

Revisions to the Fair Wage Policy Report

Appendix “A”

Proposed revisions to Municipal Code, Chapter 67, Schedule “A” Fair Wage Policy

1. Schedule A of Chapter 67 is replaced with the following (italicized items are either revisions of existing items or new additions):

§ 67-A1. Definitions.

As used in this Fair Wage Policy, the following terms have the meanings indicated:

APPRENTICE – An individual who has entered into a registered training agreement under which the individual is to receive workplace-based training in a trade, other occupations or skill set as part of an apprenticeship program approved by the Ontario Ministry of Education and Training.

APPRENTICESHIP PROGRAM – A program recognized by Ontario Ministry of Training, Colleges and Universities which provides for the qualification, recruitment, selection, employment, and training on the job. Apprenticeship and training leads to Ontario Certification of Qualification and Apprenticeship for journeyman status, which is recognized by employer and employee representatives of industry.

CONTRACT — A legal, business agreement between the City of Toronto and the contractor to perform work or services or to provide materials and supplies.

CONTRACTORS – Any person or business entity with whom the City enters into a contract with to perform the work or provide services.

FAIR WAGE SCHEDULE — Stipulated rates of pay for different classifications of work produced and obtainable from the Fair Wage and Labour Trades Office.

FIELD WORK — All work in performance of the contract that is not shop work.

FRINGE BENEFITS — Includes such benefits as company pension plans, extended health care benefits, dental and prescription plans, etc. It does not include legislated payroll deductions such as C.P.P., E.H.T., W.S.I.B. or E.I.C.

NON-COMPLIANCE — The occurrence of any of the following conditions:

- A. Contractor fails to co-operate with 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.

B. Sub-contractor fails to co-operate with 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.

C. Contractor or sub-contractor has been found in violation of the Fair Wage Policy (non-compliance applies to both contractor and sub-contractor).

D. Contractor has been found in violation of the Labour Trades Contractual Obligations in the Construction Industry.

E. Sub-contractor has been found in violation of the Labour Trades Contractual Obligations in the Construction Industry.

PROCUREMENT CALL DOCUMENT – Includes a Tender, Request for Quotations and a Request for Proposals as issued by the Purchasing and Materials Management Division, and as defined in Chapter 195 of the Toronto Municipal Code.

SHOP WORK — Any work in performance of the contract that is done in or at any factory, foundry, shop or place of manufacture not located at or upon the site of the work, and not operated solely for the purpose of the work.

SUB-CONTRACTOR — Any person or business entity not contracting with or employed directly by the City but who supplies services or materials to the improvement under an agreement with the contractor or under the contract with another sub-contractor.

WAGES or RATE OF WAGES — Includes the hourly rate, vacation and holiday pay and any applicable amount for fringe benefits shown in the current Fair Wage Schedule, to be paid to the worker as part of the worker's wages or for the worker's benefit provided for in any collective agreement applicable to that worker.

WORKERS — Includes mechanics, workers, labourers, owners and drivers of a truck or other vehicle employed in the execution of the contract by the contractor or by any sub-contractor under them and clerical staff.

§ 67-A2. City of Toronto Council references.

A. City of Toronto Council, by the adoption of Corporate Services Committee Report No. 13, Clause No. 1, as amended, at its meeting of October 1 and 2, 1998, directed that the Fair Wage Policy of the former Municipality of Metropolitan Toronto be adopted for all City departments, agencies, boards and commissions and replace all existing fair wage policies of the former local municipalities.

B. City of Toronto Council, by the adoption of Administration Committee Report No. 7, Clause No. 1, as amended, at its meeting of June 18, 19 and 20, 2002, directed that certain changes be made to the Fair Wage Policy and Procedures.

C. City of Toronto Council, by the adoption of Administration Committee Report No. 5, Clause No. 2, at its meeting of June 24, 25 and 26, 2003, directed that certain further changes be made to the Fair Wage Policy and Procedures, and to the Fair Wage Rate Schedule.

D. City of Toronto Council, by the adoption of Government Management Committee Item No. X, at its meeting of X, 2007, directed that certain changes be made to the Fair Wage Policy.

