

For information
17 June 2004

LegCo Panel on Manpower

Implementation of the new mandatory requirement for government service contracts

Purpose

This paper briefs members on the implementation of the new mandatory requirement for government service contracts.

Mandatory requirement for service contracts

2. On 6 May 2004, the Government promulgated a new mandatory requirement for tender assessment for contracts for the procurement of government services (excluding construction services) that rely heavily on the deployment of non-skilled workers and are procured through tender procedures. Under this new requirement, a tender offer shall not be considered if the monthly wage rates offered by the tenderer to their non-skilled workers are less than the average monthly wages (which relate to an average number of normal hours of work per day and average number of standard working days per month) for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics at the time when the tender documents are issued. The new mandatory requirement applies also to sub-contracting arrangements and procurement of the same kind of government services under direct purchase authority.

Implementation

3. For tenders invited after 6 May 2004, Controlling Officers are required to specify the new mandatory requirement in the tender documents and the wage rates to be used for the purpose of the mandatory requirement. Controlling Officers are also required to specify in the tender document that the wage rates offered by the tenderers are binding on the tenderers.

4. Controlling Officers shall in the tender documents require the successful contractor to sign written employment contract with its employees (except temporary leave reliefs), specifying the major terms of employment inclusive of wages, working hours and rest days. They shall reserve the right for the Government to require the contractor, if necessary, to produce evidence that such written contracts have been entered into and that the employment conditions are adhered to. They shall also specify in the tender documents the sanctions for dealing with breaches of contractual obligations in respect of employment conditions for the non-skilled workers and breaches of the Employment Ordinance (EO). These sanctions may include the issue of default notices, on the basis of which deductions by way of liquidated damages from the payments to the contractor may be made. For serious breaches, there should be a provision for immediate termination of the contract. In addition, Controlling Officers are required to implement a demerit point system against their contractors who have breached their contractual obligations in respect of wages, working hours and signed written contracts with employees (except temporary relief workers). Under the demerit point system, for each breach of these contractual obligations, a default notice will be issued to the contractor concerned. Each default notice attracts one demerit point. The accumulation of demerit points would affect the contractor's eligibility to take part in future tendering activities. As a general rule, a tender offer should 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. Nor should a tender offer be considered if, during the twelve-month period prior to the tender closing date, the tenderer has had a total of three or more convictions (i.e. three or more summonses resulted in conviction) under the relevant sections of the EO, the Employees' Compensation Ordinance and the Immigration Ordinance.

5. Controlling Officers are required to devise a monitoring mechanism to ensure that their contractors comply with their contractual obligations in respect of wages for the non-skilled workers. Such a mechanism may include posting of wage information in respect of non-skilled workers in their workplaces, the requirement for the contractor to adopt the method of autopay or issue of cheques for payment of wages, regular checking of wage and attendance records, and interviews with non-skilled workers to check the wages they have received. Where Controlling Officers have grounds to suspect that contractors or sub-contractors are in breach of the EO, they may pass the information to the Labour Department (LD) for investigation.

6. Upon receiving complaints of non-compliance with the EO, the LD will interview the employees and the contractors separately, look into the matter of complaint and conduct surprise inspections. The LD will take out prosecution against contractors if there is enough evidence to establish that the contractors concerned are in breach of the EO and the employees concerned are prepared to serve as prosecution witnesses. The LD will also inform the procuring departments of the cases in question and urge them to step up the monitoring of the contractors concerned.

7. Members are invited to note the contents of this paper.

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