

Motion on
“Expediently conducting a comprehensive review of
the Government’s service outsourcing system”
at the Legislative Council meeting of 8 February 2017

Progress Report

Purpose

At the Legislative Council (LegCo) meeting of 8 February 2017, the motion “Expediently conducting a comprehensive review of the Government’s service outsourcing system” moved by Hon LUK Chung-hung, as amended by Hon Steven HO Chun-yin, Hon LEUNG Yiu-chung and Hon Charles Peter MOK, was passed. The wording of the motion is at **Annex**. This report informs Members of the progress of the work concerned.

Use of marking scheme in the procurement of services

2. Following the established procurement procedures, government departments should procure services in a transparent, open, fair and competitive manner. Under the principle of prudent use of public funds, procuring departments shall generally award service contracts to tenderers who fully satisfy the tender requirements and offer the best prices for the Government. Having said that, this does not imply that the Government only takes the price aspect as the sole criterion in procuring services. For contracts where the quality of services to be provided is important, departments may adopt a marking scheme to evaluate tenders from the technical and price aspects, with a view to awarding a tender that offers both quality and value-for-money.

3. A marking scheme should normally adopt a 30%-40% weighting for the technical aspect, as against a weighting of 70%-60% for the price aspect. That notwithstanding, currently the procurement system allows flexibility for departments to adopt a higher weighting for the technical aspect in the marking scheme, provided that the departments can secure the agreement of the relevant tender boards with full justifications.

4. The Government promulgated in May 2016 the revised guidelines on the use of marking scheme for government service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled workers. Under the revised guidelines, wage level and working hours become mandatory assessment criteria when departments adopt a marking scheme for tender assessment. Assuming other assessment criteria remain unchanged, tenderers who are willing to pay higher wages to their non-skilled workers or propose fewer working hours for them will score higher in the technical assessment, and hence stand a better chance of being awarded the contract. This new measure helps to provide incentive to encourage tenderers to offer better benefits to non-skilled workers. Similarly, we do not set any limit for the weighting of these two assessment criteria. Departments may propose the relevant weightings based on their requirements for consideration by the relevant tender boards.

5. In fact, service quality has always been a major consideration of departments in procuring services. According to the prevailing tendering mechanism, departments must set out clear tender requirements in the tender documents. At present, the four major procuring departments (namely the Food and Environmental Hygiene Department (FEHD), the Government Property Agency (GPA), the Housing Department (HD) and the Leisure and Cultural Services Department (LCSD)) specify requirements (e.g. number of staff, establishment, working hours and wage levels, equipment or measures, management plans, etc.) in the tender documents having regard to their operational and management needs, and request the tenderers to submit detailed proposals for the purpose of tender assessment. Upon award of the service contract, the relevant technical requirements will form part of the contract to facilitate contract management by the departments concerned.

“Standard Employment Contract” and legal obligations of service contractors

6. Since April 2005, the Government has mandated all Government-appointed service contractors to sign the “Standard Employment Contract” (SEC) promulgated by the Labour Department (LD) with their non-skilled workers, which clearly sets out their monthly wages, working hours, overtime rates, method of wage payment and so on. This measure aims at regularising the employment terms and conditions agreed upon between

contractors and their non-skilled workers to safeguard employees' legal rights and benefits. If it is substantiated that a contractor has failed to use the SEC, distorted or altered the terms of the employment contract to the disadvantage of the employees and without the approval of the procuring department, or has failed to strictly comply with the SEC terms, the procuring department may, in accordance with the relevant service contract, issue default notices to the contractor who has breached the contract terms. The procuring departments will also take into account such records in evaluating the contractors' future tenders. For breaches of the SEC involving suspected breaches of the Employment Ordinance (EO) (such as non-payment of wages) which have been referred to LD, LD will take appropriate follow-up actions including criminal prosecution. LD will continue to closely monitor the enforcement of the SEC and will assess the need for revising the SEC provisions depending on the actual operational needs.

7. Similar to other employers, government service contractors must abide by all legislation applicable in Hong Kong, including the provisions on severance payment and other employment benefits under the EO. Based on the information provided by the procuring departments, LD will continue to step up inspection of workplaces involving service contracts near expiration. Labour Inspectors will explain to contractors their statutory obligation of making the relevant payments for dismissal under the EO, and to employees their rights and protection entitled under the EO including severance payment and transfer arrangement. In the event of disputes between contractors and their employees over legal rights and benefits and termination compensation such as severance payment, LD will provide conciliation service. If a suspected breach of the EO is detected in the course of conciliation or inspection, LD will duly follow up on the case by investigation and prosecute the law-defying contractors when there is sufficient evidence. Such information on non-compliance and conviction will be passed to the procuring departments concerned for taking other appropriate follow-up actions.

