

# 立法會

## *Legislative Council*

LC Paper No. CB(4)414/18-19(05)

Ref: CB4/PL/PS

### **Panel on Public Service**

**Meeting on 21 January 2019**

### **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 ("B/Ds"), 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. Agency workers generally refer to the manpower supplied by employment agencies to 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 and April 2011, the Civil Service Bureau ("CSB") issued guidelines to B/Ds on the proper use of agency workers<sup>1</sup> (covering the scope of using agency workers, approval authority and wage requirement to be followed by

---

<sup>1</sup> 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.

employment agencies upon the implementation of the Statutory Minimum Wage ("SMW") in May 2011) and the renewal or re-letting of service contracts for the supply of agency workers.

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 work nature 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 2017, 831 agency workers were working in B/Ds, representing a reduction of about 65% compared with the peak position in September 2009.<sup>2</sup> The majority of them were involved in providing general office and technical support, and delivering customer services. Out of these 831 agency workers, 592 (71%) were used for meeting urgent or unforeseen service needs or unexpected surge in service demands, 127 (15%) were deployed to fill short-term manpower gap and 112 (14%) were deployed to meet service needs that entailed an irregular work pattern or where the work nature rendered it difficult to recruit and retain staff. About 40% of agency workers were sourced from term contracts under which agency workers are supplied only as and when required by the procuring B/Ds.

#### T-contract staff

6. B/Ds can also secure IT manpower required through T-contract staff. As at 31 December 2017, there were a total of 2 890 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 12.3 years.<sup>3</sup> OGCIO has set out a manpower management framework and internal guidelines which include the use of T-contract staff services

<sup>2</sup> A table showing the number of agency workers (excluding T-contract and service bureau staff) procured by individual B/Ds from 2013 to 2017 is in **Appendix I**.

<sup>3</sup> Source: [Controlling Officer's Reply on the Examination of Estimates of Expenditure 2018-2019 \(Reply serial No. ITB218\)](#)

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. The use of agency workers would also give rise to social conflicts caused by middle-man exploitation and "different pay for the same job". They therefore urged the Administration to convert 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 public service. 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.

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 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.

*Renewal or re-letting of service contracts*

13. 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.

14. 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 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.

15. 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 ensure that approval would only be granted for fully justifiable cases and keep a close watch to prevent any possible abuse. 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.

16. 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 as there was concern about the prolonged use of certain 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. The Administration assured members that it would urge 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*

17. On members' concern about the wage protection and fringe benefits for agency workers, the Administration advised that measures had been implemented, such as requiring employment agencies to state the wage amounts which they would pay to their workers and the working hours of these workers in the service contracts signed with the procuring B/Ds. The 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. This arrangement ensured that no agency workers employed in Government service contracts would be worse off upon the implementation of SMW as the salary rates of some selected industry sections published in the C&S report were still higher than the prevailing SMW rates.

18. 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 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 to provide employment benefits to agency workers who were not Government employees.

19. 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*

20. In reply to members' question as to whether there was any mechanism to evaluate employment agencies' performance in supplying agency workers to

procuring B/Ds, the Administration advised that the main criteria 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 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.

21. In this connection, a member suggested that the Administration should implement measures to enhance the transparency of the procurement of the service of employment agencies and the relevant contract terms, such as by uploading relevant information onto the Internet for public monitoring.

#### *Use of agency workers by the Education Bureau*

22. At the Panel meeting on 15 January 2018, a member raised questions about the number of agency workers engaged by the Education Bureau. In response, the Administration advised that as at 30 September 2017, 32 out of the 117 agency workers used by EDB were responsible for processing the applications under the Registration Certificate for Kindergarten Admission for the 2018-2019 school year. Agency workers were also engaged to provide clerical support for the Pre-Secondary One Hong Kong Attainment Test, and EDB had been creating permanent posts in clerical grade in the past few years to gradually take up the duties of these agency workers where appropriate.

#### T-contract staff

##### *Number of T-contract staff*

23. At the Panel meeting on 15 January 2018, a member expressed concern on the upsurge in the number of T-contract staff in the past few years. Queries were raised on whether B/Ds had been rotating T-contract staff to different divisions or positions to bypass Administration's monitoring and approval, and the Administration's intention to separate the figures of T-contract staff and agency workers engaged by B/Ds. Member suggested that the Administration should keep reviewing the growth in the number of T-contract staff as against IT grade civil servants to avoid losing the fine balance between the two and causing management issues in the long-run.

24. The Administration explained that T-contract staff were IT professionals and were engaged under a different mechanism from agency workers. As the Administration was fostering IT development and enhancing e-Government services, more than 1 000 new IT projects were implemented in the past five years. In

addition, the Chief Executive announced in her Policy Address on 11 October 2017 that \$700 million would be invested to push ahead with three key infrastructure projects for smart city development. To implement the above projects, apart from the 250 civil service posts which were created in the past three financial years, there was a similar increase in the number of T-contract staff in the past few years.

### *Converting T-contract posts to civil service posts*

25. Some members considered that the engagement of T-contract staff would not be conducive to retaining expertise in the Government. It would give rise to issues of unequal pay for the same work, unfair terms of employment, middle-man exploitation and IT security problems, as well as posing difficulties to the Administration in the management and development of IT projects. They therefore urged the Administration to formulate a plan to convert T-contract staff to civil servants. A member commented that the Administration should not use a fast changing IT environment as an excuse for employing IT staff on a short-term basis, or there would be no career prospects for the employees in the trade. The Administration should take the lead to engage T-contract staff as permanent workforce. There was also concern that any converted IT civil service posts would only be filled up by internal promotion of existing civil servants and T-contract staff would not have a chance to apply for such jobs.

