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Panel on Public Service

Meeting on 20 February 2017

Updated background brief on the use of agency workers

Purpose

This paper provides background information on the use of agency workers and information technology contract staff engaged under a term contract centrally administered by the Office of the Government Chief Information Officer ("OGCIO") (commonly known as "T-contract staff"), and summarizes 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 , by Government bureaux/departments ("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.

3. In April 2010, the Civil Service Bureau ("CSB") issued a set of guidelines to B/Ds on the proper use of agency workers,¹ covering the scope 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

¹ For the purpose of these guidelines, agency workers do not include T-contract staff, service bureau staff providing public library service in the Leisure and Cultural Services Department, body-shopped personnel used by the Housing Department and manpower supplied through outsourcing services procured by individual B/Ds.

employment agencies providing agency workers to B/Ds following the implementation of the Statutory Minimum Wage ("SMW") in May 2011.

4. Under CSB's guidelines, B/Ds may only use agency workers under one or more of the following circumstances –

- (a) to meet urgent or unforeseen service needs or unexpected surge in service demands for the short-term;
- (b) to fill short-term manpower gap;
- (c) to provide short-term manpower to deliver services the mode of which will be changed shortly; or
- (d) to meet service needs which entail irregular work pattern or where the nature of the work involved renders it difficult to recruit and retain staff.

As a general guideline, the short-term service demands under the circumstances at (a), (b) and (c) above should be for no more than nine months.

5. As at 30 September 2015, there were 979 agency workers working in B/Ds, representing a reduction of 42% compared with the position in September 2011.² The majority of them were involved in providing general office and technical support, and delivering customer services. Out of these 979 agency workers, 609 (62%) were used for meeting urgent or unforeseen service needs or unexpected surge in service demands, 207 (21%) were deployed to fill short-term manpower gap and 163 (17%) 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.

T-contract staff

6. In addition to the above agency workers, some of the information technology ("IT") manpower required by B/Ds is secured through T-contract staff. As at 31 December 2015, there were a total of 2 602 T-contract staff engaged by B/Ds and the average lengths of service of staff engaged by B/Ds through T-contractors ranged from 3.6 years to 10.6 years.³ OGCI has set out a manpower management framework and internal guidelines which include the use of

² A table showing the number of agency workers (excluding T-contract and service bureau staff) procured by individual B/Ds from 2011 to 2015 is in **Appendix I**.

³ Source: Examination of Estimates of Expenditure 2016-17 by the Finance Committee - Reply Serial No. ITB201 for details.

T-contract staff services vis-à-vis the use of other types of IT manpower including civil service IT staff and non-civil service contract ("NCSC") staff within the Government for compliance by B/Ds.

Discussions of the Panel

7. The major views and concerns expressed by Panel members since 2012-2013 session and the Administration's responses are summarized below.

Need of using agency workers

8. As most of the agency workers were involved in providing general clerical and support work which did not require any special skill or expertise and having regard to the fact that the number of agency workers used by B/Ds as at 30 September 2015 only stood at 979, question was raised as to why services provided by agency workers could not be absorbed by existing staff of the procuring B/Ds through internal re-deployment.

9. Some members considered that the employment terms for agency workers were worse off than civil servants and NCSC staff in terms of wage increases, severance payment, maternity leave, fringe benefits, and job security etc. The use of agency workers would 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 explained at the Panel meeting on 15 February 2016 that the re-deployment of existing staff of the B/Ds concerned to meet urgent/unforeseen service needs or short-term surge in demands would affect the quality of their services to the public. Furthermore, such temporary manpower requirements could hardly be met in a timely manner by other means, such as employment of civil servants or NCSC staff. 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. The financial costs involved in procuring agency workers were affordable and could be absorbed from within the existing resources of the B/Ds concerned.

Use of agency workers by certain B/Ds

11. At the Panel meeting on 20 April 2015, members noted the decline in the number of agency workers over the past few years, particularly in the Department of

Health ("DH"), the Education Bureau ("EB") and the Leisure and Cultural Services Department ("LCSD"). Concern was raised whether 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. In addition, 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.

12. In response to members' further question as to 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 retirement, 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.

Renewal or re-letting of service contracts

13. Members noted that the use of agency workers should normally last for no more than nine months, except to meet service needs which entailed irregular work pattern or where the nature of work involved rendered it difficult to recruit and retain staff. They 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.

14. Members also raised question as to why the procuring B/Ds were only required to seek approval from CSB if they wished to renew/re-let an existing contract for the supply of agency workers where the aggregated period of service under the existing and renewed/re-let contracts was expected to exceed 15 months.

15. The Administration advised at the Panel meeting on 15 February 2016 that it was necessary to provide the procuring B/Ds with flexibility to extend an existing contract for the supply of agency workers without CSB's approval so long as the aggregated period of service under the existing and renewed/re-let contracts was not expected to exceed 15 months, as the period of service required was sometimes difficult to predict. The Administration however pointed out that the arrangement

on renewal or re-letting of service contracts for the supply of agency workers did not apply to term contracts under which agency workers were not required on a continuous basis throughout the contract period but were supplied only as and when needed by the procuring B/Ds. An example of the use of agency workers sourced from term contracts was those used by the Rating and Valuation Department for annual rates assessment exercise.

Wage level and fringe benefits of agency workers

16. On members' concern about the wage levels and fringe benefits of agency workers, the Administration advised at the Panel meeting on 19 May 2014 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.

