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來函檔號 Your Ref. :

27 March 2019

Clerk to Panel on Manpower  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn: Ms Betty MA)

Dear Ms MA,

**Protection of Non-skilled Employees  
Engaged by Government Service Contractors (GSCs)**

At the meetings of the Panel on Manpower on 15 January 2019 and 19 February 2019, Members requested the Government to provide further information on the revised scope of the Demerit Point System as well as response to the views and concerns raised by Members and deputations/individuals on 19 February 2019.

I attach the Government's response at **Annex** for Members' reference.

Yours sincerely,

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

(Mrs Claudia TSANG)

for Secretary for Financial Services and the Treasury

**Protection of Non-skilled Employees Engaged by  
Government Service Contractors**

At the meetings of the Panel on Manpower on 15 January 2019 and 19 February 2019, Members discussed the new policy and improvement measures to be introduced by the Government with effect from 1 April 2019 to enhance the protection of the employment terms and conditions as well as labour benefits of non-skilled employees engaged by Government Service Contractors (GSCs). Members requested the Government to respond to the following views and requests –

- (a) extending the transitional arrangements for introducing the improvement measures to cover all existing government service contracts as well as provision of gratuity to non-skilled employees engaged by GSCs, especially those of the Leisure and Cultural Services Department (LCSD), with less than one year's service on a pro-rata basis;
- (b) shortening of the proposed three-year service contracts to two years so as to tie in with the biennial adjustment cycle of statutory minimum wage;
- (c) whether the weighting of wage level in the marking scheme for tender assessment could be further adjusted;
- (d) stipulating clearly in the tender specifications and the Standard Employment Contract (SEC) the contractual obligations in respect of wages, working hours and employment benefits of non-skilled employees engaged by GSCs, e.g. provision of paid meal break and calculation of reckonable years of service;

- (e) employees' occupational safety and health at work in relation to provision of suitable protective items/clothing/equipment and appropriate rest facilities and guidelines for work arrangement in times of hot and inclement weather; and
- (f) further expanding the scope of the Demerit Point System (DPS) to enhance the regulatory efforts on GSCs, and provide details of the revised DPS, taking into account the improvement measures.

2. Having consulted the Labour Department (LD), LCSD, Food and Environmental Hygiene Department (FEHD), Housing Department (HD) and Government Property Agency (GPA), we set out the Government's consolidated response in the ensuing paragraphs.

### **Transitional arrangements**

3. To enable more non-skilled workers to benefit from the new measures introduced to service contracts that rely heavily on the deployment of non-skilled workers (non-skilled worker contracts), namely contractual gratuity being 6% of the total wages earned to a non-skilled worker with no less than one year's service under a SEC of a government service contract; statutory holiday pay to a non-skilled worker with no less than one month's service; and at least 150% of the originally entitled wages to be paid to a non-skilled worker who is required to work when typhoon signal no. 8 or above is in force, to be effective from 1 April 2019, the Government announced on 18 January 2019 that transitional arrangements would be in place for service contracts at tendering stage or already awarded during the period between the announcement of the new measures in the Policy Address on 10 October 2018 and 31 March 2019 (the Transitional Period). Details have been provided in Paper No. CB(2)788/18-19(05).

4. The introduction of contractual gratuity aims to forestall labour disputes over entitlement of severance payment (SP)/long service payment (LSP) upon the expiry of the government service contract and help relieve the uncertainty as to whether SP/LSP is payable and the possible financial burden on GSCs when the need to pay SP/LSP arises. The 12-month eligibility period required for contractual gratuity is already shorter than the 24-month and 60-month eligibility periods for SP and LSP respectively under the Employment Ordinance.

5. The procuring departments are gearing up actively for the implementation of new policy and the transitional arrangements, with a view to benefiting the non-skilled workers as early as possible. For contracts awarded before the date of policy announcement, upon expiry they will be replaced by new ones which incorporate the improvement measures. Currently, there is no plan to adjust the 12-month eligibility period for contractual gratuity or extend the transitional arrangements to cover contracts awarded before the date of policy announcement.

