

立法會 *Legislative Council*

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Panel on Public Service

Meeting on 15 February 2016

Updated background brief on the use of agency workers

Purpose

This paper provides background information on the use of agency workers by Government bureaux/departments ("B/Ds"), and summarizes the major views and concerns on the subject expressed by members of the Panel on Public Service ("the Panel") in previous discussions.

Background

2. According to the Administration, agency workers generally refer to the manpower supplied by employment agencies under service contracts with B/Ds concerned. These workers work under the direct supervision of the procuring B/Ds, but they do not have a contractual employment relationship with the B/Ds concerned. The procurement of agency worker service is governed by the relevant Stores and Procurement Regulations and Financial Circulars. It is also subject to the Government's procurement principles of value for money, transparency, open and fair competition and accountability.

Guidelines on the use of agency workers

3. In April 2010, the Civil Service Bureau ("CSB") issued a set of guidelines to B/Ds on the proper use of agency workers¹, covering the scope

¹ For the purpose of these guidelines, agency workers do not include information technology manpower supplied by technical service providers under a term contract centrally administered by the Office of the Government Chief Information Officer (commonly known as "T-contract staff") and service bureau staff providing public library service in the Leisure and Cultural Services Department ("LCSD").

of using agency workers, approval authority and wage requirement. In April 2011, CSB issued a set of supplementary guidelines on the renewal or re-letting of service contracts for the supply of agency workers, and on the wage requirement to be followed by employment agencies providing agency workers to B/Ds following the implementation of the Statutory Minimum Wage ("SMW") in May 2011.

Approving authority

4. To ensure the proper use of agency workers and to maintain consistency in the use of agency workers by individual B/Ds, every proposal to procure the service of an employment agency to supply agency workers is required to be considered and approved personally by a directorate officer at Directorate Pay Scale D2 or above of the concerned B/D.

Employment situation of agency workers

5. As at 30 September 2014, there were 965 agency workers working in B/Ds, representing a reduction of 1% compared with the position in September 2013². A breakdown of the 965 agency workers by the reasons for their engagement is follows –

- (a) 61% (or 590) of the agency workers were sourced to meet urgent or unforeseen service needs or unexpected surge in service demands for the short term;
- (b) 19% (or 187) were deployed to fill short-term manpower gap, mainly arising from the time required to recruit civil servants and/or non-civil service contract ("NCSC") staff;
- (c) 19% (or 180) were deployed to meet service needs that entailed an irregular work pattern or where the nature of work involved rendered it difficult to recruit and retain staff; and
- (d) 1% (or eight) were procured to deliver services the mode of which would likely be changed shortly.

6. The service of the above stated agency workers were procured under 317 contracts, of which around 76% were limited to the provision of one to three workers on a per contract basis. In terms of the duration of service contracts, —

² A table showing the number of agency workers procured by individual B/Ds from 2009 to 2014 is in **Appendix I**.

- (a) 60% (or 581) of the agency workers were sourced from service contracts lasting nine months or less;
- (b) 28% (or 272) were sourced from service contracts lasting more than nine months but not exceeding 15 months; and
- (c) the remaining 12% (or 112) were mostly sourced from "term contracts" under which agency workers would be supplied only as and when needed by the procuring B/Ds.

Discussions of the Panel

7. At the Panel meeting on 29 May 2009, members discussed the use of outsourcing in the delivery of government services. Members noted that there was a large number of agency workers engaged by B/Ds and they requested that the Administration should provide information on the engagement of agency workers by B/Ds for future discussion. CSB undertook to collate information on the use of agency workers by B/Ds and report back to the Panel at its meeting on 18 January 2010. At the meeting on 18 January 2010, the Panel received views from relevant staff unions/associations.

8. The Panel subsequently discussed the use of agency workers on 20 December 2010, 16 April 2012, 3 June 2013, 19 May 2014 and 20 April 2015. At the request of a member, the Panel also reviewed the use of T-contract staff engaged under term contracts centrally administered by the Office of the Government Chief Information Officer ("OGCIO") at its meeting on 3 June 2013. The major views and concerns expressed by Panel members and the Administration's responses are summarized in the ensuing paragraphs.

