

**Construction Industry Council**

**Committee on Construction Procurement**

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Meeting No. 004/17 of the Committee on Construction Procurement was held on Thursday, 14 December 2017 at 2:30pm at the Boardroom, CIC Headquarters, 38/F, COS Centre, 58 Tsun Yip Street, Kwun Tong, Kowloon.

Present :

Stephen LAI	(SLI)	Chairman
CHAN Chi-chiu	(CCC)	
Paul CHONG	(PC)	
Robert LAM	(PHL)	
Eliza WONG	(EWYL)	
Derrick PANG	(DP)	
Stanley SIU	(SyS)	for Permanent Secretary for Transport and Housing (Housing) (for <i>Ada FUNG</i> )
TSE Chun-yuen	(CYT)	Chairperson of Task Force on Enhancements to Subcontractor Registration Scheme
Francis LEUNG	(FLG)	Development Bureau
Joseph LEE	(JoL)	Independent Commission Against Corruption
YUEN Hung-wai	(HWY)	Hong Kong General Building Contractors Association
Gary SOO	(GS)	Hong Kong International Arbitration Centre
LEE Kai-yuen	(KYL)	Contractor's Authorised Signatory Association (for <i>WONG Sing-lam</i> )
Danny HUNG	(CSH)	Hong Kong Construction Association

In Attendance :

Albert CHENG	(CTN)	Executive Director
Henry FUNG	(HF)	Director - Industry Development
LEE Oi-yen	(OYL)	Assistant Director - Registration Services
LAI Chi-wai	(CWL)	Senior Manager - Registration Services
LI Kam-sang	(KSL)	Senior Manager - Industry Development (Productivity)
Miranda YEAP	(MYP)	Senior Manager - Council Services
Rocky CHO	(RYC)	Manager - Council Services

	Thomas NG		The University of Hong Kong
Apologies	:	Ada FUNG (AF)	For Permanent Secretary for Transport and Housing (Housing)
		Lawrence NG (LN)	
		Kevin POOLE (KP)	
		Wilfred WU (WSCW)	
		Dick KWOK (DkK)	Chairperson of Task Force on RMAA Procurement
		CHOW Luen-kiu (LKC)	Hong Kong Construction Industry Employees General Union
		KU Chi-ming (CMK)	Construction Site Workers General Union
		Gary LEUNG (GL)	Manager - Council Services

## MINUTES

### Action

#### **4.1 Confirmation of the Progress Report of Meeting No. 003/17 of the Committee on Construction Procurement**

Members took note of the Paper CIC/CPT/R/003/17 and confirmed the Progress Report of Meeting No. 003/17 of the Com-CPT held on Thursday, 14 September 2017.

#### **4.3 Progress Update on the Research titled “A Roadmap to Enhance the Subcontractor Management Mechanism in Hong Kong”**

Members took note of the Paper CIC/CPT/P/010/17.

CWL updated Members on the progress of the research being conducted by The University of Hong Kong regarding the enhancement of the Subcontractor Registration Scheme (SRS). The research team, via a focus group meeting held on 9 November 2017, met with the Chairman of CIC, the Executive Director of CIC, Members of Com-CPT, Management Committee of SRS and Task Force on Enhancements to SRS, to gather their views on the direction of the research and future SRS enhancements and development.

Prof. Thomas NG, who led the research, presented some initial recommendations for future SRS enhancements and development

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as stated in Paper CIC/CPT/P/010/17, having incorporated comments from earlier meetings of the Com-CPT and the abovementioned focus group meeting.

(a) Alignment of trade divisions

The proposed pathway of enhancing SRS registration could be implemented from voluntary to mandatory in phases, with an interim measure, namely regulatory registration, to prepare the industry for eventual mandatory registration in the long run. Prof. NG suggested that the CIC might seize the opportunity to introduce ‘Specialised Trade Contractors’ (STC) to align the trade divisions with ‘Designated Workers for Designated Skills’ and to ensure compatibility of the registration schemes for workers and subcontractors as far as practicable. Participation from key stakeholders, including employers, main contractors and subcontractors could be encouraged to commit via a charter.

(b) Criteria for registration and standard uplifting

Consideration factors for registration could include safety performance, wage payment, financial strength, quality performance and past track record. The factors and their relative weighting could be adjusted based on actual operational requirements after launch. To facilitate acceptance by stakeholders, reference could be made to established contractor performance appraisal systems such as the PASS System of the Housing Authority. Subcontractors of exceptional performance could receive “elite” status or be placed on a premiere tier. This could motivate the subcontractors to strive for continuous improvements.

