



## **FAIR WAGE POLICY FOR ICI CONTRACTS**

### **POLICY STATEMENT**

On all Industrial Commercial Institutional Construction Contracts with the Municipality, every Contractor and Sub-Contractor shall pay or provide wages, benefits and hours of work to their Employees, in accordance with the "Fair Wage Policy for ICI Contracts" and the Fair Wage Schedule of the Corporation of the Municipality of Clarington.

Failure to comply with the Fair Wage Policy may result in restricted ability to bid on Municipal construction business.

### **DEFINITIONS**

In this policy wherever a term set out below appears in the text of this policy with its initial letters capitalized, the term is intended to have the meaning set out for it in this DEFINITION section. Wherever a term below appears in the text of this policy in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- a) "Municipality" means the Corporation of the Municipality of Clarington, and, where the context allows, its officers, officials, employees and agents or any of them.
- b) "Municipal Council" means the elected Municipal Council of the Municipality.
- c) "Contractor" means any person, firm or corporation having a contract with the Municipality for the performance of ICI construction work, but does not include any person, firm or corporation that only supplies materials for the Construction Contract.
- d) "Construction Contract" means any ICI construction of an estimated value of at least one million (\$1,000,000.00) dollars (exclusive of GST, administration and related costs), entered into between the Municipality and a Contractor and includes the various sub-contracts to that contract.

Construction Contracts which were initially tendered and awarded under the one million (\$1,000,000.00) dollar threshold (exclusive of GST, administration and related costs) but exceeded this upset limit due to owner requested changes or other unknown change orders after the award of the contract, are exempt from this policy.

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DEFINITIONS CONTINUED

- e) "Audit Services" means the review of tender submissions of any or all bids at time of tender and records of low bid contractors and sub-contractors to ensure compliance. Audit services may be performed by the City of Toronto or alternate designated by the Municipality of Clarington.
- f) "Employees" means those persons employed by the Contractor or Sub-Contractor in positions, classifications (trades or any combination of those) identified in the Fair Wage Schedule, for the performance of construction work on a Construction Contract with the Municipality, or any sub-contract.
- g) "Fair Wage Schedule" means the schedule of wages, benefits and hours of work for the performance of construction work on all Municipal ICI Construction Contracts as approved and as amended from time to time as based on the Ontario Labour Relations Geographical Board Area 9.
- h) "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., O.H.I.P.
- i) "ICI" is an acronym abbreviation for "Industrial, Commercial and/or Institutional".
- j) "Registered Complaint" means a written complaint from an identified source which alleges that a Contractor or Sub-contractor has violated this Fair Wage Policy. Registered Complaints must be submitted, in writing, to the Purchasing Manager of the Municipality of Clarington.
- k) "Sub-contractor" means any person, firm or corporation performing work for a Contractor or one of the Contractors or other Sub-contractors who has a Construction Contract with the Municipality, but does not include any person, firm or corporation that only supplies materials for the Construction Contract.
- l) "Sub-contract" means any contract between a Contractor and any of that Contractor's Sub-contractors with a firm, person or corporation for work in accordance with a Construction Contract. The term excludes contracts for material supplies only.
- m) "Term". This policy is in effect for a term of twelve (12) months from Council ratification, after which it will be referred back to Council for review.

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## PROCEDURES

- 1.a) The Purchasing Manager or designate will prepare and review the Fair Wage Schedule from time to time and after consultation with the audit service provider, those amendments to the Fair Wage Schedule which are required to reflect the prevailing wages, benefits and hours of work in the construction industry in the geographical area of the Municipality will be made by the Purchasing Manager.
- b) The Purchasing Manager or designate will review the Fair Wage Policy from time to time and recommend to Council any substantive required amendments to the Fair Wage Policy. Minor amendments may be made after consultation with the audit service provider.
- c) The Purchasing Manager for the Municipality or designate will co-ordinate, as necessary, the preparation of information reports to Council regarding complaints investigated and audits performed pursuant to the Fair Wage Policy.
2. The Municipality shall make available through its tender call, to every person bidding on the Municipality's ICI Contracts, the then current Fair Wage Policy and Fair Wage Schedule and shall include in contract documents and/or provide copies of them to the bidders, or make them available through the Municipality's web page. The Contractor and its Sub-contractors shall not be responsible for any Fair Wage Schedule rate increases which occur after the closing of the tender for the Municipal Construction Contract on which the Contractor is the successful bidder.
3. For all ICI Contracts with the Municipality, the Contractor shall provide to the Municipality, in a form acceptable to the Municipal Solicitor or designate, notification that the Contractor and its Sub-contractors are in compliance with the Fair Wage Policy and the Fair Wage Schedule. This notification shall be provided to the Municipality after substantial performance of the Construction Contract as defined in the Ontario Construction Lien Act, R.S.O. 1990, c C.30, as amended, including successor legislation.
- 4.a) A Contractor is fully responsible for ensuring that all of its Sub-contractors comply with the Fair Wage Policy and 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.
- c) Contractors and Sub-contractors can not subcontract any portion of the contract for less than the fair wage rates.
5. From time to time, the Municipality of Clarington will engage the services of the City of Toronto or alternate auditing services to conduct investigations on their behalf.

