

## **Revisions to the Fair Wage Policy**

<b>Date:</b>	September 17, 2007
<b>To:</b>	Government Management
<b>From:</b>	Manager, Fair Wage Office
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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This report responds to a request by the Government Management Committee to review the Fair Wage Policy (the “Policy”) and propose revisions to the Policy that would enhance the clarity and understanding of the Policy by Contractors, employees and City Staff. This report also responds to a request by Council to develop internal guidelines to assist the Fair Wage Office when making a recommendation to disqualify or not to disqualify a Contractor who has violated the Policy twice in three years.

This report has identified a number of revisions that can be made to the Policy and a few amendments to the Municipal Code Chapter 67 – Fair Wage that will enhance the Policy’s clarity. These revisions and amendments include making it clearer how the Policy operates, how Apprentices and Apprenticeships are dealt with under the Policy, what responsibilities Contractors and the Manager, Fair Wage Office have under the Policy, and what penalty provisions exist within the Policy. This report also sets out the internal guidelines the Manager, Fair Wage Office, will use to address circumstances of disqualification of a Contractor in the application of the Fair Wage Policy.

### **RECOMMENDATIONS**

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**The Manager, Fair Wage Office recommends that:**

1. Council adopt the revisions to Municipal Code Chapter 67, Schedule A – the Fair Wage Policy as set out in Appendix “A”.
2. Council adopt the amendments to Municipal Code Chapter 67- Fair Wage as set out in Appendix “B”.

3. Council adopt the revisions to the Purchasing and Materials Management Divisions's Procurement Processes Policy as set out in Appendix "C".
4. Council approve the new criteria, attached as Appendix "D", to be used by the Manager, Fair Wage Office, in making a determination for disqualification of a company that has violated the Fair Wage Policy twice within a three year period.
5. the City Solicitor be directed to submit the necessary bills to Council to implement the above noted recommendations.

## **FINANCIAL IMPACT**

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There are no financial implications resulting from this report.

## **DECISION HISTORY**

At its meeting on April 12, 2007, the Government Management Committee in consideration of a staff report entitled "Review of Implementation/Administration of Fair Wage Policy" directed the Manager of the Fair Wage Office to:

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.

Link to "Review of Implementation/Administration of Fair Wage Policy" dated March 22, 2007

<http://www.toronto.ca/legdocs/mmis/2007/gm/bgrd/backgroundfile-2652.pdf>

At its meeting on May 23, 24 and 25, 2007 City Council in consideration of a staff report to the Government Management Committee "Fair Wage Policy Disqualification: OJCR Construction Ltd." (January 8, 2007), adopted the following motion:

The Manager, Fair Wage Office, be requested to report to the July 6, 2007 meeting of the Government Management Committee on new and improved criteria to address the issues for disqualification provisions under the Fair Wage Policy.

Link to "Fair Wage Policy Disqualification: OJCR Construction Ltd." (January 8, 2007)

<http://www.toronto.ca/legdocs/mmis/2007/gm/bgrd/backgroundfile-2653.pdf>

Link to City Council Decision Document for May 23, 24 and 25, 2007

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-05-23-cc08-dd.pdf>

The Fair Wage Policy was last revised in June, 2003 by Administration Committee Report No. 5, Clause No. 2.

## ISSUE BACKGROUND

Internal Audit's report of March 22, 2007 to the Government Management Committee, reviewed the administration and implementation of the Fair Wage Policy (herein referred to as the "Policy"). That report found that the Fair Wage requirements are being enforced in accordance with the Council approved Policy. However, the report noted a lack of clarity on certain aspects of the Policy, which may create the perception that the Policy is not being applied appropriately.

The report also noted that with respect to the Manager, Fair Wage Office's application of the Policy disqualification provision "[t]here 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 current Policy provides no guidance to staff as to how and when such discretion should be applied."

This report is designed to address the concerns raised in the Internal Audit Report and recommend ways to enhance the Policy.

