

A. Introduction

The Audit Commission (Audit) conducted a review to examine the economy, efficiency and effectiveness of the Housing Department (HD)'s outsourcing of the management of public rental housing (PRH) estates. The review focused on the following areas:

- protection of non-skilled workers engaged in outsourcing contracts;
- procurement of services and contract administration;
- monitoring of the performance of property services agents (PSAs); and
- performance management and contingency planning.

2. At the beginning of the Committee's public hearing, **Mr LAU Kai-hung, Deputy Director of Housing (Estate Management)**, made a powerpoint presentation, which gave a general overview of the various measures implemented by the HD to protect non-skilled workers engaged in outsourcing contracts. The presentation materials and a table summarising the progress made by the HD in implementing the various audit recommendations are in *Appendices 7 and 8* respectively. In conclusion, the **Deputy Director of Housing (Estate Management)** said that the HD had already taken actions on 28 of the 40 audit recommendations and was following up the remaining 12 recommendations.

B. Protection of non-skilled workers engaged in outsourcing contracts

3. The Committee noted from paragraph 2.17 of the Director of Audit's Report (Audit Report) that of the 117 cases identified by the HD with irregularities established (irregular cases), the HD had only referred 17 cases to law enforcement agencies for investigation and issued default notices (DNs) under the Demerit Point System (DPS) in two cases, and these DNs were subsequently withdrawn. Besides, the HD had neither applied the "batch-payment adjustment" nor issued any adverse performance reports to the PSAs/contractors for the irregularities identified. It appeared to the Committee that the HD had not taken adequate regulatory actions on the suspected irregular cases. The Committee asked:

- about the reasons for not taking regulatory actions on the majority of the irregular cases, and whether other follow-up actions had been taken in respect of these cases; and
- whether the HD had issued clear and specific guidelines to frontline staff on the administration of labour protection clauses in the outsourcing contracts and on the regulatory actions to be taken against contractors violating employment-related contractual obligations.

4. **Mr CHAN Chun-yuen, Director of Housing**, stated that:

- the outsourcing of the management of PRH estates was a new arrangement for both the HD and the PSAs/contractors. Therefore, the HD had followed the Efficiency Unit (EU)'s recommendation and adopted a partnership approach in managing the contractor relationship. The HD regarded the PSAs/contractors as long-term business partners and promoted mutual trust with them. It was within this framework that the HD had developed its supervision and monitoring system, allowing the PSAs/contractors to gradually learn the requirements of outsourcing services. Given that the PSAs/contractors were like "kindergarten students" just promoted to primary schools, it would not be desirable to "kick them out of school" once they breached the school regulations. Opportunities had to be given to them to learn from and rectify the irregularities. As such, HD staff would not take regulatory actions (such as the issue of DNs) against the defaulted PSAs/contractors if they found that the irregularities were not committed wilfully or if the PSAs/contractors had undertaken to rectify the irregularities. That said, the defaulted PSAs/contractors would still be verbally warned, although such verbal warnings were not recorded. The HD would ensure that these were properly documented in future; and
- the HD's Estate Management Division had issued and updated guidelines from time to time regarding the administration of labour protection requirements in outsourcing contracts. From late 2007 onwards, the HD had applied more stringent rules, i.e. a hardline approach, against all employment-related irregularities, as both the HD staff and the PSAs/contractors had become familiar with the requirements developed over the years. The outsourcing system was complicated and the HD would continue to strive for further improvement.

5. According to the presentation made by the Deputy Director of Housing (Estate Management), one of the common irregularities for which DNs under the DPS would not be issued was miscalculation of overtime payment due to the use of the formula for calculating deduction for absentee. Usually, only verbal warnings were given to the defaulted PSAs/contractors since they would repay the shortfall of wages to the workers. The Committee enquired:

- when the HD noticed the first case with such a problem, and details of the actions that had been taken to address the problem in the first case as well as other cases with similar problem; and
- about the reasons for the recurrence of the problem despite the actions taken by the HD.

6. The **Director of Housing** replied in his letter of 8 January 2008 in *Appendix 9* that:

- there were about 10 cases of this nature handled by the HD for the period from 1 March 2006 to 28 February 2007. The dates of discovery and actions taken by the HD on these cases were provided in Annex A to *Appendix 9*. Most of these minor irregularities were detected in the first year of implementation of the measures introduced in May 2006; and
- the recurrence of similar problem could be due to the fact that these cases were scattered in different estates involving different contractors, contractors had taken time to learn from these unintentional mistakes and make improvement, and the HD had adopted a partnership approach in the past in accordance with the spirit advocated by the EU. Stepped-up action had been taken since November 2007.

7. As the HD regarded the PSAs/contractors as “kindergarten students”, the Committee queried whether the HD had been too lenient in managing the PSAs/contractors, and whether it had issued clearer guidelines to its staff on the circumstances for the issue of DNs under the DPS, as mentioned in paragraph 2.27(a) of the Audit Report.

