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Panel on Public Service

Meeting on 17 February 2020

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 workers¹ (covering the scope of using agency workers, approval authority and wage requirement to be followed by

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.

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 2018, 1 025 agency workers were working in B/Ds, representing a reduction of about 57% 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 1 025 agency workers, 741 (72%) were used for meeting urgent or unforeseen service needs or unexpected surge in service demands, 164 (16%) were deployed to fill short-term manpower gap and 120 (12%) 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. Over 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 end February 2019, there were a total of 2 987 T-contract staff engaged by B/Ds³ and the average lengths of service of staff engaged by B/Ds through T-contractors

² A table showing the number of agency workers (excluding T-contract and service bureau staff) procured by individual B/Ds from 2014 to 2018 is in **Appendix I**.

³ As at end December 2018, there were 1 193 civil service IT staff and 452 full-time non-civil service contract IT staff in B/Ds. Source: Controlling Officer's Reply on the Examination of Estimates of Expenditure 2019-2020 (Reply serial No. [ITB200](#))

ranged from 2.2 years to 10.8 years.⁴ 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 and the Administration's responses are summarized in the ensuing paragraphs.

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.

⁴ Source: Controlling Officer's Reply on the Examination of Estimates of Expenditure 2019-2020 (Reply serial No. [ITB200](#))

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. Noting that some B/Ds had engaged more than 50 agency workers, members enquired whether a ceiling on the number of agency workers would be set for each B/D. The Administration replied that any ceiling might limit the flexibility of B/Ds in responding to urgent or unforeseen operational needs. The authority of approving proposal for procuring agency worker service had been delegated to B/Ds. CSB would review the use of agency workers annually and discuss with the B/Ds from time to time, to ensure that agency workers were engaged only when fully justified and proper approval procedures were followed. Overall speaking, the number of agency workers engaged by B/Ds had been on a continuous downward trend, dropping from the peak of some 2 400 in 2009 to about 1 000 in 2018.

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, and suggested engaging NCSC staff instead of agency workers for short-term jobs exceeding 15 months.

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 contracts⁵ under which agency workers were supplied only as and when needed by the procuring B/Ds.

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. While CSB would ensure that approval would only be granted for fully justifiable cases and keep a close watch to prevent any possible abuse, the Administration pointed out in January 2019 that in the past three years, it had not received any such applications from B/Ds.

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. 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 minimum remuneration and fringe benefits in the

⁵ 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.

service contracts which 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 who were not Government employees.

19. At the Panel meeting on 21 January 2019, members noted that the Labour and Welfare Bureau had devised some improvement measures for non-skilled employees engaged by government service contractors, which would also be applied to the non-skilled agency workers. These measures included increasing the technical weighting in marking schemes for tender assessment to not less than 50% and raising the weighting for wage level as an assessment criterion to at least 25% in the technical assessment, enhancing the employment gratuity, statutory holiday pay upon employment for not less than one month, and additional remuneration for working when Tropical Cyclone Warning Signal No. 8 or above was in force.

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 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. The Administration would closely monitor the service quality of public services delivered by agency workers. The performance of these workers and records of services provided would be taken into account in the award or renewal of future similar service contracts. 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. 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 21 January 2019, a member expressed concern that the Education Bureau ("EDB") engaged 134 agency works, the largest number among B/Ds. In response, the Administration advised that to tie in with the mounting service needs in recent years, EDB had increased the number of civil service posts created for the Free Quality Kindergarten Education Scheme from 24 in 2016-2017 to some 60 and over 70 in 2017-2018 and 2018-2019 respectively. Notwithstanding the increase, there were still needs for agency workers. Among the 134 agency workers engaged by EDB, 68 of them were engaged mainly for providing clerical and general support to seasonal upsurge of workload for service needs such as the Pre-Secondary One Hong Kong Attainment Test in 2018 and another 39 of them were for supporting the processing of applications for Registration Certificate for Kindergarten Admission and the KG scheme. The workload of the above seasonal and short-term projects varied in different phases and the manpower requirement changes from time to time. Hence, it was not appropriate for civil service to take up these duties.

T-contract staff

Number of T-contract staff and converting T-contract posts to civil service posts

23. At the Panel meeting on 21 January 2019, several members voiced great concern over the rare situation that the number of T-contract staff engaged by different B/Ds far exceeded the combined civil service and NCSC IT workforce in the entire Government. Some members suggested converting T-contract staff to civil servants, especially those who had been working for the Government for a long time. The Administration advised that the implementation of IT projects required different IT skills-set at different stages. The T-contract staff engaged could complement the services provided by IT grade civil servants, enabling B/Ds to better meet their fluctuating IT manpower demand.

24. 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 a long time, the Administration advised that according to the Government's policy to fill civil service vacancies by an open, fair and competitive process, vacancies in the basic rank would normally be filled by open

recruitment. As for vacancies in the promotion ranks, unless there was no civil service candidates found suitable, they would normally be filled by promotion of suitable candidates within the civil service. In the past five years, there were around 50 former T-contract staff who had been recruited as civil servants through open recruitment exercises.

Improving remuneration packages and advancement prospects of T-contract staff and enhancing transparency of information

25. Members criticized the Administration for making limited efforts in addressing T-contract staff's concerns in the new T-contract which commenced on 1 February 2019, especially in the areas of improving their remuneration and fringe benefits. A member was also concerned about the low morale and lack of advancement prospects of T-contract staff. The Administration was urged to formulate detailed plans to address the issues of excessive exploitation by the T-contractors on the T-contract staff and standardize the minimum remuneration as well as employment terms for T-contract staff.