§ 67-A3. Purpose and history of Fair Wage Policy.

A. The Fair Wage Policy has as a central principle the prohibition of the City doing business with contractors, sub-contractors and suppliers who discriminate against their workers.

B. Originally implemented in 1893 to ensure that contractors for the City paid their workers the union rates or, for non-union workers, the prevailing wages and benefits in their field, the Fair Wage Policy has expanded over the years to other non-construction classifications such as clerical workers.

C. The policy also requires compliance with acceptable number of working hours and conditions of work in order to protect the rights of workers.

§ 67-A4. Intent of Fair Wage Policy.

The intent of the Fair Wage Policy can be summarized as follows:

A. To produce stable labour relations with minimal disruption;

B. To compromise between the wage differentials of organized and unorganized labour;

C. To create a level playing field in competitions for City work;

D. To protect the public; and

E. To enhance the reputation of the City for ethical and fair business dealings.

§ 67-A5. Application.

- A. The provisions of the Fair Wage Policy apply equally to contractors and all sub-contractors engaged in work for the City of Toronto. It is understood that contractors cannot sub-contract work to any sub-contractor at a rate lower than called for in the Fair Wage Policy.
- B. The fair wage rates do not apply to small businesses, typically those with owner-operators, or partnerships, or principals of companies as long as they undertake the work themselves.
- C. It should be noted that under the above City of Toronto Council reference authorities, the conditions of the Fair Wage Policy cannot be waived, unless authorized by Council to do so.

§ 67-A6. Establishment of rates.

- A. Establishing fair wage rates and schedules are intended to minimize potential conflicts between organized and unorganized labour in the tendering and awarding of City contracts.
- B. Certain designated construction-related rates are based on the lowest rate established by collective bargaining, while the wage rates for other classifications are based on market and industrial surveys in accordance with the prevailing wages for non-union workers in the geographic area.
- C. *The City encourages contractors to hire and train apprentices under approved apprenticeship programs. Apprentices/trainees will be assessed based on Provincial Qualification Apprenticeship Certification Criteria.*
- D. Fair wage rates, *including rates for apprentices*, are established through discussion between the Fair Wage Office and with employee and employer groups and associations (having both union and non-union members). *This discussion will also include appropriate apprenticeship programs for construction-related trades.*
- E. *The proper wage rates to be paid to apprentices/trainees are those specified by a particular industry program in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices and trainees have not been properly registered, or are utilized at the jobsite in excess of the ratio of journeymen permitted under the approved program, they must be paid the applicable schedule of wage rate. The Manager, Fair Wage Office may assess established employee work history as to the appropriate apprentice /trainee level.*
- F. These rates are reviewed by the above-noted groups and are recommended to Council, by the Manager, Fair Wage Office for approval every three years.

§ 67-A7. Contractor and sub-contractor responsibilities.

- A. Contractors will be responsible for any violations or non-compliance issues arising from the engagement of any sub-contractor on City work.
- B. The contractor or sub-contractor shall pay or cause to be paid weekly or biweekly to every worker employed in the execution of the contract wages at the following rates, namely:
- (1) For workers employed in shop work:
 - (a) The union rate of wages in the particular district or locality in which the work is undertaken for any class of work in respect of which there is such union rate; and
 - (b) For any class of work for which there is no such union rate, the rate of wages shall be the rate of wages, as determined by the Manager, Fair Wage Office, prevailing in the particular district or locality in which the work is undertaken.
 - (2) For workers employed in field work:
 - (a) Where the contractor or sub-contractor is in contractual relationship with a union recognized by the Ontario Labour Relations Board as the bargaining agent for the relevant workers, the applicable rate of wages set out in the collective agreement; and
 - (b) Where there is no such contractual relationship, a rate not less than that set out for such work in the Schedule of Wage Rates filed by the Manager, Fair Wage Office, with the City Clerk of the Corporation after being first approved by Toronto Council; and
 - (c) For any class of work for which there is no rate, the rate of wages shall be the rate of wages, as determined by the Manager, Fair Wage Office, prevailing in the particular district or locality in which the work is undertaken.
- C. Workers engaged in clerical office work are to be paid a rate of wages no less than the surveyed standard for each classification of worker for the particular industry at the time of tendering.
- D. The contractor and sub-contractor shall:

(1) At all times keep a list of the names and classifications of all workers employed in the work, the hourly rate and hours worked per day and a record of the amounts paid to each.