8. The **Director of Housing** admitted that during the initial years of implementing outsourcing, the HD had indeed adopted a lenient approach in managing the PSAs/contractors as they were still in their early stage of learning. The HD should have taken more rigorous regulatory actions for some irregular cases. He also stated that clearer guidelines had already been issued to the HD staff, and provided a copy of the guidelines to the Committee (see *Appendix 10*).

9. The Committee noted from Annex C of the above guidelines that breaches concerning the arrangement of leave and fulfilment of the obligations under the Mandatory Provident Fund (MPF) Schemes Ordinance were not categorised as irregularities that warranted the issue of DNs attracting demerit points (DNNDP), and that cases involving possible violation of employment-related ordinances would not be referred to law enforcement agencies for follow-up if authorisation had not been given by the workers concerned. In view of the above, the Committee asked:

- about the reasons for not issuing DNNDP for breaches such as improper arrangement of leave, late contribution of MPF or absence of MPF contribution records, despite that these were serious cases involving possible violation of employment-related ordinances; and

- whether the HD could refer cases involving possible violation of employment-related ordinances to law enforcement agencies for follow-up, irrespective of whether authorisation from the workers concerned had been given.

10. The **Director of Housing**, in his letter of 8 January 2008, stated that:

- the HD had followed the guidelines issued by the Financial Services and the Treasury Bureau (FSTB) under Financial Circular No. 4/2006, which was applicable to all government departments. The guidelines stipulated that DNDP was to be issued only for any of the four breaches on contractual obligations, i.e. committed wages, daily maximum working hours, signing of standard employment contracts and wage payment by means of autopay to non-skilled workers. Whether or not to include other breaches concerning the arrangement of leave and fulfilment of the obligations under the MPF Schemes Ordinance should best be reviewed by the FSTB in the context of a unified action for all government departments. The HD's view was that these breaches were breaches of the Employment Ordinance and the MPF Schemes Ordinance respectively, enforcement actions of which should be taken by the relevant enforcement agencies, i.e. the Labour Department and the MPF Schemes Authority respectively; and
- legal advice sought by the HD had confirmed that the HD could refer cases involving possible violation of employment-related ordinances to the law enforcement agencies for follow-up. The HD would, in future, refer such cases to the relevant law enforcement agencies for necessary action.

11. The Committee referred to paragraph 2.27(b) to (f) of the Audit Report and enquired about the details of the HD's reviews, particularly the differences between past and new practices, and the follow-up actions taken by the HD. The **Director of Housing** provided further information in his letter of 8 January 2008, as follows:

On paragraph 2.27(b) concerning review of the HD's monitoring mechanism and taking of appropriate regulatory actions

- in the past, measures on protection of non-skilled workers were audited by the HD frontline staff on a monthly basis. Irregularities found in the monthly audits or detected by the Central Monitoring Team (CMT) would be followed up by the HD staff who would consider and decide the regulatory actions to be taken where appropriate, including the issue of warning letters, adverse reports, DNs, or delisting from the Housing Authority (HA)'s approved Lists of PSAs/Contractors. In addition to these past practices, a more stringent approach had now been adopted regarding the issue of DNDP and DN not attracting demerit points (DNNDP). For each DNDP or DNNDP, marks

would be deducted in the PSA/contractor's performance scores which would reduce their chance of success in future tendering exercises;

On paragraph 2.27(c) concerning applying stringent rules against serious breaches of labour protection requirements

- when the partnership approach was adopted in the past, DNDP was issued for violation of the contractual obligations only if the employment-related irregularities were committed intentionally (after considering the severity of the act and whether it was a technical fault) or if the irregularities had not been rectified by the contractor upon notification or issue of warning letters by the management. Under the new practices, stringent rules had been adopted against all employment-related irregularities;

On paragraph 2.27(d) concerning review of the HD's regulatory system to step up regulatory actions against defaulted PSAs/contractors

- in the past, PSAs/contractors were allowed to take rectification actions on minor irregularities if the defaults were not committed wilfully. Under the new practices, stringent rules had been adopted against all employment-related irregularities. The work flow had also been revised to enhance follow-up actions to be taken against irregular cases (see *Annex A to Appendix 10*);

On paragraph 2.27(e) concerning details of implementation for the appointment of the CMT to oversee follow-up actions taken by estate staff

- in the past, the CMT provided support services to estate staff in monitoring the PSAs/contractors' compliance with labour protection clauses in the contracts. The CMT centrally monitored the Employment-related Irregularities Complaint Register to keep in view of the progress and outcome of investigation and actions taken by estate staff. In addition to these practices, the CMT was now entrusted with the responsibility of overseeing the follow-up actions taken by estate staff to ensure that a consistent regulatory approach was taken in compliance with the relevant instructions; and

On paragraph 2.27(f) concerning the issue of guidelines on the documentation of regulatory actions taken or not taken for compliance by estate staff

