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Panel on Public Service

Meeting on 15 January 2018

Updated background brief on the use of agency workers

Purpose

This paper provides background information and summarizes major views and concerns expressed by members of the Panel on Public Service ("the Panel") in previous discussions on the use of agency workers in Government bureaux/departments, as well as the employment of information technology ("IT") 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").

Background

Agency workers

2. According to the Administration, agency workers generally refer to the manpower supplied by employment agencies to Government bureaux/departments ("B/Ds") under service contracts. 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

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.

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 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 2016, there were 974 agency workers working in B/Ds, representing a reduction of about 60% compared with the peak position in September 2009.² The majority of them were involved in providing general office and technical support, and delivering customer services. Out of these 974 agency workers, 619 (64%) were used for meeting urgent or unforeseen service needs or unexpected surge in service demands, 238 (24%) were deployed to fill short-term manpower gap and 117 (12%) 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. Among these 974 agency workers, almost half were sourced from term contracts under which agency workers are not required on a continuous basis throughout the contract period but are supplied only as and when required by the procuring B/Ds.

T-contract staff

6. In addition to the above agency workers, some of the IT manpower required by B/Ds is secured through T-contract staff. As at September 30, 2017, there were

² A table showing the number of agency workers (excluding T-contract and service bureau staff) procured by individual B/Ds from 2012 to 2016 is in **Appendix I**.

a total of 2 847 T-contract staff engaged by B/Ds and the average lengths of service of staff engaged by B/Ds through T-contractors ranged from 4 years to 12 years.³ OGCIO has set out a manpower management framework and internal guidelines which include the use of 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.

Agency workers

Employment of 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, question was raised as to why services provided by them 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 usually 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 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. 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

³ Source: <http://www.info.gov.hk/gia/general/201710/25/P2017102500642.htm>

workers were affordable and could be absorbed from within the existing resources of the B/Ds concerned.

11. In response to members' question about why B/Ds did not make early planning and take timely action to recruit staff to fill the posts to be vacated by civil servants upon their retirement, thereby obviating the need to use agency workers in such circumstance, the Administration replied that this was due to unexpected situations that happened during the recruitment and appointment process, such as long processing time resulting from unexpectedly large number of applications and long reporting time because the appointees had to serve a longer resignation notice to their employers.

12. On members' concern whether a ceiling on the number of agency workers would be set for each B/D, the Administration considered that this might limit the flexibility of B/Ds in responding to urgent or unforeseen operational needs. Nevertheless, the Administration assured members that it would keep a close watch on B/Ds to prevent any possible abuse.

13. At the Panel meeting on 20 February 2017, a member enquired about the reasons behind the large reduction of agency workers engaged by B/Ds from 2 398 in September 2009 to 974 in September 2016. The Administration explained that the resumption of recruitment of civil servants after the economic downturn, the promulgation of guidelines for the use of agency workers for reference by B/Ds in April 2010, and CSB's monitoring of compliance of the guidelines had all contributed to the reduction.

Renewal or re-letting of service contracts

14. Some 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. Some members were concerned that some B/Ds might abuse the system by repeatedly renewing contracts of nine months or a shorter duration.

15. The Administration advised 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.

16. The Administration further advised that B/Ds were well aware that CSB's approval should be sought for the renewal of an existing contract with aggregated period of service exceeding 15 months. CSB would carefully consider each application to ensure that approval would only be granted for fully justifiable cases. At the Panel meeting on 20 February 2017, the Administration pointed out that in the past three years, it had not received any applications from B/Ds to renew or re-let service contract for the supply of agency workers for an aggregated period exceeding 15 months.

17. At the Panel meeting on 20 February 2017, some members asked whether the supply of agency workers to B/Ds were dominated by just a few employment agencies. The Administration advised that as at 30 September 2016, B/Ds engaged a total of 42 employment agencies. Two agencies which mainly provided manpower of clerical and administrative support services had supplied more than 100 agency workers to B/Ds per year. In reply to member's further enquiry about the prolonged use of certain employment agencies, the Administration assured members that it would urge the B/Ds to explore other feasible alternatives, such as a mix of civil servants, NCSC staff and agency workers.

Wage protection and fringe benefits of agency workers

18. On members' concern about the wage protection and fringe benefits for agency workers, the Administration advised that measures had been implemented, such as requiring all bidders to state in their bids the wage levels of their agenda workers, and all these workers should be made aware of the committed monthly wages. The Administration also pointed out that government contractors should at least 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.

19. As regards members' suggestion of providing civil service fringe benefits to agency workers or specifying in the service contracts that the terms and conditions as well as fringe benefits offered to agency workers should be at a level more favourable than those specified in the Employment Ordinance (Cap. 57), the Administration replied that employment agencies, as employers of agency workers, had the obligations under the Employment Ordinance 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. The Administration advised that when considering whether to provide fringe benefits to employees of service contractors, attaining optimal utilization of public funds was paramount.

20. Responding to a member's enquiry about the impact on agency workers if the Administration abolished the practice of using accrued benefits under employer's mandatory provident fund ("MPF") contributions to offset severance payment/long service payment, the Administration pointed out that as any changes in the MPF offsetting arrangement would affect the cost of supplying manpower by employment agencies, the agencies had to take into account such changes when placing bids.

