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PROPOSED SUBSTITUTE D

..Reference

..Sponsor

ALD. ZIELINSKI, BAUMAN, HINES, WADE, HAMILTON, DAVIS AND WITKOWIAK

..Title

A substitute ordinance relating to procurement of various items.

..Sections

310-17 rc

310-19-2 am

..Analysis

Current code provisions require contracting departments to award contracts in excess of \$5000 relating to the purchasing, renting, laundering and dry cleaning of items of apparel to responsible manufacturers. "Responsible manufacturer" means an establishment engaged in manufacturing, distributing, laundering or dry cleaning that can demonstrate it complies with all applicable local and international labor laws and workplace regulations regarding wages and benefits, workplace health and safety, as well as the fundamental conventions of the International Labor Organization. It must also pay its employees non-poverty wages.

According to current code, a non-poverty wage for domestic manufacturers is equal to the U.S. Department of Health and Human Services' most recent poverty guideline for a family of 3, plus an additional 20% of the wage level paid either as hourly wages or health benefits. The code stipulates that non-poverty wages outside the United States must be comparable to the non-poverty wage as defined for domestic manufacturers, but adjusted to reflect the country's level of economic development. However, many organizations assert the current formula underestimates what is necessary for non-poverty wages in countries outside the United States, and especially in developing countries.

This ordinance revises the current code to:

1. Require that contracting departments award contracts to responsible manufacturers for all non-apparel items, materials, supplies and equipment in excess of \$30,000 that are bid by the city of Milwaukee. The requirements of this section shall not apply to items, materials, supplies and equipment to be furnished as part of a public works contract subject to s. 66.0903, Wis. Stats.
2. Require that no contract for these items, materials, supplies and equipment may be entered into by a contracting department unless the lowest responsible bidder first submits to the purchasing director an affidavit verifying that the bidder is a responsible manufacturer; and require that contractors for these items shall procure and submit affidavits from every

subcontractor who contracts directly with the contractor during the specified time period of the contract to manufacture any part or component of a manufactured item referenced, and said affidavit shall verify that the subcontractor is a responsible manufacturer.

3. Specify how non-poverty wages outside the United States will be calculated. For countries outside of the United States, a nationwide wage that is comparable to the wage calculated for domestic manufacturers will be used and updated annually. The wage level will be calculated using regularly updated CIA – World Factbook data, which will be adjusted to reflect the country’s level of economic development, and the city clerk will change the amount in accordance with adjustment each March 1.
4. Expand the waiver provision so that the requirements of this section may be waived in writing by the purchasing director if all bidders to a contract are deemed ineligible under this section, the contract is necessary in order to respond to an emergency which endangers the public health and safety, and no contractor who complies with the requirements of this section is immediately capable of responding to the emergency; or it is impossible or impracticable to draw specifications satisfactorily to permit competitive bidding, items can be furnished from only one source, or items constitute a special adaptation for a special purpose.
5. Impose a penalty provision for any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt to evade the provisions of this section by providing false, misleading or fraudulent information. The forfeiture is not less than \$2,000 nor more than \$5,000 together with the costs of prosecution, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days. Any contractor or subcontractor engaged in a contract who has been found by the business operations division-procurement services section-department of administration to have submitted any false, misleading or fraudulent information shall be referred to the district attorney for investigation.

This ordinance also makes a technical change so that the procurement of items of apparel is included in the purchasing appeals process ordinance.

This ordinance takes effect 6 months after passage and publication.

...Body

Whereas, The Common Council finds that the City’s expenditure of funds for purchase of materials, supplies and equipment should be allocated in a manner that enhances the rights and well-being of workers worldwide, while acquiring the best quality goods at reasonable cost; and

Whereas, In its role as a market participant, the City seeks to assure that the integrity of the procurement process is not undermined by contractors or

subcontractors who pay unfair wages and maintain inhumane work environments and conditions; and

Whereas, In 2003, the Common Council passed an ordinance creating s. 310-17 which required the City to award apparel contracts to contractors and subcontractors who are able to provide for the fulfillment of the contracts from establishments able to demonstrate that they are responsible manufacturers; and

Whereas, Included in the definition of “responsible manufacturer” is the requirement that non-poverty wages are paid to workers, and the principle of requiring a non-poverty wage applies to establishments involved in the fulfillment of city contracts both domestically and internationally; and

Whereas, The Code establishes the formula for determining a non-poverty domestic wage, but many organizations assert the current formula for calculating wages in countries outside the United States underestimates what is necessary for non-poverty wages in those countries, and especially in developing countries; and

