



MEMO

From Secretary for Development
Ref (03E8T) in DEVB(W)516/80/03
Tel. No. 3509 8335
Fax No. 2524 9308
Email alancwwong@devb.gov.hk
Date 3 August 2022

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Construction Site Safety Manual

Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents

This memo promulgates contract provisions for incorporation in public works contracts and their subcontracts at all tiers for prohibition of imposing administrative charges for reporting site accidents and processing employees' compensation claims as well as imposing requirements on reporting all site accidents by contractors.

Background

2. It is not an uncommon practice for some contractors to impose administrative charges on their subcontractors for reporting accidents or processing employees' compensation claims on behalf of their subcontractors. It gives rise to concerns such as the appropriateness of imposition of administrative charges and the reasonableness of the amount charged. Such measures may also stave the subcontractors off in reporting site accidents under their purview, leading to under-reporting of site accidents.

3. It is essential and crucial to eliminate the malpractice on under-reporting of site accidents and collect accurate accident data, with a view to obtaining a full picture of the safety performance of public works contracts and formulating appropriate targeted and effective measures to tackle the safety challenges ahead.

Policy

Prohibition of Imposing Administrative Charges for Reporting of Site Accidents

4. We forbid contractors of all public works contracts and their subcontractors at any tiers to impose charges of any form or deduct any amount

from the payment to which any subcontractor is entitled, for reporting site accidents and processing any claims on employees' compensation on behalf of their subcontractors.

5. We also take this opportunity to reconcile the conditions of contract in public works contracts regarding accident reporting requirements. Where injury by accident arising out of and in the course of the employment is caused to any person employed to provide the works or services or in connection with the contract, the Contractor shall notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the contract administrator of public works contract (viz. Architect / Engineer / Maintenance Surveyor / Supervising Officer, *Project Manager*, *Service Manager* etc.) in the prescribed form without delay. This shall apply irrespective of whether the person is in the employ of the Contractor or a subcontractor at any tiers, and whether the person claims for compensation. In addition, if the subcontractors at any tiers reported the accidents to the Commissioner for Labour direct, he/she shall make the same report to the Contractor and the contract administrator of public works contract.

6. The contract provisions for incorporation into all public works contracts and their associated subcontracts are at **Annex A**.

7. The contract administrator shall monitor the Contractor's performance on incorporation of the contract provisions at Annex A *mutatis mutandis* into all subcontracts under the public works contracts, as required under relevant contract provisions at Annex A. The Contractor should be warned in writing if he fails to ensure incorporation of the said contract provisions *mutatis mutandis* in the subcontracts. If the Contractor fails to provide documentary proof of compliance or to rectify the non-compliance, the Project Office shall give "Poor" or "Very Poor" rating in Item 6.12 (compliance with particulars related to sub-contracting) in the Report on Contractor's Performance.

8. The Contractor shall devise measures and incorporate the measures in the Subcontractor Management Plan for (a) monitoring the performance of the subcontractors in complying with the requirements in the Contract regarding reporting site accidents; and (b) ensuring all subcontractors, irrespective of tiers, to incorporate the subcontract conditions *mutatis mutandis* as required in the provisions at Annex A into all subcontracts. The revised Guidelines on Scope and Contents of Subcontractor Management Plan to replace existing Appendix to Special Conditions of Contract / *additional conditions of contract* on Subcontractor Management Plan promulgated under DEVB TC(W) No. 6/2021, and the Standard Checklist for monitoring of the Subcontractor Management Plan are at **Annex B** and **Annex C** respectively.

Under-reporting of Site Accidents

9. If there is any under-reporting or late reporting of reportable accident¹ received by or made known to the project team or the contract administrator of public works contract via other means (i.e. not via the Contractor direct), the Contractor shall provide the contract administrator of public works contract within three months after the Contractor being notified of the case² the details of the reportable accident and the Injury Report Form for Works Department (WD) to upload to the “PWP Construction Site Safety & Environmental Statistics”, or sufficient evidence to dismiss the case. If the Contractor could not provide sufficient evidence to dismiss the case, the WD will include the accident case concerned into the accident statistics and the performance of the Contractor will be duly reflected in the Report on Contractor’s Performance, based on the prevailing provisions provided in DEVB TC(W) No. 1/2020 on Score Card for Assessment of Site Safety Performance and its subsequent updates, if any.