17. As regards members' suggestion of providing civil service fringe benefits to agency workers, the Administration replied that employment agencies, as employers of agency workers, had the obligations under the Employment Ordinance (Cap. 57) 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.

Monitoring the performance of employment agencies

18. In reply to members' question as to whether there was any mechanism to evaluate the performance of employment agencies in supplying their employees to work in the procuring B/Ds, the Administration advised at the Panel meeting on 15 February 2016 that the main criteria used by the procuring B/Ds to evaluate the performance of employment agencies were how swiftly agency workers could be supplied as needed and how suitable the agency workers supplied were for carrying out the work assigned. Furthermore, under the demerit point system, service contractors in breach of contractual obligations might be barred from bidding for further supply of agency workers. If an employment agency accumulated certain number of demerit points over a specified time period, its bid for further supply of agency workers would not be considered for a period of five years. Other sanctions included withholding service fee and no or partial refunding of contract deposit.

T-contract staff

19. At the Panel 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.

20. 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. T-contract staff could complement the service provided by 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.

Recent development

21. The Administration will update the Panel on the use of agency workers, including T-contract staff, at the Panel meeting on 20 February 2017.

Relevant papers

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

Appendix I

A breakdown of the number of agency workers by bureaux/departments from 2011 to 2015[#]

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2011	2012	2013	2014	2015
Agriculture, Fisheries and Conservation Department	21	7	2	8	7
Buildings Department	125	40	-	37	56
Chief Secretary and Financial Secretary's Office	20	22	25	17	14
Civil Aid Service	1	-	-	2	-
Civil Aviation Department	2	1	-	-	-
Civil Engineering and Development Department	4	-	5	2	-
Civil Service Bureau	2	2	-	-	-
Commerce and Economic Development Bureau	11	9	6	8	7
Constitutional and Mainland Affairs Bureau	5	-	-	-	-
Correctional Services Department	33	22	22	27	34
Customs and Excise Department	11	-	-	-	-
Department of Health	294	288	168	50	61
Department of Justice	16	6	13	14	13
Development Bureau	12	20	14	17	12
Drainage Services Department	18	7	9	22	10
Education Bureau	150	90	68	94	70
Electrical and Mechanical Services Department	15	16	32	15	15
Environment Bureau	4	5	5	9	5
Environmental Protection Department	27	32	37	53	54
Financial Services and the Treasury Bureau	6	-	2	2	3
Fire Services Department	24	14	25	17	12
Food and Environmental Hygiene Department	37	27	13	8	12
Food and Health Bureau	12	5	4	1	6
Government Flying Service	1	1	3	1	5

[#] Sources: Annexes to LC Papers Nos. CB(4)568/15-16(03) and (04).

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2011	2012	2013	2014	2015
Government Laboratory	9	2	-	-	-
Government Logistics Department	1	4	6	13	17
Home Affairs Bureau	24	10	3	2	21
Hong Kong Police Force	11	-	2	-	11
Immigration Department	88	45	31	33	38
Information Services Department	21	20	22	30	23
Innovation and Technology Commission	2	2	4	6	6
Intellectual Property Department	-	-	1	-	3
Invest Hong Kong	1	1	-	-	-
Labour and Welfare Bureau	-	5	7	6	7
Labour Department	40	42	37	41	33
Lands Department	65	71	59	59	54
Leisure and Cultural Services Department	188	84	76	68	83
Marine Department	8	19	26	21	18
Office of the Communications Authority	-	-	-	-	1
Official Receiver's Office	12	16	17	13	15
Planning Department	9	5	13	28	33
Rating and Valuation Department	54	48	44	42	42
Registration and Electoral Office	107	7	-	-	38
Security Bureau	7	6	5	4	2
Student Financial Assistance Agency	22	39	29	58	-
Trade and Industry Department	-	-	-	3	-
Transport and Housing Bureau	5	4	4	6	8
Transport Department	60	59	58	41	25
University Grants Committee Secretariat	-	1	1	7	3
Water Supplies Department	102	69	74	80	77
Working Family and Student Financial Assistance Agency	-	-	-	-	25
Total	1 687	1 173	972	965	979

List of relevant papers

Meeting	Date of meeting	Paper
Panel on Public Service	18 January 2010	<u>Administration's paper</u> <u>Minutes</u>
	20 December 2010	<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	<u>Administration's paper</u> <u>Background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u> <u>Administration's follow-up response to issues raised at the Panel meeting</u>
	3 June 2013	<u>Administration's paper (use of agency workers)</u> <u>Administration's paper (use of T-contract services)</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u> <u>Administration's follow-up response to issues raised at the Panel meeting (use of agency workers)</u> <u>Administration's follow-up response to issues raised at the Panel meeting (use of T-contract staff)</u>

Meeting	Date of meeting	Paper
Panel on Public Service	19 May 2014	<u>Administration's paper</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u> <u>Administration's follow up response to Hon LEE Cheuk-yan's letter dated 14 May 2014</u>
	20 April 2015	<u>Administration's paper</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u>
	15 February 2016	<u>Administration's paper</u> <u>Updated background brief prepared by the Legislative Council Secretariat</u> <u>Minutes</u> <u>Administration's follow-up response to issues raised at the Panel meeting</u>

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Legislative Council Secretariat
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