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10.3 Common Council - City of Ithaca Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles - Resolution

By Alderperson Rooker: Seconded by Alderperson Myrick

WHEREAS, the City of Ithaca endorses efforts to improve working conditions and to eliminate illegal and exploitative employment practices, such as the operation of “sweatshops,” and

WHEREAS, the City of Ithaca is entrusted with assuring the prudent and economical use of public money in the best interest of the taxpayers and facilitating the acquisition of quality goods at the lowest reasonable cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption, and

WHEREAS, the City of Ithaca affirms that the manufacture of apparel and textiles in violation of reasonable labor or human rights standards is an improvident, fraudulent, and corrupt practice, and purchase of such goods is not a prudent or economical use of public money, and

WHEREAS, informed purchases of apparel and textiles manufactured in compliance with labor and human rights standards helps the City to fulfill its duties to use public money in the best interest of the taxpayer, to acquire quality goods at the lowest responsible cost, and to guard against favoritism, improvidence, extravagance, fraud and corruption, and

WHEREAS, the City of Ithaca recognizes that the violation of labor or human rights standards in the garment industry, whether in the United States or internationally, is not “responsible,” as that term is intended when applied to the selection of the “lowest responsible bidder” for a contract with the City, and

WHEREAS, the State of New York gives local governments the authority to enact local laws, ordinances, regulations and policies not inconsistent with the provisions of the State constitution or any general law, pursuant to which authority the City of Ithaca may reasonably define what constitutes a responsible bidder, and may investigate a bidder’s skill, judgment, and integrity in considering whether that bidder is in fact a responsible bidder, and

WHEREAS, in its role as a market participant, the City of Ithaca seeks to assure that the integrity of the procurement process is not undermined by contractors or subcontractors who engage in or benefit from sweatshop practices, as such contractors are able to underbid responsible contractors who pay fair wages and maintain humane work environments and conditions, which practice places responsible contractors at a competitive disadvantage and may even dissuade them from participating in the City’s procurement process, and

WHEREAS, the City of Ithaca, as a market participant, also seeks to protect the interests of local residents, workers, and businesses, while respecting internationally shared concerns about human rights and workers’ labor rights, by exercising its home rule powers to establish a sweatshop-free procurement policy statement so as to ensure that textiles and items of apparel (such as uniforms) procured by the City of Ithaca are produced in workplaces free of sweatshop conditions; now therefore be it

RESOLVED, That, for the reasons set forth above, the Common Council of the City of Ithaca hereby adopts the following City Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles, and declares its intention to modify existing City policies and ordinances and to take other steps, as needed, to reflect and support the adoption of this position:

Effective January 1, 2012, the City of Ithaca and every department and division within the City government shall take all steps within its authority to ensure that, whenever possible, City purchases of apparel or textiles, in excess of \$1,000, are from contractors or suppliers confirmed to be “sweatshop-free” – i.e., whose products are confirmed by a credible, independent source to be manufactured or assembled without violating the wage and hour, labor, safety, health, environmental, building, fire, or anti-discrimination laws, rules, codes, regulations or standards that are applicable in the country of manufacture or assembly, or that are contained in the International Labour Organization (ILO) Core International Labour Standards (whichever is stricter).

Carried Unanimously

10.4 A Resolution Authorizing Enrollment by the City of Ithaca in the Sweat-free Purchasing Consortium

By Alderperson Rooker: Seconded by Alderperson Myrick

WHEREAS, the Common Council of the City of Ithaca has on this date, by resolution, adopted a City Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles, and

WHEREAS, in said resolution, the Council declared its intention to modify existing City policies and ordinances and to take other steps, as needed, in order to implement its Sweatshop-Free position, and

WHEREAS, the Sweat-Free Purchasing Consortium is organized for educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, for the purpose of assisting public officials and others who seek to ensure that taxpayer dollars are not spent on products made in sweatshops; and the Consortium serves as a coordinating body and resource center for public entities and other organizations that share this goal, by sharing information and providing a forum for collaboration in improving the economy and efficiency of procurement policies designed to eliminate sweatshop labor from supply chains, and

WHEREAS, as a dues paying member of the Sweat-Free Purchasing Consortium, the City of Ithaca will utilize and refer to the resources of the Consortium and its other members, to assist prospective bidders that are seeking a contract to supply apparel or textiles to the City, and/or may ask the Consortium to perform a preliminary verification of the bidder’s sweatshop-free status; now therefore be it

RESOLVED, That the Common Council hereby authorizes the Mayor to enroll the City of Ithaca in the Sweatshop-Free Purchasing Consortium, as a member city, to pay the annual dues (initially \$500.00), and to participate in the Consortium’s annual membership meetings.

