

TORONTO STAFF REPORT

February 23, 2006

To: Administration Committee

From: City Manager
Deputy City Manager and Chief Financial Officer

Subject: Responsible Garment Manufacturer (No-Sweatshop) Policy

Purpose:

The purpose of this report is to respond to Council's request that the City of Toronto enact a purchasing policy requiring the purchase of garments, uniforms or other apparel items from responsible (no-sweatshop) garment manufacturers.

Financial Implications and Impact Statement:

There are no immediate financial implications as a result of this report. Initially, the staff resources required to administer this policy will be negligible as the policy will be administered on a complaint basis only. If a complaint is registered, it is difficult to determine the exact amount of time it would take to investigate and respond to a complaint, however, given our experience with other types of procurement complaints, staff would expect to expend not more than 2 to 3 person days on a complaint. The City issues approximately 30 bids on average per year for clothing and related items.

It is possible that the prices the City may pay for clothing and related items may rise if vendors not meeting the proposed policy are disqualified. Again, it is difficult to determine if this will actually occur. As a point of reference, in 2004 and 2005, the average price differential between the low bid and the next lowest bidder on garment contracts was 5%.

Finally, staff preliminary investigation of the costs to engage a third party agency to investigate complaints is in the range of \$10,000 to \$50,000 annually.

Recommendations:

It is recommended that:

- (1) the Policy, attached as Appendix B to this report, entitled "Purchase of Garments and Other Apparel from Responsible Manufacturers" be approved; and
- (2) the Treasurer investigate the potential for collaboration with other government jurisdictions on a verification program and report back to the Administration Committee as part of the 2007 budget process.

Background:

At its meeting of October 1, 2, and 3, 2002, Council adopted the following recommendations from the Administration Committee as amended:

- (1) the adoption of the following motion by Councillor David Miller seconded by Councillor Sherene Shaw, as amended;

***“WHEREAS** the City of Toronto and its agencies, boards and commissions purchase a large volume of uniforms and other garments; and*

***WHEREAS** the City of Toronto has an interest in ensuring that these items are manufactured in appropriate conditions; and*

***WHEREAS** parts of the garment trade around the world are known to be involved in employing workers in conditions which violate their rights and which are commonly referred to as ‘sweat shops’; and*

***WHEREAS** it is in the interest of the City of Toronto to take a lead on this issue, to ensure workers are treated with respect and dignity and in accordance with their legal rights; and*

***WHEREAS** the garment trade in the City of Toronto is striving for a reputation of producing high quality garments and would benefit from the recognition of Toronto as a ‘no sweat’ city; and*

***WHEREAS** other municipalities, including the City of New York, have passed by-laws requiring purchases from ‘No Sweat’ workshops; and*

***WHEREAS** many clothing manufacturing businesses have expressed support for the City’s initiative;*

***NOW THEREFORE BE IT RESOLVED THAT** the City of Toronto enact a purchasing policy requiring the purchase of garments, uniforms, or other*

apparel items from 'No Sweat' manufacturers, and the Director, Purchasing and Materials Management, be requested to consult with all interested parties in the development of the policy and to develop suitable definitions and policy recommendations for presentation to Council, through the Administration Committee, within current staffing resources."

- (2) that the Chief Administrative Officer and the Chief Financial Officer and Treasurer (Director of Purchasing and Materials Management) and the Manager, Fair Wage and Labour Trades Office:
 - (a) in the development of the No-Sweatshop Procurement Policy, be requested to include in the forthcoming report, staffing requirements for enforcement of the Policy; and
 - (b) be requested to investigate the No-Sweatshop Procurement Policy adopted in New York City and measures they have taken to ensure compliance; and
- (3) that all written submissions filed at the April 30, 2002, meeting of the Administration Committee respecting this matter be referred to the aforementioned City Officials for consideration in the development of the No-Sweatshop Procurement Policy.

Comments:

In preparation of this report and in the development of the recommended policy attached as Appendix B, staff considered the following:

- the size and scope of supplier contracts it would apply to
- the existing federal and provincial statutory framework
- existing similar City procurement policies
- the No-sweatshop policy adopted by New York City
- policies from other jurisdictions
- a public consultation with interested parties

Scope of Policy Application

As per the Council resolution, this policy is directed towards garment manufacturers. Staff reviewed the origin of manufacture of the City's major garment purchases. The dollar value of purchasing activity for uniform clothing in 2004 was approximately \$3.2 million for Fire Fighters, Ambulance and other Public employees. Approximately 63% of City's current suppliers of uniforms are providing clothing that is manufactured in Canada. Approximately 37% of suppliers are providing clothing that is manufactured outside Canada.

