

For meeting on
16 June 2020

Legislative Council Panel on Manpower

Review of the Improvement Measures for Non-skilled Employees Engaged by Government Service Contractors

Purpose

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

Background

2. An inter-bureaux/departmental Working Group (Working Group) was set up in August 2017 to review the government outsourcing system with a view to enhancing the protection of the non-skilled employees engaged by Government Service Contractors (GSCs). Led by the Secretary for Labour and Welfare, the Working Group comprises the Financial Services and the Treasury Bureau (FSTB), Food and Environmental Hygiene Department (FEHD), Leisure and Cultural Services Department (LCSD), Housing Department (HD)², Government Property Agency (GPA) and Labour Department (LD). The Working Group came up with a set of improvement measures applicable to

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/II and Workshop Attendant.

² 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.

service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled employees (e.g., cleansing or security services) tendered from 1 April 2019 onwards. The Chief Executive also announced the recommendations in the 2018 Policy Address, and later on further announced transitional arrangements for this type of service contracts at tendering stage or already awarded during the period between the 2018 Policy Address and 31 March 2019. Details of the improvement measures are as follows:

(1) Increasing the technical weighting (including the marks assigned to wage level) in marking schemes

3. The wages of non-skilled employees of GSCs are determined by market mechanism but must not be lower than the Statutory Minimum Wage (SMW). Before implementation of the improvement measures, marking schemes to evaluate tenders adopted by government departments procuring service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled employees normally adopted a 30% to 40% weighting for the technical aspect, as opposed to a weighting of 60% to 70% for the price aspect. Under the improvement measures implemented since April 2019, the normal technical weighting in tender evaluation of this type of service contracts has been increased to the range of 50% to 70% and price weighting 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 exceptions³. 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 has also been 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 accounts for at least 12.5% in the overall assessment.

³ For example, 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.

(2) Entitlement to contractual gratuity

4. Under the improvement measures, GSCs are required to pay contractual gratuity to their non-skilled employees pursuant to the terms of government service contracts and Standard Employment Contract (SEC)⁴. The contractual gratuity is payable to non-skilled employees with no less than one year of continuous contract⁵ as defined under the Employment Ordinance (EO) 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.

(3) Early entitlement to statutory holiday pay

5. According to EO, an employee is entitled to 12 statutory holidays (SHs) each year. An employee having been employed under a continuous contract for not less than 3 months preceding a SH is further entitled to statutory holiday pay for that SH. Under the improvement measures, non-skilled employees who have been employed under a continuous contract for not less than 1 month preceding a SH can enjoy the early entitlement to statutory holiday pay.

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

6. GSCs and employees may draw up work arrangements on whether the latter are required to work in times of Typhoon Warning Signal No. 8 or above having regard to operational needs. Under the improvement measures, if a non-skilled employee is required to report for duty when Typhoon Warning Signal

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.

⁵ According to 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.

No. 8 or above is hoisted, the GSC should pay wages calculated at the rate of at least 150% of the wages that he is originally entitled to.

(5) Tenure of government service contracts

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

Review of Improvement Measures

8. On 14 January 2020, LWB has been tasked by the Chief Executive to complete, by the end of this year, a review of the improvement measures on the tendering of GSCs to enhance the remuneration packages and protection for the interests of non-skilled employees, and increase the weighting of wage levels in tender assessments to avoid the “lowest bid wins”, as well as to consider further improvement measures.

Monitoring Measures

9. To ensure that GSCs comply with the improvement measures, procuring departments have strengthened their measures on the monitoring 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.

10. Labour Inspectors of LD conduct surprise inspections targeted at workplaces under service contracts for which the new improvement measures are applicable and interview non-skilled employees individually to check the signing of revised SEC, as well as GSCs’ compliance with the new measures. They also explain and distribute leaflets to the employees on their entitlements to the new employment benefits. In 2019, Labour Inspectors conducted 823 inspections and

interviewed 2 450 employees of GSCs. One case involving a GSC who failed to pay additional remuneration to non-skilled employees who reported for duty in times of Typhoon Warning Signal No. 8 was detected. Upon explanation of the relevant new requirement, the concerned GSC rectified the wage balance to the employees.

