

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 003/14 of the Committee on Procurement and Subcontracting was held on Monday, 15 December 2014 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)	
		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
		CHUNG Ling-so	(LsC)	Construction Site Workers General Union
		Thomas Kwok-kwan HO	(KnH)	Chairperson of Special Group on On-Demand Bonds
		Sing-mo HO	(SMH)	Chairperson of Task Force on NEC3 Collaborative Contracts
		Hing-fung LEUNG	(HfL)	Hong Kong International Arbitration Center
		Alfred Wai-ho LEUNG	(ADL)	Hong Kong Institution of Engineers
		Victor TAI	(VTi)	Development Bureau <i>(on behalf of Francis LEUNG)</i>
		Ki-cheung TANG	(KCT)	Chairperson of Task Force on Standard Contract Provisions for Domestic Subcontracts
		Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
		Franklin YU	(FIY)	Hong Kong Institute of Architects
In Attendance	:	Christopher TO	(CT)	Executive Director
		Miranda YEAP	(MYP)	Senior Manager – Council Services
		Belle HO	(CYH)	Manager – Council Services
		Chi-wai LAI	(CWL)	Manager – Registration Services

	Amy FUNG	(AyF)	Assistant Manager – Council Services
Apologies	:	Hau-wai CHEUNG (HWC)	
		Stephen LAI (SLI)	
		Derrick PANG (DP)	
		Kevin POOLE (KP)	Chairperson of Task Force on the Selection of Consultants and Contractors
		Mike WONG (MW)	
		Ada FUNG (AF)	For Permanent Secretary for Transport and Housing (Housing)
		Tat-tong CHEUNG (TTC)	Chairperson of Working Group on the Review of the Implementation of the Dispute Resolution Mechanism
		Francis LEUNG (FLG)	Development Bureau
		Steve GRIFFIN (SGN)	Chairperson of Task Force on Employer-Procured Insurance Policies in Construction Contracts
		Andrew SIMPSON (ASN)	Chairperson of Task Force on Competition Law
		Chun-yuen TSE (CYT)	Chairperson of Task Force on Enhancements to Subcontractor Registration Scheme

PROGRESS REPORT

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3.0 Welcome Note from the Chairman

The Chairman welcomed Members for joining Meeting No. 003/14 of the Committee on Procurement and Subcontracting (Com-PNS).

3.1 Confirmation of the Progress Report of Meeting No. 002/14 of the Committee on Procurement and Subcontracting

Members took note of the Paper CIC/PNS/R/002/14 and confirmed the Progress Report of Meeting No.002/14 of the Com-PNS held on Friday, 17 October 2014.

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

- (a) Item 2.3(a) – Proposed Collaboration with NEC UK
- (b) Item 2.3(b) – Reference Materials on Frequently Asked

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Questions on NEC3 Collaborative Contracts

- (c) Item 2.7 – Report of the Task Force on the Selection of Consultants and Contractors
- (d) Item 2.10(a) – Progress Update of the Task Force on Standard Contract Provisions for Domestic Subcontracts
- (e) Item 2.10(c) – Issues on Allocation/Sharing of Risks in Construction Contracts

MYP reported that status updates on the aforementioned matter arising items would be reported under the respective agenda items at this meeting.

3.3 Report of the Task Force on the Selection of Consultants and Contractors

Members took note of the Paper CIC/PNS/P/019/14 on “Reference Materials on the Selection of Consultants”.

On behalf of KP, Chairman of Task Force on the Selection of Consultants and Contractors, MYP briefed Members on the latest progress of the Task Force.

MYP reported that based on Members’ suggestion at the last Com-PNS meeting, a Feedback Form had been included in the Reference Materials to collect feedback from industry stakeholders. The Reference Materials was approved by the Council at its meeting held on 24 October 2014 and published on the CIC website in November 2014. A copy of the published Reference Materials was appended at Annex A for Members’ information.

In terms of the possible stage 2 work of the Task Force, MYP reported that, with the estimated budget of HK\$200,000 previously endorsed by the Com-PNS, the Task Force Chairman would consider organizing a briefing session/seminar/forum to further publicise the Reference Materials. A Consultant might also be engaged to draft the “Reference Materials on the Selection of Contractors” in 2015/2016, subject to further deliberation by the Task Force or Com-PNS.

