

College Procedure

PROCEDURE TYPE:	Administrative
PROCEDURE TITLE:	Fair Wage for Academic Construction Contracts
PROCEDURE NO.:	ADMIN-228.1
RESPONSIBILITY:	Chief Administrative Officer and Chief Financial Officer
APPROVED BY:	Durham College Leadership Team
EFFECTIVE DATE:	March 2017
REVISED DATE(S):	
REVIEW DATE:	March 2020

1. Introduction

The Office of the Associate Vice-President Facilities and Ancillary Services will provide support, information, training and counsel for any individuals, schools and departments involved in construction contracts.

2. Definitions

2.1. Institution

Durham College of Applied Arts and Technology and, where the context allows, its officers, officials, employees and agents, or any of them.

2.2. Contractor

Any person, firm or corporation having a contract with the institution for the performance of academic construction work. This does not include any person, firm or corporation that only supplies materials for the academic construction contract.

2.3. Academic Construction Contract

Any construction contract of an estimated value of at least \$1 million, entered into between the Institution and a contractor and including the various subcontracts to that contract. Construction contracts that were initially tendered and awarded under the \$1 million threshold, 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 procedure. Residential construction contracts with the institution are exempt from this procedure.

2.4. Subcontractor

Any person, firm or corporation having a contract with a contractor or another subcontractor for the performance of academic construction work. This does not include any person, firm or corporation that only supplies materials for the academic construction contract.

2.5. Employees

Those persons employed by the Contractor or Subcontractor in positions, classifications (trades or any combination of those), identified in the Fair Wage Schedule, for the performance of construction work on an Academic Construction Contract with the institution, or any subcontract. Owner operators who undertake the work themselves are exempt from this definition.

2.6. Fair Wage Schedule

The schedule of wages, benefits and hours of work for the performance of construction work on all academic construction contracts as approved and as amended from time to time, based on the Ontario Labour Relations Geographical Board Area 9, which is made up of the Regional Municipality of Durham (with the exception of the Town of Ajax and City of Pickering), the Township of Cavan Monaghan in the County of Peterborough, and the geographic Township of Manvers in the City of Kawartha Lakes.

2.7. Fringe Benefits

Includes such benefits as pension plans, extended health-care benefits, dental, and prescription plans etc. It does not include legislated payroll deductions such as Canada Pension Plan, Employer Health Tax, Workplace Safety and Insurance Board, and Employment Insurance.

2.8. ICI

Is an acronym for industrial, commercial, and/or institutional.

2.9. Registered Complaint

Is a written complaint from an identified source that alleges that a Contractor or Subcontractor has violated this procedure. Registered complaints must be submitted on the Fair Wage Complaint Form. All elements of the form must be responded to.

2.10. Subcontract

Means any contract between a Contractor and any of that Contractor's Subcontractors with a firm, person or corporation for work in accordance with an Academic Construction Contract. The term excludes contracts for material supplies only.

2.11. Wages or Fair Wage Rate

Includes the hourly rate, vacation and holiday pay, and any amount for fringe benefits shown in the current Fair Wage Schedule to be paid to a worker.

3. Procedure

3.1. Fair Wage Schedule

- 3.1.1. The Institution shall make available, through its tender call to every person bidding on the Institution's Academic Construction Contracts, the current Fair Wage Schedule and shall include in contract documents and/or provide copies of them to the bidders, or make them available through the institution's website. The Contractor and its Subcontractors shall not be responsible for any Fair Wage Schedule rate increases that occur after the closing of the tender for the Academic Construction Contract on which the Contractor is the successful bidder.
- 3.1.2. A Contractor must provide all of its Subcontractors with a copy of the Fair Wage Schedule before any construction work is performed by the Subcontractors.
- 3.1.3. Contractors and Subcontractors cannot Subcontract any portion of the contract for less than the Fair Wage Rate.

3.2. Contractor Compliance

For all Academic Construction Contracts with the institution, the Contractor shall provide to the institution, in a form acceptable to the institution, a notification that the Contractor and its Subcontractors are in compliance with the Fair Wage Schedule. This notification shall be provided to the institution 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.

3.3. Subcontractor Compliance

A Contractor is fully responsible for ensuring that all of its Subcontractors comply with the Fair Wage Schedule. A Subcontractor is fully responsible for ensuring that all of its Subcontractors comply with the Fair Wage Schedule.

3.4. Legislative compliance

- 3.4.1. Contractors and Subcontractors shall obey all federal, provincial and municipal laws, acts, ordinances, regulations and bylaws, which could in any way pertain to the work outlined in the contract or to the employees of the company.
- 3.4.2. Contractors and Subcontractors shall ensure Workplace Safety and Insurance Board (WSIB) compliance and coverage in accordance with relevant legislation and the Institution's prevailing policy.
- 3.4.3. Without limiting the generality of the foregoing, Contractors and Subcontractors shall satisfy all statutory requirements imposed by the Occupational Health and Safety Act and regulations made thereupon, on a Contractor, a constructor and/or employer with respect to or arising out of the performance of the Contractor's and Subcontractor's obligations.

3.5. Posting

All Contractors must post, in a conspicuous place on every construction project site, in a location satisfactory to the institution, a copy of this procedure and the Fair Wage Schedule. They will be supplied to them by the institution and will include a telephone number by which any inquiry regarding this procedure and/or the Fair Wage Schedule may be made to the institution.

