

Construction Industry Council
4th Progress Report of Committee on Subcontracting

Purpose

This paper outlines the main points discussed at the 4th meeting of the Committee on Subcontracting held on 7 April 2008. The record of attendance is at Annex A.

Items Discussed

2. Members discussed the following items –
- security of payment;
 - proposal for enhanced ethical commitment by subcontractors registered on Voluntary Subcontractor Registration Scheme (VSRS);
 - work plan;
 - Stage 2 of VSRS – structure of register of subcontractors
 - 2nd summary report of Informal Task Force on Administration Charges for Accident Reporting; and
 - measures to control and monitor payment of wages to workers engaged in public housing contracts.

Progress on Matters Arising from 3rd Meeting on 22 October 2007

3. Members noted the following -

Paragraph 6

The proposal to issue a set of guidelines for promoting adoption of contractual provisions for protecting workers' entitlement to wage payment was endorsed at the 6th CIC meeting on 15 November 2007. The guidelines were being prepared by the Secretariat for discussion in future meetings;

Paragraph 20

Stage 2 of the VSRS would be discussed in latter parts of the meeting;

Paragraph 23

The guidelines on administration charges for accident reporting would be discussed in latter parts of the meeting; and

Paragraph 24

The new trades were added to the Primary Register with effect from 1 February 2008.

Security of Payment

4. HKCA briefed Members on the major cash flow problems affecting the local construction supply chain caused by the forms of contract in use in Hong Kong being generally not as equitable as they should be causing contractors to make claims when risks causing financial losses eventuated. Engineers and architects were less independent than the standard forms of contracts anticipated and were often cornered by the employers into a conflict of interest in that, if a risk event occurred, either they or the contractors had to accept responsibility. Engineers and architects were usually engaged on lump sum fees and did not have incentives for providing adequate resources for achieving timely settlement of disagreements on payments. Furthermore, the timeliness of payments to subcontractors was affected by pay-when-paid provisions.

5. HKCA put forward security of payment legislations similar to those enacted in UK, Australia and Singapore as possible solutions to the cash flow problem. The key features of the legislation in UK included statutory entitlement of parties performing construction works to payment by installment, restriction on employers' rights to set off from payments certified to contractors, right to suspend works for non-payment of sums certified, outlawing of pay-when-paid provisions and statutory rights to refer payment disputes to adjudication without having to wait for the completion of the works.

6. HKCA was desirous of government introducing security of payment legislation. HKFEMC and Hong Kong Construction Sub-contractors Association (HKCSA) express support with HKFEMC

observing that while blatant violations of contractual provisions were not common the use of delay tactics (such as arguing with contractors) was prevalent. On the other hand, some Members preferred to further examine the justification of security of payment legislation through assessing the nature of the current problems and their magnitudes. In this regard, HKCA had commissioned an independent survey to gather such information in relation to main contractors and believed that the exercise could be extended to cover subcontractors.

7. Having regard to the possibility of including most of the features of security of payment legislation into construction contracts through mutual consent of the concerned parties and the lead time for legislation, Members suggested giving consideration to issuing a set of CIC guidelines on the good practices for ensuring security of payment for voluntary adoption by industry stakeholders. The experience acquired through the application of the guidelines could form the basis for considering the need and, if so, the scope of security of payment legislation in future.

8. In view of the complexity of the subject, the Secretariat was asked to draw up an action plan for conducting further deliberations.

VSRS – Proposal for Enhanced Ethical Commitment by Registered Subcontractors

9. ICAC advised that the number of corruption reports associated with the management and maintenance of private buildings had risen sharply in recent years from 715 in 2000 to a record high of 972 in 2007, accounting for over 40% of the private-sector corruption reports. Most of these cases involved malpractice in the carrying out of building maintenance works, such as contractors attempting to secure contracts through collusion with consultants, tender rigging and bribing members of Owners' Corporations (OC). The recent introduction of the Fire Safety (Buildings) Ordinance and the impending launch of the Mandatory Building Inspection Scheme in 2008 could sustain the uprising trend of corruption reports.

10. ICAC was planning to prevent corruption and abuse in building maintenance through launching a Building Maintenance Toolkit in partnership with the Hong Kong Housing Society (HKHS) to provide a user-friendly guide to owners and OCs on how best to implement building renovation and maintenance. ICAC also aimed to further assist

owners and OC's in the selection of contractors by making available lists of contractors who were not only technically competent but were also committed to ethical practices.

11. ICAC proposed to use the VSRS as one of the platforms for achieving this objective by introducing the Enhanced Ethical Commitment Scheme (EECS) whereby Registered Subcontractors not having been subject to any regulatory actions under clause 10 of the Rules and Procedures of the Primary Register could apply to join the EECS by promulgating an enhanced company code on ethic (in addition to issuing the company policy on ethics under clause 19 of the Rules and Procedures) pledging not to collude with other parties in the bidding and implementation of any construction contracts and to declare any actual or potential conflict of interest in bidding and executing construction works.