- according to past practices, frontline managers had to interview the defaulted PSAs/contractors and request them to give explanations prior to the issue of DNs, and keep records of such interviews. If the frontline staff were in doubt with the explanations given by the PSAs/contractors, they should seek directives from their senior officers. DNs would be issued if the explanations given by the contractors were not acceptable. Under the new

guidelines, endorsement of District Senior Housing Manager (DSHM)/Senior Property Services Manager (SPSM) was required for each issue of DNNDP/DNNDP or non-issue of DN. The fully completed cases, endorsed by DSHM/SPSM, had to be passed to the CMT for monitoring. In case there was disagreement over the outcome endorsed by DSHM/SPSM, the Regional Chief Manager's decision would be sought.

12. The **Director of Housing** also said that all of the above new practices were introduced via the Estate Management Division Instruction No. M07/2007(S) issued on 7 December 2007 (*Appendix 10*), and had been clearly disseminated to HD frontline staff and/or contractors to ensure that they were strictly adhered to.

13. The Committee noted that despite the tightened measures implemented by the HD, the number of suspected employment-related irregularities had significantly increased from 25 cases in 2004-2005 to 118 cases in 2005-2006 and 126 cases in 2006-2007, as shown in Table 2 in paragraph 2.12 of the Audit Report. The Committee queried the reason for such increase.

14. The **Deputy Director of Housing (Estate Management)** explained that the HD had, through education and publicity, enhanced the workers' awareness of their rights, and dedicated a 24-hour telephone hotline to receive complaints on employment-related issues. As a result, the number of suspected cases had increased substantially in the said two years and multifarious irregularities were identified by the HD. On the other hand, Table 2 also showed that there were only 25 cases in 2007-2008 (up to 30 June 2007), which were due to strengthened regulatory actions enforced by the HD.

15. The Committee noted from paragraph 2.31 of the Audit Report that the HA's procurement policy of removal of a defaulted PSA/contractor (with employment-related conviction or three or more demerit points under the DPS) from the HA Lists of approved PSAs/Contractors for "a maximum of five years" was not entirely consistent with the Government's requirement that tender offers submitted by a tenderer with similar conviction/demerit point records would not be considered for "a period of five years" (five-year suspension requirement). In the case referred to in paragraph 2.32 of the Audit Report where the PSA was convicted of contravening the Employees' Compensation Ordinance under a non-government contract in November 2006, the HD decided to remove the convicted PSA from the Lists for only one year from the date of conviction. It appeared to the Committee that the HA's policy was less restrictive than that of the Government and was not in line with the Government's initiatives to protect non-skilled workers. The different suspension periods imposed on the PSAs/contractors might also be perceived as unfair. The Committee therefore asked the FSTB, which promulgated the five-year suspension requirement vide Financial Circular No. 4/2006:

- about the rationale for setting the period of suspension at five years, and whether government departments were allowed to exercise flexibility to shorten the suspension period; and
- whether the HD had the discretion not to follow the Government's five-year suspension requirement.

16. **Mr Joe WONG, Deputy Secretary for Financial Services and the Treasury (Treasury)**, said that:

- it was the Government's policy that tender offers would not be considered for a period of five years if the tenderer had any employment-related conviction or had accumulated three demerit points. For the sake of clarity and consistency in implementation, the Government had set a fixed period of five years for all departments to follow, and discretionary shortening of the duration was not allowed. This also sent a clear message to the contractors that there was no room for negotiation regarding the suspension period. Strict enforcement of such requirement would produce sufficient deterrent effect on the contractors; and
- the HD, as the executive arm of the HA, could draw up its own procurement policy and procedures and was not obliged to follow the requirements in the said Financial Circular.

17. Having obtained clarification about the Government's position on the matter, the Committee enquired about:

- the HA's rationale for adopting a less restrictive policy as compared with that of the Government;
- the reasons for suspending the convicted PSA from tendering for only one year instead of the maximum of five years; and
- when the HD would bring the Government's suspension requirement to the attention of the Tender Committee (TC), as recommended in paragraph 2.36(a) of the Audit Report.

18. The **Director of Housing** and the **Deputy Director of Housing (Estate Management)** said that:

- the TC endorsed on 23 March 2006 the adoption of a tightened measure on labour protection that a PSA/contractor would be removed from the respective HA Lists of PSAs/Contractors for a maximum of five years, which was one

month before the FSTB's promulgation of the Government's tightened measure. The HA considered the Government's five-year suspension requirement too rigid if adopted across-the-board;

- when the TC discussed the particular regulatory case in July 2007, it was fully aware of the difference between the HA's prevailing procurement policy and the requirements stipulated by the FSTB. In view of the fact that the case happened in a private residential property and that the two security guards were dismissed (one dismissed during sick leave) because they breached the regulations of their company concerning staff discipline, the TC considered that removing the PSA concerned from the HA Lists for five years would be too harsh. It therefore decided on a suspension for one year instead. The decision was made after due consideration of the background, nature and severity of the case. In fact, for the seven PSAs/contractors which had been removed from the HA Lists up to August 2007, only this case was not suspended for five years; and
- although the TC had been informed at various meetings and was fully aware of the five-year suspension requirement, it consciously decided to remove defaulted contractors from the HA Lists for "a maximum of five years" having regard to the severity and nature of the convictions. Nevertheless, the HD would inform the TC again at its next meeting of the differences between the HA's procurement policy and practice and the requirements stipulated by the FSTB.

