

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 002/15 of the Committee on Procurement and Subcontracting was held on Thursday, 19 June 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)
Lawrence NG (LN)
Melissa Kaye PANG (MKP)
Mike WONG (MW)
Wilfred WU (WSCW)
Stephen LAI (SLI)
Stephen KWOK (StK) for Permanent Secretary for
Transport and Housing (Housing)
(*on behalf of Ada FUNG*)
Joseph LEE (JLe) Independent Commission Against
Corruption
Ling-so CHUNG (LsC) Construction Site Workers General
Union
Thomas Kwok- (KnH) Chairperson of Special Group on
kwan HO 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
Sing-mo HO (SMH) Chairperson of Task Force on NEC3
Collaborative Contracts
Alfred Wai-ho (ADL) Hong Kong Institution of Engineers
LEUNG
Franklin YU (FIY) Hong Kong Institute of Architects
Victor TAI (VTi) Development Bureau

	Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
In Attendance :	Miranda YEAP	(MYP)	Senior Manager – Council Services
	Chi-wai LAI	(CWL)	Senior Manager – Registration Services
	Rocky CHO	(RYC)	Manager – Council Services
	Amy FUNG	(AyF)	Assistant Manager – Council Services
	Christine LAU	(CGL)	Assistant Manager – Council Services
	Alan HUANG	(ALH)	McKinsey & Company
Apologies :	Hau-wai CHEUNG	(HWC)	
	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
	Hing-fung LEUNG	(HfL)	Hong Kong International Arbitration Centre
	Ada FUNG	(AF)	For Permanent Secretary for Transport and Housing (Housing) Development Bureau
	Francis LEUNG	(FLG)	
	Jennie AU YEUNG	(JAY)	Independent Commission Against Corruption

PROGRESS REPORT

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2.1 Confirmation of the Progress Report of Meeting No. 001/15 of the Committee on Procurement and Subcontracting

Members took note of the Paper CIC/PNS/R/001/15 and confirmed the Progress Report of Meeting No. 001/15 of the Com-PNS held on Thursday, 26 March 2015.

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

- (a) Item 1.3(c) – Drafting progress of the three sets of draft “Reference Materials on Competition Law for the Construction Industry” (Reference Materials)

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MYP reported that the Reference Materials were circulated through email and by post to relevant institutions/organizations for consultation from 13 May to 12 June 2015.

Details were reported under agenda item 2.5 at this meeting.

- (b) Item 1.4(a) – “Reference Materials on Frequently Asked Questions on NEC3 Collaborative Contracts” (FAQ Document)

MYP reported that the FAQ Document was reviewed by the Task Force.

Details were reported under agenda item 2.4(a) at this meeting.

[LKC joined the meeting at 2:35pm]

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

The Chairman briefed Members on the background of the Draft Two Report on Development Strategy for the Hong Kong Construction Industry (the Report) as set out in Annex A of the Paper CIC/PNS/P/005/15. He urged Members to provide comments to the Report as the Council would be keen to seek the views of all members in order to collectively present a document about the future of the construction industry.

MYP supplemented that since the representative of McKinsey & Company (McKinsey) would also brief a number of other committees of the CIC, the discussion at this meeting should focus on Chapter 2 – Vision for Growth and Sustainability and Chapter 7 – Promoting Greater Partnership in Procurement.

[PC and ALH joined the meeting at 2:40pm]

The Chairman invited ALH from McKinsey to brief members on the main points of the Report.

[LsC left the meeting at 2:50pm]

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Members then raised their comments and quoted some examples in the Report and sought ALH's clarification. Salient points of Members' comments were as follows:

The Chairman suggested that an Executive Summary of the Report be prepared.

KCT recognised the vision of the Report and agreed with the long term objectives but was concerned that the targets set out in the Report might be difficult to achieve without some fundamental shift in the mindset of our industry practitioners.

