

QUANTITY SURVEYORS : CONSTRUCTION COST CONSULTANTS
威寧謝香港有限公司：工料測量師及建設本值顧問

1st June 1998

Letter to withhold NSC payment

Attn : Mr. Geoffrey Wong

Dear Sirs,

ELECTRICAL INSTALLATION SUB-CONTRACT
FOR THE NEW SCIENCE BUILDING COMPLEX
IN THE CHINESE UNIVERSITY CAMPUS
SHATIN, NEW TERRITORIES
WITHHOLD OF PAYMENT TO UDL

Subsequent to the determination of the above Sub-Contract by the Main Contractor, the Sub-Contractor is deemed to have breached his warranties to the Employer for the Sub-Contract Works, and shall thus be liable for any damage and/or loss that will be suffered by the Employer.

Based on Kin Shing's letter ref. 779/98 of 20 May 1998, he had released payment to the Sub-Contractor, UDL Kenworth Engineering Ltd., up to Interim Certificate No. 17 amounting to \$1,234,800.00.

To safeguard the interest of the Employer subsequent to the said determination, the balance amount of the estimated value of work completed and materials left on Site by the Sub-Contractor will be withheld in the coming certificates to compensate the loss and expense which the Employer is anticipated to incur.

Yours faithfully,

Original signed by:
Chan Chi Kai

For and on behalf of
DAVIS LANGDON & SEAH HONG KONG LIMITED

c.c. CUHK - Attn : Mr. Winston Kan
CUHK - Attn : Mr. Norman Yip
KS - Attn : Mr. David Leung

CCK/LMF
 Directors: Ku Moon Lan, Y Pesecek, Kenneth K Y Poon, Joseph Y K Lee, D C Mackay,
 Eric K F Au, Cheung Suk Hui, A C Ruxton, Peter M H Au
 Deputy Directors: Chan Kin Kai, John W Cheung, Francis K M So, Ricardo C P Cheung, Tai Si
 Assistant Directors: K S Yau, Martin O K Ng, Simon K M So, Dily L L Hu, Peter H M Law, M
 M J Juslution, Frank H L Kwok, W William K H Fong, Jonathan C K Lo
 Lysander M L Lam, Wong Chin Wing

DAVIS LANGDON & SEAH INTERNATIONAL

[illegible]

Advise the Employer

to withhold NSC's

payment due to this

NSC employing Res team

alternant

2101 Leighton Centre
77 Leighton Road
Hong Kong
Tel: 2830 3500
Fax: 2576 0416
E-mail: dlskh@dlskh.com

Determination: Withholding
payments

QUANTITY SURVEYORS : CONSTRUCTION COST CONSULTANTS
威寧謝香港有限公司：工料測量師及建設本值顧問

Sub-Conf

NSC

2101 Leighton Centre
77 Leighton Road
Hong Kong
Tel: 2830 3500
Fax: 2576 0416
Tlx: 63240 DLSOS HK

Advice on NSC's determination

Facsimile Message

Mr. Guyma Wong

From: Sherry Law / Chan Chi Kai

Of: Ronald Lu & Partners (HK) Ltd.

30 March 1998

Fax No.: 2833 6284 ✓

Ref: DLS/HK/98/7837

Total pages (including this cover sheet).....2

Should the attached message be incomplete please telephone us.

FIRE SERVICES INSTALLATION SUB-CONTRACT
FOR SANDWICH CLASS HOUSING DEVELOPMENT
AT LAI KONG STREET, KWAI CHUNG
DETERMINATION

NSC. ✓ Determined

We refer to the meeting on 26 March 1998 regarding the above.

We regret to learn that that the Fire Services Installation Sub-Contractor has failed to proceed his work regularly and diligently, and there is high possibility that the Sub-Contract needs to be determined. We would advise on the contractual issues as follows:-

procedures

1. The Main Contractor shall give notice to the Sub-Contractor by registered post or recorded delivery specifying that the Sub-Contractor has failed to proceed regularly and diligently with the Sub-Contract Works.
2. If such default shall continue for ten days after the above notice, the Main Contractor can, in accordance with clause 20(a) of the Sub-Contract Conditions, by notice by registered post or recorded delivery determine the employment of the Sub-Contractor under this Sub-Contract.
3. Upon determination, the Sub-Contractor is only entitled to the value of any work actually and properly executed and not paid for at the date of such determination and the value of any unfixed materials and goods delivered upon the site for use in the Sub-Contract Works the property in which has passed to the Employer under the terms of the Main Contract. However, further payment should not be released to the Sub-Contractor without the consent of the Main Contractor.
4. In turn, the Main Contractor shall have the right to recover, or to deduct from or set off against the above amount, the amount of damage suffered and/or of loss and expense incurred by him by reason of the determination of the employment of the Sub-Contractor under this Sub-Contract. These shall normally include, but not limited to, the Liquidated and Ascertained Damages that may be chargeable to the Main Contractor, the difference in costs of the remaining Sub-Contract Works, etc. However, these shall be sorted out between the Main Contractor and the Sub-Contractor themselves.