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PROCEDURES CONTINUED

6. The Fair Wage Rates will be based on the Ontario Labour Relations Geographical Board Area 9.
7. Contractors and Sub-contractors shall not discriminate because of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, record of offences (provincial offences and pardoned federal offences), marital status, family status or handicap.

8. LEGISLATIVE COMPLIANCE

Contractors and Sub-contractors shall obey all Federal, Provincial and Municipal Laws, Act, Ordinances, Regulations, Orders-in-Council and By-laws, which could in any way pertain to the work outlined in the Contract or to the Employees of the Company.

Contractors and Sub-contractors shall ensure WSIB compliance and coverage in accordance with relevant legislation and the Municipality's prevailing policy.

Without limiting the generality of the foregoing, Contractors and Sub-contractors shall satisfy all statutory requirements imposed by the Occupational Health and Safety Act and Regulations made thereunder, on a contractor, a Constructor and/or Employer with respect to or arising out of the performance of the Contractors and Sub-contractors obligations.

9. LIABILITY

The Municipality of Clarington and any other designate to be fully indemnified and saved harmless from all actions, suits, claims, demands, losses, costs, charges and expenses whatsoever for all damage or injury including death to any person and all damage to any property which may arise directly or indirectly, save and except for damage caused by the negligence of the Municipality, its employees or designate.

The Contractor agrees to defend, fully indemnify and save harmless the Municipality from any and all charges, fines, penalties and costs that may be incurred or paid by the Municipality if the Municipality or any of its employees shall be made a party to any charge under the Occupational Health and Safety Act or any other Act in relation to any violation of the Act arising out of this contract.

POSTING

All Contractors must post in a conspicuous place on every construction project site, in a location satisfactory to the Project Manager or his designate, a copy of the Fair Wage Policy and the Fair Wage Schedule supplied to it by the Municipality which will include a telephone number by which any inquiry regarding the Fair Wage Policy or the Fair Wage Schedule, may be made to the Municipality's Purchasing Manager or designate.

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## 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 Municipality upon the request of the Municipality for a period of seven (7) years after final completion of the Construction Contract. The Municipality will only be permitted access to these records upon receipt of a Registered Complaint.
2. The Contractor shall, in any agreement with a Sub-contractor, require the Sub-contractor to comply with all subparagraphs below.
  - a) The Sub-contractor shall keep records of the names, addresses, wages paid, benefits paid or provided and hours worked for all of its employees.
  - b) The Sub-contractor shall make these records available for inspection by the Municipality within five (5) days to the date of the Municipality's request. The Municipality will only be permitted access to these records upon receipt of a Registered Complaint, and only for a period of seven (7) years after final completion of the Construction Contract.
  - c) The Sub-contractor shall also require its Sub-contractors to assume the same obligations in relation to their own Employees.
3. Failure to provide these records or failure to co-operate as required by this Policy may result in the Contractor or Sub-contractor being subject to the CONSEQUENCES OF NON-COMPLIANCE provisions of this Fair Wage Policy.

## COMPLAINTS

1. Any Contractor, Sub-contractor or Employee that tendered on that awarded Construction Contract by the Municipality, may submit a Complaint against that tender award to the Municipality with respect to any Contractor or Sub-contractor on that project. Registered Complaints should be submitted at the earliest time but no later than fifteen (15) days following the:
  - a) substantial performance of relevant Construction Contract where a complaint is being made against a Contractor; or
  - b) substantial completion of relevant Sub-contract to a Construction Contract where a complaint is being made against a Sub-contractor.
2. Upon receipt of a Registered Complaint, together with payment of an investigation fee of \$2,500.00, in the form of a certified cheque, the Municipality shall take such action as it deems necessary to determine whether the Contractor and Sub-contractor involved or named in the Registered Complaint is in compliance with the Fair Wage Policy and the Fair Wage Schedule.

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### COMPLAINTS CONTINUED

If upon investigation, the Registered Complaint is found to be substantiated, the fee of \$2,500.00 will be refunded to the person, company or corporation filing the complaint. If the complaint is found to be unsubstantiated, the fee will be retained by the Municipality to cover administrative costs of the investigation and audit process.

The Municipality may, at its discretion, waive the fee in cases where an employee of the Contractor or Sub-contractor working on the construction project issues the complaint.

3. The Municipality's Purchasing Manager or designate shall inform the complainant and any Contractor or Sub-contractor involved or named in the complaint, or the results of the Municipality's determination of Contractor's and/or Sub-contractor's compliance or non-compliance with the Fair Wage Policy or Fair Wage Schedule, or both by ordinary mail. The decision of the Purchasing Manager or designate is final.