19. After the Committee's public hearing, the **Director of Housing** informed the Committee in his letter of 8 January 2008 that the FSTB's five-year suspension requirement as stipulated in Financial Circular No. 4/2006 had been brought to the attention of the TC again at its meeting on 13 December 2007. The Committee noted from the draft meeting minutes provided by the HD that most members of the TC considered HA's current policy reasonable and fair because unlike the Government, the HA had maintained its own Lists of PSAs/Contractors with strict admission criteria and adopted a selective tendering procedure. Given that the HA had had a thorough discussion with the FSTB regarding the suspension period before the said Financial Circular was issued, the TC decided that the HA should further discuss the matter with the FSTB before making a decision.

20. According to paragraphs 2.38 and 2.39 of the Audit Report, the checking conducted by the HD estate staff for monitoring and enforcing PSA/contractor's compliance with the labour protection requirements did not seem to be effective as no significant findings had been identified. On the other hand, the inspections conducted by the CMT were more fruitful. The Committee asked whether this was due to the negligence of duty on the part of some estate staff, and whether the HD would consider expanding the CMT so that all the inspections would be conducted by CMT staff.

21. The **Director of Housing** replied that the HD would regularly review its practices in carrying out inspections. As the HD had outsourced a significant proportion of its estate management services, not many estate staff were stationed in the estates. The HD had to rely on the local monitoring teams and the CMT to conduct checking. Given that CMT staff were more specialised in handling employment-related irregularities, the HD would make appropriate adjustments to strengthen the CMT.

C. Procurement of services and contract administration

22. As stated in paragraphs 3.12 and 3.13 of the Audit Report, the various regulatory actions laid down by the HD, which included suspension from tendering, taking over part of the PSA's work and removal from the PSA List, sometimes might not be able to provide sufficient deterrent effect, especially on those PSAs whose workload had almost reached the List Capping Limit or who had no intention to bid for new contracts. The Committee asked whether the HD would consider introducing financial penalty against those PSAs with persistently poor performance.

23. The **Director of Housing**, in his letter of 8 January 2008, stated that:

- the HD had sought legal advice regarding the introduction of financial penalty against PSAs with persistently poor performance. The advice was that HA did not have the power to do so under the Housing Ordinance. Under the laws of contract, where one party had acted in breach of the contract, the other party was entitled to claim damages for the breach. However, damages would have to be quantified and must be genuine estimates of the loss. This was typical in a construction contract where a contractor would have to pay the employer liquidated damages of a fixed amount (for each day's delay beyond the completion date) if he failed to complete the project on time. Even so, liquidated damages clauses had been subject to legal challenges when they were perceived as a "penalty", e.g. if they were in sums disproportionate to the actual loss; and
- in view of the above, it was considered inappropriate to introduce financial penalty over and above actual losses to penalise PSAs due to their poor performance.

24. The Committee referred to Case 6 in Table 4 in paragraph 3.12 of the Audit Report where Company Y was only suspended from tendering for a short period and was still included in the PSA List, despite its persistently poor performance as reflected in the consecutive adverse reports it received. It appeared to the Committee that the HD's regulatory actions had not been effective in compelling the PSAs to improve their performance. The Committee asked why Company Y in Case 6 could still remain on the PSA List, and the criteria for removing PSAs from the List.

25. The **Deputy Director of Housing (Estate Management)** explained that:

- the HD would need to consider the special circumstances of each case when dealing with PSAs with poor performance. For Case 6, apart from the number of adverse reports received, the HD also took into account other considerations such as the tenants' assessment on the PSA's performance, which made up 30% of the overall assessment score, and the PSA contract expiry date. The HD was of the view that Case 6 did not warrant the termination of contract. However, in any case, the HD stood ready to take over the work of any underperforming PSAs if necessary. As demonstrated in Case 5 in Table 4 in paragraph 3.12 of the Audit Report, the HD took over part of the management work in one estate managed by the PSA; and
- if the PSAs had employment-related convictions under the relevant ordinances, or had accumulated three demerit points under the DPS, they would be removed from the List. The HD had also introduced four levels of regulatory actions against PSAs with adverse reports on performance, whereby the PSAs would be debarred from tendering for a certain period or be removed from the List depending on the number of adverse reports obtained within four quarterly periods.

