

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 004/15 of the Committee on Procurement and Subcontracting was held on Monday, 23 November 2015 at 2:30pm at Meeting Room No.1, CIC Headquarters, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

Present :

Tai-chong CHEW	(TCC)	Chairman
Allan CHAN	(SKC)	
Paul CHONG	(PC)	
Luen-kiu CHOW	(LKC)	
Stephen LAI	(SLI)	
Mike WONG	(MW)	
Wilfred WU	(WSCW)	
Irene CHENG	(ICG)	for Permanent Secretary for Transport and Housing (Housing) (<i>on behalf of Ada FUNG</i>)
Jennie AU YEUNG	(JAY)	Independent Commission Against Corruption
Ling-so CHUNG	(LsC)	Construction Site Workers General Union
Steve GRIFFIN	(SGN)	Chairperson of Task Force on Employer-Procured Insurance Policies in Construction Contracts
Thomas Kwok-kwan HO	(KnH)	Chairperson of Special Group on On-Demand Bonds
Alfred Wai-ho LEUNG	(ADL)	Hong Kong Institution of Engineers
Hing-fung LEUNG	(HfL)	Hong Kong International Arbitration Centre
Ki-cheung TANG	(KCT)	Chairperson of Task Force on Standard Contract Provisions for Domestic Subcontracts
Chun-yuen TSE	(CYT)	Chairperson of Task Force on Enhancements to Subcontractor Registration Scheme
Edwin WONG	(WKY)	Development Bureau (<i>on behalf of Francis LEUNG</i>)
Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association

In Attendance : Miranda YEAP (MYP) Senior Manager - Council Services

Apologies	:	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
		Christine LAU	(CGL)	Assistant Manager - Council Services
		Hau-wai CHEUNG	(HWC)	
		Lawrence NG	(LN)	
		Melissa Kaye PANG	(MKP)	
		Kevin POOLE	(KP)	Chairperson of Task Force on the Selection of Consultants and Contractors
		Tat-tong CHEUNG	(TTC)	Chairperson of Working Group on the Review of the Implementation of the Dispute Resolution Mechanism
		Andrew SIMPSON	(ASN)	Chairperson of Task Force on Competition Law
		Sing-mo HO	(SMH)	Chairperson of Task Force on NEC3 Collaborative Contracts
		Ada FUNG	(AF)	For Permanent Secretary for Transport and Housing (Housing)

Francis LEUNG (FLG) Development Bureau
Franklin YU (FIY) Hong Kong Institute of Architects

PROGRESS REPORT

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4.1 Confirmation of the Progress Report of Meeting No. 003/15 of the Committee on Procurement and Subcontracting

Members took note of the Paper CIC/PNS/R/003/15 and confirmed the Progress Report of Meeting No. 003/15 of the Com-PNS held on Thursday, 27 August 2015.

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

(a) Item 3.2 - Trade Union Representatives in the Management Committee of the Subcontractor Registration Scheme

MYP reported that further to the comments raised during Meeting No. 003/15 on 27 August 2015, The Task Force on Enhancement to Subcontractor Registration Scheme had

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considered the proposal to invite trade union representatives to the Management Committee of the Subcontractor Registration Scheme. Details would be discussed under item 4.5.

(b) Item 3.3(c) - Animation Video on Bid-rigging in the Construction Industry

MYP reported that Council Members raised further comments on the bid-rigging animation video. It was suggested that the animation video should elaborate on what constituted bid-rigging. The animation video was being revised to address the Council's comments. The revised animation video would be circulated to Com-PNS Members for their review and comment before further submission to the Council.

(c) Item 3.6(a) - Enhancements to Subcontractor Registration Scheme Operations

MYP reported that the Task Force on Enhancements to Subcontractor Registration Scheme deliberated over the possible enhancements to the Subcontractor Registration Scheme operations at their previous meeting. Details would be discussed under item 4.5.

4.3 Report of the Task Force on NEC3 Collaborative Contracts

Members took note of Paper CIC/PNS/P/019/15 proposing the invitation of a representative from the Institution of Civil Engineers Hong Kong Association (ICEHKA) to the Task Force on NEC3 Collaborative Contracts (TF-NEC). MYP briefed Members on the contribution of ICEHKA to the various NEC initiatives and the benefits of their involvement with the works of the TF-NEC in sharing their knowledge and experience in NEC. MYP further noted that the Chairman of TF-NEC had no objection to the proposal.

KCT stated the position of HKIS that they would not usually accept involvement of overseas organisations in local matters, and would leave it for other Members to decide on this proposal. He suggested that it might be more appropriate to include ICEHKA as a Co-opted Member.

The Chairman noted that the construction industry had strong links

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with notable foreign professional institutions such as the Institution of Civil Engineers, the Institution of Structural Engineers and the Institution of Mechanical Engineers. Furthermore, there was value in maintaining close collaboration with overseas organisations as Hong Kong should be looking to reach out into the international community.

