

財經事務及庫務局
(庫務科)

香港下亞厘畢道
中區政府合署



FINANCIAL SERVICES AND
THE TREASURY BUREAU
(The Treasury Branch)

Central Government Offices
Lower Albert Road
Hong Kong

傳真號碼 Fax No. : 2869 4519
電話號碼 Tel. No. : 2810 2257
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6 January 2005

Clerk to the Panel on Manpower
Legislative Council
3/F Citibank Tower
Central
Hong Kong

Dear Mrs Tong,

**Government's response to the two motions moved by
the Hon WONG Kwok-hing and LEE Cheuk-yan dated 2 December 2004
concerning services outsourced by the Government**

The following is our reply to the two motions passed by the Panel on Manpower at its meeting held on 2 December 2004.

The Hon WONG Kwok-hing's motion

“That this Panel requests the Administration to submit the parts concerning employment terms in model tender documents for all outsourced service contracts to this Council for discussion and endorsement before such contracts are signed.”

In response to the concern of Members of the Legislative Council and the request of non-skilled workers employed by contractors of government outsourced services, the Government promulgated mandatory requirements for tender assessments and demerit point system for contractors of service contracts (excluding construction services) and for evaluation of wage offers on 27 March 2004 and 6 May 2004 respectively. The purposes of these mandatory requirements are to strengthen the monitoring of the contractors of outsourced

services and to ensure that the average wage rates (which relate to an average number of normal hours of work per day and average number of standard working days per month) offered to non-skilled workers by these service contractors will not be lower than those in the relevant industry or occupation in the market. To implement these mandatory requirements, procuring departments have suitably revised the relevant provisions in the tender documents for outsourced service contracts. The relevant general employment terms-related provisions in the tender documents for service contracts of the major users of service contracts, such as the Food and Environmental Hygiene Department (FEHD) and the Leisure and Cultural Services Department (LCSD), are listed at Annex 1 for information. Other government departments also have similar provisions included in their tender documents for service contracts. As department's service contract requirements are different, these provisions may vary depending on circumstances of each service contract. Besides, while not subject to government's procurement policy, the Housing Department (HD) have also included similar provisions in their tender documents, the details are at Annex 2.

We do not agree to the request in the motion that the employment terms-related provisions in tender documents for all outsourced service contracts should be discussed and endorsed by the Panel on Manpower before such contracts are signed. In drawing up the tender documents for service contracts, the procuring department would consider the nature and requirements of the various services, and, where necessary, seek legal advice on the relevant provisions before they are put to use. The existing provisions have reflected the policy intention of the mandatory requirements. Moreover, according to the information provided by FEHD, LCSD and HD, the tender process for a total of 54 service tenders already invited and some service tenders planned to be invited in December 2004 have been temporarily suspended due to this motion. The tendering process for these service tenders should resume as soon as possible, otherwise the public services provided by these departments will be seriously affected.

The Government is fully aware of Members' concern over terms of employment for workers employed in government outsourced service contracts. We will make every effort to eliminate exploitation of workers by service contractors. Procuring departments will strengthen their monitoring on the service contractors and, where appropriate, apply provisions in the contract to punish those service contractors who breach the contract provisions. The Labour Department will also step up its enforcement action against service contractors found to have violated the Employment Ordinance and Employees' Compensation Ordinance.

The Hon LEE Cheuk-yan's motion

“That this Panel requests the Administration to require that the monthly wages to be paid by contractors of outsourced services to their workers in the eight-hour service contracts (covering meal breaks) be stipulated at the average wage rates for the relevant industry as published in the Quarterly Report of Wages and Payroll Statistics of the Census and Statistics Department.”

The implementation of the mandatory wage requirement is to ensure that the average wage rates (which relate to an average number of normal hours of work per day and average number of standard working days per month) offered to non-skilled workers employed by contractors of government outsourced services will not be lower than those of their counterparts employed in the relevant industry or occupation in the market. The Government adopts the average monthly wage rates stipulated in the Quarterly Report of Wages and Payroll Statistics of the Census and Statistics Department (C&SD) as the basis of the mandatory wages because the information of C&SD best reflects the market wage rates. The calculation of the wage rates is based on net hours of work, which exclude meal and rest breaks. We do not agree to include meal breaks in the net hours of work, because this will distort the market wage rates based on C&SD's survey and affect the calculation of wage rates for those workers whose net working hours are not eight hours.

To reduce misunderstanding about wage rates, we will request the procuring departments to review their service requirements, with a view to determining the working hours of non-skilled workers. We will also remind the departments to instruct contractors to specify in the employment contracts signed with their employees the wage rates and whether the working hours include meal breaks. The procuring departments are actively considering the inclusion of a criterion in the marking scheme for assessment of tenders to evaluate the proposed wage rates offered by tenderers to non-skilled workers. Tenderers who are willing to offer wage rates higher than those for the relevant industries/occupations as published by C&SD will be awarded higher marks. This is to encourage tenderers to offer higher wage rates to their non-skilled workers so as to enhance their wage level.

Yours sincerely,



(Mrs Vivian Ting)

for Secretary for Financial Services and the Treasury

**General Employment Terms-related Provisions in
Tender Documents of Service Contracts***
**(The provisions may vary depending on the nature
and requirements of the service contract)**

NOTES FOR TENDERERS

Mandatory Requirement

The technical information of the tenders will be checked against the mandatory requirements. Tenders that fail to meet any of the mandatory requirements will not be further processed for evaluation. Only those conforming to the mandatory requirements will enter into stage 2 evaluation. In this connection, Tenderers should comply with the following mandatory requirements :–

- Tenderer's satisfactory past performance in respect of compliance with the following Ordinances –
 - (A) the Employment Ordinance (Cap. 57) and Employees' Compensation Ordinance (Cap. 282) convictions of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);
 - (B) Section 17I (1) of the Immigration Ordinance (Cap. 115);
 - (C) Section 89 of the Criminal Procedure Ordinance (Cap. 221) and Section 41 of the Immigration Ordinance (Cap. 115); and
 - (D) Section 38A(4) of the Immigration Ordinance (Cap. 115).

The Tenderer's past performance will not be considered satisfactory if during the 12-month period prior to the Tender Closing Date, the Tenderer has had a total of three (3) or more convictions under the aforesaid Ordinances. For this purpose, convictions will count for all Government and private contracts and by the number of summonses convicted.

* Based on the tender documents of major users of service contracts (including Food and Environmental Hygiene Department and Leisure and Cultural Services Department)

- Tenderer's satisfactory past performance for complying with contractual obligations in respect of wages, working hours, and (if the contractual period exceeds seven (7) days) to comply also with the signed written employment agreements with the non-skilled workers under all Government service contracts that rely heavily on the deployment of non-skilled workers awarded on the basis of tenders invited after 27 March 2004. The Tenderer's past performance will not be considered satisfactory if during the four most recent quarters prior to the Tender Closing Date ending 31 March, 30 June, 30 September and 31 December, the Tenderer has received a total of six (6) Demerit Points for breaches of such contractual obligations under all Government service contracts that rely heavily on the deployment of non-skilled workers from one or more Government departments.
- The proposed monthly wage for [specify position] shall not be less than the overall average monthly salary for [specify industry/occupation], which is [HK\$xxxx] (on the basis of [xx] net working hours per day (excluding meal break) and [xx] working days per month) and such overall monthly salaries are published in the Quarterly Report of Wage and Payroll Statistics by the Census and Statistics Department in the edition for the time being in force (that is, [specify month/year] Edition).
- Tenderer's declaration of experience in operating any business as employers, and if Tenderer has previous conviction of offences under the Ordinances detailed in [specify relevant clause] of the Notes for Tenderers, to give details of conviction records, and to give consent and authorization to [specify department] to check with the Authorities to affirm the conviction records in [specify relevant Schedule].