26. According to paragraphs 3.17 and 3.19 of the Audit Report, although the HD had attached greater weighting to the past performance of tenderers in tender evaluation since June 2007, it did not include, as an assessment criterion, the number of DNs issued (with or without demerit points given) in its scoring scheme. The Committee asked whether the number of DNNDP would result in a corresponding deduction of the PSA/contractor's performance score, which would in turn affect its tendering opportunities.

27. The **Director of Housing** and the **Deputy Director of Housing (Estate Management)** said that:

- the HD had adopted a two-envelope system for tender evaluation. Apart from the financial proposal, non-financial assessment based on the tenderer's past performance and management proposal would first be considered. In June 2007, the HD revised the scoring scheme by increasing the weighting for past performance from 36% to 50%. On the other hand, the weighting for management proposal was reduced from 16% to 5%;
- when evaluating the past performance of tenderers, the TC would be informed of the number of and reasons for the issue of DNs in the tender assessment reports. The DNNDP issued would result in a corresponding deduction of the PSA/contractor's performance score, which would be taken into account during tender evaluation. Since competition among tenderers was keen, the final scores were usually compared up to the decimal place; and

- to provide incentive to PSAs with good performance, the HD gave tender opportunities to PSAs quarterly based on their performance on HA contracts. Competent PSAs with good track records were given more tender opportunities. PSAs in the top quartile were given all tendering opportunities, whereas those in the lowest quartile would have no tendering opportunities.

28. Noting that under the scoring scheme, the successful tenderer might not necessarily be the one who offered the lowest bid, the Committee asked about the percentage of the existing PSA contracts which were of the lowest bids, and the number of established employment-related irregularities for these lowest-bid contracts as compared to other contracts of higher bids.

29. The **Director of Housing** replied at the public hearing and in his letter of 8 January 2008 that of the existing 41 PSA contracts, 39% were the lowest bids and six cases of employment-related irregularities were found in these contracts. For the remaining 61% of the contracts of higher bids, another six irregular cases were identified. There seemed to be no correlation between the number of employment-related irregularities and the bids offered by the contractors. In fact, when considering the past performance of the tenderers, the HD would take into account their performance under other non-HD contracts.

30. The Committee noted from paragraph 3.26(c) and (d) of the Audit Report that in Audit's examination of PSA contracts related to 20 estates and involving 32 sub-contractors, in seven cases, the PSAs submitted their applications for seeking the HD's approval after the commencement of the sub-contracting services. In four cases, there was no documentary evidence to show that the PSAs had submitted any application seeking the HD's approval for the sub-contracting services. The Committee asked:

- whether the sub-contractors involved in these cases had further sub-contracted their services; and
- how the HD would step up the monitoring of the appointment and performance of sub-contractors.

31. In response, the **Deputy Director of Housing (Estate Management)** said that:

- the PSAs were only allowed to have one tier of sub-contracting for cleansing and security services they provided for the estates they managed, i.e. further sub-contracting of their services was not allowed; and

- since May 2006, the HD had tightened the control by requiring PSAs to employ sub-contractors from the HA Lists of PSAs/Contractors. This applied to contracts for which tenders were invited on or after 1 May 2006. Regarding contracts for which tenders were invited before 1 May 2006, the HD's prior consent was required for the sub-contracting services. Most of the contracts tendered before 1 May 2006 had expired and when the PSAs/contractors tendered for new contracts, they would have to appoint sub-contractors from the Lists and obtain the HD's prior approval. Since the implementation of the requirement, no further irregularity had been identified.

32. The Committee further enquired about the criteria for admission to and removal from the Lists of PSAs/Contractors. The **Deputy Director of Housing (Estate Management)** replied that the HD would take into account the sub-contractors' financial situation, past experience and performance records when considering admission to the Lists. If the financial situation of the sub-contractors worsened or their performance deteriorated, they could be removed from the Lists or be downgraded.

33. The Committee noted from paragraph 3.32 of the Audit Report that in five of the eight PSA contracts examined by Audit, the amounts of performance bonds provided by PSAs were at variance with the contract requirements, ranging from a shortfall of \$2 million to an excess of \$500,000. The Committee asked why the amounts of the bonds were not equal to 5% of the value of the contracts as stated in the tender document. The **Director of Housing** explained that sometimes changes in the contract scope before tendering would result in deviation from the usual value of 5% of the contract sum. The HD would closely follow up with the PSAs concerned to ask them to make up for the shortfall as soon as possible.

34. According to paragraph 3.35 of the Audit Report, some PSAs took out insurance after the commencement of contracts, which put the PSAs (and the HA) at risk. The Committee asked why the HD allowed such situation to occur. The **Deputy Director of Housing (Estate Management)** said that the type of insurance in question was not public liability insurance. The insurance policies were mainly money and fidelity guarantee insurance policies to cover the performance risks of PSAs in taking up HA contracts. The HA would ensure that PSAs possessed valid insurance policies before commencement of contracts.