FIY suggested the Task Force Chairman to explore the idea of organizing a seminar or sharing session for Members of The Hong Kong Institute of Architects (HKIA). The Chairman entrusted

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MYP to discuss with KP on the possibility of organizing a seminar/sharing session specifically for Members of professional institutes/organizations.

3.4 Report of the Task Force on Standard Contract Provisions for Domestic Subcontracts

Members took note of the Paper CIC/PNS/P/020/14 as the Progress Report for Meeting No. 002/14 of the Task Force on Standard Contract Provisions for Domestic Subcontracts.

KCT, Chairman of Task Force on Standard Contract Provisions for Domestic Subcontracts, reported that he had contacted Mr. Thomas TSE of Hong Kong Construction Association (HKCA) subsequent to the last Com-PNS meeting. Mr. TSE reiterated that HKCA would not participate further in the work of the Task Force. KCT further consulted the Task Force Members on the way forward and the majority agreed to proceed with legal vetting of the current English draft Standard Form of Domestic Subcontract. Concurrently, KCT had fine-tuned the draft to make it more user-friendly and sought Members' endorsement to proceed with legal vetting of the revised version.

The Task Force Members had also agreed to go ahead with the drafting of a simplified version of Standard Form of Domestic Subcontract, by streamlining the legally vetted version, which would be more practical for lower tier Subcontracting.

MYP reported that CIC Members had agreed to go ahead with legal vetting of the revised English draft and the drafting of a simplified set of Standard Form of Domestic Subcontract at the Council Meeting held on 12 December 2014. The CIC Chairman had also appealed to SKC, Chairman of HKCA to seriously reconsider participating in the Task Force and SKC agreed to reconsider accordingly.

LN expressed appreciation to the effort of the Task Force and the support from HKCA in preparing the current English draft Standard Form of Domestic Subcontract. He said that whilst the current draft might not be applicable to every contract, it should be acceptable and helpful to the industry. LN supported the drafting of a simplified Standard Form of Domestic Subcontract so the industry could have a detailed version and a simplified version to fit different needs of different contracts. For example, the

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simplified version could be used between second and third tier Subcontractors; and main contractors could also consider using it for simple assignments such as installation and dismantling of tower crane.

The Chairman agreed with LN and reiterated the importance of HKCA's input and support during the past years. He looked forward to HKCA's continuous support to the Task Force.

KCT further stated that by adopting a Standard Form, the practitioners would only need to refer to the Standard Form instead of going through different domestic forms published by different contractors. The time required could be much reduced.

After much deliberation, the Com-PNS endorsed to proceed with (i) legal vetting of the revised English draft Standard Form of Domestic Subcontract and (ii) drafting of a simplified Standard Form of Domestic Subcontract based on the legally vetted version.

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

Members took note of the Paper CIC/PNS/P/021/14 as the Progress Report for Meeting No. 001/14 of the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism.

On behalf of TTC, Chairman of the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism, MYP briefed Members on the latest updates of the Working Group.

MYP reported that the Hong Kong Construction Arbitration Centre (HKCAC) proposed an alternative model, involving the establishment of a new unified body comprising of HKIA, The Hong Kong Institute of Surveyors (HKIS) and The Hong Kong Institution of Engineers (HKIE), etc., to the one stipulated in CIC's Reference Materials for Application of Dispute Resolution in Construction Contracts. Dr. Simon Chee, Member of the Working Group and President of HKCAC, was consulting HKIA, HKIS and HKIE on the proposal and would advise Com-PNS of the outcome in due course.

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Members took note of the latest progress of the Working Group.

3.6 Report of the Task Force on Competition Law

Members took note of the Paper CIC/PNS/P/022/14 regarding the work plan of the Task Force on Competition Law for 2014/2015.

On behalf of ASN, Chairman of the Task Force on Competition Law, MYP briefed Members on the latest progress of the Task Force.

MYP reported that, at Meeting Nos. 001/14 and 002/14 of the Com-PNS, Members endorsed the budget and action plan for producing the stage 1 deliverables of the Task Force on Competition Law, which included the production of a set of Reference Materials on Competition Law for the construction industry.

