

Paying a living wage in contracts: example contract clauses and RfX questions

All public service departments, listed in schedule 2 of the Public Service Act, must include requirements in their cleaning, catering and security guard contracts that workers undertaking these services are paid, at a minimum, the New Zealand Living Wage, with annual increases.

For more information, see 'Paying a living wage in contracts':

[Paying a living wage in contracts](#)

This guidance provides agencies with example contract clauses and RfX questions they can use to help when they are going to market to negotiate a new contract or renew an existing contract.

Contract clauses

The following contract clauses aim to assist agencies to implement key aspects of this policy and their consistent application in government contracts. They set out:

- application of the living wage to those workers directly undertaking cleaning, catering or security guard services in relation to the contract and how to build in the annual increases based on the rate published by MBIE
- a simple mechanism for agencies to obtain assurances, on an annual basis, from a provider that the living wage is being paid, including requiring reasonable supporting evidence
- a right to an audit to ensure compliance
- a provision to ensure that the requirement to pay a living wage to workers flows down through all sub-contracting arrangements.

Minimum Living Wage rate

X.1 Definitions: For the purposes of this clause X:

"Minimum Living Wage Rate" means, during the applicable period, such hourly rate as set out in [insert link to relevant MBIE website that will set out the reference hourly rate], as updated from time to time.

"Specified Role" means any functional role as a cleaner, caterer and/or security guard.

"Specified Person" has the meaning given to that term in clause X.2.

X.2 Minimum living wage rate: The Supplier shall ensure that each person performing any Specified Role in connection with the Supplier's performance of this [agreement] ("Specified Person") is paid, for each hour worked, at a rate no less than the Minimum Living Wage Rate applicable at the time. Non-compliance with this provision shall be deemed to be a material breach of this [agreement].

X.3 Annual confirmation: The Supplier shall, on a 12 monthly basis, provide written confirmation to the [Agency] that the Supplier has complied with its obligations in clause X.2. If required by the [Agency], the Supplier shall, within 7 days of receiving a request from the [Agency], provide to the [Agency] reasonable evidence of such compliance to support the confirmation.

X.4 Audit:

The [Agency] may at any time, with no less than [2 Business Days'] prior written notice, notify the Supplier that the [Agency] wishes to audit the Supplier's compliance with clause X.2. The Supplier shall assist the [Agency] in a timely manner with any such audit, including by making its premises, personnel, systems, information, data, accounts, documents and records available to the [Agency] or its nominee(s) if requested.

If the [Agency] is undertaking an audit under this [agreement] for any other purpose, the Supplier shall also offer to the [Agency] access to the information, data, accounts, documents and records required to audit the Supplier's compliance with clause X.2.

X.5 Subcontractors: The Supplier shall ensure that each of its subcontractors, and the subcontractors' own subcontractors, comply with the obligations included under clause X.2, in respect of each Specified Person they employ or contract with, as if those subcontractors were the Supplier. Non-compliance with this provision shall be deemed to be a material breach of this [agreement].

Commentary on example contract clauses

Clause X.1 sets out the relevant definitions used in this clause. Alternatively, these definitions can be moved to the main definition clause in the agreement.

Clause X.2 sets out the central obligation of the Supplier to ensure all relevant personnel undertaking cleaning, catering and security guard roles are paid at least the “minimum living wage rate”, and that this rate shall reflect the rates published by the Ministry of Business, Innovation and Employment (adjusted from time to time). This is a minimum, not a maximum, rate. Breach of this clause is expressly identified as being a material breach of the agreement, so that the Agency has the option to terminate the agreement for non-compliance by the Supplier, even if the agreement only permits termination for material (as opposed to any) breach of that agreement.

Clause X.3 provides a simple mechanism for the Agency to obtain some assurance from the Supplier that it has met its obligation to pay the “minimum living wage rate”. The agency can require reasonable supporting evidence.

Clause X.4 provides the Agency with the ability to obtain further assurance by way of undertaking an audit of the Supplier's compliance with its “minimum living wage rate” obligations, including by requiring the Supplier to offer the Agency access to relevant information and records on its “minimum living wage rate” obligations. The Agency could also obtain this assurance where the Agency is simply undertaking a more general audit of the Supplier as required by another audit obligation in the agreement.

Clause X.5 obliges the Supplier to require its contractors and sub-contractors to also pay the minimum living wage rate to the cleaners, caterers and security guards they employ. This is intended to prevent the Supplier from circumventing the obligation through employing the cleaners, caterers and security guards as contractors or sub-contractors. As for clause X.2, breach of this clause is expressly identified as being a material breach of the agreement, so that the Agency has the option to terminate the agreement for non-compliance by the Supplier, even if the agreement only permits termination for material breach of that agreement.

RFx questions

Agencies should consider making it a mandatory requirement of the RFx criteria that the provider will agree to pay a living wage to workers within the scope of this policy.

Mandatory requirements	Yes	No
Does your company agree to ensure that workers performing [catering, cleaning or security guards services] to [Agency] will be paid at a rate no less than the 'Minimum Living Wage Rate' as published on MBIE's website?		

Agencies can refer to the following questions as examples of assessing a provider's ability to meet requirements.

Questions	Yes	No
Does your company comply with applicable New Zealand employment law and standards?		
Does your company keep up to date and accurate wage, time, leave and holiday records?		
Do all of your employees have a written employment agreement?		
Will you be using any sub-contractors, independent contractors and/ or franchisees? If yes: <ul style="list-style-type: none">• Please explain why you are not supplying the services directly.• Demonstrate how your company will ensure workers performing [catering, cleaning or security guards services] to [Agency] will be paid at a rate no less than the 'Minimum Living Wage Rate' as published on MBIE's website?		