Whereas, The Common Council finds that minimum standards for workers’ and human rights should be extended to all workers, not only those in the apparel industry, and that it is the responsibility of the city of Milwaukee to ensure that it is not expending funds in ways that contribute to violation of workers’ rights and the proliferation of poverty; and

Whereas, When minimum standards for workers’ and human rights are not maintained, both American workers and workers abroad are negatively impacted, as American workers may lose their jobs when businesses choose to relocate abroad to take advantage of lower workplace standards and less enforcement of applicable labor laws, while workers abroad face inhumane working conditions, often relating to the manufacture of goods contracted from the United States; and

Whereas, Passage of this ordinance revising s. 310-17 will encourage responsible contracting with the City and reduce support of contractors who violate workplace standards, while expressing the City's commitment to the rights and well-being of domestic and international workers who are negatively impacted when minimum workplace standards are not maintained; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 310-17 of the code is repealed and recreated to read:

310-17. Procurement of Various Items.

1. PURPOSE. The common council finds that:

- a. It is in the city's best interest to procure items from responsible vendors and manufacturers who provide a safe, non-discriminatory work environment, and who compensate their employees with non-poverty wages.

- b. Many manufacturers, both domestic and international, are engaged in practices that result in poverty wages, violations of workers' rights and unsafe and unhealthy working conditions.
- c. Minimum standards for workers' and human rights should be extended to all workers, and that it is the responsibility of the city of Milwaukee to ensure that it is not expending funds in ways that contribute to violation of workers' rights and the proliferation of poverty.
- d. As a participant in the marketplace, the city chooses to expend its purchasing dollars to enhance the economic and social well-being of people, while acquiring the best possible quality goods at the lowest cost.

2. DEFINITIONS. In this section:

- a. "Apparel" means all items of clothing and cloth produced by weaving, knitting and felting, and shall include uniforms, coveralls, footwear, linens and entrance mats.
- b. "Contractor" means the business entity with which the city enters into a contract.
- c. "Manufacture" means to process, fabricate, assemble, treat or package.
- d. "Non-poverty wage" means the following for:
 - d-1. Domestic manufacturers. A base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. department of health and human services' most recent poverty guideline for a family of 3 plus an additional 20 percent of the wage level paid either as hourly wages or health benefits [city clerk to change amount in accordance with adjustment each March 1].
 - d-2. Outside the United States. A nationwide wage, to be adjusted annually, that shall be comparable to the wage for domestic manufacturers in subdiv. 1, adjusted to reflect the country's level of economic development using the central intelligence agency's most recent world factbook purchasing power parity-adjusted gross domestic product per capita index [city clerk to change amount in accordance with adjustment each March 1].
- e. "Responsible manufacturer" means an establishment engaged in manufacturing, distributing, laundering or dry cleaning that can demonstrate all of the following:
 - e-1. Compliance with all applicable local, state and national laws of the jurisdiction in which the labor is performed concerning wages and benefits and workplace health and safety. In addition, for manufacturers located outside the United States, compliance with the principles of the fundamental conventions of the International Labor Organization regarding forced labor, child labor and freedom of association.
 - e-2. Payment to its employees of non-poverty wages as defined in par. d-1 for domestic manufacturers and par. d-2 for manufacturers located outside of the United States.
 - e-3. Termination of its employees only with just cause.
 - e-4. Establishment of a mechanism for the resolution of workplace disputes that are not regulated by the National Labor Relations Act.

- 3. REQUIREMENTS.**
- a. Apparel. Contracting departments shall award contracts to responsible manufacturers for all apparel contracts in excess of \$5000. These contracts may include any or all of the following activities relating to apparel – purchase, rental, laundering and dry cleaning.
 - b. Non-apparel. Contracting departments shall award contracts to responsible manufacturers for all non-apparel items, materials, supplies and equipment in excess of \$30,000 that are bid by the city of Milwaukee. The requirements of this section shall not

apply to items, materials, supplies and equipment to be furnished as part of a public works contract subject to s. 66.0903, Wis. Stats.

c. Affidavits for apparel contracts. c-1. No contracts for items referenced in par. a shall be entered into by contracting departments unless the lowest responsible bidders first submit to the purchasing director sworn reports or affidavits which include the following information for the specified time periods of the contracts:

c-1-a. The names and addresses of the companies and facilities in which the items have been or will be manufactured, distributed, laundered or dry cleaned.

c-1-b. The names and addresses of all owners of the facilities in which the items have been or will be manufactured, distributed, laundered or dry cleaned.

c-1-c. The base hourly wage and the percent of wage level paid as health benefits for persons working at the facilities in which the items have been or will be manufactured or distributed, laundered or dry cleaned.

c-1-d. Sworn statements by the contractors that facilities identified pursuant to this paragraph are responsible manufacturers as defined in sub. 2-e.

