

**ILRF** INTERNATIONAL LABOR RIGHTS FORUM

**I AM  
A WORKER  
WE ARE ONE**

**DIGNITY AND  
JUSTICE FOR  
WORKERS  
WORLDWIDE**

The International Labor Rights Forum is a human rights organization that advocates for workers globally.

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## Governments' Responsibility for Ethical Public Procurement



**Governments** are responsible for protecting the human rights of workers in their contractors' supply chains. Ignoring this responsibility puts workers at risk.

On April 24, 2013, the Rana Plaza building collapsed in Bangladesh. At least 1,138 workers were crushed to death. Western brands and retailers had audited the Rana Plaza factories and certified them to be compliant with labor rights and safety standards. Those audits did not protect the workers.

In *Dangerous Silence* (February 2014), ILRF reported that the U.S. military exchanges—retail stores located on military installations globally that operate under the authority of the US Department of Defense—use some of the same unsafe and illegal factories in Bangladesh as the private brands and retailers. The U.S. military exchanges say that they rely on the industries' audits to ensure workers' safety and do not take action independently either to investigate or remedy safety violations. After Rana Plaza, it must be clear to the U.S. government that

outsourcing social responsibility to the private sector is equivalent to playing with fire.

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## Government Procurement and Workers' Rights: Overview

Part I: Why Government Procurement?

Part II: Labor Rights in Government Procurement

Part III. Pioneering Collaboration

Part IV. The Journey of Socially Responsible Public Procurement

Advance the slides that follow to learn more about how and why governments should exercise their responsibility to protect the human rights of workers in their supply chains and the pioneering work of some government agencies to accomplish this goal.

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Part I:

Why Government Procurement?

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## Why Government Procurement?

### *Public Procurement is Big Business*

- US government procurement:
  - \$2 trillion market
  - 12% of GDP
    - 4% by federal government and 8% by state and local governments
- US federal government: world's largest single consumer: \$350-\$500 billion of goods and services
- Government procurement worldwide:
  - 13% of GDP in OECD countries
  - 15-25% in non-OECD countries

### **Government purchasing is big business everywhere.**

In the United States, state, local and federal government agencies spend a combined \$2 trillion on goods, services, and public works projects. This amounts to 12% of our gross domestic product (GDP). The federal government spends about one-third of the total, and state and local governments two-thirds. The U.S. federal government is the world's largest consumer, spending between \$350 billion and \$500 billion on goods and services.

Government purchasing is big business elsewhere too.

The annual EU procurement budget is about 1 trillion euros (US \$1.25 trillion).

In OECD countries government purchasing comprises 13% of GDP on average, and in non-OECD states 15-25%.

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## Why Government Procurement?

### *Risk of Labor Violations*

#### ILRF/Sweatfree Publications

- Subsidizing Sweatshops I & II (2008, 2009)
- Toxic Uniforms (2009)
- Dangerous Silence (2014)



**Government purchasing is big business that all too often puts workers' rights and safety at risk.**

ILRF has conducted several studies of workers' rights in the supply chains of apparel companies that make uniforms and other products for US state, local, and federal government agencies. We have found the following abuses in supplier factories in Bangladesh, China, the Dominican Republic, Haiti, Honduras, Mexico, Pakistan, and the United States:

- Poverty wages, only enough to cover a fraction of family's basic needs.
- Excessive production quotas, resulting in 12-hour days, workers coming to work sick, and limits on bathroom usage.
- Mandatory pregnancy tests as a requirement of employment.
- An unhealthy work environment, including suffocating heat, dust causing chronic respiratory problems, and accidents resulting in puncture wounds and loss of fingers.
- Lack of safety, including risk of fire and building collapse.
- Severe repression of union supporters, including harassment, intimidation, beatings, and firings.

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## Why Government Procurement?

### Risk of Labor Violations

	Apparel	Electronics	Hospital Equipment	Office Equipment	Private Security	General
Government investigations	Los Angeles (city) San Francisco (city & county)	Swedish County Councils	South-Eastern Norway Regional Health Authority  National Health Service (UK)	Swedish cities		US Senate "HELP" Committee, Government Accountability Office (US)
NGO investigations	ILRF (US state, local and federal agencies)	DanWatch (Danish cities and national agencies)	SwedWatch (Swedish County Council)		Human Rights First, Amnesty International (US federal agencies)	Center for American Progress (US federal agencies)
Media investigations	New York Times (US federal agencies)					

**Many NGOs, investigative journalists, and government agencies themselves have investigated and found severe labor rights violations in factories that make a wide variety of products for public agencies.**

This table shows some of these investigators of public procurement supply chains and the sectors they have researched, including apparel, electronics, hospital garments and surgical instruments, pharmaceuticals, office equipment, and private security services. This growing body of research indicates that the problem of governments using taxpayer money to purchase products or services made or provided in subpar conditions is severe and widespread.

For example:

- In December 2013, *The New York Times* published a major investigative report revealing widespread human rights abuses—including child labor, unsafe working conditions, and poverty-level wages—in apparel factories globally that supply the U.S. government. *The New York Times* reported “a pattern of legal violations and harsh working conditions” among U.S. government suppliers in Bangladesh, the Dominican Republic, Haiti, Mexico, Pakistan and Vietnam.
- According to a 2013 report by the Center for American Progress and the U.S. Senate HELP Committee, almost 30 percent of companies receiving the highest penalties for violations of federal labor law are also federal contractors, and 49

federal contractors accountable for large-scale labor law violations received more than US\$ 81 billion in taxpayer dollars in 2012 alone.