Call for reduction in the use of agency workers

9. Some members considered that while the employment terms for NCSC staff were not good, those offered to agency workers were even worse, as agency workers were deprived of wage increases, severance payment, maternity leave, fringe benefits, and job security etc. The use of agency workers would have the effect of suppressing the general wage level of employees and give rise to social conflicts caused by middle-man exploitation and "different pay for the same job". They urged the Administration to reduce or discontinue the use of agency workers, by converting those agency workers who had been providing services to B/Ds

for a long time to government employees, and recruiting adequate number of civil servants or NCSC staff to meet B/Ds changing operational and service needs.

10. The Administration advised that agency workers were only used to meet urgent or unforeseen service needs or unexpected surge in service demands for the short term. As a general guideline, the short-term service demands under the circumstances where agency workers could be used should last for no more than nine months, while NCSC staff would usually be employed for at least one year. It often required several months to recruit NCSC staff, thus it was not practicable for B/Ds to employ NCSC staff to meet their urgent or unforeseen manpower or service needs. To prevent abusive use of agency workers, CSB had issued guidelines to B/Ds on the proper use of agency workers and had held regular meetings with B/Ds to keep abreast of the situation of the use of agency workers.

11. Noting that the use of agency workers should normally last for no more than nine months, some members were concerned that some B/Ds might abuse the system by repeatedly renewing contracts of nine months or a shorter duration. The Administration advised that B/Ds were well aware that renewal of an existing contract where the aggregated period of service under the existing and renewed contract was expected to exceed 15 months should be subject to CSB's approval. CSB would carefully consider each application to ensure that approval would only be granted for fully justifiable cases.

12. Members noted the decline in the number of agency workers over the past few years, particularly in the Department of Health ("DH"), Education Bureau ("EB") and Leisure and Cultural Services Department ("LCSD"). Concern was raised that the Administration had resorted to outsourcing of services to reduce the number of agency workers. The Administration responded that there were various reasons for the decrease, such as the outsourcing of services, the completion of time-limited contracts and filling of civil service or NCSC vacancies. The Administration supplemented that the decrease in the number of agency workers working in DH, EB and LCSD might be due to reduction in unexpected upsurge in service demands and the implementation of new or improved mode of delivery. B/Ds had made more early planning and taken more timely action to recruit staff to fill in vacancies arising from, say, retirement, and therefore reduced the need for B/Ds to use agency workers to fill short-term manpower gap.

13. In response to members' question why B/Ds did not make more early planning and take more timely action to recruit staff to fill the posts to

be vacated by civil servants upon their retirements, the Administration replied that this was due to unexpected situations happened during the recruitment and appointment process, such as long processing time resulted from unexpectedly large number of applications and long reporting time because the appointees had to serve a longer resignation notice to their employers.

Wage level and fringe benefits of agency workers

14. On members' concern about the wage levels of agency workers, the Administration advised that as a minimum, government contractors were required to pay agency workers either the wages calculated at the prevailing SMW rate plus one rest day for every period of seven days, or the relevant average monthly wages as published in the Census & Statistics Quarterly Report of Wage and Payroll Statistics for December 2010 ("the C&S Report"), whichever was the higher. The Administration further advised that the reason for maintaining the rates as published in the C&S Report in the guidelines was that the salary rates of some selected industry sections published in the report were still higher than the prevailing SMW rates. This arrangement ensured that no agency workers employed in Government service contracts would be worse off upon the implementation of SMW.

15. On the suggestion of providing civil service fringe benefits to agency workers, the Administration responded that employment agencies, as employers of agency workers, had the obligations under the Employment Ordinance and other relevant labour laws to provide suitable employment benefits to their employees. It would not be appropriate for the Government, as the service user, to provide employment benefits to agency workers who were not Government employees.

Protection for agency workers

16. Some members emphasized the need to ensure sufficient deterrence against employment agencies' malpractices of labour exploitation, and urged the Administration to devise a system under which employment agencies having records of such malpractices would be deducted points or even prohibited from bidding for Government service contracts again. The Administration responded that a marking scheme and a demerit point system were already in place which required procuring B/Ds to take into account bidders' past record of compliance with certain statutory and contractual obligations. The Administration pointed out that although the procuring B/Ds did not have a contractual relationship with the agency workers, agency workers were accorded protection and benefits under the Employment Ordinance (Cap. 57) ("EO").

17. Some members proposed that the Administration should consider centralizing the recruitment and co-ordination of the supply of non-skilled workers so as to avoid middle-man exploitation. The Administration responded that since the duties required to be performed by agency workers varied substantially among B/Ds, it was neither desirable nor viable to centrally maintain a pool of staff to meet individual B/Ds' service needs as they arose.

