

Legislative Council Panel on Manpower

Government Policy Relating to the Outsourcing of Service Contracts

PURPOSE

This note sets out Government's views on two issues relating to the contracting out of government services proposed in the joint submission of 13 March 2012 from the Federation of Hong Kong & Kowloon Labour Unions and H.K. Hospitals Employees Association (the joint submission).

BACKGROUND

2. On 23 April 2012, the Legislative Council Panel on Manpower separately informed the Labour and Welfare Bureau and Financial Services and the Treasury Bureau in writing that the issues raised in the joint submission will be discussed at the May meeting. A copy of the joint submission is attached. In summary, citing a case involving a change of contractors for a service contract of the Prince of Wales Hospital¹, the joint submission puts forward two proposals –

- (a) there is a long-term manpower need for services provided by Government and public organisations. These services should not be contracted out and should be performed by workers engaged on long-term contracts; and
- (b) Government should mandate in the service contracts that if there is a change of contractors at the end of the contract period, the outgoing contractor should provide severance payment (SP) to his workers, or the incoming contractor should allow workers of the pre-existing contract to carry over their years of service to the new contract for calculation of statutory employment benefits in future.

Our views on the above two proposals are set out in the ensuing paragraphs.

¹ The Prince of Wales Hospital, being part of the Hospital Authority (HA), follows HA's guidelines in outsourcing its services.

DELIVERY OF PUBLIC SERVICES

3. The Government is conscious of the need to adopt the most cost-effective and efficient means for delivery of public services. Civil servants are employed for meeting long-term operational needs which should be delivered by government departments direct and when alternative modes of service delivery have been critically examined and considered inappropriate. These functions include policy formulation, regulatory control, law enforcement and statutory functions. Non-civil service contract (NCSC) staff are engaged to supplement the civil service when the service needs are time-limited, seasonal, or may be subject to market fluctuations, or which require staff to work less than the conditioned hours, or which require tapping the latest expertise in a particular area, etc.

4. Apart from engaging civil servants and officers on other employment terms (such as NCSC staff), the Government has a long history of using the private sector to deliver public services. This is in keeping with our objectives of maintaining a small and efficient civil service, and promoting business opportunities and jobs in the private sector. For example, service contracts for specific activities (such as cleaning or security) enable the Government to take advantage of private sector expertise and resources to provide basic services in return for a fee. Contracting out helps maintain a lean and efficient civil service on one hand², while increasing the value for money and flexibility in service delivery on the other. It can also allow departments to focus their in-house civil service resources on providing core services and tackling priorities. Departments will take account of their operational needs, better use of and advancement in technology, business process re-engineering, experience in using the private sector, etc in determining the best mode for delivering public services.

5. We will continue to employ civil servants and officers on other employment terms where appropriate, and engage the services of service providers in the market where appropriate.

² After lifting the recruitment freeze in 2007, we have since 2007-08 contained the growth of the civil service establishment to about one per cent annually to meet new and improved services. As at 31 December 2011, the strength of the civil service stood at 158 527. This figure excludes some 1 530 judges, judicial officers, officers of the Independent Commission Against Corruption and locally engaged staff working in overseas Hong Kong Economic and Trade Offices.

PROPOSAL RELATING TO SEVERANCE PAYMENT AND YEARS OF SERVICE

Entitlement to SP under the law

6. Whether we directly employ staff or engage the services of contractors, we ensure that we do so in ways in line with the requirements of the law. Under the Employment Ordinance (EO), if an employee who has been employed under a continuous contract for not less than 24 months is dismissed by reason of redundancy, he is in general entitled to SP. Whether the employees of government service contractors affected by the change of contractors upon the expiry of service contracts would be entitled to SP would depend on the facts and circumstances of individual cases. Such include, inter alia, whether they are given an offer by the outgoing contractor to renew their employment contracts with terms no less favourable than before.

7. Labour Department (LD) offers conciliation service to help parties reach an amicable settlement if there are disputes over the liability for statutory benefits like SP. Where conciliation does not bear fruit, the claimant may seek court adjudication.

