

For discussion
22 April 2004

LegCo Panel on Manpower

Employment terms for persons engaged in projects or services contracted out by the Government

Purpose

This paper provides information on employment terms for workers engaged in service contracts let out by government departments and the Hospital Authority (HA) through tendering arrangements.

Existing guidelines for tendering arrangements for service contracts

2. In May 2001, the Government promulgated new arrangements for procurement of government services (excluding construction services) that relied heavily on the deployment of non-skilled workers and were procured through tender procedures under the Stores and Procurement Regulations. Under these new tendering arrangements, Controlling Officers are required to adopt a marking scheme for the evaluation of tenders. Depending on the nature of the services to be procured, Controlling Officers may consider allocating a 30% to 40% weighting to quality assessment and 60% to 70% weighting to price evaluation of the tenders received.

3. In considering the tender offers, Controlling Officers are required to include in their assessment criteria the evaluation of the wage levels and working hours of non-skilled workers included in each of the tenders received to determine whether the offers are in line with the conditions in the market for similar trade/industry and commensurate with the standards of services Government intends to procure. They may refer to the Quarterly Reports of Wage and Payroll Statistics issued by the Census and Statistics Department (C&SD) for information on the prevailing market wage rates and working hours in the trades/industries. In addition, they are required to take into account records of past convictions under the Employment Ordinance in their evaluation of the tenders received. They are required to consider grouping various

manpower or employment terms-related evaluation criteria under one section in the marking scheme and introducing a passing mark for that section.

4. To supplement the above tendering arrangements, the Government promulgated in March 2004 a mandatory requirement for assessment of tenderers' past performance in respect of compliance with the Employment Ordinance, the Employees' Compensation Ordinance and the Immigration Ordinance. As a general guideline, a tender offer will not be considered if, during the 12-month period prior to the tender closing date, the tenderer has had a total of three or more convictions under the aforementioned Ordinances. For the purpose of this mandatory requirement, all convictions which individually carry maximum fines of a defined level¹ under the Employment Ordinance and Employees' Compensation Ordinance count. All convictions relating to unlawful employment under the Immigration Ordinance also count for the purpose of this mandatory requirement. In addition, a mandatory requirement for assessment of tenderers' past performance in respect of compliance with contractual obligations in respect of wages, working hours and signed written contracts with employees (except temporary relief workers) was promulgated at the same time. For the purpose of this mandatory requirement, as a general guideline, a tender offer will not be considered if during the four most recent quarters before the tender closing date, the tenderer has received from one or more departments a total of six demerit points. In this regard, Controlling Officers are required to implement a demerit point system, under which for each breach of the aforementioned contractual obligations, a default notice (each default notice attracting a demerit point) will be issued to the contractor concerned.

5. The above requirements also apply to the letting out of management service contracts that rely heavily on the deployment of non-skilled workers. Examples of these management service contracts include the management service contract for a number of public markets awarded by the Food and Environmental Hygiene Department (FEHD), the management support service contracts for a number of sports centres awarded by the Leisure and Cultural Services Department (LCSD) and the property management service contracts awarded by the Government Property Agency (GPA).

¹ Maximum fines corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance.

6. As manpower planning including the recruitment of workers is part of the commercial activities of the contractors and the contractors may have their own staff resources before tendering for government service contracts, there are no provisions in tender documents requiring new contractors to employ the non-skilled workers of the previous contractors.

7. The tendering arrangements as described above do not apply to HA, which is independent of the Government. Nevertheless HA generally follow the approach of the Government and adopt marking schemes in their tender assessment. In May 2002, HA organised a briefing to all supporting services contractors and raised concern regarding the salary packages of employees engaged by the contractors. At that meeting, all parties were informed that in future selection of tenderers, HA would take into account the salary packages offered in the tenders and the Wages and Payroll Statistics issued by C&SD in the tender assessment, and would bind the selected tenderers to the salary packages offered upon award of the contracts. In March 2004, following a comprehensive review of the outsourced supporting services with a view to strengthening the contract management function, HA issued a guideline to hospitals to improve the tender/ contract management for the out-sourced supporting services. The guideline requires hospitals to disqualify tenderers in the tender evaluation stage if they are offering wages to their employees which are substantially below the prevailing wage levels for the equivalent posts in the latest available Quarterly Report of Wage and Payroll Statistics issued by C&SD of the Government. To ensure consistency of evaluation on the wage rates offered, HA will adopt standardised definitions on “wage” and “working hours per day” following the definitions used in the C&SD report. Same as the Government, in the case of a change of contractors, there is no requirement for the new contractor to employ the non-skilled workers of the previous contractor.

