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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 11 April 2011**

**Wage arrangement for non-skilled workers
engaged in government service contracts**

Purpose

This paper summarizes past discussions by the Panel on Manpower ("the Panel") on the mandatory requirement for employment terms for non-skilled workers engaged in services contracted out by the Government.

Background

2. Since 2001, the Administration has required all contractors of government service contracts to sign written employment contracts with their employees (except temporary relief workers). Such contracts should stipulate major employment terms including wage rate, working hours, rest days, etc. so as to safeguard employees' rights and benefits.

3. On 6 May 2004, the Administration promulgated a mandatory requirement on wage rates for government service contracts for the purpose of tender assessment. Under this mandatory requirement, a tender offer shall not be considered if the monthly wages offered by the tenderer are less than the average monthly wages (which relate to an average number of normal hours of work per day and an 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 tenders are invited. This mandatory requirement applies to sub-contracting arrangement and procurement of the same kind of government services under direct purchase authority. The new requirement applies to tenders invited on

or after 6 May 2004. The purpose of the mandatory requirement is to ensure that the wages of non-skilled workers engaged by government service contractors are not lower than the market rates.

4. To better protect labour rights and benefits, the Administration drew up a proposed standard employment contract for use by contractors of government service contracts in their employment of non-skilled workers to carry out government service contracts.

Standard employment contract

5. According to the Administration, contractors are required to set out clearly in the proposed standard employment contract the monthly wages, working hours, method of wage payment, etc. Its key features are as follows:

- (a) the monthly wage payable to a non-skilled worker should be no less than the amount committed by the contractor in the relevant tender offer if he/she has worked in accordance with the working hours and working days as specified in the standard employment contract. Any allowance, under whatever title, should be paid on top of the committed monthly wage;
- (b) as a control measure, with the employees' consent, all wages should be paid directly by way of autopay into the individual employee's bank account;
- (c) contractors should be responsible for the costs of all operational and administrative expenses, as well as the depreciation of all assets and equipment. No fee or deposit, under whatever title, should be collected from their non-skilled workers;
- (d) the workplace should be specified. Where necessary, deployment of the worker to other workplaces within the same region should be on an ad hoc and limited basis or only under exceptional circumstances. This flexibility is to cater for special operational requirements of the procuring department;
- (e) copies of the signed standard employment contract should be kept by the contractor, the worker and the relevant procuring department for reference; and

- (f) variation of employment terms which is only allowed shall not extinguish or reduce any right, benefit or protection conferred upon the employee by the contract and has the latter's written agreement. A copy of such variation should also be provided to the worker and the relevant procuring department for reference.

Administrative sanctions

6. Since 27 March 2004, a demerit point system has been applied to tenders for government service contracts invited thereafter. Under the demerit point system, procuring departments are required to issue a default notice to their contractors for each breach of contractual obligations in respect of wages, working hours and the requirement for signed written contracts with employees (except temporary relief workers). Each default notice will result in one demerit point. A tender offer should not be considered if the tenderer has received from one or more departments a total of six demerit points during the four most recent quarters (before the tender closing date).

7. Following the implementation of the proposed standard employment contract, any contractor of government service contracts who has failed to use the standard employment contract, distorted or altered the term of the contract to the disadvantage of the non-skilled workers, and/or is found to have breached the contractual terms not in connection with the law, wages, working hours and the requirement for signed written contracts with non-skilled workers, would be subject to administrative sanction. Individual procuring departments will in future issue default notices to contractors for breaches of these contractual terms in accordance with the service contracts. They will also take into account these default notices issued to contractors for evaluation of their future tenders.

Deliberations of the Panel

8. The Panel discussed the mandatory requirement for employment terms for non-skilled workers engaged in services contracted out by the Government at its meetings on 17 June and 2 December 2004, 17 March 2005 and 21 October 2010. The deliberations are summarized in the following paragraphs.

Scope of workers covered by the proposed standard employment contract

9. Concern had been raised as to why the proposed standard employment contract was applicable to non-skilled workers only. The Administration

explained that the proposed standard employment contract was mainly intended for the protection of elementary workers.

Inclusion of meal break in the normal working hours

10. There was a suggestion that the standard employment contract should provide for the inclusion of meal breaks in the normal working hours of the employee concerned. The Administration advised that the inclusion of meal breaks in the normal working hours had wide implications. Nevertheless, it would examine the wordings used in the standard employment contract.

Adoption of the proposed standard employment contract by public funded organizations

11. Regarding the suggestion that the standard employment contract should be adopted by all public funded organizations, the Administration advised that it would encourage public funded organizations to adopt the standard employment contract. The Administration had already written to all public funded organizations encouraging them to adopt the mandatory requirement.

Responsibility of contractors and subcontractors

12. Members sought information on the responsibility of contractors and subcontractors in the case of multi-layer subcontracting. According to the Administration, subcontracting was normally not permitted in government service contracts (excluding construction services) that deployed a large number of non-skilled workers, and prior approval had to be obtained from the procuring department before sub-contracting for the services to be provided by the main contractor was allowed. In exceptional cases where subcontracting was allowed, the main contractor should be held responsible for any subcontractor's breach of the service contract.

13. Members called on the Administration to promote good employer's practices, such as the employment of more full-time employees and offering higher wage rates to employees, through awarding higher marks for such employers in the marking scheme for tender assessment.

Wage arrangement for non-skilled workers engaged in government outsourced service contracts

14. Noting that the statutory minimum wage ("SMW") would be implemented on 1 May 2011, members sought information on whether employees of government outsourced service contractors, who were currently

paid wages not lower than the average market rate for the relevant industry/occupation published in the latest Quarterly Report of Wages and Payroll Statistics issued by the Census and Statistics Department, would continue to receive wages not lower than the average market rate.

15. The Administration advised that it would keep in view whether and how the implementation of SMW would affect the wages of workers employed under government outsourced service contracts. It would take follow-up actions as and where appropriate.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on Wage arrangement for non-skilled workers engaged in government service contracts

Committee	Date of meeting	Paper
Panel on Manpower	17.6.2004 (Item IV)	Agenda Minutes
Panel on Manpower	2.12.2004 (Item I)	Agenda Minutes
Panel on Manpower	17.3.2005 (Item III)	Agenda Minutes
Panel on Manpower	21.10.2010 (Item II)	Agenda Minutes

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