

Measures to Monitor and Control Payment of Workers' Wages and Multi-layer Subcontracting

Purpose

This paper is intended to inform members of the work current being undertaken by the Environment, Transport and Works Bureau (ETWB) in formulating measures to monitor and control payment of workers wages and the problems associated with multi-layer subcontracting.

Background

2. Wage disputes and wage arrears have given rise to much concern over the past recent years in the construction industry. In September 2002, ETWB commenced monthly monitoring of statistical records concerning wage dispute cases. These records are presented in Appendix 1. Members should note that the figures reported may not accurately reflect the actual situation as it has been widely acknowledged that the workers preferred not to report wage arrears immediately to preserve future working opportunities. There are two observations worth noting from the reported figures:-

- (a) There is a noticeable increase in the number of wage disputes in the public works building categories during the latter part of 2004;
- (b) The number of wage disputes in the public sector represents only about 5.5% of the industry's total.

3. Taking into account the considerable higher volume of work in the public sector, the contribution to the problem within the public works category in terms of percentage workload is rather small. Notwithstanding this, Government being a major employer in the construction industry wishes to take the initiative to deal with the problem in the hope that the major stakeholders in the private sector will do likewise.

The Inherent Problem

4. Under ETWB's current contractor management system, a contractor on our Approved Lists convicted of three or more offences (private or public works contracts) under the Employment Ordinance (Cap.57) in a rolling 12-month period, and which individually carry maximum fines corresponding to Level 5 or higher will be automatically suspended for six months from tendering for public works. In the past three years, ETWB have only taken such regulating action against two contractors. There is a strong indication that the problem with wage arrears in the construction industry largely lies with the subcontractors.

5. Sub-contracting is a common practice in the construction industry. If properly managed by contractors it will facilitate the execution of works in a cost-effective manner with efficient use of resources. However, in the absence of proper management, uncontrolled subcontracting could have adverse impact on the progress and quality of works, not to mention the adverse public image on Government.

Existing Measures

6. To assist industry stakeholders in enhancing the performance standards of subcontractors, the following measures are in place:-

(a) **Guidelines on procurement and management of subcontractors**

The PCICB has issued in March 2003 a set of guidelines on good industry practice on procurement and management of subcontractors. These guidelines are meant for industry-wide adoption for a culture change and stress clear contractual responsibilities, equitable payment terms, fair selection process and transparent management framework. ETWB have formally encouraged contractors on the ETWB Approved Lists to make reference to the above guidelines when preparing the Subcontractor Management Plan (SMP) submissions in public works contracts.

(b) The Subcontractor Management Plan (SMP)

The SMP was implemented in public works projects in Jan 2003 by ETWB under which all public works contractors are required to submit with their tenders details of their subcontracting arrangements and to update the plan quarterly during the contract. The SMP served as a management tool for enhanced transparency of the contractor's subcontracting arrangement and accountability. Feedbacks received so far are in support of the implementation of the SMP in general. However, it is a common practice in the construction industry that quite a lot of lower tier subcontracting are not adopting written contract of any kind and they may not appear in the SMP as such. Lower-tier subcontracting are usually where cases of wage arrears arise.

(c) Voluntary Subcontractors Registration Scheme (VSRS)

In August 2004, all public works contractors are required to employ their subcontractors, whether nominated, specialist or domestic, from the registered list of the Voluntary Subcontractors Registration Scheme (VSRS) introduced by PCICB. Subcontractors on the registered list of the VSRS are regulated by PCICB. The system would greatly enhance the quality of subcontracting in our public works contracts.

(d) Construction Workers Registration system (CWRS)

The Construction Workers Registration Bill which introduced a Construction Workers Registration System (CWRS) has just been passed into law on 2 July 2004. The CWRS is intended to enhance the quality of construction works through assessment & certification of the level of skills of all construction site workers. It will also help combat employment of illegal workers and assist in resolving wage disputes between the contractors and the workers through the availability of site attendance records under the proposed computerized smart card system.

7. The above measures altogether increase the quality of our construction services and to some extent contain the problem brought about by multi-layer subcontracting and wage disputes.

Further Initiatives

8. Notwithstanding the measures that are already in place and in view of the rising figures and the public concern on non-payment of workers wages and the inherent problems associated with the practice of multi-layer subcontracting in the construction industry, ETWB has taken the initiative to form a Working Group to undertake a review on our contractual arrangements to ascertain whether further control measures can be incorporated to the contract to alleviate the situation.