3.6. Records

- 3.6.1. The Contractor must keep records of the names, addresses, wages paid, benefits paid or provided, and hours worked for all of its employees. The Contractor shall make these records available for inspection by the institution upon request by the institution for a period of four (4) years after substantial completion of the Construction Contract. The institution will only be permitted access to these records upon receipt of a Registered Complaint.
- 3.6.2. The Contractor shall, in any agreement with a Subcontractor, require the Subcontractor to comply with all subparagraphs below:
 - The Subcontractor shall keep records of the names, addresses, wages paid, benefits paid or provided, and hours worked for all of its employees.
 - The Subcontractor shall make these records available for inspection by the institution within five (5) days of the date of the institution's request. The institution will only be permitted access to these records upon receipt of a Registered Complaint, and only for a period of four (4) years after final completion of the construction contract.
 - The Subcontractor shall also require its Subcontractors to assume the same obligations in relation to their own Employees.

- 3.6.3. Failure to provide these records as required by this procedure may result in the Contractor or Subcontractor being subject to Section 10, Consequences of Non- Compliance provisions of this procedure.

3.7. Complaints

- 3.7.1. Any Contractor, Subcontractor or Employee that tendered on an awarded Academic Construction Contract by the institution, may submit a complaint against that tender award to the institution with respect to any Contractor or Subcontractor on that project. Registered Complaints should be submitted at the earliest time but no later than fifteen (15) days following:
- Substantial performance of the relevant Academic Construction Contract where a complaint is being made against a Contractor; or
 - Substantial completion of the relevant Subcontract to an Academic Construction Contract where a complaint is being made against a Subcontractor.
- 3.7.2. Upon receipt of a Registered Complaint, the institution shall take such action as it deems necessary to determine whether the Contractor and Subcontractor involved or named in the Registered Complaint is in compliance with the Fair Wage Schedule.
- 3.7.3. The institution's Associate Vice-President, Facilities and Ancillary Services, or designate shall inform the complainant and any Contractor or Subcontractor involved or named in the complaint of the results of the institution's determination of the Contractor's and/or Subcontractor's compliance or non-compliance with the Fair Wage Schedule, within 15 days of rendering a decision. The decision of the institution's Associate Vice-President, Facilities and Ancillary Services is final.

3.8. Inspection on audits

- 3.8.1. The institution retains the right to inspect and audit the payroll records (as referred to in the Records section of this Fair Wage for Construction Contracts Procedure) of the Contractor or Subcontractor at any time during the period of the Academic Construction Contract and up to four (4) years after the Academic Construction Contract has been completed.
- 3.8.2. The Contractor shall supply certified copies of any records whenever requested by the institution within five (5) business days. After completion of the Academic Construction Contract, the institution will only be permitted access to these records upon its receipt of a Registered Complaint of non- compliance of a Contractor or Subcontractor under the Fair Wage for Construction Contracts Policy.

3.9. Compliance

A Contractor or Subcontractor shall be in compliance with the wage requirements of the Fair Wage Policy when it pays its Employees' wages, vacation and holiday pay, Fringe Benefits equal to or greater than the amount set out in the Fair Wage Schedule, issued as part of the tender package.

3.10. Consequences of non-compliance

3.10.1. The Institution, upon determining that a Contractor or Subcontractor is in non-compliance of the Fair Wage Schedule, shall undertake the actions set out in the following subparagraphs:

- The institution shall advise the Contractor and/or Subcontractor, in writing, that it has been determined that the Contractor or Subcontractor is in non-compliance, providing the details of that non-compliance. The notice shall stipulate that the Contractor and/or Subcontractor 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 Academic Construction Contract award. If a Contractor or Subcontractor is provided with notice in accordance with this subparagraph, this fact shall be recorded as an occurrence of non-compliance.
- The institution as a result of the determination of non-compliance of the Contractor and/or Subcontractor, may deduct that amount from any payment owed by the Institution to the Contractor.
- The institution may withhold an amount of funds equal to the amount by which the Contractor or Subcontractor has benefited from its non-compliance, from any payment owed by the institution to the Contractor until such time as the Contractor or Subcontractor complies.

3.10.2. Where a Contractor or Subcontractor has been determined to be in non-compliance with the Fair Wage Schedule for the first time in a five (5) year period, the institution may require that the Contractor or Subcontractor, on the next three (3) Academic Construction Contracts on which the Contractor or Subcontractor performs construction work, submit an accountant's report that verifies the Contractor's or Subcontractor's compliance with the Fair Wage Policy and the Fair Wage Schedule. The accountant's report shall be in a form satisfactory to the institution and shall be submitted after substantial performance of the Construction Contract as defined in the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, including successor legislation.

3.10.3. Where a Contractor or Subcontractor 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 institution, the institution may:

- Refuse to accept bids, quotations or proposals from that Contractor on Academic Construction Contracts, for a period of two (2) years, save and except any Academic Construction Contract the Contractor may currently have with the Institution.
- Not allow that Subcontractor to perform any construction work on any Academic Construction Contract, for a period of two (2) years, save and except any Academic Construction Contract on which the Subcontractor may currently be performing construction work.

4. Roles and responsibilities

The associate vice-president, Facilities and Ancillary Services, or designate will prepare and review the Fair Wage Schedule from time to time after consultation with the other Geographical Board Area 9 members.

5. Accessibility for Ontarians with Disabilities Act (AODA) Considerations

The Accessibility for Ontarians with Disabilities Act standards have been considered in the review of this procedure.

6. Related policies, procedures and directives

- Durham College Fair Wage for Academic Construction Contracts Policy (ADMIN-228)