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Panel on Housing
Meeting on 5 June 2006

Background brief on
Procurement of services for public rental housing estates

Purpose

This paper summarizes previous discussions by the Panel on Housing (the Housing Panel) on problems related to the procurement of services for public rental housing (PRH) estates and measures taken by the Housing Authority (HA) to address them.

Outsourcing of estate management and maintenance services

2. Prior to 2000, estate management and maintenance (EMM) services, including cleansing and security services, of PRH were undertaken by staff engaged directly by the Housing Department (HD) or its Property Management Agents. On 27 January 2000, HA endorsed the transfer of a comprehensive range of EMM services, for no less than 75 000 existing PRH units and all new production, to the private sector over a two-year initial phased transfer programme to Property Services Companies (PSCs). The objective was to provide residents with a greater choice and an increasing voice in the care and management of their estates. This gradual transfer of EMM services was intended to allow sufficient flexibility for private contractors to provide quality services cost-effectively.

3. In January 2004, a survey conducted by Oxfam Hong Kong on the wages of the cleansing workers employed by the cleansing contractors of outsourced estates revealed that 65% of these workers received wages lower than those pledged by the cleansing contractors in the service contracts, and some contractors had used various means to exploit workers and evade monitoring by HD. The matter was followed up by the Housing Panel at its meeting on 15 January 2004. At the meeting, the Administration stressed its

commitment to ensure that workers were fully aware of the committed levels of their wages and that they were duly paid in accordance with the contractual obligations. The Administration had also caused an investigation into the situation. When responding to a Legislative Council (LegCo) question on 10 March 2004, the Secretary for Housing, Planning and Lands (SHPL) emphasized that to further protect the interests of cleansing workers, HD would require all cleansing contractors of outsourced estates to use standard form contracts formulated by the Labour Department (LD) and specify the committed wages, working hours and overtime pay in the employment contracts. Vigilant enforcement actions would also be taken against under-payment and exploitation of workers.

Enhancement of measures on procurement of services to protect workers

4. On 7 June 2004, the Administration reported to the Housing Panel the findings of the above investigation. It was found that 143 cases had paid wages lower than the committed wages. These cases involved a dozen of cleansing contractors working for 27 PRH estates. HD had issued warning letters to these contractors and deducted payment to the PCSs who had been found to have shortfalls of payment to their workers. In addressing the problems concerning procurement of services in general, namely, unreasonably low wages, unacceptable long working hours and few or even no rest days, the Administration implemented in May 2004 enhancement measures for new tenders procuring services. These included adopting new requirement on wages of unskilled workers, and adopting a demerit point system (DPS) to penalize contractors for non complying with contract requirements. A full list of the measures is in **Appendix I**.

5. Members of the Housing Panel were in support of the implementation of the measures to protect workers. They however brought up a number of concerns when examining these measures.

Demerit point system

6. Members considered it a criminal offence if the wages actually paid to workers were lower than the committed wages. They found the DPS too lenient to contractors because they would only be disqualified for tendering after being allotted six or more demerit points. Some members opined that HD adopted double standards in the treatment of contractors and PRH tenants, in that PRH tenants would face immediate termination of tenancy and even prosecution if they submitted false information in relation to application for PRH, whereas contractors would not be disqualified for tendering immediately for cheating HD and exploiting workers.

7. The Administration assured members that cases with criminal elements would be referred to the Police for follow-up actions. For those involving contravention of the Employment Ordinance (Cap. 57), they would be referred to LD. Members took note that the DPS would apply to all Government departments. Any contractor which has accumulated six or more demerit points would not be able to tender for any Government contracts.

Wage determination and protection

8. Members also expressed the following views on wage determination and protection -

- (a) Workers might be unwilling to report on exploitation, worrying that they might be discriminated in employment in the trade;
- (b) Although the designations of certain occupations might be similar, the occupations called for different skills. Care should be exercised to identify the appropriate industries/occupations published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics to ensure the wages for comparison were reasonable; and
- (c) The Administration should investigate into other service contracts to ensure there were no malpractices.

Progress and effectiveness of the enhanced measures

9. Six months after the implementation of the enhanced measures, the Housing Panel was briefed on the progress and effectiveness of the measures at its meeting on 3 January 2005. The Administration's initial observations on the effectiveness of the measures are set out in **Appendix II**.

10. The Administration pointed out that the enhanced measures had been effective as evidenced by the significant decrease in the number of complaints by non-skilled workers from 16 in the first half of 2004 to only five in the second half. Such complaints mainly concerned labour disputes, leave and wage matters.