Core members of the Working Group comprise representatives from:-

1. Environment Transport and Works Bureau;
2. Labour Department;
3. Architectural Services Department; and
4. Civil Engineering and Development Department.

9. The Working Group also comprises representatives from the construction industry at various fronts directly associated with the issues involved to serve as ad-hoc members. These ad-hoc members are being invited to attend Working Group meetings on a need basis to advise the Working Group of their particular concerns so that they will be duly considered by the Working Group in formulating the proposed contractual measures. The following organizations have representatives nominated to serve as ad-hoc members:-

1. Hong Kong Construction Association 香港建造商會;
2. Hong Kong Federation of Electrical & Mechanical Contractors' Association 香港機電工程商聯會;
3. Construction Site Workers General Union 建築地盤職工總會;
4. Hong Kong Construction Industry Employees General Union 香港建造業總工會;
5. Federation of Hong Kong Electrical & Mechanical Industries Trade Unions 香港機電業工會聯合會;
6. HK Construction Sub-contractors Association 香港建造業分包商聯會所;
7. Hong Kong General Building Contractors Association Limited 香港建造業承建商會聯會; and
8. Mandatory Provident Fund Scheme Authority

強制性公積金計劃管理局.

10. The prime duty of the Working Group is to formulate a proposal to tackle the subject problem currently being faced in our public works contracts. The Working Group will also look at possible measures to encourage and to monitor the contribution of MPF in line with the legislation from both the contractors/subcontractors and the workers. The Working Group is chaired by the Deputy Secretary (Works) 2 of ETWB and its terms of reference are:-

- (1) To consider and to discuss proposed measures to tackle the problems currently being faced by the construction industry associated with non-payment of workers wages and the inherent problems with multi-layer subcontracting; and
- (2) To transform the proposed measures into contract provisions for incorporation to suitable public works contracts on a trial basis.

11. The first meeting of the working group has taken place on 28.2.2004 in which ETWB presented a series of proposals to the members for their consideration and discussions. Members were generally in support of the general principle behind the proposals.

Proposed Measures

12. The proposals put forward by ETWB and considered by the working group made reference where appropriate to the scheme of measures currently being used by Sun Hung Kai Properties Limited (SHK) whom has implemented a scheme to deal with similar problems in their building works contracts.

13. In brief the proposed scheme of measures is outlined below:-

A – To establish computerized site access control and a special team to receive and handle complaints

1. The use of a computerized Smart Card System to establish records of attendance such as:-
 - Data of workers;
 - Record of site entries; and

- Data of Employment Contract.
- 2. Requiring self-employed Persons to have accident and life insurance;
- 3. Requiring all workers on site to have a written employment contract with their respective employers;
- 4. Lorry drivers may elect to be self-employed or an employee with a written employment contract;
- 5. Main contractor will be required to set up a special team directly responsible to the Employer to receive and handle complaints on wage arrears;
- 6. Main contractor's performance report and tendering status will be affected by any records found on wage arrears;

B – To control/monitor payment of workers wages

- 1. Main contractor, all subcontractors as well as site workers are required to establish an account in a designated bank;
- 2. The Government shall disburse contract payment to the main contractor in accordance with the contract. Main contractor shall pay to subcontractors in the usual way according to the sub-contracts, and so forth for the lower-tier subcontractors;
- 3. Based on the data in the smart card record system, main contractor is required to distribute the file records of workers attendance and vehicle site entries to the respective subcontractors;
- 4. After verification of the data by the main contractor and all the related subcontractors they are required to input workers' wage and the MPF contributions to the file records and have the same submitted to the bank respectively;
- 5. Main contractor and all related subcontractors are required to ensure availability of sufficient funds for the related transactions;

6. Upon receiving the file records, the bank will arrange direct payment as follows:-
 - Workers' salary;
 - Workers' MPF contribution; and
 - Employers' MPF contribution.
7. The bank is required to return all related transaction records to main contractor/subcontractors;
8. Main contractor is required to submit copies of all transaction records, including those from subcontractors, to the Government;
9. There will be separate allowance in the contract for contractor's MPF contribution. A separate item will be created which will form part of the tender;
10. Contract works payment and wage payment cycles are independent events and are not inter-related.