An “Assignment Brief for Provision of Services on the Drafting of Reference Materials on Competition Law” was hence issued with an aim to engage a law firm to draft Reference Materials in the form of Competitive Conduct Standard or Code of Conduct, FAQs and Case Summaries on Competition Law as its “Core Service”. An “Optional Service” for producing Quarterly Updates of Case Summaries, which could form part of the stage 2 deliverables of the Task Force, was also specified in the Assignment Brief.

Subsequently, a tender assessment was conducted by a panel chaired by the Executive Director of the CIC. The assessment panel interviewed the qualified tenderers on 24 November 2014 and recommended to award the contract to King & Wood Mallesons with a tender sum as stated in the Paper CIC/PNS/P/022/14 for the “Core Service”.

Given that King & Wood Mallesons had scored the highest technical score and offered the lowest combined tender sum amongst the other qualified tenderers, the assessment panel also recommended to award the “Optional Service”, i.e. production of Quarterly Updates of Competition Law Case Summaries for a period of 3 years, to King & Wood Mallesons at an additional sum as stated in the said Paper CIC/PNS/P/022/14.

MYP further reported that, as part of the stage 2 deliverables of the Task Force, the CIC Secretariat would also work in consultation

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with the TF-CLW to organise a Forum on Competition Law tentatively in Q3 or Q4 2015.

MYP sought Members' endorsement on:

- a) the additional budget for awarding the "Optional Service" to King & Wood Mallesons, in addition to the "Core Service", at a combined tender sum as stated in the Paper CIC/PNS/P/022/14; and
- b) an estimated budget of HK\$300,000 for the organization of a forum on Competition Law in 2015.

After deliberation, the Com-PNS endorsed the aforementioned budget and the action plan stated in the Paper CIC/PNS/P/022/14. In response to PC's suggestion, Com-PNS further agreed that a reserved fund should be included in Com-PNS's budget for seeking legal advice on competition law and other legal or Com-PNS related issues.

CT informed Members that he had recently met Ms. Anna WU, Chairperson of the Competition Commission, at a forum and had expressed the concern of the construction industry on whether collective bargaining of wage increases might contravene the First Conduct Rule of the Competition Ordinance. Ms. WU agreed to set up a meeting with Members of the Com-PNS to exchange views and explore ways to work together to provide meaningful guidelines to the industry. The Secretariat would inform Members on the details of the meeting in due course.

CIC
Secretariat

[Post-Meeting Note: Subsequent to the Com-PNS meeting, a visit to the Competition Commission had been arranged on 20 January 2015 (2:30pm to 4:00pm).]

3.7 Updates on Subcontractor Registration Scheme (SRS) Operations

Members took note of the Paper CIC/PNS/P/023/14 regarding updates on SRS operations.

CWL briefed Members on the latest statistics in terms of (i) the number of "New", "Renew" and "Add trade" applications received and processed; (ii) the number of registered subcontractors under

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the SRS; and (iii) the number of regulatory actions taken.

3.8 Tentative Meeting Schedule for 2015

Members took note of the Paper CIC/PNS/P/024/14 on the tentative meeting schedule for 2015.

MYP reported that after consultation with the Chairman, the first Com-PNS meeting in 2015 would be held on Thursday 26 March 2015. She would confirm with Members on the remaining meeting dates nearer the time.

3.9 Any Other Business

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

MYP reported that the “Memorandum of Understanding (MoU) for collaboration between the CIC and the NEC Contracts UK” was signed by the CIC Chairman in October 2014. As part of the collaboration, the NEC UK would work in partnership with the CIC to deliver NEC ECC Project Manager Accreditation courses in Hong Kong. Tentatively, several classes would be arranged in 2015 at the ZCB, with the first one being run from 9 to 13 February 2015.

The Chairman highlighted that the Hong Kong Government was pushing quite a number of NEC contracts out in 2015/2016, and Members should make sure that the industry could respond to the challenge in a professional way. Currently, companies executing NEC contract(s) in Hong Kong were training their staff accordingly. He advised Members to familiarise their staff on the subject.

SMH, Chairman of the Task Force on NEC3 Collaborative Contracts, reported that subsequent to the last Com-PNS meeting, the draft Chinese translation of the “Reference Materials on Frequently Asked Questions on NEC3 Collaborative Contracts” (FAQ document) had been prepared. Subject to Com-PNS’s endorsement on an estimated budget of HK\$500,000, the English and Chinese version of the FAQ document would be submitted to CIC’s legal advisor for vetting before presenting the document to the Council for approval to publish. Furthermore, a Feedback Form would be

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attached to the FAQ document to collect feedback from industry stakeholders.