11. In line with the overall objective to accord better protection for non-skilled workers, the Government has also expanded the scope of the Debarment Mechanism and the Demerit Point System (DPS) to strengthen the management of GSCs engaged under non-skilled worker contracts tendered on or after 1 April 2019. The scope of the DPS is expanded from four to seven in the contractual obligations of GSCs that are subject to the Demerit Point. The three new obligations are (a) provision of gratuity payable to non-skilled employees with no less than one year of service under a continuous contract, (b) provision of Statutory Holiday Pay payable to non-skilled employees who have been employed under a continuous contract of not less one month, and (c) the provision of wages at a rate of at least 150% to non-skilled employees who are required to work under Typhoon Warning Signal No. 8 or above. If a GSC has accumulated three demerit points over a rolling period of 36 months, it shall be debarred from tendering for non-skilled employee contracts for a period of five years from the date on which the third demerit point was obtained.

12. The scope of the Debarment Mechanism is also expanded to cover tenderers' convictions under three more Ordinances, namely the Occupational Safety and Health Ordinance (Cap. 509), Factories and Industrial Undertakings Ordinance (Cap. 59), and different sections of the Mandatory Provident Fund Scheme Ordinance (Cap. 485). Tenderers who have been convicted of any relevant offences shall be debarred from bidding non-skilled employee contract for five years from the date of conviction.

Implementation of the Improvement Measures

Improvements on wages according to initial statistics up to November 2019

13. On 8 January 2020, the Secretary for Financial Services and the Treasury in his written reply to a Legislative Council member's question on Government service contracts, provided information on the improvement in the wages of non-skilled employees engaged by GSCs according to initial statistics obtained from the four major procuring departments up to November 2019, even though the improvement measures have taken effect for less than one year at that time (LCQ 15).

14. Secondary analysis of the data from FEHD, LCSD and HD extracted from Tables (iii) and (iv) of Annex 3 of LCQ 15 was conducted. A comparison of the committed hourly wages (CHW) of non-skilled employees before and after the implementation of the improvement measures found an increase in the CHW of the employees. Among the 5 978 non-skilled employees engaged in service contracts tendered after April 2019, nearly half (48.23%) of them had CHW of \$45.6 or above (i.e., 20% higher than the current SMW of \$37.5), while the figure for service contracts tendered before 1 April 2019 was only 1.67% among the 6 580 non-skilled employees. Further breakdown of the relevant figures are set out in Annex 2.

Enhancement of technical weighting and weighting of wage level

15. A comparison of marking schemes for tender assessment indicates enhancement in the technical weighting and the weighting of wage level in tender assessment by the four major procuring departments for service contracts tendered after 1 April 2019. Technical weighting ranged from 30% to 45% before April 2019, and increased to 50% to 60% after April 2019; while the weighting of wage level ranged from 0% to 18% before April 2019, and increased to at least 25% afterwards. Details are set out in Annex 3.

Further Review

16. Relevant data, including data of service contracts awarded to GSCs before and after 1 April 2019 by the four major procuring departments, are currently being collated and analysed to observe the changes in the remuneration packages of non-skilled employees providing cleansing, security or other services after implementation of the improvement measures. Moreover, information collated under the monitoring measures and compliance mechanisms will be examined to assess the effectiveness of implementation.

Advice Sought

17. Members are invited to note the content of this paper.

Labour and Welfare Bureau

June 2020

**Information Extracted from Tables (iii) & (iv) of Annex 3 of the Government’s reply to LCQ15 dated 8 January 2020
Number of non-skilled workers broken down by committed wages under the service contracts awarded
between 1 April 2019 and 30 November 2019**

