

REPORT OF: City Purchasing Staff

TITLE: Additional Information Requested by Common Council Regarding City Purchasing Policy and Procedures Regarding Purchases of goods made under deplorable, inhuman conditions of a sweatshop.

AUTHORS: Dean C. Brassler, City Comptroller
Patricia A. Brill, CPA, Accounting Services Manager
David C. Johnson, Purchasing Supervisor

DATED: June 27, 2005

TO THE MAYOR AND BOARD OF ESTIMATES:

On April 19, 2005, the Council adopted Resolution 05-00361, which states as follows:

“That the City of Madison establish as official city policy that no public funds shall be used in the purchase of goods made under the deplorable, inhuman conditions of a sweatshop;” and “That the Board of Estimates, in conjunction with city staff, evaluate current purchasing decisions and create a purchasing policy through ordinance amendments or other means to achieve the greatest possible furtherance of this policy, and report back to the Council with its recommendations no later than July 19, 2005.”

The following report serves to respond to this request on behalf of the Comptroller’s purchasing staff.

Current Purchasing Methods and Administration

Purchasing Services has established three primary methods for which City Agency staff purchase commodities and services: 1) Purchase Order; 2) Limited Purchase Order; 3) Purchasing Card.

The Purchase Order is a contract for commodities and services over \$5,000 that must be approved by designated Comptroller staff (generally the Purchasing Supervisor). While purchasing staff is not charged with enforcing the Living Wage ordinance, contracts that exceed \$5,000 pass through this division, to ensure required Living Wage language is included, and/or routed for review by the Affirmative Action Department. Generally, Purchasing staff only review and administer contracts for commodities and services that exceed \$5,000. However, the Purchasing Supervisor may authorize and approve the purchase of commodities for any dollar amount and services up to \$25,000 or 1 year in duration. Per Madison General Ordinances Section 3.61(5) service contracts greater than \$25,000 or 1 year in duration must be authorized by the Common Council and signed by the Mayor and City Clerk.

The Limited Purchase Order (LPO) is another method by which City staff may purchase commodities and services for limited amounts up to \$2,000 that were not previously contracted, and/or when a supplier does not accept the City’s Purchasing Card. The LPO also serves as a release of payment form for current city public work’s contracts, State, and/or joint municipal contracts that allow for “piggy backing”.

The Purchasing Card (P-Card) is a method of purchasing used by City department staff for the purchase of low dollar commodities. The department head delegates the authority to purchase low dollar items directly to their staff, the designated cardholder, thus enabling the purchases of low dollar commodities more efficiently and cost effectively than if purchasing via a LPO and/or purchase order.

Furthermore, most P-Card holder's have established limits set at \$1,000 or less; however numerous city personnel do have higher limits upwards to \$5,000 to accommodate large volume purchases such as vehicle/work supplies, equipment, and clothing items. Approximately, 300 City employees currently hold a purchasing card.

Information Regarding Solicitations from Suppliers and Other Common Purchasing Practices

Normally, city agency staff and/or specific committees establish product specifications and requirements. Those specifications and requirements are then distributed in the form of a Request for Quotation, Request for Bid, or Request for Proposal. These three solicitations do reference the Purchasing Services Standard Terms and Conditions that contain the City's legal requirements for contracting such as Living Wage, Prevailing Wage Rate and Affirmative Action plan. Generally, City purchasing staff only solicits suppliers for purchases that exceed the threshold of \$5,000. LPO and P-card users are directed to use their "Best Judgment" when selecting commodities and suppliers.

Additionally, some city agencies have their own requirements that extend beyond the city ordinances or purchasing policies and procedures. For example, The Madison Police and Fire Departments have "clothing committees", which are functions of the labor unions, that create their own specifications for the clothing items that are bid, such as cotton wear must be labeled "Union Made" and/or "Made in USA".

On occasion, the Streets, Parks, and other city agencies purchase clothing items such as t-shirts for their staff by means of a LPO and/or P-card. These low dollar purchases do not exceed the LPO or P-card dollar threshold limits of \$2,000 and \$1,000 respectively, and are generally not reviewed by Purchasing Services staff.

Currently Known Facts

Some organizations such as the University of Wisconsin-Madison, the cities of Milwaukee and Los Angeles, and the State of Maine have already adopted "sweat-free" procurement policies and ordinances to assist with allocating purchasing dollars to enhance the economic and social well-being of people, while still acquiring the best possible quality goods at the lowest cost. Generally, these other policies have focused on the apparel manufacturing industry.

Presently, the City of Madison does not have purchasing policies or procedures in place that address the issues of "sweatshops". The City contracts with apparel suppliers to provide custom made, standard and rental uniforms, laundry services, cotton and foot wear, and linens at an estimated annual cost of \$355,000. Of that, about \$240,000 relates to uniforms.

We are currently not aware of any existing City contracts involving suppliers known to violate "sweat-free" standards, although no active monitoring has been in place.

Potential Implementation Options To Consider

Resolution 05-00361 provides that the City of Madison establish as official city policy, "that no public funds shall be used in the purchase of goods made under the deplorable, inhuman conditions of a sweatshop". This could be accomplished in a variety of ways, including the creation of an ordinance, a resolution, or an administrative policy.

