

**For information on
28 April 2006**

LegCo Panel on Manpower

Measures to tackle the problem of arrears of wages of workers employed under public housing construction works and public works projects

PURPOSE

This paper briefs members on the measures already taken and to be adopted by the Environment, Transport and Works Bureau (ETWB) and Housing Authority (HA) in public works projects and public housing construction contracts to better monitor and safeguard the payment of wages.

BACKGROUND

2. Sub-contracting is a common practice in the construction industry. If properly managed, 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 multi-layered sub-contracting may lead to ambiguous appointment and employment relationships. Furthermore, there is often a lack of formal employment agreements, as well as proper attendance and wage records for the workers on site. Against this background, it is difficult to control and monitor wage payments to workers. Workers are thus vulnerable to wage arrears incidents.

3. Labour disputes and wage arrears in the construction industry, especially under public works and public housing projects, have given rise to considerable public concern. Both the ETWB and HA have long been concerned about the problem. Improvement measures have been implemented and new measures will be introduced to address the situation.

ETWB'S IMPROVEMENT MEASURES

4. Under ETWB's current contractor management system, a contractor on its Approved Lists convicted of three or more offences (private or public works contracts) under the Employment Ordinance (EO) (Cap.57),

including offences on wage arrears, in a rolling 12-month period will be automatically suspended for six months from tendering for public works. In the past three years, the bureau has taken such regulatory action against two contractors. There is a strong indication that the problem with wage arrears largely lies with the subcontractors.

The Subcontractor Management Plan (SMP)

5. To tackle at source the problem arising from subcontracting, the ETWB implemented the SMP in public works projects in January 2003. All public works contractors are required to submit with their tenders details of their subcontracting arrangements and to update the plan on a quarterly basis during the contract. Under the SMP scheme, the contractors are required to adopt measures aimed at ensuring payment of wages to workers and addressing the problem arising from non-value added multi-layer subcontracting. As a management tool for enhanced transparency of the contractor's subcontracting arrangement and accountability, the SMP can be used by works departments to monitor the performance of the main contractor in their sub-contractor management. The detailed coverage of the SMP is at **Annex 1**.

6. Following the introduction of the SMP, two surveys were conducted in 2004 and 2005 to obtain feedback from trade associations and the works departments. These included a review of selected SMPs submitted by contractors of on-going public works contracts. A list of good practices consolidated from the survey was prepared and disseminated to the works departments in November 2005 to facilitate their vetting of the SMPs submitted by the contractors. **Annex 2** sets out the good practices.

7. To further enhance sub-contractor management, improvement proposals on the SMP currently under consideration include:

- (a) preparing a standard checklist to facilitate officers in charge of the project to carry out SMP vetting;
- (b) requiring works departments to conduct regular internal audit on compliance with the SMP requirements; and
- (c) putting in place contractual provisions to empower the Engineer/Architect supervising the contract to obtain detailed subcontracting information from the contractors.

Voluntary Subcontractors Registration Scheme (VSRS)

8. To enhance the quality of subcontracting in public works contracts, since 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 the Provisional Construction Industry Coordination Board (PCICB). Listed subcontractors are regulated by PCICB.

9. Together with SMP, VSRS helps to enhance the quality of construction services in public works projects and, to a certain extent, contain the problem brought about by multi-layer subcontracting and wage disputes.

Further Initiatives in Wage Payment Monitoring

10. Notwithstanding the measures that are already in place and in view of the public concern over non-payment of workers' wages and the inherent problems associated with multi-layer subcontracting, ETWB has taken the initiative to form a Working Group with representatives from various sectors of the industry in January 2005 to undertake a review of contractual arrangements in public works projects, so as to ascertain whether further control measures can be incorporated to the contract to improve the situation. The membership of the Working Group is at **Annex 3**.