26. 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.

27. As regards some members' suggestions about direct appointment of T-contract staff to civil service posts, in particular for those who had been providing services to the Government for long time, 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 fact, B/Ds would review their IT manpower requirements annually. For posts with long-term service needs, B/Ds would apply for additional resources in the annual Resource Allocation Exercise for the creation of civil service posts. T-contract staff might apply for civil service posts if they were interested. However, according to the recruitment experience of Analyst/Programmer II posts in 2016, 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 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.

### *Review on the T-contract system*

28. In response to members' concern on whether the Administration would conduct a comprehensive review of the T-contract system, the Administration advised that it would seek to improve the administrative arrangements and contract provisions for the next T-contract to ensure the quality of T-contract services. In this connection, the Administration would:

- (a) review the present situation of not setting minimum remuneration package and fringe benefits for T-contract staff in T-contract, as well as the tender assessment criteria and contract provisions when preparing the tender documents for the next T-contract which would commence in February 2019;
- (b) stipulate in the next T-contract that the pay adjustment rates for T-contract staff must not be lower than the adjustment rate for the service fees paid by the Government to the T-contractors determined with reference to the change in the relevant Consumer Price Index;
- (c) consider revealing a range of service fees payable by the Government for engagement of T-contract staff for reference; and
- (d) explore the arrangement for allowing T-contract staff to apply for other T-contract positions under different T-contractors prior to the expiry of their service period.

### **Recent development**

29. The Administration will update the Panel on the use of agency workers, including T-contract staff, at the Panel meeting on 21 January 2019.

### **Relevant papers**

30. 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 2013 to 2017<sup>#</sup>

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2013	2014	2015	2016	2017
Agriculture, Fisheries and Conservation Department	2	8	7	5	11
Buildings Department	-	37	56	82	-
Chief Secretary and Financial Secretary's Office	25	17	14	18	8
Civil Aid Service	-	2	-	1	3
Civil Engineering and Development Department	5	2	-	2	5
Constitutional and Mainland Affairs Bureau	-	-	-	-	1
Commerce and Economic Development Bureau	6	8	7	9	13
Correctional Services Department	22	27	34	19	11
Department of Health	168	50	61	89	58
Department of Justice	13	14	13	22	25
Development Bureau	14	17	12	10	5
Drainage Services Department	9	22	10	5	7
Education Bureau	68	94	70	99	117
Electrical and Mechanical Services Department	32	15	15	20	12
Environment Bureau	5	9	5	3	-
Environmental Protection Department	37	53	54	41	37
Financial Services and the Treasury Bureau	2	2	3	3	3
Fire Services Department	25	17	12	3	2
Food and Environmental Hygiene Department	13	8	12	30	17
Food and Health Bureau	4	1	6	6	9
Government Flying Service	3	1	5	3	1
Government Laboratory	-	-	-	-	1
Government Logistics Department	6	13	17	13	10
Home Affairs Bureau	3	2	21	3	2

<sup>#</sup> Sources: Appendix I to LC Paper No. CB(4)554/16-17(05) and Annex A to LC Paper No. CB(4)455/17-18(04).

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2013	2014	2015	2016	2017
Hong Kong Police Force	2	-	11	1	1
Immigration Department	31	33	38	28	35
Information Services Department	22	30	23	22	27
Innovation and Technology Commission	4	6	6	4	6
Intellectual Property Department	1	-	3	2	1
Invest Hong Kong	-	-	-	4	6
Labour and Welfare Bureau	7	6	7	7	8
Labour Department	37	41	33	-	-
Lands Department	59	59	54	60	58
Leisure and Cultural Services Department	76	68	83	61	62
Marine Department	26	21	18	38	24
Office of the Communications Authority	-	-	1	-	-
Official Receiver's Office	17	13	15	26	18
Planning Department	13	28	33	12	9
Hongkong Post	-	-	-	-	2
Radio Television Hong Kong	-	-	-	2	-
Rating and Valuation Department	44	42	42	42	37
Registration and Electoral Office	-	-	38	5	-
Security Bureau	5	4	2	1	-
Student Financial Assistance Agency	29	58	-	-	-
Trade and Industry Department	-	3	-	-	-
Transport and Housing Bureau	4	6	8	5	4
Transport Department	58	41	25	23	17
University Grants Committee Secretariat	1	7	3	5	4
Water Supplies Department	74	80	77	69	65
Working Family and Student Financial Assistance Agency	-	-	25	71	89
<b>Total</b>	<b>972</b>	<b>965</b>	<b>979</b>	<b>974</b>	<b>831</b>

Use of agency workers

List of relevant papers

Meeting	Date of meeting	Paper
Council meeting	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>

Meeting	Date of meeting	Paper
Panel on Public Service	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>
	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>
	20 April 2015	<u>Administration's paper</u>  <u>Updated background brief prepared by the Legislative Council Secretariat</u>  <u>Minutes</u>

Meeting	Date of meeting	Paper
Panel on Public Service	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>
	15 January 2018	<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>