GENERAL CONDITIONS OF CONTRACT

Payment for Services

- Provided that the Contractor shall have performed the Services in accordance with the Contract and that the Contractor provides a statement which affirms all his [specify position] have been paid no less than the wages as specified in [specify relevant Schedule] and contributions have been made for all his [specify position] in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or under the Occupational Retirement Schemes Ordinance (Cap. 426) to the satisfaction of the Government Representative, the Government shall pay the Contractor the Monthly Rates for the Services Provided in arrears as specified in [specify

relevant Schedule] subject to any payment discount or deductions provided herein and in the manner hereinafter provided. The Contractor shall make available to the Government Representative information such as wage books, bank autopay return, receipts of wages and record of contributions made under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or under the Occupational Retirement Schemes Ordinance (Cap. 426) to enable the Government Representative to crosscheck the data contained in the statement.

Policy of Insurance and Compensation

- The Contractor shall effect and keep in force during the currency of the Contract at his own expense a Public Liability Policy of Insurance exclusively for the Contract in the joint name of the Government and the Contractor in a sum of not less than ten million Hong Kong dollars (HK\$10,000,000) for any one accident with unlimited number of claims with a reputable insurance company authorized under the Insurance Companies Ordinance (Cap. 41) and on such terms and conditions as shall be approved by the Government Representative against liability to pay damages and compensation for injury to or death of any persons and for loss or damage to any properties whatsoever where such injury, death, loss or damage as the case may be shall be caused or arisen out of any act or default of the Contractor and the Government and their respective employees and sub-contractor (if any).
- The Contractor shall submit to the Government Representative within fourteen (14) days upon notification by the Government of award of the Contract two (2) copies of the said policy of insurance together with the receipt for payment of the current premium.
- In the event of any of the Contractor's employees suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within seven (7) clear working days give notice in writing of such injury or death to the Government Representative.

Information Not To Be Divulged

- The Government shall have the right, without seeking prior consent from the Contractor, to disclose whenever he considers appropriate or when such disclosure is for the purpose of implementing the contractual obligation by the Government –
 - (i) contractual information and commitment contained in the Tender Document as submitted by the Contractor in relation to the [specify position] wages and their maximum working hours and the number of employees engaged for the performance of the Contract; and
 - (ii) information in relation to the Demerit Points given to the Contractor for breaches of the specific contractual obligations under the Contract.

Compliance with Laws and Regulations

- The Contractor shall at all times comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509) and its subsidiary legislation, and of any other legal provisions pertaining to the health and safety of his own staff, Government staff and others who may be affected by his performance of the Services.

Termination of Contract

The Government Representative shall be entitled to terminate the Contract forthwith but without prejudice to any other rights and remedies which the Government has or may have under various circumstances including but not limited to the following –

- the Contractor is in material breach of and/or has committed repeatedly breaches of any of his obligations under the Contract;
- discovery of material misrepresentation by the Contractor during the tendering process;

- discovery of false declaration or untruthful revelation in regard to the record of convictions of offences under the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115) or Criminal Procedure Ordinance (Cap. 221) as stated in [specify relevant Schedule] by the Contractor during the tendering process;
- the Contractor is convicted of any of the offences under the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282), Section 17I (1) of the Immigration Ordinance (Cap. 115), Section 89 of the Criminal Procedure Ordinance (Cap. 221) or under Section 41 of the Immigration Ordinance (Cap. 115) arising from the performance of the Contract;
- the Contractor breaches the undertaking in [specify relevant clause] in respect of signed written employment agreements with his [specify position];
- the Contractor breaches the wage level or allowable daily maximum working hours undertaking in [specify relevant clauses]; or
- the Contractor is convicted of any offences under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Occupational Retirement Schemes Ordinance (Cap. 426) arising from the performance of the Contract.

SPECIAL CONDITIONS OF CONTRACTS

Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Government that –

- he shall comply with the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282), Section 17I (1) of the Immigration Ordinance (Cap. 115), Section 89 of the Criminal Procedure Ordinance (Cap. 221) or Section 41 of the Immigration Ordinance (Cap. 115). Any conviction of an offence under the Employment Ordinance (Cap. 57) or Employees' Compensation Ordinance (Cap. 282) the punishment of which carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221) and for any conviction of an offence under Section 17I (1) of the Immigration Ordinance (Cap. 115), Section 89 of the Criminal Procedure Ordinance

(Cap. 221) or Section 41 of the Immigration Ordinance (Cap. 115) arising from the performance of the Contract may be construed as a breach of the commitment of the Contract and the Government Representative may have a right to seek appropriate remedies which include the right to terminate the Contract under [specify relevant clause].

- he shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Occupational Retirement Schemes Ordinance (Cap. 426) in the employment of his staff. Should the Contractor be found to be in breach of this undertaking after being convicted of any offences under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Occupational Retirement Schemes Ordinance (Cap. 426) arising from the performance of the Contract, the Government may, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.

Performance

- During a work shift of [xx] hours or longer, there shall be one (1) meal break of [xx] hour on each working shift for the workers employed by the Contractor for the performance of the Contract. The schedule of such break shall be determined by the Government Representative. The Contractor shall not alter the schedule of such break without the prior written consent of the Government Representative. For the avoidance of doubt, it is the Contractor's responsibility to make necessary arrangement for his staff to take meal breaks by mutual agreement between the Contractor and his staff.

Personnel Records

- The Contractor shall maintain proper current and accurate records of all employees employed by the Contractor under the Contract, and such records shall include the names and photographs of such persons, their grades, posts, sex, identity card numbers, ages, training, the time sheet showing their attendance and their wage books.
- The Contractor undertakes and warrants that he shall enter into an employment agreement including any amendments, variations or cancellation with his [specify position] in writing (if the contractual period exceeds seven (7) days) containing at least the minimum wages and allowable daily maximum working hours as committed in the Tender Document by the Contractor, the employment period, the rest day arrangements, the wages payable to and the daily maximum working hours for his [specify position]

and that the parties to the employment agreement agree that they consent to the production of the written employment agreement and all documents relating to the employment to the Government Representative and to the Labour Department for law enforcement purpose upon request.

- The Contractor shall within two (2) weeks from the commencement of the Contract provide the Government Representative with a copy of all employment agreements entered into under [specify relevant clause] at his own costs. In the event that there is any subsequent change of [specify position] or of the terms of any employment, including but not limited to those terms referred to in [specify relevant clause], the Contractor shall provide the Government Representative within three (3) days after such change with a copy of any new employment agreement entered into or any employment agreement as amended, as the case may be, at his own costs.
- The Contractor shall keep proper record of the written employment agreements including any amendments, variation or cancellation and the payment to his [specify position]. The methods of autopay or issue of cheque for payment of wages shall be adopted for proper record keeping purpose unless his [specify position] exercises his right to demand payment in legal tender in which event the Contractor shall obtain official receipt from the relevant [specify position].
- Any breach of the undertaking in [specify relevant clause] in respect of signed written employment agreements with his [specify position] may be construed as a breach of the commitment in the Contract and the Government Representative may have a right to seek appropriate remedies which include the right to terminate the Contract under [specify relevant clause].
- The Contractor shall ensure and procure that his contract with his sub-contractor (if any) shall contain a contractual clause to the same effect as [specify relevant clause]. The Contractor shall ensure that any default of the said contractual clause by the sub-contractor (if any) shall be readily remedied. Any failure of the sub-contractor (if any) to observe the aforesaid contractual clause shall be deemed to be a breach of the Contract on the part of the Contractor himself under [specify relevant clause] entitling the Government to terminate the Contract.