## COMMENTS

The review of the Policy, undertaken by the Manager, Fair Wage Office and the City Solicitor, identified a number of changes that could be made to the Policy, and one change to the Fair Wage Chapter of the Municipal Code. These changes would provide clarification on how the Policy is applied and the duties and responsibilities imposed on the Contractor, Subcontractor and the Fair Wage Office. The changes can be broken down into two groups: minor changes and substantive changes.

### Minor Changes to the Fair Wage Bylaw and the Fair Wage Policy

A number of minor changes are recommended to the Policy as follows:

1. revised definition for "Contractors", "Subcontractors" and inclusion of a definition for "Procurement Call Document";
2. Moving existing provisions to provide for a more logical flow, including:
  - a. §67- A5 City of Toronto Council references becomes §67- A2;
  - b. §67-A2. Purpose and history of Fair Wage Policy becomes §67- A3;
  - c. §67-A3. Intent of Fair Wage Policy becomes §67-A4;
  - d. §67-A6. Application becomes §67-A5; and
  - e. §67-A4. Establishment of rates becomes §67-A6;
3. clarified the responsibilities of Contractors and Sub-Contractors;
4. clarified the responsibilities of the Manager, Fair Wage Office by indicating that his duties must be fulfilled under Chapter 67 – Fair Wage;
5. clarified when disqualification, if approved by Council, would begin; and
6. moving a provision related to the Manager's ability to review records of a Contractor, six months after substantial completion of the Contract from the Policy to the Chapter 67 – Fair Wage.

These changes are reasonable and provide more practical clarity to the Policy and its implementation.

### Substantive Changes to the Fair Wage Policy

The proposed revisions to the Policy will provide clarity on the Manager's responsibilities in the Procurement Process and how Apprentices and Apprenticeship Programs are dealt with.

Both the Policy and the Fair Wage Schedules have always reflected the City's desire for Contractors to use Apprentices under approved Apprenticeship Programs. However, the Policy was silent on who was considered to be an Apprentice, what qualified as an Apprenticeship program and whether each Fair Wage Schedule contained provisions for Apprentices. By adding definitions of Apprentices and Apprenticeship Programs, the Policy becomes clearer to all companies who do business with the City.

Further, the Policy's provision on the establishment of Fair Wage Rates is clarified by having wages for Apprentices and Apprenticeship Programs being discussed with the Industry to ensure that the Policy reflects Industry practice.

The responsibility of the Fair Wage Office to enforce infractions under the *Occupational Health and Safety Act* and to ensure that Contractors or Subcontractors do not engage in discriminatory practices towards workers has been removed from the Fair Wage Policy. The Fair Wage Office does not currently have the resources to enforce these types of provisions, nor do these types of provisions fit in with the intent of the Fair Wage Policy to ensure that an adequate level of wages is paid to all workers employed under a City contract. This does not mean that the Fair Wage Office can not report any suspected infractions of the *Occupational Health and Safety Act* or any discrimination to the appropriate departments or officials to deal with the matter.

In the revisions, the responsibilities of the Manager, Fair Wage Office are revised to set out more clearly the role of the Manager in the City's procurement process. In past practices, the Fair Wage Policy was attached to all procurement call documents that were released by the City. After the closing of a particular procurement call document, the Manager would be requested by the Purchasing and Materials Management Division ("PMMD") to send a declaration form to the three lowest bidders. The declaration form would ask the bidder to agree to abide by the Fair Wage Policy and Fair Wage Schedules. The declaration form would also ask the bidder to provide wage information on the types of job classifications they employed. This declaration form would then be signed and sent back to the Fair Wage Office. The Manager would review, and would indicate to PMMD that the lowest bidder was in compliance.

With the revisions, the Manager will review the procurement call document before it is released by PMMD and indicate which Fair Wage Schedule(s) are applicable to that type of work. The Fair Wage Schedule(s), as indicated, would then be noted clearly in the procurement call document and would also be attached. This will provide clarity to

bidders with respect to how the Fair Wage is applied to the contract. The revisions will also clearly set out the current practice of sending out a declaration form after the closing of a procurement call document.