effect

loss recovery



Determination
(c-c) 12

FAX OUT/M

DAVIS LANGDON & HONG KONG CHINA LTD.
REC'D / 30 MAR 1998 ACTION / [unclear]

FIRE SERVICES INSTALLATION SUB-CONTRACT
FOR SANDWICH CLASS HOUSING DEVELOPMENT
AT LAI KONG STREET, KWAI CHUNG
DETERMINATION (Cont'd)

5. Clause 23(g) of the Main Contract Conditions has been deleted. Therefore the Main Contractor will not be entitled to any Extension of Time if delay occurs in this regard and the Main Contractor will be subject to Liquidated and Ascertained Damages being charged.

MC EOT

To safeguard the Client's interest

Employer's loss

1. The Client should consider to claim the surety bond of the Sub-Contract for any damages immediately when it is decided to determine the Sub-Contract.
2. The Services Engineer has to immediately do an accurate valuation of the Sub-Contract Works actually and properly executed and of any unfixed materials and goods delivered upon the site for use in the Sub-Contract Works.
3. The Main Contractor shall carefully safeguard all Sub-Contract Works executed and all materials and goods paid for not being removed from the site.
4. In accordance with clause SCC-22(1) of the Special Conditions of Contract for the Main Contract, the Main Contractor shall, with the consent of the Architect, select a substitute to complete the execution of the Sub-Contract Works immediately. The Main Contractor will only be entitled to the amounts which would have been payable under the original Sub-Contract for the remaining Sub-Contract Works irrespective of the actual amounts the Main Contractor has to pay the substitute for such. Also, the Main Contractor will not be entitled for any damages, loss and expense, etc. from the Employer in this regard.

Action to
Safeguard client's interest

It is most unfortunately that such determination will not only cause more administration work, but will inevitably delay the completion of the Contract.

Should you have any query, please let us know.

Regards,



For and on behalf of
DAVIS LANGDON & SEAH HONG KONG LIMITED

c.c. Housing Society
Mott MacDonald

- Attn. : Mr. H. S. Chum (2882 8630) ✓
- Attn. : Mr. Philip Chan (2827 1915) ✓

DE 29
Determination
NSC

FIXED

Ref. 1950.3

31st January 1996

By Fax & By Hand

Advice on NSC's determination

Hong Kong Housing Society
29/F World Trade Centre
280 Gloucester Road
Causeway Bay
Hong Kong

Attention: Mr. C.M. Yan 8829670

Dear Sirs,

Proposed Sandwich Class Housing
Tsing Yi Area 3, T. Y. T. L. 121, N.T.
Determination of Nominated Electrical Sub-Contractor

We refer to the meeting held in your office on 23/1/96 with your goodself, WTP, MCE, Wan Hin and our office on matters relating to the determination of the Electrical Sub-Contractor, Messrs. Empire Engineering Co., Ltd. During the meeting, a common consensus was established whereby, pursuant to Wan Hin's registered letter to Empire, Empire had repudiated the Sub-Contract by repeatedly failing to proceed with the Sub-Contract Works, and as such determination of the Electrical Sub-Contractor under the Sub-Contract would be the most appropriate action to take to provide a clean and clear cut basis for the completion works.

Regarding the contractual implications and the necessary actions to be taken by the Employer in the above connection, we would advise as follows :-

1. Implication to the Sub-Contract

Three issues arise from the determination of the Sub-Contract and are discussed below :

1. Implication to the Sub-Contract (Cont'd)

1.1 Determination of a Sub-Contractor obliges the Employer to renominate other sub-contractor to take over the works. However, in terms of time, cost and practicality of a re-nomination, it is not advisable nor viable in this circumstances, considering the long procedural time which would expose the Employer into deeper loss, and the relatively simple and minor outstanding/rectification work left over by the defaulting Sub-Contractor. It is considered, therefore, that the outstanding/rectification work be more appropriately taken up by Wan Hin who can mobilize immediately on site and who being the Main Contractor of the project, has the first hand information to enhance a swift and immediate continuation of the Sub-Contract work.

The liability and warranty for the works completed by Empire will be left open after determination. We interpret such liability and warranty be part of the sub-contract works not yet completed and shall be converted in terms of cost.

1.3 The defaulting Sub-Contractor has no direct contractual link with the Employer. However, they are jointly and severally with their Surety under the Bond provided to the Employer, liable for any loss and/or damages sustained by the Employer due to the non-performance of their obligation under the Sub-Contract.

