



City of Portland
Sweatshop Free Procurement Policy
Administrative Rules
Adopted August 5, 2009

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1 PURPOSE

These rules are intended to:

Establish rules and procedures for implementing the provisions of the Sweatshop Free Procurement Policy adopted October 2008 that integrates social equity, fiscal responsibility and community and environmental stewardship based on the principle that certain City Contractors and their Supply Chain Partners will comply with all applicable laws and regulations in their business activities; promote social justice and better working conditions; adhere to the City of Portland's Code of Conduct; and provide clear guidance to entities seeking to comply with these requirements.

2 BUREAUS AFFECTED

All City bureaus, departments or offices.

3 CITY CODE REFERENCES

Portland City Code Chapter 5.33, 5.33.080 – Environmentally Preferable Procurement, 3.100 – Equal Employment Opportunity.

4 DEFINITIONS

- 4.1 Bureau. “Bureau” means the Bureau of Purchases.
- 4.2 Contract. “Contract” means all formal solicitation contracts for uniform and clothing products authorized and executed pursuant to PCC Chapter 5.33 and the City’s Sweatshop Free Procurement Policy.
- 4.3 Code of Conduct. “Code of Conduct” means the City of Portland Code of Conduct for Apparel Contractors adopted October 15, 2008.
- 4.4 Cut and Run. “Cut and Run” means contractors, subcontractors including point of assembly facilities shutting down or reducing orders to deny workers any right or standard stated in the City of Portland Code of Conduct.
- 4.5 Purchasing Agent. “Purchasing Agent” means the Director of the Bureau of Purchases, or that person to whom those duties have been properly delegated.
- 4.6 Contractor. “Contractor” means any person or entity, in whatever legal form, that enters into a Contract with the City of Portland.
- 4.7 Independent Compliance Monitor. “Independent Compliance Monitor” means an organization that works with the City or its agents for the purposes of monitoring services associated with factory labor disclosure. The Independent Compliance Monitor is an organization with expertise in monitoring factory working conditions deemed free of a conflict of interest.
- 4.8 Oversight Committee. “Oversight Committee” means those persons selected to assist the Bureau of Purchases in the implementation and enforcement of the City’s

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Sweatshop Free Procurement Policy, as defined by the by the City’s Sweatshop Free Procurement Policy.

- 4.9 Remediation Plan. "Remediation Plan" means administrative actions by the non-compliant Contractor to fully comply with these rules including where they are deficient in complying with these rules, suggested remedies, including a suggested timeline within which they will be in full compliance. The Plan must be approved by the Purchasing Agent and the Oversight Committee.
- 4.10 Supply Chain Partners. "Supply Chain Partners" mean subcontractors and suppliers within the supply chain of the prime contractor, from the point of assembly up through the prime contractor, who contribute to fulfilling uniforms and clothing items under contract with the City.
- 4.11 Uniform and Clothing. “Uniform and Clothing” means all garments or items of clothing any part of which is textile produced by weaving, knitting, sewing or felting; and all shoes and other footwear including uniforms and clothing that are purchased, leased or rented.

5 **POLICY**

- 5.1 The City shall not execute a contract exceeding the formal solicitation threshold for uniforms and clothing products (apparel) with a Contractor unless the Contractor and its Supply Chain Partners have agreed that they will comply with the Code of Conduct or is otherwise in compliance with these administrative rules.
- 5.2 These rules and procedures apply to contract amendments that exceed the formal solicitation threshold for uniforms and clothing products. The amendment process shall not be used for the purpose of evading the requirements of these provisions by intentionally reducing the time needed to complete the work or to lessen the additional contract amount in order to avoid triggering the formal threshold amounts. The Purchasing Agent may require the Contractor and their Supply Chain Partners to comply with these requirements if it is found to be in the best interest of the City.