PC acknowledged the benefits of having the involvement of ICEKHA, especially with their expertise in the subject matter that would certainly be helpful towards formulating the CIC's NEC training initiatives. However, he also noted that as the ICE was the proponent of NEC, there could be concerns for conflict of interests. As such, PC was in favour of including them as a Co-opted Member.

After much deliberation, Members accepted the inclusion of ICEHKA as a Co-opted Member in the TF-NEC.

4.4 Report of the Task Force on Standard Contracts Provisions for Domestic Subcontract

Members took note of Paper CIC/PNS/P/020/15 seeking Members' endorsement of the "Standard Form of Domestic Sub-contract" (Standard Form). KCT updated Members on the drafting progress of the Standard Form. The Standard Form had been legally vetted and had been accepted by Task Force Members.

SKC considered the current version of the Standard Form was still too cumbersome for use by domestic subcontractors, and suggested that a much simpler version, possibly at around 3 pages, would be more readily adopted for the wide range of subcontracts. Thus, the Hong Kong Construction Association would be reluctant to adopt the current version of the Standard Form for their subcontracts.

JAY noted that the ICAC had previously commented that the Standard Form had not included any anti-bribery clause. Without such clauses, especially in the private sector, difficulties could potentially be created for the ICAC to enforce its power under the Prevention of Bribery Ordinance.

MW commended the Task Force for delivering the Standard Form

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and expressed his support for the publication of the Standard Form. MW, CYT and LKC also agreed that there was a need for a simplified version of the Standard Form to cater for those legally less sophisticated subcontractors.

KCT explained that the Task Force had aimed to strike the balance between comprehensiveness and ease of use when drafting the Standard Form, and that the current version was not particularly lengthy when compared to other subcontracts being used today. Nonetheless, the Task Force recognised the need for a simplified version and a simplified version was being drafted with small subcontractors in mind.

KCT also explained that the Task Force was not in favour of including anti-bribery clauses into the Standard Form as it was agreed that anti-bribery commitment could be expressed in the form of separate undertakings by the bidders which was already common practice in the industry. Furthermore, inclusion of such undertakings into the terms of the Standard Form would only lengthen the contract.

The Chairman suggested the inclusion of an explanatory note in the Standard Form to alert future users to adopt necessary anti-bribery and anti-collusion provisions as recommended by the ICAC and the Competition Commission respectively.

After much deliberation, Members endorsed the Standard Form for further approval by the Council.

[Post meeting note: KCT furnished the following note to be added to the Standard Form to address the comments raised by Members: “Users should consider to incorporate the requirements of the Employer or the special provisions recommended by the Independent Commission Against Corruption or the Competition Commission against corruption and anti-competition.”]

4.5 Report of the Task Force on Enhancements to Subcontractor Registration Scheme

Members took note of the Paper CIC/PNS/P/021/15 regarding updates on progress of the works of the Task Force. CYT reported that the Task Force reached a unanimous decision of adding the

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“Trade unions” sector to the composition of the Management Committee of Subcontractor Registration Scheme (the “MC”) which would help the decision making of the MC be more comprehensive and credible. Based on this, the Task Force agreed to add Hong Kong Construction Industry Employees General Union, Construction Site Workers General Union and the Federation of Hong Kong Electrical and Mechanical Industries Trade Unions as the specified bodies under the “Trade unions” sector of the composition of the MC. Each of the said union would be invited to nominate one representative, with the term of office to be the same with the existing Members of the MC, i.e., until 15 July 2018. The quorum for the meeting of the MC of SRS would be increased from 3 to 4, regardless of the sectors they represent in view of the increased number of members of the MC.

Members endorsed the Task Force’s recommendation of the revised composition of the MC of the SRS to include trade union representatives. Chairman further supplemented that it would not be necessary to seek approval at the Council meeting given the Com-PNS was empowered to decide on the membership composition of the MC.

SLW noted that the Registered Minor Works Contractor Signatory Association, with more than 6000 members, represented the SMEs of the construction industry. He suggested that the Task Force should consider their inclusion in the MC of SRS. CYT responded that the Task Force would consider the subject matter in due course.

Regarding the review on the mechanism of taking regulatory action under the SRS, CYT reported that the Task Force had discussed and recommended that the current specified circumstances that might call for taking regulatory actions as stated in clause 10.2 of the “Rules and Procedures for the Primary Register of the Subcontractor Registration Scheme” were adequate and would not need to be expanded whereas the current principle of initiating regulatory action for cases convicted by court (Except for late payment of workers’ wages or MPF contributions over 10 days with solid proof of such late payment) and through hearing by the MC would remain unchanged. Noting the long period of time between the date of fatal incident and the date of court judgment, the Task Force concerned about and exchanged views on how to speeding up the taking of regulatory action by the MC

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against these cases and the Secretariat was requested to review the arrangements and to discuss further with the Labour Department on speeding up the referral of relevant information of fatal cases to the MC so that hearing could be conducted as soon as possible within a specific timeframe in order to enhance deterrent effect.