Comparison of marking schemes adopted by major users of service contracts

8. During the past 12 months (i.e. from 1 April 2003 to 31 March 2004), the Central Tender Board (CTB) has endorsed a total of 67 service contracts covered by the tendering arrangement promulgated in May 2001. A breakdown of the 67 contracts awarded is as follows:

Department	No. of contracts awarded
FEHD	32
LCSD	27
GPA	3
Others	5

As can be seen from the above statistics, the majority of the service contracts were awarded by FEHD and LCSD. The marking schemes² adopted by these two departments, as by GPA, include criteria for assessment of wage levels, working hours and other employment conditions of non-skilled workers. These assessment criteria are included in one section with a sectional passing mark in the marking scheme. As the service requirements for the contracts may not be the same, the marking schemes are structured to cater for the particular operational requirements of the Departments. The weighting for the manpower or employment terms-related section may also be different.

9. The Housing Department (HD) is considering the adoption of a new marking scheme for the assessment of their service tenders. This new marking scheme features an increase in the weighting allocated to wage level and related items, the adoption of the overall average monthly salary published in C&SD's Quarterly Report as a benchmark for assessment of wage offers, and the introduction of a passing mark for the section on wage levels and related items. A table showing the main features on manpower or employment-related terms for the new marking scheme under consideration by HD and the latest marking schemes (for the contracts endorsed by CTB in the past 12 months) adopted by FEHD, LCSD and GPA, as well as those currently adopted by HA, is at *Annex A*. As the marking schemes are designed to cater for the particular service requirements in each case, the structures of the marking schemes are not the same, and are therefore not comparable.

² No service contract covered by the concerned tendering arrangement has been awarded by the Government Logistics Department (GLD) in the past years. Hence GLD has not adopted any such marking schemes.

Sub-contracting

10. Under the present arrangement, sub-contracting by a government contractor requires the prior approval of the procuring department. Controlling Officers are required to take into consideration the proposed sub-contractors' records of convictions under the Employment Ordinance, the Employees' Compensation Ordinance and the Immigration Ordinance and demerit points for breaches of the concerned contractual obligations, and apply the same guidelines as set out in paragraph 4 above in considering whether or not to approve a sub-contracting proposal. Where sub-contracting is allowed, there are provisions in the tender documents requiring the main contractor to ensure that their sub-contractors will also observe the conditions on wage levels, working hours and signed written employment agreements included in the tender offers. As regards HD, sub-contracting is normally not allowed under the contracts. Only in the case of complete outsourcing through a property management and maintenance agent is sub-contracting allowed for a part of the services, such as cleansing, security or property maintenance works. However, sub-contracting will not relieve the contractor from any liability and obligation under the respective contract. In the case of HA, sub-contracting by a supporting services contractor requires the prior written consent of HA. To preserve the contractual obligations, HA does not normally allow or approve sub-contracting proposals from contractors.

Wage levels offered by tenderers

11. The tendering arrangements promulgated in May 2001 require Controlling Officers to take into account the wage offers from the tenderers in tender assessment and bind the successful contractors to their wage offers. These arrangements have by and large worked effectively to prevent exploitation of non-skilled workers by contractors. We believe these arrangements, complemented with measures to ensure enforcement (which will be elaborated below), can safeguard the contractual and statutory rights of employees engaged by Government service contractors.

12. Information on the monthly wages and working hours of the non-skilled workers employed by the contractors of FEHD, LCSD and GPA for the contracts referred to in paragraph 8 above is at *Annex B*. Information on the monthly wages and working hours of the existing contractors of HD and HA

is also set out in this Annex.

