

Construction Industry Council

Committee on Subcontracting

Meeting No. 001/13 of the Committee on Subcontracting for 2013 was held on 8 January 2013 (Tuesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

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| Present: | Mike WONG | (MW) | Chairman |
| | Teresa CHENG | (TC) | |
| | Paul CHONG | (PC) | |
| | Luen-kiu CHOW | (LKC) | |
| | Lawrence NG | (LN) | |
| | Bay WONG | (ByW) | |
| | Wai-wai YU | (WWY) | |
| | Sam-choi CHAN | (SCC) | Construction Site Workers General Union |
| | Tommy LEUNG | (TLg) | Airport Authority Hong Kong |
| | Ki-cheung TANG | (KCT) | The Hong Kong Institute of Surveyors |
| In Attendance: | Chun-yuen TSE | (CYT) | Hong Kong Construction Subcontractors Association |
| | Arthur WONG | (ArW) | Development Bureau |
| | Russell JONES | (RJ) | Hong Kong Construction Association |
| | David LEONG | (DLG) | Hong Kong Construction Association |
| | Andrew KWOK | | Hong Kong General Building Contractors Association |
| | Sonia YUNG | (SY) | Housing Authority (Representing Ada FUNG) |
| | LI Chi-leung | (CLL) | Labour Department |
| | Roger LAM | (MPL) | Water Supplies Department |
| | Nelson CHAN | (NC) | Independent Commission Against Corruption |
| | Christopher TO | (CT) | Executive Director |
| Ivan WONG | (IW) | Senior Manager – Council Services | |
| Shirley LEE | (SyL) | Manager - Council Services | |
| Apologies: | Hau-wai CHEUNG | (HWC) | |
| | Conrad WONG | (CW) | |
| | Anthony CHAN | (AnCN) | Hong Kong General Building Contractors Association |
| | Bernard HUI | (BH) | The Hong Kong Institute of Architects |

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| WONG Sing-lam | (SLW) | Contractor's Authorised Signatory Association |
| Alex CHOW | (KPC) | Building Department |

PROGRESS REPORT

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1.1 Confirmation of the Progress Report of the 5th Meeting for 2012

Members referred to Paper CIC/SBC/R/005/12.

With no further comments, Members confirmed the progress report of the previous meeting held on Tuesday, 9 October 2012 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 1.2.1 Reference Material for Application of Dispute
(Item 5.4.1 Resolution in Construction Contracts
of Meeting
005/12)

Reported by IW, the reference material was approved by the Council on 26 October 2012. Upon the completion of final proofreading and cover design, the document would be published in January 2013 by uploading on CIC web site for public access. CT advised that a new task force would be set up in 2013 to review the implementation of the dispute resolution mechanisms proposed in the reference material.

1.3 Report of the Hong Kong Construction Association – Hong Kong's Construction Industry Vision 2020

Members took note of Paper CIC/SBC/P/001/13 and received a brief introduction by Mr. Russell Jones on the essence of the Construction Industry 2020 Vision published by HKCA in June 2012.

To cope with the fast-paced and ever-changing business environment over the coming years, Mr. Russell Jones said that

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The Vision 2020 was prepared considering the need to set long-term goals for Hong Kong's construction industry. Five strategic areas of focus (on page C19) that are essential to the successful growth and prosperity of Hong Kong's construction industry were identified by HKCA.

The following areas were specifically highlighted:

- It was important to improve the multi-layer subcontracting practice, in particular the problems arising from non-value added multi-layer subcontracting;
- To eliminate "pay-when-paid" clause in subcontracts, except in situations where conditional payment provisions could be stipulated in contracts signed with selective major subcontractors;
- To change the culture by implementing partnering practices and to encourage the adoption of collaborative partnerships among participants in the supply chain;
- To renew the workforce and increase workforce capacity through the building and civil engineering courses. An internship programme was launched by HKCA's Young Members Society to give students the opportunity to get a head start on the career in construction industry;
- To create more job opportunities for young generation, main contractors were encouraged to directly employ or provide training to their own workforce if they were able to generate a more sustainable and predictable level of work;
- To improve the image of the construction industry and the contractors in particular in every possible way.

In response to a Member's question concerning any views or thoughts on removing or eliminating the excessive layering of subcontractors, Mr. Russell Jones said that from the point of view of the employers, it was important to control the number of on-site construction workers and to keep track on the type of tasks carried out by each worker in order to identify those workers that do not add any value to the project but would incur additional costs as a result of redundancy. Subcontractors were recommended to take the initiative to review the manpower supply and demand of on-site construction workers as a practical way to keep the cost under control.

Commented by a Member, manpower supply was not only a trade-specific issue but a social issue in today's society. In his opinion, there was a clear need for the government to devise a sound

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population policy in order to maintain adequate labour supply for Hong Kong's economic growth. Chairman opined that the comment on population policy was nonetheless outside the scope of committee's discussion. CT added that the manpower planning and development for construction industry personnel was taken care by the Committee on Manpower Training and Development.