In response to the proposed recommendation of the “McKinsey Report” on making the Subcontractor Registration Scheme mandatory for all subcontractors by 2020, CYT reported there were different views amongst members of the Task Force but the mandatory implementation of subcontractors registration by the mean of legislation should be a common goal. However, the appropriate timing of implementation, details of the interim measure and regulatory arrangements would need more relevant information as well as overseas experiences for helping the Task Force to have a more comprehensive and thorough consideration. As such, the Task Force requested the Secretariat to approach relevant research institution along the direction of having further research study for considering suitable follow-up actions.

4.6 Update on Subcontractor Registration Scheme Operation

Member took note of the Paper CIC/PNS/P/023/15 regarding the latest status of SRS operations. CWL reported that there was a modest increase of about 50 registered subcontractors since the last report to about 5,150 companies registered under the SRS as of the end of October 2015. Two regulatory hearings had been scheduled for 4 December 2015 and 15 January 2016 respectively involving a total of nine cases in which seven of them were safety related involving fatalities.

4.7 Tentative Meeting Schedule for 2016

Members took note of the Paper CIC/PNS/P/022/15 regarding the tentative meeting schedule of Com-PNS for 2016. MYP noted that the dates would be confirmed before each subsequent meetings.

4.8 Any Other Business

(a) Progress Update of the Task Force on Employer-Procured Insurance Policies in Construction Contracts

SGN briefed Members that the main works of the Task Force

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had been completed in early 2015. The Task Force would continue to monitor the development in the area of the subject matter and formulate any future works for the Task Force accordingly.

(b) Progress Update of the Task Force on Competition Law

MYP briefed Members that the Reference Materials on Competition Law for the Construction Industry had been published on the CIC website. The animation video on bid-rigging was being revised to take into account Council Members' comments. The animation video would be launched in early 2016.

MYP briefed Members that a technical seminar on "Employer Procured Insurance Programme"; "Selection of Consultants" and "Competition Ordinance" would be held on 27 November 2015 at ZCB. She encouraged Members to attend the seminar.

The Chairman thanked Members of the Com-PNS and the Task Forces for their support towards the organising of seminars by the CIC. These seminars were well subscribed and received by the industry. This was an indication that the CIC was in touch with the interests of the industry and had met the industry's expectations.

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

KnH updated Members that King and Wood Mallesons had been engaged as the consultant for the drafting of the "Standard Form for On-Demand Performance Bonds with Conditions" (Standard ODB Form). The Standard ODB Form was under his review and would be circulated to Members of the Special Group shortly.

(d) Work Plan of the Committee on Procurement and Subcontracting

The work plan of the Com-PNS for the year 2016 and 2017 with an estimated budget for each task was tabled for Members' information. Members were invited to review and comment on the work plan and to provide their feedback to the Secretariat. The Secretariat would consolidate feedbacks in

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Secretariat

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around 2 months time for further deliberation in the next Com-PNS meeting.

The Chairman urged Members to use this as an opportunity to formulate initiatives that would contribute positively to the CIC and the construction industry.

(e) Addendum to MoU with NEC UK for Collaboration in 2016 & 2017

MYP briefed Members on the successful NEC ECC Project Manager Accreditation courses that were conducted in collaboration with NEC UK in 2015 under the MoU. Additional accreditation courses were being considered to be launched in 2016 and an Addendum to the MoU was proposed to be executed to cover further collaborations with NEC UK. Discounts on online purchases of NEC materials would also be offered to Council Members as part of the Addendum. The proposed execution of the Addendum would be reported at the next Council meeting.

(f) Standard Form of Contract for Maintenance Works

KnH suggested for the CIC's consideration on the possibility for the CIC to endorse 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 had been circulated for Members' comments after Com-PNS Meeting No. 002/15 back in June 2015, no comment was received up to this moment.

MW noted that there were previous discussions about 4 or 5 years ago on whether maintenance works should fall under the purview of the CIC. The consensus at the time was that the CIC would focus mainly on main contract works. MW maintained that he was in support of the CIC to cover maintenance as part of the whole spectrum of building works. He opined that the maintenance works sector involved more casualties and were generally less organised compared to main contract building works, which warranted stronger emphasis from the CIC. He suggested that it would be a good time now to re-examine whether the scope of the CIC should be

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expanded to put more emphasis on maintenance works.

The Chairman requested the Secretariat to raise the issue and seek guidance from the Council on whether the CIC would consider including maintenance works under its scope before further deliberation on the way forward for the possible endorsement of the Standard Maintenance Contract and any other initiatives relating to maintenance works. **CIC Secretariat**

(g) Chairman's Note of Thanks to Members of the Committee on Procurement and Subcontracting

The Chairman thanked Members for their support of the considerable achievements of the Com-PNS and the CIC in the past 6 years. As a result, the construction industry had been a much better industry than it was 6 years ago. He encouraged Members to continue their effort in making the construction industry a sustainable one going into the future.

Members and the Secretariat thanked the Chairman for his guidance and leadership during his tenure.

4.9 Date of Next Meeting

The next meeting would be scheduled for Thursday, 24 March 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 3:50 p.m.

CIC Secretariat
December 2015