

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 001/16 of the Committee on Procurement and Subcontracting was held on Thursday, 24 March 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
		Paul CHONG	(PC)	
		Robert LAM	(PHL)	
		Lawrence NG	(LN)	
		Eliza WONG	(EWYL)	
		Irene CHENG	(ICG)	for Permanent Secretary for Transport and Housing (Housing) <i>(on behalf of Ada FUNG)</i>
		HO Sing-mo	(SMH)	Chairperson of Task Force on NEC3 Collaborative Contracts
		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
	Francis LEUNG	(FLG)	Development Bureau	
	Jennie AU YEUNG	(JAY)	Independent Commission Against Corruption	
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
		Amy FUNG	(AyF)	Assistant Manager - Council Services
Apologies	:	CHAN Chi-chiu	(CCC)	
		Wilfred WU	(WSCW)	
		Kevin POOLE	(KP)	Chairperson of Task Force on the Selection of Consultants and Contractors
		Ada FUNG	(AF)	For Permanent Secretary for Transport and Housing (Housing)
		Rocky CHO	(RYC)	Manager - Council Services

PROGRESS REPORT

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1.1 Confirmation of the Progress Report of Meeting No. 004/15 of the Committee on Procurement and Subcontracting

The Chairman welcomed all Members, and in particular the new Members, Mr. Robert LAM and Ms Eliza WONG joining the meeting of the new term for the first time.

Members took note of the Paper CIC/PNS/R/004/15 and confirmed the Progress Report of Meeting No. 004/15 of the Com-PNS held on Monday, 23 November 2015.

1.2 Matters Arising from the Previous Meeting of the Committee on Procurement and Subcontracting

(a) Item 4.8(d) – Work Plan of the Committee on Procurement and Subcontract

MYP reported that subsequent to Meeting No. 003/15 of the Com-PNS, Paper on “The proposed 2016/2017 Year Plan and Budget” was circulated further to Members for comments on 10 December 2015. Members endorsed in principle the proposed Year Plan and Budget subject to some minor amendments. Details were discussed under item 1.3.

(b) Item 4.8(f) – Standard Form of Contract for Maintenance Works

MYP reported that at the last Com-PNS meeting, KnH suggested CIC to consider endorsing the “Standard Form of Contract for Maintenance and Renovation Works” (Standard Maintenance Contract) published by the Hong Kong Institute of Surveyors. The Standard Maintenance Contract was subsequently submitted to the Council for consideration, and Council decided that Com-PNS could decide on the matter. Incidentally, one of the new initiatives of the Council and Com-PNS in 2016 would be on Renovation, Maintenance, Alteration and Addition (RMAA). The Com-PNS may consider setting up a new task force on RMAA to explore topics in this sector. Probably, further discussion of the Standard Maintenance Contract may fall under the purview of

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this new task force.

MYP further supplemented that the Council Chairman has set out 3 new initiatives for the CIC to pursue in 2016, including:

- **RMAA** – its related problems and relevant stakeholders’ involvement;
- **High-Rise Building** in regard to the construction cost and other relevant issues; and
- **Demolition** in the respect of cost and environmental impacts, etc.

The Council Chairman may deliberate with Members on these 3 new initiatives later.

While on the subject of RMAA, both PC and LN stated that RMAA is a topic with high relevancy to workers in all aspects and they expressed concerns about whether representative from the Hong Kong Construction Industry Employees General Union (HKCIEGU) would be invited to take up the seat of Mr. CHOW Luen-kiu in the Com-PNS to ensure the voice from workers’ sector could be heard. MYP confirmed that representative from HKCIEGU would be invited to the Com-PNS in the capacity of co-opted member.

1.3 Work Plan and Budget for 2016 and 2017 cum Implementation Plan of Report on ‘Building for a Better Future – Vision 2030’

MYP briefed Members on Paper CIC/PNS/P/001/16, which set out the following for Members’ discussion and endorsement:

- The proposed tasks carried forward from 2015 and the associated budget;
- The implementation plan for the relevant recommendations stated in the Interim Report ‘Building for a Better Future – Vision 2030’ for the Hong Kong Construction Industry. Among the total of 60 recommendations, 4 recommendations were relating to procurement and subcontracting; and
- New initiatives for consideration in 2016.

MYP further elaborated the key issues under the “proposed tasks carried forward from 2015 and the associated budget” as follows:

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i. Reference Materials on the Selection of Contractors

The “Reference Materials on the Selection of Consultants” was published on the CIC website in November 2014 and the Com-PNS would continue with the drafting of “Reference Materials on the Selection of Contractors” in 2016. The draft assignment brief was prepared and submitted to the Chairman of Task Force on the Selection of Consultants and Contractors (TF-SCC) for comments.