- According to a 2013 report by Danish watchdog, DanWatch, workers in China who make Dell computers for Danish municipal and national government agencies face up to 74 hour work weeks, forced overtime, and earn below the legal minimum wage.

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## Why Government Procurement?

### *Risk of Labor Violations*

List of Products Produced by Forced or Indentured Child Labor (US).



List of product categories where the risk of workers' rights and human rights violations is high and systematic (Norway).



### **Some government agencies maintain updated lists of products that may have been made in illegal and unsafe conditions.**

In order to help US government contractors comply with a prohibition of selling products made with forced or indentured child labor, the U.S. Department of Labor maintains a list of products and their source countries which it has a reasonable basis to believe are produced by forced or indentured child labor. This list currently includes 35 different products. ILRF research has helped ensure that the following products are on the watch list: cocoa from Cote d'Ivoire, cotton from Uzbekistan, and shrimp from Thailand.

In order to support socially responsible public procurement a Norwegian government agency, the Agency for Public Management and eGovernment (difi), maintains a similar list of product categories where it has found "high and systematic" risks of workers' rights and human rights violations in the supply chain. Those product categories currently include building materials (wood products, natural stones), electronics, cooking utensils, food products (coffee, chocolate, bananas, sugar), furniture, medical equipment (disposable gloves, surgical instruments), office and school supplies (pens, staple machines), sports equipment and toys.

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Part II:

Labor Rights in Public Procurement

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## Labor Rights in Public Procurement



**The good news is that an increasing number of government agencies worldwide and on all levels are beginning to address labor issues in their contractors' supply chains.**

Following its Inter-agency Roundtable on Corporate Social Responsibility in November 2014, the International Labour Organization (ILO) reported that sustainable public procurement is on the rise. According to the ILO, governments on all levels are beginning to address not just environmental impacts of public procurement, but also the impact on workers in global supply chains. The challenge, says ILO, is how to incorporate labor rights criteria effectively in procurement processes. "In this endeavour, there is room to 'think outside the box' and groundbreaking pioneer practices," the ILO prompts.

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**ILRF**

## Labor Rights in Public Procurement

*US state and local governments*

**US Sweatfree Movement: 192 strong**  
 States: 7  
 Cities: 47  
 Counties: 16  
 Dioceses: 4  
 School Districts: 118

The PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares:

(a) The State of California spends millions in public funds on garments, uniforms, uniforms, and supplies provided or loaned by private holders, vendors, and contractors.

(b) The state recognizes a public interest in avoiding situations in which holders and contractors whose workplaces represent sweatshop conditions, including violation of occupational standards of wages, workplace health and safety, child labor, nondiscrimination and nonharassment, and the rights of workers to assemble and choose to bargain collectively.

(c) Thousands of workers are employed in sweatshop conditions in the State of California, and southern California has been identified as the sweatshop capital of the United States.

(d) The state recognizes the rights of its citizens to information and choice with regard to the expenditure of its tax dollars.

(e) The state has an interest in providing incentives for responsible holders.

(f) The state shall establish a "sweat-free" procurement policy.

SEC. 12U.3. PROHIBITION ON SWEATSHOP CONDITIONS.

Each Contractor and Subcontractor shall comply with each of the following requirements:

(a) Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor.

(b) Each Contractor and Subcontractor shall pay at least the following minimum wages to Workers: (1) to Workers working in the United States a base hourly wage, to be set and adjusted annually by the Director, 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 guidelines for a family of three plus an additional 20 percent of the wage level paid, including without limitation amounts paid as hourly wages or health benefits or retirement benefits; and (2) for Workers working in countries other than the United States, a wage, to be set and adjusted annually by the Director, that shall be comparable to the wage for domestic manufacturers established above.

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

Part 1. Section 310-17 of the code is created to read:

310-17. Procurement of Items of Apparel.

1. PURPOSE. The common council finds that manufacturers who provide a safe, non-discriminatory work environment, and who compensate their employees with non-poverty wages.

2. The approved and viable industries, in particular, are engaged in practices that result in poverty wages, violation of workers' rights and needs, and substandard working conditions.

3. As a participant in the marketplace, the city chooses to allocate 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 workers, knitting and felting, and shall include uniforms, overalls, sweaters, shirts and entrance coats.

b. "Manufacturer" means to process, fabricate, assemble, knit or package.

**In the United States, state and local government agencies have pioneered new policies and practices to protect workers' rights in contractors supply chains since the late 1990s.**

The US "sweatfree" movement began in 1998 when North Olmstead, a suburb of Cleveland, Ohio, declared it would no longer purchase uniforms made in sweatshop conditions. The latest city to join the sweatfree movement is Chicago, bringing the overall total to 192 state and local government agencies.

These state and local government agencies seek to avoid a broad range of harms to workers in both domestic and international supply chains—harms to safety and life, to freedom of association and freedom of expression, and to workers' livelihood—by protecting workers' rights established in the labor laws of country of production and by the International Labour Organization (ILO). The ILO has established the following core labor standards, endorsed by all ILO member nations: freedom of association and the right to collective bargaining; the elimination of forced and compulsory labor; the abolition of child labor; and the elimination of discrimination in the workplace.

