

For meeting on
15 January 2019

Legislative Council Panel on Manpower

Enhancing the protection of non-skilled employees engaged by government service contractors

Purpose

This paper briefs Members on Government's improvement measures to be implemented from April 2019 for enhancing the protection of the employment terms and conditions as well as labour benefits of non-skilled employees¹ engaged by government service contractors (GSCs).

Background

2. Outsourcing is one of the ways adopted by government departments to deliver public services. Government departments have the discretion to consider whether to adopt outsourcing and the details thereof in accordance with their operational needs. Provision of services through outsourcing is not uncommon, in particular for cleansing and security services that heavily rely on the deployment of non-skilled employees. Outsourcing helps the Government maintain a small and efficient civil service, promotes job creation and business opportunities in the private sector, and increases flexibility in the delivery of public services.

3. Under the outsourcing regime, re-tendering is required when a government service contract ends and the concerned government department is still in need of the service, hence resulting in a possible changeover of service contractor. This involves issues on the deployment of the employees of the outgoing GSC or termination of contracts of employment. It has been noted in recent years that dispute might

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

sometimes arise between the outgoing GSC and the employees over eligibility for severance payment (SP)/long service payment (LSP)² upon the expiry of the government service contract. In addition, employees who are engaged by the new GSC would need to accrue their length of service afresh in order to become entitled to those service-related statutory employment benefits.

Inter-bureaux/departmental Working Group

4. Against this background, the Secretary for Labour and Welfare set up an inter-bureaux/departmental Working Group (Working Group) in August 2017 to review the government outsourcing system so as to enhance the protection of the employment terms and conditions as well as labour benefits of non-skilled employees engaged by GSCs. Led by the Labour and Welfare Bureau, the Working Group comprises the Financial Services and the Treasury Bureau, Food and Environmental Hygiene Department (FEHD), Leisure and Cultural Services Department (LCSD), Housing Department (HD)³, Government Property Agency (GPA) and Labour Department (LD). 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 the non-skilled employees of GSCs. The Working Group also examined the content of the Standard Employment Contract (SEC)⁴ and duration of government service contracts in order to strengthen the protection of employees' labour benefits (such as SP) under the law. To gauge the views of stakeholders, the Working Group has met with trade unions, concern groups, Members of the Legislative Council, employers' organisations,

² According to the Employment Ordinance (EO), an employee employed under a continuous contract for not less than 24 months is eligible for SP if he is dismissed by reason of redundancy, or his fixed term employment contract expires without being renewed due to redundancy, or is laid off. An employee employed under a continuous contract for not less than five years is eligible for LSP if he is dismissed (except by reason of redundancy or summary dismissal due to the employee's serious misconduct), or his fixed term employment contract expires without being renewed, or his employment contract is terminated under those conditions specified by EO. An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a continuous contract.

³ The Hong Kong Housing Authority (HA) is the statutory body for developing and implementing public housing programmes. HD is the executive arm of HA and provides support to HA in the relevant work.

⁴ The Government has since April 2005 mandated all GSCs to sign SEC prescribed by the Government with their non-skilled employees. SEC clearly states the employment terms and conditions.

etc. for in-depth discussions, and consulted government departments which procure services.

Details of the improvement measures

5. The Working Group has completed the review and come up with a set of improvement measures applicable to service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled employees. The Chief Executive announced the improvement measures in the 2018 Policy Address as detailed in the ensuing paragraphs.

Increasing the technical weighting and weighting of wage level in marking schemes

6. At present, the wages of non-skilled employees of GSCs are determined by market mechanism but must not be lower than Statutory Minimum Wage. According to the internal guidelines issued by the Government, departments procuring service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled employees are encouraged to adopt a marking scheme to evaluate tenders. A marking scheme should normally adopt a 30% to 40% weighting for the technical aspect, as opposed to a weighting of 60% to 70% for the price aspect. Besides, when procuring departments adopt a marking scheme for tender assessment of this type of contracts, they must include the wage level and working hours as mandatory assessment criteria in the technical assessment. Other things being equal, GSCs bidding the contracts that are willing to offer better terms and conditions to non-skilled employees will get higher scores, hence standing a better chance of being awarded the contract. Upon award of the service contract, the wage level and working hours offered in the tender will form part of the service contract. Currently, there is no pre-set ceiling or floor on the weighting of wage level and working hours in the technical assessment.