Management measures on government service contractors

8. The Government attaches great importance to safeguarding the legal rights and benefits of non-skilled workers appointed by service contractors. A series of measures, including the debarment mechanism and demerit point system (DPS), have been introduced to strengthen the management of

government service contractors with a view to protecting relevant employees' legal rights and benefits.

9. Under the debarment mechanism, if a service contractor is convicted of a specified employment-related offence, its tender offers will not be considered by the Government for a period of five years from the date of conviction, regardless of whether the conviction is related to government service contracts. Under the DPS, a service contractor will be awarded with demerit points if it fails to sign the SEC promulgated by LD with its employees, or fails to observe the contractual obligations stipulated in the SEC in respect of wages, working hours and auto-payment of wages. If the service contractor has accumulated three demerit points over a rolling period of three years preceding the tender closing date, its tender offers will not be considered by the Government in the subsequent five years.

10. At the same time, the DPS provides with the procuring departments an objective indicator to assess tenderers' past performance in the management of non-skilled workers during tender evaluation. In respect of government service contracts that rely heavily on the deployment of non-skilled workers, the four major procuring departments will take into account tenderers' past performance under the DPS in assessing the relevant tender offers. For a service contractor who has been awarded with demerit points under the DPS, scores may be deducted or no additional scores will be given in the relevant assessment.

11. Having regard to the views of LegCo Members and labour groups, the Financial Services and the Treasury Bureau, LD and other relevant departments are actively exploring the inclusion of more employment-related offences (such as occupational safety and health) or breaches of contractual obligations under the debarment mechanism or the DPS as appropriate.

Monitoring the performance of service contractors and handling complaints lodged by non-skilled workers

12. Under the government procurement regulations, departments are required to put in place a mechanism to monitor whether a service contractor performs to the standard laid down in the contract and complies with the contract terms. In respect of government service contracts that rely heavily on the deployment of non-skilled workers, the four major procuring departments

have adopted various measures to monitor contractors' performance and to handle relevant staff complaints concerning unreasonable treatment –

(a) Food and Environmental Hygiene Department

FEHD has established a contract management mechanism to monitor the performance of service contractors. FEHD's staff conducts regular and surprise inspections to check contractors' performance and confirm whether the services have been completed as scheduled in accordance with the contract provisions and the approved work plan (including staff attendance). In case of non-compliance with the contract provisions, FEHD will take appropriate actions including the issuance of verbal warnings, written warnings or default notices as well as deducting monthly payment of service charge.

Upon receipt of a non-skilled worker's complaint against a service contractor's non-compliance with the contract terms, FEHD will conduct investigations immediately and take follow-up actions as appropriate. If the complaint is substantiated and involves issues beyond the service contract terms, FEHD will refer the case to other relevant departments for follow-up.

(b) Government Property Agency

GPA has put in place measures to monitor the performance of service contractors. These include compiling periodic reports to assess contractors' compliance with various service level requirements set out in the property management services contracts, conducting customer satisfaction surveys, and carrying out regular and surprise on-site inspections to evaluate their service levels. For any under-performed contractors, GPA will impose sanctions according to the contract terms.

To monitor service contractors' treatment to their non-skilled workers, GPA conducts regular or surprise inspections to examine the relevant records. At present, the service contracts awarded by GPA provide that contractors shall pay their non-skilled workers at a rate not lower than the committed wages or the statutory minimum wage. To ensure contractors' payment of the prescribed wages, the contracts also provide that the monthly statements submitted by the contractors shall

be certified by recognised professional accountants to confirm that the contractors have fulfilled their contractual obligations by paying the prescribed wages to their employees. Moreover, GPA's staff conducts random interviews with frontline employees of contractors on a regular basis to check whether wage payments and related benefits have been provided in accordance with the SEC.

Upon receipt of a complaint from frontline employees concerning aspects such as wages, working hours and auto-payment of wages specified in the SEC, GPA will conduct follow-up investigation. For substantiated complaint cases, demerit points will be awarded to the service contractor under the DPS. If the contractor is suspected to be in breach of labour laws, GPA will pass the relevant information to LD for follow-up.