Enforcement

13. One of the enforcement measures for the tendering arrangements promulgated in May 2001 is that the successful contractor is required to sign written contracts with its employees (except temporary leave reliefs), in which the major terms of employment including wages and working hours are specified. In addition, Controlling Officers are required to specify the provisions on sanctions dealing with breaches of contractual obligations in the tender document. The more recent introduction of the mandatory requirements for tender evaluation referred to in paragraph 4 above reinforces the safeguards against breaches of statutory and contractual obligations by the contractors.

14. Departments administering the service contracts are required to devise a monitoring mechanism to ensure that their contractors comply with the terms of contract. In this regard, in the case of FEHD and LCSD, wages for the non-skilled workers in the tender offers are displayed in most of the workplaces so that the workers know about their wages. Both departments have adopted the practice of carrying out random checking of the wage records and attendance records of the workers to ensure that the contractors have complied with their contractual obligations. Requirements for uniform and photographs in respect of the workers are included in the service contracts to facilitate identification of the workers in the checking process. The two departments also require their contractors to regularly provide for verification a statement (together with supporting documents) affirming that the non-skilled workers have been paid no less than the wages committed in the service contracts. Under the present system, complaints about breaches of the employment terms are investigated by the departments themselves or are referred to the Labour Department (LD) for investigation where there are grounds for suspecting that the contractors are in breach of the Employment Ordinance or the Employees' Compensation Ordinance.

15. Labour inspectors (LIs) of LD also conduct surprise inspections to workplaces of non-skilled workers for checking contractors' compliance with labour laws. If LIs detect contractor's failure to observe employment-related conditions specified in the service contract, they will refer the matter to the relevant procuring departments for follow-up actions.

16. In 2003, LD conducted 513 visits to work sites of 127 service contractors of the major procuring departments including HD, FEHD, LCSD and GPA. LIs interviewed the workers and distributed leaflets explaining employees' statutory entitlements. Inspection findings were passed to the departments concerned for reference and follow-up actions. LD will continue to liaise closely with the major procuring departments to ensure the protection of employees' rights and benefits.

17. LD also organised seminars for service contractors and front-line supervisors of procuring departments to familiarise them with employees' rights and benefits as well as employers' obligations under the Employment Ordinance. Good management practices and sample employment contract designed by LD were introduced to participants. In 2003, five such seminars were organised and the most recent one was held in March this year with more than 400 participants.

18. As regards HA, as part of the contract management function, hospitals exercise their right under the contracts to periodically require the contractors to provide proofs of salary payment to ensure that the wage levels offered to their employees are consistent with the committed rates in the contracts.

19. For information on the number of cases in respect of breaches of the Employment Ordinance, Employees' Compensation Ordinance and Immigration Ordinance and breaches of contractual obligations in respect of employment-related terms for non-skilled workers, as well as the sanction details, please refer to *Annex C* for details.

Financial Services and the Treasury Bureau
Economic Development and Labour Bureau/Labour Department
Food and Environmental Hygiene Department
Leisure and Cultural Services Department
Government Property Agency
Housing Department
Hospital Authority

April 2004

Marking schemes
Manpower or employment terms-related features

Features	HD <i>(marking scheme under consideration)</i>	FEHD	LCSD	GPA	HA
quality to price weightings	<p>57 : 43 (for cleansing service contract)</p> <p>55 : 45 (for security service contract)</p> <p>53 : 47 (for property service contract)</p>	30 : 70	30 : 70	50 : 50	60:40
weighting for manpower or employment terms-related section in quality assessment	<p>63% (for cleansing service contract)</p> <p>49% (for security service contract)</p> <p>40% (for property service contract)</p>	between 57% and 87%	between 20% and 24% *	42%	<p>20% (for security service contracts)</p> <p>25% (for other contracts)</p>

Features	HD <i>(marking scheme under consideration)</i>	FEHD	LCSD	GPA	HA
weighting for wage level in quality assessment	<p align="center">42% (for cleansing service contract)</p> <p align="center">49% (for security service contract)</p> <p align="center">17% (for property service contract - cleansing workers)</p> <p align="center">11% (for property service contract - security guard)</p>	between 30% and 42%	10% *	8% (4% each for cleaners and guards)	15%

