

**LegCo Panel on Manpower
(For Meeting on 25 May 2000)**

**Minimum Employment Terms - Projects or Services
Contracted Out by the Government**

Introduction

This paper sets out Government's views on the proposal to stipulate minimum employment terms in contracts when projects or services are contracted out by the Government. It also informs members of the measures adopted by some individual departments to ensure compliance of the Employment Ordinance (EO) by their contractors and the quality of service provided by their contractors.

Minimum Employment Terms in Government Contracts

2. In the free market economy of Hong Kong, wage rates for employees, like other costs of production and prices of goods and services, are determined entirely by the forces of supply and demand in the labour market. This wage-setting mechanism has ensured the most optimal and efficient allocation of human resources in the economy, and the Government does not consider it appropriate to introduce any form of statutory minimum wage in Hong Kong. Along the same line, there is no requirement on the stipulation of minimum wage in Government projects and service contracts. As far as the Government is concerned, the wages of workers engaged for projects and services contracted out by Government is a matter for the successful contractor to work out with his employees. In contracting out projects and services, the Government's objective is to obtain goods and services at the best value for money in support of programmes and activities.

3. As regards conditions of employment, the EO prescribes standards for various employment benefits and provides a framework under which basic employment rights and benefits of employees are protected. There is already in place an effective system to ensure that channels are available to employees for pursuing their employment claims and that their interests are adequately protected. The Labour Department enforces the EO and conducts inspections of workplaces to

ensure that the statutory conditions of employment are complied with. Whenever a complaint against breach of the EO is received or a possible offence is detected, the Department will thoroughly investigate into the case with a view to prosecution so as to deter employers from infringing the employment rights of their employees. Like all other employees in Hong Kong, employees engaged by contractors of Government projects and services are protected by the EO.

4. To promote understanding of the EO, the Labour Department organises briefings for contractors. The briefings will explain employers' obligations under the EO, introduce good people management practices and promote the use of the Department's sample employment contract.

Measures Adopted by Individual Departments to Ensure Compliance of EO

5. The terms for inclusion in the contracts of projects or services are matters for individual departments to decide. Some individual departments have adopted measures which they consider appropriate in their own circumstances to ensure that their contractors comply with the statutory requirements stipulated in the EO and other labour legislation. These measures include -

- (a) stipulating, as a term of contract, that contractors shall abide by the laws of Hong Kong; and that Government may terminate contract pre-maturely if serious offence has been proven;
- (b) applying a sanction system whereby contractors who breach the EO will be blacklisted;
- (c) ascertaining that contractors have no previous adverse record in relation to major labour legislation provisions before award of contracts;
- (d) monitoring performance of contractors through supervision by department staff, regular and surprise checks, collection of feedback from users, regular meetings with contractors, etc to ensure that they comply with labour laws; and
- (e) encouraging contractors to attend Labour Department's briefing sessions on the EO.

Measures Adopted by Individual Departments to Ensure Quality of Service

6. In addition, some individual departments have adopted measures which they consider appropriate in their own circumstances to ensure the quality of service provided by their contractors. These measures include -

- (a) specifying in the tender document and/or the contract the requirements in service quality and output quantity, the level of experience required of the contractor, the number of employees required to deliver the service as well as the qualifications, experience and skills required of these employees;
- (b) maintaining an approved list of contractors whose standard of services has been carefully vetted, and taking into account the past performance of contractors in the evaluation of bids;
- (c) suspending/terminating contracts and blacklisting the contractors in cases of unsatisfactory performance;
- (d) monitoring performance of contractors through supervision by department staff, regular and surprise checks, collection of feedback from users and regular meetings with contractors, etc; and
- (e) making payments to contractors by phases, and ensuring that contractors receive payment only if they have completed certain parts of the project to an acceptable level.