KCT and PC shared the view that it would be better to further categorise the information by nature and split into several booklets, targeting at different groups of stakeholders. For example, Members noted that information relating to subcontracting was scattered in different chapters of the Report thus it would not be easy for readers to locate information regarding subcontracting in one go. In addition, the content should be scrutinised in detail to eliminate conflict that may misalign with the overall direction of the Report, e.g. while the Report stated some payment upfront might be needed from a client when using NEC3 ECC, this seemed to be an disincentive when we were trying to promote collaborative contracts.

The Chairman emphasized the importance of promoting long-term sustainability of the construction industry.

SKC suggested that the Report should elaborate on the expected outcome that the CIC would like to achieve and how to enable the industry to follow.

LN and SGN were of the view that there should be more solid targets for the industry stakeholders and plans on how the visions would be delivered in the foreseeable future. PC further added that the Report might be further developed into action list to address the issues raised under different categories.

FIY pointed out that many of the problems faced by the construction industry, e.g. those of quality, safety and payment might be related to the sub-contracting regime. When asked if this had been specifically addressed in the Report, ALH replied that instead of the act of sub-contracting itself, which was common

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across the world, it was apparently the small size of the sub-contracting firms that was the root cause of the problem. ALH further explained that the small size firms might be inherent as they could be flexible enough to swim the ups and downs in a volatile construction market. This would only be addressed by working towards a stable and sustainable growth of our industry.

CYT pointed out problems currently encountered by subcontractors, especially lower tier subcontractors, such as lack of manpower, stringent technical requirement, long working hours, aging of workers and ineffective/insufficient training. He suggested including in the Report a workable solution for subcontractors to tackle the above problems.

KCT suggested including coverage on building maintenance in the Report.

LN suggested the Council to place more emphasis on the vision and individual committee could give more comments on their relevant ambit for Mckinsey's consideration.

After much deliberation, the Chairman asked ALH to take into account the comment of members. In addition, it was suggested that CIC's members should be more involved in working with the consultant to arrive at a Report that was insightful in taking our industry to the next level. **ALH**

[ALH left the meeting at 3:55pm]

[Post-Meeting Note: This matter was raised by the Chairman of Com-PNS, LN and PC at the CIC's meeting on 19 June 2015. The Chairman of the CIC took note of the discussion at the Com-PNS meeting and encouraged Members to debate and comment more on the Report. The Chairman of the CIC agreed to host a Retreat for Council Members to review and finalise on the Report and to agree on the Hong Kong Construction Industry Vision before publishing the Report. Com-PNS members were encouraged to write in with their comments before the next Com-PNS meeting, which would be very important for the industry.]

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2.4 Report of the Task Force on NEC3 Collaborative Contracts

(a) Reference Materials on Frequently Asked Questions on NEC3 Collaborative Contracts

Members took note of the Paper CIC/PNS/P/006/15 regarding updates on NEC3 Collaborative Contracts.

SMH, Chairman of the Task Force on NEC3 Collaborative Contracts, updated Members on the latest progress of the drafting progress of “Reference Materials on Frequently Asked Questions on NEC Collaborative Contracts” (FAQ Document). The Bilingual version of the FAQ Document was reviewed by the Task Force. SMH expressed his appreciation to the efforts of section leaders of the Task Force for drafting, editing and final vetting of the FAQ Document.

Members endorsed the FAQ Document for Council’s approval at its August meeting.

(b) Case Books on NEC Projects in Hong Kong

SMH reported that a series of Case Books on NEC Projects in Hong Kong was proposed to be produced, the first of the series would be on the Improvement of Fuk Man Road Nullah Project of the Drainage Services Department (DSD) and Tai Po Noise Barrier Project of Highways Department. Subject to further deliberation, another case book on CLP’s first completed NEC Project and one NEC Project of the MTR corporation was proposed to be produced in due course.

(c) NEC ECC Project Manager Accreditation Programme

MYP reported that the February session of ECC Project Manager Accreditation Programme (Hong Kong) was completed with a high passing rate of 89%. The May, July, September and November sessions would be conducted in due course. The class size would be limited to 16 to 17 and the duration would be reduced from 5 to 4 days to facilitate more effective and efficient training. Interested parties might visit NEC UK’s website for enrolment.