Features	HD <i>(marking scheme under consideration)</i>	FEHD	LCSD	GPA	HA
weighting for working hours in quality assessment	<p>5% (for cleansing service contract)</p> <p>N/A (for security service contract)</p> <p>5% (for property service contract - cleansing workers)</p> <p>N/A (for property service contract - security guard)</p>	between 4% and 5%	4% (including 2% for maximum allowable working days per month)	2% (for cleaners)	Working hours are assessed in conjunction with the proposed wages

Features	HD <i>(marking scheme under consideration)</i>	FEHD	LCSD	GPA	HA
passing mark for manpower or employment terms-related section	<p align="center">52% (for cleansing service contract)</p> <p align="center">57% (for security service contract)</p> <p align="center">50% (for property service contract)</p>	50%	50%	50%	50%
scoring method for wage criterion	Score is calculated on the basis of the difference between the overall average monthly salary published in C&SD's Quarterly Report and the overall average of conforming tenderers' proposed monthly wage. Higher scores are awarded for proposed wages nearer to or above the overall average monthly salary published in C&SD's Quarterly Report.				Same method as shown on the left

* Following a recent review of the marking schemes, it is proposed to increase the weighting for employment terms-related section and the weighting allocated to wage level in quality assessment.

Wage levels for non-skilled workers employed by existing contractors

Department	Position	Monthly wage	Working hours per day #
FEHD*	Workmen	\$4,900 – \$4,999 : 15.6% of the total no. of contracts (5 out of 32 contracts)	8 hours : 46.9% of the total no. of contracts (15 out of 32 contracts)
		\$5,000 – \$5,200 : 68.8% of the total no. of contracts (22 out of 32 contracts)	10 hours : 53.1% of the total no. of contracts (17 out of 32 contracts)
		Above \$5,200 : 15.6% of the total no. of contracts (5 out of 32 contracts)	
LCSD*	Cleaners	\$4,000 – \$4,299 : 28.6% of the total no. of contracts (4 out of 14 contracts)	Not exceeding 8 hours : 66.7% of the total no. of contracts (18 out of 27 contracts)
		\$4,300 – \$5,190 : 71.4% of the total no. of contracts (10 out of 14 contracts)	Not exceeding 10 hours : 29.6% of the total no. of contracts (8 out of 27 contracts)
	Gardeners	\$3,900 – \$4,699 : 38.5% of the total no. of contracts (5 out of 13 contracts)	Not exceeding 11 hours : 3.7% of the total no. of contracts (1 out of 27 contracts)
		\$4,700 – \$4,800 : 61.5% of the total no. of contracts (8 out of 13 contracts)	

Department	Position	Monthly wage	Working hours per day [#]
GPA *	Cleaners	\$4,289 – \$5,000	Not exceeding 8 hours
	Security Guards	\$5,596 – \$5,878	Not exceeding 8 hours
HD	Cleansing Workers (for cleansing service contract)	\$2,450 – \$7,274	7 – 9 hours
	Security Guards (for security service contract)	\$4,965 ^o – \$ 5,642	8 hours
	Full-time Cleansing Workers (for property service contract)	\$3,240 – \$ 9,150	7 – 9 hours
	Security Guards (for property service contract)	\$4,100 [#] - \$7,310	8 hours
HA	Security Guards	\$5,401 – 6,000 (25%) \$6,001 – 6,500 (50%) \$6,501 – 7,000 (18.8%) \$7,001 and above (6.2%)	9.5 – 11 hours
	Laundry Workers	\$5,000 – 5,500 (57.2%) \$5,501 – 6,000 (14.2%) \$6,001 and above (28.6%)	8 – 9 hours

Department	Position	Monthly wage	Working hours per day [#]
HA (Cont'd)	Domestic Service Workers	\$4,200 – 4,500 (12.4%) [†]	7 – 9 hours
		\$4,501 – 5,000 (18.8%) [‡]	
		\$5,001 – 5,500 (50%)	
\$6,000 and above (18.8%)			
Pest Control Workers	\$5,700 (50%)	8 – 9 hours	
	\$7,265.50 (50%)		
Gardeners	\$5,500 (50%)	7 – 8 hours	
	\$6,000 (50%)		

* On the basis of 8 working hours per day and 26 working days per month.

Maximum allowable working hours per day.

Cases of full-time cleansing workers with monthly wages less than \$3,000 only exist in 7 contracts out of a total of 77 contracts awarded.