11. The Working Group has identified a number of measures which may help to further monitor payment of workers' wages and control multi-layer subcontracting, ranging from maintaining workers' records, improving workers' wage protection to better managing subcontractors. Specifically, they include:

Maintaining workers' records

- (a) installing a computerized smart card system at construction sites to keep records of workers' attendance;
- (b) requiring all on-site workers to enter into written employment contracts with their employers;
- (c) arranging for bank auto-payment in respect of wages and requiring main contractors to submit copies of wage payment records;

Improving workers' protection

- (d) requiring the main contractor to employ Labour Relations Officers (LROs) to handle complaints on arrears of wages;

- (e) requiring principal contractors to be responsible for the arrears of wages in their construction sites. In cases of wage default, the Government has the right to pay directly to the workers who are owed wages after the Labour Tribunal (LT) has awarded in favour of workers and to recover the payment so made from the contract fees due to the contractor under the contract. The workers should, however, report the arrears of wages to the LRO within seven days after they are owed wages; and

Subcontractor management

- (f) enhancing the requirements on the scope of subcontracting and the number of subcontracting layers.

Implementation

12. Members of the Working Group acknowledged that the new measures would have an impact on the long-established working practice in the construction industry. The intention was thus to first implement these measures in a few selected public works contracts on a trial basis. Three contracts have been selected as trial contracts³ for this purpose. A monitoring group comprising mainly the same membership from the Working Group was established in January 2006 to monitor and review the effectiveness of the control measures, with a view to taking them forward for full implementation as and when it is appropriate to do so on a stage-by-stage basis. Some of the difficulties in relation to the new measures which have so far been observed in the trial contracts are set out in **Annex 4**.

13. ETWB's original plan is to adopt these measures in all public works contracts in the fourth quarter 2006 when the workers' registration system will be fully in place and all workers will have been registered. This would enable the worker's registration smart cards to be maximized for the purpose of tightening up site and contract management. Indeed, to implement the measures any earlier may give an unintended impression that those workers who have registered are having an unfair advantage over the rest who are yet to be so registered and issued the smart card. Furthermore, ETWB would be able to gain more practical experience with the new measures by the end of the year to make

³ They include two building contracts from the Architectural Services Department and one civil engineering contract from the Civil Engineering and Development Department. Work on one building contract and the civil engineering contract has commenced in December 2005. Work on the second building contract is scheduled to begin in September 2006.

any necessary adjustment and refinement before an across-the-board application is made.

14. Notwithstanding the above reservation and in view of increasing public concern over wage arrears in public works projects, the Government has now decided to advance the implementation timetable so that all new construction contracts with invitation to tender on or after 1 May 2006 would be covered.

HA's IMPROVEMENT MEASURES

15. HA subscribes to ETWB's concept of tackling the issue at source by initiating changes in the procurement arrangements of the industry and implementing measures to monitor and address default of wage payments. Making reference to the ETWB's trial projects and after further consultation with its stakeholders (including contractors, sub-contractors and workers), HA has introduced some modified improvement measures to address the issue of wage arrears in its building construction contracts. These, as shown at Annex 5, include:

- (a) continuing with the existing Electronic Site Access Control and supplement it with Workers' Attendance Records for cross-referencing with the workers' employment records and SMP records;
- (b) requiring contractors to keep Workers' Employment Agreements and Records of both themselves and their subcontractors;
- (c) implementing Wage Payment Monitoring System and Records, including payment through auto-pay;
- (d) implementing a SMP so that contractors are required to report all layers of subcontractors engaged on site;
- (e) requiring the main contractor to employ LROs on site; and
- (f) empowering HA to deduct monies due to the contractor through contractual provisions for direct payment of outstanding wages to workers in proven cases of default.

Regulatory action

16. In addition to the improvement measures, HA would also take regulatory actions under the "List Management" measures similar to those set out in paragraph 4 above against contractors with proven default. Moreover, the HA will strengthen its regulatory measures concerning wage payment to workers with more severe actions including the removal from relevant lists for

default in payment to workers after the verification and order of relevant authorities, as well as suspension from tendering for poor performance in the keeping of records related to payment of wages and in monitoring of payment to workers by their sub-contractors.