### **Tendering arrangements**

6. The new policy encourages a contract period of at least 3 years for non-skilled worker contracts where operational situations permit in order to provide a more stable working environment to the workers. When GSCs bid for government service contracts, it is a common practice for them to take into account the anticipated increase in wage levels during the contract period and reflect the potential increase in staff costs in their tender price.

7. To encourage GSCs who bid for government service contracts to attach more importance to the wage levels of non-skilled workers, the new policy requires that the weighting of “wages” should be no less than 25% in the technical assessment. Procuring departments may set a higher weighting for “wages” as they consider appropriate.

8. The contractual obligations of GSCs under the new policy will be stipulated in the tender documents and the revised SEC promulgated by LD. The revised SEC provides a standard framework for GSCs and non-skilled workers to record the mutually agreed wages, working hours, meal breaks (whether paid or unpaid) and other employment benefits. The revised SEC also provides examples on the calculation of wages, holiday pay, gratuity, and reduction of SP payable to an employee by the amount of gratuity paid, etc. for illustration.

### **Occupational safety and health**

9. LD attaches great importance to the protection of the occupational safety and health (OSH) of employees. The existing OSH legislation has already imposed obligations on employers to safeguard the safety and health of their employees at work.

10. According to the Occupational Safety and Health Ordinance (Cap. 509) and its subsidiary regulations, an employer must, as far as reasonably practicable, ensure the safety and health at work of the employees, including providing suitable personal protective equipment to the employees working under hot and inclement weather, ensuring that they take suitable rests and formulating emergency plans for them. Accordingly, GSCs shall provide drinking water and suitable protective equipment such as wide-brimmed hats against sunlight to the employees undertaking outdoor work in hot weather. They shall also arrange the employees to take suitable rests in sheltered and well-ventilated areas as far as reasonably practicable. In addition, an employer shall conduct safety assessment for the workplace and take appropriate safety measures, and formulate safety plan and emergency plan with regard to inclement weather conditions as well as provide safe shelters or structures to protect employees from strong wind, lightning and rainstorm to ensure their safety. If LD spots irregularities during inspections, it will take appropriate enforcement actions.

11. In addition, LD has produced “Risk Assessment for the Prevention of Heat Stroke at Work”, “Checklist for Heat Stress Assessment at Outdoor Cleansing Workplaces”, “Prevention of Heat Stroke at Work in a Hot Environment” and “Code of Practice in time of Typhoons and Rainstorms” to provide advice and practical guidelines for employers to draw up work arrangements under hot and inclement weather. LD will continue to protect the OSH of employees through inspections and enforcement of Cap. 509. It will also sustain promotional efforts to urge employers to adopt the risk assessment approach and take corresponding preventive measures. LD encourages procuring departments to require their GSCs to observe the relevant guidelines promulgated by LD.

12. Procuring departments will continue to require GSCs to comply with the statutory requirements on OSH and monitor the provision of OSH equipment as committed in the service contracts. They will also share and promote the good practices of GSCs as appropriate. The four major procuring departments, i.e. FEHD, HD, LCSD and GPA have, as far as circumstances permit, provided general space to cater for the changing, storage, water-drinking and resting needs of non-skilled workers engaged under their service contracts. In planning new facilities such as refuse collection points, departments will endeavor to make specific provision for changing and storage facilities for the use of workers where possible.

### **Debarment mechanism and Demerit Point System**

13. In line with our overall objective to accord better protection to non-skilled workers, the Government has also reviewed and expanded the scope of the Debarment Mechanism and the DPS to strengthen the management of GSCs engaged under non-skilled worker contracts. The expanded scope will apply to non-skilled worker contracts the bids of which are to be invited on or after 1 April 2019.