(d) NEC Users Group Annual Conference

MYP shared with Members her recent visit to London to attend

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the NEC Users Group Annual Conference. She remarked that one of the DSD's NEC Project, the Happy Valley Underground Stormwater Storage Scheme, won an award of commendation. MYP also visited a number of NEC projects and had fruitful discussion with various parties and had some experience sharing regarding NEC projects.

2.5 Report of the Task Force on Competition Law

Members took note of the Paper CIC/PNS/P/007/15 regarding the drafting progress of the three sets of draft "Reference Materials on Competition Law for the Construction Industry".

MYP reported that subsequent to the last Com-PNS meeting, the consultant has further reviewed the Reference Materials taking into account the revised Draft Guidelines on the First and Second Conduct Rules published by the Competition Commission on 30 March 2015. The Consultant concluded that the additional material in the revised Draft Guidelines has already been adequately covered in the current draft of the Reference Materials and no further amendment was made.

MYP also reported that the views of Members were taken into account and the Reference Materials "Code of Conduct on Competition Law for the Construction Industry" was renamed as "DOs and DON'Ts on Competition Law for the Construction Industry" to address the concerns of Members.

MYP further reported that the Reference Materials were circulated through email and by post to 9 relevant institutions/organizations for consultation from 13 May to 12 June 2015. A number of replies were received from some of the organizations. All of them except HKIS responded with a nil return. The comments from HKIS would be incorporated as appropriate. In addition, after liaison with HKIS, it was agreed that the consultation period would be extended for three weeks in response to HKIS's request in order to allow more time for other comments to come in.

In relation to the information brochures on trade associations recently published by the Competition Commission, the Secretariat would also alert the consultant to conduct further coherence check.

Members noted that by the end of the consultation period in three weeks time, the final version incorporating comments from the industry stakeholders would be endorsed at the next Task Force

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meeting, followed by endorsement by the Com-PNS and approval by the Council as soon as possible.

The Chairman emphasised the importance to finalise the above document for timely release for the benefit of stakeholders.

In response to LN's comments, MYP mentioned that briefing session would be organised upon finalisation of the Reference Materials and relevant stakeholders would be invited to attend.

MYP also mentioned that a two-minute animation video on bid-rigging was being produced with an aim to act as a lively education channel for stakeholders and would be available for submission to the next Com-PNS meeting. Upon finalisation, the video would be published on CIC's website, as well as other social media channels such as facebook.

2.6 Report of the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism

MYP updated members on the progress of the Working Group on the renewed implementation of Dispute Resolution Mechanism. Comments on the reference material had been consolidated from working group members and subsequent amendments had been endorsed in the last Working Group meeting.

Members took note of the Paper CIC/PNS/P/008/15. MYP highlighted that Hong Kong Construction Arbitration Centre (HKCAC)'s application as one of the Appointing Bodies under CIC's Reference Material for Application of Dispute Resolution in Construction Contracts was resolved and HKCAC was now satisfied with the existing arrangement and therefore the matter has been closed.

Members took note of the changes made to the Reference Materials for Application of Dispute Resolution in Construction Contracts (Version 2) of Paper CIC/PNS/P/009/15 and endorsed the Reference Materials for Council's approval at its next meeting and then for publishing at the CIC's Website.

2.7 Update on Subcontractor Registration Scheme (SRS) Operations

Members took note of the Paper CIC/PNS/P/010/15 regarding updates on SRS operations.

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CWL briefly updated Members on the progress of the operations of the SRS, highlighting the updated number of registered subcontractors under the SRS. He also mentioned that hearing of regulatory actions would be held on 25 June 2015 concerning four cases with fatalities.

CWL also reported that in order to disseminate the message of the recent launch of the public consultation on the proposed Security of Payment Legislation for the Construction Industry, relevant information was e-broadcasted to all the registered Subcontractors under the SRS for their attention.

