

Construction Industry Council

Committee on Subcontracting

Meeting No. 001/14 of the Committee on Subcontracting for 2014 was held on 21 January 2014 (Tuesday) at 14:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

Present:	Mike WONG	(MW)	Chairman
	Luen-kiu CHOW	(LKC)	
	Paul CHONG	(PC)	
	Lawrence NG	(LN)	
	Derrick PANG	(DP)	
	Bay WONG	(ByW)	
	Sonia YUNG	(SY)	for Permanent Secretary for Transport and Housing (Housing)
	Nelson CHAN	(NC)	Independent Commission Against Corruption
	Ki-cheung TANG	(KCT)	The Hong Kong Institute of Surveyors
	Chun-yuen TSE	(CYT)	Hong Kong Construction Subcontractors Association
	Sing-lam WONG	(SLW)	Contractor's Authorised Signatory Association
	Sam-choi CHAN	(SCC)	Construction Site Workers General Union
	Arthur WONG	(AW)	Development Bureau
Roger LAM	(MPL)	Water Supplies Department	
In Attendance:	Ivan WONG	(IW)	Senior Manager - Council Services
	Ivan KO	(IK)	Manager - Council Services
Apologies:	Anthony CHAN	(AnCN)	
	Hau-wai CHEUNG	(HWC)	
	Wai-wai YU	(WWY)	
	Teresa CHENG	(TC)	
	Tat-tong CHEUNG	(TTC)	Chair of Working Group on the Review of the Implementation of the Dispute Resolution Mechanism
	Tommy LEUNG	(TLg)	Airport Authority Hong Kong
	Bernard HUI	(BH)	The Hong Kong Institute of Architects
	Alex CHOW	(KPC)	Building Department
	Chi-leung LI	(CLL)	Labour Department

PROGRESS REPORT

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1.1 Confirmation of the Progress Report of the 4th Meeting for 2013

Members referred to Paper CIC/SBC/R/004/13.

With no further comments, Members confirmed the progress report of the previous meeting held on Thursday, 21 November 2013 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

1.2 Matters Arising from the Last Meeting

Item 4.3 The issues relating to the enhancements to SRS were covered in the Agenda Item 1.5 of the meeting.

1.3 Task Force on the Adoption of Dispute Resolution Advisor System to the Subcontract

Members took note of Paper CIC/SBC/P/001/14.

HKCA strongly objected to extend the current Dispute Resolution Advisor (DRA) system adopted in the Main Contract (between Employer and Main Contractor) to the Subcontract (between Main Contractor and Subcontractor), in particular the use of the same Dispute Resolution Advisor (i.e. same person) acting for both the Main Contract and the Subcontracts within the same project.

It was agreed that the Task Force will explore a different system similar to but not a direct extension of the current DRA system adopted in the Main Contract to the Subcontract.

HKCA stated that they supported in principle a mechanism to avoid dispute but reiterated that their concerns should be satisfactorily addressed and resolved before they would participate in any pilot run or trial scheme.

The Chairman and some Members considered that pilot schemes should be conducted at the first instance to ascertain more details about the benefits and constraints in the adoption of such a dispute avoidance mechanism in the Subcontracts for developing the scheme. ByW relayed HKCA's request for the mandatory implementation of

the Subcontract Registration Scheme (SRS) as soon as possible for the consideration of the Committee. The Secretariat said that the Council had endorsed the preparation of a strategic plan like the CIRC Report prepared in 2001 to set out the future strategy of the industry (“the Tang Report II”). It might be more appropriate to consider the matter from a strategic perspective in the “Tang Report II”. The request was further discussed in Agenda item 1.5 of this meeting.

1.4 **Standard Contract Provisions for Domestic Subcontracts**

Members took note of Paper CIC/SBC/P/002/14, CIC/SBC/P/003/14, CIC/SBC/P/004/14, CIC/SBC/P/005/14, CIC/SBC/P/006/14 and CIC/SBC/P/007/14.

KCT advised that the first and second round of the discussions were completed with the concerted effort of the Task Force Members in 31 meetings during the past 2 years. Task Force Members’ consensus on the draft Standard Form was almost reached after two rounds of the discussions.

The third round of the discussion will begin after the 3 months’ industry consultation period ending on 15 April 2014. No big change to the draft Standard Form was expected in the upcoming third round discussion.

KCT relayed HKCA’s general comments on the purpose, content and implementation of this draft Standard Form to Com-SBC:

1. the original purpose of this Standard Form is to prepare a sub-contract that is as simple and short as possible, leaving all the specific details to be added by the users; the present draft Standard Form is somehow intended to be more encompassing and is not simple and short;
2. the Chinese version of the Standard Form would more likely be used; professional translation should be adopted to ensure good readability for the general audience;
3. the target end users of this Standard Form should be specified;

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4. this Standard Form includes best practices which would require more administrative effort on both the main contractors and sub-contractors and thus creating burden to them;
5. enhancement of the sub-contractors' capability would be required; in order to better implement this Standard Form, mandatory registration of sub-contractors should commence as soon as possible; and
6. during the course of discussions, it is found that there are certain common practices which are viewed by the sub-contractors as undesirable but are indeed imposed upon by the employers on the main contractors in the main contract; the industry should work together to eliminate those bad practices.