11. Many members however, cast doubt on the effectiveness of the enhanced measures, and highlighted various complaints of exploitation of workers employed by HA's contractors. Some members were also concerned that the measures could not prevent permanent full-time jobs from being split up into part-time jobs to cut staff costs. To arrest the development, members proposed that as in the case of management contracts of private buildings, HD

should specify the required number of workers and wages when inviting tenders. They also highlighted possible loopholes that would enable contractors to circumvent the requirements regarding the “committed wages” and the capping of the number of part-time workers. The Administration was urged to review the ratio of part-time workers and improve HD’s complaint system to encourage workers to come forward to testify against non-complying contractors.

12. As labour exploitation might be attributed to the awarding of Government contracts to the lowest tenderer, members made the following suggestions for improving the award of contracts –

- (a) To examine the feasibility of the lowest tender by estimating the basic costs for providing certain estate services;
- (b) To give additional scores to contractors who pay higher “committed wages”;
- (c) To award service contracts to tenderers with good track record notwithstanding the higher tender prices; and
- (d) To introduce incentive measures to encourage good performance and hence attract established management companies to bid for HA’s service contracts.

13. Members further urged the Administration to improve DPS, which they considered too lenient, gear up monitoring and enforcement efforts against labour exploitation and impose heavier penalties. They also called upon LD to expedite the preparation of a standard employment contract for non-skilled workers employed by contractors in government service contracts, which in their view would help HA regulate their service contractors.

Subsequent developments

14. Since the Panel meeting on 3 January 2005, the following developments in the protection of interests of non-skilled workers employed by government service contractors have been made -

- (a) A new standard employment contract for use by contractors of government service contracts in their employment of non-skilled workers came into effect on 29 April 2005;

- (b) The complaint hotline specially established for outsourcing workers to lodge complaints on any exploitation of wages and work-related benefits went into full operation on 1 July 2005; and
- (c) To encourage workers to report the malpractice of contractors, for confirmed cases where malpractice is involved, on request HA would provide workers with assistance in placement findings with other contractors.

15. The problem of exploitation of workers employed by government service contractors remained a grave concern of Members. Three questions on outsourcing of services and breaches of labour legislation and employment conditions by government service contractors were raised at the Council meetings on 6 July 2005, 23 November 2005 and 22 February 2006 respectively.

16. The Tender Committee of HA endorsed on 23 March 2006 a set of tightened measures covering all fronts, including tender evaluation, contract administration and list management to deter unscrupulous cleansing and security service contractors from exploiting their workers for implementation from 1 May 2006.

17. The Administration will brief the Panel on HA's tightened measures and provide an update on the progress and effectiveness of the existing enhanced measures at the meeting to be held on 5 June 2006.

18. A list of relevant papers with their hyperlinks is in **Appendix III**.

**Enhancement Measures on
Procurement and Monitoring of Service Contracts
for Public Rental Housing Estates**

The following enhancement measures have been implemented since May 2004 for new service tenders : -

- (a) Adopt the new mandatory requirement on wages of non-skilled workers as stated in Financial Circular No. 5/2004 issued by the Financial Services and the Treasury Bureau (FSTB) on 6 May 2004. A tender offer shall not be considered if the monthly wages offered by the tenderers to the non-skilled workers to be employed by them for carrying out the contracts are less than the average monthly wage for the specific normal hour of work for the relevant industry/occupation published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics when tenders are invited.
- (b) Introduce a new item on "committed total man-hour input" in the tender. Tenderers are required to commit in the tender the number of man-hour to be allocated to the cleansing service being tendered. Tenders with low committed input resources will receive lower score so as to discourage contractors from devoting insufficient resources to the service contract.
- (c) Devise a scoring mechanism in tender evaluation to encourage tenderers to keep the working hour of workers to not more than 10 hours per day on average over a period of 10 days. Furthermore, the tenderer has to commit in the tender the maximum working hours for their cleansing workers.
- (d) The definition of "committed wages" is refined. Only those income and allowances that are guaranteed will be counted as part of the committed wages. All-or-none allowances which are not paid to a worker in proportion to his/her attendance, such as good attendance allowance, will not be counted under "committed wages".

