

For meeting on
26 February 2018

Legislative Council Panel on Manpower

Protection of Employees of Government Service Contractors

Purpose

This paper briefs Members on the existing measures adopted by the Government for protecting non-skilled workers¹ engaged by its service contractors, and the work of a working group set up by the Government in exploring ways to strengthen the employment rights and benefits as well as protection of these non-skilled employees.

Outsourcing of services

2. Outsourcing is one of the ways adopted by government departments to deliver public services. Currently, there is no policy requiring government departments to outsource public services, or mandating outsourcing as the primary mode for delivering services. Departments have the discretion to consider according to their operational needs whether to adopt outsourcing and the details thereof².

Measures in place to protect non-skilled employees

3. The Government is very concerned about the protection of the statutory entitlements of non-skilled employees engaged by government service contractors (GSCs), including whether GSCs have complied with legislation related to labour rights and benefits such as the Employment

¹ Non-skilled workers are those performing the functions comparable to the duties of Government Model Scale 1 Grade Staff. Currently, Model Scale 1 Grades include Car Park Attendant II, Explosives Depot Attendant, Ganger, Gardener, Lift Operator, Property Attendant, Supplies Attendant, Ward Attendant, Workman I, Workshop Attendant and Workman II.

² The Hong Kong Housing Authority (HA) is the statutory body for developing and implementing public housing programmes. It draws reference from procurement regulations and financial circulars of the Government in formulating its relevant tender and procurement procedures. The Housing Department (HD) is the executive arm of HA and provides support to HA in the relevant work.

Ordinance (EO) and the Employees' Compensation Ordinance. To effectively protect the employment rights and benefits of these non-skilled employees, the Government has incorporated as far as possible the statutory entitlements stipulated in the relevant labour legislation into government service contracts. Government departments also handle matters involving employment rights and benefits in accordance with the requirements of labour legislation, including monitoring and ensuring that contractors provide employment rights and benefits to their employees on terms no less favourable than the statutory requirements. As far as the wage level is concerned, the wages of non-skilled employees are determined by the market mechanism and these employees are protected by the Minimum Wage Ordinance. Government departments from time to time make reference to the guidelines on relevant labour legislation published by the Labour Department (LD), for instance, on the calculation of Statutory Minimum Wage, and remind and monitor their GSCs in safeguarding the statutory rights of non-skilled employees.

4. To strengthen the protection of non-skilled employees engaged by GSCs, the Government has since April 2005 mandated all GSCs to sign the "Standard Employment Contract" (SEC) prescribed by the Government with their non-skilled employees. SEC clearly states the employment terms and conditions such as employees' monthly wages, working and meal hours, rates of overtime pay, etc. This measure aims at providing a clear framework to set out the employment terms and conditions between GSCs and their non-skilled employees with a view to protecting the entitlements of the employees. According to SEC, GSCs must offer monthly-rated wages with paid rest days to their non-skilled employees.

5. To encourage GSCs to enhance the employment terms and conditions of non-skilled employees, the Government revised relevant guidelines in May 2016 under which wage level and working hours become mandatory assessment criteria when procuring departments adopt marking schemes for assessing service contracts (excluding construction ones) that rely heavily on the deployment of non-skilled employees. This arrangement aims to encourage contractors bidding for the contract to provide better employment terms and conditions to non-skilled employees. If the contractor is awarded the contract, the wage level and working hours stipulated in its tender will form part of the service contract and be subject to the procuring department's monitoring. Currently, there is no pre-set ceiling on the weightings of the assessment criteria and procuring departments may propose the relevant weightings based on their actual operational requirements for consideration by relevant tender committees.

6. In order to strengthen monitoring on GSCs, labour inspectors of LD conduct proactive surprise inspections of workplaces. The labour inspectors interview non-skilled employees engaged by GSCs individually and check employment records to monitor GSCs' compliance with the provisions of labour legislation and SEC. They also explain to the employees their protection under EO and SEC during the inspections. If the employees have questions about their entitlements, they can contact the 24-hour enquiry hotline of LD (2717 1771). Furthermore, the employees can lodge complaints through LD's complaint hotline (2815 2200) when GSCs are suspected of infringing their employment rights so that LD will promptly initiate follow-up. For suspected breaches of EO detected, LD will duly investigate the case and take out prosecution against the offending GSCs upon collection of sufficient evidence. LD will also inform the procuring departments concerned of the cases of non-compliance and conviction.

