

FAIR WAGE POLICY

POLICY STATEMENT

On all Construction Contracts with the City of Hamilton (City), every Contractor and Sub-Contractor shall pay or provide Wages and Benefits to their Employees, in accordance with the Fair Wage Policy and the Fair Wage Schedule of the City.

INTERPRETATION

In this Policy:

- (a) A word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa; and
- (b) A reference to any Act, bylaw, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, bylaw, rule or regulation or provision enacted in substitution therefor or amendment thereof.

DEFINITIONS

Capitalized words and phrases used in this policy shall have the following meanings, unless expressly stated otherwise.

- (a) "Benefits" means a pension plan or Registered Retirement Savings Plans (RRSPs) (or monetary equivalent), major medical plans, dental plans, vacation entitlement and public holiday (as defined in the *Employment Standards Act*) entitlement;
- (b) "Bidder" means any person submitting a bid in response to a Request for Tenders or Request for Proposals.
- (c) "Construction Contract" means any construction work or construction maintenance work awarded to a Contractor with an estimated value of at least one hundred thousand dollars (\$100,000);
- (d) "Contractor" means any person having a Construction Contract with the City but does not include any person that only supplies materials for the Construction Contract;
- (e) "Employees" means those persons employed by the Contractor or Sub-Contractor in positions, classifications, trades or any combination thereof identified in the Fair Wage Schedule, for a Construction Contract with the City;
- (f) "Fair Wage Schedule" means the schedule of Wages for the performance of construction work or construction maintenance work on all City Construction Contracts, as amended from time to time and approved by City Council. The Wage Rates negotiated for both the Residential and Heavy Engineering Sectors, specific to the journeyman carpenter rates, shall

be eighty-five (85%) percent of the base hourly wage rate as set out in the Provincial Collective Agreement.

- (g) "Hours of Work" means the regular hours of work per day and week and shall include a provision for the payment of overtime beyond such regular hours, as per the *Employment Standards Act*.
- (h) "City" means the City of Hamilton, its officers, officials, Employees and agents;
- (i) "City Council" means the Council of the City of Hamilton;
- (j) "Sub-Contractor" means any person performing construction work or construction maintenance work under an agreement with a Contractor having a Construction Contract with the City, or an agreement with another Sub-Contractor under the Contractor, for the performance of construction work or construction maintenance work, but does not include any person that only supplies materials for the Construction Contract;
- (k) "Successful Bidder" means the Bidder whose bid is selected by the City for the award of the Construction Contract in respect of a project or works; and
- (l) "Wages" means the basic hourly rate of pay for each position, classification and trade as per the Fair Wage Schedule.

PROCEDURES

1.
 - (a) The Executive Director of the Human Resources Division or designate will prepare and review the Fair Wage Schedule from time to time and recommend to the appropriate Standing Committee of Council those amendments to the Fair Wage Schedule which are required to reflect the prevailing Wages in the construction industry in the geographical area of the City.
 - (b) The Manager of Purchasing or designate will review the Fair Wage Policy from time to time and recommend to the appropriate Standing Committee of Council any required amendments to the Fair Wage Policy.
 - (c) The Manager of Purchasing for the City or designate will co-ordinate the preparation of an annual report for the appropriate Standing Committee of Council regarding complaints investigated and resulting audits performed pursuant to the Fair Wage Policy.
2. The Manager of Purchasing or designate shall notify every person bidding on City Construction Contracts of the then current Fair Wage Policy and Fair Wage Schedule and shall provide copies of the same to the Bidders, upon request. The Contractor and its Sub-Contractor shall not be responsible for any Fair Wage Schedule rate increases which occur after the closing of the Request for Tenders or Request for Proposals for the City Construction Contract on which the Contractor is the Successful Bidder.

3. Prior to initiating any work on a Construction Contract, the Contractor shall provide to the City, in a form acceptable to the Manager of Purchasing or designate, a signed written acknowledgement that the Fair Wage Policy and Fair Wage Schedule applies to the Construction Contract that the Contractor has been awarded, and will comply with the Fair Wage Policy and Fair Wage Schedule.
4. For all Construction Contracts with the City, the Contractor shall provide to the City, in a form acceptable to the General Manager of Public Works or designate, a statutory declaration confirming that the Contractor and its Sub-Contractor are in compliance with the Fair Wage Policy and the Fair Wage Schedule. This sworn statement shall be provided to the City after substantial performance of the Construction Contract (as defined in the Construction Lien Act of Ontario) and prior to release of the holdback. The City reserves the right to not release any holdback on a Construction Contract until such Contractor's sworn statement of compliance is received and deemed to be satisfactory by the General Manger of Public Works or designate.
5.
 - (a) 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.
 - (b) 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.
6. Any person who has an objection to the administration of the Fair Wage Policy or the Fair Wage Schedule, or both, may make a written request to appear and to make submissions before the appropriate Standing Committee of Council and such Committee may, in its sole discretion, grant or refuse such request.