D. Monitoring of the performance of PSAs

35. According to paragraph 4.20 of the Audit Report, the HD's Administration Guidelines stipulated that the monitoring teams of the Property Service Administration Units (PSAUs) were expected to carry out at least one surprise check for each PSA-managed estate each month. However, Table 7 in paragraph 4.23 revealed that in

two estates, surprise checks had not been carried out as frequently as required. The Committee asked why the required frequency of checks could not be achieved.

36. The **Deputy Director of Housing (Estate Management)** explained that the surprise checks covered three disciplines, namely estate management, building works and building services. As shown in Table 7, the required frequency had been achieved for either one or two of the three disciplines for the two estates. The extent of not achieving the required frequency ranged from 8% to 25%. Apart from conducting surprise checks, the HD staff obtained a good understanding of the PSAs' performance through regular meetings with PSAs, members of the Estate Management Advisory Committee (EMAC) and tenants.

37. According to paragraph 4.32 of the Audit Report, members of the EMAC had to complete questionnaires for the purpose of evaluating the performance of the PSAs. The Administration Guidelines stipulated that in completing the questionnaires, each EMAC member was required to declare any conflict of interest he might have with the PSA. However, as revealed in paragraph 4.33(c) of the Audit Report, in all eight estates examined by Audit, many EMAC members did not indicate on the declaration forms whether they had any conflict of interest with the PSAs. The Committee asked:

- why the Administration Guidelines concerning declaration of interest were not followed; and
- how the HD could ensure that there was in fact no conflict of interest between the EMAC member and the PSA if no such indication was made on the declaration form.

38. In response, the **Director of Housing** and the **Deputy Director of Housing (Estate Management)** said that:

- the meetings of EMAC were usually held after office hours with a tight schedule. Despite this, the HD staff conducting the meeting would strive to ensure that members of the EMAC followed the Administration Guidelines and evaluated the performance of PSAs in a fair and open manner. In fact, clearer guidelines on how to properly complete the questionnaires had been issued to the HD staff. According to the revised guidelines, assessment forms filled in with pencil, without declaration or without signature by the EMAC members would be invalidated; and
- if there was no indication of conflict of interest on the declaration form, the HD had no idea whether there was such conflict between the EMAC member and the PSA. In any case, the assessment form without declaration would be disregarded. If a member intentionally provided false information, the HD

might consider taking more rigorous action. The HD had in the past cooperated with the Police to conduct further investigation for suspected fraudulent cases. The HD would make sure that members were informed of the possible consequence of providing false information.

39. According to paragraph 4.41 of the Audit Report, PSAs might be discouraged from reporting hawking activities to the PSAUs, fearing that it might affect their performance rating, or that the HD would take cost-recovery action. The Committee asked:

- whether any regulatory action would be taken against the PSAs if they failed to report illegal hawking activities; and
- how the HD would ensure that PSAs were not discouraged from reporting hawking activities.

40. In reply, the **Deputy Director of Housing (Estate Management)** said that:

- in reality, the chance of PSAs not reporting hawking activities was slim as there were many residents living in PRH estates who would report such activities to the HD from time to time. Moreover, according to the modality plan for inter-departmental collaboration as specified in the “Report on Measures to Improve Environmental Hygiene in Hong Kong” published by Team Clean in August 2003, for a blackspot having 10 or more illegal cooked food hawker stalls in operation, joint departmental raiding operations by the HD, the Food and Environmental Hygiene Department and the Police would be mounted. For a blackspot having five to nine such hawker stalls, the HD’s Mobile Operations Unit (MOU) would be deployed to conduct surprise raids and intensive patrols. For a blackspot having less than five illegal hawkers, local management staff, including PSAs, would be responsible for handling the problem. Since the implementation of this plan, the number of hawker blackspots in PRH estates had reduced significantly. As the PSAs were required to inform the HD of any hawking activities within the estate, failing to do so might result in warnings given by the HD; and
- having considered the various problems relating to the practice of recovering the costs of anti-hawking operations from the PSAs, the HD had discontinued this practice.

41. The Committee noted that although PSAs were required to take effective actions to keep an estate free from hawkers and to clear hawkers in the vicinity of the estate, these actions were not always effective. This was clearly demonstrated in Case 7 in paragraph 4.44 of the Audit Report, in which the hawkers always left the spot for a short while and

returned when PSA staff were not present. The Committee also noted that unlike the HD staff, PSA staff were not empowered by law to take enforcement actions against illegal hawking activities in estates. Therefore, in estates with less than five hawkers, the problem of illegal hawking resurfaced time and again. The Committee asked how the HD could effectively address this problem, and whether it would consider deploying more HD staff to take enforcement actions against illegal hawking activities, or even taking over such work from the PSAs.