7. Through strengthened monitoring and management measures, the procuring departments monitor GSCs' compliance with labour legislation and SEC. If it is substantiated that a service contractor has failed to use SEC, distorted or altered its employment terms to the disadvantage of the employees without the approval of the concerned procuring department, or failed to strictly comply with the terms of SEC, the procuring department may take follow-up actions in accordance with the relevant service contract. For suspected non-compliance of SEC involving breaches of EO, the procuring departments will refer the case to LD which will take appropriate follow-up actions including criminal prosecution against the service contractor. In respect of government service contracts that rely heavily on the deployment of non-skilled employees, the measures adopted by the four major procuring departments, namely, the Food and Environmental Hygiene Department (FEHD), Leisure and Cultural Services Department (LCS), HD and Government Property Agency (GPA), are at **Annexes A to D**.

8. Furthermore, the Government administers the following debarment mechanism and demerit point system (DPS) in respect of government service contracts that rely heavily on the deployment of non-skilled employees:

- (a) Under the debarment mechanism, if the GSC is convicted of an offence relating to employment rights and benefits (including a specified offence relating to EO), its tender offers will not be considered by the Government for a period of five years from the date of conviction, regardless of whether the conviction is related to government service contracts.

- (b) Under DPS, GSCs will be awarded demerit points for non-compliance of the relevant items³. If a service contractor has accumulated three demerit points over a rolling period of three years preceding the tender closing date, its tender offers will not be considered by the Government in the subsequent five years. The four major procuring departments will also take into account the contractors' past records under DPS in evaluating their tenders. DPS provides the procuring departments with an objective indicator to assess tenderers' past performance during tender evaluation.

Inter-bureaux/departmental working group

9. The Government is very concerned about the employment rights and benefits of non-skilled employees engaged by GSCs. The Secretary for Labour and Welfare has set up an inter-bureaux/departmental working group (Working Group) to explore feasible options to improve the government outsourcing system with a view to enhancing the protection of reasonable employment terms and conditions as well as labour benefits for non-skilled employees engaged by GSCs. Apart from the Labour and Welfare Bureau and LD, the Working Group comprises the Financial Services and the Treasury Bureau, FEHD, LCSD, HD and GPA. The scope of the review of the Working Group includes the assessment criteria in tendering so as to provide more reasonable employment terms and conditions to non-skilled employees of GSCs while at the same time improving the requirements of service quality. The Working Group will also study the content of SEC and duration of government service contracts in order to strengthen the protection of the labour rights and benefits (such as severance payment) of the eligible employees.

10. Further improvement of the protection of the entitlements of non-skilled employees engaged by GSCs has to be considered in the context of the overall Government policy, which warrants careful study and assessment of the additional resources involved. The Working Group is proceeding with the review in full gear and targets to complete the review before the third quarter of this year⁴.

³ These include failing to sign SEC with its employees, or failing to observe the contractual obligations stipulated in SEC in respect of wages, working hours and auto-payment of wages.

⁴ If the Government introduces new measures, HA will consider including them into its system as in the past.

11. Members are invited to note the content of this paper and give their advice.

Labour and Welfare Bureau
Financial Services and the Treasury Bureau
Food and Environmental Hygiene Department
Leisure and Cultural Services Department
Housing Department
Government Property Agency
Labour Department

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Government department :	Food and Environmental Hygiene Department (FEHD)
Monitoring measures against service contractors :	<p>FEHD has put in place various monitoring measures to protect the rights of non-skilled workers employed by service contractors. In accordance with the service contract provisions, service contractors must enter into the “Standard Employment Contract” (SEC) with their non-skilled workers. They are also required to submit attendance records, a statement of wage payment and mandatory provident fund (MPF) contribution records certified by a certified public accountant (practising), etc. in respect of the workers to FEHD on a monthly basis. District staff of FEHD will check the information randomly. In addition, the Central Investigation Team (CIT) of FEHD will conduct audit inspections to every single contract at least once a year. During the process, SEC, monthly wage records, attendance records and MPF contribution records, etc. of the workers will be checked in order to ensure compliance with the employment-related obligations by the service contractors. CIT has also set up a telephone hotline to facilitate workers in making enquiries or lodging complaints.</p> <p>Upon receipt of a complaint against a service contractor’s non-compliance with the employment-related requirements, FEHD will conduct investigation and take follow-up actions as appropriate. Moreover, CIT and district offices will regularly conduct interviews with workers by random selection to enquire about their situation related to employment issues. At three months prior to the expiry of a service contract, FEHD’s staff will post up notices at the roll call points to remind workers to verify whether they are eligible to receive severance payment or long service payment, etc. upon termination of their employment contracts. Relevant telephone hotlines will also be displayed so that the workers may approach the appropriate authorities for enquiries or lodging complaints.</p>