Service contracts tendered before April 2019 and awarded between April and November 2019 ^{Note 1}

| Committed hourly wage | Number of non-skilled workers | | | | | | | | | | | | |
|-----------------------|-------------------------------|-----------|--------------|--------------|------------|--------------|--------------|--------------|--------------------------------------|--|-----------------------------|------------|--------------|
| | Type of contracts | | | | | | | | | | | | |
| | Cleansing | | | | Security | | | | Others | | | | Total |
| | FEHD | LCSD | HD Note 2 | Sub-total | FEHD | LCSD | HD Note 2 | Sub-total | FEHD (Cementeries and crematoria) | LCSD (Horticultural maintenance Services) | LCSD (Venues Management) | Sub-total | |
| \$34.5 or below | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$34.6 - \$35.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$35.6 - \$36.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$36.6 - \$37.5 | 0 | 0 | 20 | 20 | 46 | 0 | 1 | 47 | 0 | 0 | 0 | 0 | 67 |
| \$37.6 - \$38.5 | 490 | 6 | 42 | 538 | 90 | 1 320 | 181 | 1 591 | 0 | 0 | 0 | 0 | 2 129 |
| \$38.6 - \$39.5 | 1 281 | 63 | 0 | 1 344 | 49 | 666 | 115 | 830 | 0 | 0 | 21 | 21 | 2 195 |
| \$39.6 - \$40.5 | 1 189 | 0 | 0 | 1 189 | 0 | 96 | 0 | 96 | 0 | 28 | 0 | 28 | 1 313 |
| \$40.6 - \$41.5 | 72 | 0 | 0 | 72 | 0 | 201 | 0 | 201 | 0 | 0 | 0 | 0 | 273 |
| \$41.6 - \$42.5 | 192 | 0 | 0 | 192 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 192 |
| \$42.6 - \$43.5 | 231 | 0 | 0 | 231 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 231 |
| \$43.6 - \$44.5 | 65 | 0 | 0 | 65 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 65 |
| \$44.6 - \$45.5 | 5 | 0 | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| \$45.6 - \$46.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$46.6 - \$47.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$47.6 or above | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | 0 | 97 | 110 | 110 |
| Total | 3 525 | 69 | 62 | 3 656 | 185 | 2 283 | 297 | 2 765 | 13 | 28 | 118 | 159 | 6 580 |

Notes:

1. The new measures to enhance the protection of non-skilled workers engaged by government service contractors have taken effect since 1 April 2019.
The marking scheme requirement under the new measures are not applicable to these contracts.
2. Includes non-skilled workers performing cleansing and security duties under the property management service contracts of HD.

FEHD: Food and Environmental Hygiene Department LCSD: Leisure and Cultural Services Department HD: Housing Department

Service contracts tendered and awarded between April and November 2019 under the new measures

| Committed hourly wage | Number of non-skilled workers | | | | | | | | | | | | |
|-----------------------|-------------------------------|------------|--------------|--------------|-----------|------------|--------------|--------------|--------------------------------------|--|-----------------------------|-----------|--------------|
| | Type of contracts | | | | | | | | | | | | |
| | Cleansing | | | | Security | | | | Others | | | | Total |
| | FEHD | LCSD | HD Note | Sub-total | FEHD | LCSD | HD Note | Sub-total | FEHD (Cementeries and crematoria) | LCSD (Horticultural maintenance Services) | LCSD (Venues Management) | Sub-total | |
| \$34.5 or below | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$34.6 - \$35.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$35.6 - \$36.5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| \$36.6 - \$37.5 | 0 | 0 | 13 | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 |
| \$37.6 - \$38.5 | 0 | 0 | 246 | 246 | 0 | 0 | 118 | 118 | 0 | 0 | 0 | 0 | 364 |
| \$38.6 - \$39.5 | 0 | 4 | 64 | 68 | 11 | 139 | 100 | 250 | 0 | 0 | 0 | 0 | 318 |
| \$39.6 - \$40.5 | 78 | 165 | 48 | 291 | 61 | 51 | 337 | 449 | 0 | 0 | 11 | 11 | 751 |
| \$40.6 - \$41.5 | 6 | 0 | 0 | 6 | 5 | 28 | 30 | 63 | 0 | 0 | 0 | 0 | 69 |
| \$41.6 - \$42.5 | 0 | 0 | 14 | 14 | 0 | 9 | 34 | 43 | 0 | 0 | 0 | 0 | 57 |
| \$42.6 - \$43.5 | 575 | 0 | 49 | 624 | 0 | 0 | 205 | 205 | 0 | 0 | 0 | 0 | 829 |
| \$43.6 - \$44.5 | 99 | 45 | 128 | 272 | 0 | 0 | 268 | 268 | 0 | 0 | 0 | 0 | 540 |
| \$44.6 - \$45.5 | 18 | 0 | 129 | 147 | 0 | 0 | 7 | 7 | 0 | 0 | 0 | 0 | 154 |
| \$45.6 - \$46.5 | 0 | 0 | 242 | 242 | 0 | 0 | 61 | 61 | 0 | 0 | 0 | 0 | 303 |
| \$46.6 - \$47.5 | 572 | 0 | 93 | 665 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 665 |
| \$47.6 or above | 800 | 0 | 363 | 1 163 | 0 | 0 | 740 | 740 | 0 | 0 | 12 | 12 | 1 915 |
| Total | 2 148 | 214 | 1 389 | 3 751 | 77 | 227 | 1 900 | 2 204 | 0 | 0 | 23 | 23 | 5 978 |