42. The **Director of Housing** replied that:

- illegal hawking was a complicated problem, particularly in an estate managed by different parties. In locations with serious hawking problems, the HD would deploy MOU staff to carry out anti-hawking operations. However, there were almost 200 PRH estates and the manpower of the MOU, with some 200 staff, was tight; and
- the HD was aware that PSA staff did not have the legal power to take enforcement actions, such as arrests and seizures, against illegal hawking in estates. The PSA staff were thus not effective in combating illegal hawking activities. The HD had requested the EU to conduct a comprehensive study to review the types of estate management work, including taking enforcement actions against illegal hawking activities, which should be handled by HD staff instead of PSA staff. Having regard to the results of the study, which would be available by April 2008, the HD would review the overall manpower requirements with a view to effectively addressing the problem of illegal hawking.

E. Performance management and contingency planning

43. The Committee noted from the presentation made by the Deputy Director of Housing (Estate Management) at the beginning of the public hearing that providing quality estate management services, achieving customer satisfaction and maintaining cost effectiveness were the missions of the HD for outsourcing the management of PRH estates. The Committee asked whether the HD had met these objectives.

44. The **Director of Housing** and the **Deputy Director of Housing (Estate Management)** responded that:

- the quality of estate management services could best be reflected in the satisfaction level of tenants. According to the results of customer satisfaction surveys, 68% of the households indicated in 2007 that they were “very satisfied/satisfied” with the service quality of estate management officers, compared to 61% in 2005. Those “very satisfied/satisfied” with the

quality of security services had increased from 69% in 2005 to 76% in 2007. The satisfaction level on cleanliness and hygienic conditions had also improved. Moreover, the result of the customer satisfaction survey for the HD's Total Maintenance Scheme recorded an overall satisfaction rate of 88.5% in 2007; and

- as to cost-effectiveness, according to the EU's examination in 2006 of more recent outsourced contracts, the overall cost saving achieved by the HD from the PSA model was 18% as compared with the in-house model.

45. According to Audit's observation in paragraph 5.13 of the Audit Report, the HD did not have a contingency plan to cope with a sudden termination of a PSA contract. The Committee asked whether a contingency plan had been in place to avoid service disruptions. The **Deputy Director of Housing (Estate Management)** said that current PSA contracts had included provisions to allow PSAs to provide services at a location outside the estates they managed under the contracts. The HD maintained a contingency mechanism by issuing instructions to serving PSAs of other contracts to take over the work of underperforming PSAs in case of need. For cleansing and security service contractors, the HD had a "standby contractor" arrangement to take over the required service with short notice. As this arrangement was applicable to HD directly-managed estates only, the HD would consider extending such arrangement to PSA-managed estates where appropriate.

46. The Committee further enquired whether asking other PSAs to take over the work of underperforming PSAs would compromise the quality of estate management services. The **Deputy Director of Housing (Estate Management)** said that usually one month's notice was required for terminating a PSA's contract. As such, the PSA requested by the HD to take over the work would have time to make proper arrangement, such as employing new staff or deploying existing staff under other contracts managed by it to take up the additional work. In exceptional circumstances, the tendering process could be expedited to facilitate the early award of replacement contract.

47. Noting from paragraph 5.17(b) of the Audit Report that the EU had been asked to arrange a consultancy study for the HD to review the adequacy of existing contingency measures, the Committee asked about the progress of the study. The **Director of Housing** said that the study had commenced and the results would be available by April 2008.

F. Conclusions and recommendations

48. The Committee:

Protection of non-skilled workers engaged in outsourcing contracts

- notes that although the Housing Department (HD) is not obliged to follow the Government Financial Circulars, it had largely followed the Government's labour protection requirements, including the adoption of the Government's Demerit Point System (DPS) and standard employment contract;
- expresses dismay and finds its unacceptable that:
 - (a) the HD had adopted a lenient approach in the management of property services agents (PSAs)/contractors, with HD staff not taking regulatory actions against the defaulted PSAs/contractors if the irregularities were not committed wilfully;
 - (b) Audit's case studies showed that there were instances where HD staff had not adequately followed up those cases with suspected employment-related irregularities and had not taken effective regulatory actions against the defaulted PSAs/contractors;
 - (c) in respect of the 117 cases identified by the HD with irregularities established, no default notices (DNs) had been issued, and that the HD had neither applied the "batch-payment adjustment" nor issued any adverse performance reports to the PSAs/contractors;
 - (d) the Housing Authority (HA)'s procurement policy of removal of a defaulted contractor (with employment-related conviction or three or more demerit points under the DPS) from the HA Lists of PSAs/Contractors for "a maximum of five years" is not entirely consistent with the Government's requirement that tender offers submitted by a tenderer with similar conviction/demerit point records will not be considered for "a period of five years"; and
 - (e) two months after the HD had suspended a PSA convicted of contravening the Employees' Compensation Ordinance from tendering, the HA renewed in January 2007 an outsourcing contract with the convicted PSA for managing a Home Ownership Scheme estate and that under the renewed contract, there was no requirement for the PSA to adopt the Government's standard employment contract for employing non-skilled workers;