7. Under the improvement measures, the normal technical weighting in tender evaluation will be increased to the range of 50% to 70% and price weighting will be decreased correspondingly to the range of 30% to 50%. Procuring departments may adopt a technical weighting higher than 70% if they see fit but the technical weighting must not fall below 50% in any case. If two or more tenders obtain the same overall score in tender evaluation, the tender obtaining the highest score in technical assessment should be awarded the contract save for the specified

exceptions⁵. In addition, to prompt GSCs bidding the service contracts to increase the wages for non-skilled employees, the weighting of wage level as an assessment criterion will be increased to at least 25% in the technical assessment. With the combined effect of increasing the weightings in the two aspects mentioned above, the wage level will account for at least 12.5% in the overall assessment.

Entitlement to contractual gratuity

8. To forestall labour disputes over entitlement to SP/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 (particularly upon the abolition of the arrangement of offsetting SP/LSP with employers' mandatory contributions under the Mandatory Provident Fund System), GSCs will be required to pay contractual gratuity to their non-skilled employees pursuant to the terms of the government service contracts and SEC under the improvement measures. The contractual gratuity is payable to non-skilled employees with no less than one year's service of a continuous contract who complete an SEC, or whose SEC is terminated (including resignation by employees, or dismissal by employers save for summary dismissal due to the employee's serious misconduct). The rate of the gratuity is 6% of the total wages earned by the employee during the relevant employment period. As the contractual gratuity will be offsettable against SP/LSP, this would enable GSCs to calculate the related cost in advance and suitably reflect it in the tender price when bidding the service contract, hence mitigating the possible dispute with employees over SP/LSP upon the expiry of government service contracts for the benefit of harmonious labour relations.

Early entitlement to statutory holiday pay

9. According to EO, an employee, irrespective of his length of service, is entitled to 12 statutory holidays (SHs) each year. An employee having been employed under a continuous contract for not less than three months immediately preceding a SH is entitled to statutory holiday pay (SHP) for that SH. As one of the improvement measures, GSCs shall, pursuant to the terms of the government service contracts and SEC, grant

⁵ For risk management purpose and to cater for operational requirement, some procuring departments stipulate that the same GSC would not be awarded all the service contracts in the same region. For this and similar cases, individual departments may consider whether to handle them as exceptions.

SHP to their non-skilled employees who have been employed under a continuous contract for not less than one month preceding a SH.

Entitlement to additional remuneration for working when Typhoon Warning Signal No. 8 or above is hoisted

10. As the situations vary for different industries and enterprises, employers and employees may work out their arrangements on whether the latter need to report for duty and whether additional remuneration is granted to those who are required to work when Typhoon Warning Signal No. 8 or above is in force. This is not regulated by EO or other labour legislation. Pursuant to the terms of the government service contracts and SEC under the improvement measures, if a non-skilled employee is required to report for duty when Typhoon Warning Signal No. 8 or above is hoisted, the GSC should pay wages calculated at the rate of 150% of the wages that he is originally entitled to.

Tenure of government service contracts

11. In order to provide a more stable working environment for non-skilled employees, procuring departments will be encouraged to adopt a tenure of not less than three years where operational situations permit.

Expenditure involved

12. The improvement measures will help increase the wage level and enhance the employment terms and conditions of non-skilled employees. According to the crude assessment of the procuring departments including FEHD, LCSD, GPA, etc., the additional expenditure arising from the improvement measures will be about \$300 million annually. The actual cost impact will depend on the response of individual GSCs to the improvement measures and their bidding strategies.

Implementation of the improvement measures

13. The Working Group is proceeding with the preparatory work for implementation in full gear with a view to applying the improvement measures to the relevant government service contracts tendered from 1 April 2019 onwards. The preparatory work includes preparing the standard clauses in service contracts, revising SEC and formulating detailed guidelines for procuring departments. To ensure that GSCs comply with the improvement measures and provide the non-skilled employees with the enhanced employment benefits (including contractual

gratuity, SHP and additional remuneration for working when Typhoon Warning Signal No. 8 or above is hoisted), procuring departments will strengthen their measures on the monitoring and management of GSCs such as requiring GSCs to submit wage payment records certified by practising certified public accountant, gauging the wage payment situations direct from frontline employees, etc. Furthermore, LD will organise briefings for procuring departments and GSCs to familiarise them with the improvement measures. Labour Inspectors of LD will conduct surprise workplace inspections to check GSCs' compliance with the improvement measures through interviewing non-skilled employees individually and checking their employment records.

14. Members are invited to note and give views on the above improvement measures.

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

January 2019