Term contracts

18. Noting that about 9% (or 105) agency workers were sourced from service contracts exceeding 15 months as at 30 September 2012, members enquired about the job nature of these agency workers and the services involved.

19. The Administration advised that among these 105 agency workers, 88 were sourced from "term contracts" under which the employment agencies supplied short-term clerical and administrative manpower or workman-type staff to the procuring B/Ds as and when required. The remaining 17 agency workers were used by B/Ds for meeting service needs which entailed irregular work pattern. For instance, agency workers worked in shifts in the Vessel Traffic Centre ("VTC") of Marine Department. These agency workers provided clerical support to the VTS which operated round-the-clock to maintain surveillance over Hong Kong navigable waters, gave information and offered advice to mariners on prevailing navigational conditions.

Information technology contract staff engaged under a term contract (commonly known as "T-contract staff")

20. At the meeting on 3 June 2013, members noted that T-contracts were renewed every two to three years since the 1980s and the award of T-contracts was governed by the relevant Stores and Procurement Regulations and Financial Circulars. Noting that as at 31 March 2013, there were some 1 970 T-contract staff working alongside a combined civil service and NCSC workforce of about 2 000 in different B/Ds, some members considered that the engagement of T-contract staff gave rise to issues of unequal pay for the same work, unfair terms of employment and middle-man exploitation, as well as IT security problems. They urged the Administration to conduct a comprehensive review of the T-contract arrangement and formulate a plan to convert those T-contract staff who had been providing services continuously to B/Ds for a long time to government employees.

21. The Administration advised that the use of temporary staff for the implementation of time-limited IT projects was a common practice in the IT industry. The T-contract staff could complement the service provided by the IT staff directly employed by the Government to meet the fluctuating IT manpower demands. This arrangement allowed B/Ds to tap the latest expertise in the market for developing IT systems and fostered technology exchange between IT personnel in the civil service and the private sector. The flourishing IT market and the high mobility of IT personnel had helped maintain the service rates of T-contract staff at a buoyant level. T-contract staff were required to sign confidentiality undertakings on non-disclosure of confidential information.

Use of service bureau staff

22. Some members were concerned about the employment protection for the service bureau staff who provided service in public libraries under service contracts. A member asked whether the contracts of service bureau staff met the continuous contract requirement under the EO (i.e. an employee employed by the same employer for four weeks or more with a weekly working hours of 18 hours or more (commonly known as the "4-1-18" requirement)) so that agency workers were protected by the employment laws of Hong Kong.

23. The Administration advised that the LCSD entered into service contracts with the employment agencies selected in accordance with the relevant Stores and Procurement Regulations and Financial Circulars to supply a pre-determined total number of man-hours of manpower within the duration of a contract. The service bureau staff were remunerated on an hourly basis and they assisted the core workforce to deliver services during peak demand periods, such as lunch hours, after-school hours, weekends and public holidays, as and when needed. The number of service bureau staff working in public libraries varied from time to time, and they did not have uniform weekly or monthly working hours. The Administration further advised that the contractors were required to comply with the relevant employment ordinances of Hong Kong. For service bureau staff who worked continuously for the same employer for four weeks or more with at least 18 hours a week, they were entitled to benefits for an employee who was employed under a continuous contract as provided under the EO.

Recent development

24. The Administration will update the Panel on the use of agency workers at the Panel meeting on 15 February 2016.

Relevant papers

25. A list of relevant papers and hyperlinks is shown in **Appendix II**.

Council Business Division 4
Legislative Council Secretariat
4 February 2016

Appendix I

A breakdown of the number of agency workers by B/Ds

(sources: Annexes to LC Papers Nos. CB(1)860/09-10(03), CB(1)783/10-11(05), CB(1)1498/11-12(05), CB(4)625/12-13(03), CB(4)661/13-14(03) and CB(4)773/14-15(03))