Implications of the proposal

8. Under the proposal in the joint submission, existing employees of the outgoing contractor would either receive termination payment (including SP) if the eligibility criteria under EO were met; or their years of service with the outgoing contractor would be taken over by the incoming contractor so that those length-of-service related statutory employment benefits under EO like SP, long service payment (LSP) would continue to accrue.

9. The proposal needs to be analysed in the context of the current law and circumstances in the market. The proposal would impose additional requirements on both the outgoing and incoming contractors. The proposal would considerably reduce the flexibility of service contractors in the deployment of their workers, which is essential to the business operation of the cleaning or security industry. For the outgoing contractor, even when he wishes to retain a worker and deploy the worker to another site, he would not be able to do so as he will need to dismiss all workers upon non-renewal of service contracts. This is not conducive for the contractors to build up long-term employment relationship with their

employees, and may adversely affect contractors' other human resource plans and practices. Furthermore, contractors may face immense cashflow problems if they were to make SP to all employees affected whenever they failed to have their service contracts renewed.

10. For the incoming contractor, if he has to take over the existing employees of the outgoing contractor (irrespective of their individual performance), he may find it not fair to be held accountable for the workers' performance under the service contract. The service quality may suffer in the end if the line of accountability is unclear. Incoming contractors would also have practical difficulties in estimating their liabilities for provision of employment benefits, in particular those contingent liabilities like SP or LSP, if they were to assume the responsibility for the years of service of the outgoing contractor's employees.

11. Contractors wishing to bid for such government contracts would face practical problems. Bidders need to know the employment profile of individual workers currently working on the site before they can assess the cost implication of taking over their years of service in the new contract. But it would be very difficult for them to do so. First, there may be privacy/commercial secrecy angle if the employment records are made available to potential bidders. Also, even with such records contractors would not know if individual employees would eventually opt to stay with the outgoing contractor.

12. More contract management and enforcement efforts would need to be spent by procuring departments to ensure that the additional resources are used properly to provide SP or other employment benefits to workers. Furthermore, we are concerned about any possible abuse of public money if the actual pay-out by contractors is less than the amount budgeted in the tender price due to, for example, staff turnover or contingent liabilities such as SP not realised in the end. The problem will become more acute if workers are allowed to choose between receiving SP from outgoing contractors or transferring their years of service to incoming contractors.

13. In view of the above analysis, we do not consider that there is a clear case for pursuing the proposal at this stage. We will continue to help parties resolve amicably disputes over the liability for statutory benefits like SP through LD's conciliation services.

ADVICE SOUGHT

14. Members are invited to note the content of this paper.

Financial Services and the Treasury Bureau
Labour and Welfare Bureau/Labour Department
Food and Environmental Hygiene Department
Housing Department
Leisure and Cultural Services Department

May 2012

港九勞工社團聯會

THE FEDERATION OF HONG KONG
& KOWLOON LABOUR UNIONS



九龍長沙灣道1-5號長勝大廈5/F, D-E座
Flat D-E, 5/F., Cheung Shing Bldg., 1-5 Cheung
Sha Wan Road, Kowloon, Hong Kong.

電話 Tel: 2776 7232 2776 7242
傳真 Fax: 2788 0600
電郵 E-mail: hkflu@netvigator.com
網址 Website: www.hkflu.org.hk

本會檔號 OUR REF.:

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致：立法會人力事務委員會
主席暨各委員

要求加強監管政府及公共服務外判合約

近年勞聯經常接獲政府及公共服務的外判承辦商之工友投訴及求助，指因政府轉換承辦商而令工友的權益受損，她／他們既沒有獲得舊承辦商的遣散補償，亦沒有得到新承辦商認可年資，就如附件中“威爾斯親王醫院（下稱“威院”）轉換服務承辦商事件”這例子，留在威院繼續服務的ISS工友竟然成為威院轉換服務承辦商的犧牲品！