C – To control multi-layer sub-contracting

1. Main contractor's core management team for the contract must be its own employees, such as:-
 - Project Manager;
 - Site agent
 - Foreman;
 - Site engineer; and
 - Surveyor
2. The above staff cannot subcontract any part of the works under the contract.
3. To consider prohibiting the main contractor from contracting out certain part of the works under the contract;
4. To prevent the existence of Agents/Brokers, all employees/workers on Site are required to have written

employment contracts with their employers who must be one of the subcontractors under the Subcontractor Management Plan (SMP). (This will ensure that all site workers are employed by the approved subcontractors under the SMP and not through Agents/Brokers which are difficult to locate.)

14. To illustrate the scheme of arrangements above, two diagrams are presented in Appendix 2 which shows the following:-

- (i) Sub-contracting and Employer/Employee arrangement; and
- (ii) Payment arrangements.

Implementation Programme

15. The present intention is to implement the above measures via a few selected public works contracts. At the moment, two building contracts from Architectural Services Department and one civil contract from Civil Engineering and Development Department have provisionally been selected to incorporate these measures on a trial basis. These measures will be implemented via two different schemes as follows:-

- (1) The full measures as outlined in paragraphs 13A (access control), 13B (payment arrangement) and 13C (control of subcontracting); and
- (2) The measures in paragraphs 13A (access control) and 13C (control of subcontracting).

Scheme (1) above will be implemented through a building and a civil contract whilst Scheme (2) will be implemented through a second building contract. It is anticipated that the full process in monitoring the payment arrangement through Scheme (1) is very time consuming and requires tremendous resources input. It is hoped that the trials will be able to reveal the cost effectiveness of the different schemes to enable us to identify a most cost-effective scheme in taking matters forward. Nevertheless, the proposed measures in respect of control of multi-layer subcontracting such as direct employment of the core management team can be implemented immediately on all future contracts

following consultation.

16. ETWB is currently working towards the drafting of the contractual provisions in line with the above proposed measures and will attempt to complete the initial drafting by the end of April 2005. Consultation with the working group members will immediately follow thereafter. A special presentation to members of the HKCA was undertaken by ETWB on 10.3.2005 in which discussions and views were exchanged.

17. It is anticipated that the drafting work can be finalized following consultation by the end of June 2005. The present programme indicates that the three selected contracts will be out to tender in the third quarter of 2005 and these contracts are due to commence towards the end of 2005.

Conclusion

18. Members are no doubt aware of the current problems brought about by non-payment of workers wages and multi-layer subcontracting. It is hoped that the further proposed measures set out above, together with our existing administrative control over the registration of workers and subcontractors will altogether contain the problem to a large extent. The success or otherwise of any scheme of measures relies on the joint efforts of the industry as a whole including main contractors, subcontractors and the workers. We are confident that we can all work towards a common interest to overcome this long standing problem within the construction industry.

