

Construction Industry Council

Committee on Construction Procurement

Meeting No. 003/16 of the Committee on Construction Procurement was held on Monday, 12 September 2016 at 2:30pm at Meeting Room No. 1, CIC Headquarters, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

Present :

Stephen LAI	(SLI)	Chairman
CHAN Chi-chiu	(CCC)	
Paul CHONG	(PC)	
Robert LAM	(PHL)	
Eliza WONG	(EWYL)	
Wilfred WU	(WSCW)	
LAU Tsz-mei	(TML)	for Permanent Secretary for Transport and Housing (Housing) (<i>on behalf of Ada FUNG</i>)
Thomas HO	(KnH)	Chairperson of Special Group on On-Demand Bonds
Ki-cheung TANG	(KCT)	Chairperson of Task Force on Standard Contract Provisions for Domestic Subcontracts
TSE Chun-yuen	(CYT)	Chairperson of Task Force on Enhancements to Subcontractor Registration Scheme
Jennie AU YEUNG	(JAY)	Independent Commission Against Corruption
Francis LEUNG	(FLG)	Development Bureau
KU Chi-ming	(CMK)	Construction Site Workers General Union
Danny HUNG	(CSH)	Hong Kong Construction Association
Daniel LAM	(DLL)	Hong Kong International Arbitration Centre
WONG Sing-lam	(SLW)	Contractor's Authorised Signatory Association
YUEN Hung-wai	(HWY)	Hong Kong General Building Contractors Association

In Attendance :

LEE Oi-yen	(OYL)	Assistant Director - Registration Services
Miranda YEAP	(MYP)	Senior Manager - Council Services

Chi-wai LAI	(CWL)	Senior Manager - Registration Services
Belle HO	(CYH)	Manager - Council Services
Rocky CHO	(RYC)	Manager - Council Services
Amy FUNG	(AyF)	Assistant Manager - Council Services
James WONG	(JaW)	Assistant Manager - Research & Development
Lucas YAU		Intern
Y. H. CHIANG		Hong Kong Polytechnic University
Francis WONG		Hong Kong Polytechnic University

Apologies : Ada FUNG (AF) For Permanent Secretary for Transport and Housing (Housing)

Lawrence NG (LN)

Kevin POOLE (KP)

HO Sing-mo (SMH) Chairperson of Task Force on NEC3 Collaborative Contracts

CHOW Luen-kiu (LKC) Hong Kong Construction Industry Employees General Union

PROGRESS REPORT

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The Chairperson and Members welcomed new Co-opted Member, Mr. KU Chi-ming, representative of the Construction Site Workers General Union, replacing Mr. CHUNG Ling-so who has left the Union and resigned from the Com-CPT.

3.1 Confirmation of the Progress Report of Meeting No. 002/16 of the Committee on Construction Procurement

Members took note of the Paper CIC/CPT/R/002/16 and confirmed the Progress Report of Meeting No. 002/16 of the Com-CPT held on Thursday, 23 June 2016.

3.2 Matters Arising from the Previous Meeting of the Committee on Construction Procurement

(a) Item 2.2(d) - PolyU research on “No-Saturday-Site-Work”

Prof. Y. H. CHIANG of the PolyU was invited to present his research findings on “No-Saturday-Site-Work” under Agenda

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Item 3.5.

(b) Item 2.4 - Establishment of Task Force on RMAA Procurement

MYP reported that further to the last Com-CPT meeting, Members were invited to provide their views and opinions on the proposed scope, terms of reference and members composition for the establishment of the Task Force on RMAA Procurement. The amended terms of reference and members composition was circulated to Members on 13 July 2016 and the CIC Secretariat had not received any further comments from Members.

The terms of reference and members composition was endorsed accordingly and the CIC Secretariat will further consult the Com-CPT Chairperson to identify a suitable candidate to take up the Chairperson role of the Task Force.

[EWYL and HWY joint the meeting at this juncture.]

(c) Item 2.6(g) - Briefing by ICAC on Corruption Issues in Construction Industry

JAY tabled a paper containing detailed information on the corruption trend in the construction industry for Members' information. She explained that the complaints received by ICAC related to the construction sector were the second highest in number in the past ten years.