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## Labor Rights in Public Procurement

*US federal government*

- **Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (1999)**
  - *Requires good faith effort to determine whether forced or indentured child labor was used and certification of being unaware of any such use of child labor*
- **Strengthening Protections Against Trafficking In Persons In Federal Contracts (2012)**
  - *Requires compliance plans to investigate, mitigate, and prevent violations*
- **Fair Pay & Safe Workplaces (2014, domestic)**
  - *Bidder responsibility determination for first time includes compliance with labor law (13 federal labor statutes and one executive order)*

**U.S. federal agencies have also take steps to eliminate harms to workers in contractors' supply chains.**

However, the federal government has been concerned with a much narrower range of harms than the sweatfree movement on the state and local government level. Around the same time as North Olmstead said no to sweatshop labor (violations of labor law and a range of international labor standards), the U.S. federal government said no to forced or indentured child labor, but not to other forms of child labor or to other workers' rights violations. President Clinton's executive order (1999) requires contractors to make a **good faith effort to determine whether forced or indentured child labor was used to make the goods they propose to sell and to self-certify that they are not aware of any such use of child labor if those products are included in the Department of Labor's forced or indentured child labor watch list (see slide 8).** This weak form of contractor due diligence combined with

the lack of government oversight of contractors' supply chains weakens the government's efforts not to acquire products made with forced or indentured child labor.

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**President Obama's executive order on government contracts and human trafficking (2012) goes beyond a one-step "good faith effort" contractor requirement to determine whether or not there are abuses in the supply chain.**

Instead, President Obama's executive order requires contractors to undertake an ongoing effort to develop and implement compliance plans to investigate, mitigate, and prevent violations. Among other things the compliance plans must include an awareness program to inform workers of their rights and a process for workers to report violations of their rights without fear of retaliation. While

these due diligence requirements can give federal agencies stronger confidence that human trafficking will be addressed, the proposed rule thus far fails to achieve the U.S.

Government's goal of zero tolerance for forced labor and trafficking primarily because it exempts supplies of "commercially available off-the-shelf" (COTS) products from the compliance plan requirement. Unfortunately many COTS products are susceptible to forced labor and trafficking. For example, ILRF and other organizations have documented trafficking of Cambodian and Burmese workers in Thailand's seafood export industry, which supplies canned tuna and other products to federal agencies. ILRF has provided recommendations to the Federal Acquisitions Regulatory (FAR) Council on the implementation rules for Obama's executive order that would help the federal government achieve its goal for zero tolerance for forced labor and trafficking.

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## Labor Rights in Public Procurement

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**President Obama’s Fair Pay & Safe Workplaces executive order is important because it establishes compliance with U.S. labor laws as a basic standard of “integrity and business ethics” and therefore of bidder responsibility.**

It requires bidders to disclose and remedy violations of labor law and in some circumstances allows federal contracting officer to determine that a bidder is ineligible for a contract because it does not comply with U.S. labor laws. The goal of the process is to help more contractors come into compliance with workplace protections. However, it stops short of requiring contractor compliance with labor law or safety protections in other countries when the products are produced outside of the United States. The federal government still does not prohibit contractors from delivering products to agencies that have been made in factories in Bangladesh or elsewhere where workers’ lives may be in imminent danger or where their right to association is violently repressed.

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## Labor Rights in Public Procurement

*Europe*

### The EU Procurement Directive 2014

- Member States *shall* take appropriate measures to *ensure* that in the performance of public contracts economic operators comply with applicable obligations in the fields of...labour law established by ... national law, collective agreements or by [the ILO core labor conventions]. (Ch.2, Art. 18)
- ILO core conventions=minimum binding standards for contractors in the European Union?

### **The recent European Union's procurement directive (2014) goes one step beyond President's Obama's executive order on Fair Pay & Safe Workplaces.**

The EU procurement directive requires contracting authorities to ensure that contractors do not just comply with national labor law where they operate but also with the International Labour Organization's (ILO) core conventions. It also allows contracting authorities to require contractor compliance with other ILO conventions. Although the contracting authorities' obligation to ensure compliance with the ILO conventions is clear, the Directive leaves open the question of how to ensure such compliance, stating only that they shall adopt "appropriate means."

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## Labor Rights in Public Procurement

*International Institutions*

### **United Nations Guiding Principles on Business and Human Rights**

**#6:** Governments have a responsibility to “promote respect for human rights by business enterprises with which they conduct commercial transactions ... not least through their procurement activities. This provides States—individually and collectively—with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts...”



**The United Nations is clear that governments have a duty to protect the human rights of workers in their contractors’ supply chains.**

The United Nations Human Rights Council adopted the Guiding Principles on Business and Human Rights (UNGPs) in 2011, which apply to all states and all business enterprises regardless of size. According to these principles every government must protect against human rights abuse by third parties, including business enterprises, within their own territories and throughout their operations. This duty to protect human rights extends to the responsibility to “promote respect for human rights by business enterprises with which they conduct commercial transactions.” In fact, the UNGPs recognize that governments’ “procurement activities provides [them] with unique opportunities to promote awareness of and respect for human rights.”