12. To assure the credibility of the EECS, the Management Committee could revoke EECS status of a Registered Subcontractor under specified circumstances including any regulatory actions being taken against the Registered Subcontractors, its failure to comply with the enhanced company code on ethics, conviction of its senior staff for criminal offences involving corruption or fraud, embezzlement and theft in connection with construction works, availability of substantial evidence of such misconduct or winding up or bankruptcy of the company.

13. Members supported the proposal in principle but were concerned about the possibility that EECS status being revoked for corruption offences before actual convictions. The Secretariat was directed to give careful consideration to this aspect in revising the Rules and Procedures for implementing the scheme and circulate the draft to Members for comments.

Stage 2 of VSRS – Structure of Register of Subcontractors

14. The Secretariat put forward the preliminary proposal for re-structuring the VSRS in Stage 2 of the scheme proposing to replace the Primary Register with a single Register of Subcontractors so as to facilitate more efficient administration and avoid segregation of registered subcontractors into two distinct classes. The Register of Subcontractors would be divided into three grades. All subcontractors registered on the Primary Register would be allowed to migrate automatically to the entry grade. For the sake of continuity, the Register of Subcontractors would adopt the same trade classification as the

Primary Register. Except subcontractors in the highest grade, limits would be set on the value of individual subcontracts that subcontractors in the lower grades may undertake.

15. On entry requirements, the entry grade would adopt the same entry requirements as the Primary Register based solely on works experience. The higher grades would include criteria based on financial capability, works experience, capability of staff, and specific requirements for individual trades such as availability of workshops, availability of plant and equipment for conducting specific operations, or qualification on Government registration schemes.

16. Members endorsed the preliminary proposal and directed the Secretariat to conduct a questionnaire survey on contractors and subcontractors to collect feedback on the proposed structure and the various key parameters (such as the financial limits for the various grades). The feedback would be taken into account in formulating the detailed proposal for implementing the Register of Subcontractors.

2nd Summary Report of Informal Task Force on Administration Charges

17. Members noted the draft of the Guidelines on Administration Charges for Reporting of Site Accidents incorporating comments made at and after the 2nd meeting of the Task Force held on 25 January 2008. The guidelines recorded the consensus that given the widely different circumstances, it was not appropriate to draw any conclusion on whether the levying of administration charges was justified. However, the guidelines aimed to ensure and promote fair and good practices for the imposition of any administration charges for the benefit of the parties as well as the construction industry as a whole.

18. Having consulted its members, HKCSA objected to the levying of administration charges in principle through its letter of 17 March 2008 on the grounds that, from the point of view of subcontractors, administration charges were unforeseeable expenditure and were considered to be punitive in nature. From the point of view of construction workers, the levying of administration charges could induce subcontractors to settle minor injuries privately by making payment directly to the injured workers without going through proper procedures. HKCSA therefore considered that administration charges should be absorbed by main contractors as part of the essential expenses of securing insurance covers.

Members agreed that the Task Force should further discuss the way forward in view of HKCSA's objection.

Measures to Control and Monitor Payment of Wages to Workers Engaged in Public Housing Contracts

19. HD briefed Members on the measures introduced in HA contracts in May 2006 to secure and monitor payment of wages to construction workers including keeping of attendance records, engagement of labour relation officers (LRO) for checking wage payment records and direct settlement of wage arrears by HA in case of proven defaults, etc. The requirement for on-demand bonds was introduced in September 2007 to ensure availability of funds for settling wage arrears even if main contractors became insolvent and were liquidated. Since the introduction of the measures in May 2006 only 57 complaints of wage arrears involving 96 workers (or 0.7% of the total) had been received with 22 found to be unsubstantiated, 29 settled directly by the main contractors or subcontractors and six resolved through LD.

20. A Member suggested taking a cautious approach in mandating on-demand bonds which could jeopardize small and medium size firms with limited financial resources. While Members re-affirmed their support for rolling out the monitoring and control measures to the private sector, the high administration cost involved could be potential hurdles to adoption by developers. Some Members suggested that the security of payment in private sector contracts should be addressed concurrently to help main contractors and subcontractors in discharging their obligations on timely payment of wages.

21. HD was discussing with DEVB, LD and the Construction Industry Council Training Academy (CICTA) on ways for tackling the turnover rate of 40% of LRO's through provision of better training and development of career path. Subject to the agreement of the Construction Industry Training Board (CITB), CICTA was prepared to organize such training courses and would report progress made at the next meeting. HD believed that proper promotion prospect, formal accreditation of the courses and contractual requirement on the employment of LRO's in private sector projects could help make LRO career more attractive and sustainable. Other Members opined that accreditation of the courses was desirable but not essential as long as the qualifications to be awarded for attending these courses were recognized by the construction industry.

Work Plan

22. Members considered the proposed work plan for the Committee and directed the Secretariat to prepare a revised work plan taking into account the discussions at the meeting for submission to the 9th CIC meeting scheduled for 2 May 2008.

[Post meeting note – The revised work plan is at Annex B.]