Members took note of the latest progress of the Task Force and endorsed the estimated budget for the legal vetting of the FAQ document.

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

KnH, Chairman of the Special Group on On-Demand Bonds reported that at the last meeting of the Com-PNS, Members endorsed the revised Terms of Reference of the Special Group and accepted the idea of engaging a law firm or legal practitioner to undertake the drafting of a “Standard Form of On-Demand Bonds with Conditions”. The Special Group Chairman would work with Members to define the scope of the consultancy and propose a work plan for producing the Standard Form in due course. As a preliminary estimate, it was suggested that a budget of HK\$1,500,000 might be required for undertaking this assignment in 2015-2017.

Members took note of the progress of the Special Group and the estimated budget for producing the Standard Form.

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

On behalf of SGN, Chairman of the Task Force on Employer-Procured Insurance Policies in Construction Contracts, MYP briefed Members on the latest updates of the Task Force.

MYP reported that subsequent to the publication of the “Procurement Fact Sheet on Owner-Controlled Insurance Programme in Construction Contracts”, the Task Force Chairman would be consulted on the work plan of the possible 2nd stage deliverables of the Task Force, if any, for 2015.

(d) Issues on Allocation/Sharing of Risks in Construction Contracts

The Chairman informed Members that as DP of HKCA expressed dissatisfaction over CIC’s proposed course of action at the last Com-PNS meeting, he planned to arrange a meeting

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with CT and DP to have a discussion on the issue in the next few months.

(e) Work Plan of the Com-PNS 2015/2016

Members took note of the tabled Paper CIC/PNS/P/025/14 enclosing the draft Year Plan 2015/2016 of the Com-PNS. The Chairman informed Members that the estimated project costs stated in the Paper were only ballpark indication of the budget estimates. He invited Members to express views and contribute suggestions to the year plan. After deliberation, the Task Force Chairmen were tasked to review the proposed tasks and budget and submit their comments or suggestions, if any, to the Secretariat by January 2015.

**Task Force
Chairmen**

(f) Others

(i) Progress Update on the Security of Payment Legislation for the Construction Industry

MYP informed Members that CIC had participated in the 15th Working Group Meeting on Security of Payment (SOP) Legislation for the Construction Industry which was held on 3 November 2014. At the meeting, it was decided that a phased approach to the implementation of the proposed SOP legislation should be adopted. The implementation would consist of two phases. The first phase would cover contracts relating to all new construction works carried out in Hong Kong and innovation works of the public sector in Hong Kong. The second phase would cover all remaining contracts relating to construction activities carried out in Hong Kong, subject to the results of the first phase implementation. It was expected that the Development Bureau would conduct a consultation exercise in the second quarter of 2015.

CT informed Members that the legislation would have an adjudication process and the default appointing authority would be the Hong Kong International Arbitration Centre (HKIAC). CT was working with HKIAC to determine the criteria for the appointment of a qualified adjudicator. Members would be kept informed on any updates on the proposed criteria.

PC highlighted that the Task Force/Working Group on Dispute

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Resolution should be fully aware of the progress and content of the SOP Legislation to avoid overlapping of work.

CT ensured Members that TTC and SLI were seated in the Committee for the Hong Kong International Arbitration Centre monitoring the adjudication process. Chairmen of the Task Force/Working Group would keep Members informed on any important issues.

(ii) Survey on CIC Publications and Revamp of CIC website

PC inquired whether CIC had any mechanism to measure the popularity of the CIC publications such as Guidelines, Reference Materials and Alerts, etc.. KCT also commented on the slow response of the CIC website. In response, CT informed Members that a survey on CIC publications had recently been conducted and revamp of the CIC website was currently underway to optimize its application and was expected to be completed by 2015/16. Members would be kept informed on the development the improvement plan in due course.

3.10 Date of Next Meeting

Thursday, 26 March 2015 at 2:30 pm at Meeting Room No. 1, CIC Headquarters, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

All to note

There being no further business, the meeting adjourned at 3:40pm.

CIC Secretariat
December 2014