

Title: Fair Wage Policy
Number: FIN-07-01
Approved By: City Council
Administered By: Finance Services
Effective Date: July 2007

1. Policy Statement

On all Industrial, Commercial and /or Institutional (I.C.I.) construction contracts with the City of Oshawa, every Contractor and Sub-contractor shall pay or provide wages, benefits and hours of work to their Employees, in accordance with this "Fair Wage Policy for I.C.I. Contracts" and the City's Fair Wage Schedule.

Failure to comply with the City's Fair Wage Policy may result in restricted ability to bid on City construction business.

2. Definitions

In this Policy wherever a term set out below appears in the text of this policy with its initial letters capitalized, the term is intended to have the meaning set out for it in this Definitions section. Wherever a term below appears in the text of this policy in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- a) "City" means The Corporation of the City of Oshawa, and, where the context allows, its officers, officials, employees and agents or any of them.
- b) "City Council" means the elected municipal council of the City.
- c) "Contractor" means any person, firm or corporation having a contract with the City for the performance of I.C.I. construction work, but does not include any person, firm or corporation that only supplies materials for the Construction Contract.
- d) "Construction Contract" means any I.C.I. construction of an estimated value of at least five hundred thousand dollars (\$500,000), entered into between the City and a Contractor and includes the various sub-contracts to that contract.
- e) Construction Contracts which were initially tendered and awarded under the five hundred thousand dollar (\$500,000) threshold, but exceeded this upset limit due to owner-requested changes, or other unknown change orders after the award of the contract, are exempt from this policy.

- f) "Employees" means those persons employed by the Contractor or Sub-contractor in positions, classifications, (trades or any combination of those) identified in the Fair Wage Schedule, for the performance of construction work on a Construction Contract with the City, or any Sub-contract. Owner operators who undertake the work themselves are exempt from this definition.
- g) "Fair Wage Schedule" means the schedule of wages, benefits and hours of work as obtained from the City of Toronto Fair Wage Office for construction work on all City I.C.I. Construction Contracts as approved and amended from time to time based on the prevailing rates, Fringe Benefits and hours of work in the I.C.I. Sector of the construction industry in the relevant geographical area.
- h) "Fringe Benefits" includes such benefits as pension plans, extended health care benefits, dental and prescription plans, etc. It does not include legislated payroll deductions such as Canada Pension Plan (C.P.P.), Employer Health Tax (E.H.T.), Workplace Safety and Insurance board (W.S.I.B.), and Employment Insurance (E.I.)
- i) "I.C.I." is an acronym abbreviation for "Industrial, Commercial and/or Institutional".
- j) "Registered Complaint" means a written complaint from an identified source that alleges that a Contractor or Sub-contractor has violated this Fair Wage Policy. Registered Complaints must be submitted on the Fair Wage Complaint Form. All elements of the form must be responded to.
- k) "Sub-contractor" means any person, firm or corporation performing work for a Contractor or one of the Contractors or other Sub-contractors who has a Construction Contract with the City, but does not include any person, firm or corporation that only supplies materials for the Construction Contract.
- l) "Sub-contract" means any contract between a Contractor and any of that Contractor's Sub-contractors with a firm, person or corporation for work in accordance with a Construction Contract. The term excludes contracts for material supplies only.
- m) "Wages" or "Fair Wage Rate" includes the hourly rate, vacation and holiday pay, and any amount for Fringe Benefits shown in the current Fair Wage Schedule to be paid to a worker.

3. Procedures

- a) The Manager, Purchasing Services or designate will prepare and review the Fair Wage Schedule from time to time and after those amendments to the Fair Wage Schedule which are required to reflect the prevailing wages, benefits and hours of work in the construction industry in the geographical area of the City.
- b) The City shall make available through its tender call, to every person bidding on the City's Construction Contracts, the then current Fair Wage Policy and Fair Wage Schedule and shall include in contract documents and/or provide copies of them to the bidders, or make them available through the City's Website. The Contractor and its Sub-contractors shall not be responsible for any Fair Wage Schedule rate increases which occur after the closing of the tender for the City Construction Contract on which the Contractor is the successful bidder.

