

LCQ7: Non-skilled employees engaged by government service contractors

Following is a question by the Hon Kingsley Wong and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (April 6):

Question:

To enhance the protection of the employment terms and conditions as well as labour benefits of non-skilled employees (employees) engaged by government service contractors (contractors), the Government has implemented improvement measures since April 1, 2019. It also put in place transitional arrangements for government outsourced service contracts (contracts) which were at the tendering stage or already awarded during the period between October 10, 2018 and March 31, 2019 (collectively referred to as "improvement measures"). In this connection, will the Government inform this Council:

(1) in respect of each of the four major procuring departments (i.e. the Leisure and Cultural Services Department, the Housing Department, the Food and Environmental Hygiene Department, as well as the Government Property Agency), of the number of contracts under the department which were in force in the past three years, and the number of employees involved in such contracts; the percentage of such employees in the department's overall manpower, and among such employees, the number of those who had not benefited from the improvement measures (with a breakdown by service category, range of hourly wages and contract period);

(2) among the contracts currently in force under each of the aforesaid departments, of the number of those contracts which have stipulated paid meal breaks for employees, as well as the number of employees involved in such contracts and the percentage of such employees in the total number of employees engaged under all the contracts;

(3) among the employees who were engaged under the contracts mentioned in (1) and had been employed under a continuous contract for not less than one year, of the number of those who were paid contractual gratuities in the past three years upon completion/termination of their contracts in accordance with the improvement measures, and the amounts involved; if there were employees who had not been paid the gratuities, of the reasons for that;

(4) of a breakdown by type of the complaints received by the Government in the past three years about contractors failing to duly carry out their contractual obligations under the improvement measures, as well as the number of those cases in which the contractors concerned were penalised because the complaints had been found substantiated, and the penalties imposed; and

(5) of the additional expenditure and the number of contracts involved in each of the years since the implementation of the improvement measures, and

whether the Government has plans to: (i) review again the implementation situation of the improvement measures, (ii) extend the scope of application of such measures to the outsourced service contracts of public organisations and subvented service organisations, (iii) include in the contracts a provision that the contractor should provide paid meal breaks for its employees, (iv) further increase the weighting for "technical" (including employment terms and conditions for employees) scores in the marking schemes for tender assessments, as well as (v) downsize outsourced services and switch to employing staff on civil service agreement terms to provide services with a long term need?

Reply:

President,

Having consulted the Labour and Welfare Bureau, the Food and Environmental Hygiene Department (FEHD), the Leisure and Cultural Services Department (LCSD), the Government Property Agency (GPA) and the Housing Department (HD), our reply to the question raised by the Hon Kingsley Wong is as follows:

(1) As regards government outsourced service contracts that rely heavily on the deployment of non-skilled workers (service contracts) engaged by the four major procuring departments, a breakdown of the number of service contracts, the number of outsourced non-skilled workers involved and the percentage of such workers to the respective department's overall manpower in the past three financial years is set out at Annex 1.

Information on the number of outsourced non-skilled workers who have not benefited from the improvement measures under the existing service contracts engaged by the four major procuring departments (with a breakdown by service category, range of hourly wages and contract period) is set out at Annex 2.

(2) As the employers of the outsourced non-skilled workers, government service contractors (contractors) may, having regard to their operations and needs, agree with employees on the employment terms, including whether meal breaks are paid. Generally speaking, service contracts awarded by procuring departments do not prescribe provisions requiring the contractors concerned to provide paid meal breaks for their employees.

Nevertheless, with the implementation of the improvement measures since April 1, 2019, if contractors bidding for service contracts provide paid meal breaks for the non-skilled workers employed by them, the committed wages specified in their tenders should be raised, and it would increase the technical score of the contractors and their chance of winning the bid.

(3) Contractors are required to pay contractual gratuities to their non-skilled workers pursuant to the terms of service contracts. The contractual gratuities are paid directly by the contractors to the non-skilled workers employed by them, and the four major procuring departments do not keep information relating to the contractual gratuities paid to the outsourced non-skilled workers under their service contracts. The four major procuring

departments have not received any complaint from outsourced non-skilled workers against their employers (i.e. contractors) in this regard.

(4) In the past three financial years, LCSD received one complaint about a contractor's failure to pay additional remuneration to the non-skilled workers who were employed by the contractor and reported for duty when typhoon signal no. 8 was in force. As the complaint was found substantiated, the contractor concerned was issued with a default notice by LCSD and given one demerit point under the Demerit Point System in July 2020. Under the mechanism, if a contractor has accumulated three demerit points over a specified rolling period of 36 months, the service contract tenders submitted by the contractor shall not be considered for a period of five years from the date the third demerit point was received.

FEHD, GPA and HD did not receive any complaint about contractors' failure to duly fulfil their contractual obligations in relation to the improvement measures in the past three financial years.

(5) On October 10, 2018, the Government announced the improvement measures to enhance the remuneration packages as well as labour benefits of outsourced non-skilled workers. Such measures would be applicable to service contracts tendered from April 1, 2019 onwards. The Government also announced that transitional arrangements would be put in place for contracts at the tendering stage or awarded during the period between October 10, 2018 and March 31, 2019. Under the transitional arrangements, the new terms would be incorporated into the relevant contracts having regard to the actual circumstances to enable the outsourced non-skilled workers concerned to benefit from the new improvement measures, and the Government would provide the contractors with top-up payments in this regard.

Information on the additional top-up payments provided by the four major procuring departments to the contractors under the transitional arrangements and the number of service contracts involved is set out at Annex 3.

As the contract terms in relation to the improvement measures have been incorporated into the service contracts tendered from April 1, 2019 onwards, there is no need for the procuring departments to provide additional payments to the contractors since then.

The improvement measures are a major step forward in providing better protection to non-skilled workers engaged by contractors. The "Report on Review of the Improvement Measures for Non-skilled Employees Engaged by Government Service Contractors Implemented with effect from April 1, 2019", released on January 27, 2021 by the Inter-departmental Working Group (working group) set up and led by the Secretary for Labour and Welfare, revealed that there was a net increase of 14.0 per cent in the relevant outsourced non-skilled employees' median hourly wage since the implementation of the package of improvement measures by the Government in April 2019. The improvement measures adopted have been clearly proven to be significant and effective in enhancing the remuneration packages and labour protection for non-skilled employees engaged by contractors. The working group also recommended the introduction of three additional measures, namely (1) requiring contractors

to provide uniforms with dry-fit properties for non-skilled employees engaged in outdoor work in summer; (2) introducing measures on preventing heat stroke in the tender brief as guidelines on good practices for contractors to implement the measures; and (3) conducting a review on the working hours arrangements for outsourced non-skilled employees when the working hours guidelines of the property management and cleaning services sectors by the tripartite committees of the Labour Department are available. Procuring departments have already implemented the first two additional measures.

The Government will keep in view the implementation of the improvement measures and review the situation from time to time so as to identify areas for further improvement. We have also asked relevant policy bureaux to encourage the public organisations and non-governmental organisations in receipt of government funding under their purview to draw reference from the Government's policy and consider adopting such improvement measures through appropriate means, with a view to enhancing protection for their outsourced non-skilled workers.

Regarding outsourcing policy, outsourcing is one of the means adopted by government departments to deliver public services. At present, government departments decide on their own how they deliver the public services having regard to their operational needs, and they will consider adopting outsourcing arrangements as appropriate to make better use of the technical expertise and experience in the market and deliver services with flexibility.