Bureau/Department	Number of agency workers* as at					
	30 September 2009	30 September 2010	30 September 2011	30 September 2012	30 September 2013	30 September 2014
Agriculture, Fisheries and Conservation Department	11	43	21	7	2	8
Auxiliary Medical Service	2	-	-	-	-	-
Buildings Department	160	194	125	40	-	37
Census and Statistics Department	39	5	-	-	-	-
Chief Secretary and Financial Secretary's Office	20	15	20	22	25	17
Civil Aid Service	4	5	1	-	-	2
Civil Aviation Department	4	2	2	1	-	-
Civil Engineering and Development Department	53	55	4	-	5	2
Civil Service Bureau	13	9	2	2	-	-
Commerce and Economic Development Bureau	13	15	11	9	6	8
Constitutional and Mainland Affairs Bureau	11	10	5	-	-	-
Correctional Services Department	52	64	33	22	22	27
Customs and Excise Department	45	11	11	-	-	-
Department of Health	323	317	294	288	168	50
Department of Justice	5	13	16	6	13	14
Development Bureau	17	23	12	20	14	17
Drainage Services Department	20	20	18	7	9	22
Education Bureau	285	269	150	90	68	94
Electrical and Mechanical Services Department	109	77	15	16	32	15
Environment Bureau	-	4	4	5	5	9
Environmental Protection Department	31	25	27	32	37	53
Financial Services and the Treasury Bureau	19	11	6	-	2	2
Fire Services Department	61	70	24	14	25	17
Food and Environmental Hygiene Department	188	73	37	27	13	8
Food and Health Bureau	19	16	12	5	4	1
Government Flying Service	4	2	1	1	3	1
Government Laboratory	4	8	9	2	-	-

Government Logistics Department	14	14	1	4	6	13
Highways Department	3	1	-	-	-	-
Home Affairs Bureau	9	4	24	10	3	2
Home Affairs Department	2	2	-	-	-	-
Hong Kong Police Force	33	72	11	-	2	-
Hongkong Post	3	-	-	-	-	-
Immigration Department	8	8	88	45	31	33
Information Services Department	20	28	21	20	22	30
Inland Revenue Department	1	-	-	-	-	-
Innovation and Technology Commission	5	1	2	2	4	6
Intellectual Property Department	-	-	-	-	1	-
Invest Hong Kong	1	1	1	1	-	-
Labour and Welfare Bureau	3	-	-	5	7	6
Labour Department	31	42	40	42	37	41
Lands Department	90	80	65	71	59	59
Leisure and Cultural Services Department	299	314	188	84	76	68
Marine Department	22	21	8	19	26	21
Office of the Government Chief Information Officer	5	5	-	-	-	-
Official Receiver's Office	15	12	12	16	17	13
Planning Department	-	-	9	5	13	28
Radio Television Hong Kong	5	-	-	-	-	-
Rating and Valuation Department	52	51	54	48	44	42
Registration and Electoral Office	-	-	107	7	-	-
Security Bureau	6	6	7	6	5	4
Student Financial Assistance Agency	35	35	22	39	29	58
Television and Entertainment Licensing Authority	1	-	-	-	-	-
Trade and Industry Department	1	9	-	-	-	3
Transport and Housing Bureau	15	14	5	4	4	6
Transport Department	41	56	60	59	58	41
University Grants Committee Secretariat	1	-	-	1	1	7
Water Supplies Department	165	128	102	69	74	80
Total	2 398	2 260	1 687	1 173	972	965

* Excluding the T-contract and service bureau staff

List of relevant papers

Meeting	Date of meeting	Paper
Panel on Public Service	18 January 2010 (item IV)	<u>Agenda</u> <u>Administration's paper</u> <u>Minutes</u>
	20 December 2010 (item V)	<u>Agenda</u> <u>Administration's paper</u> <u>Minutes</u>
Council meeting	2 March 2011	<u>Question raised by Dr Hon PAN Pey-chyou on "Use of agency workers in Government"</u>
Panel on Public Service	16 April 2012 (item IV)	<u>Agenda</u> <u>Administration's paper</u> <u>Minutes</u> <u>Administration's follow-up paper</u>
	3 June 2013 (item IV)	<u>Agenda</u> <u>Administration's paper on use of agency workers</u> <u>Administration's paper on use of T-contract services</u> <u>Updated background brief</u> <u>Minutes</u> <u>Administration's follow-up paper on use of agency workers</u> <u>Administration's follow-up paper on use of T-contract staff</u>

Meeting	Date of meeting	Paper
Panel on Public Service	19 May 2014 (item IV)	Agenda Administration's paper on use of agency workers Updated background brief Minutes Administration's response on use of agency workers
	20 April 2015 (item III)	Agenda Administration's paper on use of agency workers Updated background brief Minutes

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