- notes that:
 - (a) the HD has issued guidelines to implement a hardline approach towards employment-related irregularities committed by PSAs/contractors;
 - (b) the HD will refer cases involving possible violation of employment-related ordinances to the relevant law enforcement agencies for necessary action, irrespective of whether authorisation from the employees concerned has been given;
 - (c) the HD had set up the Central Monitoring Team (CMT) which produced very useful findings from their inspections and identified over a two-year period 63 cases among which 227 employment-related irregularities were found;
 - (d) the Director of Housing brought to the attention of the HA's Tender Committee (TC) the Government's five-year suspension requirement at the TC's meeting held on 13 December 2007, and the TC agreed that the HA should further discuss the issue with the Financial Services and the Treasury Bureau (FSTB) before making a decision; and
 - (e) the renewed contract was intended to be a stop-gap arrangement and the HD had terminated the renewed contract with the PSA;
- expresses serious concern that the statistical information reported by the CMT provided the HD management with indicators of CMT workload only, but did not help management assess the effectiveness of the HD measures to protect non-skilled workers;
- notes that the Director of Housing has implemented the audit recommendations referred to in paragraphs 2.26, 2.43 and 2.47 of the Director of Audit's Report (Audit Report);

Procurement of services and contract administration

- finds it unacceptable that:
 - (a) the various regulatory actions adopted by the HD might not be able to provide sufficient deterrent effect, especially on those PSAs whose workload had almost reached the List Capping Limit or who had no intention to bid for new contracts;
 - (b) the HD did not include, as an assessment criterion, the number of DN's (with or without demerit points given) in its scoring scheme for PSA tender evaluation;

- (c) some PSAs sought approvals after the commencement of the sub-contracting services and some did not seek the HD's approval for the sub-contracting services; and
 - (d) there were PSA contracts with performance bonds which were at variance with the contract requirements, as well as contracts where insurance was taken out after the commencement of the contracts;
- notes that the Director of Housing:
- (a) has implemented the audit recommendations referred to in paragraphs 3.14(a), 3.28 and 3.41(a) to (d) of the Audit Report; and
 - (b) will implement the audit recommendations referred to in paragraphs 3.14(b), 3.21 and 3.41(e) of the Audit Report;

Monitoring of the performance of property services agents

- expresses dismay and finds it unacceptable that:
- (a) some monitoring teams of the Property Service Administration Units (PSAUs) did not make an appropriate assessment of PSA performance on the enforcement of the Tenant Marking Scheme;
 - (b) many monitoring teams did not prepare surprise check plans beforehand to focus on the areas for inspection and the surprise checks for some estates were not carried out as frequently as required;
 - (c) there were inconsistencies in the reporting of results of monthly inspections and surprise checks among the monitoring teams;
 - (d) the HD did not have any guidelines on the requirements for supervisory checks to be conducted on the monitoring teams' work;
 - (e) some PSAs did not report to the PSAUs the hawking activities in their estates and the HD did not have a central record of the hawking activities in all PSA-managed estates to facilitate its monitoring of the hawker problem; and
 - (f) since PSA staff do not have the legal powers to take enforcement actions against illegal hawking activities, they are not always effective in tackling the hawker problem;

- notes that the Director of Housing:
 - (a) has requested the Efficiency Unit (EU) to conduct a study to review the types of estate management work, including taking enforcement actions against illegal hawking activities, which should be handled by HD staff instead of PSA staff, and the results of the study will be available by April 2008;
 - (b) has implemented the audit recommendations referred to in paragraphs 4.18, 4.26, 4.30, 4.34 and 4.51(e) of the Audit Report; and
 - (c) will implement the audit recommendation referred to in paragraph 4.51(a) to (d) of the Audit Report;
- recommends that the Director of Housing should, having regard to the results of the study conducted by the EU, expeditiously take effective actions to address the hawker control problem, including considering whether HD staff instead of PSA staff should be deployed to take enforcement actions against illegal hawking activities;

Performance management and contingency planning

- expresses serious concern that the HD did not have a contingency plan to cope with a sudden termination of a PSA contract;
- notes that the Director of Housing:
 - (a) has requested the EU to review the adequacy of existing contingency measures so as to avoid any possible service disruption, and the results of the study will be available by April 2008;
 - (b) has implemented the audit recommendation referred to in paragraph 5.10 of the Audit Report; and
 - (c) will implement the audit recommendations referred to in paragraphs 5.6 and 5.16 of the Audit Report; and

Follow-up action

- wishes to be kept informed of:
 - (a) the result of HA's discussion with the FSTB regarding the five-year suspension requirement and the TC's decision on this issue;
 - (b) the progress made by the HD in tackling the hawker control problem;

- (c) the progress made by the HD in reviewing the adequacy of existing contingency measures; and
- (d) any further developments and progress made in implementing the various audit recommendations.