○ Cases of security guard with monthly wages less than \$5,000 only exist in 4 contracts out of a total of 69 contracts awarded.

Cases of full-time cleansing workers with monthly wages less than \$4,000 only exist in 4 contracts out of a total of 22 contracts awarded.

⊕ Cases of security guard with monthly wages less than \$5,000 only exist in 3 contracts out of a total of 22 contracts awarded.

† 2 contracts are covered here. They will expire in May 2004 and May 2005 and these contracts with substandard wages will not be extended.

‡ 3 contracts are covered here. All will expire in May/July 2004 and these contracts with substandard wages will not be extended.

**Breaches of Employment Ordinance, Employees' Compensation Ordinance,
Immigration Ordinance and contractual obligations in respect of
employment-related terms for non-skilled workers**

Department	Details of sanctions other than those promulgated in March 2004 as mentioned in paragraph 4 of the paper	Number of cases of the above breaches During the past 12 months (from 1.4.2003 to 31.3.2004)
FEHD	(a) Conviction records of breaches of the Employment Ordinance (Cap. 57) arising from the performance of FEHD contracts will constitute a sufficient ground for the Director of Food and Environmental Hygiene (DFEH) to suspend the contractors from tendering for FEHD's contracts in future. The duration of suspension will depend on the seriousness of the offence(s) and other relevant considerations in connection with the performance of the contracts.	20 Default Notices were issued to the contractors for breach of contractual obligations in respect of the wage level/allowable daily maximum working hours commitment. One conviction under the Employment Ordinance was recorded against a contractor for late payment of wages.

Department	Details of sanctions other than those promulgated in March 2004 as mentioned in paragraph 4 of the paper	Number of cases of the above breaches During the past 12 months (from 1.4.2003 to 31.3.2004)
FEHD (Cont'd)	<p>(b) If contractors are convicted of offences under the Immigration Ordinance (Cap. 115) for employing persons who are not lawfully employable to perform under FEHD contracts, such convictions will constitute sufficient grounds for DFEH to suspend the contractors from tendering for FEHD's contracts in future. The duration of suspension will depend on the seriousness of the offence(s) and other relevant considerations in connection with the performance of the contracts.</p> <p>(c) The Government may be entitled to terminate the contract for a serious breach of the contract.</p>	

Department	Details of sanctions other than those promulgated in March 2004 as mentioned in paragraph 4 of the paper	Number of cases of the above breaches During the past 12 months (from 1.4.2003 to 31.3.2004)
LCSD	<p>Other than default notices, notices to claim liquidated damages and warning letters may be issued to a contractor depending on the circumstances of the case. Issuance of all these notices/letters will adversely affect the contractor's future standing as LCSD service provider.</p> <p>If a contractor is convicted of a breach of the Employment Ordinance or Immigration Ordinance in the performance of a contract of LCSD, the Government may be entitled to terminate the contract.</p>	<p>1 Default Notice was issued to a contractor for breach of contractual obligations in respect of wage level.</p> <p>One conviction under the Employment Ordinance was recorded against a contractor for late payment of wages.</p>
GPA	<p>The contractor shall conform in all aspects with the laws of the HKSAR and shall keep GPA indemnified against all penalties and liabilities of every kind for breach of any such laws. The contractor shall also be required to maintain the working conditions, inclusive of wages and working hours of the cleaners and guards, to be not less favourable than those specified in the contract. Any breach of this requirement shall be deemed to be a material breach which may lead to termination of the contract.</p>	<p style="text-align: center;">Nil</p>

Department	Details of sanctions other than those promulgated in March 2004 as mentioned in paragraph 4 of the paper	Number of cases of the above breaches During the past 12 months (from 1.4.2003 to 31.3.2004)
HD	Warnings issued to contractors (other penalty action like barring from tender similar to that promulgated in March 2004 had also been applied)	<p>Cleansing contracts : 114 *</p> <p>Property service contracts : 27 *</p> <p>One conviction under the Employment Ordinance was recorded against a contractor for late payment of wages.</p>
HA	Nil	No reported case.

* Data collected on 31.1.2004 (each worker found to have wages lower than the commitment is treated as one case).