

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 003/15 of the Committee on Procurement and Subcontracting was held on Thursday, 27 August 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
		Paul CHONG	(PC)	
		Luen-kiu CHOW	(LKC)	
		Lawrence NG	(LN)	
		Melissa Kaye PANG	(MKP)	
		Wilfred WU	(WSCW)	
		Stanley SIU	(SSIU)	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
		Thomas Kwok-kwan HO	(KnH)	Chairperson of Special Group on On-Demand Bonds
		Steve GRIFFIN	(SGN)	Chairperson of Task Force on Employer-Procured Insurance Policies in Construction Contracts
		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
		Victor TAI	(VTi)	Development Bureau <i>(on behalf of Francis LEUNG)</i>
		Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
		Hing-fung LEUNG	(HfL)	Hong Kong International Arbitration Centre
In Attendance	:	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

Apologies	:	Amy FUNG	(AyF)	Assistant Manager - Council Services
		Christine LAU	(CGL)	Assistant Manager - Council Services
		Allan CHAN	(SKC)	
		Hau-wai CHEUNG	(HWC)	
		Mike WONG	(MW)	
		Stephen LAI	(SLI)	
		Andrew SIMPSON	(ASN)	Chairperson of Task Force on Competition Law
		Tat-tong CHEUNG	(TTC)	Chairperson of Working Group on the Review of the Implementation of the Dispute Resolution Mechanism
		Kevin POOLE	(KP)	Chairperson of Task Force on the Selection of Consultants and Contractors
		Sing-mo HO	(SMH)	Chairperson of Task Force on NEC3 Collaborative Contracts
		Ada FUNG	(AF)	For Permanent Secretary for Transport and Housing (Housing) Development Bureau
		Francis LEUNG	(FLG)	
		Franklin YU	(FIY)	Hong Kong Institute of Architects
	Alfred Wai-ho LEUNG	(ADL)	Hong Kong Institution of Engineers	

PROGRESS REPORT

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3.1 Confirmation of the Progress Report of Meeting No. 002/15 of the Committee on Procurement and Subcontracting

Members took note of the Paper CIC/PNS/R/002/15 and confirmed the Progress Report of Meeting No. 002/15 of the Com-PNS held on Thursday, 18 June 2015.

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

(a) Item 2.3(c) – Consultancy Services on Development Strategy for the Hong Kong Industry

MYP reported that further to the comments raised on the 2nd draft report during Meeting No. 002/15 on 18 June 2015, the comments were brought to the attention of Com-ANF and the

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contribution of Com-PNS was acknowledged.

MYP noted that the comments were incorporated into a final draft with 2 new chapters by McKinsey: Chapter 3 – Unique Characteristics of Hong Kong Construction Industry; and Chapter 10 – Implementation Planning, Priorities, and Timeline. The final draft was circulated to Members seeking their comment under Paper CIC/PNS/P/014/15 on 5 August 2015. As on 24 August 2015, comments on the final draft were received from the Independent Commission Against Corruption, the Construction Site Workers General Union, the Hong Kong Institute of Surveyors, MTR Corporation Limited and the Buildings Department.

Members were invited to discuss on the final draft report under item 3.4.

The Chairman supplemented that SMH had also recently furnished his comment on the report.

(b) Item 2.7 – Update on Subcontractor Registration Scheme (SRS) Operation

MYP reported that further to comments raised by LKC at the last meeting regarding the lack of workers union representative in the Management Committee of the SRS (MC), the matter was raised to the Council during Council Meeting No. 003/15 on 19 June 2015, and the Council Chairman said that Com-PNS was empowered to decide on the membership composition of the MC.

The Task Force on Enhancements to the SRS was requested to review whether it would be necessary to invite the relevant trade unions to nominate their representatives to the MC. **TF-SRS**

(c) Item 2.9(e) – Tighter procedures urged to curb building maintenance cartels in Hong Kong

MYP reported that after Meeting No. 002/15 on 18 June 2015, Paper CIC/PNS/P/012/15 was circulated on 22 June 2015 seeking Members' comments on the matter. No response had been received up to this date.