Finally, the Policy clarifies the penalties for violations or non-compliance of the Policy. Currently, upon review of the three lowest bidders on a tender, the Manager may recommend the next lowest bidder to PMMD in three specific situations:

1. An investigation is underway and the firm does not co-operate in providing timely information requested by the Manager, Fair Wage Office in fulfilling his or her responsibilities under the Fair Wage Policy and the Labour Trades Contractual Obligations in the Construction Industry *and*, operationally, the provision of goods and/or services cannot be delayed;
2. The low bidder, or one of its subcontractors, had been found in violation of the Policy and had not paid restitution to its workers; and
3. The low bidder, or one of its subcontractors, is unable to comply with the City's Labour Trade Obligations.

There is one other situation in which the Manager should have the ability to recommend the next lowest bidder:

1. When the low bidder submits the declaration form, discussed above, and indicates that the bidder will pay less than the appropriate Fair Wage rate.

To implement the Manager's recommendation on a bidder, however, the Director of PMMD would have to report through a standing committee and/or Council for authority to award to the next lowest bidder. Revising PMMD's Procurement Processes Policy by adding the noted situations to the Bid/Proposal Irregularities will allow the Director to follow the Fair Wage Office's recommendation and award to the next lowest bidder without going to a standing committee and/or Council, as the bidder would not be the lowest compliant bidder. This will ensure that there are no delays in awarding contracts that deal with goods or services that the City requires right away, that no contract will be awarded to a Contractor who refuses to pay restitution or to cooperate with the Fair Wage Office and will send a message to firms who bid on City work about the importance of the Policy. For greater clarity, the Policy will also be revised to indicate that a lack of cooperation by the Contractor to provide timely information will be demonstrated by not responding to a request for information from the Fair Wage Office within 5 business days.

Appendix "A" sets out the proposed Fair Wage Policy incorporating the minor and substantive Policy changes discussed above. All new additions or revisions to the Policy have been italicized in Appendix "A" except for simply moving existing provisions around. Appendix "B" sets out an amendment to Chapter 67 – Fair Wage to reflect a

minor change. Appendix “C” sets out the revisions to PMMD’s Procurement Processes Policy. The Director of PMMD agrees with these recommended changes.

#### Factors to be used in the Disqualification determination by the Fair Wage Office

The Policy’s disqualification provision sets out that when a Contractor or Subcontractor has been found in non-compliance with the Policy in two separate instances over a period of three years, the Manager *must* report and *may* recommend to the Government Management Committee that the Contractor or Subcontractor be disqualified for a period of two years (emphasis added).

To date, the Manager has only recommended disqualification of three Contractors and only two of the three Contractors were then disqualified by Council. Internal Audit, in its report noted above, stated that:

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 Fair Wage 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.

While this approach has meant that every violation has been treated equally, it may lead to unreasonable recommendations by the Fair Wage Office to disqualify a Contractor who may have violated the Policy twice by very low dollar amounts.

To help address this, the Manager, Fair Wage Office, in discussions with Internal Audit and the City Solicitor, has prepared Internal Guidelines and Factors for the staff of the Fair Wage Office to use, attached as Appendix “D”.

The guidelines will assist the Manager, Fair Wage Office in making judicious and fair decisions with respect to making a recommendation to disqualify or not to disqualify a Contractor, based on the facts of each individual case. The guidelines will also assist the Manager in writing his report to the Government Management Committee as the report will have to be clear as to the reasons that have led the Manager to make the particular recommendations.

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## **SIGNATURE**

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Brigitte Hohn  
Executive Director, Human Resources

## **ATTACHMENTS**

- Appendix “A” – Proposed revisions to Municipal Code, Chapter 67, Schedule “A” Fair Wage Policy
- Appendix “B” – Proposed amendments to Municipal Code, Chapter 67 - Fair Wage
- Appendix “C” – Proposed revisions to Purchasing & Materials Management Division’s Procurement Processes Policy
- Appendix “D” – Fair Wage Office Internal Guidelines for the Disqualification Provision of the Fair Wage Policy