Government department :	Leisure and Cultural Services Department (LCSD)
Monitoring measures against service contractors :	<p>Having regard to the actual operational needs of individual venues, LCSD requires its cleansing and security guard service contractors to provide the specified number of staff at designated posts in accordance with the service specifications in the tender documents/contracts. Contractors are required to submit information on staff establishment, particulars of their employees and monthly duty rosters to the venue management for perusal. The venue management also monitors the performance of contractors and their employees and handles employees' complaints of unreasonable treatment through on-site inspections or surprise checks, working meetings with contractors, and routine contacts with their employees. In case of any non-compliance with the contract requirements by the contractors, the venue management may give verbal advice or issue advisory letters to the contractors. For serious cases, default notices may be issued and follow-up actions may be taken as appropriate. Besides, the venue management conducts monthly assessment on the performance of contractors to ensure that they meet the contract requirements and comply with the contract provisions.</p> <p>For breaches of contractual obligations stipulated in SEC in respect of wages, maximum working hours, etc., LCSD will take appropriate actions against the contractors under the demerit point system (DPS). LCSD will refer cases of suspected violation of labour laws to the law enforcement agencies concerned for follow-up. If a contractor is convicted of any offence under the above laws, LCSD will consider terminating the service contract in accordance with the contract terms and removing the contractor from its Supplier List.</p> <p>At present, the service contracts awarded by LCSD provide that service contractors shall pay their non-skilled workers at a rate not lower than the committed wages or Statutory Minimum Wage (SMW). To ensure contractors' payment of the prescribed wages, the contracts also provide that the monthly statements submitted by the</p>

Government department :	Leisure and Cultural Services Department (LCSD)
	<p>contractors shall be audited by recognised professional accountants or corporate practices to certify that the contractors have fulfilled their contractual obligations by paying the prescribed wages to their employees.</p> <p>Upon receipt of a complaint from the contractor's employees, LCSD's venue management will normally communicate with the contractor and its employees about their disputes and provide suitable assistance in the first place. Where necessary, the venue management will assist the employees to approach LD for follow-up.</p>

Government department :	Housing Department (HD, as the executive arm of the Hong Kong Housing Authority)
Monitoring measures against service contractors :	HD closely monitors the service contractors to ensure compliance with the contract and labour legislation, and monitors their performance by conducting interviews with the contractor's workers at least quarterly to understand workers' conditions for the prevention of exploitation. Besides, each estate management office has been provided with an e-Face system to monitor the attendance and working hours of non-skilled workers to ensure that the contractors comply with the daily/weekly number and working hours of workers stipulated in the respective contract. Furthermore, the Central Monitoring Unit of HD conducts surprise checks in different estates and interview with the non-skilled workers for protection of their rights and interests. Same as other government departments, HD also implements DPS against contractors which have breached their contractual obligations in respect of wages, daily maximum working hours, signing of SEC with and wage payment by means of autopay to their non-skilled workers.

Government department :	Government Property Agency (GPA)
Monitoring measures against service contractors :	<p>GPA has put in place measures to monitor the performance of service contractors. These include compiling periodic reports to assess contractors' compliance with various service level requirements set out in the property management services contracts, conducting customer satisfaction surveys, carrying out regular and surprise on-site inspections to evaluate their service levels, etc. For any under-performed contractors, GPA will impose sanctions according to the contract terms.</p> <p>To monitor service contractors' treatment of their non-skilled workers, GPA conducts regular and surprise inspections to examine the relevant records. At present, the service contracts awarded by GPA provide that contractors shall pay their non-skilled workers at a rate not lower than the committed wages or SMW. To ensure contractors' payment of the prescribed wages, the contracts also provide that the monthly statements submitted by the contractors shall be certified by recognised professional accountants to confirm that the contractors have fulfilled their contractual obligations by paying the prescribed wages to their employees. Moreover, GPA's staff conduct random interviews with frontline employees of contractors on a regular basis to check whether wage payments and related benefits have been provided in accordance with SEC.</p> <p>Upon receipt of a complaint from frontline employees concerning aspects in SEC such as wages and working hours, GPA will conduct follow-up investigation. For substantiated complaint cases, demerit points will be awarded to the service contractor under DPS. If the contractor is suspected to be in breach of labour laws, GPA will pass the relevant information to LD to follow up.</p>