

Construction Industry Council

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Guidelines on Administration Charges for Reporting of Site Accidents

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Enquiries

Enquiries on these guidelines may be made to the CIC Secretariat at -

Rm 2001, 20/F, Alliance Building
130-136 Connaught Road Central
Hong Kong.

Tel. no. : 3571 8716
Fax no. : 3571 9848
E-mail : enquiry@hkcic.org

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Guidelines on

Administration Charges for Reporting of Sites Accidents

Purpose

This publication sets out the criteria recommended by the Construction Industry Council (CIC) on whether principal contractors should impose charges on subcontractors for providing services in connection with the reporting of accidents involving employees of subcontractors and the processing of employees' compensation (EC) claims ("administration charges") and if so, good practices for levying such charges.

Terminology

2. In this document, unless the context otherwise requires -

"subcontractor" means -

- (a) any party who enters into a contract with a principal contractor to perform all or any part of the work which the principal contractor has undertaken to perform; or
- (b) any other person who enters into a contract to perform all or any part of the work which a subcontractor has undertaken to perform.

Introduction

3. In recent years, it has become a common practice for principal contractors to impose administration charges on subcontractors for reporting accidents and processing EC claims on their behalf giving rise to concerns such as the appropriateness of imposition

of administration charges, the reasonableness of the amounts charged and the possible undesirable effects of discouraging reporting of minor accidents. A Task Force has therefore been set up by CIC to review the current practice and a set of guidelines on the matter is promulgated in the interim.

Background

(A) Relevant statutory provisions

4. Under section 5 of the Employees' Compensation Ordinance (Cap. 282) (ECO), an employer is liable to pay EC for injuries suffered by their employees. Under section 24 of the ECO, principal contractors may be liable to compensate employees of their subcontractors.

5. Under section 40(1) of the ECO, no employer should employ any employees not covered by EC insurance. Under section 40(1B) of the ECO, principal contractors may take out EC insurance in respect of the liability of their subcontractors.

(B) Possible arrangements for EC insurance for subcontractors

6. The arrangements for EC insurance vary among subcontractors but the most common arrangements are as follows -

- Option 1 - main contractors taking out EC insurance covering workers employed by subcontractors;
 - Option 2 - subcontractors taking out EC insurance for their own workers;
- and

- Option 3 - same as Option 2 but main contractors' liability in relation to subcontractors' employees under section 24 of the ECO is covered by endorsement to subcontractors' EC insurance policies.

7. Option 1 is primarily used for domestic subcontracts for general trades. Nominated subcontracts and domestic subcontracts for specialist trades may adopt one of the above three options.

(C) Administration charges for accident reporting

8. Under section 15 of the ECO, employers have to report fatal accidents within 7 days and other injuries within 14 days using a standard form prescribed by the Labour Department. The same form is also accepted by insurers for fulfilling reporting requirements under EC insurance policies.

9. Under Option 1, principal contractors usually report accidents to the Labour Department (on behalf of subcontractors) and to insurers. Under Options 2 and 3, subcontractors usually report accidents directly to the Labour Department and their insurers. Main contractors will also report to their insurers to safeguard insurance protection.

10. In domestic subcontracts, administration charges, if required, are usually stipulated in tender documents and subcontracts. However, principal contractors are not involved in the drafting of nominated subcontracts and some of them may seek to impose administration charges through house rules which are not known to nominated subcontractors before these nominated subcontracts are concluded.

Justifications for Imposing Administration Charges

11. Industry stakeholders have different views on the justifications and reasons for imposing administration charges. Having considered the matter through the Task Force, CIC finds that, given the widely different circumstances, it is not appropriate to draw any conclusion on whether the levying of administration charges is justified. However, CIC has decided to promulgate the Guidelines on Administration Charges for Reporting of Site Accidents (Guidelines) so as to ensure and promote fair and good practices for the imposition of any concerned administration charges for the benefit of the parties as well as the construction industry as a whole.

Guidelines on Imposition of Administration Charges

12. CIC recommends the industry to observe the following guidelines in determining whether administration charges should be imposed and, if so, the arrangements for doing so -

- (a) any imposition of administration charges should be agreed by the parties to the subcontract having regard to all relevant circumstances, including
 - (i) their business practices; and
 - (ii) the EC insurance arrangements for the subcontract in particular whether the subcontractor will genuinely need the services of the main contractor in reporting accidents and processing EC claims;
- (b) where Options 2 and 3 set out in paragraph 6 above are adopted for EC insurance, subcontractors will bear the primary responsibility for reporting accidents for their employees and processing EC claims and should not therefore be required to pay administration charges to main contractors for accident reporting unless there are other valid over-riding considerations;

- (c) where administration charges are imposed -
 - (i) the relevant details including arrangements for levying such charges and the charge rates should be clearly set out in tender documents and subcontracts; and
 - (ii) the amount of administration charges should be reasonable and assessed having regard to all relevant factors including the staff input for reporting accidents and handling EC claims and the complexity of individual cases;
- (d) the practice of deducting administration charges from payments after award of subcontracts, through measures such as post-contract adoption of “house rules”, is without a proper basis and undesirable and should therefore be avoided.

Way Forward

13. Looking ahead, CIC will encourage the construction industry to pay heed to and adopt the Guidelines. It is hoped that through the support and publicity rendered for the Guidelines by various organizations representing stakeholders, the industry as a whole will benefit from the fair and good practices recommended here.

14. The Guidelines are promulgated with a view to reviewing them, if necessary, at an appropriate time in the future. Some of the matters raised during the discussions of the Task Force may be of interest for review, including a more in-depth study on the currently unsubstantiated worry of accident reporting being suppressed so as to avoid administration charges; and the practice in other leading economies whereby corporations demonstrate and practise corporate social responsibilities by encouraging accident reporting through paying fees to principal contractors or subcontractors for doing so.