



STAFF REPORT ACTION REQUIRED

Review of Implementation/Administration of Fair Wage Policy

Date:	March 22, 2007
To:	Government Management Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

This report examines the implementation and administration of the Fair Wage Policy (the Policy) by the Fair Wage Office.

The review conducted by Internal Audit found that the Fair Wage requirements are being applied in accordance with the Council approved Policy. The review did however note a lack of clarity in certain areas of the Policy, which may create the perception that the Policy is not being applied appropriately.

This report has identified areas where the City's Policy and related procedures can be further enhanced with respect to their clarity, consistency, transparency and fairness so as to minimize potential disputes.

RECOMMENDATIONS

It is recommended by the Director, Internal Audit that the Manager, Fair Wage Office:

1. in consultation with the Director, Purchasing and Materials Management Division ensure that each call document issued by the City, clearly indicates the appropriate fair wage schedule(s) that apply to the specific contract;
2. develop internal guidelines and criteria to identify cases in which a fair wage violation may not warrant a recommendation of disqualification of a contractor;
and

3. in consultation with the City Solicitor, review the Policy and report back to the Government Management Committee by the third quarter of 2007 on proposed amendments to the Policy, including the disqualification provisions contained in the current Policy.

Financial Impact

There are no financial implications resulting from this report.

DECISION HISTORY

The Government Management Committee formerly the General Government Committee at its meeting on January 25, 2007 in considering a report from the Manager, Fair Wage Office entitled “Fair Wage Policy Disqualification: OJCR Construction Ltd.” (January 8, 2007) made the following motion:

“requested that the City Manager conduct an internal audit and review of the implementation of the Fair Wage Policy and report back to the Committee.”

ISSUE BACKGROUND

This report responds to a request from the Government Management Committee to perform a review of the implementation and administration of the Policy. The focus of the review was to determine whether:

1. the requirements of the Policy are being applied correctly and consistently;
2. the authorities and responsibilities outlined in the Policy are being applied appropriately; and
3. the issues and recommendations identified in the Auditor General’s report entitled “Fair Wage Policy and Procedures Review” dated January 31, 2001 have been addressed adequately.

In performing our review, we conducted interviews with staff of the Fair Wage Office and City Legal, reviewed applicable policies and procedures and examined investigation files maintained by the Fair Wage Office of reviews conducted by the Office during 2006.

The results of our review, including observations, conclusions and recommendations are outlined below.

COMMENTS

Application of Requirements of the Policy

The Fair Wage Office is responsible for investigating and inspecting the records of contractors engaged in the performance of City contracts to ensure compliance with the Policy.

In 2006, the Fair Wage Office conducted 30 investigations pertaining to fair wage issues, of which 17 were in response to complaints received and 13 were initiated by the Fair Wage Office as part of their on-going pro-active monitoring of compliance with the Policy.

Our review found that the results and conclusions of the investigations performed were adequately documented and properly supported, and that the Fair Wage requirements are being applied in accordance with the City's current Policy.

We identified three areas where the City's Fair Wage policies and practices can be further enhanced with respect to its clarity, transparency, consistency and fairness, so as to minimize disputes. These areas and recommended actions are noted below.

(i) Disclosure of Applicable Fair Wage Schedules

The Policy requires contractors of the City to pay a pre-determined wage to their non-unionized workers. These wages are set out in schedules attached to the Policy. The schedules outline trade classifications, minimum hourly wages, hours of work and benefits paid to various classes of workers. There is a separate schedule for each of the following categories:

- General Classification work
- Industrial, Commercial, Institutional (I.C.I.) work
- Heavy Construction work
- Road Building work
- Sewer and Water Main Construction work
- Utility work

The Policy is included in all call documents issued by the City and contractors are required to sign back on a form an acknowledgement of their obligations to adhere to the Policy as a condition of the award of a contract.

There is however, no information contained on either the call document or the Fair Wage acknowledgement form indicating which Fair Wage schedule(s) ought to be used for a particular contract.

In most cases, based on the description of work outlined in the call document, it is evident as to which fair wage schedule(s) should apply. There could be cases where it may not be apparent as to which schedule ought to be used in determining compliance with the Policy, which may result in potential disputes between a contractor and the Fair Wage Office.

To enhance the transparency of the process and to minimize potential disputes, the call documents issued by the City should explicitly indicate the related fair wage schedule(s) that is applicable to a particular contract.

(ii) *Discretion of the Fair Wage Office*

Section A9 of the Policy states:

“When a contractor or any sub-contractor is found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years inclusive, the Manager, Fair Wage Office must report and **may** recommend to the Administration Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for a period of two years inclusive.”