### INSPECTION AND AUDITS

1. The Municipality retains the right to inspect and audit the payroll records (as referred to in the RECORDS section of the Fair Wage Policy) of the Contractor or Sub-contractor at any time during the period of the Construction Contract and up to seven (7) years after the Construction Contract has been completed, as deemed necessary by the Municipality. The Contractor shall supply certified copies of any records whenever requested by the Municipality within five (5) business days.. After completion of the Construction Contract, the Municipality will only be permitted access to these records upon its receipt of a Registered Complaint of non-compliance of a Contractor or Sub-contractor under the Fair Wage Policy.

### COMPLIANCE

1. A Contractor or Sub-contractor shall be in compliance with the wage requirements of the Fair Wage Policy when it pays to its Employees wages, vacation and holiday pay, fringe benefits equal to or greater than the amount set out in the most recently approved Fair Wage Schedule.

### CONSEQUENCES OF NON-COMPLIANCE

1. The Municipality's Purchasing Manager or designate, upon determining that a Contractor or Sub-contractor is in non-compliance of the Fair Wage Policy or the Fair Wage Schedule, shall undertake the actions set out in subparagraphs (a) and (c) and may undertake the action set out in subparagraph (b).

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CONSEQUENCES OF NON-COMPLIANCE CONTINUED

- a) The Municipality shall advise the Contractor and/or Sub-contractor, in writing, sent by ordinary mail, that it has been determined that the Contractor or Sub-contractor is in non-compliance, providing the detail of that non-compliance. The notice shall stipulate that the Contractor and/or Sub-contractor is required to comply and/or immediately pay (retroactively) wages to its workers according to the Fair Wage Schedule applicable at the time of the Construction Contract award, as applicable.

If a Contractor or Sub-contractor is provided with notice in accordance with this subparagraph, the fact shall be recorded as an occurrence of non-compliance.

- b) The Municipality may withhold an amount of funds equal to the amount by which the Contractor and/or Sub-contractor has benefited from its non-compliance from any payment owed by the Municipality to the Contractor until such time as the Contractor or Sub-contractor complies.
  - c) The Municipality shall assess the base cost of \$2,500.00 for the Municipality's inspection, audit or other action as deemed necessary by the Municipality as a result of the determination of non-compliance of the Contractor and/or Sub-contractor, and may deduct that amount from any payment owed by the Municipality to the Contractor. In addition, the Contractor shall be responsible for all of the Municipality's costs beyond the base cost of \$2,500.00, to be payable immediately upon demand.
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 Municipality's Purchasing Manager or designate may require that Contractor or Sub-contractor, on the next three (3) Municipal Construction Contracts on which the Contractor or Sub-contractor performs construction work, to submit an accountant's report which verifies the Contractor's or Sub-contractor's compliance with the Fair Wage Policy and the Fair Wage Schedule. The accountant's report shall be in a form satisfactory to the Municipality's Director of Corporate Services or designate and shall be submitted after substantial performance of the Construction Contract as defined in the Construction Lien Act, R.S.O., c. C.30, as amended, including successor legislation.
  3. Where a Contractor or Sub-contractor has been determined to be in non-compliance with the 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 Municipality's Purchasing Manager or designate, the Municipality may:
    - a) refuse to accept bids, quotations or proposals from that Contractor on Municipal Construction Contracts for a period of two (2) years, save and except any Construction Contract the Contractor may currently have with the Municipality.

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CONSEQUENCES OF NON-COMPLIANCE CONTINUED

- b) not allow that Sub-contractor to perform any construction work on any Municipal Construction Contract for a period of two (2) years, save and except any Construction Contract on which the Sub-contractor may currently be performing construction work.
- 4. The Municipality's Purchasing Manager or designate shall make available to the public 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 #2 and/or #3 of the CONSEQUENCES OF NON-COMPLIANCE. This list may be made available through the Municipality's web page, posted through the Durham Construction Association web page, included in ICI tender calls, posted in the Purchasing Office or other suitable methods of posting.
- 5. The Municipality of Clarington's Purchasing Manager or designate will require a Contractor or Sub-contractor to substitute, at its own cost, any Sub-contractor who, on the first day that the tender for the relevant Construction Contract is available for pick-up, is named on the list referred to in #4 of the CONSEQUENCES OF NON-COMPLIANCE above, and is identified as not being allowed to perform any construction work on a Construction Contract.
- 6. The Municipality of Clarington or its designate 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 Policy or the Fair Wage Schedule or both and the Municipality assumes no responsibility to any Employee, Sub-contractor or Contractor or any other person for the administration and enforcement of the Fair Wage Policy or the Fair Wage Schedule or both.

Any employee of the Contractor or Sub-contractor is not an employee or deemed an employee of the Municipality for any purpose.

THIS POLICY SHALL BE READ WITH SUCH GENDER OR NUMBER OR CORPORATE STATUS AS THE CONTEXT MAY REQUIRE.