This information is important as provincial and federal legislation applies to manufacturers within Canada. One also has to consider the extent of resources required to enforce a City policy internationally given that just over \$1 million is spent annually on garments of foreign manufacture.

Responsible Manufacturer – Definition

As per the Council resolution, the goal of the policy should be to ensure that the City obtains its uniforms and other garments from manufacturers that treat workers with dignity, respect and in accordance with their legal rights. In researching the policy, staff could not find a generally accepted legal definition of a “sweatshop”. However, the research generated a number of attributes that could be considered minimum labour rights. Below is a summary of those attributes:

- no forced labour
- no child (under 14) labour
- respect for women’s rights
- freedom of association
- healthy and safe working environment
- no discrimination
- fair wages and compensation
- maximum hours of work

In addition to meeting or exceeding the minimum labour rights set out above, a responsible manufacturer must operate in accordance with all laws, including labour and health and safety laws, applicable in the jurisdiction of their operation.

Authority to Implement the Policy

There are a number of legal tests which must be satisfied to determine whether a by-law implementing the proposed policy is within the municipality’s competence to enact, i.e. does it comply with other legislation, does it serve a municipal purpose and is it discriminatory?

The City can derive its authority for the proposed policy under either Section 271 of Municipal Act, 2001 (establishment of procurement policies) or Section 130 of Municipal Act, 2001 (regulation of matters related to the health, safety and well-being of the municipality’s inhabitants) provided the policy does not conflict with any provincial or federal legislation, is adopted for a municipal purpose and does not constitute unauthorized discrimination.

There is extensive existing provincial or federal legislation which contain comprehensive enforcement mechanisms for a number of conditions that one would associate with a “sweatshop”, including:

- Employment Standards Act
- Criminal Code
- Human Rights Code

- Charter of Rights and Freedoms
- Occupational Health and Safety Act
- Workplace Safety and Insurance Act

The enforcement of these laws is within the jurisdiction of the provincial or federal governments. If the City were to implement the enforcement of the matters dealt with in provincial or federal legislation, it is likely that the City could be challenged in court for exceeding its jurisdiction.

However, the recommended policy does not purport to enforce labour standards or other laws with respect to employment practices and the treatment of workers. It simply provides that the City, as a consumer, can make the business decision not to deal with suppliers and manufacturers that choose not to operate responsibly in accordance with the governing laws of their jurisdictions. As such, the recommended policy is not in conflict with existing provincial or federal legislation. Therefore, provided the business decision reflected in the policy is for a valid municipal purpose and does not constitute unauthorized discrimination, it is within the City's jurisdiction to adopt the policy.

A procurement policy adopted by a municipality must apply standardized criteria to all suppliers and clearly indicate the policy's connection to a municipal purpose. By refusing to do business with suppliers that obtain their products from manufacturers that are not in compliance with the policy, the City is arguably discriminating against those suppliers. However, such discrimination is not prohibited by law provided it is a business decision made for a municipal purpose. Therefore, the authority to enact this policy depends on being able to demonstrate that the policy is for valid business reasons that relate to the health, safety and well-being of the municipality's inhabitants.

The recommended policy applies to any supplier of garments, uniforms, or other apparel items regardless of location and is therefore distinguishable from a policy targeted at a particular country for the goal of forcing policy changes or practices of a foreign government. The City of Toronto and other Canadian cities are not immune to the spread of sweatshop conditions in the garment industry. The spread of sweatshop practices both locally and internationally threatens the jobs and working conditions of workers in the City. Therefore, the purpose of the policy is to protect and enhance the economic and social well-being of the City and its residents by supporting suppliers that provide goods and services at competitive prices without engaging in the illegal exploitation of their workers (and correspondingly, not supporting suppliers that are engaged in exploitive practices).

Based on the above, staff are of the view that the recommended policy does not conflict with provincial or federal legislation, is for a municipal purpose and does not constitute unauthorized discrimination, and is therefore within the municipality's authority to enact.

City Policies

The City of Toronto already has in place a number of policies to address concerns respecting the rights and protection of workers and ensure fair treatment of workers for

companies providing goods and services to the City. These policies are described below.