為此，港九勞工社團聯會和香港醫院職工協會特書此函，促請各位議員要求政府加強監管政府及公共服務外判合約，以免基層工友的權益蒙受不必要的損失。我們的意見如下：

1. 政府及公共服務機構向公眾提供服務，長期存在人手的需要，而外判服務問題很多，為了確保穩定及良好的服務質素，政府及公共服務機構實應以長期合約聘請員工，避免外判。
2. 政府應加強監管外判服務合約，今後在外判服務合約上增設保障僱員權益的條款，規定在外判合約到期，轉換新舊承辦商的情況下，除基本的僱傭權益外，新承辦商須認可舊有員工的年資又或舊承辦商須給予工人遣散補償等，以免工友成為機構轉換新舊承辦商的犧牲品。

順祝

身體健康、工作愉快！

聯絡人：蔡志明，高浚杰

港九勞工社團聯會權益委員會
香港醫院職工協會 謹啟
二零一二年三月十三日

2185 7845 LU
港九勞工社團聯會

**THE FEDERATION OF HONG KONG
& KOWLOON LABOUR UNIONS**



九龍長沙灣道1-5號長勝大廈5/F, D-E座
 Flat D-E, 5/F., Cheung Shing Bldg., 1-5 Cheung
 Sha Wan Road, Kowloon, Hong Kong.

電話 Tel : 2776 7232 2776 7242
 傳真 Fax : 2788 0600
 電郵 E-mail : hkflu@netvigator.com
 網址 Website : www.hkflu.org.hk

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附件

威爾斯親王醫院轉換服務承辦商事件

最近勞聯權益委員會和香港醫院職工協會接到在沙田威爾斯親王醫院（下稱“威院”）任職綜合服務員的工友投訴及求助，事緣ISS公司與威院的合約在2012年3月19日到期，而ISS公司未能繼續獲得威院的外判服務合約，該合約由另一間公司SERCO取得；但ISS公司未有妥善處理現職威院工友的安排，只向跟從公司調派的員工給予僅500元的留任津貼（須在新環境工作至5月7日才合資格領取）及交通費津貼。但超過八成ISS工友因熟悉威院的運作、人事、環境，對新環境卻毫不清楚的情況下，選擇了與SERCO簽約。其實，現職威院的ISS工友之選擇有利於威院維持良好的服務質素，因為大多數工友已經熟習了醫院的運作，不需經過培訓，出錯的機會相對較低，對醫院、對病人均是有利的。然而，這些工友自身卻蒙受了外判服務政策帶給她／他們不應有的損失！因為，她／他們仍然留在威院工作，沒有離開，可能連工作崗位也不變，但純粹因為威院的服務合約轉給了一間新的承辦商而已。這些工友大部份已超過50歲，在威院工作超過兩年以上，最長的達6年，但是，ISS公司並沒有對她／他們作出任何補償，她／他們是自動離職，與SERCO簽訂新的僱傭合約，SERCO亦沒有承認她／他們的年資，所以她／他們所有福利包括年假從新計算，這樣對一班忠誠為威院服務多年的工友是何等不公平！在整件事件中，現職威院並將留院的ISS工友成為了受害者，她／他們沒有得到任何補償，反而年資及福利須從頭算起，這是何等的荒謬！

事件中，我們觀察到新舊承辦商只是各自安排人手，並沒有為留院之ISS員工的切身權益作考慮，令到一批忠誠為威院服務的員工，因為新舊承辦商的轉換而損失了他們應得的僱傭權益。我們亦留意到，在事件中威院的地位似乎很超然，只是轉換了服務合約的承辦商而已。但是，由於政策及安排的不當，目前受害的部份工友正醞釀在ISS公司與威院的合約到期前集體辭職，倘若處理不當，對威院的聲譽及服務質素肯定造成不良影響。

為此，港九勞工社團聯會和香港醫院職工協會促請各位議員關注事件背後的政策問題，要求政府加強監管政府及公共服務外判合約，以免基層工友的權益蒙受不必要的損失。