(c) Performance assessment

Prof. NG suggested that a performance data repository and grading system should be established to increase transparency and facilitate the market to engage appropriate subcontractors.

Prof. NG remarked that the recommendations were formulated with regard to the unique market situation in Hong Kong while incorporating good overseas practices where applicable.

In response to CCC’s enquiry regarding the relationship between

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the existing primary register of the current SRS and the proposed introduction of STC, premiere tier and probationary status, Prof. NG replied that by mapping the proposed STC to the current primary register of the SRS while maintaining both in parallel could ease implementation. The introduction of STC and the different tiers allowed a clear differentiation and assessment of subcontractors. Those with less capability would also be encouraged to upgrade and progress to higher tiers with a well-defined progression pathway.

CYT commented that the proposal to enhance the SRS seemed complicated and could potentially detract from the essence of the subcontracting practice: to offer flexibility in the supply of construction services. Any enhancement to the SRS should focus on facilitating the smaller players to participate in the market and offer a realistic pathway for upgrading. Prof. NG supplemented that a low entry barrier could be imposed during the initial stage of implementing the STC to attract those having difficulties in participating in the current SRS.

CTN commented that the future development of SRS should remain simple with a clear goal of becoming mandatory. He opined that enough time had been spent on discussing the issue and the industry should be well prepared for mandatory registration by now. To ease concerns of smaller players being put out of business by the registration requirements, industry stakeholders could agree on a mutually acceptable entry barrier. Anyhow, concrete suggestions should be put forward for stakeholders' further deliberation.

FLG agreed and supplemented that the Government had been operating its own registration scheme for some time and could share their experience with the research team.

The time table for the SRS enhancement was also discussed. Members generally agreed that a time frame of around 2 to 3 years should be the target for mandatory registration.

After much deliberation, SLI concluded that Prof. NG should consider the Members' comments and refine the scope and direction of the research study.

[Prof. Thomas NG left the meeting at this juncture.]

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**4.2 Matters Arising from the Previous Meeting of the Committee on Construction Procurement**

(a) Item 3.4 – Consultancy Report – A Study of the Risk Sharing Pattern in the Construction Projects in Hong Kong

CSH suggested that with reference to the findings in the consultancy study on the risk sharing pattern in construction projects in Hong Kong commissioned by the HKCA, the issue of unfair contract conditions was more prevalent in the private sector than the public works sector. Focus should be directed at tackling the problem in the private sector. He cited an example where a cap was imposed on EOT entitlement of the contractor.

CTN agreed that CIC could take the initiative to gather views from industry stakeholders and come up with an impartial position on this matter.

EWYL commented that REDA members generally conduct their construction projects in a reasonable manner. The problem could be associated with the influx of new developers from overseas entering the local market. The CIC could consider opening dialogues with these new players and those not yet being a member of REDA.

PHL commented that the issue of risk sharing had been discussed for more than 10 years, yet the problem remained quite common in the private sector. The government and contractors should work together to create a culture where contractual risk was actively being evaluated and apportioned to the appropriate party.

FLG commented that NEC had been adopted in public works projects and had been successful in driving a more collaborative culture between employers and contractors in the construction industry.

After much deliberation, the Chairman suggested and Members agreed that a Task Force would be formed to study the issue of unfair contract conditions with an aim to fostering equitable risk sharing practices in construction projects.

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[CSH left the meeting at this juncture]

(b) Item 3.2 (c) – Briefing on Automatic Opt-in of Schedule 2 of the Arbitration Ordinance for Domestic Arbitration

FLG briefed Members on the expiring of automatic opt-in of Schedule 2 provisions under the Arbitration Ordinance (Cap 609) which applied to contracts entered into on or after 1 June 2017. If the contracting parties intended some or all of the Schedule 2 provisions to be applicable, they had to expressly indicate such in the arbitration agreement. FLG pointed out that the opt-in Schedule 2 provisions was included in the arbitration ordinance that came into effect back in 2011.

FLG expressed that industry practitioners were expected to comply with the clauses stated in Cap 609. EWYL commented that REDA Members were aware of this change and had no adverse comment.

GS suggested that the CIC and Hong Kong International Arbitration Centre in 2018 could collaborate more closely to support the construction industry on contractual matters.