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The Chairman further opined that the timely issuance of the reference materials on Competition Law before the implementation of the Competition Ordinance for the industry's information should be of prime importance. The reference materials could be reviewed in the future for possible revisions to include other areas such as building maintenance.

3.3 Report of the Task Force on Competition Law

(a) Progress Report for Meeting No. 001/15 of the Task Force on Competition Law

Members took note of Paper CIC/PNS/P/015/15 as the Progress Report for Meeting No. 001/15 of the Task Force on Competition Law.

(b) Reference Materials on Competition Law for the Construction Industry

Members took note of the Paper CIC/PNS/P/016/15. MYP updated Members on the drafting progress of the "Reference Materials on Competition Law for the Construction Industry", namely the "Dos and Don'ts on Competition Law" which was renamed from "Code of Conduct" to alleviate Members' concern; "Frequently Asked Questions on Competition Law" and "Competition Law Case Analysis".

MYP noted that the Reference Materials were circulated to the following industry organisations for consultation from mid-May to mid-June 2015: Construction Site Workers General Union; Hong Kong General Building Contractors Association; Hong Kong Construction Association; Hong Kong Construction Industry Employees' General Union; Hong Kong Construction Sub-Contractors Association; Hong Kong Federation of Electrical and Mechanical Contractors; The Hong Kong Institute of Architects; The Hong Kong Institution of Engineers; and The Hong Kong Institute of Surveyors.

MYP noted that the Reference Materials were endorsed by Members of Task Force on Competition Law subject to some minor comments raised during Task Force Meeting No. 002/15 on 11 August 2015 which had also been incorporated in the

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latest revision.

[LN joined the meeting at 2:40pm]

KnH supplemented that HKIS had also established a task force on competition law and was in support for the early release of the Reference Materials to the industry.

KCT provided a few comments on some wordings in the Reference Materials. MYP acknowledged the comments and undertook to review the Reference Materials again to amend those wordings where appropriate before submission to the Council.

Members endorsed the Reference Materials for Council's approval at its October meeting.

[SSIU joined the meeting at 2:45pm]

(c) Animation Video on Bid-Rigging in Construction Industry

Members took note of the Paper CIC/PNS/P/017/15. MYP briefed Members on the background of the animation video with the aim to convey the implications of the Competition Ordinance to the construction industry via a more interesting channel. The animation video depicted bid-rigging activities at a building maintenance project and concluded with the perpetrator being found out to face the consequences of his action.

MYP noted that the animation video was reviewed by Task Force Members and endorsed in principle during Meeting No. 002/15 on 11 August 2015 subject to the following comments raised to Com-PNS for Members consideration:

- i) "The appropriateness to feature linkage of bribery with bid-rigging in the animation video" – MYP explained that this had been featured due to the fact that bribery is often involved with bid-rigging in real life situations.
- ii) "The assertion of correlation between bid-rigging and bad quality works" – MYP acknowledged that while not all cases of bid-rigging would result in poor quality, MYP also

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suggested that it was equally important not to give the wrong impression of bid-rigging leading to good quality works.

- iii) “The prohibition of communication between rival bidders should be brought out more clearly”

MYP informed Members that as the animation video was reviewed and endorsed by the Competition Commission, any major alteration to the animation video would require further liaison with the Competition Commission and would delay the timeframe for publication.

[MKP joined the meeting at 3:00pm]

The bilingual versions of the animation were shown to Members.

PC suggested that the message conveyed in the animation video should focus on those who might be involved in construction activities. PC agreed with Task Force’s comments that there were no necessary linkage between bid-rigging, bribery and poor quality. PC also suggested that the animation video should depict more severe punishment for bid-rigging.

JAY referred to the scene featuring the solicitation or acceptance of “Lai See” (red packets) highlighted in the animation video as it could be a bribery issue. She explained that if the agent who did so without the lawful authority of his principal or reasonable excuse, he or she could have breached the Prevention of Bribery Ordinance (POBO) liable to imprisonment for a maximum of 7 years. She suggested that the focus of the story should be made clear to avoid confusion to the audience.

