

Construction Industry Council

Committee on Subcontracting

Meeting No. 003/11 of the Committee on Subcontracting for 2011 was held on 24 May 2011 (Tuesday) at 2:30pm at Boardroom, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

Present: Mike WONG (MW) Chairman
Hau-wai CHEUNG (HWC)
Luen-kiu CHOW (LKC)
Peter Oi-ki LAM (OKL)
Conrad WONG (CW)
Kam-hung YU (KHY)
Sam-choi CHAN (SCC) Construction Site Workers
General Union
Lawrence NG (LN) Hong Kong Marble and Granite
Merchants Association
Chun-yuen TSE (CYT) Hong Kong Construction
Subcontractors Association
Paul CHONG (PC) The Hong Kong Federation of
Electrical and Mechanical
Contractors
Bernard HUI (BH) The Hong Kong Institute of
Architects
Ki-cheung TANG (KCT) The Hong Kong Institute of
Surveyors
Chau-fat CHAN (CFC) Development Bureau
Nelson CHAN (NC) Independent Commission Against
Corruption

In Attendance: Tommy LEUNG Representing Stanley HUI
Jerry LIU Water Supplies Department
(Representing KWAN Sek-yiu)
Sonia YUNG (SY) Housing Department
(Representing Ada FUNG)
TSO Sing-Hin (SHT) Labour Department
Christopher TO (CT) Executive Director
Ivan WONG (IW) Senior Manager (Council
Services) 2
Shirley LEE (SyL) Manager (Council Services) 5

Apologies: Teresa CHENG (TC)
Stanley HUI (SH)
Koon-sun WAN (KSW)
Wai-wai YU (WWY)

Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
David CHAN	(NSC)	Hong Kong Construction Association
Joseph NG	(JN)	Hong Kong General Building Contractors Association
Ada FUNG	(AF)	Permanent Secretary for Transport and Housing (Housing)
Alex CHOW	(KPC)	Building Department
Sek-yiu KWAN	(SKW)	Water Supplies Department

PROGRESS REPORT

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3.1 Confirmation of the Progress Report of the Previous Meeting

Members took note of Paper CIC/SBC/R/002/11 and confirmed the progress report of the previous meeting held on Tuesday, 8 March 2011 at Room 1201, Murray Building, Central, Hong Kong.

3.2 Matters Arising from the 2nd Meeting for 2011

3.2.1 Mandatory Provident Fund

The Secretariat advised that the VSRS Registration Office had been identifying the employers who defaulted on the MPF contribution by referring to the press releases available on the MPFA's web site. MPFA had recently provided at its website a new function to search for employers who had breached the Mandatory Provident Fund Schemes Ordinance in the past five years. This would help facilitate the VSRS's Management Committee to take necessary regulatory action against Registered Subcontractors who failed to comply with MPF requirements.

A Member suggested that main contractors and specialist subcontractors could be authorised to pay MPF contributions on behalf of all lower-tier subcontractors to their employees. While currently there was limitation for the third parties to make MPF contributions, the suggestion could be explored by the Task Force on VSRS Stage 2.

**TF - VSRS
Stage 2**

3.2.2 Task Force on Voluntary Subcontractor Registration Scheme Stage 2

Discussed under agenda item 3.7.

3.3 **Task Force on Dispute Resolution Documentation (TF-DRD)**

Members took note of the Paper CIC/SBC/P/015/11.

The Secretariat briefed Members on the flowcharts set out in paper illustrating the dispute resolution mechanisms with DRA and without DRA. DevB expressed reservation on taking short form arbitration as the default option if both contracting parties could not mutually agree to choose any method of dispute resolution.

From the perspective of middle and lower-tier stakeholders, the Hong Kong Federation of Electrical and Mechanical Contractors supported the use of short form arbitration as it would accelerate the procedure, which lead to a rapid decision. However, a Member pointed out that short form arbitration might not be the best nor the most suitable form of resolving full scale disputes. Members took note that the principle was to have a prompt resolution of disputes. Further deliberation should be carried out by the TF-DRD.

TF-DRD

The Hong Kong Institute of Surveyors expressed reservation on the adoption of independent expert certifier as it would risk undermining the role of quantity surveyor under the contract. It was remarked that independent expert certifier would only be involved when the price related dispute could not be resolved mutually by both contracting parties or through DRA and hence the role of quantity surveyor would not be undermined. It was agreed that the TF-DRD would follow up on the matter.

TF-DRD

3.4 **Task Force on Security of Payment Legislation (TF-SoP)**

Members took note of the Paper CIC/SBC/P/016/11.

BH, Chairman of the TF-SoP reported the progress of the survey on payment practice. DevB supplemented that around 550 companies, representing different sectors in the construction industry had been approached and invited to participate in the survey up to mid-May. Over 80% of them had agreed to take part

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in the face-to-face interview.

BH also briefed Members on the application of SoP legislation in various jurisdictions, including UK, New South Wales and Victoria of Australia as well as Singapore. A number of general attributes were introduced and the Secretariat was asked to circulate the document “Outline for Security of Payment Legislation” for Members’ reference.

**CIC
Secretariat**

(PMN: The Outline for Security of Payment Legislation has been provided for members’ reference by email on 10 June 2011.)

3.5 Task Force on Standard Contract Provisions for Domestic Subcontracts (TF-SCDC)

Members took note of the Papers CIC/SBC/P/017/11, CIC/SBC/P/018/11 and CIC/SBC/P/019/11.

Out of a total of twelve chapters, KCT briefed Members that the task force had completed the discussion of seven chapters. Efforts were made to reach consensus amongst key stakeholders on the controversial issues such as payment, variations and final account. Subsequent clauses such as dispute resolution would be far more straightforward as some key areas were being reviewed by other task forces. Nonetheless, a number of important issues had been identified such as the prime cost rate, which should be addressed in the main contract between employers and main contractors. The task force would list out those issues and pass it over to the Committee for consideration and deliberation at appropriate forum.

TF-SCDC

3.6 Updates on VSRS Operations

Members took note of the Paper CIC/SBC/P/020/11.

The Secretariat updated Members on the number of applications received and processed over the past four months in 2011.

For the practical difficulty encountered by the Management Committee in taking regulatory actions against Registered Subcontractors convicted of site safety offences relating to serious bodily injury or loss of life, the following points had been concluded for further consideration of the Management Committee:

Action

- i) To seek legal advice on the implication of regulatory action on subsequent civil claims.
 - ii) Try to collect more information from Labour Department which would be sufficient to determine the appropriate type of regulatory action to be taken.
 - iii) Consider the resources and manpower required, legal liability and the specific expertise and practicality of the Management Committee to determine the type of regulatory action to be taken.
 - iv) Some form of regulatory action should be considered such as a warning letter if there was practical difficulty in imposing other forms of regulatory action.
- Management Committee of VSRS**

3.7 Management Committee of Voluntary Subcontractor Registration Scheme Stage 2

Members took note of the Paper CIC/SBC/P/021/11.

In response to the recommendation in the internal audit report relating to the changes of the composition of the Management Committee, the following comments on the proposed amendment by the Secretariat had been drawn for further consideration:

- i) To expand the list of specified bodies by including representatives from construction industry employees unions.
 - ii) To increase the number of appointed members to cover a wider range of stakeholders.
 - iii) To reassign the proportion of members from different sectors.
- Task Force on VSRS Stage 2**

3.8 Any Other Business

Nil

3.9 Date of Next Meeting for 2011

Next meeting was scheduled for 2 September 2011 (Friday) at 2:30pm at Boardroom, 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 4:21pm.