Monitoring the performance of employment agencies

21. 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. Under a 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

22. At the Panel meetings on 3 June 2013 and 20 February 2017, 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.

23. 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 and a larger pool of talented professionals in the market within a short period of time to work with civil servants in fostering IT development and enhancing e-Government services in Hong Kong. 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.

24. As regards some members' enquiry about direct appointment of T-contract staff to civil service posts, the Administration advised that this practice would not be in line with the Government's policy to select the most suitable candidates to fill civil service vacancies by open and fair competition. In 2016, about 100 of some 1 000 T-contract staff who were at the junior level had applied for about 60 Analyst/Programmer II posts in the civil service through an open recruitment exercise, and six of them were recruited as civil servants. The figures indicated that only a small portion of T-contract staff had interest in applying for civil service posts. As for the possible IT security problems arising from the engagement of T-contract staff, the Administration explained that T-contract staff would not be assigned duties involving specific security requirements or sensitive information, such duties would only be performed by civil servants. T-contract staff were also required to sign confidentiality undertakings on non-disclosure of confidential information.

Recent development

25. The Administration will update the Panel on the use of agency workers, including T-contract staff, at the Panel meeting on 15 January 2018.

Relevant papers

26. 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 2012 to 2016[#]

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2012	2013	2014	2015	2016
Agriculture, Fisheries and Conservation Department	7	2	8	7	5
Buildings Department	40	-	37	56	82
Chief Secretary and Financial Secretary's Office	22	25	17	14	18
Civil Aid Service	-	-	2	-	1
Civil Aviation Department	1	-	-	-	-
Civil Engineering and Development Department	-	5	2	-	2
Civil Service Bureau	2	-	-	-	-
Commerce and Economic Development Bureau	9	6	8	7	9
Correctional Services Department	22	22	27	34	19
Department of Health	288	168	50	61	89
Department of Justice	6	13	14	13	22
Development Bureau	20	14	17	12	10
Drainage Services Department	7	9	22	10	5
Education Bureau	90	68	94	70	99
Electrical and Mechanical Services Department	16	32	15	15	20
Environment Bureau	5	5	9	5	3
Environmental Protection Department	32	37	53	54	41
Financial Services and the Treasury Bureau	-	2	2	3	3
Fire Services Department	14	25	17	12	3
Food and Environmental Hygiene Department	27	13	8	12	30
Food and Health Bureau	5	4	1	6	6
Government Flying Service	1	3	1	5	3
Government Laboratory	2	-	-	-	-
Government Logistics Department	4	6	13	17	13

[#] Sources: Appendix I to LC Paper No. CB(4)554/16-17(05) and Annex A to LC Paper No. CB(4)554/16-17(03).

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2012	2013	2014	2015	2016
Home Affairs Bureau	10	3	2	21	3
Hong Kong Police Force	-	2	-	11	1
Immigration Department	45	31	33	38	28
Information Services Department	20	22	30	23	22
Innovation and Technology Commission	2	4	6	6	4
Intellectual Property Department	-	1	-	3	2
Invest Hong Kong	1	-	-	-	4
Labour and Welfare Bureau	5	7	6	7	7
Labour Department	42	37	41	33	-
Lands Department	71	59	59	54	60
Leisure and Cultural Services Department	84	76	68	83	61
Marine Department	19	26	21	18	38
Office of the Communications Authority	-	-	-	1	-
Official Receiver's Office	16	17	13	15	26
Planning Department	5	13	28	33	12
Radio Television Hong Kong	-	-	-	-	2
Rating and Valuation Department	48	44	42	42	42
Registration and Electoral Office	7	-	-	38	5
Security Bureau	6	5	4	2	1
Student Financial Assistance Agency	39	29	58	-	-
Trade and Industry Department	-	-	3	-	-
Transport and Housing Bureau	4	4	6	8	5
Transport Department	59	58	41	25	23
University Grants Committee Secretariat	1	1	7	3	5
Water Supplies Department	69	74	80	77	69
Working Family and Student Financial Assistance Agency	-	-	-	25	71
Total	1 173	972	965	979	974

Use of agency workers

List of relevant papers

Meeting	Date of meeting	Paper
Council meeting	2 March 2011	<u>Question raised by Dr Hon PAN Pey-chyou on "Use of agency workers in Government"</u>
	8 July 2015	<u>Question raised by Hon Charles Peter MOK on "Procurement policy of IT products and services and implementation of government IT projects"</u>
	11 November 2015	<u>Question raised by Hon Charles Peter MOK on "Employment of information technology staff by Government"</u>
	14 June 2017	<u>Question raised by Hon LUK Chung-hung on "Engagement of information technology contract staff by _____ government bureaux/departments"</u>
	25 October 2017	<u>Question raised by Hon Charles Peter MOK on "Information technology contract staff employed through a term contract"</u>
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>

Meeting	Date of meeting	Paper
	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>
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>

Meeting	Date of meeting	Paper
	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>
	20 February 2017	<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</u>