- (a) “Fair Wage Policy”: This policy ensures that the City of Toronto does business only with companies who pay fair wages and do not discriminate against their workers. This policy is included in all requests and calls issued by the Purchasing and Materials Management Division (PMMD) and is administered by the Corporate Services Department, Fair Wage and Labour Trades (FW & LT) office.
- (b) “Purchase of Products Manufactured in Factories where Children are Used as Slave Labour or Other Exploitive Circumstances Which Impedes Child Development”: This policy advises suppliers that the City of Toronto does not wish to encourage the use of products manufactured in factories where children are used as slave labour or other exploitive circumstances that impede child development. The policy is included in all requests and calls used by PMMD and is administered by PMMD. It requires bidders to state where the products have been made;
- (c) “Purchase of Coffee”: This policy advises suppliers that the City encourages the purchase of coffee from companies that support sustainable agricultural policies in the coffee sector of producing countries, and are involved in programs that make a positive difference in the lives of coffee farmers or have received the Transfair/Fair TradeMark Canada Label. This policy is included in all calls issued for the purchase of coffee by the PMMD. It requires bidders to state if coffee that will be supplied is from companies that support sustainable agricultural policies in the coffee sector of producing countries and are involved in programs that make a positive difference in the lives of coffee farmers or has received the Transfair/Fair TradeMark Canada Label.
- (d) “Declaration of Non-Discrimination Policy”: This policy is to verify that firms doing business with the City have adopted the City of Toronto Non-Discrimination Policy and to compile statistics for the purpose of monitoring the equal opportunity designated group status of the ownership of firms. A copy of the policy is provided to all bidders requesting to be placed on the bidders list. The policy includes a Non-Discrimination Policy Declaration form, which confirms that the firm has adopted a non-discrimination policy. Bidders complete the form and return it to the Chief Administrative Officer’s Access and Equity Office.

To avoid duplication, the recommend policy simply makes reference to these existing policies where applicable.

No-Sweatshop Procurement Policy Adopted by New York City

The New York City Council found that there was a resurgence of sweatshops in the apparel and textile sectors in New York, the U.S. and around the world. In response to this resurgence, the City of New York enacted No-Sweatshop legislation (Local Law 20) in April 2001.

A provision of the proposed law directed the Mayor to select an agency to collect and maintain information concerning the City's apparel and textile contracts. However, New York City has advised that there was no mechanism in place to enforce the legislation. As a result of a court challenge by the Mayor of New York, the law was declared null and void in November 2004 because the Supreme Court of the State of New York found that the legislation was inconsistent with existing State legislation which specifically dealt with purchasing requirements for apparel and textiles.

Other Jurisdictions

A survey of 26 other jurisdictions (11 U.S. and 15 Canadian) has resulted in only four (City of Bangor, City of Boston, City of Los Angeles and City of Vancouver) that have a No sweatshop policy. The Cities of Bangor, Boston, Los Angeles and Vancouver were contacted and copies of their policies were obtained.

The City of Bangor policy was adopted in 1999. The only method that the City of Bangor uses to ensure that suppliers adhere to the policy is by including a questionnaire in its call documents for items of apparel, footwear and other related products for bidders to complete to determine compliance to the policy. To date, they have not identified any manufacturers that have violated the policy.

The City of Boston policy was adopted in 2001. The City of Boston does not have a specific department that investigates and enforces the policy. Upon submission of their bids, bidders for items of clothing or apparel must provide a written declaration that each garment purchased shall have a union label affixed to it as sufficient evidence that the workers producing the garment, including contractors and subcontractors, were paid the appropriate prevailing wage.

The City of Los Angeles policy was adopted in November 2004 and it is applied to all contracts over \$25,000 and over 3 months. The City of Los Angeles has recently contracted with a third party to verify conditions in factories supplying the City.

The City of Vancouver Policy was adopted on February 17, 2005.

The goal of the City of Vancouver's Ethical Purchasing Policy (EPP) is to ensure that all suppliers to the City meet, at a minimum, the performance standards outlined in the Supplier Code of Conduct which includes core labour conventions of the International Labour Organization (ILO). It demonstrates a commitment to sustainability by seeking

to ensure safe and healthy workplaces for the people who make products for the City of Vancouver, where human and civil rights are respected.

The policy establishes an avenue whereby complaints of abuses in workplaces that are involved in the manufacture of apparel and agricultural products purchased by the City of Vancouver can be made to the City of Vancouver. The City of Vancouver will determine the level and the degree necessary to investigate and act upon complaints.

Vancouver City Council also approved the creation of one full time permanent position to provide support to all City departments and boards and to implement and manage the policy.

Overall, the conclusion that staff reached from this research is that most large municipal jurisdictions either do not have a policy or of those that do, there is little enforcement.

Consultation with Interested Parties

Staff consulted with interested parties on January 18, 2005. Attendees to the consultation were provided with copies of the City's existing policies dealing with workers rights and were provided with a summary of staff's research into other jurisdictions which is outlined above. The difficulty of enforcement was one of the key issues shared with the attendees.