Further Actions

23. The following further actions were agreed –
- (a) the Secretariat would develop an action plan for the deliberations on security of payment;
 - (b) the Secretariat would draft the revised Rules and Procedures for implementing the EECS for Members' comments;
 - (c) the Secretariat would conduct a questionnaire survey to collect views of contractors and subcontractors on the preliminary proposal for the structure of the Register of Subcontractors;
 - (d) the Informal Task Force on Administration Charges would further deliberate on the principle of levying administration charges for accident reporting;
 - (e) CICTA would brief Members on the progress of organizing training courses for LRO's; and
 - (f) the work plan for the Committee would be submitted to the 9th meeting of CIC scheduled for 2 May 2008.

**CIC Secretariat
April 2008**

Committee on Subcontracting

**4th Meeting held at 2:30 pm on 7 April 2008
in Conference Room 1201, Murray Building**

Record of Attendance

Present

Mr S S Lee	Chairman
Mr CHOI Chun-wa	
Mr CHEUNG Tat-tong	
Mr James Chiu	
Mr Conrad Wong	
Ms Teresa Cheng	
Mr TSE Chun-yuen	
Ms Ada Fung	Representing Permanent Secretary for Transport and Housing (Housing)
Mr Paul Chong	Hong Kong Federation of Electrical and Mechanical Contractors
Mr Bernard Hui	Hong Kong Institute of Architects
Mr CHEUNG Tak-hing	Hong Kong Construction Site Workers General Union
Mr Lawrence Ng	Hong Kong Marble and Granite Merchants Association
Mr LAW Wai-tai	Hong Kong Construction Association
Mr C S So	Henderson Land Development Co. Ltd.
Mr WONG Sing-lam	Contractor's Authorized Signatory Association
Mr S H Tso	Labour Department
Mr MOK Wah-hoi	ICAC
Mr LAM Siu-tong	Buildings Department
Ms Sonia Yung	Housing Department
Mr David Tong	Development Bureau

Absent with Apologies

Mr WAN Koon-sun

Mr LAI Chi-hung

Mr YAU Hung-yuen

Mr Joseph Ng

Hong Kong & Kowloon Painters General
Union

Association of Electrical Contractors

Hong Kong General Building Contractors
Association

In Attendance

Mr Charles Wong

Mr K H Tao

Mr Solomon Wong

Acting Executive Director, CIC

Chief Assistant Secretary for Development
(Works) 1

Assistant Secretary for Development (Works)
Public Works Systems Administration 1

For discussion of “Security of Payment”

Mr Vincent Connor

Hong Kong Construction Association

For discussion of “Measures to Control and Monitor Payment of Wages to Workers Engaged in Public Housing Contracts”

Mrs Irene Cheng

Mr Forrest Fong

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Housing Department

Work Plan**(I) Stage 2 of VSRS**

Milestone	Task	Deliverable
Apr 2008	Discussion of preliminary proposal for structure of Register of Subcontractors by Committee	
May – Jun 2008	Questionnaire survey on contractors and subcontractors to gather feedback on preliminary proposal	Feedback on preliminary proposal
Jul 2008	Formulation of detailed proposal for structure of Register of Subcontractors	Proposed structure
	Consideration of structure by Committee	
Aug 2008	Drafting operational framework for the Register of Subcontractors	Operational framework
Sep 2008	Consideration of operational framework by Committee	
Oct 2008	Endorsement of release of operational framework for industry consultation by CIC	
Nov – Dec 2008	Industry consultation on operational framework	Industry feedback
Jan 2009	Revision of operational framework taking into account industry feedback	Revised operational framework
Feb 2009	Consideration of revised operational framework by Committee	
Mar 2009	Endorsement of revised operational framework by CIC	

Milestone	Task	Deliverable
Apr – Jun 2009	Implementation of Register of Subcontractors	
Jul 2009	Launch of Register of Subcontractors	

(II) Improvements to VSRS

Milestone	Task	Deliverable
Jul – Aug 2008	Drawing up proposals for value-added services	Proposal for value-added services
Sep 2008	Consideration of proposal by Committee	
Oct 2008	Launch of value-added services	

(III) CIRC Recommendations 42 and 43 – Security of Payment

Milestone	Task	Deliverable
Apr 2008	Preliminary discussion on security of payment by Committee	
May 2008	Drawing up of action plan on way forward	Action plan
	Consideration of action plan by Committee	

(IV) Guidelines on Administration Charges for Accident Reporting

Milestone	Task	Deliverable
May 2008	Further discussions of principle of imposing administration charges by Informal Task Force on Administration Charges	
Jun 2008	Revision of guidelines taking into account outcome of discussions	Revised guidelines
Jul 2008	Consideration of guidelines by Committee	
Sep 2008	Approval of guidelines by CIC for promulgation	

(V) Guidelines on Measures for Protection of Workers' Entitlement to Wage Payment

Milestone	Task	Deliverable
May 2008	Endorsement of guidelines by Committee	Endorsed guidelines
Jun 2008	Approval of guidelines by CIC for promulgation	