights are violated.**

*This is what you do:*

1. Obtain written commitment from the factories you have disclosed to grant access to a local organization with expertise in labor rights and sound relation with workers to conduct a worker rights training. The training can take place either inside or outside the premises of the factory, but must be conducted without management oversight. Management must guarantee that there will be no retribution against any worker who joins the training. A separate training, covering the same areas of labor rights, should be offered managers. If you already work with factories to offer such trainings by acceptable organizations, or if a legitimate factory union conducts such trainings on a regular basis, or if the factory works with another company to conduct these trainings you do not need to replicate this work for the purposes of this program. Simply provide evidence of those trainings being completed and the content of the trainings to meet this requirement. The trainings must be offered at least annually.
2. Obtain written commitment from the factories to implement functional grievance procedures where workers present grievances without fear of retribution, management responds in a timely fashion to achieve a just resolution, and outside impartial experts are available as mediators or arbitrators as necessary. In factories where there is a legitimate union the union grievance process should be followed.
3. Complete Level 1 requirements.

*This is what the Consortium does:*

1. Reviews factory commitments to provide access to worker rights trainings and implement functional grievance procedures.
2. Arranges the worker rights trainings, as necessary, in collaboration with the local organizations providing the trainings.
3. Reports on the contents of the trainings to you.
4. Investigates complaints as necessary following the Consortium complaint and investigation process (see: [http://buysweatfree.org/worker\\_complaint\\_process](http://buysweatfree.org/worker_complaint_process)).
5. Publicizes the final results of any grievance and investigation. A grievance does not become public until it is either resolved satisfactorily or we have determined the factory is unwilling or unable to resolve it, and it is in the best interest of workers to make it public.
6. Recognizes you as a Level 2 participant.

Cost: Level 1 costs plus \$1,500 per training, and any costs associated with complaints investigations. If two or more companies participating in this program at this level and use the same factories they may share the cost of the worker rights trainings and investigations.



### **Level 3: Sustainably Sweatfree**

**> The work is not complete until workers receive a living wage, your purchasing practices harmonize with your commitment to ethical production, and independent inspections verify sweatfree conditions.**

*This is what you do:*

1. Specify at least one factory annually in consultation with the Consortium to take the steps below.
2. Obtain written commitment from the factory to increase wages to a living wage within a specified and reasonable period of time.
3. Reach written agreement with the factory on terms and conditions that are sufficient to enable the factory to comply with all applicable labor standards, pay a living wage, and make a profit. The agreement must include the following provisions:
  - 3.1. Product price, length of contract, and order volume to meet the labor standards and wage requirements.
  - 3.2. A dispute resolution mechanism that allows either side to achieve resolution through binding arbitration.
4. Work with the factory to rectify each violation identified by the Consortium.
5. Complete Level 1 and Level 2 requirements.

*This is what the Consortium does:*

1. Works with local experts to determine the specific living wage level for a given region or country unless such a study already exists. These experts determine the price of the goods and services included in a culturally appropriate market basket sufficient to support a family of average size.
2. Reviews your agreement with the factory on terms and conditions that enable and support legal compliance and living wages, and reviews any complaints that either party is not meeting the terms and conditions.
3. Conducts a thorough compliance investigation working with an independent monitor, and facilitates the remediation process as necessary.
4. Recognizes you as a Level 3 participant. The Consortium will promote the products made in accordance with the requirements of this level as certified sweatfree.

**Cost:** The cost will vary depending on the investigatory needs. A complete compliance investigation will generally cost \$10,000 - \$15,000. The living wage study will be additional if needed. If two or more companies participating in this program at this level and use the same factories they share the cost of the investigations and the living wage study as necessary.

## **How to get started**

Simple. Just call or email us and we will work together on a program that meets your needs.

Thank you for your interest.

Email: [contact@buysweatfree.org](mailto:contact@buysweatfree.org)

Telephone: 207-262-7277

Web: [www.buysweatfree.org](http://www.buysweatfree.org)

## Appendix 4: Model Sweatfree Procurement Policy

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# Sweatfree Model Policy<sup>1</sup>

*Version 1.0, 2012*

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### Contents and Objectives

<b>1. Introduction.....</b>	<b>20</b>
Explains the purpose and applicability of the policy.	
<b>2. Intent.....</b>	<b>20</b>
Establishes that a lead purpose is to protect integrity of competitive bidding – to ensure that bidders cannot cheat by violating labor standards.	
<b>3. Definitions .....</b>	<b>21</b>
Defines actors and places; note that standards are in the operational sections on labor standards and procurement process, not in definitions.	
<b>4. Scope of coverage .....</b>	<b>22</b>
Defines policy scope to be both one-time purchase of apparel and long-term distribution services for purchase or use of apparel.	
<b>5. Labor standards .....</b>	<b>23</b>
Incorporates the ILO’s fundamental principles, and provides intermediate and specific examples of violations that contractors must avoid. Delegates authority to establish a wage ladder to compare worker wages with the minimum wage, the living wage, and other benchmarks.	
<b>6. Procurement process .....</b>	<b>27</b>
Establishes that bidders will be evaluated based on their capacity to ensure subcontractor compliance with labor standards. Capacity includes awareness of labor standards, subcontract duties to comply, and monitoring systems. Also, provides an incentive to increase wages.	
<b>7. Monitoring and enforcement.....</b>	<b>30</b>
Clarifies that general enforcement powers apply to this policy, and sweatfree purchasing contracts incorporate these remedies.	

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

- 8. Legal effect..... 31**  
 Provides the purchasing department with powers to interpret and make rules to implement this policy. If adopted at the state level, this policy does not preempt local sweatfree policy.

**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](http://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.