Based on staff discussions, we have identified some potential options:

1. Ordinance. It was further resolved in Resolution 05-00361, adopted on April 19, 2005, that the Board of Estimates and city staff create a purchasing policy through ordinance amendments or other means to achieve the greatest possible furtherance that no public funds shall be used in the purchase of goods made under the deplorable, inhuman conditions of a “sweatshop”. We understand that it is the recommendation of the sponsor of the adopted resolution that the policy be implemented by an ordinance and limited at this time, to the procurement of items of apparel. An ordinance would be a permanent, legally binding legislative action that is published and accessible to reference by the general public, similar to those ordinances defining the City’s Living and Prevailing Wage programs. Currently, the City Attorney’s staff is preparing a draft “sweatshop free” ordinance at the request of the sponsor.
2. Resolution. As an alternative, the Council could adopt a resolution establishing a “sweatshop free” purchasing policy which could specify program objectives and guidelines and direct City staff to administer related purchasing procedures and ongoing monitoring of the policy. This action could have an effect similar to adoption of an ordinance, but may become more difficult to reference in the future, since Council resolutions are not codified in the same manner as municipal ordinances.
3. Amending Purchasing Policies and Procedures. The following options could be used instead of an ordinance or resolution, or as part of the implementation of an ordinance regarding the purchase of items of apparel:
 - a. Contracting agencies shall add the required provisions to all specifications for apparel purchasing, renting, and laundering upon which they issue solicitations for quote, bid, or proposal.
 - b. Reference to the ordinance, resolution or policy, could be included as part of the standard language for the City of Madison contract and purchase order form documents (see attached “Conditions of Purchase”)
 - c. Similar notification language could be incorporated into standard contract documents prepared by the City Attorney’s Office and City Purchasing.
 - d. A reference could also be posted on the Purchasing web site in the “Standard Terms and Conditions” intended to provide minimum requirements for the submission of bids. This web site also provides a link to additional living wage information, including the “Notice of Employee’s Rights”.
 - e. Supplier self-disclosure forms (forms certifying that contractors and sub-contractors will refrain from any actions that would diminish the protection of certain labor standards and/or disclose any known “sweat-shop” activities) could be prepared, required, and returned with purchasing solicitation responses. If a supplier does not submit and/or certify the self-disclosure form, the contractor would be omitted from further consideration for that particular solicitation.
 - f. As an alternative, supplier affidavit forms (similar to those used by the City of Milwaukee), on which the contractor submits sworn reports including information regarding owners of facilities where apparel is manufactured and distributed, base hourly wages and health benefits for workers within the facilities, and any other information deemed necessary to enforce the policy could be required. If the supplier does not provide this affidavit form, the contractor would be omitted from further consideration for that particular solicitation.

g. Supplier self-disclosure and/or affidavit forms, could also be prepared, required, and returned at the time of awarding the contract. No pre-screening process would be completed at the time of initial solicitation and award. Rather, we would require proof of compliance with an ordinance at the time of executing a contract, and ongoing compliance throughout the term of the contract. This is how the current ordinance draft was structured, at the request of the sponsor.

Policy Monitoring and Enforcement

Options also exist for the ongoing enforcement of a “sweatshop” policy, including the following:

1. Staff from a specific agency could review and monitor the self-disclosure forms provided by contracted suppliers, investigate complaints and impose sanctions upon any contractor who provides false information or fails to comply with ordinance provisions. Presently, similar enforcement responsibility rests with the Affirmative Action Office for the living wage ordinance and other contract compliance provisions. Enforcement of these programs is initiated on a complaint basis only. Funding within the City’s budget for additional resources should be considered if active monitoring or enforcement of a “sweatshop free” policy is recommended.
2. Conduct a Request for Proposals (RFP) to select and contract, for a fee, with an outside monitoring organization to provide the services mentioned in option 1, directly above. One example of such an organization is the Workers Rights Consortium (WRC). It is our understanding that the University of Wisconsin-Madison contracts with this organization to monitor their “sweatshop” regulations. They currently pay a membership fee of approximately \$15,000 per year. The fees for membership are based upon the size of the member organization. It is not known at this time, what it may cost the City to join this consortium. This information would be determined during the RFP solicitation process. Funding within the City’s budget for additional membership fees should be considered for monitoring or enforcement if this option is recommended.

To the best of our knowledge, the WRC relies upon and follows up on worker complaints and “underground” tips regarding labor practices inconsistent with international standards of human rights. If a complaint is determined to constitute a violation, the WRC take steps to mediate on behalf of the workers, not the member organization. The WRC typically forwards information to its member organization to review and to decide if there has been a violation of the local policy or ordinance. The question of how the City would respond to a reported violation on the part of a contractor would be determined on a case-by-case basis. In the four years that the University of Wisconsin-Madison has been contracting with this service provider (WRC), they have been notified of approximately 15 violations. It is currently not known what action we would take if such a notice were provided to the member organization. That is an issue we would need to resolve with the City Attorneys.

3. An ad-hoc/standing committee comprised of alders, citizens, and/or city staff could be formed to actively monitor or enforce this ordinance, resolution or policy, once adopted. It is unclear at this time how such a committee would carry out an effective monitoring function or what implications this option may have on the City’s budget if recommended.

Purchasing staff could prepare self-disclosure forms, update the website with policy information, develop and conduct the solicitation process for hiring of an outside monitoring organization, award the bid, and assist with executing contracts. No significant additional staff resources would be allocated to provide these services.

Recommended Implementation Time Table

City staff recommends six to nine months to fully implement an ordinance and a monitoring system, depending on which monitoring and enforcement option is adopted. During this time, staff would revise the RFP and standard contract languages, design self-disclosure forms, communicate the ordinance changes with the vendor community and contract for third-party monitoring services if authorized and budgeted. This time may also allow current suppliers and subcontractors to locate alternative sources for their apparel if any initial problems are identified.

We hope that the information contained within this report is helpful in your decision making process. If you have additional requests for information and/or questions, please contact us within the Comptroller's Office.