#### Debarment Mechanism

14. Under the current Debarment Mechanism, a bidder with a conviction record of the following offences will be debarred from participating in the procurement of non-skilled worker contracts for five years counted from the date of conviction:

- (a) any offence under the Employment Ordinance (Cap. 57) and the Employees' Compensation Ordinance (Cap. 282), conviction in respect 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) (offence to be employer of a person who is not lawfully employable);
- (c) Section 38A(4), Cap. 115 (offence of the construction site controller if a person not lawfully employable takes employment on a construction site);
- (d) Section 89, Cap. 221 and Section 41, Cap. 115 (aiding and abetting another person to breach his condition of stay); and
- (e) offences under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), namely Section 7 (employer to arrange for employees to become Mandatory Provident Fund (MPF) Scheme members), Section 7A (employer and relevant employees required to contribute to an MPF Scheme) and Section 43E (making false or misleading statement).

15. With effect from 1 April 2019, the Debarment Mechanism will be expanded to cover the following offences –

- (a) any offence under Cap. 509 and the Factories and Industrial Undertakings Ordinance (Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to Cap. 221; and
- (b) Section 7AA (employer to contribute to Mandatory Provident Fund Schemes Authority for employees who have not been enrolled in an MPF Scheme), section 43B(3A) (failure to comply with civil court order) and section 43BA(5) (failure to comply with criminal court order) of Cap. 485.

Convictions will be counted irrespective of whether they are obtained under a government or private contract and irrespective of the type of services offered under the contract. Convictions will be counted by the number of summonses convicted.

16. Bidders are required to submit a statement of convictions in respect of the offences covered in the Debarment Mechanism during a five-year period immediately preceding the bid closing date. The procuring departments will then check the accuracy of the statement. If a bidder is convicted of any of the offences covered in paragraphs 14 – 15 above, the bidder's proposals for undertaking the non-skilled worker contracts will not be considered for a period of five years from the date of the last conviction.

### Demerit Point System

17. Under the current DPS, GSCs which have breached their contractual obligations set out in government service contracts in respect of wages, daily maximum working hours, signing of standard employment contracts and making wage payment by means of autopay to their non-skilled workers employed for the carrying out of the contract with the Government will receive default notices issued by the procuring departments. Each default notice attracts one demerit point. If a GSC has accumulated three demerit points over a rolling period of 36 months, it will be debarred from bidding non-skilled worker contracts for a period of five years from the date on which the third demerit point was obtained.

18. In line with the introduction of the new measures, in addition to the four obligations set out in paragraph 17 above, with effect from 1 April 2019, the DPS will also cover the following obligations to be included in the service contracts between the procuring departments and the GSCs –

- (a) provision of gratuity payable to non-skilled workers with no less than one year of service under a continuous contract;
- (b) provision of Statutory Holiday Pay to the non-skilled workers having been employed under a continuous contract for not less than one month; and



- (c) provision of wages at a rate of at least 150% for the non-skilled workers who are required to work when the typhoon signal no. 8 or above is hoisted.

As a result, the contractual obligations of GSCs that are subject to the DPS will increase from four to seven. While the coverage of the DPS has almost doubled, the debarment threshold of the DPS remains at three demerit points. In other words, GSCs will need to pay more attention to and be more disciplined in protecting the benefits of the non-skilled workers they employ.

19. The procuring departments are also required to step up their contract monitoring mechanism. To ensure closer monitoring, procuring departments are required to report to their Controlling Officers (CO) (or the directorate officer authorized by CO) on the number of non-skilled worker contracts awarded, the number of default notices and demerit points issued, as well as complaints received in relation to these contracts.

## **Conclusion**

20. The new policy and improvement measures are a major step forward in according better protection to non-skilled workers engaged by GSCs. The immediate priority of the Government is to ensure that these measures and the related transitional arrangements can be implemented smoothly and successfully. We welcome the views and feedback of stakeholders after rolling out the measures and will consider areas for further improvement on an ongoing basis.

**Financial Services and the Treasury Bureau**  
**Food and Environmental Hygiene Department**  
**Housing Department**  
**Labour Department**  
**Leisure and Cultural Services Department**

**March 2019**