

Construction Industry Council

Committee on Procurement and Subcontracting

Meeting No. 001/14 of the Committee on Procurement and Subcontracting was held on Friday, 23 May 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)	
		Kevin POOLE	(KP)	
		Stephen LAI	(SLI)	
		Lawrence NG	(LN)	
		Derrick PANG	(DP)	
		Melissa Kaye PANG	(MKP)	
		Mike WONG	(MW)	
		Wilfred WU	(WSCW)	
		Sing-mo HO	(SMH)	Chairperson of Task Force on NEC3 Collaborative Contracts
		Thomas Kwok-kwan HO	(KnH)	Chairperson of Special Group on On-Demand Bonds
		Andrew SIMPSON	(ASN)	Chairperson of Task Force on Competition Law
		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
		Ka-man YEUNG	(KMY)	for Permanent Secretary for Transport and Housing (Housing) (<i>on behalf of Ada FUNG</i>)
In Attendance	:	Victor TAI	(VTi)	Development Bureau
		Christopher TO	(CT)	Executive Director
		Miranda YEAP	(MYP)	Senior Manager – Council Services
		Ivan KO	(IK)	Manager – Council Services

	Chi-wai LAI	(CWL)	Manager – Council Services
	Claire LEE	(CeL)	Manager – Council Services
Apologies	: Anthony CHAN	(AnCN)	
	Hau-wai CHEUNG	(HWC)	
	Ada FUNG	(AF)	for Permanent Secretary for Transport and Housing (Housing)
	Steve GRIFFIN	(SGN)	Chairperson of Task Force on Employer-Procured Insurance Policies in Construction Contracts
	Tat-tong CHEUNG	(TTC)	Chairperson of Working Group on the Review of the Implementation of the Dispute Resolution Mechanism

PROGRESS REPORT

Action

1.1 Welcome Note from the Chairman

The Chairman welcomed Members for joining the new Committee on Procurement and Subcontracting (Com-PNS).

MYP briefed Members on the Paper CIC/PNS/P/001/14 regarding the Terms of Reference and Membership List of the Com-PNS, and the amendments to the structure and operations of the Committee.

1.2 Confirmation of the Progress Report of the former Committee on Procurement (Meeting No.004/13) and the former Committee on Subcontracting (Meeting No.001/14)

Members took note of the Papers CIC/PCM/R/004/13 and CIC/SBC/R/001/14, and confirmed the Progress Reports of the former Committee on Procurement (Meeting No.004/13) and the former Committee on Subcontracting (Meeting No.001/14) held on 13 November 2013 and 21 January 2014 respectively.

1.3 Matters Arising from the Previous Meetings of the former Committee on Procurement and Committee on Subcontracting

From the former Committee on Procurement (Com-PCM):

(a) Item 4.3 – Issues on On-Demand Bonds

A Special Group on On-Demand Bonds had been formed and held its first meeting on 19 February 2014. Details would be discussed under Agenda Item 1.6.

(b) Item 4.4 – Issues on Construction Programme

The CIC's research department had commissioned the research team of the Hong Kong Polytechnic University (PolyU) to conduct a research on "An Empirical Study of Construction Time Performance of High-Rise Private Building Projects in Hong Kong". The project would aim to investigate the construction time performance of high-rise private building projects in Hong Kong, and thereby improving the overall competitiveness and productivity of the local construction industry as a whole. The research programme would cover a period of 18 months from 1 June 2014 to 30 November 2015. Key deliverables of the research would include:

- Comparisons on construction time performance of projects between Hong Kong and Singapore;
- Summary of the determinants of project duration; and
- Practical guidance notes for industrial practitioners to achieve more efficient and faster project completion.

From the former Committee on Subcontracting (Com-SBC):

(a) Item 1.4 – Standard Contract Provisions for Domestic Subcontracts

- *Independent Commission Against Corruption*

(ICAC)'s comment

ICAC expressed disappointment on the Task Force's refusal to add an anti-bribery clause to the Standard Form. The Task Force and the former Com-SBC opined that the principle of Standard Contract Provisions for Domestic Subcontracts was to produce precise and simple documentation, and to avoid duplicating requirements which were already laid down under relevant legislation. The Secretariat had reported the same message at the Council Meeting held on 28 February 2014 for Council Members' information.

- *Publishing the Standard Form on CIC's website*

The Standard Form had been published on CIC's website for industry's access in February 2014, with a view to collect more comments from the industry on the draft.

- *Legal vetting of the English and Chinese versions*

Upon the completion of industry consultation ending in mid-May 2014, the Secretariat would engage a consultant or advisor for legal vetting of the English and Chinese versions.

- (b) Item 1.5 – Enhancements to Subcontractor Registration Scheme (SRS)

A Task Force on Enhancements to Subcontractor Registration Scheme had been formed and held its first meeting on 19 May 2014. Details would be discussed under Agenda Item 1.9.

- (c) Item 1.6 – Update on SRS Operations

The enhanced services to be provided to registered subcontractors would be handled by the Task Force on Enhancements to Subcontractor Registration Scheme.

1.4 Proposed Nomination of Co-opted Members for Committee on Procurement and Subcontracting from February 2014 to January 2016

MYP briefed Members on the Paper CIC/PNS/P/002/14.

VTi informed Members that the representative from Development Bureau should be Mr Francis LEUNG instead of Mr Kelvin LO.