- (e) Adopt the Demerit Point System to penalize contractors not complying with contract requirements or committing the offence stated in Financial Circular No. 3/2004 issued by FSTB on 27 March 2004. Tenders submitted by cleansing contractors with six demerit points or above would not be considered. Demerit points will be allotted to the contractors if the actual working hours of their workers have exceeded the committed maximum working hours or the wages paid to workers are below the committed wages.
- (f) Adopt the “batch-payment adjustment” system for the monthly payment to the contractor. Workers’ salary statements will be checked on a random basis. The Housing Department will carry out random interviews with the workers to verify that wages shown on the salary statements were the amount actually received by them. If irregularities were found in the samples taken in a particular month, the total gross payment for that month payable to the contractor will be deducted by the same percentage of short payment to worker.
- (g) Contractors are required to use the standard monthly salary statement for their workers to show clearly the breakdown of wages when they claim monthly payment from the Housing Department. Both the contractor and its workers are required to sign on the salary statement.
- (h) The number of part-time workers are capped at no more than three-eighth of the total number of workers.
- (i) Contractors are required to use the Standardized Employment Contract published by the Labour Department when they enter into employment agreement with their workers.
- (j) Adopt the use of autopay or cheque payment for workers for salary payment to facilitate checking by the Housing Department.

(Source: Annex to LC Paper No. CB(1)350/04-05(06) provided by the Administration.)

Housing Authority's Initial Observations on Effectiveness of the Enhanced Measures

(a) Wages of non-skilled workers

In line with the mandatory requirement promulgated by the Government in May 2004, the “committed wage” for non-skilled employees in the Housing Authority’s outsourced contracts must not be less than the relevant average monthly wage published in the latest Census and Statistics Department’s Quarterly Report of Wage and Payroll Statistics. In response to the suggestions raised at the Panel on Manpower on 18 November 2004, the Housing Department is considering to include “committed wage” as one of its scoring items under the Tender Scoring Scheme in order to encourage contractors to offer a higher level of wage to their non-skilled workers than the average wage. Committed wages that are higher than the average will be given additional scores.

(b) Number of workers benefiting from the enhancement

The 65 contracts featuring enhanced labour protection awarded so far employ some 3 400 cleaners and security guards. Upon incorporation of the new enhanced measures in all contracts, the total number of workers that will benefit from the enhancement measures will be around 10 000.

(c) Contract enforcement and supervision

All employment contracts and monthly salary statements are checked to ensure that the committed wages, actual wage payments and working hours of workers comply with contract requirements. In addition, the Housing Department carries out random interviews with the workers to verify that the wages shown on the salary statements were the amount actually received by them. Up to November 2004, no irregularity has been found and no Default Notice was issued.

(d) **Complaints**

No complaint of labour exploitation has been received under the new contracts in the past seven months since implementation of the enhanced requirements but there was one referral of suspected malpractice. In this case, the contractor demanded payment of deposit from workers as an initial condition of employment to prevent workers quitting without prior notification. Upon investigation, the contractor had already withdrawn the requirement. Nonetheless, he was verbally warned to avoid imposing any employment conditions which might be perceived as labour exploitation.

(Source: Extract from LC Paper No. CB(1)350/04-05(06) provided by the Administration.)

Procurement of services for public rental housing estates

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Housing	15 January 2004	Minutes (http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg040115.pdf)
Council meeting	10 March 2004	Hansard (http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0310ti-translate-e.pdf)
Panel on Housing	7 June 2004	LC Paper No. CB(1)2028/03-04(05) (http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg0607cb1-2028-5e.pdf) Minutes (http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg040607.pdf)
Council meeting	3 November 2004	The Administration's press release on question raised by Hon WONG Kwok-hing at the Council meeting on 3 November 2004 (http://www.info.gov.hk/gia/general/200411/03/1103236.htm)
Panel on Housing	3 January 2005	LC Paper No. CB(1)350/04-05(06) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1206cb1-350-6e.pdf) LC Paper No. CB(1)350/04-05(07) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1206cb1-350-7e.pdf)

Council/Committee	Date of meeting	Paper
		Minutes (http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050103.pdf) LC Paper No. CB(1)1136/04-05(01) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0103cb1-1136-1-e.pdf)
Council meeting	6 July 2005	The Administration's press release on question raised by Hon Fred LI at the Council meeting on 6 July 2005 (http://www.info.gov.hk/gia/general/200507/06/07060100.htm)
Council meeting	23 November 2005	The Administration's press release on question raised by Hon LEUNG Kwok-hung at the Council meeting on 23 November 2005 (http://www.info.gov.hk/gia/general/200511/23/P200511230135.htm)
Council meeting	22 February 2006	The Administration's press release on question raised by Hon LAU Chin-shek at the Council meeting on 22 February 2006 (http://www.info.gov.hk/gia/general/200602/22/P200602220083.htm)