(2) From time to time, if demanded by the Manager, Fair Wage Office, furnish a certified copy of all paysheets, lists, records and books relating to the work and keep the originals thereof open at all times for examination by the Manager.

(3) At all times furnish and disclose to the said Manager any other information respecting wages of workers that may be desired by the Manger in connection with the work.

(4) Attach to all accounts rendered for payment of money upon the Contract, a declaration affirming that the requirements of the Fair Wage Policy have been fully complied with.

(5) Display legible copies of this Fair Wage Policy in a prominent position in his or her workshop(s), accessible to all employees.

E. The contractor or sub-contractor shall not compel or permit any worker engaged for the work to work more than the number of hours per day and the number of hours per week set out in the Fair Wage Schedule for the particular type of work involved except in case of emergency, and then only with the written permission of the commissioner or head of the department having charge of the work or the person then acting as such.

§ 67-A8. Responsibilities of Manager, Fair Wage Office.

A. *To fulfil the duties of the Manager, as set out in Chapter 67 of the Toronto Municipal Code, §67-A3.*

B. *In every procurement call to which the Fair Wage Policy applies, the Manager, Fair Wage Office, will determine the applicable Fair Wage Schedules for the work requested in the procurement call, or whether unionized workers need to be utilized for the work requested in the procurement call as per Chapter 67 Schedule B Labour Trades Contractual Obligations in the construction industry.*

C. *Once the applicable Fair Wage Schedule is determined for a specific procurement call, the Manager, Fair Wage Office will provide a copy of the Fair Wage Schedule to Purchasing & Materials Management Department to insert into the procurement document, before the procurement document is issued.*

D. In case of a jurisdictional dispute or dispute as to rate of wages to be paid under the contract or as to the amount to be paid to any worker *or apprentice*, the decision of the Manager, Fair Wage Office, shall be final and binding upon all parties.

E. After the procurement call closes, the Manager, Fair Wage Office, at the request of Purchasing & Materials Management Department, will send a fair wage declaration form to the three lowest bidders, to determine if the bidder will comply with the fair wage policy and fair wage schedules.

§ 67-A9. Penalty provisions.

A. If the contractor or sub-contractor fails to pay any worker wages at the rate called for in § 67-A7, the City may:

(1) Charge an administrative fee not in excess of 15 percent of the balance necessary to make up the amount that should have been paid from the contractor's progress draw or holdback; and

(2) Pay the worker(s) directly for any back-wages owing directly from the contractor's progress draw or holdback.

B. If a tenderer or bidder is found not to comply with the Fair Wage Policy, the Manager may recommend the next lowest bidder for contract award to Purchasing & Materials Management Department in the following circumstances:

(1) On the declaration form discussed in §§ 67-A8E, a contractor or subcontractor does not meet the Fair Wage Schedules.

(2) An investigation is underway and the firm does not co-operate in providing timely information *within 5 business days after being* 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.

(3) A contractor or sub-contractor is in violation of the Fair Wage Policy and has not paid restitution to its workers.

(4) A contractor or sub-contractor is unable to comply with the City of Toronto Labour Trades Contractual Obligations in the construction industry.

§ 67-A10. Disqualification provisions.

A. 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 Government Management Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for a period of two years, inclusive.

B. The disqualification period will start from the day of the decision of Council.

C. After the disqualifying period is over, the said contractor or sub-contractor will be placed on probation for the next year. If another non-compliance violation occurs, the Manager, Fair Wage Office must report and may recommend to the Government Management Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for an indefinite period of time.

D. All non-compliance activities (including firm names) and disqualification statistics will be reported to Council annually. Disqualified firms will be published on the City's Web site.