Level of Wage, Allowable Daily Maximum Working Hours and Signed Written Employment Agreements for [specify position]

- The Contractor shall pay the wages not less than those specified by him in [specify relevant Schedule] for each [specify position] on the basis of [xx] net working hours (excluding meal break) per day and [xx] working days per month. For the avoidance of doubt, the monthly wage for [specify position] with working hours deviating from the referenced [xx] net working hours (excluding meal break) per day and [xx] working days per month shall be determined on pro rata basis. Also, the Contractor shall not allow his [specify position] to work with net total hours in a day more than that specified by him in [specify relevant Schedule].
- Any breaches of the wage level undertaking and/or allowable daily maximum working hours undertaking may be construed as a breach of the commitment in the Contract and the Government Representative may have a right to seek appropriate remedies which include the right to terminate the Contract under [specify relevant clause].
- The Contractor shall ensure and procure that his contract with his sub-contractor (if any) shall contain a contractual clause to the same effect as [specify relevant clause]. The Contractor shall ensure that any default of the said contractual clause by the sub-contractor (if any) shall be readily remedied. Any failure of the sub-contractor (if any) to observe the aforesaid contractual clause shall be deemed to be a breach of the Contract on the part of the Contractor himself under [specify relevant clause] entitling the Government to terminate the Contract.
- If the Contractor is in breach of any of the commitments set out in [specify relevant clause], the Government Representative shall be entitled to record in writing a Notice of Default in Employment Commitment and serve the same upon the Contractor. Without prejudice to this and any other rights, remedies or actions to be taken under the Contract or without affecting the obligation of the Contractor to readily remedy the breach so identified, the Government Representative shall be entitled to make a deduction in the form of liquidated damages of a sum equivalent to the actual administrative cost incurred for enforcing the contractual terms of this clause which is calculated as [HK\$xxxx].

- For the avoidance of doubt, a Notice of Default in Employment Commitment will be issued for each breach of the contractual obligations in respect of wage level, working hours and signed written employment agreements. Each Notice of Default so issued under Government service contracts that rely heavily on the deployment of non-skilled workers attracts one Demerit Point. The Demerit Points given to the Contractor from Government departments will be taken into account by the Government in tender evaluation of the Contractor's bids for all Government service contracts the performance of which will rely heavily on the deployment of non-skilled workers and may result in the Contractor failing the tender assessment.

Payment of Wages

- The Contractor shall promptly pay salaries to his employees who are employed for the purpose of the Contract, failure to do so will entitle the Government to terminate the Contract.

Sub-contracting

- The Contractor shall apply with submission of the particulars of the sub-contractor and reasons for the sub-contracting as well as a draft of such tender document and sub-contract for prior written approval by the Government Representative. Where the application is approved, the Contractor shall ensure and procure that his contract with his sub-contractor shall contain a contractual clause to the same effect as [specify relevant clause] and the Government Representative is entitled to require the Contractor to enter into such sub-contract on such other terms and conditions as the Government Representative thinks fit. After signing of the sub-contract, the Contractor shall within three (3) days provide the Government Representative with copies of any such sub-contracts, and shall not without the prior written consent of the Government Representative, propose to amend or accept any proposal to amend the sub-contract.
- Subject to the requirements and conditions in [specify relevant clause], the Department will take into account the conviction records and Demerit Points of the proposed sub-contractor and apply the same principles as set out in [specify relevant clauses] in considering whether or not to approve a sub-contracting proposal made under [specify relevant clause].

- The Contractor shall remain fully responsible for the performance of the Services and shall not be relieved from any of his obligations and commitments under the Contract by entering into any sub-contract for the performance of any part of the Contract and the Contractor shall be fully liable for any acts of defaults or neglect of any sub-contractor (if any) or his employees.

Immediate Termination of Contract

- Without prejudice to [specify relevant clause] and without prejudice to any other right, action or remedy which shall have accrued or shall accrue thereafter to the Government, if the Government finds that the breaches as set out in [specify relevant clause] are serious enough to warrant an immediate termination of the Contract, the Government will take immediate termination action in addition to any action taken to recover all losses, damages, costs and expenses including but not limited to all costs and expenses incurred in relation to engaging replacement contractor(s) and conducting re-tendering exercise(s), if any, upon the Contractor's breach of [specify relevant clause], and shall have the right to deduct any money due to the Contractor under the Contract and under any other Government contracts (if there are any) for recovering the above losses, damages, costs and expense.

房屋署服務合約招標文件中有關僱傭條件的條款

甲部：清潔服務合約（暫時只得中文本。房屋署正安排英文翻譯。當譯本收到後，房屋署會另行呈交）

潔淨工作合約投標章程

- 投標者如在截標日期前 12 個月內，因違反《僱傭條例》、《僱員補償條例》或《入境條例》共有三次或以上的定罪記錄，其投標建議便不會獲得考慮。
- 承辦商在遞交標書時，必須同時呈報聲明曾否觸犯《僱傭條例》，《僱員補償條例》，《入境條例》或有關法例的資料。如有虛報，標書將不獲評審；或在獲批合約後，合約會被終止。
- 根據扣分制度，承辦商如不履行有關工資、工時以及與其僱員簽訂書面僱傭合約的責任時，房屋事務經理即向有關的承辦商發出失責通知書，每發出一次失責通知書，承辦商會被扣一分。如在截標日期前最近四個季度內，投標者被一個或以上的政府部門扣滿六分，其提交的標書將不獲考慮。
- 承辦商須按實際需要提供人手，但工人的整體工作時數，個別工人的工資及合計月薪總額，無論如何不得少於投標價格分析表所列的數目。
- 承辦商給予其僱員的每月工資，如低於招標時政府統計處最新發表的《工資及薪金總額按季統計報告》內相關行業/職業的平均每月工資，則其投標建議將不會獲得考慮。
- 為方便評審標書及執行合約，房屋署會將承諾工資的定義完善化，清楚列出工資部分所包含的類別及性質。所有保證的收入及各項津貼必須符合政府統計處的標準指引，才會被接納。
- 承辦商於投標時，必須就所提供服務的總工作時數作出承諾，以確保服務質素。此外，是項承諾的總工作時數，亦會納入評審標書的計分制中，用作鼓勵承辦商投放合適資源於服務上。
- 承辦商僱用工人的平均工作時數，每 10 日一個時段(只計算值勤的工作天)，不能超過其在投標時所承諾工人每日最高工作時數。
- 為確保服務質素，承辦商在調配工人時，兼職工人的數目將不能超越整體工人人數的八分之三。

合約一般條款

- 僱傭合約

承辦商必須與為履行本合約而僱用員工簽訂書面僱傭合約，並須使用勞工處制訂的標準僱傭合約，列明主要的僱用條款，例如工資、工作時數、休息日等。

- 承諾工資

承辦商給予其僱員的每月工資，不能低於招標時政府統計處最新發表的《工資及薪金總額按季統計報告》內相關行業/職業的平均每月工資

在遞交服務費用月結單時，承辦商須同時遞交房屋署認可的「潔淨工作工人薪俸結算書」，清楚列明員工應獲工資的計算方法，作為證據。

倘房屋事務經理提出要求，承辦商必須將所有為履行本合約而僱用員工的僱員薪金報稅表及有關的證明文件，提交房屋署查閱及/或複印，並在事前已取得有關僱員的書面同意書。

承辦商需採用自動轉賬或以簽發支票方式支付僱員工資，以便核實薪酬。

承辦商必須在屋邨租用的辦公室或員工休息室內，張貼各類工人的薪金資料，以便員工知悉。

- 扣款

工人的整體工作時數及薪金總和少於投標價格分析表內所承諾的總工時及薪金，本會得按情況從每月潔淨費中扣除一筆合理的款項。

房屋事務經理在執行付款時會採用“整筆付款調整”概念，用作核實承辦商申索的費用。他亦會抽查員工薪俸結算書，或約見員工，了解情況。一旦發現違規情況屬實，房署會以少付工人的金額，將承辦商申索工人工資的整筆費用作相應調減。

- 檢查工作與拒絕付款

在繳付潔淨費前，房屋事務經理將檢查有關的潔淨工作，倘認為未符合合約的規定，則有權停發潔淨費。

- 財產損失

如有任何動產或不動產因潔淨工作的執行或在潔淨工作進行期間受到損壞，而該項損壞是承辦商本人、其屬員、代理人或分包商的疏忽、過失或在其可控制的情況下所引致，則本會因此事而遭受控告或索償時，承辦商須負全責，並賠償本會所蒙受的一切損失。