(c) Housing Department

HD monitors the performance of service contractors continuously to ensure their compliance with the contract terms in respect of paying the committed wages to cleaning workers and security guards. From time to time, HD also conducts interviews with the contractors' management and their employees to check contractors' compliance with labour laws and the SEC, as well as to help enhance employees' awareness of their employment rights and benefits. In case of suspected breaches, HD will refer to LD for follow-up or prosecution.

In addition, prior to the change of service contractors, estates offices will post notices to remind affected employees of their rights and benefits under the EO. Estates offices will also hold meetings with the incoming and outgoing contractors to remind them of the need to comply with the contract terms and statutory requirements in making employment arrangements. HD will not tolerate any contractors contravening labour laws or exploiting their employees. In case of substantiated breaches of contract terms or laws, HD will take appropriate regulatory actions, such as awarding demerit points under the DPS, termination of service contract, or even removal of the contractor from the Housing Authority's Counterparty List.

(d) Leisure and Cultural Services Department

Having regard to the actual operational needs of individual venues, LCSD requires its cleansing service contractors to provide the specified number of staff at designated posts in accordance with the service specifications in the tender documents/contracts. Contractors are required to submit information on staff establishment, particulars of their employees and monthly duty rosters to the venue management for perusal. The venue management also monitors the performance of contractors and their employees and handles employees' complaints of unreasonable treatment through on-site inspections or surprise checks, working meetings with contractors, and routine contacts with their employees. In case of any non-compliance with the contract requirements by the contractors, the venue management may give verbal advice or issue advisory letters to the contractors. For serious cases, default notices may be issued and follow-up actions may be taken as appropriate. Besides, the venue management conducts monthly assessment on the performance of contractors to ensure that they meet the contract requirements and comply with the contract provisions.

For breaches of contractual obligations stipulated in the SEC in respect of wages, maximum working hours, etc., LCSD will take appropriate actions against the contractors under the DPS. LCSD will refer cases of suspected violation of labour laws to the law enforcement agencies concerned for follow-up. If a contractor is convicted of any offence under the above laws, LCSD will consider terminating the service contract in accordance with the contract terms and removing the contractor from its Supplier List.

At present, the service contracts awarded by LCSD provide that service contractors shall pay their non-skilled workers at a rate not lower than the committed wages or the statutory minimum wage. To ensure contractors' payment of the prescribed wages, the contracts also provide that the monthly statements submitted by the contractors shall be audited by recognised professional accountants or corporate practices to certify that the contractors have fulfilled their contractual obligations by paying the prescribed wages to their employees.

Upon receipt of a complaint from the contractor's employees, LCSD's venue management will normally communicate with the contractor and its employees about their disputes and provide suitable assistance in the first place. Where necessary, the venue management will assist the employees to approach LD for follow-up.

13. Separately, LD has implemented various measures to safeguard the employment rights and benefits of non-skilled workers engaged by service contractors. From time to time, Labour Inspectors of LD take the initiative to conduct surprise inspections of contractors' workplaces, interview their employees without the presence of a third party and check the employment records to monitor contractors' compliance with the labour laws and the SEC provisions. In case of suspected violation of the labour laws, LD will initiate prosecution against the offending contractors subject to sufficient evidence, and forward the non-compliance and conviction records of the contractors to the procuring departments for appropriate actions, including termination of existing service contracts concerned.

14. LD will also continue to safeguard the occupational safety and health of employees, including those engaged by service contractors, through inspections and law enforcement, publicity and promotion, as well as education and training to reduce hazards at workplaces. If a contractor is found to have violated the Occupational Safety and Health Ordinance, LD will conduct thorough investigations, and prosecute employers subject to sufficient evidence.

Outsourcing government services

15. Currently, there is no policy requiring government departments to outsource public services, or mandating outsourcing as the primary mode for delivering public services. Departments may decide whether their public services are to be delivered through the employment of civil servants, non-civil service contract (NCSC) staff or outsourcing etc., having regard to their operational needs, service nature and efficiency. If departments decide to outsource, the services should be procured in a transparent, open, fair and competitive manner in accordance with the government procurement procedures. When departments consider that there is a need and justification to provide certain public services through direct recruitment, they should select the most suitable candidates through a fair, open and competitive recruitment process.