She cited two convicted cases as examples of illegal actions. She further noted that some of these actions were considered common practice in the construction industry and were highly undesirable in the view of the ICAC. She urged that greater transparency was needed in all levels of the construction supply chain.

The Chairperson requested Members to disseminate the information to their respective organisations.

KCT queried how sub-contractors (“包工頭”) would be distinguished from regular employees and asked for clarification between accepting kick back and making a profit.

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JAY acknowledged that there were many different terminologies and different kinds of contractual relationships between workers, foremen and employers. There was no hard and fast rule and the ICAC would look into the situation of each individual cases.

SLW expressed that the mentioned practices remained prevalent in the local construction industry.

JAY suggested that industry stakeholders should review the current procurement and employment arrangements to avoid contraventions.

CYT requested the tabled paper and the discussed information to be made available in Chinese. JAY agreed that a Chinese version would be sent to Members. She further suggested the ICAC would be happy to explain the situation to other organisations if requested. Members were welcomed to approach them directly for further discussion.

FLG noted that the court's interpretation of the different employment relationships could differ from the understanding of the industry. He acknowledged that this area would require further clarification with the industry as well as the ICAC. The Development Bureau would facilitate dialogue between the stakeholders on this matter.

[KnH and PC joint the meeting at this juncture.]

3.3 Amended Operation Framework of CIC Research Fund and Proposal of Research Agenda

JaW briefed Members on Paper CIC/CPT/P/008/16, on the amended operation framework of CIC Research Fund approved by the CIC Council in June 2016 and the proposed research areas related to construction procurement.

He explained that the amended framework consisted of the following four stages: (a) invitation to submit research proposal; (b) evaluation and approval of the research proposal by the CIC; (c) supervision and monitoring of the research proceedings and (d) promotion / implementation of the research findings. The amended framework would encourage better communication and

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collaboration between researchers and stakeholders. It is hoped that the CIC committees could be actively involved in the research and development activities.

Regarding the proposed research areas, he suggested Members could offer suggestions targeting the industry needs on procurement areas where researchers could address. Members were introduced to a few initial areas for further consideration: 1) collaborative procurement strategy; 2) effective dispute resolution; 3) implication of the competition law; 4) selection of consultants and contractors for RMAA works and 5) construction quality.

PC enquired how many research projects were in progress under the purview of the Com-CPT.

JaW replied that there were two completed projects that were assigned to the Com-CPT and there was no project in progress.

MYP supplemented that the aforementioned research funding framework would operate in addition and in parallel to the existing budget allocated to Com-CPT for its own initiatives.

FLG supported the proposed research areas and noted that the areas generally aligned with the Development Bureau's direction.

In response to PC's enquiry if the annual budget of \$10M under the research funding framework was allocated exclusively for the Com-CPT or shared between the four committees, JaW replied that the \$10M budget was shared between the four committees.

The Chairperson invited Members to provide suggestions on potential research areas after the meeting.

**Com-CPT
Members**

[Post Meeting Note: Suggestions were received from Members and had been passed to the Task Force on Research for their further consideration.]

3.4 Nomination for Member of Task Force on Research

JaW briefed Members on Paper CIC/CPT/P/009/16, seeking a representative of the Com-CPT to become a member of the Task Force on Research.

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JaW explained that members of the Task Force would be responsible for evaluating and short listing research proposals for funding consideration and also to monitor the progress of funded research projects.

The Chairperson announced that subject to acceptance of Com-CPT Members, CCC had kindly agreed to represent the Com-CPT.

CCC declared for Members' information that apart from representing the Com-CPT, he also represented the Com-CSY at the Task Force.

Members agreed to the nomination of CCC to become member of the Task Force on Research.

3.5 Presentation of the Research on “No-Saturday-Site-Work”

Prof. Y. H. CHIANG and Prof. Francis WONG of the Hong Kong Polytechnic University gave a presentation on the findings of their research on the local industry's view on “No-Saturday-Site-Work”.

Prof. CHIANG concluded that “No-Saturday-Site-Work” was not a key factor in attracting manpower and might not be feasible to be implemented in the local construction industry in the short term. He further noted that focus should be placed on enhancing workers welfare, wage security and career prospects to attract manpower to the construction industry.