Effect on Public Works Contracts

10. This new set of contract provisions at **Annex A**, **Annex B** and **Annex C** shall be incorporated in all public works contracts (including capital works contracts and term contracts) of which the tenders are to be invited **on or after 26 August 2022**. For public works contracts tendered / to be tendered before 26 August 2022, project officers are strongly encouraged to incorporate the new set of contract provisions as far as reasonably practicable.

11. On the administrative measures mentioned in paragraph 9 above, it shall take immediate effect. It has also been incorporated into Chapter 9 of the Construction Site Safety Manual as attached (at **Annex D**).

12. Please bring this memo to the attention of the project officers who are responsible for the preparation of tenders for public works contracts and the project officers, consultants and resident site staff supervising public works contracts.

¹ Reportable accident means accident resulting in an injury with incapacity for more than three days.

² For the avoidance of doubt, the Contractor shall notify the contract administrator of public works contract immediately of any accident/incident occurring on the Site or related to the Works involving dangerous occurrence or death or serious personal injury or with worker(s) admitted to the hospital, pursuant to the standard particular specification in the Construction Site Safety Manual.

Enquiries

13. Any enquiries on the above should be addressed to Mr LEE Man-yiu, Assistant Secretary (Works Policies 5) 5 at 3509 8305.

(Alan C W WONG)
for Secretary for Development

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PS(W)	} to note in file
DS(W)2	
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AS(WP4)8	
AS(WP5)5	

Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents

[Note: The optional entries with asterisk (*) are for selection by contract drafter to suit contracts using NEC3/4 Engineering and Construction Contract (ECC) or NEC3/4 Term Services Contract (TSC) or Government of the Hong Kong Special Administrative Region (HKSARG) General Conditions of Contract (GCC) 1999 Edition or HKSARG GCC for Term Contracts. Contract drafters are reminded to remove the inapplicable ones in blue.

Please update the reference as appropriate.]

The following shall be incorporated into the contract / Contract between the *Employer / Client / Employer* and the *Contractor / Contractor* as *additional conditions of contract / Special Conditions of Contract* –

Section D – General Obligation

	<u>Marginal Notes</u>	<u>Guidelines</u>
<p>[D33][#] (1) The <i>*Contractor / Contractor</i> shall not impose charges of any form on any <i>*subcontractor / sub-contractor</i>, or deduct any amount from the payment to which any <i>*subcontractor / sub-contractor</i> is entitled, for reporting accidents and processing any claims for compensation under the Employees' Compensation Ordinance (Cap. 282) on behalf of the <i>*subcontractor / sub-contractor</i>. For the avoidance of doubt, <i>*subcontractor / sub-contractor</i> in this clause [D33][#] means all types of <i>*subcontractors / sub-contractors</i>, irrespective of tiers.</p> <p>(2) The <i>*Contractor / Contractor</i> shall ensure that the provisions at Appendix [A][#] of these <i>*additional</i></p>	<p>Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents</p>	

conditions of contract / Special Conditions of Contract are included *mutatis mutandis* in all **subcontracts / sub-contracts* entered into with **its / his *subcontractors / sub-contractors*. The **Contractor / Contractor* shall, if necessary, within a reasonable time enter into a supplemental agreement with **its / his *subcontractors / sub-contractors* to comply with the requirements in this sub-clause.

- (3) For **subcontracts / sub-contracts* at any lower tiers of **subcontracting / sub-contracting*, the **Contractor / Contractor* shall take all reasonable steps to ensure that the provisions at Appendix [A][#] of these **additional conditions of contract / Special Conditions of Contract* are included *mutatis mutandis* in all such **subcontracts / sub-contracts*. The **Contractor / Contractor* shall take all reasonable steps to ensure that **subcontractors / sub-contractors* at any lower tiers of **subcontracting / sub-contracting* shall, if necessary, within a reasonable time enter into a supplemental agreement to include the provisions at Appendix [A][#] of these **additional conditions of contract / Special Conditions of Contract* *mutatis mutandis* in all such **subcontracts / sub-contracts*.
- (4) Upon request by the **Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer*, the **Contractor / Contractor* shall provide the original documents of the **subcontracts / sub-contracts* to the **Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer*, for inspection.