6 **JURISDICTION**

- 6.1 Contractors and their Supply Chain Partners. The Code of Conduct applies to Contractors and their Supply Chain Partners, throughout the duration of the contract in all of its operations where work relating to a City Contract is being performed.
- 6.2 Nothing in this section shall preclude a Contractor or its subcontractors and Supply Chain Partners from ending sweatshop labor practices throughout its U.S. or International operations. The City encourages Contractors to stop poor labor practices, increase health and safety standards throughout their U.S. or International operations and commends Contractors that do so.

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7 **EFFECTIVE DATE**

Upon adoption, these rules and procedures shall apply to any Contract, or amendments to existing contracts, that exceed the formal solicitation threshold for uniforms and clothing products.

8 **COVERED ENTITY**

The Contractor and its Supply Chain Partners must comply with these rules in all of their operations where work relating to a City Contract is being performed.

9 **FULL COMPLIANCE OPTIONS**

Contractors are required to be in full compliance with these provisions at the time of contract award and must remain in compliance during the term of the contract, unless delayed compliance is authorized pursuant to Paragraph 10 below. Full compliance means fully complying with the requirements established in the Code of Conduct and attesting to their Supply Chain Partners' compliance.

- 9.1 **Full Compliance:** The term “full compliance” means the Contractor has provided written documentation identifying all relevant information required by the City, including street addresses and other contact information for Supply Chain Partners. In addition the Contractor must certify that its operations and those of its Supply Chain Partners comply with the Code of Conduct.

10 **DELAYED COMPLIANCE**

The Purchasing Agent in coordination with the Oversight Committee may authorize a Contractor to delay being in full compliance with the requirements of these rules if conditions stated below are met:

- 10.1 The Contractor must provide a written Remediation Plan outlining specific steps it will take to come into full compliance under a timeline established by the Bureau of Purchases. The contract shall not be awarded until the Remediation Plan has been approved. The Contractors also must provide written documentation identifying all relevant information including the street addresses and other contact information for its Supply Chain Partners.
- 10.2 To be approved, a Remediation Plan must include administrative actions and specific steps to be taken by the Contractor to comply with these rules. The Remediation Plan must be approved by the Purchasing Agent and the Oversight Committee.
- 10.3 The time allotted for taking these steps may not exceed three (3) months. An additional 90 day extension may be granted at the discretion of the Purchasing Agent upon the written request of the Contractor. The Contractor will identify, in writing, the reasons it is unable to reach full compliance, suggested remedies to achieve full compliance and a suggested timeline to achieve full compliance.
- 10.4 A Contractor is not eligible to receive more than two 90 day extensions unless the denial of additional delays creates an extreme hardship to the City, in which case the

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Purchasing Agent and the Oversight Committee, may grant an additional extensions as appropriate.

11 WAIVERS and NON-APPLICABILITY

11.1 Bureaus may submit to the Purchasing Agent a request to waive the requirements of these rules after encouraging Contractors who are not in Full or Delayed Compliance to comply with these rules. Any waiver must be approved by the Purchasing Agent and the Oversight Committee except under the circumstances described in Section 11.1.1 in which case the Purchasing Agent can approve a waiver. A waiver may be permitted in the following situations:

11.1.1 Emergency: When the award of a Contract is necessary to respond to an emergency and the proposed Contractor fails to comply with these rules, and rejection of the Contractor would adversely affect the City's interests, or creates a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety. In these situations, the initiating bureau must submit a request for a waiver to the Purchasing Agent;

11.1.2 Sole Source: Whenever it can be established that the proposed Contractor is a “sole source” as defined by City rules and the Contractor fails to comply with these rules then the initiating bureau must submit a request for a waiver to the Purchasing Agent under this provision. The Contract cannot be executed, nor can work commence until the waiver has been approved;

11.1.3 Public Entity: These requirements do not apply when the Contractor is a public entity;

11.1.4 Cooperative and Joint Purchases: These requirements do not apply when the City is purchasing uniforms and clothing products through a cooperative or joint purchasing agreement unless the City is the lead agency in the solicitation or will be a participating member in the solicitation;

11.1.5 Absence of Compliant Contractors: No capable, compliant Contractors are available. Whenever it can be established to the satisfaction of the Bureau of Purchases that no compliant Contractors are capable of providing sweatshop free uniforms and clothing products that respond to the City's requirements, a waiver under this provision may be granted; or

11.1.6 Unique Circumstances: Whenever unique circumstances exist and application of these rules would result in extreme hardship to the City.