[WSCW left the meeting at this juncture.]

PC enquired if any particular work trade was specified when referring to construction works in the survey. Prof. CHIANG replied that no trade was specified and the survey referred to construction work in general.

KCT enquired if working in construction sites included professional disciplines such as architects and engineers. Prof. CHIANG replied that it was made clear to respondents for the purpose of the survey that working in construction site referred to frontline construction workers.

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CCC enquired and Prof. CHIANG confirmed that in his findings, site work on Saturday was common across the world.

PC questioned how was “feasible” defined in the survey as different stakeholders would have different concerns regarding the feasibility of “No-Saturday-Site-Work”. Prof. CHIANG replied that during the survey, they allowed the respondents to offer their own opinions on the considerations and circumstances that would make “No-Saturday-Site-Work” feasible, as such feasibility was not rigidly defined.

PHL recalled from previous discussions on this issue that workers wages on a monthly basis was critical to the implementation of “No-Saturday-Site-Work”.

The Chairperson thanked Prof. CHIANG and Prof. WONG for their presentation.

[JaW, Prof. CHIANG and Prof. WONG left the meeting at this juncture.]

[Post Meeting Note: EWYL expressed that developers were happy to explore with other concerned parties on feasible ways to enhance workers welfare and improve site conditions.]

3.6 Reference Materials - NEC Case Book: Improvement of Fuk Man Road Nullah in Sai Kung

MYP briefed Members on Paper CIC/CPT/P/010/16 seeking Members’ endorsement of the “Reference Materials - NEC Case Book: Improvement of Fuk Man Road Nullah in Sai Kung” for publication on the CIC website.

MYP thanked Ms. Ellen CHENG of the DSD for her contribution in the drafting of the Case Book.

KnH commented that the Case Book was mostly prepared by Ms. CHENG of the DSD and suggested that it should be conveyed to readers that the Case Book only represented views from their perspective.

PHL commented that the section on contract period was quite ambiguous and suggested clarifications for readers’ better

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understanding.

FLG commented that the effectiveness and limitation of NEC3 was still under evaluation by the Development Bureau and expressed his reservation that the Case Book might be sending an over-optimistic image on the use of NEC3 to the industry.

The Chairperson suggested to include a foreword to the Case Book to address Members' comments.

**CIC
Secretariat**

Members endorsed the Case Book subject to the inclusion of a foreword.

MYP told Members that a Request for Proposal exercise was conducted to engage a consultant for the drafting of the second Case Book. Unfortunately, there were little interest in this assignment from potential consultants. Another round of Request for Proposal would be conducted and Members were invited to disseminate the opportunity of this assignment to their peers.

MYP invited Members to attend the Technical Seminar on Collaborative Contracts and Third Party Contract Rights to be held on 22 September 2016.

[FLG left the meeting at this juncture.]

[Post Meeting Note: A foreword incorporating Members' comments was drafted by the CIC Secretariat and was accepted by the Chairperson of the Task Force on NEC Collaborative Contracts on 29 September 2016. The Case Book with the foreword would be published on the CIC website subject to no further comments from the Council.]

3.7 Reference Materials - Standard Form of On-demand Bonds with Conditions

KnH briefed Members on Paper CIC/CPT/P/011/16 seeking Members' endorsement of the "Reference Materials - Standard Form of On-demand Bonds with Conditions for publication on the CIC website.

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CSH stated HKCA's position of objecting any form of on-demand bonds.

TML shared the Hong Kong Housing Authority's experience on the use of on-demand bonds as a risk management tool in capital works projects.

PHL noted that in CIC's previous publications on the subject matter, it was suggested that on-demand bonds were undesirable and advocated other ways to manage contractor performance. Nonetheless, the use of on-demand bonds remained a not uncommon practice in the local construction industry. The current Standard Form should serve as a fair option for the benefit of the construction industry as a whole. Should the Standard Form be published by the CIC, he suggested that reference should be made to CIC's previous publication on the same subject.

CSH expressed concern that if the Standard Form was published by the CIC, it would be seen by the industry as an endorsement of on-demand bond practices by the CIC.

KnH explained that the terms of the Standard Form had been drafted to be much more equitable as compared to those commonly seen in the industry.