Annex A

	<u>Marginal Notes</u>	<u>Guidelines</u>
<p>(5) Where injury by accident arising out of and in the course of the employment is caused to any person employed to <i>*Provide the Works / Provide the Service</i> or in connection with the contract, the <i>Contractor</i> shall notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the <i>*Project Manager / Service Manager</i> in the form prescribed in this contract without delay. This sub-clause shall apply irrespective of whether the person is in the employ of the <i>Contractor</i> or a subcontractor, and whether the person claims for compensation.</p>		<p>[Note: This sub-clause is only applicable for contracts using NEC3/4 ECC or NEC3/4 TSC.]</p>
<p>(6) The <i>*Contractor / Contractor</i> shall make necessary arrangements to ensure that all <i>*subcontractors / sub-contractors</i> report all accidents on the Site involving their employees via their upper tier <i>*subcontractors / sub-contractors</i> (if applicable) to the <i>*Contractor / Contractor</i> without delay. Such arrangement shall be incorporated in the Safety Plan and Subcontractor Management Plan required under the <i>*contract / Contract</i>.</p>		
<p>(7) The <i>*Employer / Client</i> shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the <i>Contractor</i> or any subcontractors save and except an accident or injury resulting from any act or default of the <i>*Employer / Client</i>, his agents or employees and the <i>Contractor</i> shall indemnify and keep indemnified the <i>*Employer / Client</i> against all such damages and compensation, save and except as aforesaid and against all claims, demands,</p>		<p>[Note: This sub-clause is only applicable for contracts using NEC3/4 ECC or NEC3/4 TSC.]</p>

proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- (8) The compliance of this clause [D33][#] of these **additional conditions of contract / Special Conditions of Contract* by the **Contractor / Contractor* is entirely without prejudice to and do not relieve the **Contractor / Contractor* from any of **its / his* obligations or responsibilities under the **contract / Contract*, the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees' Compensation Ordinance (Cap. 282), and all their subsidiary legislation.

Appendix [A][#] of **additional conditions of contract /*
Special Conditions of Contract

The following clause shall be incorporated mutatis mutandis into the
**subcontracts / sub-contracts at any tiers under the Contractor as*
**additional conditions of contract / Special Conditions of Contract –*

**Clause [X] – Mandatory Subcontract Conditions for Prohibition of
Imposing Administrative Charges for Reporting of Site Accidents and
Elimination of Under-reporting of Site Accidents**

(1) In this clause, the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires:-

“**Client / Employer / Employer*” means the Government of the Hong Kong Special Administrative Region;

“**Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer*” means the **Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer* for the Contract;

“Contract” means the main contract [insert the Contract No.][#] made between the **Client / Employer / Employer* and the **Contractor / Contractor*;

“**Contractor / Contractor*” means the contractor who has entered into the Contract with the **Client / Employer / Employer* and entered into the Sub-contract with the Sub-contractor [Note: Replace the words “the Sub-contract with the Sub-contractor” with “a sub-contract with a sub-contractor at the first tier of the same chain of subcontracting in connection with this Sub-contract” for the second or lower tier subcontracts];

“Sub-contract” means this agreement;

“Sub-contractor” means the party who entered into this Sub-contract with the **Contractor / Contractor* [Note: Replace the words “the **Contractor / Contractor*” with “the Higher-tier-sub-contractor” for the second or lower tier subcontracts];

“sub-contractors” means all types of sub-contractors of the Sub-contractor, irrespective of tiers;

“Higher-tier-sub-contractor” means the party who entered into a subcontract at higher tier than this Sub-contract with another party and entered into this Sub-contract with the Sub-contractor; [Note: Adopt this definition for the second or lower tiers subcontracts only].

- (2) The Sub-contractor shall not impose charges in any form on any sub-contractor, or deduct any amount from the payment to which any sub-contractor is entitled, for reporting any accidents and processing any claims for compensation under the Employees’ Compensation Ordinance (Cap. 282) on behalf of the sub-contractor.
- (3) Where injury by accident arising out of and in the course of the employment is caused to any person employed by the Sub-contractor or sub-contractors on the Works or in connection with the Contract, the Sub-contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the **Contractor / Contractor* and **Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer*. This sub-clause shall apply irrespective of whether the person claims for compensation.
- (4) Upon request by the **Contractor / Contractor* [Note: Add “or the Higher-tier-subcontractor” for the second or lower tiers subcontracts], the Sub-contractor shall provide the original documents of the sub-contracts to the **Contractor / Contractor* [Note: Replace “the **Contractor / Contractor*” with “the Higher-tier-subcontractor” for the second or lower tiers subcontracts] who is authorized to provide the same to the **Project Manager / Service Manager / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer* [Note: Add “and the **Contractor /*

Contractor” for the second or lower tiers subcontracts] for inspection.