KCT noted that although the animation video featured the Chairman of the owners’ corporation initiating the bid-rigging exercise, the building owners in reality were very often the victims of bid-rigging in building renovation projects. He was worried that the animation video would create a false impression to the general public and create difficulties for otherwise decent building committees and consultants to

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discharge their duties.

MYP acknowledged Members' suggestions and agreed to revise the animation video accordingly. MYP also reiterated that this was only the first attempt in producing an animation video to reach out to the industry and additional videos might be produced on other anti-competitive elements such as cartels.

After deliberation, Members endorsed the animation video in principle subject to the comments raised being taken into account. The Chairman concluded that the animation video should be shortened to remove references to bribery and to focus on bid-rigging activities. The revised animation video would be circulated to Members for comments before being submitted for Council's approval at the next Council Meeting in end October 2015.

CIC
Secretariat

[SLW joined the meeting at 3:20pm]

[Post meeting note: The revised animation video was circulated to Members on 16 September 2015]

3.4 Consultancy Services on Development Strategy for the Hong Kong Construction Industry

The Chairman briefed Members on the previous discussions on the McKinsey Report and that the Council Chairman would call for a Members' Away Day towards the end of 2015 to discuss the vision for the future development of the construction industry before the release of the McKinsey Report.

The Chairman invited Members to discuss and comment on the specific chapters related to procurement and subcontracting.

KCT expressed his disagreement over the suggestion in Chapter 8 Section 2.1 that the separation of design and construction was against the fostering of collaborative culture, but agreed with Section 2.2 that under-developed design was a major issue. KCT further suggested that the problems would be reduced if contractors were not bound by fixed price contracts or short contract period without extension of time. So even under traditional design-bid-built form of contracts, there would be much fewer problems if the contractors' payments were promptly met

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and extension of time were fairly granted. KCT opined that the alternative form of contracts suggested in the McKinsey Report might not be the cure to the problem.

KCT noted that in Chapter 10, the recommendation for development of BIM in the construction industry was too slow and urged the government to take the initiative to move forward with greater urgency. KCT expressed his concerns that Hong Kong would further lack behind other Asian countries in BIM development and adoption.

The Chairman shared his experience of his recent visit to Singapore that their Building & Construction Authority had introduced legislation on the use of BIM and their government institutions made the processing of building plans with BIM mandatory. Their government provided financial support to enterprises to set up BIM systems. The Hong Kong construction industry should look for similar initiatives where appropriate.

LN raised his doubt over the present role of the McKinsey Report. LN suggested that the McKinsey Report should focus on fact finding from the construction industry and present the result for CIC to draw its own conclusion and formulate recommendations for the future development of the construction industry.

SGN expressed that the MTRC is in support of the McKinsey Report with an aim to move the construction industry forward. However, he noted that some high-level recommendations would be difficult to implement at a working level; and that the delivery of these recommendations in the current format might render the Report to be an academic exercise.

CYT noted that Recommendation 31 called for mandatory Subcontractor Registration by the year 2020 but pointed out that the Task Force on Enhancements to Subcontractor Registration Scheme had not been consulted on this recommendation. CYT questioned the basis of such recommendation.

PC suggested that Members should take a pragmatic approach in finalising the McKinsey Report with an aim to publish the Report within the timeframe of early 2016.

After much deliberation, the Chairman thanked Members' input on

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the way forward for the McKinsey Report and noted that the issues raised during the discussion would be brought to the Council's attention for their further deliberation.

3.5 Update on Subcontractor Registration Scheme (SRS) Operation

Members took note of the Paper CIC/PNS/P/018/15 regarding updates on SRS operations.

CWL updated Members that the number of Registered Subcontractors had been increased by 30 since the last report to around 5,100 as of the end of July 2015. CWL also reported that 4 cases of regulatory actions, each with suspension of registration for periods of 4.5 to 6 months, had been taken against Registered Subcontractors in relation to safety related convictions since the last report.