In order to secure such reimbursement for any loss and/or damages through the Bond, the immediate action required is to lodge to the Surety the Employer's intention to call the Bond. In this connection please refer to our letter dated 24/1/96 to you attaching a draft letter to the Surety for your issuance.

renomination
or MC to take
outstanding

Should be
by SP

recover guarantee
and warranty
left open

call surety bond

Determination
cc 13

Hypothetical
S/c Final A/c

1.3 (Cont'd)

final account

The substantiation of the loss and/or damages incurred by the Employer will be prepared jointly by WTPL, MCE, L&B and Wan Hin, we list below the principle to demonstrate the loss and/or damages to the Surety as follows :-

Hypothetical F/A

A) The Hypothetical Sub-Contract Final Account

This will be the sum of :

① Value of work done

M/E + MC Analyse the value of work done + variations works executed
joint site inspection

A.1) Value of work completed and materials delivered for incorporation into the Sub-Contract

(Action required : MCE and Wan Hin to finalise the value of the electrical sub-contract account for value of work completed and value of materials delivered to site by Empire, including all variations works executed by Empire. A joint site inspection and record by MCE and Wan Hin will be essential for that purpose.

MCE should also check the latest recommendation for payment to Empire to reconcile with the findings above.

MCE and Wan Hin to finalise also the value of works completed and materials purchased by Wan Hin through A-185, 186, 211 & 212 and verbal confirmations as per Wan Hin's letter 11/1/96 ref. 232/QS-0680-96

② Hypothetical value of remaining work should S/c complete the work.

M/E work out
① remaining S/c work value
② variations issued but S/c not completed
③ variations issued during completion of outstanding/rectification work.

A.2) Hypothetical value of remaining work which would have been payable to Empire on due completion of the Electrical Sub-Contract.

(Action required : MCE to work out the hypothetical value of the remaining sub-contract work had Empire not been determined, including the hypothetical value of variations issued to Empire but not completed by Empire, and variations issued to Wan Hin during their completion of the outstanding/rectification work, if any.)

1.3 (Cont'd)

Total cost and loss/damages incurred by the Employer

B) The total costs and loss/damages incurred by the Employer in this Sub-Contract

This will be the sum of :

① Monies paid to MC for payment of S/c

B.1) Monies paid to the Main Contractor for payment to Empire

(Action required : Wan Hin should be asked to give a clear statement of the amounts received from the Employer for payment to Empire, and the actual amount paid out to Empire. Should there be a difference, Wan Hin should be asked to give account of).

② Costs required for completion of S/c work

B.2) All costs required for the completion of the outstanding/rectification sub-contract work.

by complete Contractor

(Action required : MCE & Wan Hin to estimate the value of the outstanding/rectification work, and to finalise the actual cost when available)

③ Other expenses e.g. extra consultants' fees/charges, extra management cost.

B.3) Any other expenses properly incurred by the Employer and loss/damages caused to the Employer by the determination.

(Action required : The Employer shall finalise any expense and loss/damages, e.g. extra consultants' fee/charges, extra management costs etc.)

Proof

The difference between items listed in B) and those in A) shall be the amount recoverable from the Bond. It should be noted also that the finalisation of the actual cost of rectification works for defects left over by Empire may take up to the end of the Main Contract's Defects Liability Period.

other action

2. Other courses of action to be taken

Other action:

- 1) MC secure & protect all mat'l & equipment. Identify clearly.

- 2) Architect/MCE instruct b) MC take over and complete remaining works.

- 3) Architect/MCE. Time at the remaining work to be completed by MC.

- 4) Employer to seek legal advice.

The following actions shall also be carried out:

- a) ~~Complete Contractor~~
Wan Hin should immediately secure and protect all the materials and equipments installed and unfixed material delivered to site under the Electrical Sub-Contract to avoid damage and burglary. Such materials and equipment delivered should be labelled clearly for identification.

WTPL/MCE to instruct Wan Hin to take over and complete the remaining outstanding electrical works and rectify the defects found. Works completed will be reimbursed to Wan Hin on daywork basis.

(L&B has issued fax dated 25/1/96 attaching draft Architect's Instruction to WTPL, HKHS and MCE for comments and action)

- c) WTPL/MCE to issue Architect's Instruction detailing the remaining electrical works to be completed by Wan Hin by 2/2/96. (Wan Hin/BSI to prepare detail list and submit to MCE for checking by 29/1/96; HKHS to endorse by 1/2/96; WTPL to issue A.I. by 2/2/96)

- d) We advise the Employer shall seek legal advice in this respect.

We trust the above have presented you a perspective picture of the determination and for your appreciation of the future courses of action to be taken.

Yours faithfully,



Levett and Bailey

NC/FY/HMK/mun

c.c. WTPL - Mr. Charles Grose 25/3/98
MCE - Mr. W. H. Wong 25/3/98

site security

AI to MC for outstanding
list of defect, outstanding