Public agencies are not, of course, per se responsible for human rights abuses by private actors, including contractors. But the UNGPs make clear that public agencies “may breach their international human rights law obligations....where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.”

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## Labor Rights in Public Procurement

### Challenges

#### Challenges to get started...

- Low-bid procurement
- Opaque supply chains
- Lack of government capacity to oversee supply chains

#### Challenges after the start...

- Scattered standards and requirements
- Lack of monitoring and verification capacity
- Lack of cooperation between and within government agencies

“It is the government activity most vulnerable to waste, fraud and corruption due to the size of the financial flows involved.”

--OECD

**Despite the emerging international consensus that public agencies must protect the human rights of workers in their contractors’ supply chains they face a number of challenges in doing so.**

The challenges include a low-bid procurement system that may inadvertently encourage cost-cutting measures down the supply chain, with adverse impacts on workers; opaque and complex supply chains, and lack of government capacity to oversee its supply chain and hold contractors accountable.

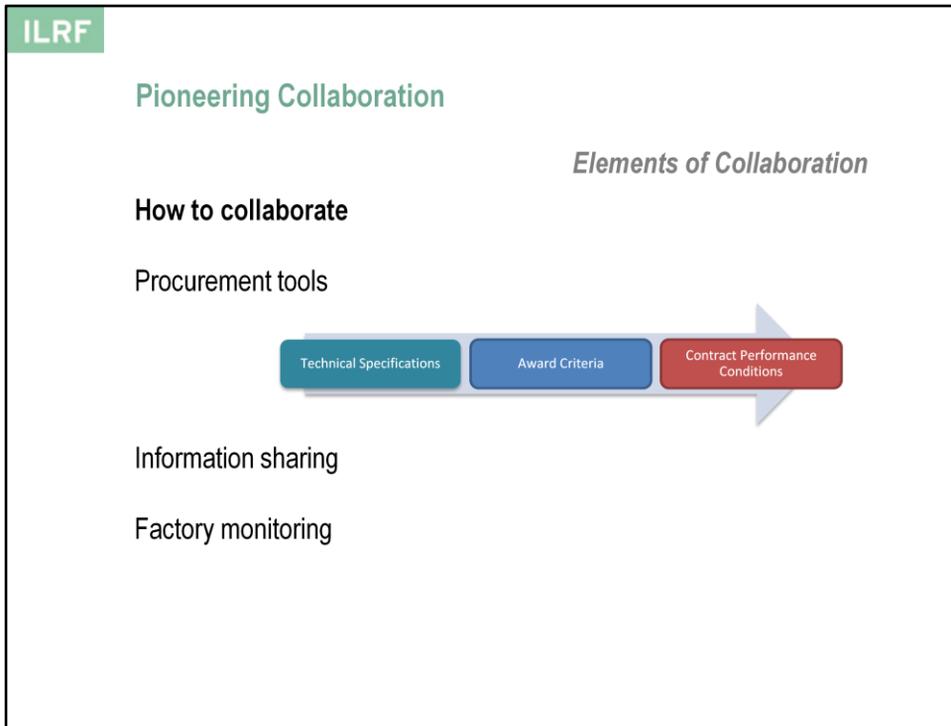
In addition, even leading public agencies struggle to generate capacity to monitor supply chains and suppliers often strain to comply with a wide variety of standards and requirements.

These challenges require a concerted cooperative effort among public agencies. Some agencies are already pioneers in collaboration.

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Part III:  
Pioneering Collaboration

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**There are three key area of collaboration.**

First, public buyers decide whether to express demand for compliance with labor standards in their technical specifications, award criteria, contract performance conditions, or some combination of all three. Public buyers are more likely to reach their goals if they agree on a shared system of demand.

The technical specifications and award criteria are pre-award conditions and can be useful to select the contractor most capable of complying with specified labor standards or to exclude those with poor records of performance. The contract performance conditions are post-award conditions and essential for addressing labor violations and maintaining compliance in factories during the course of the contract. These conditions include requirements to share certain information—such as factory names and locations--engage in certain activities—such as developing compliance plans or cooperating with independent investigations--and attaining certain objectives—such as remedying violations and maintaining compliance with the labor standards. The contract performance conditions are drafted as clauses that are annexed to a contract for certain goods or services and incorporated into the contract. Contractors that do not meet the specified conditions may be sanctioned.

A vehicle for sharing experiences and information about best practices is also useful to public buyers. Such a vehicle can be a network that meets in person or on-line, a

website with information about contracts and contractors accessible to members, or a shared database with information about relevant supply chains.

Finally, factory monitoring is usually cost-prohibitive for a single public agency, but can be conducted effectively and cost-efficiently on a collaborative basis as public agencies often buy the same goods from the same suppliers made in the same factories.

