

Draft Clause on payment of wages of Site Workers for subcontracts

[Guidance note for subcontract drafter:

Example: The Government enters into the Contract with the main *Contractor*. The main *Contractor* then subcontracts to the subcontractor at the first tier, who in turn further subcontracts to the subcontractor at the second tier;

- : in the first subcontract between the main *Contractor* and the subcontractor at the first tier, in Clause [A] below, “the Contractor” means the main *Contractor*, and “the Subcontractor” means the subcontractor at the first tier;
- : in the second subcontract between the subcontractor at the first tier and the subcontractor at the second tier, in Clause [A] below, “the Contractor” means the subcontractor at the first tier, and “the Subcontractor” means the subcontractor at the second tier.]

Clause [A]

- (1) In this Subcontract the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires :-
- (i) “Contract” means the main contract of the Construction of Activity Centre in Kowloon Park (Contract No. SS N504) made between the *Client* and the main *Contractor*;
 - (ii) “main *Contractor*” refers to the contractor who has entered into the Contract with the *Client*;
 - (iii) “*Client*” means the Government of the Hong Kong Special Administrative Region;
 - (iv) “*Project Manager*” means the *Project Manager* of the Contract;
 - (v) “*Cost Manager*” means the *Cost Manager* of the Contract;
 - (vi) “Site” means the Site as defined in the Contract;
 - (vii) “Subcontract” means this agreement;
 - (viii) “Subcontract sum” means the sum identified as such in the Subcontract [Schedule of Prices] **[Guidance note for subcontract drafter: input and amend as appropriate];**
 - (ix) “works” means the *works* as identified in the Contract; and
 - (x) “Site Workers” means the construction workers engaged for construction work on the Site who are registered under the Construction Workers Registration Ordinance (“CWRO”) (Cap. 583) and employed by the Subcontractor or his subcontractors at lower tier(s) for Providing the Works and has the same meaning as defined under Clause A1 of the *additional conditions of contract* of the Contract.
 - (xi) “Providing the Works” means doing the work necessary to complete the *works* in accordance with the Contract and all incidental work, services and actions which the Contract requires.

- (2) (i) Without prejudice to the generality of Clause C2 of the *additional conditions of contract* of the Contract, if any part of the *works* is further subcontracted to any person by the Subcontractor, the Subcontractor shall ensure that the relevant provisions under this Clause on payment of wages of Site Workers are included in all lower tier subcontracts.
- (ii) The Subcontractor shall ensure that all subcontractors at lower tier(s) shall include, observe and comply with the provisions which are mutatis mutandis in the terms of this Clause [A] in the relevant subcontracts in the lower tier subcontract.
- (iii) The Subcontractor shall submit copies of the relevant lower tier subcontracts of the Subcontract to the *Project Manager* for the purpose of checking if the relevant subcontract provisions referred to in sub-clauses (2)(i) and (2)(ii) of this Clause are included in the relevant lower tier subcontracts. Upon request by the *Project Manager*, the Subcontractor shall provide the original documents of the relevant lower tier subcontracts for inspection by the *Project Manager*.
- (iv) The Subcontractor shall comply with and shall ensure that subcontractors at lower tier(s) shall comply with the provisions of this Clause; and shall, if necessary, within reasonable time enter into a supplemental agreement with his subcontractor at lower tier to ensure that the lower tier subcontract complies with the requirements in sub-clause (2)(i) and (2)(ii) of this Clause and shall take all reasonable steps to ensure that subcontractors at further lower tier of subcontracting shall include, observe and enter into a supplemental agreement if necessary and as required under this sub-clause 2(iv).
- (3) (i) Subject to those Casual Workers referred to in Clause Z.1 (1) of the Particular Specification PS.G07 Section Z of the Contract on "Casual Workers", all Site Workers shall be engaged in accordance with Clauses X.2 to X.5 of the Particular Specification PS.G07 Section X on "Payment of Wages of Site Workers" of the Contract. Such Site Workers shall be engaged with a written employment contract with their respective employers who shall either be the Subcontractor or any of his subcontractors at lower tier(s). The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract at Appendix ACC.M to the *additional conditions of contract* of the Contract as far as the Site Workers are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under the Contract nor under this Subcontract.
- (ii) The Subcontractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by either extending the Subcontractor's employees compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Subcontractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix ACC.N to the *additional conditions of contract* of the Contract and shall maintain such policy for the duration of the self-employed workers being engaged in the Subcontract. The Subcontractor shall inform the Contractor immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.
- (iii) Truck drivers engaged for the Subcontract Works (excluding those truck drivers engaged by suppliers to deliver material to the Site) may either be a Site Worker or a self-employed person.

- (iv) There are on Site card reading devices to retrieve the data stored in Site Workers' registration cards and to enable that the daily attendance records of all Site Workers are submitted to the Construction Industry Council ("CIC") for the purposes under section 58(7) of CWRO and the Subcontractor shall verify the information of his Site Workers entering and leaving the Site in accordance with Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers Section X of the Contract.
- (v) Within 14 days of the commencement of the Subcontract, the Subcontractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Workers in accordance with Section X of the Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers of the Contract. The Subcontractor, among others specified in Section X of the Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers of the Contract,
 - (a) shall prepare the respective schedules of wages of the Site Workers employed or engaged by them based on the verified data from the attendance record system developed by the CIC known as Construction Workers Registration System or log books kept by the Contractor and / or the Subcontractor# **[Guidance note for subcontract drafter: # delete as appropriate]**;
 - (b) shall have sufficient funds available in the respective designated bank accounts for the payment of the wages to their respective Site Workers and ensure that certified true copies of the instruction records are made available to the *Project Manager*; and
 - (c) shall submit a written declaration that all Site Workers' wages payable have been paid when he submits the instruction records to the Contractor,in accordance with Section X of the Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers of the Contract. Site Workers who are not able to open a personal bank account in Hong Kong shall be paid by personal cheques in accordance with Section X of the Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers of the Contract.
- (vi) The Subcontractor shall acknowledge Clause C8 of the *additional conditions of contract* of the Contract that failure to comply with the Section X of the Particular Specification PS.G07 for Monitoring of Wage Payment to Site Workers of the Contract by any of the subcontractors may render the removal of the Subcontractor from the Site and/or the *works*.