

Construction Industry Council

Committee on Subcontracting

Meeting No. 002/13 of the Committee on Subcontracting for 2013 was held on 16 April 2013 (Tuesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

| | | | |
|----------------|----------------|---------------------|---|
| Present: | Mike WONG | (MW) | Chairman |
| | Anthony CHAN | (AnCN) | |
| | Paul CHONG | (PC) | |
| | Luen-kiu CHOW | (LKC) | |
| | Lawrence NG | (LN) | |
| | Bay WONG | (ByW) | |
| | Sam-choi CHAN | (SCC) | Construction Site Workers General Union |
| | Ki-cheung TANG | (KCT) | The Hong Kong Institute of Surveyors |
| | Chun-yuen TSE | (CYT) | Hong Kong Construction Subcontractors Association |
| Arthur WONG | (ArW) | Development Bureau | |
| In Attendance: | Thomas TSE | | Hong Kong Construction Association |
| | Sonia YUNG | (SY) | Housing Authority (Representing Ada FUNG) |
| | Roger LAM | (MPL) | Water Supplies Department |
| | Ricky LAI | (WKLi) | Independent Commission Against Corruption (Representing Nelson CHAN) |
| | Ivan WONG | (IW) | Senior Manager – Council Services |
| | Shirley LEE | (SyL) | Manager - Council Services |
| Apologies: | Teresa CHENG | (TC) | |
| | Hau-wai CHEUNG | (HWC) | |
| | Derrick PANG | (DP) | |
| | Wai-wai YU | (WWY) | |
| | Bernard HUI | (BH) | The Hong Kong Institute of Architects |
| | Tommy LEUNG | (TLg) | Airport Authority Hong Kong |
| | LI Chi-leung | (CLL) | Labour Department |
| | WONG Sing-lam | (SLW) | Contractor's Authorised Signatory Association |
| Alex CHOW | (KPC) | Building Department | |

PROGRESS REPORT

Action

2.1 Confirmation of the Progress Report of the 1st Meeting for 2013

Members referred to Paper CIC/SBC/R/001/13.

With no further comments, Members confirmed the progress report of the previous meeting held on Tuesday, 8 January 2013 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

2.2 Matters Arising from the Last Meeting

2.2.1 Reference Materials for Application of Dispute
(Item 1.2.1 Resolution in Construction Contracts (January 2013)
of Meeting
001/13)

The Reference Materials was available for download at the CIC website.

2.2.2 Guidelines on Measures for Protection of Workers'
(Item 1.4 of Wages, Version 2 (March 2013)
Meeting - Revised Specimen Employment Contract
001/13)

IW reported that the revised specimen employment contract, which superseded the previous version, had been incorporated in the Guidelines on Measures for Protection of Workers' Wages, Version 2 (March 2013). To attract the attention of potential users, the revised specimen employment contract had also been uploaded as a separate document to CIC website for easy reference.

To promote industry best practices, HKCA was invited to promote the adoption of the revised specimen employment contract amongst their member companies.

2.3 Formation of the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism

Members received a brief introduction to the Paper CIC/SBC/P/005/13 and its Annex A concerning the proposed terms

of reference and members of the new working group.

With no further comments, Members endorsed the terms of reference as well as the nominated representatives of the local stakeholder groups to serve as members of the new working group. The first meeting would be arranged shortly.

2.4 **Provision of Services for Conducting Consultancy Study on the Adoption of Dispute Resolution Advisor System to the Subcontract**

Members were briefed on the Paper CIC/SBC/P/006/13.

The following key issues in the paper were particularly highlighted:

- Paragraph 3 (point 3.1) on page C16 - Engagement of consultant and justification for using consultancy services;
- Point 4.2 (a) to (i) on pages C16 – C17 – The proposed scope of consultancy services;
- Paragraph 5 (points 5.1 and 5.2) on page C17 – Proposed budget for the consultancy service; and
- Paragraph 6 (points 6.1 and 6.2) on page C18 – Membership and terms of reference of the Task Force on Adoption of Dispute Resolution Advisor System in Subcontract.

Observed from the practical experience of the Task Force on Standard Contract Provisions for Domestic Subcontracts, ByW pointed out that the objective for appointing a consultant was aimed partly to ease the research workload of the task force and the Secretariat so as to speed up the delivery of discussion result. With the use of the professional knowledge, support and resources from the consultant, it was believed that the study would be completed within the given timeline proposed in the outline brief. Instead of working independently, the consultant would be closely monitored by the task force, who would steer the study throughout the process.

In addition to the associations and institutes mentioned in point 3.1(d) on page C16, a Member suggested that it would be more sensible to conduct interviews with users with experience in adopting DRA such as employers and contractors to share their real-life experiences of using the DRA services.

Clarified by ByW, as a system of security of payment had been

developed, the task force would not consider the adoption of DRA system at the worker level.