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## Pioneering Collaboration

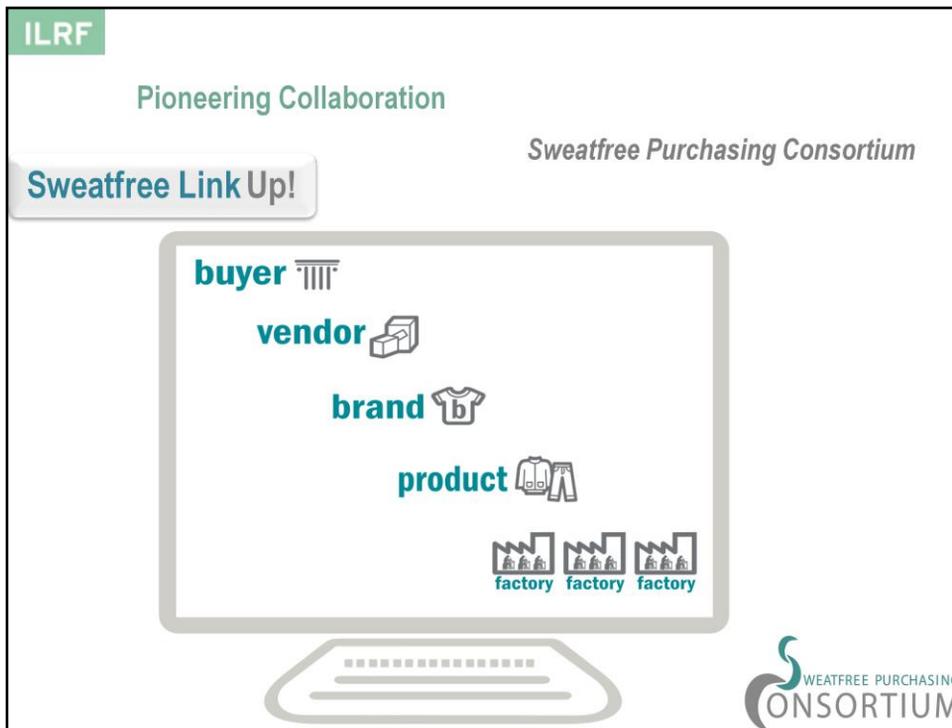
### *Models of Collaboration*

	Factory Monitoring	Procurement Tools	Information Sharing
Swedish County Councils	Factory audits	Code of conduct, contract clauses	Web portal, network meetings
Norwegian Municipalities	Factory audits	Code of conduct, contract clauses	
Electronics Watch (under development)	Ongoing monitoring, investigations	Code of conduct, contract clauses	Factory database
Sweatfree Purchasing Consortium		Model code and contract clauses	Factory database, network meetings
City of Madison cooperative contract	Complaints investigations	Contract clauses	

### **Increasing numbers of public agencies pool resources and share information to address labor rights issues in contractors' supply chains.**

For example, all of Sweden's 21 county councils—the government units responsible for healthcare and public transportation—use the same code of conduct for labor standards, contract performance requirements, and procurement routines and follow-up procedures. They also share the cost of factory audits and audit results through a common web portal. They have been to address dangerous working conditions and discrimination among IT suppliers. In one case a contractor of surgical instruments agreed to increase payments to their supplier in order to help finance improvements in the factory. Yet, ensuring sustainable change remains a challenge for the Swedish public agencies.

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**Some U.S. public agencies are pioneering the sharing of supply chain data.**

Sweatfree LinkUp is a publicly accessible database of factories and other suppliers that make uniforms and other apparel for public agencies. It is a tool to promote increased transparency and labor rights accountability in the industry. Cities such as Los Angeles, San Francisco, Portland, and Milwaukee require that apparel bidders or contractors disclose the factories where their products are made, and share the information they receive with the Sweatfree Purchasing Consortium, a collaborative effort of U.S. state and local government agencies to purchase apparel made in good working conditions. The Consortium attempts to independently verify the name and location of each entity with the help of import-export databases and other internet tools and by comparing the submission to other submissions from the same source or other sources. However, it remains the responsibility of contractors to provide full and accurate information either to public agencies or directly to the Consortium.

Public agencies that are members of the Consortium have unrestricted access to the database and can log in to view their own individualized supply chain page.

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## Pioneering Collaboration

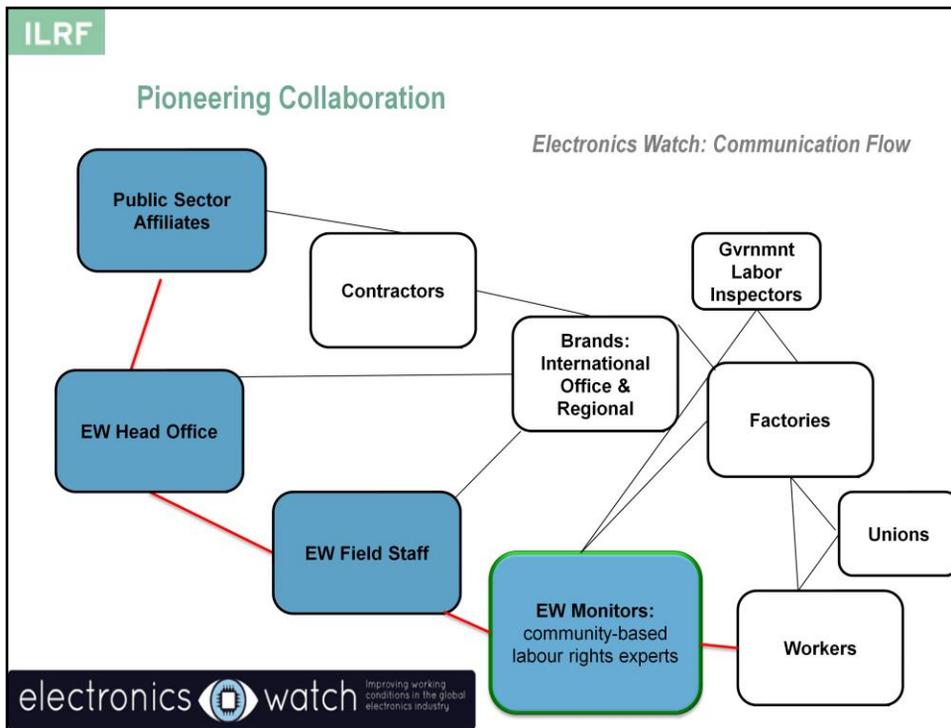
### *Electronics Watch*

A **consortium of public sector buyers**, who combine strength to **monitor** and **remediate** ICT supply chains effectively and cost-efficiently.