- (5) The compliance of this clause [X][#] of the **additional conditions of contract / Special Conditions of Contract* by the Sub-contractor is entirely without prejudice to and do not relieve the Sub-contractor from any of **its /his* obligations or responsibilities under this contract, the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees’ Compensation Ordinance (Cap. 282), and all their subsidiary legislation.

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

for Capital Works Contracts using NEC3/4 ECC

To replace existing Appendix [x] to ACC [C5]¹

Appendix [x][#] to ACC [C5][#]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for **Limiting the Tiers of Subcontracting**).
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *works* subcontracted to any of them.
- iv) The *Contractor's* proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.
- vi) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- vii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- viii) The *Contractor's* approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for **Subcontract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- ix) Details of the *Contractor's* Management Team, as required in the Contract (i.e. the ACC for **Contractor's Management Team**), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor's* direct staff in supervision and management of his subcontractor(s) shall be submitted.
- x) Declaration through the standard declaration form that members of staff on the *Contractor's* Management Team are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of the subcontractors irrespective of tiers.
- xi) The *Contractor's* proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for **Payment of Wages of Site Workers**). The *Contractor's* proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to

¹ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020 and replaced by Annex F of DEVB TC(W) No. 6/2021.

subcontractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

Appendix [x][#] to ACC [C5][#]

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the *Contractor's* own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.
- v) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.
- vi) The *Contractor's* approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The *Contractor's* proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.
- viii) The *Contractor's* proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.
- ix) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.
- x) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- xi) The *Contractor's* proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).
- xii) The *Contractor's* approach for monitoring disputes.
- xiii) The *Contractor's* approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the *Project Manager's* site representatives updated of the situation.
- xiv) The *Contractor's* proposed measures for maintaining updated daily attendance records of all workers on site.
- xv) The *Contractor's* proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

Insert appropriate reference

To replace existing Appendix [y] to ACC [C5]²

Appendix [y][#] to ACC [C5][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) *Project Manager* should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x][#] to these *additional conditions of contract*.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in this contract (i.e. ACC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

² Existing appendix in *mutatis mutandis* terms of Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008 and replaced by Annex F of DEVB TC(W) No. 6/2021.

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

**for Capital Works Contracts using GCC 1999 Ed.
/ Term Contracts using GCC for Term Contracts**

To replace existing Appendix [x] to SCC [x]³

Appendix [x][#] to SCC [x][#]

Guidelines on Scope and Contents of Sub-contractor Management Plan

The Sub-contractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be sub-contracted including the form and extent of sub-contracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be sub-contracted shall comply with the relevant contractual provisions (i.e. the SCC for **Limiting the Tiers of Sub-contracting**).
- ii) Particulars of sub-contracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The Contractor's approach to demand/ensure his sub-contractor(s) to a) abstain from sub-contracting the whole of the works sub-contracted to him/them, and b) report upwards his/their sub-contracting arrangement and any subsequent changes with written declarations of no "hidden" sub-contracts for any part of the Works sub-contracted to any of them.
- iv) The Contractor's proposed measures for supervision of the works and monitoring of the performance of sub-contractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) The Contractor's proposed measures for monitoring the performance of the sub-contractors in complying with the requirements in the Contract in reporting site accidents.
- vi) The Contractor's approach to ensure all sub-contractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- vii) Criteria for selection of sub-contractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- viii) The Contractor's approach to ensure all his sub-contractor(s) (irrespective of tiers) to adopt written contracts in his/their sub-contracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract (i.e. SCC for **Sub-contract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- ix) Details of the Contractor's Management Team, as required in the Contract (i.e. the SCC for **Contractor's Management Team**), employed on direct supervision and management of sub-contractor(s). An organization chart showing the responsibilities of the Contractor's direct staff in supervision and management of his sub-contractor(s) shall be submitted.
- x) Declaration through the standard declaration form that members of staff on the Contractor's Management Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers.
- xi) The Contractor's proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. SCC for **Payment of Wages of Site Workers**). The Contractor's proposed measures for

³ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020 and replaced by Annex F of DEVB TC(W) No. 6/2021.

ensuring timely payments to sub-contractor(s) and payments by sub-contractor(s) to sub-contractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his sub-contractor(s).]