The attendees were told that staff's initial plan was to develop a stand alone policy that would be monitored by the Fair Wage Office or Purchasing or both and that it would include a definition, enforcement provisions and that it would include a declaration process by the suppliers.

Generally, the attendees supported the passage of a "No-sweatshop" policy. Some favoured a stand alone policy, while others thought that the Fair Wage Policy should be expanded to cover sweatshops. Some expressed concern that the City apply adequate resources to enforce the policy and that the Fair Wage Office was not currently equipped to carry out enforcement. Others wanted to see clear penalties for those suppliers contravening the policy.

Some attendees provided examples of jurisdictions that had No-sweatshop policies. Afterwards, staff contacted these jurisdictions and copies of their policies were obtained and reviewed in the preparation of this report.

Development and Application of a City of Toronto Responsible Manufacturer Policy

Based on the research and consultation conducted by staff, enforcement of the policy was the key consideration. While it appears that the City has the authority to implement the policy, the application and enforcement of the policy raises concerns from a procurement fairness standpoint.

Procurement policies have to be capable of being applied to all bidders in a fair and reasonable manner. In order to reject a bid or terminate an existing contract based on alleged contravention of any listed attributes, sufficient factual evidence must be provided in order to exercise the City's discretion (i.e. to make a fair and reasonable decision). The City may have difficulty, unless it uses significant resources, in being able to obtain the evidence to support non-compliance, if the complaint arises from the manufacture of goods in another province or another country. Without the use of these resources, it could lead to unfairness in applying the policy to those allegations which relate to local contractors or manufacturers, versus those in other jurisdictions.

Based on the above enforcement issues, it appears that the best way to implement the policy would be to have a self-declaration system, similar to what is done in other jurisdictions, as well as what is done currently by the City in its policies on Child Slave Labour, Purchase of Coffee and Non-Discrimination. In all future garment and other apparel calls, the call documents would reference the Responsible Manufacturer Policy communicating the City's desire to deal with manufacturers that treat workers with dignity, respect and in accordance with their legal rights. Similar to the City's other policies, a bidder would be required to declare if they adhere and will adhere to the City's policy in the provision of the contracted goods or services before an award would be made. If the bidder is unwilling or unable to make the declaration, the bid would be rejected. If a bidder's declaration is subsequently found to be false, the City could be in a position to withdraw from the contract and disqualify the bidder from conducting business with the City for a period of up to two years.

City staff are recommending that the potential of using a third party to verify factory conditions, similar to what the City of Los Angeles is doing, be investigated. Due to the potential cost involved, staff are also recommending that cost sharing opportunities be pursued with other like minded agencies. For example, the City of Ottawa has recently expressed an interest in the City's policy.

In the meantime, in instances where credible allegations are made that a bidder or existing supplier is not in compliance with the policy, a recommendation with respect to rejection of the bid or termination of existing contracts and imposition of a disqualification period will be made to the Administration Committee and Council on a case by case basis.

Conclusions:

This report recommends that Responsible Manufacturer policy and declaration as outlined in Appendix B be included in all future garment and other apparel calls issued by PMMD

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Deputy City Manager and Chief Financial Officer

List of Attachments:

Appendix A: List of Interested Parties Consulted

Appendix B: Recommended Policy: Purchase of Garments and Other Apparel from
Responsible Manufacturers

APPENDIX 'A'

LIST OF INTERESTED PARTIES CONSULTED

List of Parties Invited to Consultation Meeting Held on January 18, 2005

Amalgamated Transit Union Canadian Council
Anglican Diocese of Toronto
Archbishop of Toronto
Canadian Federation of (Post Secondary) Students – Ontario
Catholic Religious Teachers – Mother Theresa Catholic Secondary School
City of Toronto Councillors and Mayor's Office
Coats North America
CUPE Local 79
Ethical Trading Action Group
Government Relations, Retail Council of Canada
Grand National
Greater Toronto and Canadian Council for Reform Judaism – Solel Congregation
Homeworker Association – Unite Canada
International Association of Firefighters
Lipson Shirtmakers
Lonix Hats Inc.
MacMor-Weatherman
Mayor David Miller
Member Toronto Council, Canadian Catholic Organization for Development and Peace
Metro Sportswear Limited
Muir Cap and Regalia Limited
Ontario Institute for Studies in Education, University of Toronto
OXFAM Canada
Pillowtex Canada Inc.
Plain and Simple
Private Citizen
The Apparel Manufacturers Association of Ontario
Toronto and York Region Labour Council
Toronto Civic Employee's Union, Local 416
Toronto Conference, United Church of Canada
Toronto Police Association
Union Needles Trade Industry and Textile Employees
Union of American Hebrew Congregations
Union of Needletrades, Industrial & Textile Employees
Youth Cabinet Co-ordinator – City of Toronto