- 賠償

- (a) 承辦商必須為所有工作人員購買保險。保險單必須在工作人員的整段受僱期間內有效。在本會提出要求時，保險單連同現行保險費收據，須一併呈交房屋署署長於合約期內妥為保存。
- (b) 倘承辦商未有投購上述或合約規定的其他保險，並將其保持有效，本會得代為投購此類保險，並保持其在合約期間有效，然後視作債項向承辦商索還。
- (c) 如承辦商或分包商為執行本合約而僱用的工作人員受傷，則不論其要求賠償與否，承辦商必須立即以書面通知房屋署署長。

- 投購保險

承辦商須按房屋委員會的要求投購或着令其分包商投購以承辦商聯同房屋委員會的名義為投保人的有關保險，以便一旦有人因執行本合約的潔淨工作或在工作期間受傷或死亡，而此事又非因本會或本會人員的行為或疏忽而致時，可承擔賠償責任。

(a) 上述投保的賠償額得為：

- (i) 任何一宗意外：不少於港幣 750 萬元。
- (ii) 在整個投保期內賠償無限次。

(b) 除非另外得到〔香港房屋委員會〕同意，承辦商須於本合約生效當日或以前，購買並繼續維持本合約規定的保險，投保期須涵蓋本合約整段合約期，內容則須包含香港房屋委員會規定的最低限度保險條款和承保範圍。

- (c) 承辦商須於本合約生效當日或以前，向香港房屋委員會提交由其承保人或保險經紀／代理人發出的確認書，證明已購買包含最低限度保險條款和承保範圍的保險，並已繳付保費，而且有關保險是由經保險業監理處認可在香港經營此類保險業務的承保人承保。
- (d) 如上述確認書所指的保險單並未涵蓋本合約的整段合約期，則承辦商須在該保險單和其後每份保險單（如有的話）承保期屆滿前，向香港房屋委員會再行提交由其承保人／保險經紀／代理人發出的確認書，以符合上述各項規定和證明上述事宜。
- (e) 每項上述保險，得向房委會所批准的保險公司按房委會批准的條件投購。承辦商得經由管理人向房委會遞交保單正副本，確認書正本及現期保金收條。

- 分包商

未經房屋署署長書面同意，承辦商不得將本合約或其中任何部分或股份或權益直接或間接移交或轉讓他人。

- 遵守有關條例、規例等

承辦商在各方面均須遵守適用於本合約的條例的規定，及本地或其他正式組成的管理當局的規例或附例，並須符合此等規則及規例，或上述一類公共機構及公司的有關規定。

- 提前終止合約

本會有權隨時終止承辦商的潔淨服務，但須於 3 個月前以書面通知。

- 違約

倘承辦商在履行任何一期(每期一年)合約時 —

- (i) 放棄合約，或
- (ii) 不按照合約的規定執行工作或經常疏於履行合約內的義務，

則房屋署署長在向承辦商發出書面通知 7 日後，得將本合約終止，並得進入有關的物業將其逐走，但承辦商並不因此而免負本合約所規定的義務與責任。

合約特別條款

- 工人工資

承辦商必須提供足夠的管工及工人，按「工作細則表」的規定，清潔有關屋邨。僱用的工人數目，須視乎實際需要而定，以確保能圓滿履行潔淨工作細則表的規定，但工人的整體工作時數，個別工人的工資及合計月薪總額，無論如何不得少於投標價格分析表所列的數目。

- 員工紀錄

承辦商須向房屋事務經理提交一份有關上文第 5(a)及(b)條所規定聘請的潔淨工人調配表，詳列工人的職責範圍及工作時數。工人如有任何變動，須立即向房屋事務經理報告。在合約期內，承辦商須要求清潔工人每日簽署出勤表，及將值勤紀錄記存，以供房屋事務經理或其代表隨時查閱。

- 職業安全設備

承辦商須在潔淨工人執行潔淨工作時，為他們提供防護手套、防滑鞋、安全帶、口罩及安全帽。在清理斜坡及進行高空工作時，承辦商必須指派不少於 2 名工人執行工作。承辦商必須為其僱員提供足夠的安全設備及措施，包括高空工作台。承辦商必須指派一名僱員整體負責及監察員工的職業安全事宜。

工作細則表

- 職業安全設備

根據香港特別行政區職業安全及健康條例（第 509 章）第 6（1）條，承辦商必須確保所有為執行本合約而僱用的工作人員的安全及健康。承辦商清理斜坡及執行高空工作時，必須提供其僱員足夠的安全設備及安全措施，並注意公眾安全。

投標價格分析表

- 工作時數不包括用膳時間。
- 工資率以政府統計處公布工人每月工作 26 日每日 8 小時為基準。

Basic Employment terms-related Provisions in Tender Document of the Housing Department

Part B : Security service contract (English version only. The Housing Department is arranging Chinese translation and will submit it to the Panel when it is ready)

CONDITIONS OF TENDER

- A tender offer shall not be considered if during the 12-month period prior to the tender closing date, the tenderer has had a total of three or more convictions under the ‘Employment Ordinance’, ‘Employees’ Compensation Ordinance’, ‘Immigration Ordinance’ or other relevant Ordinances.
- The tenderers shall submit a statement of all convictions/no conviction of offences (Appendix I) in triplicate in relation to the “Employment Ordinance”, “Employees’ Compensation Ordinance”, “Immigration Ordinance” or other relevant Ordinances. The Authority shall invalidate the tender if the tenderer is subsequently found to have made a false declaration at the tendering stage or terminate the contract if discovered after award of contract.
- Under the Demerit Point System of the HKSAR Government, a tender offer shall not be considered if the tenderer has received from one or more government departments a total of six or more demerit points in the four most recent quarters before the tender closing date.
- A tender offer shall not be considered if the monthly wages offered by the tenderer to the security guards to be employed by it for the carrying out of the contract are less than the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department’s (C&SD) Quarterly Report of Wage and Payroll Statistics at the time when the tenders are invited, i.e, \$_____.
- The definition of “committed wages” will be refined to restrict the type and nature of wage elements allowed and use for tender comparison and contract administration. Only guaranteed income and allowances meeting the specification used by C&SD will be accepted.

GENERAL CONDITIONS OF CONTRACT

Payment for Services

Submission of Invoice

- As soon as possible after the last day of each month and in any case within seven days, the Contractor shall submit to the Manager or as otherwise directed for certification and any necessary correction an invoice setting out the hours of security guard services provided during the month under the Contract together with the Monthly Salary Statements as mentioned under Clause 20(5) of the General Conditions of Contract. No payment shall be made unless such invoice as submitted by the Contractor has been certified by the Manager or the Manager's Representative.
- Provided always that the Director of Housing may, at his absolute discretion, direct payments to be made to the Contractor whenever he considers it desirable notwithstanding that a certificate has not been issued or signed by the Manager or the Manager's Representative.
- The Manager's certification under the preceding sub-clause shall be final and the Contractor is not entitled to make any objection thereto whatsoever.

Batch-payment Adjustment

- The "batch-payment adjustment" concept in validating the payment claimed by the contractor shall be adopted. The guards wage statements shall be sampling-checked and the concerned security guards will be interviewed. The total payment to the contractor shall be downward adjusted in accordance with the shortfall of payment to security guards reflected by sampling checking.

Remedy on Contractor's failure to perform services required

- If the Contractor shall fail to replace any security guard or supervisory officer objected to and removed under Clause 24(2) herein before mentioned, or if the Contractor shall fail to provide the number of security guards as stipulated in the Contract or as may be required by the Manager from time to time upon service of the appropriate notice, then the Manager shall be entitled -
 - (a) to deduct appropriate sums from the monthly payments commensurate with the failure to provide adequate replacements to maintain a satisfactory standard of performance of service; or
 - (b) to instruct employees of the Authority or other contractors to carry out such services as are rendered necessary by the contractors' failure and the Authority shall be entitled to recover the cost thereof from the Contractor, or to deduct the same from any monies due or becoming due to the Contractor under this or any other contract;
 - (c) to withhold, refuse, disallow payment in respect of the services which may have been rendered by security guards or supervisory officers objected to and required to be removed as aforesaid or in respect of services which may have been rendered by other employees of the Contractor on behalf of the employees who are found absent from work or in respect of service which have not been performed or performed properly.
- In case of dispute to the above clause, the decision of the Manager shall be final.