The Chairman supplemented that KP, the Chairman of the Committee on Environment, Innovation and Technology (Com-EIT) had expressed his wish to step down from the chairmanship of TF-SCC due to heavy office commitments. The Chairman encouraged nomination from Members for a new chairperson to the TF-SCC.

ii. Production of animation video on bid-rigging in the construction industry

As part of the initiative to educate and facilitate industry stakeholders’ compliance with the Competition Ordinance, an educational video on bid-rigging with specific reference to the construction industry was produced. Subsequent to several rounds of revision incorporating comments from Com-PNS Members, the video was submitted to the Council at Meeting No. 005/15 held on 30 October 2015. At the meeting, further comments were received from Council Members. The video would be revised to address Members’ comments and submitted to the Council again in 2016.

iii. NEC Case Book

Volume 1 of the NEC case book had been prepared by Ms Ellen CHENG of Drainage Services Department (DSD) and was under review by the Task Force Chairman. Drafting work of Volume 2 was scheduled to commence in mid-June 2016.

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iv. Standard Form of Domestic Sub-contracts for lower tier subcontractors

The Reference Materials for the Standard Form of Domestic Sub-contract was approved by the Council in December 2015 and was published on the CIC website. A simplified version of the Standard Form of Domestic Sub-contract would be prepared by KCT. Details were reported by KCT under item 1.7(b).

v. Standard Form of On-demand Bonds with Conditions

The 1st draft of the Standard Form of On-Demand Bond with Conditions was prepared by the consultant, King & Wood Mallesons and had been circulated to the Task Force Members for comments. The comments received had been conveyed to King & Wood Mallesons for consideration and preparation of a revised draft.

Regarding the corresponding budget of the work plan, PC requested the Secretariat to list out the actual expenses of the Com-PNS in 2015. PC reiterated that actual expenses could be a good indicator for Members to review the progress of work of the Com-PNS in 2015.

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For the new initiatives of 2016, LN stated that as the legislative framework of the proposed Security of Payment Legislation (SOPL) was still being discussed by the “Task Force for Preparation of Legislative Proposals to the Construction Industry Security of Payment Ordinance” established under the Development Bureau, it was believed that the Security of Payment Ordinance could only be enacted in late 2017. Based on this legislative timeframe, it was not possible for the Com-PNS to provide any guidance on the SOPL for industry stakeholders in 2016. After some discussion, Members agreed in principle the proposed direction of work in 2016, but could work out other options to disseminate the message of SOPL to the industry stakeholders, e.g. to conduct survey/study or organize seminar on SOPL.

MYP continued to brief Members on the implementation plan for the relevant recommendations stated in the Interim Report. Corresponding activities/direction of work suggested by the Chairman and the Secretariat were delivered through powerpoint

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presentation for Members consideration. The suggested activities/ direction of work were summarised as follows:

i. Recommendation 16:

Encourage private sector (e.g. through experience and codification and sharing from public sector clients) to adopt tender evaluation systems that encourage innovation and creativity.

Suggested activities/direction of work:

- Consultancy study on the tender practices in the private sector with regard to the considerations given to innovation and creativity and deliberate on the way forward based on the findings of the study;
- Establish a reference tender evaluation system;
- Conduct promotional activities to raise stakeholders' awareness on the benefits of innovation and creativity considerations in tender evaluation systems (e.g. seminars, briefing sessions).

ii. Recommendation 22:

Make the Subcontractors Registration Scheme mandatory for all sub-contractors.

MYP said that CYT would share the views of the Task Force on Enhancements to Subcontractor Registration Scheme (TF-SRS) with Members under item 1.7(d).

iii. Recommendation 53:

Ramping up industry proficiency in delivering collaborative contracts via continued investment in capability building.

Suggested activities/direction of work:

- Continue with the existing NEC3 accreditation training programmes delivered in collaboration with NEC UK, with an aim to supply the industry with personnel conversant in the operation and administration of NEC3 contracts;
- Publish case studies of NEC3 projects and other collaboration and partnering initiatives in construction projects to share experience and successful examples with industry practitioners;
- Promotional activities (e.g. seminar and workshops on

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relevant topics).

iv. **Recommendation 58:**

Promote the adoption of collaborative contracts and procurement strategies within the private sector.