- c) For all Construction Contracts with the City, the Contractor shall provide to the City, in a form acceptable to the Manager, Purchasing Services, or designate, notification that the Contractor and its Sub-contractors are in compliance with the City's Fair Wage Policy and the Fair Wage Schedule. This notification shall be provided to the City after substantial performance of the Construction Contract as defined in the Ontario Construction Lien Act, R.S.O. 1990, c. C.30, as amended, including successor legislation.
- d) A Contractor is fully responsible for ensuring that all of its Sub-contractors comply with the Fair Wage Policy and the Fair Wage Schedule. A Sub-contractor is fully responsible for ensuring that all of its Sub-contractors comply with the Fair Wage Policy and the Fair Wage Schedule.
- e) A Contractor must provide all of its Sub-contractors with a copy of the Fair Wage Policy and Fair Wage Schedule before any construction work is performed by the Sub-contractors.
- f) Contractors and sub-contractors cannot subcontract any portion of the contract for less than the fair wage rate.
- g) Contractors and sub-contractors shall not discriminate because of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, record of offences (provincial offences and pardoned federal offences) marital status, family status or handicap.

4. Legislative Compliance

- a) Contractors and sub-contractors shall obey all Federal, Provincial and Municipal Laws, Act, Ordinances, Regulations and By-laws, which could in any way pertain to the work outlined in the contract or to the employees of the company.
- b) Contractors and sub-contractors shall ensure W.S.I.B compliance and coverage in accordance with relevant legislation and the City's prevailing policy.
- c) Without limiting the generality of the foregoing, Contractors and sub-contractors shall satisfy all statutory requirements imposed by the Occupational Health and Safety Act and Regulations made thereunder, on a Contractor, a Constructor and/or Employer with respect to or arising out of the performance of the Contractors' and Sub-contractor's obligations.

5. Posting

All Contractors must post in a conspicuous place on every construction project site, in a location satisfactory to the City's Manager, Purchasing Services or designate, a copy of the Fair Wage Policy and the Fair Wage Schedule supplied to it by the City and which will include a telephone number by which any inquiry regarding the Fair Wage Policy or the Fair Wage Schedule, or both, may be made to the City.

6. Records

- a) The Contractor must keep records of the names, addresses, wages paid, benefits paid or provided and hours worked for all of its employees. The Contractor shall make these records available for inspection by the City upon request by the City for a period of four (4) years after substantial completion of the Construction Contract. The City will only be permitted access to these records upon receipt of a Registered Complaint.

- b) The Contractor shall, in any agreement with a Sub-contractor, require the Sub-contractor to comply with all subparagraphs below:
 - i. The Sub-contractor shall keep records of the names, addresses, wages paid, benefits paid or provided and hours worked for all of its employees.
 - ii. The Sub-contractor shall make these records available for inspection by the City within five (5) days of the date of the City's request. The City will only be permitted access to these records upon receipt of a Registered Complaint, and only for a period of four (4) years after final completion of the Construction Contract.
 - iii. The Sub-contractor shall also require its Sub-contractors to assume the same obligations in relation to their own Employees.
- c) Failure to provide these records as required by this Policy may result in the Contractor or Sub-contractor being subject to Section 10, Consequences of Non-Compliance Provisions of this Fair Wage Policy.

7. Complaints

- a) Any Contractor, Sub-contractor or Employee that tendered on that awarded Construction Contract by the City may submit a Complaint against that tender award to the City with respect to any Contractor or Sub-contractor on that project. Registered Complaints should be submitted at the earliest time but no later than fifteen (15) days following the:
 - i. substantial performance of the relevant Construction Contract where a complaint is being made against a Contractor; or
 - ii. substantial completion of the relevant Sub-contract to a Construction Contract where a complaint is being made against a Sub-contractor.
- b) Upon receipt of a Registered Complaint, together with payment of an investigation fee of \$5,000, the City shall take such action as it deems necessary to determine whether the Contractor and Sub-contractor involved or named in the Registered Complaint is in compliance with the Fair Wage Policy and the Fair Wage Schedule.
 - i. The City may, at its discretion, waive the fee in cases where an employee of a Contractor or Sub-contractor working on the construction project issues the complaint.

If upon investigation, the Registered Complaint is found to be substantiated, the fee of \$5,000 will be refunded to the person, company or corporation filing the complaint. If the complaint is found to be unsubstantiated, the fee will be retained by the City to cover administrative costs of the investigation and audit process. If the costs exceed \$5,000, the City will take the necessary action to claim these costs from the complainant.

- c) The City's Manager, Purchasing Services or designate shall inform the complainant and any Contractor or Sub-contractor involved or named in the complaint of the results of the City's determination of the Contractor's and/or Sub-contractor's compliance or non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both within 15 days of rendering a decision. The decision of the City's Manager, Purchasing Services or designate is final.

