

STATE OF MAINE

18-123 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES BUREAU OF GENERAL SERVICES

Chapter 130: GOVERNING IMPLEMENTATION OF THE STATE PURCHASING CODE OF CONDUCT FOR SUPPLIERS OF APPAREL, FOOTWEAR OR TEXTILES

SUMMARY:

1. Purpose and Scope

Pursuant to 5 M.R.S.A. §1825-O, the Department of Administrative and Financial Services, Bureau of General Services adopts this rule to implement the State Purchasing Code of Conduct for Suppliers of Apparel, Footwear, or Textiles. This rule provides specific procedures for bidders to follow in order to comply with the Code of Conduct.

2. Affidavit Required

Bidders making a competitive bid to provide apparel, footwear or textiles shall file with the State Purchasing Agent a signed affidavit stating that the bidder will comply with the State Purchasing Code of Conduct and that, to the best of the bidder's knowledge, the supplier at the point of assembly is in compliance with the Code of Conduct.

- A. The Affidavit shall be executed by a person authorized to commit the bidder to the Code of Conduct.
- B. The affidavit shall include the State Purchasing Code of Conduct without alteration.
- C. This written declaration shall be made under oath before an official such as a notary public, and shall include the following statements:
 - (1) that the entity and its suppliers at the point of assembly for products bid to the State of Maine comply with workplace laws of the bidder's or supplier's site of assembly and with treaty obligations that are shared by the United States and the country in which the goods are assembled, and that
 - (2) the entity complies with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes and laws relating to discrimination in hiring, promotion or compensation on the

basis of race, disability, national origin, gender, sexual orientation or affiliation with any political, nongovernmental or civic group except when federal law precludes the State from attaching these procurement conditions, and that

- (3) the entity complies with all human and labor rights treaty obligations that are shared by the United States and the country in which the goods are assembled. These may include obligations with regard to forced labor, indentured labor, slave labor, child labor, involuntary prison labor, physical and sexual abuse and freedom of association.

3. State Purchasing Code of Conduct

The State Code of Conduct shall read as follows:

- A. Maine is a state that believes employers should fairly compensate hard work, that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. Maine citizens are aware that laws and regulations designed to safeguard basic tenets of ethical business practice are disregarded in many workplaces, commonly referred to as “sweatshops.” State Government purchase of goods made under abusive conditions on behalf of its citizens offends Maine citizens’ sense of justice and decency. Moreover, when the State of Maine contracts with vendors whose suppliers profit by providing substandard wages and working conditions, Maine’s businesses are put at a competitive disadvantage. Therefore, the State of Maine believes in doing business with vendors who make a good faith effort to ensure that they and their suppliers at the point of assembly adhere to the principles of the State of Maine’s Purchasing Code of Conduct.
- B. In its role as a market participant that procures goods covered by this code, the State of Maine seeks to protect the interests of Maine citizens and businesses by exercising its state sovereignty to spend Maine citizens' tax dollars in a manner consistent with their expressed wishes that the State deal with responsible bidders who seek contracts to supply goods to the State of Maine, and protect legally compliant Maine businesses and workers from unfair competition created by downward pressure on prices and conditions attributable to businesses that violate applicable workplace laws.
- C. Seeking to protect these local interests through the least discriminatory means available, the State of Maine requires that all bidders seeking contracts to supply the State of Maine with goods covered by this Code sign an affidavit stating that they and, to the

best of their knowledge, their suppliers at the point of assembly comply with workplace laws of the vendor's or supplier's site of assembly and with treaty obligations that are shared by the United States and the country in which the goods are assembled.

4. Bidding Procedure

Each bidder shall provide the following information with a bid for items of apparel, footwear or textiles:

- (1) name and address of every supplier at point of assembly;
- (2) statement of certification that the supplier(s) is in compliance with the State Purchasing Code of Conduct;
- (3) date of submission of the required affidavit by bidder.

This informational statement must be electronically submitted with each bid or quote response except where specifically instructed to submit in another format by the individual solicitation.