Environment, Transport and Works Bureau
April 2005

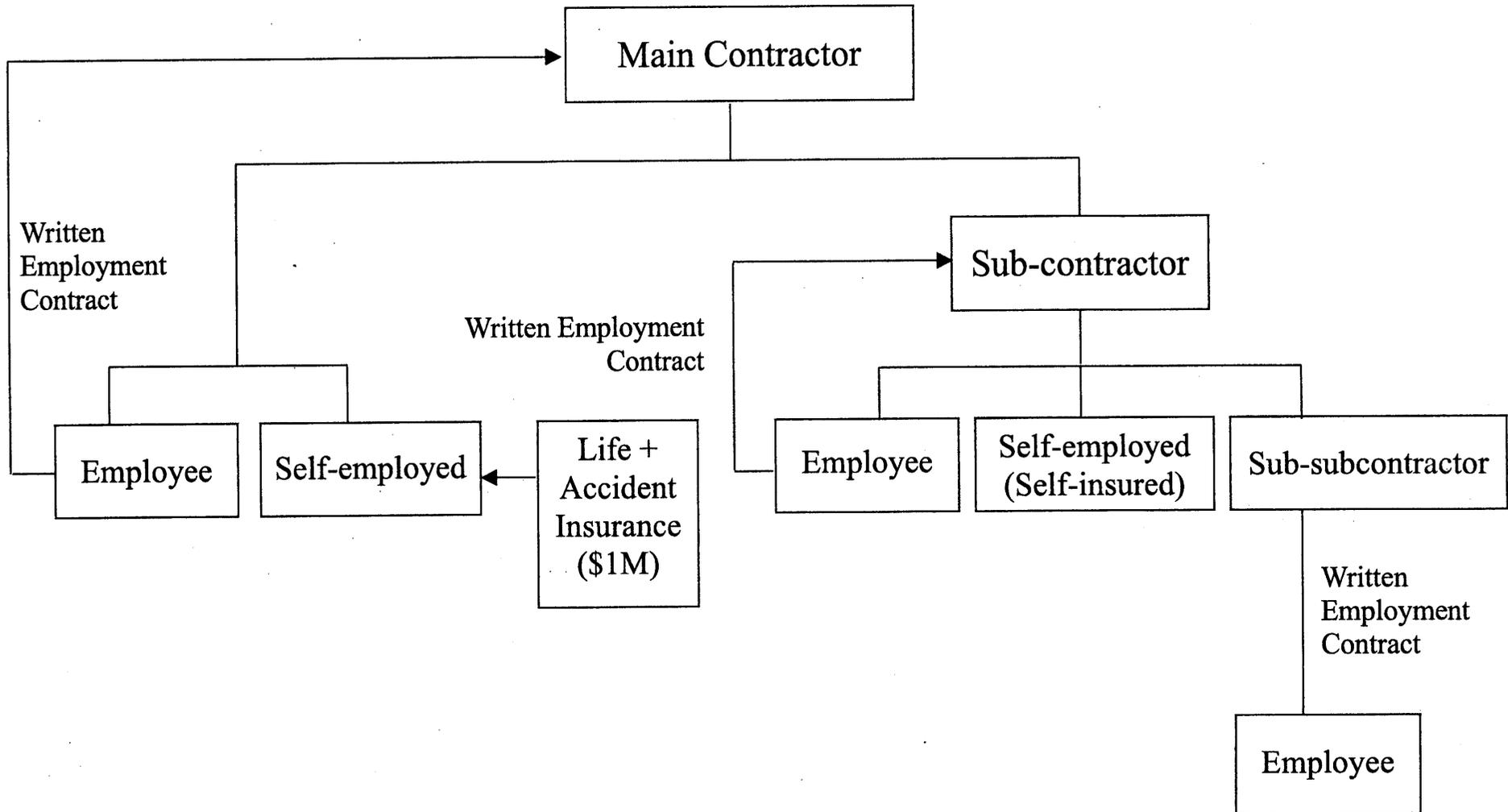
Workers' wages being held in arrears by either the main contractor or subcontractors in 2004 (up till December)
(Number of disputes based on Monthly Reports submitted by Works Departments to ETWB)

| Month | 2003 | 2004 | | | | | | | | | | | | Total |
|-------------------------|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|--------------------------|
| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | | |
| ArchSD | 21 | 3 | 1 | 1 | 1 | 1 | -- | -- | 1 | 3 | 10 | 7 | 1 | 29 |
| CED/CEDD | 6 | -- | -- | 1 | 1 | 1 | -- | -- | 2 | 1 | -- | 2 | 3 | 11 |
| DSD | 10 | -- | -- | 3 | 3 | -- | 1 | 1 | 3 | 2 | -- | 1 | 1 | 15 |
| HyD | 1 | -- | -- | -- | 2 | -- | -- | -- | -- | -- | 1 | -- | -- | 3 |
| TDD | 10 | 4 | 2 | -- | -- | -- | -- | N/A | N/A | N/A | N/A | N/A | N/A | 6 |
| EMSD | 4 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| WSD | 7 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | 1 |
| Works Dept Total | 59 | 7 | 3 | 5 | 7 | 2 | 1 | 1 | 6 | 6 | 11 | 10 | 6 | 65¹ |
| Industry Total | 3,206 | 282 | 269 | 240 | 206 | 204 | 202 | 243 | 333 | 245 | 313 | 296 | 277 | 3,109² |

Remark : 1. Of the 65 disputes, 6 nos. involve more than 20 employees; 29 nos. involve less than 20 employees; and the employees involved for the remaining 30 nos. are not known.

2. Information provided by Labour Department through their e-mail dated 23 Feb 2005. Of the 3,109 disputes, 139 nos. involved more than 20 employees and 2,970 nos. involve less than 20 employees.

Subcontracting and Employer/Employee Arrangement



Workers Payment Arrangements