Comment: The following is an example of when a Waiver under Section 11.1.5 might be necessary: In response to a competitive solicitation process, the Bureau of Purchases receives two Bids or proposals for a particular Contract. Both bidders and/or proposers satisfy all of the City's requirements except for complying with these rules. The circumstances are such that it is not feasible for the City to delay awarding the Contract in order to allow for another competitive solicitation process. A waiver of these requirements may be granted

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under these conditions, provided that a waiver under this provision is not granted until all reasonable measures to facilitate compliance from an otherwise responsive bidder or proposer have been taken.

- 11.2 Requests for Waivers. Bureaus seeking a waiver shall submit to the Purchasing Agent, a written request, signed by the Director of the Bureau detailing the reasons for the request. Any waiver must be approved by both the Purchasing Agent and the Oversight Committee.
- 11.2.1 Criteria. The written justification requesting a waiver must provide the following minimum information:
- a) The dollar amount of the Contract and the type of product being purchased through the Contract;
 - b) An explanation of the situation requiring a waiver of these requirements;
 - c) An explanation of the alternatives to a waiver that were considered by the requesting Bureau, and why each alternative was rejected;
 - d) A statement indicating whether they anticipate any amendment to the Contract, including the estimated dollar value of additional work; and
 - e) A description of the steps taken to identify other qualified Contractors and an explanation of the rationale for selecting a Contractor that does not comply with these requirements.
- 11.2.2 Additional Requirements. Where a bureau seeks to obtain the approval of a waiver from the Purchasing Agent and a waiver is granted, the requesting bureau must:
- a) Inform and provide a copy of the City’s Sweatshop Free Procurement Policy and Code of Conduct to the prospective Contractor and ensure they understand how these rules apply to the Contract in question; and
 - b) Award any future Contracts for uniforms and clothing to a Contractor that fully complies with these requirements.
- 11.3 Decisions by the Purchasing Agent and the Oversight Committee to approve or deny waivers are final, subject to those limits expressed above.

12 SANCTIONS and REMEDIES

- 12.1 The Purchasing Agent, in coordination with the Oversight Committee, shall determine and impose appropriate sanctions and/or remedies during the contractor selection phase or for a Contractor’s breach of Contract subject to these rules including, but not limited to:
- 12.1.1 Rejection of a Contractor’s bid or proposal;
- 12.1.2 Debarment of the Contractor from bidding on or being awarded a City contract for a period of up to 3 years or until the Contractor is brought into full compliance with these rules, or both;

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- 12.1.3 Contractual remedies, including, but not limited to, termination of the Contract for default;
- 12.1.4 Requiring the Contractor to identify, in writing, its deficiencies, suggested remedies and suggested timeline to achieve full compliance; and
- 12.1.5 Conditioning further work upon remedial action. Where the Purchasing Agent determines that the best resolution of non-compliance would be remedial action by the Contractor, the Purchasing Agent may allow the Contractor to take such action in lieu of Contract termination or debarment. The Purchasing Agent may require the Contractor to provide a written remedial action plan during the term of the Contract. The Purchasing Agent may require other appropriate remedial action, including expedited implementation of bringing the Contractor back into full compliance provided that any remedial action authorized under this Section must be undertaken within sixty (60) days of the date of the finding of non-compliance. Circumstances that would favor remedial action include:
 - a) where the Contractor’s non-compliance was nominal or unintentional;
 - b) where the Contractor believed in good faith that it was in full compliance with these rules and procedures; or
 - c) where the Purchasing Agent determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of these rules.
- 12.2 The Purchasing Agent may reject a potential Contractor’s bid or proposal if the Purchasing Agent determines that the proposed Contractor was established, or is being used, for the purpose of evading the requirements of these rules.
 - 12.2.1 The Purchasing Agent may examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of evading the requirements or the intent of these rules. The factors to be considered in this determination may include but are not limited to:
 - a. the legal structure of the entity;
 - b. the degree of control the entity exercises over their Supply Chain Partners;
 - c. the date the entity was formed; and
 - d. the role within the entity of the person signing the Contract.
- 12.3 Avoiding Compliance: If it is clearly evident that a contractor is intentionally avoiding compliance with these rules, an award of the Contract may be cancelled, or an executed contract may be terminated for material breach of contract.