HWY said that the cost of bonds would be reflected in the contractor's tender price. He questioned if this added value to construction projects.

EWYL suggested that the Standard Form could be promoted to construction clients through consultant quantity surveyors, so that professional advice and guidance could accompany the use of the Standard Form.

After much deliberation, Members agreed that some form of guidance note should be included with the Standard Form expressly stating on-demand bonds were not encouraged; and that there were other ways to ensure contractor performance. The key benefits of the Standard Form should also be highlighted.

The Chairperson requested the CIC Secretariat to consult the Task Force Chairperson and prepare the guidance note addressing Members concerns for further endorsement of the Standard Form

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at the next Com-CPT meeting.

The Chairperson thanked KnH for his contribution towards the drafting of the Standard Form.

[PHL, PC and JAY left the meeting at this juncture.]

3.8 Update on Subcontractor Registration Scheme (SRS) Operations

Members took note of Paper CIC/CPT/P/012/16 regarding the latest status of SRS operations. CWL reported that as at the end of August 2016, a total of 5,377 companies were registered under the SRS. This indicated a moderate increase of 52 Registered Subcontractors since the last report in May 2016. CWL further reported that regulatory hearings were conducted by the Management Committee (MC) of the SRS in June, July and August 2016. Four registered sub-contractors involved in the lead in drinking water incident were subjected to regulatory action of suspension of their registration under the SRS from four to nine months.

Members endorsed on the change of representative of Construction Site Workers General Union in the MC of the SRS.

3.9 Any Other Business

(a) Progress Update of the Task Force on Standard Contracts Provisions for Domestic Subcontracts

KCT updated Members that the Simplified Standard Form of Domestic Sub-contract (“Simplified Form”) was drafted and had been circulated for Task Force Members’ comment. He acknowledged that the current Simplified Form remained a lengthy document and might not meet the expectation for a document of few pages in length. He conceded it was not easy to strike a delicate balance between comprehensiveness and simplicity of a contract document while satisfying the needs of different stakeholders.

CSH expressed regret over the previous publication of the Standard Form of Domestic Subcontract without reaching consensus with the HKCA. Going forward, he urged the Task

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Force to thoroughly consult all stakeholders and believed that by working together, they could ultimately arrive at a mutually agreeable Simplified Form.

KCT explained that during the course of drafting, there were differing views towards its content and he believed that the current version was already the best compromise that could be reached between the stakeholders. Most Task Force Members felt that the drafting of the Standard Form had already taken a number of years and it was the right time to bring it to a close. The publication of the Standard Form on the CIC website was the natural progression and conclusion of the project.

After much deliberation, KCT suggested and Members agreed that the present Simplified Form could serve as a revised version of the published Standard Form for more complex works; and a legal consultant would be engaged to draft another bare-essential simplified version.

(b) Progress Update of the Task Force on Enhancements to Subcontractor Registration Scheme

CWL updated Members that at the next Task Force meeting to be held on 19 September 2016, the Task Force would deliberate on key issues of the tentative roadmap of enhancing the SRS. In the short to medium term, the Task Force would review and explore ways to strengthen supports from current supporting organisations and get new supporters from quasi-government organisations. In long run and for responding to the mandatory implementation of the SRS by 2020 as proposed in the Report on “Building for a Better Future - Vision 2030” (McKinsey Report), the Task Force would exchange views on an academic research applying funding under the CIC research funding framework.

Members endorsed on the changes of representatives of Development Bureau, Housing Authority, MTR Corporation Limited, Hong Kong Construction Sub-contractors Association Limited and Construction Site Workers General Union in the Task Force.

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(c) **Progress Update of the Task Force on Selection of Contractors**

MYP updated Members that apart from the Real Estate Developers Association of Hong Kong, who was unable to nominate a representative to the Task Force, other invited organisations had nominated their representatives and the appointment letter would be sent out in due course. The first Task Force meeting was scheduled on 3 October 2016.

3.10 Date of Next Meeting

The next meeting would be scheduled for Thursday, 1 December 2016 at 2:30pm. Due to relocation of CIC Headquarters, venue of the next meeting would be confirmed in due course. **All to note**

There being no further business, the meeting adjourned at 5:00 p.m.

CIC Secretariat
October 2016