In response to LKC's query on the interpretation of the "number of regulatory actions taken" set out in the Paper, CWL responded that regulatory actions could only be taken against companies registered under the SRS and convicted by the court based on information provided by the Labour Department.

LKC was concerned that no representatives from the trade unions were currently sitting on the Management Committee of the SRS. It was suggested to explore the feasibility in reviewing the composition of the Management committee ("MC") of the SRS to include representative from the trade unions or invite them to attend regulatory hearings of the MC of the SRS, if requested by union.

**CIC
Secretariat**

[Post-Meeting Note: LKC's concern was raised at the CIC meeting on 19 June 2015 and the Chairman of the CIC said that Com-PNS was empowered to decide on the membership of the MC of the SRS.]

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

CYT, Chairman of the Task Force on Enhancements to Subcontractors Registration Scheme, reported that the Task Force members concurred not to proceed with the mandatory registration scheme and categorization of subcontractors under the SRS at this stage. He remarked that the Task Force concluded that based on the diversified data collected, it was difficult to draw up the criteria for categorization.

He also elaborated that the Task Force considered that there were

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already specific legislations to protect payment of workers' wages and MPF contributions. As such, the way ahead should focus on how to strengthen the support to the SRS by different industry stakeholders and refine its operations and incentives that could be offered through the SRS to stimulate self-improvements by Registered Subcontractors.

In response to SKC's enquiry, CYT responded that there was no particular timeframe for the Task Force to re-visit the implementation of the mandatory registration scheme. However, the Task Force might review the situation as appropriate in the future. SKC further opined that mandatory registration should be the ultimate goal.

LN illustrated the difficulty in grading the subcontractors of different trades according to turnover. In addition, the proposed categorization would limit the choice of employer or restrict normal business activities of free market.

LN also pointed out that while mandatory registration scheme would involve huge, long term resources and costs implications, the matter could always be further looked into in the future.

[SGN left the meeting at 4:36pm]

LKC urged DEVB to review the current categorization system for public works contracts to enable more subcontractors to take part in different works contracts. VTi welcomed LKC's comments and responded that the DEVB already has plans to review the current categorization system.

2.9 Any Other Business

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

KCT, Chairman of the Task Force on Standard Contract Provisions for Domestic Subcontracts, reported that legal vetting of the Standard Form of Domestic Sub-Contract was completed with minor refinement. The marked up version would be circulated to Task Force Members for consideration and finalisation.

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

KnH, Chairman of the Special Group on On-Demand Bonds reported that the scope of consultancy for the “Standard Form of On-Demand Bonds with Conditions” had been defined and an assignment brief for consultant engagement had been prepared. An invitation for expression of interest would be issued soon.

He also reported that regarding the invitation by the Task Force on the Selection of Consultants and Contractors at the last Com-PNS meeting to co-organise a seminar/briefing session in late 2015, the Special Group would further consider whether to accept the invitation.

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

MYP, on behalf of KP, Chairman of the Task Force on the Selection of Consultants and Contractors, remarked that the Task Force would liaise with Task Force on Employer-Procured Insurance Policies in Construction Contracts and Special Group on On-Demand Bonds regarding the abovementioned seminar/briefing session with an aim to promulgate their published Fact Sheets and Alerts on the same occasion. It was hoped that richer contents would make the seminar / briefing more interesting.

(d) Development of Appropriate Procurement and Subcontracting Processes

Regarding the Chairman’s invitation for Members to contribute comments or ideas to enhance the processes of the industry at the last meeting, MYP reported that the Secretariat had not received any comments since the last meeting.

(e) Tighter procedures urged to curb building maintenance cartels in Hong Kong

MYP briefed members on the Paper CIC/PNS/P/012/15.