16. As regards information technology (IT) services, the Government has been committed to fostering IT development in Hong Kong and enhancing e-Government services. In the past five years, the Government implemented over 1 000 new IT projects, with a total investment amounting to \$10 billion. However, system development work is generally of time-limited nature. Upon completion of a project, the service of the relevant staff would no longer be required. The engagement of T-contract staff can complement the manpower of the civil service in certain short-term or time-limited projects, which enables bureaux/departments (B/Ds) to better cope with the fluctuating demand for IT manpower. It has always been the practice of B/Ds to determine whether civil servants in IT grades, NCSC staff or T-contract staff should be deployed to the IT-related posts, having regard to the nature and requirements of the jobs. Such a well-established arrangement allows the Government to readily tap the latest knowledge and technologies in the market, and facilitates technology exchange between IT personnel in the civil service and IT professionals in the private sector for joint promotion of e-Government services.

17. B/Ds will review their IT manpower needs annually. For posts with long-term service needs, individual B/Ds may consider creation of civil service posts. Although only a handful of T-contract staff were interested in applying for civil service posts in the past, they are welcome to apply for such vacancies. In fact, their successful rate is higher than other applicants in general. Over the past five years, a total of 20 T-contract staff were appointed as civil servants.

Financial Services and the Treasury Bureau

Labour and Welfare Bureau

Labour Department

Civil Service Bureau

Office of the Government Chief Information Officer

Food and Environmental Hygiene Department

Government Property Agency

Housing Department

Leisure and Cultural Services Department

April 2017

(Translation)

Motion on
“Expeditiously conducting a comprehensive review of the Government’s
service outsourcing system”
moved by Hon LUK Chung-hung
at the Council meeting of 8 February 2017

Motion as amended by Hon Steven HO, Hon LEUNG Yiu-chung and
Hon Charles Peter MOK

That, in the recent several decades, the governance philosophy of the Hong Kong Government has all along been influenced by neo-liberalism; since the 1990s, the Government has been gradually outsourcing public services such as cleaning and security; in recent years, the scope of outsourced services has become even more extensive, covering areas such as information technology, plant and equipment maintenance, building and property management, with a significant increase in the number of outsourced service contracts; given that many public and private organizations have followed the Government’s practice of outsourcing services, some employees of outsourced service contractors have seen their remuneration suppressed, employment rights and benefits exploited, and employment stability undermined over the years, therefore, there are opinions that service outsourcing is one of the causes of in-work poverty and the disparity between the rich and the poor in Hong Kong; although the Government has proposed improvement measures to the service outsourcing system, which include amending the standard employment contract, improving the marking scheme for assessing tenders for contracts, and imposing a requirement last year that all departments must consider the wage levels to be offered to employees by tenderers when inviting tenders for outsourced services, these measures are only patchy fixes which cannot reverse the plights of ‘low wages, little benefits and a lack of job security’ faced by employees of outsourced services and the overall problem of poor quality of outsourced services; in this connection, this Council urges the Government to conduct a comprehensive review of the service outsourcing system, which includes:

- (1) ceasing the use of the approach of ‘lowest bid wins’ in inviting tenders and at the same time introducing a ‘quality-orientated’ tendering mechanism which sets out clearly in the tender documents various relevant requirements for outsourced service contractors, such as wage levels of frontline staff, establishment of frontline staff, ratio between the establishment of frontline staff and that of supervisory staff, standards of equipment, project management and evaluation approach, and stipulates that the relevant requirements shall carry a weighting of

no less than 50% in the scores of the tender as a whole, thereby encouraging tenderers to upgrade the quality of their contracts to increase the chance of bidding successfully;

- (2) stipulating that tenderers who offer to employees wage levels higher than the statutory minimum wage or set the wage levels according to the median wage of the relevant industries will be given higher scores in the assessment to encourage outsourced service contractors to treat their employees well;
- (3) strengthening the monitoring of the performance of outsourced service contractors and strictly enforcing the demerit point system for outsourcing services so that severe punishments will be imposed on outsourced service contractors in breach of labour legislation or safety requirements;
- (4) examining and improving the standard employment contract to eradicate exploitation of employees' rights and benefits by outsourced service contractors, such as evasion of making severance payment; and
- (5) reviewing the Government's approach in outsourcing services by, among others, narrowing the scope and scale of service outsourcing, and recruiting employees on civil service agreement terms to fill positions with long-term service needs while according priority in employment to employees of outsourced service contractors or non-civil service contract; and
- (6) reviewing the marking scheme for assessing tenders for contracts, and stipulating that outsourced service contractors who received demerit points will have scores deducted for their tenders for contracts;
- (7) establishing a redress mechanism for unreasonable treatment; and
- (8) in respect of information technology services provided by the Government, ameliorating the trend of excessive outsourcing, reducing by phases the number of relevant posts outsourced to retain professionals, and establishing a mechanism for T-contract staff to be converted to civil servants.