In response to multi-layer subcontracting, a Member pointed out that each layer in effect created value in different ways. There was always value in subcontracting practice. Yet, the subcontractors in each layer should have the obligation to take a fair share of risk and profit. Defined in many literatures as one of the most complicated industries engaging a variety of industries and processes to complete the building projects, another Member highlighted that it was necessary for construction industry to engage lots of participants to share the risk. Hence, it was difficult to remove or eliminate the layering arrangement of subcontracting. To maintain sustainable development of the industry, there was a need to foster behavioral and cultural change across the industry. More industry supports should however be given to help subcontractors develop and enhance the quality of their delivery.

A Member said that to maintain a reasonable quality of life, the propositions of five days work week and standard working hours required careful consideration in order not to jeopardise the incomes of construction workers who were normally paid on daily basis. Chairman reiterated that the discussion in the meeting should be confined to specific issues concerning subcontracting. The proposals for five days work week and standard working hours were outside the scope of the meeting.

Chairman summarised that the ultimate goal of the industry was to create a level playing field for all industry players. The task forces established by the Committee also strived to create a fair and just environment through security of payment legislation, standard contract provisions for domestic subcontract and dispute resolution documentation where people at all levels of stakeholders could continuously develop and improve their practice.

After a long discussion, Chairman concluded this session by requesting Members to send further comments or recommendations to the Secretariat in writing on any forward looking initiatives in relation to subcontracting that should be taken forward by the council.

1.4 **Informal Working Group on Review of Specification of Variable Remuneration in Specimen Employment Contract**

Members received a briefing from IW on Paper CIC/SBC/P/002/13 and Annex A which set out the proposed revised specimen employment contract.

To protect workers' payment rights, a Member strongly suggested that it was necessary to specify clearly the employment contract should be execute in triplicate to provide a copy to the employer, the employee and the consultant or the mediator respectively. In this regard, the short note on page C39 "Both Employer and the Employee shall each retain a copy of this contract for future reference." would also be specified in the first page of the specimen employment contract.

The following comments were given by Members:

- To remove the 3rd option (i.e. Basic wages and Piece-works/Others) of item 6 in the specimen employment contract since it was simply a repeat of the first two options;
- To take away the specification of payment calculation method of piece-works/others;
- A Member expressed concerns of violating the competition law if the remark (*# can make reference to the standard wage rates of the respective construction trade where available*) was to be added in the specimen employment contract;
- To give more elaboration on overtime pay under item 6 (i.e. Wages) to specify progressive income;
- To rephrase the options in wage period(s) under item 6 (i.e. Wages) to make it more straightforward and understandable;
- To promote environmentally friendly behaviour by rearranging the layout of the contract to 2 pages in A4 paper size;
- It was proposed for consideration the provision of folders to workers for keeping important documents such as employment contracts in an organised manner.

In response to all the above comments, Chairman suggested not going into great detail about specific items or wording of the contract. As a matter of urgency, Chairman urged Members to endorse the revised specimen employment contract without further delay to avoid unscrupulous employers to take advantage of the loopholes to demand workers to sign contracts at a much lower pay

than they were actually earned. To encourage wider adoption of the revised employment contract, a Member suggested studying the feasibility of imposing a requirement in SRS's rules and procedures to encourage registered subcontractors to sign written employment contract with their employees, particularly in private works projects.

After a long discussion, Members endorsed the revised specimen employment contract set out in Annex A of the paper.

1.5 **Formation of the Task Force on Adoption of Dispute Resolution System to Subcontract**

Members referred to Paper CIC/SBC/P/003/13 and received a brief introduction by IW.

A Member raised a comment suggesting some recommendations should be made to the committee after deliberating and reviewing the feasibility of introducing DRA system in the subcontract level. Agreed by Chairman, this key point would be added in the proposed terms of reference for task force's consideration and deliberation.

With extensive knowledge and hands-on experience in DRA system, Mr. John Battersby was proposed as a suitable person who could provide expert insights into the feasibility of introducing DRA system in subcontract level.

Proposed by a Member, the documents to be prepared should be fine-tuned to avoid giving the wrong impression that the DRA appointed by the client/employer was believed to be the same person as the DRA appointed in subcontract level.

Members endorsed Sr Bay Wong to chair the task force.

[TC left the meeting at this juncture.]

1.6 **Update on SRS Operations**

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

IW updated that the SRS came into effect from 1 January 2013. The regulatory actions had been strengthened by extending the coverage, including late payment of workers' wages and/or MPF

contributions over 10 days by solid proof (without conviction) from Housing Department. Members also took note of the report on various promotional activities for the launch of SRS set out in Annex A of the paper.

1.7 Any Other Business

With the implementation of SRS, some minor amendments would be made to points i and ii of the terms of reference of the committee:

- i) To operate and develop the ~~Voluntary~~ Subcontractor Registration Scheme (~~V~~SRS).
- ii) To raise the professional standard of subcontractors through providing training courses and other value-added services under the ~~V~~SRS and coordinating the training organised by other organisations.

1.8 Tentative Date of the 2nd Meeting for 2013

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.

All to note

There being no further business, the meeting was adjourned at 4:30pm.