

## **Sweatfree Procurement Forum for Purchasing/Government Officials**

Thursday, October 29, 2009

**Topic: The Swedish Experience in Sweatfree Procurement**

### **Next forum**

Thursday, January 28, 4pm ET / 3pm CT / 2pm MT / 1pm PT

Call: 712-432-0800

Access code: 946 641#

Duration: 1 hour

### **Present**

Diane Berndt, Milwaukee, WI

Carmen Herrera, San Francisco

Monette McGuire, Madison, WI

Christine Moody, Portland, OR

Michele Reale, New York

Joe Signoretta, New Jersey

Lee Tuneberg, Ashland, OR

Farshid Yazdi, Los Angeles

Bjorn Claeson, SweatFree Communities (facilitator)

Liana Foxvog, SweatFree Communities (note-taker)

Guest presenter:

**Mathias Sylwan, Chief Legal Officer for the Swedish Association of Local Authorities and Regions (SALAR).** Sylwan is the author in 2006 of the definitive legal opinion establishing the right of public authorities in Sweden to require labor standards compliance in procurement. Sylwan also assists local authorities in developing code of conduct and compliance tools.

### **Presentation**

#### **Swedish Association of Local Authorities and Regions (SALAR)**

My name is Mathias Sylwan and I am a Chief Legal Officer at the Swedish Association of Local Authorities and Regions (abbreviated SALAR). SALAR represents the interests of Sweden's 290 municipalities and 20 county councils. Among other things SALAR provides legal support to its members regarding a wide range of legal issues.

My specialty is the Swedish law of public procurement which is an implementation of the provisions in the public procurement directives adopted by the European Union. The most

important and overall principle in these directives is that criterias in a public procurement procedure must not discriminate against undertakings from other member states.

I know that you in the US have another legal framework. But I believe that many of the principles are the same. As an example local authorities in the US as well as in Sweden must have efficient procedures to ensure that criterias in a public procurement process as well as terms of delivery in a contract concluded after a public procurement procedure are actually complied with by the supplier. Failure to verify this would benefit companies that are not taking their responsibilities seriously.

As far as I understand the public procurement directives adopted by the EU also resembles the content of the Government Procurement Agreement (GPA) since EU and the member states of EU are part in the GPA.

### **Memorandum in June 2006 about the legal possibilities to take social consideration in public procurement**

Since many local and regional authorities in Sweden want to take social consideration while procuring goods and services the lawyers of SALAR decided to examine the legal possibilities to do this.

In June 2006 the lawyers at the Swedish Association of Local Authorities and Regions wrote a memorandum on the possibilities for public authorities to take social consideration, especially in regards to the procurement of goods.

When I say “social consideration” in regards of public procurement of goods I mean requirements that goods are produced under working conditions that are in compliance with international standards such as the eight core conventions of the International Labor Organization (ILO).

Our conclusion was that such requirements are in compliance with the procurement directives provided they are formulated in a correct way and that the public authority also effectively verified that the requirements are complied with by the supplier.

### **Assessing Compliance**

Since the production of goods procured by Swedish local authorities very often are produced in other parts of the world, predominately in Asia, this task provides a challenge in itself. One way to verify that the goods procured is manufactured under working conditions that are compatible with the Code of Conduct of the local authority is by doing CSR audits. We have therefore produced a model document for procuring such audits. We have also produced an assessment checklist according to which the auditor shall report back its observations to the local authority. This document is actually in English and I believe you have received it.

However, since local authorities have a wide range of suppliers, it would not be feasible to conduct CSR audits at each and every factory or other kinds of production plants that are

producing goods for the local authority. We believe that local authorities should employ CSR audits as one tool to verify its demands but, considering the cost of such audits, not as the main tool to control its suppliers.

There is therefore a need for other ways to ensure that the supplier abides by the social requirements in the contract. As a consequence SALAR has also produced a questionnaire comprising a number of questions that shall be answered by the supplier. The questions are designed in such a way that the answers given by the supplier will give a fairly good picture of the way the supplier deals with these issues and to what extent the supplier has ensured that the goods delivered are actually produced under working conditions compatible with the requirements of the local authority. It is as a rule not enough to answer these questions with a simple “yes” or “no”. The suppliers must also describe the measures that have been taken to improve working conditions and also provide documentation that substantiates the answers given in the questionnaire.