Policy of Insurance and Compensation

Public Liability Insurance

- Without limiting the Contractor's obligations and responsibilities under clauses 10, 11 and 12 of the General Conditions of Contract, the Contractor shall insure in the joint names of the Hong Kong Housing Authority and the Contractor against all loss or damage for which the Contractor is responsible under the terms of the Contract, in such a manner that the Authority and the Contractor are covered for the duration of the Contract.
- Unless otherwise agreed by the Authority, the Contractor shall on or before the date of commencement of this Contract effect and thereafter maintain for the full period of this Contract the insurance as required under Clause 13(1) of this Contract, which insurance shall provide the minimum insurance terms and coverage as required by the Authority.
- The minimum limit of indemnity to be provided shall be :-
 - (a) Any one accident HK\$7,500,000.00; and
 - (b) Unlimited in aggregate during the period of insurance.
- The Contractor shall submit to the Authority on or before the commencement date of this Contract a Confirmation Letter issued by its Insurer or Insurance Broker/Agent certifying that an insurance covering the minimum insurance terms and coverage has been taken out, the premium has been settled, and the insurance was placed with authorized insurer by the Office of the Commissioner of Insurance to carry out the kind of insurance business(es) in H.K.

If the insurance policy referred to in such Confirmation Letter shall not cover the full period of this Contract, the Contractor shall, prior to the expiration of the insurance policy and each subsequent insurance policy (if any), submit to the Hong Kong Housing Authority a further Confirmation Letter issued by its Insurer/Insurance Broker/Agent to complying with the above requirements and certifying the matters as aforesaid.

- Each such insurance shall be effected with an Insurer and in terms approved by the Authority. The Contractor shall lodge with the Authority through the Manager original and copies of the policy or policies, the receipts for payment of the current premium together with the Confirmation Letter.
- In respect of any subcontractor employed by the Contractor the Contractor's obligation to insure as aforesaid under this clause shall be satisfied if the subcontractor shall have insured against the liability in same manner as the Contractor.

The Subcontractor shall lodge with the Authority through the Manager original and copies of the policy or policies, the receipts for payment of the current premium together with the Confirmation Letter.

- If the Contractor shall fail to effect and keep in force the insurance referred to in Clause 12 and 13 or any other insurance which he may be required to effect under the terms of the Contract then and in any such case the Authority may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Authority as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

Liability for damages or compensation for employees

- The Authority shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any Security Guard or other person in the employment of the Contractor or any sub-contractor save and except an accident or injury resulting solely from any act or default of the Authority, its agents or servants and the Contractor shall indemnify and keep indemnified the Authority against all such damages and compensation, save and except as aforesaid, and against all claims demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- The contractor shall effect a policy of insurance against all liability to pay demands or compensation as aforesaid in respect of all workmen and other persons who may be employed on the works with a company approved by the Housing Authority (which approval shall not be unreasonably withheld) and shall keep in force such insurance during the whole of the time that any persons are employed by him on the works and shall, when required, deposit with the Director of Housing for safe keeping during the currency of the contract such policy of insurance together with the receipt of payment of the current premium.
- Provided always that in respect of any persons employed by any sub-contractor the Contractor's obligation to effect a policy of insurance as aforesaid under this clause shall be deemed to be fulfilled if the sub-contractor shall have effected such a policy of insurance in respect of such persons but the Contractor shall required the sub-contractor to deposit with the Director of Housing when required such policy of insurance and the receipt for payment of the current premium.

Damages to persons and property

- The Contractor shall, except if and so far as the Contract provides otherwise, indemnify and keep indemnified the Authority against all losses and claims for injuries or damage to any person or any property whatsoever, which may arise out of or in consequence of the execution of the Services and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.

Contractor to give notice to injury

- In the event of any workman or other person employed on the sites or in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form as the Commissioner for Labour may require and shall forward two copies of such notification to the Manager.

Compliance with Laws and Regulations

- The Contractor shall conform in all respects with the provisions of any enactment and the regulations or by-laws of any local or other duly constituted authority which may be applicable to the contract and with such rules and regulations or public bodies and companies as aforesaid and shall keep the Authority indemnified against all penalties and liability of every kind for breach of any such enactment, regulations, by-laws or rules.
- The Contractor shall take all necessary steps to ensure compliance of the requirements of the Personal Data (Privacy) Ordinance in the performance of the contract.

Level of Wages, Personnel Records and Signed Written Employment Agreements for Security Personnel

Security Guard's Wages and Personnel Records

- The monthly wages offered by the contractor to the security guards to be employed by it for the carrying out of the contract should not be less than the average monthly wages 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 tenders are invited, i.e. \$_____.
- The Contractor shall not reduce the wage shown in the Cost Analysis of Tendered Rates and Workplan Proposal during the entire term of the contract.
- The Contractor shall adopt the use of auto-pay or cheques for wages payment to facilitate payroll checking by the Manager.
- The Contractor shall produce documentary evidence such as payroll record and attendance record on monthly basis to the Manager's representative at the estate or office covered in the contract for examination to show to the satisfaction of the Manager's representative that the Contractor has complied with the Contractor's obligations under sub-clauses (1)-(3) of this clause.

- When submitting the invoice for the monthly payment of security services charged, the contractor shall, at the same time, submit the Monthly Salary Statements approved by the Housing Authority with clear calculation of wages payable to the security guards to support payment claims.
- If the contractor shall fail to comply with the contractual obligations under sub-clauses (1) - (5), the Manager shall exercise disciplinary actions which may include but not limited to giving a poor performance appraisal report, imposing tender bar, and removal of the contractor from the Authority's Approved List.

Engagement of labour

- The Contractor shall be required to sign employment contract with each of their security guards using the standardized Employment Contract published by the Labour Department and produce signed employment contracts to the Manager's representatives at the estate or office covered in the contract for examination.

Demerit Point System

- Without prejudice to any other remedies available to the Hong Kong Housing Authority, if during a regular or ad-hoc checking, the contractor is found to have breached his contractual obligation(s) as regards (i) wages, (ii) working hours; or (iii) signing of written employment agreements, one Default Notice will be issued to him in respect of each of the three types of breaches, irrespective of the number of workers the breaches relate to. Each Default Notice will attract one Demerit Point. Under the Demerit Point System of the HKSAR Government, the Demerit Points of the contractor will be taken into account in tender evaluation of the contractor's bids for Government service contracts that rely heavily on the deployment of non-skilled workers and may result in the contractor failing the tender assessment.
- The Authority will provide the Government Logistics Department (GLD) with information on the demerit points that have been given to the contractors. The GLD will publish this information on the restricted Government Intranet 'Central Cyber Government Office (CCGO)' for cross checking by all Government Departments.

Supply of uniform, material and equipment

- Except where otherwise specified the Contractor shall at his own expense supply and provide and maintain all the uniforms, equipment etc. for carrying out the Services including the supervision of Security Personnel, transport to or from or in and about the site or estate and other things of every kind required for the performance of the Service.

Sub-contract

- The Contractor shall not sub-contract all or any part of this Contract or all or any of the rights or obligations herein contained to any third party without the express prior written consent of the Manager provided that the Manager shall have full power to withdraw such consent at any time during the Contract and to prevent any sub-contractor from carrying out any duties under the Contract.
- The sub-contracting of the whole or any portion of the Service shall not relieve the Contractor from any liability or obligation under the Contract.
- It shall be the duty of the Contractor if so required by the Manager to furnish the Manager with all the particulars of any sub-contractor employed or to be employed on the execution of services.

Termination of Contract

- The Authority shall terminate the contract if the contractor is subsequently found to have made a false declaration of conviction of offences under the “Employment Ordinance”, “Employees’ Compensation Ordinance”, “Immigration Ordinance” or other relevant Ordinances relating to staff employment.
- The Authority has the right to terminate this Contract at any time by giving three months' prior notice in writing.

