

DRAFT POLICY

Berkeley Unified School District, “Sweatfree Contracting”

Policy Subcommittee Meetings

- First Discussion, September 10, 2020

Berkeley Unified has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practices are disregarded in some workplaces, commonly referred to as “sweatshops.”

In its role as a market participant that procures equipment, goods, materials and supplies, BUSD seeks to protect its interests by assuring that the integrity of the District’s procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the District.

When the District inadvertently contracts with these contractors, the District’s ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for District contracts. These ethical contractors may be dissuaded from participating in future procurement contracts. The District’s proprietary contracting interests are served by doing business with contractors who make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws.

Seeking to protect these interests, the District requires that all contractors certify that they and, to the best of their knowledge, their subcontractors will comply with the State of California’s [Sweatfree Contractor Code of Conduct](#), which reads:

Sweatfree Code of Conduct

Pursuant to Public Contract Code section 6108 (g), all contractors or subcontractors contracting for the procurement **or laundering of apparel, garments or corresponding accessories, equipment, materials, or supplies (other than procurement related to a public works contract) for the state of California, will sign a statement under penalty of perjury, as required by Public Contract Code**

section 6108 (f), that they adhere to the following as to employees utilized in the performance of the contract:

Contractors and subcontractors in the state of California

Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly and nondiscrimination standards, as well as appropriate federal laws.

Contractors and subcontractors based in other states in the United States

Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws.

Contractors and subcontractors outside of the United States

For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure their subcontractors comply with the appropriate laws of countries where the facilities are located.

Additional requirements for all contractors and subcontractors

Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes not regulated by the National Labor Relations Board.

Contractors and subcontractors shall ensure workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed.

All contractors and subcontractors must comply with the overtime laws and regulations of the country in which their employees are working.

All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

No person may be employed who is younger than the legal age for children to work in the country in which the facility is located, or the age for completing compulsory education, if any, whichever is greater. In no case may children under the age of 15 years be employed in the manufacturing process.

There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours. Pursuant to Public Contracting Code section 6108 (c) (6) "forced labor", and "prison labor" do not

~~include work or services performed by an inmate or a person employed by the California Prison Industry Authority.~~

The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion or political opinion.

No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents that endanger reproductive health.

Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

NOTE: For a limited period, differing effective dates may come from the procuring agencies:

(1) Public Contracts Code section 6108 (f) (3) authorizes "the appropriate procurement agency" to employ a "phased and targeted approach to implementing the sweatfree code of conduct." The ceiling on this phase-in is one year for policies "involving apparel, garments and corresponding accessories," for the goal of promoting "feasibility and providing sufficient notice to contractors and the general public."

Prospective bidders in these categories should inquire directly whether the procurement agency has elected to use this authority for a one-year phase-in period. It would be helpful if procuring agencies put that notice in their bid documents during this initial period.

(2) A different phased and targeted approach is authorized for "appropriate procurement agencies" in "other procurement categories." The other categories are presumably the "corresponding equipment, materials, or supplies furnished to the state (other than procurement related to a public works contract). Procurement agency

targets within these other categories are to be based on "the magnitude of verified sweatshop conditions and the feasibility of implementation."

Procuring agency acquisition of information as to those conditions and feasibility of "phase-in goals and timetable of up to three years in order to achieve compliance" is presumably underway in procurement agencies, and should be the subject of future consultation with the Department of Industrial Relations (DIR). In the interim, prospective bidders in these "other" categories should inquire directly whether their particular procurement agency has elected to use any part of this three-year period for targeting goals and timetables. It would be helpful if procuring agencies put their phase-in notice in bid documents during this targeting period.