Suggested activities/direction of work:

- Consultancy study on various standard forms of collaborative contracts;
- Trial project (cooperation with private employers);
- Incorporate collaborative elements into existing standard form of contract commonly used in the private sector.

Based on the activities/direction of work suggested in the powerpoint presentation, MYP invited further input/suggestions from Members to implement the recommendations practically and effectively. Members were expected to submit their suggestions to the Secretariat within one week after the Com-PNS meeting. An implementation plan incorporating input from Members would be submitted to the Council for approval at the next meeting held in April 2016.

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During the discussion, Members expressed their views on the following:

- The implementation timeframe set out in the Interim Report was not well defined and too vague to follow. The Com-PNS should set out a work plan based on a reachable and feasible timeframe of 2 to 5 years.
- Recommendation 16 should not focus purely on private sector. There should be area(s) on innovation and creativity which are worthwhile for the public sector to examine. Information sharing and interaction between public and private sector should be encouraged.
- Recommendation 58: to “Promote the adoption of collaborative contracts and procurement strategies...” should take into consideration the procurement of services from consultants.

After some discussion, Members agreed to work out an implementation plan for the coming 3 years and to review the

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progress of work on a regular basis. Industry stakeholders should be informed from time to time on the deliverables that the Com-PNS has achieved.

Members endorsed the work plan and budget for 2016/2017 set out in Paper CIC/PNS/P/001/16.

(Post meeting note: up to 15 April 2016, the Secretariat did not receive any comments or new suggestions from Members regarding the implementation plan of the Interim Report. With Chairman's consent, the implementation plan was circulated to Members for further review on 20 April 2016 and was discussed during the Council meeting held on 29 April 2016 with no objection.)

[PC left the meeting at 3:15pm]

1.4 Proposed nomination of Co-opted Members for Committee on Procurement and Subcontracting for 2016-2018

Prior to the discussion of Paper CIC/PNS/P/002/16, MYP updated Members on the recent review of the Task Forces under the Com-PNS and the proposed way forward. The review was completed with the following proposals:

Task Forces/Working Groups to be **disbanded** after the completion of assignments:

- Task Force on Competition Law
- Task Force on Employer Procured Insurance Policies in Construction Contracts
- Task Force on the Adoption of Dispute Resolution Advisor System to the Subcontract
- Ad-hoc Working Group on Procurement Factsheets
- Working Group on Review of Implementation of Dispute Resolution Mechanism

Task Groups to be **subsumed** under the corresponding Task Forces:

- Task Group on NEC3 Collaborative Contract
- Task Group on NEC3 Case Book
- Task Group on the Selection of Consultants
- Task Group on the Selection of Contractors

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Task Forces/Special Group and Management Committee to be **preserved** under the Com-PNS:

- Task Force on the Selection of Consultants and Contractors
- Task Force on NEC3 Collaborative Contracts
- Task Force on Standard Contracts Provisions for Domestic Subcontracts
- Special Group on On-Demand Bonds
- Task Force on Enhancements to Subcontractor Registration Scheme
- Management Committee of Subcontractor Registration Scheme

Task Force **proposed to be set up** under the Com-PNS:

- Task Force on RMAA
- From now on, only one layer of Task Forces to be formed under the Com-PNS
- The number of Task Forces should be kept to a minimum
- Task Forces should have a term of one year and extendable subject to the progress of assignment(s)
- Terms of Reference should be task specific
- Simplify the meeting procedure (e.g. action list instead of formal meeting minutes to be provided)

KCT asked if the Task Force on Competition Law should be preserved as a platform for industry stakeholders to seek advice on competition law relating matters. MYP assured Members that the CIC would continue to address stakeholders' concerns and to follow up on the development of the competition law. For example, a half day seminar on the recent development of the Competition Law had been organised on 15 March 2016 and the seminar was well received by Members and stakeholders. Similar activities would be arranged in 2016 onwards. Members took note of the Task Force review under the Com-PNS.

MYP continued to brief Members on Paper CIC/PNS/P/002/16 regarding the proposed nomination of Co-opted Members for the Com-PNS from February 2016 to January 2018. MYP illustrated through a powerpoint presentation the existing composition of Co-opted Members. Details were summarised as follows:

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- i. Chairperson of Task Force:
 - Mr HO Sing-mo
 - Sr HO Kwok-kwan, Thomas
 - Sr TANG Ki-cheung
 - Mr TSE Chun-yuen

- ii. Government representatives:
 - Mr Francis LEUNG
 - Ms Jennie AU YEUNG

- iii. Representatives from Industry Organisation:
 - Construction Site Workers General Union
 - Contractor's Authorised Signatory Association
 - Hong Kong Construction Association
 - Hong Kong Construction Industry Employees General Union
 - Hong Kong International Arbitration Centre

The term of office of representatives from Industry Organisations expired on 31 January 2016. Subsequent to Members' endorsement, the proposed nomination list would be submitted to the Council for approval at the next meeting held in April 2016. Upon Council's approval, invitations for nomination would be sent to the above 5 industry organizations accordingly.