KCT also responded to HKCA's aforementioned views respectively as follows:

1. whether the Standard Form is long or short, a learning curve is required for any new arrangement.
2. agreed that the Standard Form in Chinese should be easy to read instead of containing a lot of legal technical terms and jargons.
3. this version of the Standard Form is targeting at those sizable subcontractors. It was planned to produce a simpler version for second tier subcontractors and less sizable subcontractors.
4. HKCSA had expressed that they do not worry about the administrative effort on executing the standard form.
5. the mandatory registration of subcontractors would be discussed in Agenda item 1.5 of this meeting.
6. HKCA was requested to provide a wish list on removing bad practices in the Task Force meeting.

HKCA

NC expressed his disappointment about the Task Force's decision on refusing the ICAC's recommendation of adding to the Standard Form an anti-bribery clause, which aimed to create a clean and healthy sub-contracting environment in private sector construction. He therefore did not endorse the draft Standard Form in this respect.

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KCT explained that the principle of this Standard Form is to produce a precise and simple document; and avoid duplicating requirements under relevant legislation. Task Force Members considered that the terms suggested by ICAC regarding anti-corruption are statutory requirements; as such, they opined that there was no need to repeat those terms in the Standard Form. The Chairman agreed to Task Force Members' views in principle. The Secretariat was directed to make a remark on this in the upcoming Council Meeting.

**The
Secretariat**

After much deliberation, Members agreed to the following:

1. this version of the draft Standard Form should be published on CIC's website, with an aim to collect more views from the industry on this draft.
2. both English and Chinese versions of the draft Standard Form should be subject to legal vetting including the usage of language to improve readability. The Secretariat was directed to consider engaging a suitable consultant or advisor as appropriate.

**The
Secretariat**

**The
Secretariat**

1.5 Enhancements to Subcontractor Registration Scheme

Members took note of Paper CIC/SBC/P/008/14.

CYT, Chairman of the new Task Force on Enhancements to Subcontractor Registration Scheme, presented the proposed Terms of Reference and Membership of the Task Force.

Members had no comments on the Terms of Reference. However, Members suggested inviting labour unions and REDA to participate in the Task Force.

Construction Site Workers General Union and Hong Kong Construction Industry Employees' General Union agreed to participate in the Task Force. The Secretariat was directed to invite REDA accordingly.

**The
Secretariat**

The Chairman suggested the Task Force to consider setting out some initiatives for the adoption of the SRS in the private sector.

**Task Force on
Enhancements
to SRS**

HKCA requested for the implementation of mandatory registration of subcontractors (SRS). A Member recalled that the implementation of a mandatory SRS was discussed around one year ago. The

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conclusions at that moment were:

- a) categorisation of subcontractors with respect to their capabilities is the prerequisite of implementing the mandatory SRS;
- b) more information of subcontractors is required for developing a mechanism for the categorisation of subcontractors;
- c) however, there was not sufficient information of subcontractors for developing the mechanism at that moment; as such, the discussion of the implementation of mandatory SRS was deferred until there was sufficient information collected after the implementation of the SRS in January 2013.

The new Task Force was requested to review the existing information to consider if they were sufficient for developing the mechanism with a view to studying the necessity of mandatory registration of subcontractors.

**The
Secretariat**

1.6 Update on SRS Operations

Members took note of Paper CIC/SBC/P/009/14.

IW briefed Members on SRS operations.

IW advised that it was targeted to reduce the turnaround time of processing application from 8 weeks to 6 weeks in 2014.

Members were invited to participate in the Mediation Week 2014 organised by the Department of Justice scheduled for 20 to 27 March 2014. Some Members suggested arranging more events throughout the year. The Chairman requested CYT to think about the enhancement of services provided to Registered Subcontractors as a whole.

**Task Force on
Enhancements
to SRS**

1.7 Update on the Working Group on Security of Payment Legislation for the Construction Industry

Members took note of Paper CIC/SBC/P/010/14.

Suggested comments of the Secretariat on the draft consultation document prepared by the government were included in the paper. Members had no additional comments at the meeting. The Development Bureau advised that Members could further express

their views on the proposal in the upcoming 3 months industry consultation starting from March 2014.

1.8 **Amendments to the Committee**

IW gave a presentation on the amendments to the Committee which would be effective from 1 February 2014.

In order to avoid duplicated efforts, the Committee on Procurement and the Committee on Subcontracting would be merged into a single committee named Committee on Procurement and Subcontracting (Com-PNS). Accordingly, the Subcontractor Registration Scheme would be scrutinised by this new Com-PNS.

The new terms of reference of Com-PNS would be as follows:

- To examine current practices on procurement in relation to project planning, tendering, contract administration and site supervision and recommend good practices to improve the quality and cost effectiveness in delivery of construction contracts.
- To operate and develop the Subcontractor Registration Scheme (SRS).
- To raise the professional standard of subcontractors through providing value-added services under the SRS.
- To examine current arrangements for selection and management of subcontractors and recommend improvements.
- To promote use of written subcontracts.
- To promote good practices relating to dispute resolution.

1.10 **Any Other Business**

The Chairman thanked Members for their tremendous contributions to the Committee.

Members unanimously delivered their vote of thanks to the Chairman for his great leadership, open-mindedness, fairness and decisiveness.

1.11 **Tentative Date of the Next Meeting**

This was the last meeting of the Committee on Subcontracting.

All to note

There being no further business, the meeting was adjourned at 5:00pm.