PURCHASE OF GARMENTS AND OTHER APPAREL FROM RESPONSIBLE MANUFACTURERS

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Appendix B

PURPOSE

To advise suppliers that the City of Toronto wishes to purchase garments and apparel that have been manufactured by responsible manufacturers and not by “sweatshops”. The City of Toronto views sweatshops as morally unacceptable, politically unjust, and economically unwise and does not wish to purchase garments and other apparel goods manufactured goods under such conditions, nor affiliate or do business with corporations that employ such practices.

POLICY

The City of Toronto does not wish to purchase garment and other apparel goods that have not been manufactured in a responsible manner. Prior to the award of any contract, bidders will be required to provide the name and addresses of all manufacturing facilities used in the production of the goods and declare that the goods are manufactured in accordance with all laws applicable in the jurisdiction of their production and in accordance with the minimum labour rights set out in this policy. All information provided to the City shall be in the public domain and available for inspection by anyone upon request.

MINIMUM LABOUR RIGHTS

All goods purchased by the City of Toronto must be produced in accordance with all laws applicable in the jurisdiction of their production and in accordance with the minimum labour rights set out and defined in the chart below.

Labour Right	Definition
No Forced Labour	No employer shall subject a worker to forced labour practices, whether in the form of involuntary prison labour, indentured labour, bonded labour or otherwise. Workers shall not be required to lodge financial deposits or their original identity papers with their employer.
No Child Labour	No employer shall use child labour under the age of 14. Adequate transitional economic assistance and appropriate educational opportunities shall be provided to any displaced child worker. Workers under the age of 16 shall not be exposed to situations in the work place that are hazardous, unsafe or unhealthy.

PURCHASE OF GARMENTS AND OTHER APPAREL FROM RESPONSIBLE MANUFACTURERS

Women’s Rights	No worker shall be subject to the forced use of contraceptives or pregnancy testing, nor shall employers pressure workers to use contraceptives or submit to pregnancy testing.
Freedom of Association	Workers shall have the right to join or form trade unions of their own choosing and to bargain collectively. In situations where rights to freedom of association and collective bargaining are restricted under law, the employer shall facilitate parallel means of independent and free association and bargaining for all workers.
Health and Safety	Workers shall be provided with a safe and hygienic working environment, including access to clean toilet facilities and potable water.
No Discrimination	Refer to the City’s Non-Discrimination Policy.
Wages and Compensation	Refer to the City’s of Toronto Fair Wage Policy.
Hours of Work	Refer to City Of Toronto Fair Wage Policy

PROCEDURES

1. This Policy will be included in all requests and calls for garments and other apparel issued by the Purchasing and Materials Management Division.
2. Prior to the award of any contract for the purchase of garments and other apparel, bidders will be required to provide the name and addresses of all manufacturing facilities used in the production of the goods and declare that the goods are manufactured in accordance with all laws applicable in the jurisdiction of their production and in accordance with the minimum labour rights set out in this policy.

**PURCHASE OF GARMENTS AND OTHER APPAREL
FROM RESPONSIBLE MANUFACTURERS**

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3. Bidders must also acknowledge that non-compliance with the policy after award can result in termination of any contract and disqualification from conducting business with the City of Toronto for a period of up to two (2) years.
4. Failure to provide the required information and declaration prior to the award of the contract will result in the rejection of the bid.
5. In instances where credible allegations are made that a bidder or existing supplier is not in compliance with the Policy, a recommendation with respect to rejection of the bid or termination of existing contracts will be made to the Administration Committee and Council on a case by case basis.

CONTACT

Title of the Contact: Manager of Client Services
Phone Number:

List of Attendees at January 18, 2005 Consultation Meeting

Canadian Federation of Students
Chinese Canadian National Council Toronto Chapter
City Council Staff for Councillor Augimeri
Councillor J. Mihevc
CUPE 79
Homeworker's Association
Maquila Solidarity Network
Ms Vivien Leong, Private Citizen
Ontario Institute for Studies in Education, University of Toronto
OXFAM
Students Against Sweatshops Initiative
Toronto Catholic District School Board
Toronto Council Development and Peace
Toronto & York Region Labour Council
Toronto Youth Cabinet
Unite Here