

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

## **Appendix “D”**

### **Fair Wage Office Internal Guidelines for the Disqualification Provision of the Fair Wage Policy**

#### **Introduction**

These guidelines have been developed to help the Fair Wage Office when dealing with situations in which a Contractor or Subcontractor is being investigated for a violation of the Fair Wage Policy. These guidelines are also to assist the Fair Wage Office in making a recommendation to Council through the relevant standing committee to disqualify or not to disqualify a Contractor or Subcontractor who has been found in violation of the Fair Wage Policy twice in three years.

The Fair Wage Policy is designed to protect employees from being denied the appropriate wage for work done on City contracts. To that end, Contractors or Subcontractors who are found to violate the policy may be subject to disqualification on City contracts. Recommending disqualification of a Contractor or Subcontractor is an action that is not taken lightly by the Fair Wage Office and to assist transparency, these guidelines are designed to help set out factors when the Manager, Fair Wage Office may or may not recommend disqualification. Each case will be dealt with on its own facts.

#### **Procedures of the Fair Wage Office in Investigating a Complaint Against a Contractor**

The Fair Wage Policy requires contractors of the City to pay pre-determined level of wages to all workers. These wages are set out in schedules identifying different construction sectors. The schedules outline trade classifications, minimum hourly wages, hours of work and benefits paid to various classes of workers.

The Policy is included in all call documents issued by the City and, prior to the award of the contract, contractors are required to sign back on a form an acknowledgement of their obligations to adhere to the Policy. The call documents will clearly identify applicable wage schedules.

When the Fair Wage Office receives a complaint against a Contractor for an alleged violation of the Fair Wage Policy, the Fair Wage Office maintains a file on its efforts to investigate the complaint. Much of the work undertaken by the Fair Wage Office in investigating contractor compliance is directed at substantiating payroll statements. This is achieved by reviewing the payroll statements, interviewing the contractor and potentially the employees to verify specific wage rates, vacation pay, hours of work and worker job classification

For clarity purposes, the following procedures are performed by the Fair Wage Office during an investigation. The Fair Wage Office maintains well documented records on each violation by keeping records of:

- written documentation of complaints and any related evidence from those complaints;
- copies of the Tender Document in question;
- copies of the Declaration Form signed by the Contractor agreeing to abide by the Fair Wage Policy and setting out wages to be paid to employees;
- written correspondence with the Contractor with respect to the investigation;
- written notes on the reaction by the Contractor in terms of cooperation;
- written notes on any telephone conversation with the Contractor or with the employees;
- copies of any payroll information collected from the Contractor;
- copies of the payroll review performed by the Fair Wage Office in order to determine if there was a violation;
- written notes on meetings had with the Contractor over the course of the investigation including initial meetings, and any meetings dealing with appeals of the Fair Wage Office's findings; and
- written correspondence on the outcome of the Fair Wage investigation, including what may happen if a second violation were to occur within three years

#### Factors to Consider in Determining the Recommendation for the Disqualification Provision

The following factors will be considered by the Manager, Fair Wage Office in determining whether to recommend disqualification or not of a contractor found to be in violation of the Fair Wage Policy twice in three years:

- What types of non-compliance has the contractor been involved in for the two violations (lack of cooperation and violation of fair wage policy, or just lack of cooperation but no violation, or just violation of the Fair Wage Policy?)
- Did the Contractor cooperate with the Manager, Fair Wage Office's request to investigate complaints

- Did the contractor produce payroll documentation as requested within the specified five business days?
- Did the contractor pay restitution as advised by a specified time?
- Did the Contractor pay restitution to the workers or did the Fair Wage Office have to pay the restitution through holdbacks?
- Did the Contractor attempt to falsify payroll records that can be verified by written evidence from the employees or by City Staff with respect to:
  - hours worked;
  - improper classification of workers as Apprentices;
  - Has the contractor paid the correct rate for bona fide Apprentices
  - Has the contractor paid the correct rate for bona fide trainees?
  - improper headcount of employees
- Did the contractor ever ask questions to ensure they were using the proper schedule?
- Was the amount of any violation of the fair wage schedule minor or significant in nature?
  - How many employees were underpaid and what is the average amount in which each employee was underpaid?
  - Was the violation based on non-payment of fringe benefits or holiday pay?
  - Did the violation appear to be based on a miscalculation such as using the wrong percentage for fringe benefits?
  - Was there a misunderstanding with respect to overtime hours?
- Did the violation (first or second) happen once during the life of a single contract, or did it happen more than once over the life of a single contract?
- Who complained about the conduct of the Contractor?
  - Did complaints come from competitors/unions or from employees directly?
  - Did evidence provided by employees match payroll information provided by the employer?

The facts and circumstances of each individual case will dictate the weight and importance according to each of the above listed factors. Based on the facts and circumstances, the Manager, Fair Wage Office will determine whether to recommend disqualification of the Contractor or not to the Government Management Committee.

#### Notice of Report

Prior to the Manager, Fair Wage Office submitting a report to the Government Management Committee, the contractor or sub-contractor shall be furnished with written notice stating:

1. Whether disqualification is being considered and why based on the factors above;
2. Direct reference to Policy provisions for disqualification as well as to the provisions that the contractor has been in violation of;
3. The specific details of the violation referring to employees involved by name, job classification, dates of violation and amount found due;
4. Reference to the previous violation;
5. Information on the Government Management Meeting which the report will go to; and
6. Status of pending disqualification action.

#### The Report to Government Management Committee

The Report that will be submitted to the Government Management Committee will set out:

1. The history of the Contractor with the Fair Wage Policy including the specifics on the two violations in the three year period
2. The recommendation to disqualify or to not disqualify
3. The reasoning behind either recommendation based on the factors set out above to assist Councillors in understanding why the Manager has recommended that specific course of action

#### Conclusion

The Guidelines above are designed to assist the Manager in making a fair decision when it comes to recommending the disqualification of a Contractor or Subcontractor. The guidelines are also designed to help ensure that the Manager maintains an open and transparent process from investigation to reporting.