

Press release

**Government response to request for top-up payment arising from the
adjustment of the statutory minimum wage rate**

Thursday, July 4, 2013

On the request from Environmental Services Contractors Alliance (Hong Kong) (ESCA) for the Government to provide top-up payment arising from the adjustment of the statutory minimum wage (SMW) rate, a Government spokesman made the following response today (July 4):

In the past few months, the Government had replied and met ESCA (which represents a number of government outsourced service contractors) and individual contractors on a number of occasions, explaining to them the stance of the Government on ESCA's request. We have clearly reiterated that contractors as the employers have the statutory and contractual obligations to pay their employees according to the Hong Kong laws and employment contracts.

ESCA has claimed that some of the government outsourced service contracts commenced before the implementation of the SMW on May 1, 2011. As such, the contractors were unable to assess the implication arising from the implementation of the SMW when they tendered the contracts concerned. In fact, the introduction of SMW was announced in October 2008 in the Policy Address. The Government also appointed the Provisional Minimum Wage Commission (the Commission) in February 2009 to provide recommendation on the SMW rate. The implementation of the SMW was widely discussed in the community at that time.

The Minimum Wage Ordinance was passed by the Legislative Council in July 2010. In its report submitted to the Government in October 2010, the Commission clearly recommended that the initial SMW rate should be set at \$28 per hour. The recommendation was accepted by the Chief Executive in Council and the initial SMW rate was gazetted in November 2010. Coupled with the Government's wide publicity, the public (including the government outsourced service contractors) should have been aware of the implementation of the SMW before it was formally launched and that the SMW rate would be subject to regular adjustment.

All along, when contractors submit tenders, they have to consider all cost-related factors including the material costs, rent, wages, etc., to assess themselves how these factors would affect their costs during the contract period and to suitably

reflect the relevant costs in the tender prices. As such, contractors should capture the estimated cost for the possible adjustment of the SMW rate in the tender prices. The Government has no responsibility to provide top-up to contractors for the increase in operating costs arising from their compliance with the statutory and contractual obligations.

That said, the implementation of the initial SMW rate on May 1, 2011 had its uniqueness. Having considered that a large number of non-skilled workers were employed under some of the government outsourced service contracts, and that the wages of these non-skilled workers were far below the initial SMW rate, the Government had made an exceptional arrangement to provide top-up for the outsourced service contracts concerned on a one-off basis, with a view to avoiding disruption or termination of public services as the contractors might have financial difficulties due to the rise of wage cost. The exceptional arrangement was made having balanced all relevant factors such as protecting the non-skilled workers, not affecting the public and putting public money to good use.

The above top-up arrangement only covers the increase in wage cost of non-skilled workers arising solely and directly from meeting the initial SMW rate. At the time when the relevant top-up arrangement was introduced and in our replies to subsequent requests and enquiries, the Government has already reiterated clearly that the provision of top-up is a one-off and exceptional arrangement, and no top-up in subsequent SMW adjustment exercises would be provided. Hence, the Government would not provide top up for the adjustment of the SMW rate effective on May 1, 2013.

There is a wide coverage of government outsourced services which include those provided for government offices, leisure and cultural facilities, food markets, streets, public toilets, etc. These services are closely related to the public living. Hence, when contractors bid for relevant contracts, they shall ensure that they are fully capable of fulfilling the contractual obligations so as to avoid termination of contracts and putting the continuity of public services at risk due to their failure to fulfill contractual obligations in future. Under the spirit of contract, contractors should comply with the terms and conditions of contracts to provide services to the Government and the public.

Regarding ESCA's concern on government cleansing service contracts, most of these contracts last for two to three years. The number of contracts for which tender offers were submitted before November 2010 (i.e. the date on which the initial SMW

rate was accepted by the Chief Executive in Council and published in Government Gazette) but have not yet expired is small. As regards management and cleansing service contracts with a longer contract period, such as those let by the Government Property Agency and the Housing Authority, they have already included a price adjustment clause under which the contract price will be adjusted in accordance with the specified mechanism (such as the Composite Consumer Price Index and Nominal Wage Index published by the Census and Statistics Department, etc.). Thus, it is not appropriate for the Government to provide further top-up on the adjustment of the SMW rate.

All major outsourcing contracts would have been arranged through an open competitive bidding process. These would typically have due regard to price as well as service quality considerations. The Government would not seek to impose any cap on the profit margin of contractors; nor should we use public funds to offer undue top-ups to contractors to cover their normal operating costs and business risks. In addition, providing such subsidy to the selected tenderers after the tendering process would be unfair to those tenderers who did not win the contracts.

The Government will continue to maintain contact with ESCA and government outsourced service contractors with a view to maintaining the level of public services.

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