PC, LKC and LN shared their views that the problem of bid-rigging was serious. It was suggested that as building

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owners might not have knowledge in drafting of contracts to renovation their buildings, they were often vulnerable to be exploited by consultants whom they consulted when undertaking building maintenance projects. In this regard, the Chairman suggested that the CIC might organise a workshop to educate Owners' Corporations accordingly.

KnH mentioned that HKIS has submitted a proposal to DEVB to advocate the establishment of an authority to scrutinize repair and maintenance works and to maintain a list of authorised persons (APs).

LN suggested that CIC could be a platform for various stakeholders to further look into the issue of bid-rigging.

The Chairman suggested KnH to liaise with the Secretariat to write a paper to further discuss the issue at the next Com-PNS meeting.

**KnH / CIC
Secretariat**

[MKP left the meeting at 5:03pm]

JLe shared with Members the experience of ICAC and its difficulty in prosecuting bid-riggers. He mentioned that prior to the enactment of the Competition Ordinance, the court found bid-rigging not against the law. In addition, due to operational difficulties, it was very difficult to collect evidence against bid-rigging as the syndicates were experienced at fighting investigations. As such, ICAC focused on preventive measure such as education by means of publication of Toolkits and guides.

He illustrated that in the ICAC's guide, it was suggested that both APs and an independent surveyor be employed. However, JLe opined that owners might be reluctant to pay an additional amount to hire an independent surveyor.

[WSCW left the meeting at 5:04pm]

JLe further mentioned that ICAC has engaged the University of Hong Kong (HKU) to generate a database on building maintenance costs of Operation Building Bright projects, with an aim to make available maintenance cost information for benchmarking. JLe informed Members that the

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engagement had now expired, but HKU would continue to maintain the database on its own. However, since the collection of cost data from the maintenance market and analysis on such data would be difficult, JLe invited industry stakeholders to provide data or support to HKU.

(f) Standard Form of Contract for Maintenance and Renovation Works (SCMW)

MYP briefed members on the Paper CIC/PNS/P/013/15. She remarked that a Standard Form of Contract for Maintenance and Renovation Works (SCMW) prepared by HKIS would be circulated to members for comments to return in two weeks' time. The Secretariat would collate the comments and deliberated the way forward in due course.

KnH supplemented that the Standard Form of Building Contract was not intended for repair and maintenance works. When the Standard Form of Building Contract was used on repair and maintenance works, users normally adapted the Standard Form to introduce various kinds of special conditions of contract. Some adapted versions of the Standard Form of Building Contract were poorly drafted and very harsh, which might result in disputes. It was therefore considered that a SCMW should be in place for maintenance and renovation works.

KnH also mentioned that apart from the CIC, HKIS would also liaise with DEVB and Home Affairs Bureau regarding the introduction of SCMW.

(g) Security of Payment Legislation (SOPL) for the Construction Industry

MYP mentioned about the public consultation on the proposed Security of Payment Legislation (SOPL) for the Construction Industry” and invited Members to participate in the stakeholder forums to be held on 11 July or 25 July 2015 to express their views on the subject matter. She added that details regarding the Security of Payment Legislation have

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been published by the Development Bureau and a set of bilingual publications was tabled for Members' reference.

SLW was concerned that the SOPL would only cover new projects exceeding the HK\$5,000,000 thresholds and would not cover renovation projects. He also mentioned that no trade union representatives were present at the consultation meeting with DEVB.

SLW was of the view that since the threshold of levy was HK\$1,000,000, he suggested that it would be more appropriate to cover projects with contract value exceeding HK\$1,000,000 instead of HK\$5,000,000.

He also had reservations on the rationale that projects under the Mandatory Building Inspection Scheme would not be covered by the proposed SOPL. SLW informed Members that his Association would continue to reflect the comments in this regard to DEVB.

2.10 Date of Next Meeting

The next meeting would be scheduled for Thursday, 27 August 2015 at 2:30 p.m. at Meeting Room 1, Construction Industry Council Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong. **All to note**

There being no further business, the meeting adjourned at 5:08 p.m.

CIC Secretariat
June 2015