Internal Note:

[#] Insert appropriate reference

Appendix [x][#] to SCC [x][#]

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of sub-contracting]

Guidelines on Scope and Contents of Sub-contractor Management Plan

The Sub-contractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be sub-contracted including the form and extent of sub-contracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of sub-contracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of sub-contractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the Contractor's own staff employed for direct supervision and management of his sub-contractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his sub-contractor(s) shall be submitted.
- v) The Contractor's approach to demand/ensure his sub-contractor(s) to a) abstain from sub-contracting the whole of the works sub-contracted to him/them, and b) submit written declarations of no "hidden" sub-contracting of works.
- vi) The Contractor's approach to encourage his sub-contractor(s) to adopt written contract(s) in his/their sub-contracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The Contractor's proposed measures to demand his sub-contractor(s) to report upward his/their sub-contracting arrangement(s) and any subsequent changes.
- viii) The Contractor's proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his sub-contractors.
- ix) The Contractor's proposed measures for monitoring the performance of the sub-contractors in complying with the requirements in the Contract in reporting site accidents.
- x) The Contractor's approach to ensure all sub-contractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- xi) The Contractor's proposed measures for ensuring timely payment to downstream sub-contractor(s) after his payment to his direct sub-contractor(s).
- xii) The Contractor's approach for monitoring disputes.
- xiii) The Contractor's approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. Contractors are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.
- xiv) The Contractor's proposed measures for maintaining updated daily attendance records of all workers on site.
- xv) The Contractor's proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his sub-contractor(s).]

Internal Note:

[#] Insert appropriate reference

To replace existing Appendix [y] to SCC [x]⁴

Appendix [y][#] to SCC [x][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) Engineer / Supervising Officer should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x][#] to these Special Conditions of Contract.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in the Contract (i.e. SCC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

⁴ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008 and replaced by Annex F of DEVB TC(W) No. 6/2021.

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

for Term Contracts using NEC3/4 TSC

To replace existing Appendix [x] to ACC [C5]⁵

Appendix [x][#] to ACC [C5][#]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for **Limiting the Tiers of Subcontracting**).
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *service* subcontracted to any of them.
- iv) The *Contractor's* proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.
- vi) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- vii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- viii) The *Contractor's* approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for **Subcontract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- ix) Details of the *Contractor's* Management Team, as required in the Contract (i.e. the ACC for **Contractor's Management Team**), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor's* direct staff in supervision and management of his subcontractor(s) shall be submitted.
- x) Declaration through the standard declaration form that members of staff on the *Contractor's* Management Team are prohibited to be given a subcontract to any part of the *service* or to have a vested interest in any of the subcontractors irrespective of tiers.
- xi) The *Contractor's* proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for **Payment of Wages of Site Workers**). The *Contractor's* proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to

⁵ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020 and replaced by Annex F of DEVB TC(W) No. 6/2021.

subcontractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

Appendix [x][#] to ACC [C5][#]

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the *Contractor's* own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.
- v) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.
- vi) The *Contractor's* approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The *Contractor's* proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.
- viii) The *Contractor's* proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.
- ix) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.
- x) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the **Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**.
- xi) The *Contractor's* proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).
- xii) The *Contractor's* approach for monitoring disputes.
- xiii) The *Contractor's* approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the *Service Manager's* site representatives updated of the situation.
- xiv) The *Contractor's* proposed measures for maintaining updated daily attendance records of all workers on site.
- xv) The *Contractor's* proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

To replace existing Appendix [y] to ACC [x]⁶

Appendix [y][#] to ACC [x][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) *Service Manager* should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x][#] to these *additional conditions of contract*.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in this contract (i.e. ACC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

⁶ Existing appendix in *mutatis mutandis* terms of Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008 and replaced by Annex F of DEVB TC(W) No. 6/2021.