SPECIAL CONDITIONS OF CONTRACT

Number of Security Guards Required and Working Hours

- Security guards are required on 8 hours basis.
- The number of security guards to be provided under this Contract is specified in [Appendix II] but may be altered at later dates by one week's advance notice in writing by the Authority.
- For ad hoc service, security guards may be required for a minimum of four hours. The hourly rates shall stay the same as stipulated in the Form of Quotation.
- The number of security guards for temporary shelter security duties is two in normal circumstance. The duration of service is usually a few days on each occasion. Upon the verbal order from the Manager(s) or the Managers' Representatives, the contractor shall provide the required guards within two hours or the following 9:00 a.m., whichever is the earlier. All orders for service will be confirmed in writing.

Security personnel provided

- Except with the prior approval of the Manager or his representative no security personnel shall be allowed on duty for more than 8 hours in any 24-hour period. In the event that this limit is breached, no payment will be made for any excess hours worked.

**Basic Employment terms-related Provisions
in the Tender Document of the Housing Department**

Part C : Property management agent contract (English version only. The Housing Department is arranging Chinese translation and will submit it to the Panel when it is ready)

TERMS AND CONDITIONS OF CONTRACT

Committed Wages and Working Hours

- The wages of all cleansing workers (i.e. including the relieving and additional workers) working for this Agreement are subject to the wage commitment in the management proposal in [Schedule Two]. Refer to [Clause 4 (E)] for the fee adjustment in case of non-compliance.
- Security guards should be required to work on 8-hour basis per shift as stipulated on the management proposals. Except with the prior approval of the Authority's representatives, no security personnel shall be allowed on duty for more than 8 hours in any 24-hour period in Housing Authority's properties. In the event that this limit is breached, no payment will be made for any excess hours worked.
- The wages of all security workers (i.e. including the relieving and additional workers) working for this Agreement are subject to the wage commitment in the management proposal in [Schedule Two]. Refer to [Clause 4 (E)] for the fee adjustment in case of non-compliance.
- The Company must ensure that each of cleansing and security workers (full time or part time) employed by him or his sub-contractors for this Agreement receives at least the committed wage for the worker inserted in the management proposal in [Schedule Two]. Due adjustment to the committed wages shall be made on account of any overtime works, no paid leaves, etc. In the case of non-compliance, the monthly fees payable to the Company will be adjusted in commensuration with the amount of underpayment.

- The committed monthly wage shall be the guaranteed take-home wage to be received by each of the workers of the corresponding occupations for working 8 hours a day (excluding meal break, traveling time, change-over time between shift, etc.) and 6 days a week i.e. 7 days a week less one rest day (save for the holidays and paid leaves entitled by the worker under statute i.e. the holidays and paid leaves shall be counted as working days for the purpose of calculating the committed wage). For the avoidance of doubt, the monthly wages for cleansing workers with working hours deviating from the referenced 8 working hours per day shall be determined on pro rata basis.

- The committed wage can include the following:
 - (a) basic wage (before deduction of any employee's contribution to the Mandatory Provident Fund (MPF)); and
 - (b) regular and guaranteed payments (e.g. regular and guaranteed shift allowance, cost-of-living allowance, meal allowance, etc.),

provided the payments (except the employee's MPF contribution) is actually received by the worker in the monthly payment.

- The committed wage shall be net of or after deduction for the following:
 - (a) commissions, bonuses or allowances that are non-regular or non-guaranteed or not actually paid in the monthly payment (e.g. year-end bonus, performance bonus not in proportion to the worker's attendance);
 - (b) on-costs (e.g. insurance, employer's MPF contribution, uniform, tools, etc.);
 - (c) rest days, holidays, paid leaves, sick leaves, etc. entitled by the worker under statute; and
 - (d) the like.

- For any cleansing or security workers working for this Agreement not receiving the corresponding committed wages, adjustments will be made in accordance with an adjustment factor to the monthly fees payable to the Company. Refer to [Clause 4(E)] for details of the fee adjustment.
- The Company shall post the committed wages at prominent locations inside the estate management office, control rooms and rest rooms respectively for the workers' information.
- The Company shall ensure that the average daily working hours of each of the cleaners/toilet attendants calculated as per [Clause 4 (C) (viii)] above must not exceed the maximum average daily working hours committed in the management proposal in [Schedule Two].

Payment of Wages

- The Company shall issue monthly salary statements to each of the cleansing and security workers. The monthly statements shall be in a format approved by the Authority, with at least the following clearly indicated in Chinese or a language understood by the workers employed:
 - (a) basic wage and any additional payments, basic working hours, committed wage;
 - (b) adjustments for overtime work, no-pay leaves, etc.;
 - (c) employee's MPF contribution;
 - (d) average daily working hours for the period 1st-10th, 11th-20th and 21st-end of the month (for cleaners/toilet attendants only); and
 - (e) declaration by the Company (or its sub-contractor) including that he has paid the amount of money stated in the statement to the worker and declaration by the worker as to the validity of the statement.

The statements are required to support the Company's monthly payment applications. The statements will be sampled and the concerned workers will be interviewed. The fees payable to the Company will be adjusted according to the findings of the sampling.

- The Company shall ensure that each of the cleansing and security workers continuously employed for this Agreement is paid by means of auto-payment into the worker's bank account to facilitate payroll checking. During the period the auto-payment is being arranged (e.g. in the case of a new employee, or change of banks, etc.), the worker shall be paid by means of a cross-cheque payable in a bank in Hong Kong. Temporary workers must also be paid by means of a cross-cheque payable in a bank in Hong Kong.

Employment Contract

- The Company must enter into written employment contract with each of the cleansing and security workers if the employment period is longer than seven days, specifying the basic terms as wage rates, working hours, rest days, etc. The Standardized Employment Contract published by the Labour Department shall be used. Moreover, the employment contract must include the following declaration to the Authority by the Company (or his sub-contractors, if any) and the worker:

"I/We hereby authorize the Authority or his delegates to inspect this Employment Contract and any other documents that may be required to facilitate him or his delegates to conduct checking on the payment situation under this Employment Contract, inclusive of bankbooks, bank statements, salary statements, payrolls, and the like."

A copy of the agreement shall be retained by the workers, and another copy shall be kept in the estate management office for inspection by the Contract Administrator anytime during the contract period.

Sub-contracting

- The Company must ensure that the cleansing and security sub-contractors (if any) directly engaged by him do not further sub-let their services. In considering a request for sub-letting, the Authority amongst other things will take into account the sub-contractor's conviction records and Demerit Points (see below) in relation to employment of workers. The sub-contractor must also have at least two years' experience in the respective field of services.

Demerit Point System

- In the case where tender for sub-contract is invited, each tenderer is required to submit a statement of all convictions or a statement of “no convictions” in [Schedule Ten] in respect of the offences listed below for the 12-month period preceding the date of the tender submission.
 - (a) the Employment Ordinance (Cap. 57) and the Employees’ Compensation Ordinance (Cap.282). All convictions which individually carry maximum fines corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap.221) will count as convictions under the Employment Ordinance and the Employees’ Compensation Ordinance;
 - (b) the Immigration Ordinance (Cap.115). Convictions under Section 17I (1), Cap. 115 (offence to be employer of a person who is not lawfully employable) will count;
 - (c) Section 89, Cap.221 and Section 41, Cap. 115 (aiding and abetting another person to breach his/her condition of stay); and
 - (d) Section 38A(4), Cap.115 (offence of the construction site controller if a person not lawfully employable takes employment on a construction site).
- The statement should be certified by a person authorized to sign contracts on the tenderer’s behalf. The tender document should include an express term to the effect that the Company will terminate the contract if the sub-contractor is subsequently found to have made a false declaration at the tendering stage. Tenderers are required to authorize the Authority or his delegates to obtain information about their conviction records in respect of the aforesaid ordinances from all government departments and give consent to the government departments concerned to release and provide the information. The Authority or his delegates shall check with the Labour Department and Immigration Department respectively of the validity for the tenderers’ claim.