- Coordinate code, tender language, contract clauses performance requirements
- Collaborate monitoring & investigations; share results with local trade unions and government inspectors as appropriate
- Share knowledge
- Express joint demand for compliance

**Electronics Watch is an innovative consortium of public sector buyers in Europe that combine strength to monitor and remediate ICT supply chains.**

Electronics Watch is an independent monitoring organization that seeks to assist public agencies to fulfill their duty to protect the human rights of workers in their contractors' supply chains. Public agency affiliates append contract performance clauses developed by Electronics Watch to their ICT contracts. The contract clauses are divided into "necessary steps" that contractors must take because they are wholly within the contractor's control, and "key performance indicators," that contractors must work towards, but failure to reach a KPI is not necessarily subject to sanction. Factory disclosure is an example of a necessary step. Absence of factory violations is a KPI. Affiliates also pay annual dues to finance Electronics Watch monitoring activities that are more effective and less expensive than any single entity could accomplish on its own.



### The “eyes and ears” of public sector buyers in producer regions

Electronics Watch aspires to be “the eyes and ears on the ground” for their public sector affiliates. However, rather than working with social auditing firms that conduct audits for most ICT brand-name companies, Electronics Watch “monitors” are labor-rights organizations and experts that are based in producer regions and maintain ongoing programs and activities with workers. They have expertise in labor rights and factory audits and also enjoy the trust of workers who often fearful of speaking candidly about working conditions lest they would lose their employment. The monitors work hand-in-hand with Electronics Watch field staff who communicate findings to the head office. Because Electronics Watch works with local organizations with continuous interaction with workers they can respond quickly to a situation that needs redress and communicate with affiliates in a timely manner.

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**A cooperative contract that requires transparency, compliance plans, and independent oversight**

The City of Madison, Wisconsin, has released a Request for Proposals for various kinds of clothing worn by its firefighters, police, metro transit and other employees. The contract allows and invites other state and local government agencies in the United States to purchase uniforms under the same terms and conditions for the life of the contract. Designed to address unsafe and illegal conditions in apparel factories, the contract raises the bar for human rights due diligence in government contracting, requiring transparency, compliance plans, and independent oversight. An independent review panel, coordinated by the Sweatfree Purchasing Consortium, assists the City of Madison and other user agencies in evaluating contractor compliance at the proposal, award, and contract performance stages of the process.

Just about any of the 90,000 public agencies in the U.S. can use this contract to obtain uniforms for its own public employees. That means the contract has potential to become a potent tool to increase contractor respect for the human rights of workers in their supply chains.

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Part IV:

The Journey of Socially Responsible  
Procurement

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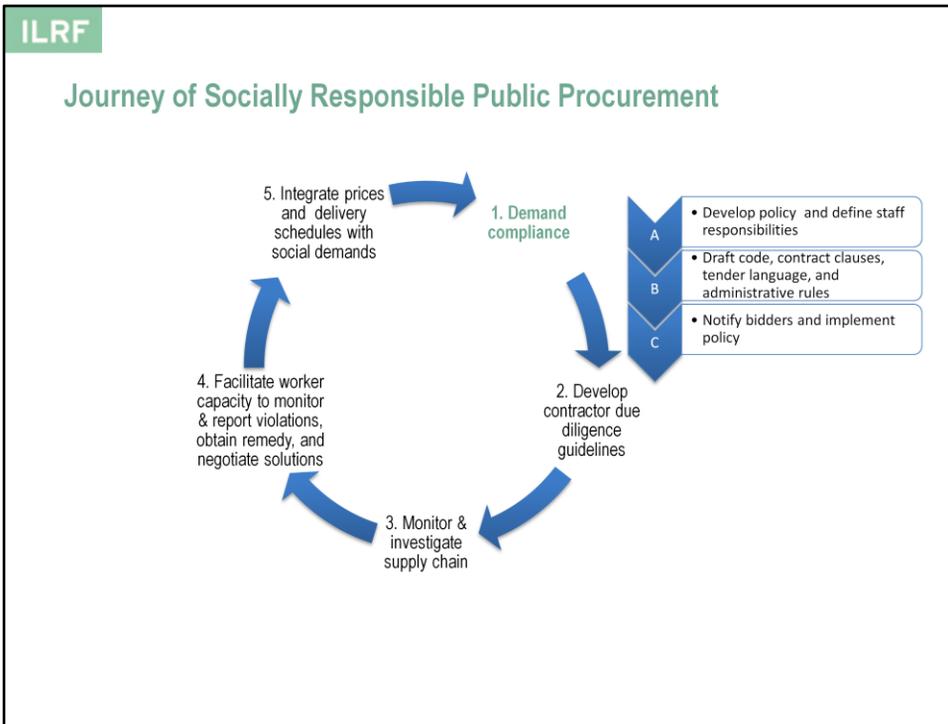
## Journey of Socially Responsible Public Procurement



**This is the journey of socially responsible or “sweatfree” public procurement, looking beyond procurement processes strictly speaking.**

When public agencies act singly, it is difficult to go beyond stage one in this journey. When they collaborate, they can complete this journey and begin anew, along the way achieving positive outcomes for workers, and reaching their own goals.