Standard Checklist for monitoring of the Sub-contractor Management Plan

DEPARTMENT/OFFICE :

A

Contractor's Ref. :

Contractor's Name :

Contract No. :

PWP No. :

Contract Title :

Type of Contract : Civil / Building / Term / Specialist / Maintenance *

Predominant Category of Work :

B

Contract Commencement Date :

Anticipated Contract Completion Date :

Anticipated Contract Period : _____ months

[illegible]

* Delete as appropriate

All dates to be shown as dd/mm/yyyy e.g. 01/03/2021

Standard Checklist for monitoring of the Sub-contractor Management Plan

PART A - Submission

Checklist Ref:

Date:

ITEM		Yes	No	N/A	Remarks
Section 1	Time Requirements				
1.1	Complies with contract requirements on timely submission				
1.2	Complies with immediate notification requirement for major changes				
Guidance Notes for Part A Section 1: (a) First submission within 30 days of Letter of Acceptance (b) Quarterly update-within 1 month from the start day of the quarterly period (c) Major changes update (including change of subcontracting structure such as addition/removal of subcontractors and/or alteration of subcontracting tiers) - interim notification (d) Revision/updating within 14 days of the date of notification					
ITEM		Yes	No	N/A	Remarks
Section 2	Content Requirements				
2.1	Compliance with contract requirements/SMP guidelines on limiting the tiers of Sub-contracting and prohibition on wholly sub-contracting of works (refer to guidance notes (a) to (c))				
2.2	Reasonable measures for monitoring and assessing sub-contractors' performance on: works programme, works quality, safety and environmental issues for individual subcontracts				
2.3	Compliance with contract requirements/SMP guidelines on Subcontract conditions (refer to guidance notes (d) and (e))				
2.4	Compliance with contract requirements/SMP guidelines on Organization chart/Contractor's Management Team (refer to guidance notes (f))				
2.5	Compliance with contract requirements/SMP guidelines on Payment of Wages of Site Personnel (refer to guidance notes (g) to (i))				
2.6	Reasonable measures for ensuring timely payment to the first-tier subcontractors and downstream sub-contractors including payments by sub-contractors to sub-contractors of lower tiers				
2.7	Compliance with the contract requirement for incorporating the vesting provisions on materials and/or constructional plant into the sub-contracts with its sub-contractors				
2.8	Compliance with contract requirement on proof of ownership of Constructional Plant or undertakings from the owner of the relevant item(s) of Constructional Plant for assignment of benefit to the Employer				
2.9	Reasonable measures for monitoring the performance of the subcontractors in complying with the requirements in the Contract in reporting site accidents				
2.10	Reasonable measures to ensure all subcontractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents				

Guidance Notes for Part A Section 2:

- (a) Clear and sufficient information on scope of works to be sub-contracted
- (b) Clear measures to ensure that sub-contractors shall not sub-contract the whole of the works sub-contracted to them
- (c) Clear measures to ensure sub-contractors to report upwards their sub-contracting arrangements and any subsequent changes
- (d) Clear requirement to demand sub-contractors to submit written declarations of no "hidden" sub-contracting works
- (e) Clear arrangement to ensure sub-contractors to adopt written contracts in their further sub-contracting and all the sub-contracts complied with the requirements as stipulated in the Contract
- (f) Organization chart with names and responsibilities to show that the Contractor employs his own staff to manage and supervise his sub-contractors, with declaration that members of staff on the Contractor's Management Team are prohibited to be given a subcontract to any part of the works or to have a vested interest in any of the subcontractors irrespective of tiers
- (g) Reasonable approach for early monitoring of industrial dispute
- (h) Reasonable approach for handling complaints from workers on site regarding wages arrears disputes
- (i) Reasonable mechanism to keep the A/E/SO informed of the latest situation regarding wages arrears or industrial dispute

Guidance Notes on follow up action for Part A:

- (a) Reminder/Warning to be issued for non-compliance on A1.1 to 1.2, A2.1 to 2.6, 2.9 and 2.10 above
- (b) Warning/notifying mechanism to be triggered
- (c) Reflect the non-compliance in the Report on Contractor's Performance
- (d) Payment for SMP is made in accordance with requirements in the Contract

Standard Checklist for monitoring of the Sub-contractor Management Plan

PART B - Site Compliance Check

Checklist Ref:

Date:

