

PRINCIPLES FOR INTERNATIONAL SWEATFREE FEDERAL GOVERNMENT PROCUREMENT

Working Draft

Compiled by SweatFree Communities

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1. Introduction

The United States Government (USG) should procure goods and services, whenever possible, from U.S.-based manufacturers and service providers consistent with guidance in U.S. law, and require that they comply fully with all applicable labor laws and pay decent wages. Unions and others have already put forward detailed proposals with regard to domestically sourced procurement. The following set of principles would apply to the 50 billion dollars spent each year on contracts performed outside the United States.¹ We propose federal procurement rules that ensure government contractors comply with core international labor standards and living wages, ensured through vendor prequalification and an effective independent monitoring and remediation program.

This effort is important for several reasons. Labor exploitation—depriving workers of decent, dignified work and adequate wages—is a fundamental human rights violation no matter where it takes place. Workers who are able to fully exercise core labor rights may, if they choose, join a union and bargain collectively for improved wages and working conditions. Organized workplaces are likely to be more productive and efficient, which benefits a nation as a whole. Decent wages, better working conditions, and respect for core labor standards translate into sustainable economic development as workers who earn more consume more. Global economic security contributes to political stability. Furthermore, workers with more disposable income are better able to care for themselves and their family members, promoting better nutrition, education, and health care. Finally, labor exploitation abroad creates unfair competition in the global labor market, accelerating a “race to the bottom” in which U.S. workers face unreasonable competitive pressures and often lose their jobs.

The USG should also track contracts more closely with respect to costs and quality of services and products, as well as the number of contractor employees who perform those contracts and their pay and benefits. Consistent with the law, the USG should actively consider opportunities for in-sourcing services that are closely associated with inherently governmental functions, poorly performed, or were contracted out without competition. Similarly, the USG should not contract out services performed by federal employees.

¹ Figure from 2008 reported by the U.S. government at <http://www.usaspending.gov>.

2. Current Federal Procurement Measures Protecting the Rights of Foreign Workers

In June 1999, President Clinton issued Executive Order 13126 on the "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor."² This EO was a positive step toward the protection of workers producing goods for government agencies. Until recently, this prohibition was limited to a narrow list of goods almost all of which were from Burma. However, in September 2009, the International Labor Affairs Bureau (ILAB) of the U.S. Department of Labor issued a Federal Register notice that proposes to substantially expand the countries and products covered.³ While this list helps raise awareness, enforcement measures are currently limited to bidder certification of a good-faith effort to ascertain that the listed products are not made with forced or indentured child labor.

The federal government has also adopted a zero tolerance policy regarding trafficking in persons, prohibiting federal contractors from using forced labor in the performance of the contract. But there are few resources for investigation and enforcement.⁴

In all, there are gaping holes in federal procurement policy, allowing the federal government to purchase products made outside the United States in the most egregious sweatshop conditions as long as there is no forced labor and no children working in conditions of indentured servitude. As contractors are only required to self-certify against these provisions, no objective measures are in place to ensure compliance with even those rudimentary standards of decency.

3. State and Local Government "Sweatfree" Procurement

By contrast, U.S. state and local government agencies have taken significant steps to ensure that both domestic and overseas factories in which apparel and other products they buy are compliant with labor standards. By requiring contractor and subcontractor labor standards compliance, states and local governments seek to protect workers from sweatshop conditions and ensure that contractors that use sweatshop labor cannot underbid responsible contractors that pay fair wages and maintain humane working conditions. To date, eight states, thirty-nine cities, fifteen counties, 118 public school districts, and three individual high schools have committed to purchase only sweatfree apparel and other products.

There is also a growing interest in pursuing the goals of sweatfree procurement and independent monitoring as a collective effort among governmental entities. The purpose of the recently formed Sweatfree Purchasing Consortium is to ensure that taxpayer dollars are not spent on products made in sweatshops. The Consortium intends to help public jurisdictions act with combined strength and resources, allowing each to share the costs and benefits of obtaining information and expertise, and of monitoring and enforcing respective sweatfree requirements.

² Executive Order 13126 is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-15491-filed

³"Notice of Initial Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126," Federal Register: September 11, 2009 (Volume 74, Number 175), available at <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=23111&AgencyId=5>.

⁴ Federal Acquisition Regulation, Basic Labor Policies, 22.103.

4. Principles of an Effective International Sweatfree Procurement Policy

This paper presents the key elements of an international federal sweatfree procurement policy based, in part, on the experiences of state and local governments. The most evident route to develop such a vehicle is an executive order, directing the Federal Acquisition Regulatory Council (FARC) to issue a new implementing rule for incorporation within the Federal Acquisition Regulations (FAR), which govern federal procurement policy generally.

4.1. Scope and Basic Standards

- 4.1.1. All federally procured goods and services should be produced or performed in decent working conditions, as described below. Enforcement may initially be targeted to certain sectors of particular concern, such as apparel, textiles, and food, and expand based on recommendations from the Sweatfree Procurement Advisory Group.
- 4.1.2. Bidders should adopt labor compliance standards for foreign production facilities that include core international labor standards, i.e. standards regarding freedom of association and collective bargaining, forced labor, child labor and non-discrimination; and all applicable domestic laws and regulations. Contractors with a pattern of serious labor violations may be considered unfavorably, even if those violations pertain to facilities beyond those proposed for a contract bid; contractors with strong compliance programs in place for all their factories may be more likely to be prequalified for bidding.
- 4.1.3. These labor obligations should be binding on any subcontractors that produce goods for, or provide services to the USG under the procurement contract. The bidder would be obligated to disclose the names and locations of all factories performing work under a subcontract.
- 4.1.4. The prime contractor and subcontractors must also commit to the payment of living wages to workers. State and local government sweatfree procurement programs use a formula based on GDP per capita ratios to determine living wages with comparable purchasing power for different countries. The federal government should adopt or develop an appropriate formula to ascertain living wages for different countries and/or subregions.
- 4.1.5. Prime contractors and subcontractors should be obligated to inform workers of their rights under the procurement contract and of the available complaint procedures.