POSTING

A copy of the Fair Wage Policy, Fair Wage Schedule and telephone number shall be made prominent by posting the policy and schedule at every City Construction Contract site or made available via an alternate method as approved in writing by the Manager of Purchasing or designate.

RECORDS

1.
 - (a) The Contractor must keep records of the names, addresses, Wages paid, Benefits paid or provided and hours worked for all of its Employees.
 - (b) The Contractor shall make these records available for inspection by the City upon request by the City.

2. The Contractor shall, in any agreement with a Sub-Contractor, require the Sub-Contractor to,
 - (a) keep records of the names, addresses, Wages paid, Benefits paid or provided and hours worked for all of its Employees;
 - (b) make these records available for inspection by the City upon request by the City; and
 - (c) require its Sub-Contractor to assume the same obligations in relation to their own Employees.
3. Where the Manager of Purchasing or designate has determined that a Contractor or Sub-Contractor is in non-compliance with this Fair Wage Policy or the Fair Wage Schedule, such Contractor or Sub-Contractor will be required to separate and provide, to the Manager of Purchasing or designate, its records pertaining to the Construction Contract or work for which it has been found to be in non-compliance.

The Contractor or Sub-Contractor shall be required to provide the said records within thirty (30) calendar days of the date that the Manager of Purchasing or designate provides notice of such requirement to the Contractor or Sub-Contractor.

Failure to provide these records as required herein may result in the Contractor or Sub-Contractor being subject to the CONSEQUENCES OF NON-COMPLIANCE provisions of this Fair Wage Policy.

AD HOC FAIR WAGE POLICY COMMITTEE

1. The City shall establish an ad hoc Fair Wage Policy Committee to identify issues, and provide a forum for consultation regarding the implementation and administration of the Fair Wage Policy and Fair Wage Schedule.
2. The Committee shall meet on an as required basis.
3. The Committee shall be comprised, as a minimum, the following members:
 - (a) Director of Financial Services or designate
 - (b) Executive Directive of Human Resources Department or designate
 - (c) a representative of a construction industry association

COMPLAINTS

1. Any person may submit a complaint to the City, alleging non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both, by any Contractor or Sub-Contractor performing construction work on a City Construction Contract. All complaints must be submitted in writing, to the Manager of Purchasing or designate. The "Fair Wage Complaint Form" may be completed for this purpose. The complaint may be initiated at any time during the Construction Contract but shall be received by the City no later than fifteen (15) days following substantial performance of the

- (a) relevant City Construction Contract where a complaint is being made against a Contractor; or
 - (b) relevant Sub-Contractor to a City Construction Contract where a complaint is being made against a Sub-Contractor.
2. Upon receipt of a complaint, the Manager of Purchasing or designate will conduct an initial review of the complaint submitted and advise the initiator of the complaint what the likely cost of an investigation will be. The initiator will confirm to the City whether or not they would like to proceed with the complaint. The City shall take such action as it deems is necessary to determine whether the Contractor and/or Sub-Contractor involved or named in the complaint is in compliance with the Fair Wage Policy and the Fair Wage Schedule. Any action deemed necessary by the City shall be commenced within thirty (30) calendar days of receipt of a completed "Fair Wage Complaint Form" by the Manager of Purchasing or designate.
3.
 - (a) The Manager of Purchasing or designate shall inform the initiator and any Contractor or Sub-Contractor involved or named in the complaint, of the results of the City determination of Contractor's and/or Sub-Contractor's compliance or non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both.
 - (b) Whenever a complaint is initiated by a person other than an individual employee of the Contractor or Sub-Contractor involved or named in the complaint, and said Contractor and/or Sub-Contractor is found to be in compliance with the Fair Wage Policy or the Fair Wage Schedule, or both, with respect to the complaint submitted, the City costs of inspection, audits or other action deemed necessary regarding such complaint shall be assessed against the initiator.
4. The City shall make every effort to safeguard the confidentiality of each initiator's identity. However, this information is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

INSPECTION AND AUDITS

The City retains the right to inspect and audit the records (as referred to in the RECORDS section of this Fair Wage Policy) of the Contractor and/or Sub-Contractor at any time during the period of the Construction Contract and at any time thereafter as deemed by the City. The Contractor shall supply certified or original copies of any such records whenever requested by the City.