Implementation

17. All building construction contracts tendered out from May 2006 onwards will adopt the improvement measures fully. For contracts tendered out in the interim, the provision to empower HA to make direct payment to workers in proven cases of wage arrears and for the employment of LRO on site would be implemented immediately. The HA will closely monitor the effects and feedback so as to review and refine the measures whenever necessary. As a major public sector developer having a large volume of procurement activities, the HA seeks to work in partnership with all stakeholders in the industry and regulators with a view to achieving continuous improvement. To this end, it would engage a consultant to examine this subject. In order to bridge the gap for making payment to workers on outstanding wages during the time when there is petition against the defaulting contractor for liquidation, the HA will study the feasibility of incorporating some form of “performance bond” into the construction contract.

WAY FORWARD

18. The Administration is very concerned about cases of wage arrears and other complications arising from uncontrolled multi-layer subcontracting in the construction industry. We are committed to dealing with the problems at source.

19. The various measures formulated by the ETWB and HA for public works and public housing contracts should help monitor and tackle the problems in relation to payment of wages to workers and subcontracting of construction work. While these measures may be subject to further refinement in the light of implementation experience, any adjustment will not deviate from the cardinal principle of protecting workers’ rights and entitlements.

20. Meanwhile, the LD will work closely with the ETWB, HA and works departments in implementing these new measures. The LD would, among other things:

- (a) offer advice on the effective implementation of the improvement measures and examples of good management practices adopted by the industry;

- (b) enhance the awareness of the principal contractors, subcontractors and workers on labour law and their respective rights and obligations through promotion and publicity;
- (c) provide suitable training to LROs if necessary;
- (d) set up alert systems to identify wage default cases for early intervention and active dispute resolution;
- (e) collaborate with the works departments to strengthen the partnership relationship with principal contractors and subcontractors with a view to preventing and resolving labour disputes; and
- (f) continue with its enforcement action to bring errant employers to justice.

21. It is hoped that the above measures would help bring about a culture change in the construction sector so that the labour rights and entitlements of workers employed under construction projects can be better protected.

22. Members are invited to note the content of this paper.

Environment, Transport and Works Bureau
Housing, Planning and Lands Bureau
Labour Department
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Detailed coverage of the SMP

Under the SMP, contractors are required to:

- (a) provide information on all layers of subcontracting and update any changes to subcontracting arrangements;
- (b) implement measures to ensure timely payment to downstream sub-contractors of all layers;
- (c) use written contracts, where practicable, for all subcontracting arrangements;
- (d) implement access control and maintain up-to-date daily attendance records of all workers on site;
- (e) introduce measures to handle complaints from workers and ensure early discovery of wage arrears; and
- (f) resolve promptly any wage arrears or industrial disputes in conjunction with the Labour Department (LD).

Subcontracting “Good Practice” List

1. Measures for monitoring early industrial dispute
 - (a) To request and encourage all workers to report any wage arrears for over seven days.
 - (b) To require sub-contractors to submit evidence of wages received by their workers together with the workers’ declarations of no “unsettled salary” for the previous month when making their payment application.
 - (c) To set up an industrial dispute hotline so that workers employed by the subcontractors can report to a designated management staff in cases of dispute.
 - (d) To appoint a senior management staff to investigate any suspected case and alert the Engineer/Architect supervising the contract without delay.

2. Measures for handling complaints from workers
 - (a) Upon the receipt of a complaint, the contractor’s designated investigating staff will first make an attempt to resolve it, as appropriate, with the relevant subcontractor and workers.
 - (b) If an agreement cannot be reached, the investigating staff will seek assistance from the LD to take over the mediation of the complaint.
 - (c) The investigation staff will co-operate with the LD to take early action on complaints.

3. Measures for maintaining daily attendance records of all workers on site
 - (a) A logging system should be implemented under the supervision of a designated staff. Workers should be required to log in at the normal place of assembly or a site entrance.

4. Ensuring timely payment to lower-tier subcontractors
 - (a) The contractor will require subcontractors to submit declarations stating that they have duly paid their subcontractors at a lower tier, together with copies of the relevant evidence of payment, such as receipts.
 - (b) The contractor will require their subcontractors to impose the same obligation on other subcontractors at a lower tier so that all subcontractors are required to follow the same practice.
 - (c) The contractor will appoint a designated staff to encourage subcontractors at all levels to report any overdue payments.