8. Inspection and Audits

The City retains the right to inspect and audit the payroll records (as referred to in the Records section of this Fair Wage Policy) of the Contractor or Sub-contractor at any time during the period of the Construction Contract and up to four (4) years after the Construction Contract has been completed. The Contractor shall supply certified copies of any records whenever requested by the City within five (5) business days. After completion of the Construction Contract, the City will only be permitted access to these records upon its receipt of a Registered Complaint of non-compliance of a Contractor or Sub-contractor under the Fair Wage Policy.

9. Compliance

A Contractor or Sub-contractor shall be in compliance with the wage requirements of the Fair Wage Policy when it pays to its Employees' wages, vacation and holiday pay, fringe benefits equal to or greater than the amount set out in the Fair Wage Schedule issued as part of the tender package.

10. Consequences of Non-Compliance

- a) The City's Manager, Purchasing Services or designate, upon determining that a Contractor or Sub-contractor is in non-compliance of the Fair Wage Policy or the Fair Wage Schedule, shall undertake the actions set out in subparagraphs (i) and (ii) and may undertake the action set out in subparagraph (iii).
 - i. The City shall advise the Contractor and/or Sub-contractor, in writing, that it has been determined that the Contractor or Sub-contractor is in non-compliance, providing the details of that non-compliance. The notice shall stipulate that the Contractor and/or Sub-contractor is required to comply and/or immediately pay (retroactively) wages to its workers according to the Fair Wage Schedule applicable at the time of the Construction Contract award, as applicable.

If a Contractor or Sub-contractor is provided with notice in accordance with this subparagraph, this fact shall be recorded as an occurrence of non-compliance.
 - ii. The City shall assess the base cost of \$5,000 for the City's inspection, audit or other action as deemed necessary by the City as a result of the determination of non-compliance of the Contractor and/or Sub-contractor, and may deduct that amount from any payment owed by the City to the Contractor. In addition, the Contractor shall be responsible for all of the City's costs beyond the base cost of \$5,000, to be payable immediately upon demand.
 - iii. The City may withhold an amount of funds equal to the amount by which the Contractor or Sub-contractor has benefited from its non-compliance, from any payment owed by the City to the Contractor until such time as the Contractor or Sub-contractor complies.

- b) Where a Contractor or Sub-contractor has been determined to be in non-compliance with the Fair Wage Schedule for the first time in a five (5) year period, the City's Manager, Purchasing Services or designate may require that the Contractor or Sub-contractor, on the next three (3) City Construction Contracts on which the Contractor or Sub-contractor performs construction work, submit an accountant's report which verifies the Contractor's or Sub-contractor's compliance with the Fair Wage Policy and the Fair Wage Schedule. The accountant's report shall be in a form satisfactory to the City's Treasurer or designate and shall be submitted after substantial performance of the Construction Contract as defined in the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, including successor legislation.
- c) Where a Contractor or Sub-contractor has been determined to be in non-compliance with the Fair Wage Schedule for a second or subsequent time within a five (5) year period from the date of the first determination of non-compliance by the City's Manager, Purchasing Services or designate, the City, may:
 - i. Refuse to accept bids, quotations or proposals from that Contractor on City Construction Contracts, for a period of two (2) years, save and except any Construction Contract the Contractor may currently have with the City.
 - ii. Not allow that Sub-contractor to perform any construction work on any City Construction Contract, for a period of two (2) years, save and except any Construction Contract on which the Sub-contractor may currently be performing construction work.
- d) The City's Manager, Purchasing Services or designate will require a Contractor or Sub-contractor to substitute, at its own cost, any Sub-contractor who, on the first day that the tender for the relevant Construction Contract is available for pick-up, is named on the list of the Consequences of Non-Compliance, and is identified as not being allowed to perform any construction work on a Construction Contract.
- e) The City is not in any way liable, obligated or responsible to any employee, Sub-contractor, Contractor or any other person for the payment of any monies not paid by a Contractor or Sub-contractor in accordance with the Fair Wage Policy or the Fair Wage Schedule, or both, and the City assumes no responsibility to any Employee, Sub-contractor, Contractor or any other person for the administration and enforcement of the Fair Wage Policy or the Fair Wage Schedule, or both.

This policy shall be read with such gender or number or corporate status as the context may require.