- A tender offer should not be recommended for the approval of the Authority if, during the 12-month period prior to management proposal or the tender closing date of the sub-contract, the tenderer has had a total of three or more convictions under the aforesaid Ordinances. Convictions will count for both government and private contracts and by the number of summons convicted.
- The Company and his sub-contractors (if any) must comply with all relevant employment law.
- Demerit points in relation to employment of workers - the tender will not be considered if the tenderer has received from one or more government departments a total of 6 or more demerit points in the four most recent quarters before the tender closing date, demerit points received after tender closing date may also be taken into account.

Ratio of Part-time/Full-time Workers

- For any given occupation (cleaner/toilet attendant, cleansing foreman, security guard, special guard and security supervisor), the ratio of part-time workers to full-time workers must be no more than 3:5. In other words, the number of part-time workers must be no more than three-eighth of the total number of workers of the given occupation working for this Agreement. For the purpose of this provision only, part time workers shall mean those workers who as a norm work less than 42 hours a week.

Deduction of Fees

- In the case the Company is in breach of the contractual commitment in relation to the employment of cleansing and security workers, adjustments shall be made to deduct the fees payable to the Company in accordance with the [formulae specified in the tender document].

END

Basic Employment terms-related Provisions in Tender Document of the Housing Department

Part D : Property services contract (English version only. The Housing Department is arranging Chinese translation and will submit it to the Panel when it is ready)

CONDITIONS OF TENDER / INSTRUCTIONS TO TENDERER

Tender Assessment

- Aspects of tender assessment includes
 - Resources for cleansing services (where committed man-hours of cleaners less than the suggested man-hours will attract zero or negative score)
 - Daily working hours of cleaners (where committed maximum daily working hours of cleaners more than the suggested working hours will attract zero or negative score.)
- Past conviction records in relation to employment of workers - the tender will not be considered if the tenderer has had a total of 3 or more convictions in respect of the ordinances listed in [Annex D] in the 12-month period preceding the tender closing date, nor if the tenderer has made a false declaration in the tender submission as regards his conviction records, convictions after tender closing date may also be taken into account;
- Demerit points in relation to employment of workers - the tender will not be considered if the tenderer has received from one or more government departments a total of 6 or more demerit points in the four most recent quarters before the tender closing date, demerit points received after tender closing date may also be taken into account.

TECHNICAL PROPOSAL

Declaration of Convictions in Relation to Employment of Worker

- *Tenderer shall declare* that during the 12-month period preceding the date of submission of tender, either : The company has NOT been convicted of any offence relating to staff employment under the ordinances listed in the Notes of this [Annex D] in both government and private contracts OR The company has been convicted on _____ count(s) of offence(s) relating to staff employment under the ordinances listed in the Notes of this Annex D in government and/or private contracts with details given.

- *Tenderer shall* authorize the Housing Authority to obtain information from all government departments concerning the conviction records of the company relating to staff employment under the ordinances listed in the Notes of this [Annex D] for the purpose of assessment of the company's tender for the caption contract Tenderer shall also give consent to all government departments to release and provide the aforesaid information to the Housing Authority for the purpose of assessment of the company's tender for the caption contract

Commitment on Wages, Resource Input and Daily Working Hours

- *Tenderer shall commit :*
 - Minimum Monthly Wage committed for Security Worker (security guard, special guard and security supervisor) and Cleansing Worker (cleaner, cleansing foreman);

 - resources input for cleansing service in term of minimum man-hours of cleaners per week.; and

 - Daily Working Hours of Cleaners in term of maximum average daily working hours of each worker.

- Reference is made to the Average Monthly Salaries in Table 8 of the Quarterly Report of Wage and Payroll Statistics – [Dec 2003] published by the Census & Statistic Department of the HKSAR Government.
- The committed monthly wage inserted by the tenderer must not be less than the corresponding lowest acceptable wage. Where the Tenderer does not insert a wage, the lowest acceptable wage shall be deemed to be the committed wage for the concerned occupation. If the Tenderer inserts a wage lower than the corresponding lowest acceptable wage, the tender will be disqualified.
- The committed monthly wage shall be the guaranteed take-home wage to be received by each of the workers of the corresponding occupations for working 8 hours a day (excluding meal break, travelling time, change-over time between shifts, etc.) and 6 days a week i.e. 7 days a week less one rest day (save for the holidays and paid leaves entitled by the worker under statute i.e. the holidays and paid leaves shall be counted as working days for the purpose of calculating the committed wage).
- The committed wage can include the following:
 - (a) basic wage (before deduction of any employee's contribution to the Mandatory Provident Fund (MPF)); and
 - (b) regular and guaranteed payments (e.g. regular and guaranteed shift allowance, cost-of-living allowance, meal allowance, etc.), provided the payments (except the employee's MPF contribution) is actually received by the worker in the monthly payment
- The committed wage shall be net of or after deduction for the following:
 - (a) commissions, bonuses or allowances that are non-regular or non-guaranteed or not actually paid in the monthly payment (e.g. year-end bonus, performance bonus not in proportion to the worker's attendance);

- (c) on-costs (e.g. insurance, employer's MPF contribution, uniform, tools, etc.);
- (d) rest days, holidays, paid leaves, paid sick leave etc. entitled by the worker under statute; and
- (e) the like.

Fee Adjustment on Default

- For any cleansing or security workers working for the Contract not receiving the corresponding committed wages, adjustments will be made to the monthly fees payable to the Contractor. Refer to [PRS.8] for details of the fee adjustment.

For man-hours used in the contract,

- (i) The man-hours shall include those provided on rest days and holidays.
- (ii) The man-hours shall be net of any meal break or travelling time.
- (iii) Refer to PS.1 for the permitted maximum ratio of time-part workers.
- (iv) The monthly fees payable to the Contractor shall be deducted for failure to provide the committed man-hours. Refer to [PRS.8] for details of the fee adjustment.

Maximum Average Daily Working Hour

- For each individual cleaner working for the Contract, three average daily working hours will be worked out in each month, respectively for the period 1st-10th, 11th-20th and 21st-end of the month. The average daily working hour is calculated from the worker's total working hours (excluding meal break and travelling time) in the period divided by his total working days in the period. Each of the three average daily working hours must not exceed the committed maximum daily working hours.

CONDITIONS OF CONTRACT

Compliance with enactments and regulations

- The Contractor shall conform in all respects with :
 - (a) the provisions of any enactment, lease, deed or covenant,
 - (b) the regulations or bye-laws of any local or duly constituted authority, and
 - (c) the rules and regulations of such public bodies and companies as are referred to in [Clause CC32],

and any additions or amendments thereto during the continuance of the Services, which are applicable to the Services, and shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules.

Engagement of Labour and Specified Personnel

- The Contractor shall make his own arrangements in regard to the provision of such labour and personnel, skilled and unskilled, as may be required for the provision of the Services and shall use all diligence in arranging for a sufficient and suitable supply of such labour and personnel but all such arrangements shall be in accordance with general local usage and subject to such regulations as the Government may from time to time require to be observed.
- The Contractor shall employ at least the number of qualified labour and personnel in each of the scheduled categories as specified in the Contract. The Contractor shall, when requested by the Contract Administrator, provide reasonable evidence that such qualified labour and personnel where specified have been and are still being employed by the Contractor.

Fair Wages

- The Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- In the event of default being made in the payment of any money in respect of wages of any person by the Contractor in and for carrying out of this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof is furnished to the satisfaction of the Hong Kong Commissioner for Labour, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Commissioner or his representative and any sums so paid shall be recoverable by the Employer from the Contractor.
- The Contract Administrator and the Employer shall be at liberty to exercise such other disciplinary action and deduction of payment as they may consider reasonably appropriate.

Forfeiture

- If the Contract Administrator shall certify in writing to the Employer that in his opinion the Contractor has made any false declaration in the tendering stage then the Employer may after giving at least 7 days' notice in writing to the Contractor enter upon the Site or any part thereof and expel the Contractor therefrom without thereby avoiding the Contract or any part thereof or releasing the Contractor from any of his obligations or liabilities under the Contract or any part thereof or affecting the rights and powers conferred on the Employer or the Contract Administrator by the Contract and the Employer may take up the Services or any part thereof or any work or may employ any other contractor to take up the Services or any part thereof or any work.