Membership of the Working Group on measures to monitor and control payment of wages and multi-layer subcontracting

1. Core members comprise representatives from:
 - (a) Environment Transport and Works Bureau
 - (b) Labour Department
 - (c) Architectural Services Department
 - (d) Civil Engineering and Development Department

2. The following organizations have nominated representatives to serve as adhoc members:
 - (a) Hong Kong Construction Association
 - (b) Hong Kong Federation of Electrical & Mechanical Contractors' Association
 - (c) Construction Site Workers General Union
 - (d) Hong Kong Construction Industry Employees General Union
 - (e) Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
 - (f) Hong Kong Construction Sub-contractors Association
 - (g) Hong Kong General Building Contractors Association Limited
 - (h) Mandatory Provident Fund Scheme Authority

3. The Independent Commission Against Corruption is represented as an observer.

**Difficulties encountered
in the public works trial contracts in relation to the improvement measures**

1. Some workers reside on the Mainland but work in Hong Kong. These individuals may have difficulty in opening a bank account in Hong Kong as they may not have a local address.
2. Casual workers are paid in cash on a daily basis. The improvement measures only allow these workers to work on the contract for not more than seven days or they would have to enter into written employment contracts with their employers and be paid by auto-pay. To avoid administrative work, some employers may choose not to employ these workers for more than seven days, thereby reducing job opportunities for these workers.
3. The employment of the LRO by the contractor may lead to a conflict of interest in the LRO's discharging of duties in, for example, reporting irregularities to the relevant authorities.
4. Some subcontractors are reluctant to disclose workers' payment details on the basis that this would seriously undermine their commercial operation. Some workers are also unwilling to disclose their employment details for personal reasons.

Improvement Measures Proposed by HA in Public Housing Projects
(to be implemented in building contracts and nominated sub-contracts
to be tendered out from May 2006 onward)

	Measures
a)	Site Access Control and Workers' Attendance Records
	- Smart Card Assess and Record System (SCRS) should be provided to control and record site assess and workers' attendance.
	- Daily attendance/working records of all employees should be properly maintained.
b)	Workers' Employment Agreement and Records
	- All workers engaged in the construction site (excluding short-term temporary workers) should have Written Employment Agreements with either the main contractor or his sub-contractors named in the Subcontractor Management Plan.
c)	Wage Payment Monitoring System and Records
	- Wages are paid to workers through auto-pay bank account on a monthly basis.
	- Wages are issued based on attendance records in the SCRS provided by contractor.
	- Worker's signature specimen should be recorded in SCRS.
	- Worker's acknowledgement of receipt of last month wages should be recorded by contractor.
	- Short-term temporary day workers must be paid by cheque with the Workers' acknowledgement upon receipt.
	- Full payroll record should be maintained by the Contractor.
d)	Subcontractor Management Plan (SMP)
	- Contractor's core management team must be its direct employees
	- All layers of sub-contractors must be recorded under the SMP.
e)	Labour Relations Officer (LRO)
	- LRO will be provided as a contract requirement. He should report to the HA, and station on site to monitor payment of wages, check the employment records and receive complaints and enquiries about wages payment matters from Workers
f)	Direct Payment in Cases of Default
	- Provision is made to allow the HA to deduct monies due to the contractor under the contract for making direct payment to the Workers employed by the contractors or his sub-contractors, where there are default cases verified by Labour Department and ordered by Labour Tribunal, subject to provisions of the current labour legislation.
g)	Regulatory Actions
	- Strengthen regulatory actions and penalties on the contractor for poor records in monitoring wage payment/conviction of non-payment of wages by themselves or their sub-contractors, which would in turn affect the Contractor's Performance Report/tendering status. The contractor shall be suspended from tendering for poor performance in the keeping of records related to payment of wages and in monitoring payment to workers by their sub-contractors. The contractor shall be removed from the relevant lists for default in payment to workers after verification and order by the relevant authorities.