



LABOUR DEPARTMENT (Headquarters)

勞工處(總處)

Your reference 來函編號 : CB2/PL/MP

Our reference 本處檔案編號 : LD CR 1/814

Tel. number 電話號碼 : 2852 4083

Fax number 傳真機號碼 : 2117 0875

11 December 2017

Miss Betty MA
Clerk to Panel on Manpower
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss MA,

Panel on Manpower
Joint letter from Dr Hon KWOK Ka-ki and Hon Jeremy TAM

Thank you for your letter of 14 November 2017 to the Secretary for Labour and Welfare. After consulting the Financial Services and the Treasury Bureau and the four major procuring departments (namely, the Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Housing Department and Government Property Agency), our consolidated reply is set out below.

“Standard Employment Contract” and statutory obligations of government service contractors

For the protection of non-skilled workers of government service contractors, the Government has since April 2005 mandated all its service contractors to sign the “Standard Employment Contract” (SEC) with their non-skilled workers, which clearly sets out the 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 service contractors and their non-skilled workers to safeguard employees’ employment rights and benefits. According to SEC, government service contractors must offer monthly-rated wages with paid rest days to their non-skilled workers. Whether meal breaks are with pay or otherwise is subject to the

employment terms agreed between these two parties as it is not prescribed in the existing legislation and SEC. However, if the employees' meal breaks fall under the situations of hours worked specified in the Minimum Wage Ordinance (including the employees being in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the employer, irrespective of whether they are provided with work or not), or where the meal breaks are regarded as hours worked by the employees according to their employment contract or agreement with the employer, such time for meal break must be taken into account in computing minimum wage.

If it is substantiated that a government service contractor has failed to use SEC, distorted or altered the terms of the employment contract to the disadvantage of the employees without the approval of the procuring department, or failed to strictly comply with the SEC terms, the procuring department may, in accordance with the relevant service contract, issue default notices to the service contractor who has breached the contract terms, and awarded demerit points under the Demerit Point System for the relevant non-compliance items¹. Procuring departments will also take into account such records in evaluating service contractors' future tenders. 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.

In addition, if suspected breaches of SEC involve contravention of the Employment Ordinance (EO) by government service contractors, procuring departments will refer the cases to the Labour Department (LD) for appropriate follow-up actions, including criminal prosecution against the service contractors. Under the Debarment Mechanism, if a service contractor is convicted of a specified offence under EO, its tender offers will not be considered by the Government for a period of five years from the date of conviction.

Government service contractors must abide by all legislation applicable in Hong Kong, including those related to employment rights and benefits such as EO, the Employees' Compensation Ordinance and the Occupational Safety and Health Ordinance (OSHO), etc. Through proactive surprise inspections of workplaces, labour inspectors of LD interview employees engaged by service contractors individually and check employment records to monitor service contractors' compliance of relevant labour legislation and SEC provisions. The labour inspectors also explain to employees their protection under EO and SEC during the inspections. If the employees have questions

¹ It includes 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.

about their employment rights and benefits, they can contact the 24-hour enquiry hotline of LD. Furthermore, they can lodge complaint through LD's complaint hotline when government service contractors are suspected of violating their employment rights so that LD will promptly initiate proactive follow-up. For suspected breaches of EO detected, LD will duly investigate the case and take out prosecution against the offending service contractors subject to sufficient evidence. LD will also inform the procuring departments concerned of the cases of non-compliance and conviction.

LD safeguards the occupational safety and health of employees at work (including employees of government service contractors) through inspection and enforcement, publicity and promotion, as well as education and training, with a view to minimising hazards at workplaces. LD will take enforcement actions, including prosecution, pursuant to the law should any violation of OSHO or other relevant legislation by service contractors be detected.

Use of marking scheme in the procurement of services by the Government

Under the principle of prudent use of public funds, procuring departments shall generally award service contracts to tenderers who fully satisfy the tender requirements and offer the best prices for the Government. Having said that, this does not imply that the Government only takes the price aspect as the sole criterion in procuring services. For contracts where the quality of services to be provided is important, departments may adopt a marking scheme to evaluate tenders from the technical and price aspects, with a view to awarding a tender that offers both quality and value-for-money.

In general, a marking scheme used by procuring departments should normally adopt a 30%-40% weighting for the technical aspect, as against a weighting of 70%-60% for the price aspect. It is not necessary for procuring departments to provide additional justifications when seeking approval from relevant tender committees if the weightings fall within this range. If a procuring department considers that there is a need for a technical weighting higher than 40%, it should provide sufficient justifications for consideration and approval by relevant tender committees. Departments may flexibly propose appropriate weightings based on their actual operational requirements.

To encourage tenderers to enhance the employment terms and conditions of non-skilled workers, the Government revised relevant guidelines in May 2016 and the wage level and working hours of non-skilled workers have become mandatory assessment criteria when procuring departments adopt a marking scheme for evaluating non-construction service contracts that rely heavily on the deployment of non-skilled workers. Similarly, procuring departments may propose the relevant weightings based

on their actual operational requirements for consideration by relevant tender committees.

The Government attaches great importance to safeguarding the employment entitlements of non-skilled workers engaged by government service contractors, and will continue to monitor government service contractors and examine SEC and the relevant marking system of government service contracts to strengthen the protection for employees of service contractors.

Should you have further questions on the issue, please contact our Mr Sam Sum at 2852 4147.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Simon Li', written in a cursive style.

(Simon Li)

for Commissioner for Labour

c.c.

Secretary for Labour and Welfare (Attn.: Mr Nicholas Chan)

Secretary for Financial Services and the Treasury (Attn.: Mr Herman So)

Director of Food and Environmental Hygiene (Attn.: Mr Leung Chung-hong)

Director of Leisure and Cultural Services (Attn.: Mr Billy Wong)

Director of Housing (Attn.: Mrs Clara Lai)

Government Property Administrator (Attn.: Mr Alex Chan)