Fee adjustments for Non-compliance

- If the Contractor fails to provide any service or to comply with any obligation under the Contract for which service or obligation a standard fee adjustment amount or rate has been specified in the Contract, then without prejudice to any other rights or remedies of the Employer, the Employer shall be entitled to make adjustments to the payment to the Contractor accordingly, and may but shall not be bound to make such adjustments either in whole or in part, in accordance with the provisions of [Clause CC83]. Such fee adjustments shall not relieve the Contractor from any other of his obligations under the Contract.

GENERAL SPECIFICATIONS

Termination of Service

- If the Contractor fails to :
 - (i) deliver any service required under this Contract;
 - (ii) fulfil any obligation specified in the tender or the Contract Agreement;
 - (iii) deliver the services to the satisfaction of the Employer; or
 - (iv) meet the performance standards set in the Management Proposal

then the Employer shall have the right to initiate or exercise any remedial actions available under the Contract and the Contractor shall co-operate fully with Employer in carrying out these remedial actions. In case of emergency, the Employer shall also have the right to initiate or exercise any remedial actions without notifying the Contractor in advance.

Sub-contracting of Cleansing and Security Services

- Where in the opinion of the Contract Administrator a sub-contractor including but not limited to a sub-contractor for cleansing or security services has performed unsatisfactorily or has failed to comply with any requirements under the Contract in particular those relating to unskilled workers' wages or working hours and the non-compliance is a persistent or serious nature, the Contract Administrator may at his absolute discretion require the Contractor to remove the sub-contractor from the Contract.

PARTICULAR SPECIFICATIONS

Staff Resource Input

- The staff specifically required for this Contract are stated in the Schedule of Cost (SOC). The Contractor shall deploy to the Site at least the specified headcount for each of the stated ranks. The minimum qualifications (if any) of the staff are as set out in [Appendix C to the General Specifications]. The Contractor must also provide at least the man-hours of cleaners/toilet attendants committed in the Management Proposal in [Annex A]. The Contractor shall be paid for the staff according to the proportion of site possession and conditional upon the staff/man-hours being deployed to the Site as required.

Employment of Cleansing and Security Staff

- The Contractor must ensure that each of cleansing and security workers (full time or part time) employed by him or his sub-contractors for the Contract receives at least the committed wage for the worker inserted in the Management Proposal in [Annex A]. Due adjustment to the committed wages shall be made on account of any overtime works, no-paid leaves, etc., and annual changes of price indices. In the case of non-compliance, the monthly fees payable to the Contractor will be adjusted in commensuration with the amount of underpayment.

- The Contractor shall post the committed wages at prominent locations inside the estate management office, control rooms and rest rooms respectively for the workers' information.
- The Contractor shall issue monthly salary statements to each of the cleansing and security workers. The monthly statements shall be in a format approved by the Contract Administrator, with at least the following clearly indicated in Chinese or a language understood by the workers employed:
 - (i) basic wage and any additional payments, basic working hours, committed wage;
 - (ii) adjustments for overtime work, no-pay leaves, etc.;
 - (iii) employee's MPF contribution;
 - (iv) average daily working hours for the period 1st-10th, 11th-20th and 21st-end of the month (for cleaners/toilet attendants only)

declaration by the Contractor (or his sub-contractor) including that he has paid the amount of money stated in the statement to the worker and declaration by the worker as to the validity of the statement.

- The statements shall be submitted to support the Contractor's monthly payment applications. The statements will be sampled and the concerned workers will be interviewed. The fees payable to the Contractor will be adjusted according to the findings of the sampling.
- The Contractor shall ensure that each of the cleansing and security workers continuously employed for the Contract is paid by means of auto-payment into the worker's bank account to facilitate payroll checking. During the period the auto-payment is being arranged (e.g. in the case of a new employee, or change of banks, etc.), the worker shall be paid by means of a cross-cheque payable in a bank in Hong Kong. Temporary workers must also be paid by means of a cross-cheque payable in a bank in Hong Kong.

- The Contractor shall ensure that the average daily working hours of each of the cleaners/toilet attendants calculated as per [PS.1.3.3] above must not exceed the maximum average daily working hours committed in the Management Proposal in [Annex A].
- The Contractor must enter into written employment contract with each of the cleansing and security workers if the employment period is longer than seven days, specifying the basic terms as wage rates, working hours, rest days, etc. The Standardized Employment Contract published by the Labour Department shall be used. Moreover, the employment contract must include the following declaration to the Housing Authority by the Contractor (or his sub-contractor) and the worker:

"I/We hereby authorize the Contract Administrator of the Housing Authority Property Services Contract No. _____ or his delegates to inspect this Employment Contract and any other documents that may be required to facilitate him or his delegates to conduct checking on the payment situation under this Employment Contract, inclusive of bankbooks, bank statements, salary statements, payrolls, and the like."

- A copy of the agreement shall be retained by the worker, and another copy shall be kept in the estate management office for inspection by the Contract Administrator anytime during the Contract Period.
- The Contractor shall further require the cleansing and security workers to sign attendance sheets, copies of which shall be kept at the estate management office for inspection and surprise check purpose.
- The Contractor shall ensure all the cleansing and security workers wear identity badges bearing the name of the company and the worker.
- The Contractor must ensure that the cleansing and security sub-contractors (if any) directly engaged by him do not further sub-let their services. In considering a request for sub-letting, the Contract Administrator amongst other things will take into account the sub-contractor's conviction records and Demerit Points (see below) in relation to employment of workers. The sub-contractor must also have at least two years' experience in the respective field of services.

- For any given occupation (cleaner/toilet attendant, cleansing foreman, security guard, special guard and security supervisor), the ratio of part-time workers to full-time workers must be no more than 3:5. In other words, the number of part-time workers must be no more than three-eighth of the total number of workers of the given occupation working for the Contract. For the purpose of this provision only, part time workers shall mean those workers who as a norm work less than 42 hours a week.
- The Contractor must comply with all relevant employment law.

Demerit Point System

- Without prejudice to any other remedies available to the Employer, if during a regular or ad-hoc checking, the Contractor is found to have breached his contractual obligation(s) as regards (i) wages; (ii) working hours; or (iii) signing of written employment agreements, one Default Notice will be issued to him in respect of each of the three types of breaches, irrespective of the number of workers the breaches relate to. Each Default Notice will attract one Demerit Point. Under the Demerit Point System of the HKSAR Government, the Demerit Points of the Contractor will be taken into account in tender evaluation of the Contractor's bids for Government service contracts that rely heavily on the deployment of non-skilled workers and may result in the Contractor failing the tender assessment.
- The Contractor shall ensure his cleansing and security sub-contractors observe all the above requirements under [PS.1.3], and shall be liable for any breaches by his sub-contractors. Default Notices will be issued to the Contractor and attract Demerit Points even though the breaches are committed by his sub-contractors.

Certification by qualified accountant

- For each monthly payment application, the Contractor shall include a financial statement audited by a qualified accountant (i.e. having recognised accounting qualification from Hong Kong Society of Accountants or Association of Chartered Certified Accountants or equivalent) to substantiate the payment application in relation to the following:

- (a) deployment of staff resources (inclusive of cleansing and security workers) specified in the SOC or committed in the Management Proposal in Annex A;
- (b) wages received by security and cleansing workers;
- (c) expenditure of provisional sums allowed in the SOC.

The financial statement shall in a form as that provided in [GS Appendix H] or otherwise directed by the Contract Administrator. All expenses in connection with the appointment and employment of the auditors/accountants shall be borne by the Contractor, no separate payment for this will be made. The cost shall be deemed to be included in other items in the Contract.

Fee Adjustments for Non-compliance

- In the case the Contractor is in breach of the contractual commitment in relation to the employment of cleansing and security workers, adjustments shall be made to deduct the fees payable to the Contractor in accordance with the shortfall.

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