

LCQ15: Incidents of payment defaults in public works

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (November 13):

Question:

It has been reported that incidents involving defaults or arrears of payment by subcontractors of public works of the Education Bureau, the Housing Bureau and public hospitals have occurred consecutively in recent months. Specific examples include: a material supplier who undertook ceiling works for the Education Bureau and was owed \$530,000 by a subcontractor made her plea by attempting to jump off from a building with a baby in her arms; the subcontractors of aluminium window works at construction sites of the Housing Department in two districts could not get payment of more than \$11 million from the upper tier, resulting in wage defaults to more than 50 workers; and more than 30 imported workers were suspected to be subject to salary exploitation in the expansion project of United Christian Hospital. There are views pointing out that the Government, being the largest employer in public works, has the responsibility under the subcontracting system to ensure that subcontractors of various tiers receive the project payment duly and on time, so as to prevent broken capital chains of projects and the resultant misery of workers not getting paid for their hard labour. Some members of the construction industry disclose that the Government's issuance of project payment is much later than before, resulting in the late availability of funds to contractors and subcontractors of various tiers and making it difficult for them to pay workers on time. In this connection, will the Government inform this Council:

(1) of the respective numbers of complaints received and conciliated by the Labour Department in each of the past three years on wages in arrears and payment defaults that are related to government projects;

(2) whether it has sought to understand the reasons behind the series of cases of wages in arrears and payment defaults by subcontractors of government projects in recent days;

(3) given that the public coffers have failed to make ends meet for consecutive years with fiscal deficits of over a hundred billion dollars in three out of the last four years, and the Financial Secretary has even said in a radio interview that fiscal deficits are expected to continue in the future three years, whether the Government has studied if the serious fiscal deficits have caused the Government to issue project payment later than before; and

(4) given the continuous fiscal deficit, under the current subcontracting

system, what policies are in place to eradicate the problem of wages in arrears and payment defaults by subcontractors of various tiers?

Reply:

President,

The current financial hardship faced by the construction industry is mainly due to the shrinkage of the private construction market, resulting in a decline in construction volume. However, the Government will continue to invest in the formation of land, infrastructure works and construction of facilities that are required by the community, and strive to maintain a steady growth in the capital works expenditure which will help alleviate the financial distress faced by the construction industry. In the coming five years, the average annual capital works expenditure of the Government will be about \$90 billion, which is more than the average annual expenditure of \$76 billion in the past five years, representing an increase of about 17 per cent. This demonstrates the Government's continued allocation of resources for capital works projects.

Having consulted the Labour Department (LD), our responses to the four parts of the question raised by the Hon Tse are as follows:

(1) In the past three years (2021 to 2023), the numbers of the construction industry related labour disputes (i.e. cases involving more than 20 employees) handled by the LD are 31, 36 and 40 respectively, in which the number of cases involving the Government and other public organisations are nine, nine and four respectively, i.e. about 30 per cent, 25 per cent and 10 per cent of the total number of cases in the respective years. It can be seen that the majority of the construction industry related labour disputes handled by the LD involve private works.

(2) As far as we understand, there are many reasons that can lead to labour disputes, e.g. financial difficulties faced by contractors/subcontractors; occurrence of divergent views or disputes in construction contracts/subcontracts which may result in contractors/subcontractors not being able to receive payments that they believe they should be entitled to in a timely manner; disputes in employment contracts between contractors/subcontractors and their employees (e.g. the way how performance-based bonus or overtime work should be calculated), etc. As far as public works are concerned, the problems generally involve subcontracts and its associated employment contracts.

(3) As one of the major clients in the construction industry, the Government has always been making contract payments in a timely manner based on the works progress and contract terms. Furthermore, we have been paying close attention to whether public works contractors have sufficient cash flow to carry out the works smoothly. In this connection, we have enhanced contractors' cash flow through a number of contract payment arrangements. For example, we provide advance payment to contractors at the onset of contracts; we adopt target contract form of the New Engineering Contract in large-scale

public works contracts in which contractors are paid based on their forecast expenditure; etc. To assist the construction industry to tide over the current difficult economic situation, in addition to the above-mentioned payment arrangements, we have recently co-ordinated with all works departments to arrange more frequent payments to contractors and to further split payment milestones into smaller ones as far as possible so that the contract payments can align more closely with contractors' works progress.

(4) We have implemented various measures in public works contracts, including prohibiting contractors from subcontracting the whole of the works, limiting the maximum number of tiers of subcontracting to two, and requiring contractors to submit subcontractor management plans and implement such plans strictly. Such measures serve to strengthen the supervision and management of subcontracting situations on site. Besides, according to the Employment Ordinance (Cap. 57), if a subcontractor of a construction contract fails to pay its employees, the relevant contractor is liable to pay such subcontractor's employees the first two months' unpaid wages. If the contractor fails to pay the outstanding wages, we can pay such subcontractor's employees on behalf of the contractor in accordance with the contract, and the amount so paid will be deducted from the contract payments that the Government needs to pay to the contractor.

The Government has been closely attentive to the healthy development of the construction industry. The proposed Construction Industry Security of Payment Bill (the Bill) is being scrutinised in the Legislative Council (LegCo). The Bill aims to improve the longstanding issue of delay contract payment among the stakeholders along the supply chain, while also seeking to reduce occurrences of wage arrears of workers. We will fully support the LegCo's scrutiny of the Bill to facilitate the early passage and implementation of the Bill. This will provide better protection for stakeholders in the construction industry to receive payments on time and in full for work done, thereby promoting the healthy and sustainable development of the construction industry. Furthermore, we have proactively introduced the Security of Payment Provisions in public works contracts on a pilot basis since October 2021, providing enhanced safeguards for contractors and subcontractors.