Carried Unanimously

10.5 Resolution Amending and Adding an Addendum to the City of Ithaca Purchasing Policy

By Alderperson Rooker: Seconded by Alderperson Myrick

WHEREAS, the Common Council of the City of Ithaca, has, on this date, adopted by resolution a City of Ithaca Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles, and

WHEREAS, in said resolution, the Council declared its intention to modify existing City policies and ordinances as needed, in order to implement its Sweatshop-Free position; now therefore be it

RESOLVED, That the City of Ithaca Purchasing Policy be amended as follows, effective January 1, 2012:

(1) Paragraph 4(F) (entitled “AUTHORIZED LIMITS AND CONTROLS”) of the City of Ithaca Purchasing Policy is hereby amended as follows:

F. Award will be made to the lowest responsible bidder. The term “responsible” means: financially responsible; accountable; reliable; sufficient resources; skill;

~~judgment~~ judgment; integrity; responsive; and moral worth. In deliberating the responsibility of a bidder, contractor or a subcontractor, all contracting agencies shall give due consideration to any credible evidence or reliable information regarding the guidelines set forth in Chapter 39 of the City Code.

(2) The City of Ithaca Purchasing Policy is hereby amended so as to include the following as an Addendum:

ADDENDUM: Policy on Sweatshop-Free Procurement of Apparel and Textiles

1. Any purchasing contract for the procurement of apparel or textiles shall comply with all applicable federal, state, and local laws and regulations, including the City of Ithaca Purchasing Policy and Chapter 39 of the Municipal Code of the City of Ithaca.
2. To the extent allowed under General Municipal Law, Section 103, the City of Ithaca and its departments shall only purchase apparel or textiles confirmed to be sweatshop-free, as those terms are defined herein, unless:
 - a) The Controller certifies that no confirmed sweatshop-free apparel or textiles are available and that the acquisition of the apparel or textiles sought is essential or time-sensitive, the contracting agency may select a supplier that is not confirmed to be sweatshop-free; or
 - b) The purchase of apparel or textiles is for less than \$1,000.
3. For purposes of this Addendum, "sweatshop-free" shall refer to apparel or textiles that are manufactured or assembled without violating laws, rules, codes, regulations or standards regarding wage and hour, labor, safety, health, environmental, building, fire, or anti-discrimination, that are applicable in the country of manufacture or assembly, or that are contained in the ILO Core International Labour Standards (whichever is stricter).
4. Apparel or textiles may be confirmed to be sweatshop-free by:
 - a) Certification or otherwise credible data, information, or reports submitted to the City Controller from the Sweat-Free Purchasing Consortium or its agency members;
 - b) Certification or otherwise credible data, information, or reports submitted to the City Controller from another comparable independent monitoring organization as selected by the Common Council or its members; or
 - c) Self-certification by affidavit of the supplier or vendor that the apparel or textiles are sweat-free, provided that such certification is not contradicted by credible information received by the City Controller.
5. As a member of the Sweat-Free Purchasing Consortium, the City will receive information from the Sweat-Free Purchasing Consortium regarding manufacturers, contractors, subcontractors, suppliers, or vendors found to have violated human rights or labor standards. The City Controller shall advise Department Heads of violation information from the Sweatshop-Free Purchasing Consortium, and Department Heads shall provide such information to all staff in a position to purchase City-required apparel.
6. The City encourages its officials and staff to strive to uphold the standards of the City Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles, in making purchases of work-related apparel.

Carried Unanimously

10.6 **An Ordinance to Amend The City of Ithaca Municipal Code Chapter 39 entitled "Contracts"**

By Alderperson Rooker: Seconded by Alderperson Myrick

WHEREAS, by resolution approved on September 7, 2011, the Common Council of the City of Ithaca adopted a City Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles; and

WHEREAS, in that resolution, the Council declared its intention to modify existing City policies and ordinances as needed, in order to implement its Sweatshop-Free position; now therefore

ORDINANCE NO. _____

BE IT ORDAINED AND ENACTED by the Common Council of the City of Ithaca as follows:

Section 1. Chapter 39 ("Contracts") of the Municipal Code of the City of Ithaca is hereby amended to read as follows:

(1) Addition of the following as Subsection 39-2(A)(12):

(12) Noncompliance by any bidder proposing to supply apparel or textiles (or by any subcontractor or supplier of that bidder) with any of the wage and hour, labor, safety, health, environmental, building, fire, or anti-discrimination laws, rules, codes, regulations or standards of the country of manufacture or assembly, or that are contained in the International Labour Organization (ILO) Core Labour Standards (whichever is stricter). Evidence of such noncompliance may include, but shall not be limited to:

(a) citations or other evidence of employment-related violations of said laws, rules, codes, regulations or standards;

(b) credible information or reports from the Sweatshop-Free Purchasing Consortium or its agency members submitted to the City Controller;

(c) credible information from interested third parties submitted to the City Controller; or

(d) failure by the bidder or contractor to self-certify its compliance with applicable laws, rules, codes, regulations or standards.

(2) Renumbering of the former subsections 39-2(A)(12) through 39-2(A)(14), so as to maintain the proper numerical sequence.

(3) Insertion of the following new definitions into Section 39-3, in alphabetical order:

APPAREL OR TEXTILES

All articles of clothing, cloth or goods, produced by weaving, knitting, or felting, or any similar goods.