3.6 Any Other Business

(a) Progress Update of the Task Force on Enhancements to Subcontractor Registration Scheme (TF-SRS)

CYT briefed Members on the position of the TF-SRS. At present, it was not in favour of the categorisation of subcontractors and mandatory Subcontractor Registration. CYT noted that as the McKinsey Report had a different opinion on this issue, the Task Force would meet shortly to deliberate further on McKinsey Report's recommendation of mandating the implementation of the SRS by 2020.

LKC raised concerns on the way in deterring the malpractice of not paying wages to workers under the current framework of the SRS.

CWL explained that under the current framework of the SRS, regulatory actions could generally be taken against Registered Subcontractors for their convicted offences under certain specified circumstances stipulated under the Rules & Procedures of the Primary Register of the SRS. Information on convicted cases was obtained from the relevant statutory bodies, e.g. Mandatory Provident Fund Schemes Authority for MPF related offences and Labour Department for wage arrears

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and safety related convictions. The Secretariat welcomed comments from Members on how to enhance the SRS for further considerations of the TF-SRS, for instance, whether it would be necessary to further strengthen the mechanism of taking regulatory actions.

LKC pointed out that there was a significant time lapse between committing an offence and being convicted. Accordingly some bad-intentioned employers might exploit the time gap.

LN responded that the currently adopted general principle of taking regulatory actions after conviction was in line with the spirit of the rule of law. The idea of taking regulatory actions against cases without conviction was discussed thoroughly in the previous round of comprehensive review of the Scheme completed a few years ago. It was then concluded that it would create too much uncertainty and even possible legal challenges on the MC and the CIC. LN reiterated that he would welcome the participation from workers union in the MC for more transparency in the decision process. LN further opined that the SRS was actually very effective with respect to the number of regulatory actions taken against Registered Subcontractors so far.

MKP suggested the threshold for triggering regulatory actions might be reviewed.

After much deliberation, the Chairman welcomed the views and opinions from Members on the issue and requested the TF-SRS to deliberate further in particular on the composition of the MC. **TF-SRS**

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

KCT briefed Members on the drafting progress of the Standard Contracts Provisions for Domestic Subcontracts. The English version had been legally vetted with some minor changes being made. The Chinese version had also been legally vetted and the comments received had been circulated for Task Force Members' consideration. KCT added that a simplified version of the standard form was being prepared. The first draft would

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be available in 2 months time.

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

KnH updated Members on the progress of recruitment of the consultant for the drafting of the Standard Form of On-demand Bonds with Conditions. The consultancy service was expected to be awarded before the end of September 2015 and the first draft of the standard form would be available in early 2016.

KnH noted that end of 2015 would not be the appropriate time to organise a half-day seminar on the topic of on-demand bonds jointly with the Task Force on the Selection of Consultants and Contractors. KnH suggested it would be better to hold the seminar when the standard form had been published.

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

MYP updated Members on the progress of the publication of the Reference Materials – FAQ on NEC3 Collaborative Contracts. The Reference Materials would be submitted for Council's approval at the Council Meeting on 28 August 2015.

MYP updated Members on the progress of the case book on NEC3 projects in Hong Kong. The first Task Group meeting was held in June 2015 and the draft outline of the first case book on the Fuk Man Road Nullah project had been prepared by Ms. Ellen Cheng of DSD. MYP noted that HyD had also agreed to contribute to the case book on their Noise Barrier project at Tai Po Tai Wo Road.

MYP updated Members that the remaining NEC PMA program of 2015 would be held in September and November. Further accreditation programs might be conducted in 2016 upon further liaison with NEC UK.

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3.7 Date of Next Meeting

The next meeting would be held at Meeting Room 1, Construction Industry Council Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong. The date and time to be advised by the Secretariat. **All to note**

There being no further business, the meeting adjourned at 4:35 p.m.

CIC Secretariat
September 2015