State of Maine Purchasing Code of Conduct

State and Local Government Sweatfree Consortium Convening Meeting Harrisburg, PA March 29, 2007 Betty M. Lamoreau
State Purchasing Code of Conduct

- Maine adopted first State Sweatfree Legislation - 2001
- Title 5 M.R.S.A. §§ 1825-K to 1825-S
- Applies to Suppliers of Apparel, Footwear, or Textiles
- Principles of the Code:
  - Employees should be fairly compensated
  - Employee health and safety should be protected
  - The law should ensure that Maine vendors are not put at a competitive disadvantage
  - Maine citizens should be assured that the State is doing business only with responsible suppliers
Early issue…

● We received a complaint regarding a vendor’s manufacturer in the Caribbean. Allegations included:
  ○ Unsafe working conditions
  ○ Workers paid less than minimum wage
  ○ Forced and underpaid overtime

● How do we, in Maine, investigate a manufacturer located outside the country?

● From where or whom do we get our information?
Our statute allowed us to consider all relevant and reliable information available, BUT

How do we assess whether a source of information is reliable and relevant under the law?

Our answer, ultimately…

The reliability and relevance of a source was directly related to the level of independence of the source.
In our case, who was “independent”?

- We learned that the complainant had been in a protracted effort to unionize the vendor’s operations.
- We learned that the parties were involved in litigation with each other.
- With respect to the actual complaint, the vendor’s findings and assertions directly refuted the complainant’s.
In the end…

- We were unsatisfied that the totality of the information we’d gathered could support a determination of noncompliance by the vendor with the Code of Conduct.

- The level of independent information we wanted simply did not seem to be available to us.
Our questions…

- How do we obtain independent information?
- Whose standards do we use in making a determination: A complainant’s? A vendor’s? A third party’s? Our own?
- What factors and motives of the parties do we weigh?
- What investigatory resources are available? Time? Money?
Time for a change!

  ○ In addition to the existing affidavit requirements, bidders must now state that the bidder has provided a copy of the Code of Conduct to their suppliers and received affirmation that the supplier is in compliance.
  ○ Bidder is now required to update affidavit’s information if there are changes
  ○ Our law now spells out how to respond to complaints of noncompliance
  ○ It requires complaints to be specific about the nature of the alleged noncompliance
● Our law now states how various complainants should file their complaints:
  ○ Worker complaints simply in writing
  ○ 3rd party complaints outside the US signed and dated under oath, if possible
  ○ 3rd party complaints in the US signed and dated under oath

● But most importantly, our law now states:

  The State Purchasing Agent has specific authority and discretion to employ an independent monitor to investigate a complaint.
The Working Group…

- LD 1769 also created a code of conduct working group, made up of four (4) labor rights advocates and four (4) businesses subject to the Code.
- Working Group’s charge: “To explore whether the State Purchasing Agent should investigate alleged violations of the state purchasing code of conduct ... by the creation and use of an independent fact-finding consortium”
- The working group’s final report was unanimous in its recommendations.
The group proposed legislation that is modest, reflecting current fiscal realities:
- Authorization of the collection of a 1% vendor’s fee from winning bidders to fund Maine’s dues to a monitoring consortium
- Establishment of a Citizens’ Code of Conduct Working Group to assist the State Purchasing Agent in matters related to developing the monitoring consortium, in implementing or administering the Code of Conduct, in providing education and outreach to state employees and vendors to foster effective implementation of the Code of Conduct, etc.
New legislation...

- The working group’s recommendations are embodied in:

  LD 1678 – An Act to Implement the Recommendations of the Working Group on the State Purchasing Code of Conduct Laws
And now to work...