As an example: one question is if the supplier has procedures to verify its subcontractors. If the answer is “yes” the supplier is also asked to describe these procedures. Another question is whether the supplier has conducted audits among its subcontractors. If the answer is “yes” the supplier is also asked to enclose reports from such audits.

We have also produced a document containing instructions how to evaluate the answers given by the supplier. The idea is that the local authority on basis of this evaluation will be able to decide whether to accept the information given by the supplier or demanding additional information or in some severe cases conducting an audit.

These documents will be made public this fall. In the spring of 2010 we plan to have workshops for public purchaser in order to train them especially in the evaluation of the information given by the supplier in the questionnaire.

### **Questions and Answers**

*Bjorn Claeson: Have you found evidence of labor rights violations in factories?*

*Sylwan: A journalist visited and documented the poor working conditions in the production of cobblestones purchased by Swedish authorities. When the representatives of the local Swedish authorities were confronted with the findings they were completely unaware of the problem and it was very embarrassing for them.*

Another incident was when a television program exposed poor working conditions in Pakistan at a factory producing medical tools for public hospitals in Sweden. Previously there had been no knowledge that the conditions were so terrible and the Swedish authorities had no program to ensure compliance.

These incidents led Swedish authorities to consider rules for labor-compliance in public procurement. There is a need to be conscious about how the goods they procure are produced.

Learning about the working conditions has been a wake-up call for Swedish authorities and is the reason that they are doing work on the issue.

*Bjorn Claeson: Most of US sweatfree procurement work focuses on textiles, apparel and footwear. What products are authorities in Sweden focusing on?*

*Sylwan:* It's up to each local authority to decide to what extent they want to apply the requirements. One city started with cobblestones due to the TV exposé. For some food products, the Fair Trade label has made verifying of compliance easier.

*Lee Tuneberg: Are there examples of successes in instances when a supplier has improved working conditions in their factories as a result of public procurement efforts?*

It's too early to say because the work has only been done for a few years. Awareness of the problem among government branches has certainly improved. Public procurement labor compliance work has only been done for a few years in comparison to some work in the private sector which in certain cases has a longer track record.

*Sylwan asked what sort of educational work cities are doing in the U.S.*

*Christine Moody:* We haven't yet started formal education about the policy to city employees but did incorporate information on it during a couple of broader presentations about sustainability at conferences. The city is planning an art show for December and hopes to reach city employees that way. (Some of these paintings will be exhibited- <http://picasaweb.google.com/sweatfreecommunities/ByJanetEssley#> .) We plan to relate the art to the work that the city is doing, and will have a booth with FAQs about the policy.

*Carmen Herrera: What educational work is SALAR doing?*

We have held workshops dealing with the legal issues. In the future, are planning to hold workshops on how to verify companies' compliance with the code of conduct. We plan to ask vendors to respond to a questionnaire with in-depth questions about what they are doing to verify compliance.

*Carmen Herrera:* San Francisco has a sweatfree ordinance compliance plan. When a bidder bids on the contract, it goes through an evaluation process that is designed based on the ordinance specifications. The questions are mostly "yes" and "no" and a rating system is used to evaluate and score sweatfree compliance.

*Bjorn Claeson:* There are some differences between the Swedish model and the San Francisco model. In SF, labor standards compliance is an award requirement. In Sweden labor compliance is as a contract performance condition. Ultimately the goal is the same.

*Monette McGuire: What are the legal issues that Mathias referred to?*

*Sylwan:* Whether it is compliant with the EU public procurement directives to have these sorts of procurement requirements. Ten years ago there was a belief that you couldn't even have environmental requirements but that discussion has been solved. One reason why it's not possible to apply these standards during the contract award procedure is that it might reduce competition. According to the guideline of proportionality, if you can achieve the same results with lesser requirements, that path should be chosen. Therefore, it's been decided that the requirements should not be used during award procedure but during contract performance. This incentivizes for performance rather than penalizes for past activity.

There hasn't yet been a case of a contract being canceled for failure to abide by a local authority's code of conduct but this could happen in the future. Local authorities in general don't want to cancel a contract because that means that they would need to conduct a new public procurement procedure and they prefer not to do that.

**End**