LN suggested to include representative from the Hong Kong General Building Contractors Association to ensure the voice from small and medium contractors could be heard. PHL echoed LN on this suggestion. The Secretariat would follow up on this matter.

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1.5 Update on Subcontractor Registration Scheme Operation (SRS)

Members took note of Paper CIC/PNS/P/003/16 regarding the latest status of SRS operations. CWL reported that as at the end of February 2016, a total of 5,242 companies have registered under the SRS. This indicated a moderate increase of 89 registered subcontractors since the last report of 5,153 in October 2015. CWL further reported that as at the end of February 2016, a total of 77 regulatory actions were taken.

In response to Members' inquiry, CWL and CYT explained further

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on the principle and rationale behind the Management Committee's decision on the various kinds of "Regulatory Actions" taken against cases convicted by court.

1.6 Membership List of Management Committee of the Subcontractor Registration Scheme

CWL briefed Members on Paper CIC/PNS/P/004/16 regarding the Membership list of Management Committee (MC) of the SRS with term of office from February 2016 to 15 July 2018. CWL stated that in response to Members' suggestion, representatives from the trade unions were included in the composition of the MC. The relevant appointments were summarised as follows:

Chairman: Ir CHAN Chi-chiu (in his capacity of CIC Member)

- Member:
- i. Employers
 - Ir MO Kon-fei, Kenneth
 - Mr James CHOW
 - Mr Tommy LEUNG

 - ii. Main Contractors
 - Sr Eddie LAM
 - Ir Barry SIN
 - Mr LIU Kam-fai

 - iii. Subcontractors/
Specialist
subcontractors
 - Mr Gilbert TSANG
 - Mr TSE Chun-yuen
 - Mr CHAN Kim-kwong

 - iv. Trade Unions
 - Mr CHUNG Ling-so
 - LOK Kwei-sang
 - CHOW Luen-kiu

Members took note of the Membership list and endorsed Paper CIC/PNS/P/004/16.

1.7 Any Other Business

(a) Progress Update of the Task Force on NEC3 Collaborative Contract

SMH updated Members on the drafting progress of the Case Book (Vol. 1) on the Fuk Man Road Nullah Project of Drainage Services Department (DSD). The first draft of the

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case book was under review by the Task Force and hopefully the bilingual version could be published in mid 2016. Subsequently, the Task Force would kick off the drafting work of the Case Book (Vol. 2) with projects from the private sector. CLP Power Hong Kong Limited (CLP) was prepared to contribute to the Case Book (Vol. 2) with a maintenance project using NEC3 TSC (Option C). This second case book was targeted to be published by end of 2016.

Regarding the recommendations of the Interim Report discussed under agenda item 1.3, SMH would deliberate with the Task Force and explore the way forward to achieve the recommendations.

SMH informed Members that an exclusive visit to the Kennedy Town Swimming Pool project was organised by the NEC Asia Pacific Users' Group and would be held on 8 April 2016. Members of the Com-PNS and Task Force on NEC3 Collaborative Contracts were welcomed to join and the CIC Secretariat would handle the registration for interested Members.

Regarding NEC3 contracts, FLG supplemented that the Government had made a public announcement to encourage the adoption of NEC in public works contracts covering the Civil Engineering and Development Department; Buildings Department; Drainage Service Department and Water Supplies Department. In 2015, a total of 31 active NEC public works contracts were underway. To date, only 3 contracts had been completed. The Government needed more time to accumulate experience on the application of NEC form before quantitative feedback could be collected for a comprehensive evaluation. Apart from this, the Development Bureau was working closely with the Independent Commission Against Corruption (ICAC) in benchmarking the NEC form to avoid any perception of collusion due to the collaborative and open-book approach adopted by NEC.

PHL appreciated the basic principle of collaboration between contractors and employers. He believed that it would be beneficial to explore the relative merits of different forms of collaborative and partnering contracts so that the stakeholders

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could decide which one suited them better.