ITEM		Yes	No	N/A	Remarks
Section 1	Documentary Proof				
1.1	Evidence of compliance with contract requirements/SMP guidelines on limiting the tiers of Sub-contracting (refer to guidance notes (a) to (c))				
1.2	Evidence of measures being implemented for monitoring and assessing sub-contractors' performance on: works programme, works quality, safety and environmental issues for individual subcontracts				
1.3	Evidence of compliance with contract requirements/SMP guidelines on Subcontract conditions (refer to guidance notes (d) and (e))				
1.4	Evidence of compliance with contract requirements (if applicable) on Contractor's Management Team				
1.5	Evidence of compliance with contract requirements/SMP guidelines on Payment of Wages of Site Personnel (refer to guidance notes (f) and (g))				
1.6	Evidence of measures for ensuring timely payment to the first-tier subcontractors and downstream sub-contractors including payments by sub-contractors to sub-contractors of lower tiers				
1.7	Evidence of compliance with the contract requirement for incorporating the vesting provisions on materials and/or constructional plant into the sub-contracts with its sub-contractors				
1.8	Evidence of compliance with contract requirement on proof of ownership of Constructional Plant or undertakings from the owner of the relevant item(s) of Constructional Plant for assignment of benefit to the Employer				

Guidance Notes for Part B Section 1:

- (a) Evidence of sub-contract arrangement tally with SMP
 (b) Evidence of measures being implemented that sub-contractors shall not sub-contract the whole of the works sub-contracted to them
 (c) Evidence of measures being implemented to ensure sub-contractors to report upwards their sub-contracting arrangements and any subsequent changes
 (d) Evidence of requirement to demand sub-contractors to submit written declarations of no "hidden" sub-contracting works
 (e) Evidence of sub-contractors to adopt written contracts in their further sub-contracting and all the sub-contracts complied with the requirements as stipulated in the Contract
 (f) Evidence of early monitoring of industrial dispute (if applicable)
 (g) Evidence of handling complaints from workers on site regarding wages arrears disputes (if applicable)
 (h) Either record or keep a copy of the documents examined for future audit purposes

ITEM		Yes	No	N/A	Remarks
Section 2	Site Observations				
2.1	Frontline RSSs are facilitated to have easy access to the submitted SMPs				
2.2	Observations indicate that the site arrangement reasonably tally with the submitted Organization chart				
2.3	Observations indicate that the site arrangement reasonably tally with the submitted information on scope of works to be sub-contracted				
2.4	If applicable, observations indicate that complaints from workers on site regarding wages arrears disputes were being handled, industrial dispute were being monitored at an early stage and A/E/SO were informed of the latest situation				

Guidance Notes for Part B Section 2:

(a) Labour Relations Officer (LRO) has to undertake regular physical checks to verify the accuracy and reliability of the workers attendance records to identify irregularities, such as hidden sub-contractors. LRO has to check regularly on the information of workers' employers recorded in the attendance recording system against the latest SMP, and properly document such checks, and alert the project officer if the sub-contractor's name is not contained in the SMP. Observations should include random check on LRO's properly discharge of this duty.

Guidance Notes on follow up action for Part B:

- (a) Reminder/Warning to be issued for non-compliance on B1.1 to 1.6, B2.1 to 2.4 above
 (b) Reflect the non-compliance in the Report on Contractor's Performance

- (c) If for whatever reason(s) the Contractor could not provide the medical certificate or report with declaration mentioned in (b) above for an injured worker with admission to the hospital, then the incident shall be regarded as a severe incident.
- (d) After scrutinizing the details of the severe incidents received in the three-year data collection period, between 2017Q2 and 2020Q2 tentatively, the statistics collection arrangement will be reviewed as necessary and the calculation of safety rating stipulated in DEVB TC(W) No. 4/2014 will be revised accordingly for replacing the use of number of reportable accidents currently by the use of number of severe incidents.

9.3.6 Handling of Under-reporting and Late-reporting of Reportable Accidents

- (a) If there is any under-reporting or late reporting of reportable accident received by or made known to the project team or the Architect/Engineer via other means (i.e. not via the Contractor direct), the Contractor shall provide the Architect/Engineer within three months after the Contractor being notified of the case the details of the reportable accident and the Injury Report Form for Works Department to upload to the PCSSES system, or sufficient evidence to dismiss the case.
- (b) If the Contractor could not provide sufficient evidence to dismiss the case, the Works Department will include the accident case concerned into the accident statistics and the performance of the Contractor will be duly reflected in the Report on Contractor's Performance, based on the prevailing provisions provided in DEVB TC(W) No. 1/2020 on Score Card for Assessment of Site Safety Performance and its subsequent updates, if any.