26. The Administration replied that improvements to the remuneration packages of T-contract staff had been incorporated into the relevant contracts. In order to retain talent, most of the contractors provided medical insurance covering outpatient and/or inpatient services; some offered annual leave more than the minimum statutory requirement, and end-of-gratuity/long service award, etc. The Administration replied that they did not notice any morale problem as IT civil servants and T-contract staff worked as a team in the Government. Around half of the existing T-contract staff in the staff categories of "Contract Senior Project Manager", "Contract Project Manager", "Contract Senior Systems Analyst" and "Contract Systems Analyst" had advanced to their current category from a lower one during the T-contract period.

27. A member requested the Administration to improve transparency by disclosing more information for the T-contract staff's reference, such as service fees payable by the Government engagement of T-contract staff, the annual pay adjustment rate and the performance of T-contractors etc., and solicit views of the T-contract staff direct. The Administration advised that OGCI would open up the dataset on the average government monthly expenditure on T-contract services for different staff categories from mid-2019 and provide an update on a half-yearly basis. It would also consider disclosing more information as suggested including the annual pay adjustment rate and the progress of T-contractors in enhancing the remuneration package of T-contract staff. For T-contract staff re-engaged by OGCI, the service fees payable had increased by 5% to 6% on average, which would in turn benefit the relevant T-contract staff.

Converting T-contract posts to civil service posts

28. Some members considered that the engagement of T-contract staff would not be conducive to retaining expertise in the Administration. It would give rise to 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. 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.

29. 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.

30. 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. 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 of IT manpower needs

31. In response to members' concern on when the last strategic review on IT manpower in the Government took place, the Administration advised that OGCIO had put in place a manpower management framework and internal guidelines on the use of different kinds of IT manpower resources in the Government in 2010,

according to which B/Ds should establish a core team of IT civil servants primarily responsible for developing and managing strategies and should regularly review their IT manpower needs.

Review on the T-contract system

32. 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 commenced 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

33. The Administration will update the Panel on the use of agency workers, including T-contract staff, at the Panel meeting on 17 February 2020.

Relevant papers

34. 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 2018[#]

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2014	2015	2016	2017	2018
Agriculture, Fisheries and Conservation Department	8	7	5	11	29
Buildings Department	37	56	82	-	37
Chief Secretary and Financial Secretary's Office	17	14	18	8	10
Civil Aid Service	2	-	1	3	5
Civil Engineering and Development Department	2	-	2	5	3
Constitutional and Mainland Affairs Bureau	-	-	-	1	-
Commerce and Economic Development Bureau	8	7	9	13	12
Correctional Services Department	27	34	19	11	12
Department of Health	50	61	89	58	76
Department of Justice	14	13	22	25	23
Development Bureau	17	12	10	5	7
Drainage Services Department	22	10	5	7	16
Education Bureau	94	70	99	117	144
Efficiency Office	-	-	-	-	3
Electrical and Mechanical Services Department	15	15	20	12	21
Environment Bureau	9	5	3	-	1
Environmental Protection Department	53	54	41	37	48
Financial Services and the Treasury Bureau	2	3	3	3	5
Fire Services Department	17	12	3	2	6
Food and Environmental Hygiene Department	8	12	30	17	30

[#] Source: Annex A to LC Paper No. CB(4)414/18-19(03).

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2014	2015	2016	2017	2018
Food and Health Bureau	1	6	6	9	14
Government Flying Service	1	5	3	1	1
Government Laboratory	-	-	-	1	-
Government Logistics Department	13	17	13	10	8
Home Affairs Bureau	2	21	3	2	5
Hong Kong Police Force	-	11	1	1	3
Immigration Department	33	38	28	35	18
Information Services Department	30	23	22	27	32
Innovation and Technology Bureau	-	-	-	-	5
Innovation and Technology Commission	6	6	4	6	6
Intellectual Property Department	-	3	2	1	-
Invest Hong Kong	-	-	4	6	4
Labour and Welfare Bureau	6	7	7	8	7
Labour Department	41	33	-	-	-
Lands Department	59	54	60	58	52
Leisure and Cultural Services Department	68	83	61	62	72
Marine Department	21	18	38	24	27
Office of the Communications Authority	-	1	-	-	-
Official Receiver's Office	13	15	26	18	20
Planning Department	28	33	12	9	11
Hongkong Post	-	-	-	2	-
Radio Television Hong Kong	-	-	2	-	-
Rating and Valuation Department	42	42	42	37	36
Registration and Electoral Office	-	38	5	-	22
Security Bureau	4	2	1	-	-
Student Financial Assistance Agency	58	-	-	-	-

Bureau/Department	Number of agency workers (excluding T-contract and service bureau staff) as at 30 September of				
	2014	2015	2016	2017	2018
Trade and Industry Department	3	-	-	-	-
Transport and Housing Bureau	6	8	5	4	5
Transport Department	41	25	23	17	11
University Grants Committee Secretariat	7	3	5	4	9
Water Supplies Department	80	77	69	65	61
Working Family and Student Financial Assistance Agency	-	25	71	89	108
Total	965	979	974	831	1 025

Use of agency workers

List of relevant papers

Meeting	Date of meeting	Paper
Council meeting	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	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>

Meeting	Date of meeting	Paper
	21 January 2019	<p><u>Administration's paper (use of agency workers)</u></p> <p><u>Administration's paper (use of T-contract services)</u></p> <p><u>Updated background brief prepared by the Legislative Council Secretariat</u></p> <p><u>Minutes</u></p> <p><u>Administration's follow up response to Hon IP Kin-yuen's letter dated 15 January 2019</u></p> <p><u>Administration's follow-up response to issues raised at the Panel meeting (use of T-contract services)</u></p> <p><u>Administration's follow-up response to issues raised at the Panel meeting (use of agency workers)</u></p> <p><u>Administration's follow-up response to issues raised at the Panel meeting (use of agency workers)</u></p>