The word “may” in the above statement indicates that the Fair Wage Office has discretion in determining whether a contractor is in violation and be disqualified.

There is a tendency on the part of the Fair Wage Office to interpret the policy too strictly. This is mostly due to the fact that the current Policy provides no guidance to staff as to how and when such discretion should be applied.

It is currently the practice of the Fair Wage Office to deem any wage discrepancy no matter how minimal to be a violation of the Policy. Our review noted two separate instances in which firms were declared to be in violation for relatively minor wage discrepancies. The amounts in our opinion are immaterial and should be considered outside the threshold of disqualification.

It should be noted that the above noted violations did not result in a disqualification of the firms as it was the first violation. The Fair Wage Office did provide written notification advising these firms that their next violation would result in them being disqualified from conducting business with the City for a period of 2 years.

To ensure that Fair Wage irregularities are treated consistently, internal guidelines and procedures need to be developed outlining mitigating circumstances/factors that Fair Wage Office staff should consider in determining situations where a Fair Wage violation may not warrant recommending the disqualification of a contractor. Such factors may include: the magnitude of the total wage discrepancy; number of workers impacted; any corrective action taken on the part of the contractor; etc.

(iii) Status of Contractors Subject to a Pending Disqualification

The Policy provides the Manager, Fair Wage Office the authority to recommend that a contractor be disqualified from doing business with the City for a period of two years in situations where a contractor has violated the Policy twice within a three year period.

The final decision with respect to the disqualification of a contractor is up to City Council and this decision would require Council and Government Management Committee approval.

The Government Management Committee does not meet every month and as a result there may be a gap between the time when the Fair Wage Office has made its recommendation to disqualify a contractor and Council meets to consider the recommendation. This time lag creates uncertainty with respect to the contractor's eligibility to bid on City contracts. The Policy does not specifically address this situation.

To enhance the transparency of the process and to ensure that the City has consistent treatment for the acceptance of bids from contractors who are facing disqualification, the Policy needs to clearly specify the eligibility status of a contractor in bidding for City contracts while awaiting the results of Council's decision pertaining to their pending disqualification.

The Manager, Fair Wage Office needs to review the Policy in this regard, with specific attention to the disqualification provisions.

Application of the Authorities and Responsibilities Outlined in the Policy

The Policy outlines the employment conditions and wage rates which contractors must adhere to when doing business with the City. In addition, the Policy specifies the role and authority of the Fair Wage Office in enforcing and ensuring compliance.

Our review noted that actions taken by the Fair Wage Office in response to violations of the Policy are consistent with the authority granted to the Manager, Fair Wage Office as outlined in the Council approved Policy, which includes:

- Recommending that the next lowest bidder be awarded the contract;
- Withholding progress payments from the contractor and paying the workers directly for any back-wages owing to them; and
- Recommending disqualification of a contractor from doing business with the City for a period of 2 years.

In addition, it is the practice of the Fair Wage Office to consult with the City's Legal Services Division prior to exercising its authority and taking action on violations of the Policy, which ensures that any risks identified is mitigated by legal advice.

Action Taken on Auditor General Recommendations

The Auditor General conducted a review of the operations of the Fair Wage Office in January 2001, and made several recommendations to strengthen the enforcement of the Policy.

Our review noted that the recommendations made by the Auditor General have been implemented by the Fair Wage Office. The following action has been taken by the Fair Wage Office in response to the Auditor General's report:

- Created a filing system to track firms doing business with the City
- Incorporated a clause in the Policy outlining the City's rights and authority with respect to auditing payroll records of suppliers
- Increased the administration fee charged to suppliers relating to fair wage violations
- Established a mechanism to hold back funds from the contractor's payments to be used to pay for any back wages owing to workers
- Implemented a formal process to disqualify a contractor with a poor compliance record from future contracts
- Established a protocol to report all policy non-compliance incidents to Committee and Council
- Developed an operating/training manual to be used by the Fair Wage Office to guide staff in conducting payroll audits and determining whether a supplier meets Fair Wage requirements

In addition to the above actions, the Fair Wage Office has established a number of practices to better ensure awareness and compliance with the Policy. These initiatives include:

- an awareness and education campaign to communicate the Policy to contractors
- establishment of a web site that provides a guide to the City's Policy
- publication of the Policy in construction trade publications
- development of a kit for contractors and workers that includes posters, brochures and other information on contractor obligations and worker rights under the Policy

CONTACT

Ruvani Shaubel
Director, Internal Audit
Telephone: (416) 392-8034
Email: rshaubel@toronto.ca

Gifford Chu
Manager, Internal Audit
Telephone: (416) 397-0301
Email: gchu@toronto.ca

SIGNATURE

Shirley Hoy, City Manager