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### Stage 1: Demand Compliance

Most public agencies in the U.S. and elsewhere are at stage one. This stage is itself a journey in many phases, beginning with a policy commitment, developing a code of conduct, creating tender or “request for proposal” language, evaluation criteria and contract performance clauses; and then notifying prospective bidders and implementing the new rules and procedures.

When public agencies demand that contractors comply with labor standards as stated in a code of conduct, they should look forward to a longer journey. First, they must be able to obtain some evidence that the contractor indeed has the capacity to comply with the code, and they must be able to independently assess that evidence. In addition, they must anticipate the possibility of code violations, and ensure that contractors will address violations and prevent them from recurring. They should also ensure that workers have a path to obtain remedy. Finally, they should have a plan for ensuring that workplace improvements are indeed sustainable. In short, public agencies should anticipate a journey of socially responsible public procurement where the demand for compliance is just the initial step.

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## Journey of Socially Responsible Public Procurement

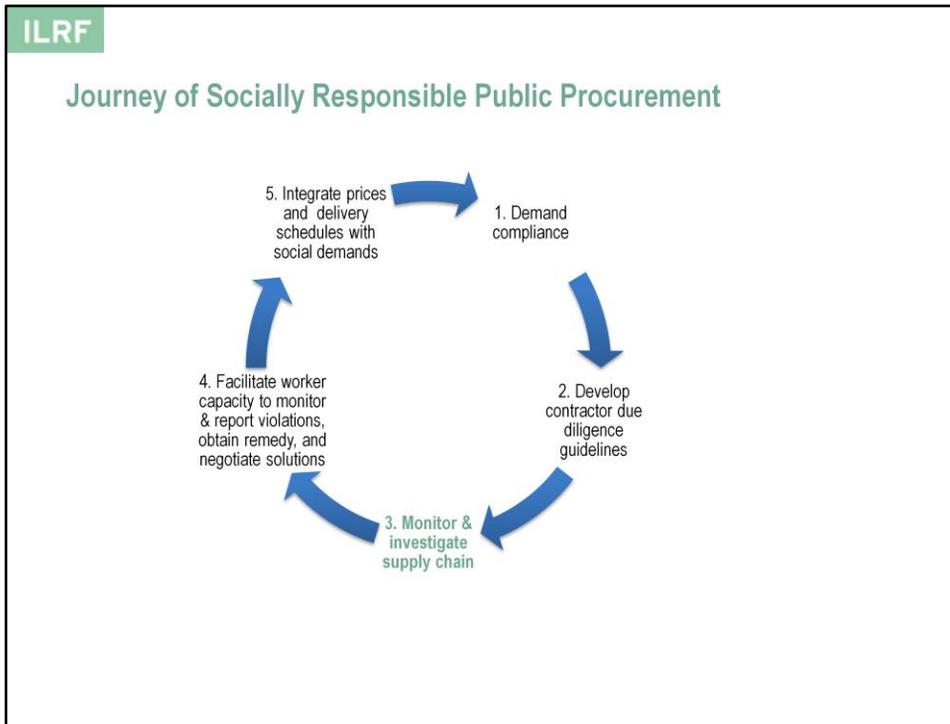


### Stage 2: Develop Contractor Due Diligence Guidelines

Many agencies think of compliance in black and white terms. Companies seeking contracts must demonstrate compliance—usually by means of a self-attestation—or they will not be eligible for a contract. This type of award condition is not compatible with the goals of addressing violations and improving conditions over time, and it cuts short the journey of socially responsible procurement when it has just begun.

Fortunately, some leading agencies in the U.S. and elsewhere instead require contractors to undertake an ongoing effort—or due diligence—to investigate, report, and address violations in their supply chain. They use tools such as supplier questionnaires, compliance plans, and independent third-party investigations to advance better conditions for workers and better compliance with codes of conduct. Best practices for contractor due diligence to ensure subcontractors comply with domestic and international labor standards will continue to evolve and public buyers should be open to revising their guidelines accordingly.