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

KCT updated Members that the Council had approved the Reference Materials for the Standard Form of Domestic Sub-contract in December 2015 and the document was published on the CIC website. The drafting work of the simplified version would be completed soon and the draft document would be circulated to the Task Force for further comments.

In response to PHL's inquiry about the attitude of the Hong Kong Construction Association (HKCA) towards the Reference Materials for the Standard Form of Domestic Sub-contract, LN supplemented that at the Council Meeting held in December 2015, HKCA expressed their reluctance to adopt the reference materials. To relieve the situation, LN suggested the Task Force to call a meeting and invited HKCA to resume discussion on the bilingual simplified version. It was hoped that through an objective discussion, all parties could be able to compromise on the contents of a simplified version acceptable to HKCA.

[SMH left the meeting at 4:05pm]

(c) Progress Update of the Special Group on On-Demand Bonds

KnH updated Members that the 1st draft of Standard Form of On-Demand Bond with Conditions had been circulated to Task Force Members in January 2016. Comments from Members had been conveyed to the drafting consultant for consideration and incorporation into the 2nd draft. Subject to no major comment on the 2nd draft, it would be circulated to relevant industry stakeholders, including "Employers", "Consultants and Professionals", "Contractors and Sub-contractors" and "Finance and Insurance sector" for further comments.

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

CYT reported to Members that the Task Force was considering Recommendation 22 “Make the Subcontractors Registration Scheme mandatory for all sub-contractors” of the Interim Report. CYT stated that the Task Force used to think of enhancing the subcontractor registration scheme by means of “encourage communication”, “provide guidance” and “through education”. With the new direction recommended in the Interim Report, the Task Force needed time to figure out the way forward and to find out the merits of making the subcontractors registration scheme mandatory. Meanwhile, the Task Force realised that a separate research project initiated by a scholar from the University of Hong Kong on reviewing the SRS was applying funding under the CIC Research Fund. This research project aimed at 5 major areas including 1) review the existing SRS system; 2) investigate the obstacle(s) of making the Subcontractors Registration Scheme mandatory and any possible solution; 3) study similar overseas experience; 4) identify criteria for assessing subcontractors’ performance; and 5) devise a strategy to develop a mandatory SRS system. This research project would last for 15 months. The Task Force would like to make reference to this research project and plan the way forward based on the findings.

LN was worried that this research project might not be able to address the specific problems that the Task Force was looking into. CWL responded that the Task Force would only make use of the research findings to shed some light on the way forward. Moreover, during the course of research, objective information would be collected from relevant industry stakeholders, which would allow the Task Force to explore additional potential area(s) worthy of conducting further in-depth study.

[LN left the meeting at 4:20pm]

JAY reminded that for any subsequent new research study, the Task Force should avoid indicating subjective preference on the above-mentioned scholar and proper procurement procedure should be followed. The Task Force took note of

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Members comments.

[JAY left the meeting at 4:30pm]

(e) Contracts (Rights of Third Parties) Ordinance

MYP briefed Members on the Contracts (Rights of Third Parties) Ordinance that came into effect on 1 January 2016. Members expressed concerns on this new ordinance and indicated that the CIC could organise technical seminars on this topic to disseminate the direct implications of the ordinance to industry stakeholders. For Members' information, FLG stated that this ordinance was currently excluded from all Consultancy Contracts and Works Contracts issued by the HKSAR Government to ease the worries of contractors.

(f) Re-name of Com-PNS

Members took note that the Com-PNS would be renamed as the "Committee on Construction Procurement" upon approval from the Council at Meeting No. 002/16 scheduled on 29 April 2016.

(g) KCT would like to explore the possibility for the Com-PNS to allocate funding to the following 2 initiatives:

- Drafting of "Statistical reference on the construction period"
- Drafting of "General specifications on construction works"

MYP replied that after publication of the Interim Report, the CIC would engage consultant(s) to conduct in-depth study on the following areas:

- Quality control
- Construction cost
- Project delay
- Climate change

The Secretariat took note of KCT's suggestions and would determine which of the above-mentioned areas could address KCT's 1st initiative. KnH stated that the discussion of construction period was initiated 3 to 4 years ago by HKCA, but not sure if any follow up action has been taken. PHL

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supported KCT's 2nd initiative and said that a unified set of General specifications could be useful to the industry as a whole.

1.8 Date of Next Meeting

The next meeting would be scheduled for Thursday, 23 June 2016 at 2:30pm at Meeting Room 1, Construction Industry Council Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong. **All to note**

There being no further business, the meeting adjourned at 4:55 p.m.

CIC Secretariat
April 2016