c-1-e. Any other information deemed necessary by the purchasing director for the enforcement of this section.

c-2. Contractors shall procure and submit sworn reports or affidavits from every subcontractor employed by the contractor during the specified time period of the contract for the fulfillment of contracts covered under this section.

c-3. In the event that any information provided by the contractor or subcontractor pursuant to this paragraph changes during the specified time period of the contract, the contractor shall submit or cause to be submitted to the purchasing director sworn reports or affidavits relating to the updated information.

c-4. The purchasing director shall maintain and make available for public inspection any sworn report or affidavit submitted pursuant to this paragraph.

d. Affidavits for non-apparel contracts. d-1. No contract for items referenced in par. b shall be entered into by a contracting department unless the lowest responsible bidder first submits to the purchasing director an affidavit verifying that the bidder is a responsible manufacturer, as defined in sub. 2-e.

d-2. Contractors for items referenced in par. b shall procure and submit affidavits from every subcontractor who contracts directly with the contractor during the specified time period of the contract to manufacture any part or component of a manufactured item referenced in par. b. Said affidavit shall verify that the subcontractor is a responsible manufacturer, as defined in sub. 2-e.

d-3. Each contractor must agree to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency to determine the contractor's compliance with the requirements of this section.

d-4. In the event that any information provided by the contractor or subcontractor pursuant to this paragraph changes during the specified time period of the contract, the contractor shall submit or cause to be submitted to the purchasing director sworn reports or affidavits relating to the updated information.

4. CONTRACT BID SPECIFICATIONS. Contracting departments shall add a digest of the provisions of this section to all applicable specifications upon which they issue invitations to bid.

5. SPECIFICATION FOR CONTRACTS. No contract for items covered under this section shall be entered into by the city unless the contract contains a stipulation stating that the contractor agrees to provide, in fulfillment of the contract, items manufactured by responsible manufacturers, and that the contractor agrees to include an equivalent stipulation in all applicable subcontracts.

6. MONITORING AND ENFORCEMENT. a. Responsibility. The business operations division - procurement services section - department of administration shall be responsible for monitoring contracts for compliance with this section. The division shall review and monitor the sworn reports or affidavits submitted by contractors, receive and investigate complaints relating to compliance with this section, and impose appropriate sanctions upon any contractor who provides false information to the division or fails to comply with the provisions of this section.

b. Notice. The division shall provide in a timely manner on the city's website notice and related documentation regarding the following:

b-1. The issuance of invitations to bid and the awarding of contracts relating to items covered by this section.

b-2. The receipt of sworn reports or affidavits submitted pursuant to sub. 3-c and 3-d.

c. Sanctions. Any contractor or subcontractor engaged in a contract who has been found by the business operations division-procurement services section-department of administration to have submitted any false, misleading or fraudulent information shall be referred to the district attorney for investigation. In addition to such fraudulent conduct, any such contractor or subcontractor who has otherwise failed to comply with the provisions of this section, may be subject to any of the following sanctions imposed by the business operations division:

c-1. Withholding of payments.

c-2. Termination, suspension or cancellation of the contract in whole or in part.

c-3. After a due process hearing, denial of the right of the contractor or subcontractor to bid on future city contracts, by himself or herself, partner or agent, or by any corporation of which he or she is a member, for a period of one year after the first violation is found and for a period of 3 years after a second violation is found.

d. Penalty. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this section by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days.

7. WAIVER. The requirements of this section may be waived in writing by the purchasing director if any of the following are true:

a. All bidders to a contract are deemed ineligible under this section.

b. The contract is necessary in order to respond to an emergency which endangers the public health and safety, and no contractor who complies with the requirements of this section is immediately capable of responding to the emergency.

c. It is impossible or impracticable to draw specifications satisfactorily to permit competitive bidding, items can be furnished from only one source, or items constitute a special adaptation for a special purpose, pursuant to s. 16-05-3 of the charter.

8. APPEALS. Any contractor who objects to any decision or action of the business operations division relative to this section may appeal the decision to the purchasing appeals board pursuant to s. 310-19.

Part 2. Section 310-19-2 of the code is amended to read:

310-19. Purchasing Appeals Process.

2. APPLICABILITY. This section applies only to appeals of specifications and recommendations involving >>procurement of items of apparel under s. 310-17 and << proposed city purchases that exceed \$30,000 in cost.

Part 3. This ordinance takes effect 6 months after passage and publication [city clerk to insert date].

..LRB
APPROVED AS TO FORM

Legislative Reference Bureau
Date: _____

..Attorney
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____

..Requestor

..Drafter
LRB07003-5
LCS
6/4/07