In response to a comment from a participant, Chairman clarified that according to the proposed terms of reference, the consultancy study to be conducted was not confined to studying the feasibility of adopting DRA system in the first-tier subcontract level. Nevertheless, whether the study would focus on the first-tier subcontract level or cover a broader spectrum including all lower-tier subcontractors under the subcontract could be further discussed and explored by the task force.

With reference to points 4.2 (a) and (h) of the paper on page C17, ArW suggested that relevant information on possible alternatives to the DRA system should also be gathered by the consultant when conducting a literature review of the DRA system.

Considering the time frames of the consultancy study and the legislative process of security of payment act, a Member emphasised that the study must be completed within six months after the commencement of the assignment to avoid conflicting arrangement between the legislative and the administrative measures.

Shared by a Member, a phenomenon was recently observed which involved the removal of arbitration as the preferred method of dispute resolution in the subcontracts. It was fairly common nowadays for main contractor and first-tier subcontractors and between first-tier subcontractors and second-tier subcontractors to include clauses in the subcontracts that stipulate management negotiation, mediation and litigation as mechanisms of dispute resolution. This observation was yet to be confirmed. More information and feedback would be collected from the industry before a conclusion could be made by HKFEMC.

After a long deliberation, Chairman concluded that the proposition of engaging a consultant to conduct a feasibility study, the outline brief and the revised terms of reference of the task force detailed in Annex A and Annex B respectively were endorsed.

Taking this opportunity, Chairman expressed his deepest appreciation to KCT who had been devoting considerable time and effort to the work of the Task Force on Standard Contract Provisions for Domestic Subcontracts and the industry

stakeholders were looking forward to the issuance of the standard document.

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

Members received a brief report by IW on Paper CIC/SBC/P/007/13 as well as the scope of legislation and rights to progress payments as described in Annex B.

Reported by DevB, the legislative process and the proposed timeline were as follows:

- i. To complete the working group discussion of all six key areas by the end of 2013;
- ii. To conduct a three-month public consultation in early 2014 to collect the public's views on the essential elements and framework of the proposed legislation;
- iii. To finalise the Draft Drafting Instructions for the legislation around April 2014 for bill drafting; and
- iv. To introduce the bill to the Legislative Council in 2015-2016.

In order to provide thoughtful input to the deliberations of the Working Group, a Member suggested that an information sheet which provides background information to the security of payment legislation, objectives of this initiative as well as the issues of key relevance to industry stakeholders should be provided as a reference to facilitate discussion within each stakeholder group. In reply, Chairman pointed out that all Working Group members representing respective stakeholder groups would be expected to convey the views of their respective associations/organisations on matters deliberated at the Working Group meetings as well as to report the views of the working group back to their respective associations/organisations. ArW supplemented that Working Group members were nominated by the respective stakeholder groups to facilitate preparation of the legislation while stakeholder groups could still raise their opinions during the public consultation at a later stage.

The terms of reference and updated membership list of the Working Group is attached in Annex A of this Progress Report.

2.6 Update on SRS Operations

Action

Members referred to Paper CIC/SBC/P/008/13 and received a brief report by IW.

The SRS had been operating smoothly since its implementation on 1 January 2013. Six briefing sessions were organised over the past three months to help subcontractors to get familiarize with the SRS. Thereafter, the Secretariat would continue to organise briefing session on a monthly basis to keep subcontractors abreast of the requirements for the new registration scheme.

With regard to the new regulatory action to be taken under Section 10.2(k) of the Rules and Procedures of SRS (point 3.2 of the paper on page 42), IW reported that the Management Committee agreed to conduct regulatory hearings against those registered subcontractors with suspected violation (i.e. late payment of workers' wages and/or late payment of MPF contribution over 10 days with solid proof) reported by Housing Authority after Labour Department has undergone formal investigation on or after 1 January 2013 but no prosecution can be initiated. The Secretariat would keep updated on the cases of evasion of payment of MPF contributions by referring to the non-compliant employer and officer records posted on MPFA's website on a regular basis.

Being enquired about the status of preparation for the categorisation of registered subcontractors, IW reported that the Secretariat had been collecting company information as required under the SRS and following up with those applicants who did not provide sufficient information on the application form. The Secretariat would continue to remind the new and renewal applicants to fill in relevant company information and documents as required to be provided when submitting the application form.

Suggested by a Member, the Secretariat would review if the provision of company information would be a pre-requisite for approval.

**CIC
Secretariat**

2.7 Any Other Business

Members were invited to attend the Competition Law cum Security of Payment Forum organised by the CIC on 3 May 2013 at Crowne Plaza Hong Kong Kowloon East in Tseung Kwan O.

2.8 Tentative Date of the 3rd Meeting for 2013

Action

9 July 2013 (Tuesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

All to note

There being no further business, the meeting was adjourned at 4:05pm.