COMPLIANCE

1. A Contractor and/or Sub-Contractor shall pay to its Employees wages equal to or greater than the amount set out in the Fair Wage Schedule. The job classification of the Fair Wage Schedule of each Employee will be based on the duties performed by that Employee on the City Construction Contract.
2. A Contractor and/or Sub-Contractor shall be in compliance with the Benefits requirements of the Fair Wage Policy when the Contractor and/or Sub-contractor:
 - A. (i) Provides to its employee a vacation and public holiday entitlement which meets the minimum requirements of the *Employment Standards Act*, 2000, S.O., c41.
or
 - (ii) Pays to its employees, in addition to the wages as set out in the Fair Wage Schedule, a vacation and public holiday entitlement which meets the minimum requirements of the *Employment Standards Act*.
and
 - B.(i) Provides to its employees Benefits (annual or other bonuses and profit sharing will not be considered an equivalent).
or
 - (ii) Provides one or more Benefit that is equal to a minimum of twenty per cent (20%) of the Wages for the particular classification, or alternatively, provides one or more Benefits in combination with pay/percentage in lieu of Benefits that is equal to twenty per cent (20%) of the Wages, for the particular classification.
or
 - (iii) Pays to its employees, in addition to the Wages, an amount equal to or greater than twenty per cent (20%) of the Wages for the particular classification.
3. A Contractor or Sub-Contractor shall be in compliance with the Hours of Work requirements of the Fair Wage Policy when the Contractor or Sub-Contractor provides to its Employees overtime pay for those hours worked in excess of the regular daily and weekly Hours of Work, at an rate not less than one and one half times the Wages. Notwithstanding that a Contractor or Sub-Contractor pays a wage rate in excess of the Wages, the Contractor or Sub-Contractor shall not, in computing overtime pay for their Employee, set off against such overtime pay any part of the Wages earned by the employee in respect of their regular work period.

CONSEQUENCES OF NON-COMPLIANCE

1. The Manager of Purchasing or designate upon determining that a Contractor or Sub-Contractor is in non-compliance of the Fair Wage Policy or the Fair Wage Schedule, or both:
 - (a) shall advise the Contractor or Sub-Contractor, in writing, that it has been determined that the Contractor or Sub-Contractor is in non-compliance and that the Contractor or Sub-Contractor is required to rectify these non-compliance(s) and provide written proof of the same, in a form satisfactory to the City, within ten (10) business days;

and
 - (b) may withhold the amount of funds by which the Contractor or Sub-Contractor has been determined to be in non-compliance from any payment or payments (as appropriate) owed by the City to the Contractor until such time as the Contractor or Sub-Contractor complies or may take any other remedies that are otherwise available at law or in equity.

and
 - (c) shall assess the cost of the City inspection, audit or other action as deemed necessary by the City, resulting in the determination of non-compliance of the Contractor and/or Sub-Contractor and may deduct such costs from any payment or payments (as appropriate) owed by the City to the Contractor or may take any other remedies that are otherwise available at law or in equity..
2. 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 Manager of Purchasing or designate may require such Contractor or Sub-Contractor to submit an accountant's report which verifies the Contractors and/or Sub-Contractor compliance to the Fair Wage Policy and Fair Wage Schedule on the following three (3) City Construction Contracts to which the Contractor or Sub-Contractor is awarded. Any costs associated with providing this accountant's report shall be borne solely by the Contractor and/or Sub-Contractor. Such accountant's report shall be in a form satisfactory to the Manager of Purchasing or designate and shall be submitted after substantial performance (as defined in the Construction Lien Act) of the Construction Contract and prior to the release of the holdback.

The City reserves the right to treat a first time offender as a repeat offender.

3. Where a Contractor or Sub-Contractor has been determined to be in non-compliance with the Fair Wage Policy and/or 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 Manager of Purchasing or designate, the City, as approved by City Council, may:

- (a) refuse to accept any bid, quotation or proposal from such Contractor on any City contracts, for a period of two (2) years from the date of City Council approval, save and except any Construction Contract the Contractor may currently have with the City.
 - (b) not allow the Contractor or Sub-Contractor to act in the capacity of a Sub-Contractor to perform any work on any City Construction Contract, for a period of two (2) years from the date of City Council approval, save and except any contract on which the Sub-Contractor may currently be performing construction work. In instances where City Council approval has been obtained, and the period of two (2) years from the date of approval has not lapsed, the Manager of Purchasing or designate will require a Contractor or Sub-Contractor to substitute, at its own cost, any Sub-Contractor who has been determined to be in non-compliance with the Fair Wage Policy and/or Fair Wage Schedule
4. The Manager of Purchasing or designate shall, upon request, make available a list of all Contractors and Sub-Contractors who have been determined to be in non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both and are subject to restrictions in accordance with Items 2 and 3 of the CONSEQUENCES OF NON-COMPLIANCE.
5. 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 such 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.