13 NOTIFICATION

Contractors and their Supply Chain Partners shall post a copy of the Code of Conduct, including a procedure for filing complaints, in a location that is visible, obvious, and accessible to all workers at

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the sites where work relating to a City Contract is being performed. Any written or verbal notice must be provided in the language(s) of the workforce.

14 CONTINUATION of COMPLIANCE

Compliance must be maintained during the entire term of the contract (including subsequent amendments and / or extensions). The Contractor must provide written notification to the Purchasing Agent of any change in the terms of its compliance or its inability to maintain compliance within 15 calendar days of such changes taking place; this includes but is not limited to, changes in Supply Chain Partners and/or factory locations.

15 INVESTIGATIVE AUTHORITY

Upon the Contractor’s execution of a Contract with the City or upon the City’s receipt of a Contractor’s Bid Form, proposal or any other document in which the Contractor certifies its compliance with the City’s Sweatshop Free procurement requirements, the Purchasing Agent shall have the authority to inspect all evidence reasonably necessary to determine whether the Contractor is in full compliance with these rules. Evidence that may be considered includes but is not limited to, documentation, reports, and reasonably reliable information (including interviews) from Contractors, Contractor employees, Supply Chain Partners and others. The investigation may be made whenever it appears to the Purchasing Agent that a Contractor may not be in compliance with the City’s program or pursuant to a random audit of a Contractor’s or its Supply Chain Partners’ operations.

A Contractor’s failure to provide information requested pursuant to the Purchasing Agent’s investigative authority shall be considered a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by the Contract and these rules.

16 PUBLIC DISCLOSURE of COMPLIANCE INFORMATION

Contractor information as required under Section 9.1 along with their current compliance status will be publicly posted on the Bureau of Purchases website, except for proprietary information that the Contractor has designated as such and as confirmed by the City.

17 REGISTERING A COMPLAINT OF NON-COMPLIANCE

Any person who wishes to register a complaint alleging that a Contractor required to comply with these rules is not in compliance may do so by filling out the applicable complaint form(s) found on the Bureau of Purchases website.

Complete information must be provided in order to register a complaint. To the extent permitted by state law, the City will endeavor to maintain the confidentiality of all complainants who register a complaint pursuant to this provision (See, ORS Ch. 190, Oregon State Public Records Act). Complainants will have the opportunity to request confidentiality when registering their complaint. The City may seek reimbursement for any cost associated with investigating complaints if it is found to be in the City’s best interest to do so.

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18 OVERSIGHT COMMITTEE

The Oversight Committee will use a “majority rules” basis for making decisions related to delayed compliance, remediation plans and waiver requests as they apply to these Rules. The Oversight Committee shall respond within five (5) business days from the date of request to decide on such matters related to these rules. In the absence of a majority response the Purchasing Agent shall issue a decision. The Oversight Committee shall assist the Bureau of Purchases in the implementation and enforcement of the City’s Sweatshop Free Procurement Policy.

19 LEGISLATIVE AUTHORITY

Nothing in these provisions shall limit the right of the City Council to waive the requirements of these rules and procedures.