(c) Items 3.6 (d) – Updates on NEC Training

RYC gave a powerpoint presentation on the upcoming NEC classes organised by CIC in 2018, i.e. 10 classes of NEC3 ECC Project Manager Accreditation Courses and 2 classes of NEC4 Accreditation Extension. New courses, e.g. Introduction to NEC4, would also be held.

(d) Items 3.6 (d) – Updates on the status of research initiatives under CIC’s research fund

KSL reported that research areas such as procurement strategy, RMAA related topics and competition law suggested by Members had been incorporated in the last round of research proposal invitation. A total of 39 applications were received but none was related to construction procurement.

KSL said that research institutions would be encouraged to submit procurement related research proposal in future invitations. EWYL suggested that MiC would be a key area of

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development and procurement procedures related to such construction should be studied.

SLI requested that Members and the Secretariat to prepare some research topics for deliberation in the next Meeting. MYP supplemented that studies and research could also be conducted with the Com-CPT budget in addition to the research fund.

**All and  
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#### **4.4 Key Achievements in 2016 - 2017 & Work Plan 2018**

MYP gave a powerpoint presentation on the key achievements of the Com-CPT in 2016 - 2017, covering three major areas namely publication of reference materials, establishment of Task Forces and organising of technical seminars.

MYP reported that Reference Materials for Standard Form of Domestic Sub-contract, NEC Case Book, Standard Form of On-demand Performance Bond with Conditions and Simplified Standard Form of Domestic Sub-contract had been published during 2016 - 2017.

MYP reported that seminars on ‘Competition Law for the Construction Industry’, ‘Partnering, Collaborative Contracts and Third Party Contractual Rights’, ‘Rising Construction Cost’ were successfully held during the said period. Feedbacks received from industry stakeholders were positive.

The Task Force on the Selection of Contractors and Task Force on RMAA Procurement were set up under the Com-CPT.

MYP updated Members that going forward, the publication of reference materials would only require approval from the Committee. Such publications would be reported to the Council for information according to the streamlined operations.

#### **4.5 Update on Subcontractor Registration Scheme (SRS) Operations**

Members took note of Paper CIC/CPT/P/011/17 on the latest status of SRS operations. CWL reported that as of November 2017, there were 5,759 companies registered under the SRS. This indicated a steady increase of around 106 Registered Subcontractors as compared with the last report in August 2017. CWL also reported that the Management Committee held its 4<sup>th</sup> regulatory hearing of

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2017 on 28 September 2017. One case was related to safety while two cases were related to payment of wages.

CWL reported that a seminar on MPF, anti-bribery and sharing of good practices was held recently. More seminars would be held for subcontractors in the coming years.

**4.7 Any Other Business**

(a) Progress Update of the Task Force on Selection of Contractors

PHL reported on the progress of the Task Force with a powerpoint presentation. Samson Wong & Associates Property Consultancy Limited had conducted interview with 14 stakeholders to gather their views on selection of contractors from August to November 2017.

PHL reported that the research would focus on studying the ways for selection of contractors in Hong Kong and the key factors affecting the selection of procurement. PHL also briefed Members the types of tendering, risk management methods, tender evaluation, contract award and performance assessment.

PHL anticipated that the first draft of the finalised report would be submitted to the Com-CPT in 2018 Q1.

(b) Progress Update of the Task Force on RMAA Procurement

RYC reported on the progress of the Task Force with a powerpoint presentation. A research titled 'Factors Affecting Contractors in Hong Kong Participating in RMAA Sector' would be conducted. The scope of research covered market situation, challenges faced by contractors entering the RMAA sector, and short to long term strategies to overcome the challenges of contractors. The study was expected to be completed by the end of 2018.

CTN suggested that the Task Force might also provide references on good practices for contractors as well as selection guidelines for users.

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(c) Other A.O.B.

CTN reported on the progress update of the Steering Committee for the Consultancy of Time, Cost and Quality Performance and Environmental Performance. The first meeting would be held in January 2018 and SLI would attend representing the Com-CPT.

**4.6 Tentative Meeting Schedule for 2018**

Members took note of the Paper CIC/CPT/P/012/17 regarding the tentative meeting schedule for 2018.

**4.8 Date of Next Meeting**

The next meeting would be scheduled for Thursday, 8 March 2018 at 2:30pm at the Boardroom, CIC Headquarters, 38/F COS Centre, 56 Tsun Yip Street, Kwun Tong, Kowloon. **All to note**

There being no further business, the meeting adjourned at 4:40 p.m.

**CIC Secretariat**  
**December 2017**