5. Criteria for Seeking Disclosure of Working Conditions and Code Compliance

The State Purchasing Agent may seek the disclosure of vendors' and suppliers' working conditions in the following circumstances:

- A. The State Purchasing Agent is advised by the vendor of a violation of the State Purchasing Code of Conduct;
- B. The State Purchasing Agent is advised by a reputable source, including but not limited to, human rights organizations, international monitors of working conditions, entities charged with the administration and oversight of treaties, that a vendor utilizes a supplier at the point of assembly that violates the State Purchasing Code of Conduct.

6. Consequences of Non-compliance with the State Purchasing Code of Conduct

A. Upon determination of a violation of the State Purchasing Code of Conduct by a vendor or vendor's supplier at the point of assembly of a good covered by this rule the State Purchasing Agent shall inform the vendor and engage in discussions with the vendor about the violation. The purpose of the discussions is to work in partnership with the vendor to influence the vendor to change its practices or to use its bargaining position with the offending supplier to change its practices, rather than to cease doing business with the vendor or supplier. The State Purchasing Agent shall prescribe appropriate measures for the vendor to take in order to comply with the Code of Conduct. These steps may include, but are not limited to:

- (1) (1) requesting disclosure of names and addresses of suppliers at the point of assembly and supplier's working conditions;
- (2) (2) completion of a detailed supplier questionnaire as issued by the State Purchasing Agent.
- (3) (3) requesting that suppliers at the point of assembly provide access to independent human rights monitors; and
- (4) (4) requesting that suppliers at the point of assembly offer their workers the training and guidelines necessary to bring the workplace into compliance with the State Purchasing Code of Conduct.

B. In making a determination of a violation of the Purchasing Code of Conduct, the State Purchasing Agent shall take into account all relevant, reliable information available, including but not limited to information provided by the vendor or the supplier at the point of assembly, reports from reputable national and international organizations, documented media reports and creditable information provided from local groups or organizations.

7. Exception

The State Purchasing Agent may accept and award a bid to a supplier who has not met the requirements herein if, after reasonable investigation, it appears that the required unit or item of supply or brand of that unit or item, is procurable by the State from only that supplier.

8. Specific Guidelines for Compliance

Vendors may demonstrate compliance with the State Purchasing Code of Conduct by:

- A. Making good faith efforts to investigate, monitor and document the business practices of their suppliers at the point of assembly;
- B. Seeking assurances from their suppliers at the point of assembly that the supplier complies with the State Purchasing Code of Conduct;
- C. Including termination clauses in contracts governing the agreement between the vendors and suppliers at the point of assembly should the vendor discover or learn of violations of the State Purchasing Code of Conduct.

9. Support to Suppliers of Goods and Services

- A. The State Purchasing Agent will publish a list on the Division of Purchases' homepage (<http://www.state.me.us/purchase>). The list will include the names of bidders and vendors who have adopted the State Purchasing Code of Conduct, and will be updated quarterly.
- B. The State Purchasing Agent shall provide technical assistance to bidders or vendors to assist with compliance with the State Purchasing Code of Conduct. This assistance may include
 - (1) a reference list of human rights organizations which review and monitor the working conditions of persons in the countries of suppliers at the point of assembly;
 - (2) resources to ensure compliance with treaty obligations that are shared by the United States and the country in which the goods offered for sale are assembled;
 - (3) resources to identify customary working conditions in the country in which the goods offered for sale are assembled.

10. Appeal

Any person aggrieved by a decision made under this rule may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in 5 M.R.S.A. §1825-E and the rules promulgated thereunder as Chapter 120 of the Bureau Services Rules. The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine 04333-0009 within 15 calendar days of receipt of notification of the decision.

STATUTORY AUTHORITY: 5 M.R.S.A. §1825-O

EFFECTIVE DATE:

BASIS STATEMENT

The Department of Administrative and Financial Services is required by statute (M.R.S.A. 1825-O) to adopt rules to implement the State Purchasing Code of Conduct for Suppliers of Apparel, Footwear or Textiles. The Director of the Division of Purchases is required to seek a signed affidavit committing each bidder offering to provide apparel, footwear or textile to compliance with the Code.

Each bidder will also be required to furnish information with a competitive bid for items of apparel, footwear or textiles. This information will include disclosure of the source of supply by name and address for the items being offered for sale and an affirmative commitment that the supplier is in compliance with the Code of Conduct.

The rule will set out appeal procedures related to awards and other actions available to the Director.