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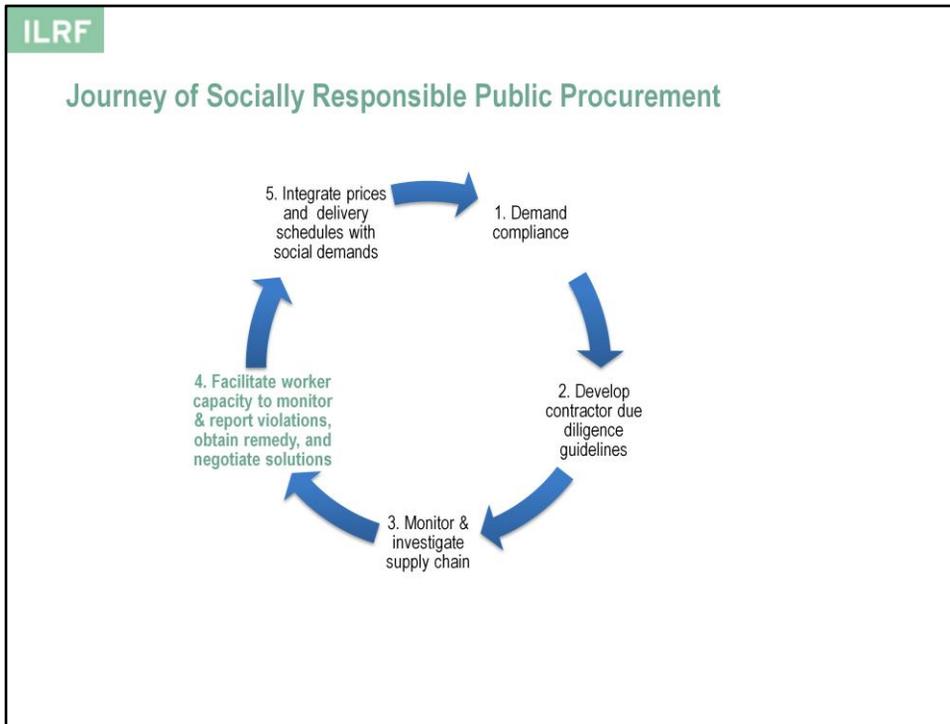


### Stage 3: Monitor and Investigate Supply Chains

Few public agencies have developed the capacity to monitor and investigate violations in the supply chain on-site. In the U.S., only the cities of Los Angeles and San Francisco do so on a regular basis. In Norway and Sweden many agencies do so on a collaborative basis, sharing both the costs and results of social audits. Key challenges here include how to develop resources for on-site investigations, developing criteria for a credible monitoring process, and involving workers and trade unions in the process.

The public sector should take care to learn from the failures of social auditing in the private sector. In a post Rana Plaza world, it has become clear that industry-controlled social audits have failed to protect workers from injury and death, as well as from violations of their core labor rights. Bottom-up monitoring, conducted by labor organizations with close and ongoing relations with the workers, is more credible. Public buyers can receive accurate and comprehensive information via an intermediary such as the Worker Rights Consortium or Electronics Watch. Public buyers can also facilitate workers' own capacity to monitor violations in their workplaces, which is essential for sustainable improvements, by working with these organizations. This idea of worker-monitors takes us to the next step in the journey.

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#### **Stage 4: Facilitate worker capacity to monitor and report violations, obtain remedy, and negotiate solutions**

Sustainable change invariably requires workers themselves to be empowered as workplace “monitors,” who can report violations without fear of reprisals, obtain remedy, and ultimately develop and negotiate solutions to workplace issues with management.

Social auditors may fail to capture blatant violations as factory conditions can change day-to-day. For example, a fire door that is unlocked one day, may be locked the next day. An aisle that is clear one day, may be obstructed the next day, when an emergency order has resulted in boxes being stacked in appropriate areas, perhaps blocking fire extinguishers. Social auditors would not know about these violations unless they happened to arrive at the right moment. Workers would know about them.

Social auditors also often fail to understand violations of workers’ rights that are difficult to measure or detect at a glance, such as violations of the freedom of association or collective bargaining rights. Workers, on the other hand, readily understand management messages, subtle or not, about the consequences of joining a union, or may remember past incidents of discrimination against union members.

Public agencies can facilitate workers' ability to monitor in three important respects:

First, they can strictly enforce workers' associational rights as stated in their codes of conduct, and require time-bound corrective action plans in case of violations of workers' freedom of association or collective bargaining rights.

Second, as part of the due diligence (step 2), they can require that contractors ensure accessible and effective non-judicial grievance mechanisms that workers can use without fear of reprisals. Grievance mechanisms should also be part of the of the general monitoring and investigatory toolbox under step 3 in this journey.

Finally, public agencies can ensure that workers have access to remedy—without remedy no grievance mechanism is effective or credible. To ensure that workers are able to access the necessary remedies, public agencies can require that contractors are able to pay liquidated damages should this be necessary to remedy a violation.

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## Journey of Socially Responsible Public Procurement



### Stage 5: Integrate prices and delivery schedules with social demands

At this stage, public agencies fully integrate investigatory findings with their own purchasing functions and processes. This is an as yet undeveloped area in public procurement. For example, what happens if investigations show that the procurement process itself contributes to adverse impacts on workers? What tools can public buyers use to mitigate and remedy violations if their own prices result in cost cutting measures such as low wages, over reliance on contract workers, lack of investment in health and safety, or lack of contributions to social security systems? What recourse is available to public buyers if their own short lead times or last minute changes to orders result in excessive or forced overtime hours?

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We Invite You to Learn More and Get Involved!



Sweatfree activists from across the U.S. meet in Congress

**Join with us to promote safe and good working conditions through the procurement journey!**

Public procurement has an impact on our world one way or another. We can use it as a tool for positive change, to promote better working conditions in factories that make the products public agencies buy, and sometimes to ensure life-saving health and safety improvements. ILRF is committed to learning how best to use this tool for change. We invite you to join with us in this endeavor.