SWEATSHOP-FREE

Refers to a supplier of apparel or textiles that are manufactured and/or assembled without violating the wage and hour, labor, safety, health, environmental, building, fire, or anti-discrimination laws, rules, codes, regulations or standards that are applicable in the country of manufacture or assembly, or that are contained in the International Labour Organization (ILO) Core International Labour Standards (whichever is stricter).

(4) Insertion of the following [underlined language] into Section 39-3, in Subsection "A" (definition of "BIDDER, CONTRACTOR AND SUBCONTRACTOR"):

A. Any person or business entity submitting a competitive bid for, receiving the award of, or submitted for approval as a subcontractor on

a contract by any one of the contracting agencies. A subcontractor on a contract for the purchase of apparel or textiles shall also include any beneficiary of bankruptcy, assignment, transfer, sale of operations, or other successorship intended to evade liability or responsibility for assertions or certifications made in a bid submitted to or contract with the City of Ithaca or a contracting agency.

- (5) Modification of the definition of "CONTRACT," in Section 39-3, as follows:

CONTRACT

Any purchasing, construction, or service contract, including those that are that is required to be let by competitive bid to the lowest reasonable responsible bidder, but not including the individual purchase of employment-related apparel or textiles, e.g. uniforms, by and for individual employees of the City of Ithaca, pursuant to the provisions of a collective bargaining agreement.

- (6) Insertion of the following as Section 39-4:

§ 39-4 Administration and Enforcement of Sweatshop-Free Purchasing Policy

(A) Pursuant to the Policy Statement on Sweatshop-Free Procurement of Apparel and Textiles, adopted by resolution of the Common Council on September 7, 2011, the City of Ithaca and its contracting agencies shall enter into contracts to purchase or obtain for any purpose any apparel or textiles only with those bidders confirmed to be sweatshop-free, as that term is defined in this Chapter, except as set forth in subsection 39-4 (B), below, and subject to the provisions of subsection (J), below.

(B) In the event that the City Controller has certified that no confirmed sweatshop-free bidders of apparel or textiles are available and that the acquisition of the apparel or textiles sought is essential or time-sensitive, the contracting agency may select a bidder that is not confirmed to be sweatshop-free.

(C) For the purpose of implementing the City's policy, a bidder may be confirmed to be sweatshop-free by either of the following means:

- (1) Certification as such by the Sweatshop-Free Purchasing Consortium or other comparable independent monitoring organization as selected by the Common Council; or
- (2) Self-certification by affidavit of the bidder, provided that such certification is not contradicted by credible information received by the City Controller.

(D) The City Controller shall collect and maintain information concerning the City's apparel and textile contracts that are awarded after the effective date of the enactment of this section, and shall ensure that the following information is available to the public, upon proper request:

(1) For each such contract, a statement from the contractor that such apparel or textiles are manufactured in accordance with the sweatshop-free criteria set forth in this chapter;

(2) A list of the names and addresses of each subcontractor to be utilized in the performance of each such contract;

(3) For each such contract, a list of each manufacturing operation of the contractor and all subcontractors involved in performance of the contract, and the location, address, and telephone number of each such facility; and

(4) For each such contract, a statement signed by the contractor showing that it agrees that it will, at the request of the contracting

agency, allow independent monitoring of the contractor's or any subcontractor's facilities, to verify compliance with the requirements of this section, and that the contractor shall be responsible for ensuring that its subcontractors comply with the independent monitoring requirements of this subdivision.

(E) Upon information and belief that a contractor or subcontractor may be in violation of this section, the City Attorney may take such action as may be appropriate and provided for by law, rule or contract. In circumstances where a contractor or subcontractor fails to perform in accordance with any or all of the requirements of this section, and there is a continued need for the service, a contracting agency may obtain the required service as specified in the original contract, or any part thereof, by issuing a new solicitation of bids. Administrative charges may be assessed against the breaching contractor by the City. The City may, as appropriate, invoke other sanctions as are available under the contract and applicable law.

(F) A contractor shall be liable for a civil penalty of not less than \$5,000 upon a determination, made through litigation or arbitration, that a contractor or subcontractor has made a false claim under the provisions of this section, to the contracting agency.

(G) Every bid solicitation for supplying apparel and textiles to the City shall contain a statement notifying bidders of the provisions and requirements of this section. Every contract for the supply of textiles and apparels shall contain a provision or provisions detailing the requirements of this section.

(H) Any investigation conducted under the provisions of this section by the City Attorney shall not extend to work performed more than two years prior to (i) the filing of a complaint pertinent to any provision of this section; or (ii) the commencement of the investigation, whichever is earlier.

(I) This section shall not apply to any contract entered into prior to the effective date of this ordinance, except that renewal, amendment or modification of such contract occurring on or after said effective date shall be subject to the conditions specified in this section.

(J) This section shall apply except when federal or state law precludes the City of Ithaca from attaching the procurement conditions herein.

Section 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective date. This ordinance shall take on January 1, 2012, and in accordance with law, upon publication of notice as provided in the Ithaca City Charter.

Carried Unanimously