4.2. Vendor Prequalification

The USG should consider the establishment of a vendor prequalification program that requires vendors to make all adjustments to their supply chains necessary to ensure that international production facilities fully respect the labor standards outlined herein. Such adjustments may include the establishment and implementation of managerial systems, rules, procedures, and audits, as well as the payment of adequate prices to subcontractors, sufficient to effectively ensure labor compliance.

4.3. Monitoring and Enforcement

- 4.3.1. The USG may conduct or require inspections into labor conditions at a company and its subcontractors after a bid submission but prior to the awarding of the contract and at any time after a contract has been awarded. Investigations and monitoring of factory conditions should operate on the principles of independence, professionalism, and transparency. Any organization or individual conducting monitoring should have no relationship with the company being monitored or investigated or the company's contractors. The monitoring organization shall be "independent" in the sense that it should not be owned or controlled in whole or in part by, nor shall it obtain any revenue from, any vendor, manufacturer, contractor, or subcontractor.
- 4.3.2. The monitoring methodology should be based on the following principles: unannounced factory visits; full access to factories; cooperation with local organizations that enjoy the trust of workers to conduct worker interviews and other aspects of the investigation; confidential and thorough worker interviews in the local language without managers and supervisors present and in settings that allow free dialogue (i.e., away from factory premises).
- 4.3.3. Any person should be able to complain that the sweatfree procurement rule has been or is being violated. The USG should ensure that the merits of each complaint are investigated and may use the services of an approved independent monitor for this purpose. The USG should also undertake routine inspections of the factories of contractors providing covered goods.
- 4.3.4. Contractors must establish and implement, and/or cause subcontractors to establish and implement, managerial systems, rules, procedures, and audits sufficient to effectively ensure labor compliance. Contractors must also ensure that their, and/or their subcontractors' business and sourcing practices effectively ensure such compliance.
- 4.3.5. Contractors must cooperate fully with any investigation. Prime contractors should also ensure that each subcontractor cooperates fully with investigations. Refusal of a contractor to facilitate monitoring by—or to cooperate fully in—the monitoring process may result in disqualification for bidding, in termination of a contract or other sanctions.
- 4.3.6. Upon determination of a violation, the USG, the prime contractor, and relevant subcontractors should 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 law. The USG may impose sanctions if it finds that the prime contractor or one of its subcontractors violates any labor compliance requirement, and that the contractor refuses or fails to take all reasonable steps to ensure that the violation is expeditiously remedied. The USG may terminate the contract without notice and without liability for unpaid amounts that otherwise would have been payable, impose a monetary penalty for each violation, or remove the contractor from the bidders' list for a period of time, in accordance with the USG's laws and regulations for imposition of sanctions on contractors that violate conditions on contracting.

4.4. Collaboration and Coordination with State and Local Governments

States and local government agencies that share a commitment to sweatfree purchasing are forming a consortium to pool resources, share information, and coordinate labor standards enforcement. The USG should join this process to share information about procurement supply chains and factory investigations, and coordinate monitoring and other enforcement activities with state and local government agencies as appropriate.

4.5. Sweatfree Procurement Advisory Group

The USG should establish a Sweatfree Procurement Advisory Group to assist in the implementation and enforcement of the program. The Sweatfree Procurement Advisory Group should consist of labor rights experts, procurement administrators responsible for implementing the program, and other interested parties with relevant experience and expertise. The purpose of the Sweatfree Procurement Advisory Group should be to: assess evidence of bidders', contractors', and subcontractors' non-compliance with the law; provide advice on bidding guidelines, dissemination of information to workers, and collaboration with other public entities; evaluate the implementation of the program; and evaluate industries engaged in manufacture and sale of goods other than textile, apparel, and food to determine whether procurement of additional goods should be subject to the monitoring provisions.

5. The Proposal is Consistent with Existing International Procurement Obligations

This proposal for labor standards in federal procurement policy will apply to procurement of goods that suppliers produce in other countries. The proposal is consistent with current U.S. trade policy. The US-Peru free trade agreement, for example, states that procurement specifications are consistent with the chapter if they require compliance with “generally applicable laws regarding (i) fundamental principles and rights at work; and (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed.” (US-Peru TPA, art 9.6.7). The “fundamental principles” in the FTA chapter refer to the Core Labor Standards that all members of the International Labor Organization endorsed in the ILO’s Declaration of Fundamental Principles and Rights at Work in 1997.

Previous procurement chapters in FTAs and the WTO’s procurement agreement were not explicit in their reference to ILO principles. However, they all provide an exception to avoid interfering with policies that protect “public morals and safety,” which could include the ILO’s core principles that are embodied in this proposal: (i) freedom of association and collective bargaining; (ii) the elimination of forced labor; (iii) the elimination of child labor; and (iv) the elimination of discrimination in respect of employment and occupation. Likewise, the safety and wage elements of this code come within the scope of “public morals and safety.” All of the countries with which the United States has a procurement agreement (WTO or FTA chapter) have signed the ILO’s 1997 Declaration and the ILO Constitution, which recognizes wage standards as a means of reducing poverty.