Note: Includes non-skilled workers performing cleansing and security duties under the property management service contracts of HD.

FEHD: Food and Environmental Hygiene Department

LCSD: Leisure and Cultural Services Department

HD: Housing Department

Number of non-skilled employees with different levels of committed hourly wages under service contracts tendered before and after 1 April 2019 ^{Note 1,2} and awarded between April and November 2019

| SMW (w.e.f. 1.5.2019) | Committed Hourly Wage | Number of non-skilled employees | | | | | | | |
|-----------------------|-----------------------|---------------------------------|----------------|---------------------------|----------------|-----------------|----------------|---------------------------------|---------------------------------|
| | | Type of contracts | | | | | | | |
| | | Cleansing | | Security ^{Note3} | | Others | | Total | |
| | | Before 1.4.2019 | After 1.4.2019 | Before 1.4.2019 | After 1.4.2019 | Before 1.4.2019 | After 1.4.2019 | Before 1.4.2019 | After 1.4.2019 |
| \$37.5 | \$37.5 or below | 20 | 13 | 47 | 0 | 0 | 0 | 67 (1.0%) | 13 (0.2%) |
| | \$37.6 - \$41.5 | 3 143 | 611 | 2 718 | 880 | 49 | 11 | 5 910 (89.8%) | 1 502 (25.1%) |
| | \$41.6 - \$45.5 | 493 | 1 057 | 0 | 523 | 0 | 0 | 493 (7.5%) | 1 580 (26.5%) |
| | \$45.6 or above | 0 | 2,070 | 0 | 801 | 110 | 12 | 110 (1.7%) | 2 883 (48.2%) |
| | Total | 3 656 | 3 751 | 2 765 | 2 204 | 159 | 23 | 6 580 (100.0%) | 5 978 (100.0%) |

Notes:

1. The new measures to enhance the protection of non-skilled employees engaged by government service contractors have taken effect since 1 April 2019. The marking scheme requirement under the new measures are not applicable to the contracts tendered before April 2019.
2. Service contracts include those from Food and Environmental Hygiene Department (FEHD), Leisure and Cultural Services Department (LCSD) and Housing Department (HD).
3. Includes non-skilled employees performing cleaning and security duties under the property management contracts of HD.
4. The information has been extracted from tables (iii) and (iv) of Annex 3 of the Government's reply to LCQ 15 on 8 January 2020.

**Technical weighting and weighting of wage level in marking schemes
before and after 1 April 2019**

| | FEHD | | LCSD | | HD | | GPA | |
|-------------------------|---------------------------------|-----------------------------|---------------------------------|-----------------------------|---------------------------------|-----------------------------|---------------------------------|-----------------------------|
| | Before 1.4.2019 (2017-18) | After 1.4.2019 (2019-20) | Before 1.4.2019 (2017-18) | After 1.4.2019 (2019-20) | Before 1.4.2019 (2018-19) | After 1.4.2019 (2019-20) | Before 1.4.2019 (2014-15) | After 1.4.2019 (2019-20) |
| Technical Weighting | 30% | 50% | 30% | 50% | 30%-45% | 50% | 40% | 60% |
| Weighting of Wage Level | 16% | 25% | 10-18% | 25% | 0%-10% | 25% | 12% | 26% |

FEHD: Food and Environmental Hygiene Department

LCSD: Leisure and Cultural Services Department

HD: Housing Department

GPA: Government Property Agency