Members noted VTi's notification and endorsed the proposed list of reappointed Co-opted Members and the organisations to be invited for nominating Co-opted Members in Annex A of the Paper. The Secretariat would put forward the proposed list of Co-opted Members for Council's approval.

**CIC
Secretariat**

KnH opined that although there were currently three members from the Hong Kong Institute of Surveyors (HKIS) in the Committee, HKIS was not one of the organizations being invited for nominating co-opted members. He expressed concerns that there would be no representative of HKIS in the Committee when all the Task Forces completed their tasks.

The Chairman reassured KnH that the Secretariat would follow up to ensure that there would be representative from HKIS in the Committee when the Task Forces had completed their tasks.

**CIC
Secretariat**

[PMN: The Secretariat had updated the representative of Development Bureau to Mr Francis LEUNG. The proposed list of Co-opted Members for Com-PNS was approved by the Council at its meeting held on 20 June 2014.]

1.5 Tasks and Budget for 2014

MYP briefed Members on the Paper CIC/PNS/P/003/14. Members noted the proposed Tasks and Budget of the Committee for 2014. The Chairman requested each Task Force Chairman to review the proposed tasks and budget and submit their spending profile at the next meeting.

All

1.6 Report of the Special Group on On-Demand Bonds

Members took note of the Paper CIC/PNS/P/004/14 enclosing

a copy of the draft Progress Report of Meeting No. 001/14 of the Special Group.

The Chairman of the Special Group on On-Demand Bonds (SG-OGB), KnH, updated Members on the progress of the Special Group. A draft Procurement Alert on the “Use of On-Demand Performance Bonds in Construction Contracts” was prepared and circulated to Members for comment and approval (see Paper CIC/PNS/P/005/14). Members had no further comments. The Secretariat would proceed to prepare the Chinese version of the Procurement Alert and arrange for its legal vetting and issuance subsequently.

**CIC
Secretariat**

KnH also reported that at the last meeting of the SG-ODB, members discussed about on-demand bonds with conditions attached, e.g. an architect’s or engineer’s certificate would be required for calling of the bonds. The bank would only honor the bond if the conditions were fulfilled. Members agreed that on-demand bonds with conditions would be more acceptable. However, there was no standard format for such kind of bonds in the market, and it would be helpful to produce one with the assistance from bankers and insurance companies on acceptable wordings. As this was not within the Terms of Reference of the SG-ODB, members would like to relay such request to the Com-PNS, and invite the Committee to consider forming another special group to produce a standard form of on-demand bonds with conditions for the construction industry.

The Chairman suggested not to form another special group and proposed KnH to review/amend the Terms of Reference/Membership List of the current SG-ODB and get back to the Com-PNS for advice and endorsement at the next meeting .

KnH

KnH also reported that the SG-ODB agreed that there was no need to conduct any research or consultancy study on the issues on on-demand bonds. Members agreed to put aside the research or consultancy study on this issue.

Members noted that the SG-ODB received a letter from Hong Kong Construction Association (HKCA) expressing their strong stance against any forms of on-demand bonds in any construction projects. They would prefer a complete removal of on-demand bonds from construction contracts.

SKC supplemented that HKCA objected to the use of on-demand bonds but understood that it was not easy to “get rid of it”. As the SG-ODB would aim to produce a new standard form of on-demand bonds with conditions, HKCA would support such direction.

DP asked if it was necessary to expand the scope of on-demand bonds to cover overall unfair contract terms in the clients’ contracts. The Chairman reverted that the topic of unfair contract terms had been raised by HKCA in the past and a Special Group on Unfair Contract Terms was already set up to deal with the issues. He suggested the Secretariat to send the relevant document to DP for reference.

**CIC
Secretariat**

[PMN: The Secretariat sent the relevant Progress Reports and Papers of the Special Group on Unfair Contract Terms and the former Com-PCM to DP’s for reference. A letter titled “Unfair Contract Terms” was received from HKCA on 11 June 2014 and a reply was already issued on 4 July 2014.]

The Chairman concluded that the industry would need to cultivate and progressively migrate towards greater trust between the clients and contractors, while on-demand bonds might eventually fade away. The role played by the Committee was to strive towards the harmonization of the industry, to avoid adversarial relationship, and to work towards a more collaborative approach.

1.7 Report of the Task Force on NEC3 Collaborative Contracts

The Chairman of the Task Force on NEC3 Collaborative Contracts, SMH, updated Members on the progress of the Task Force. The revised draft of the FAQ Document was circulated to Task Force Members, as well as REDA and ICAC for comments, in mid-April. REDA replied with no comment while ICAC replied with a list of supplementary inputs. The Section Leaders and Reviewer would continue to edit and fine-tune the document. The finalised FAQ document was targeted to be submitted to the Com-PNS for endorsement in the coming meeting.

Members noted the Chairman’s declaration that he was also the Chairman of the NEC Asia-Pacific Users’ Group.

1.8 Report of the Task Force on Employer-Procured Insurance Policies in Construction Contracts

Members took note of the Paper CIC/PNS/P/006/14 enclosing a copy of the draft Progress Report of Meeting No. 003/13 of the Task Force.

MYP updated Members on the progress of the Task Force on Employer-Procured Insurance Policies in Construction Contracts (TF-EPI). Members took note of the Paper CIC/PNS/0/007/14 regarding the draft Procurement Fact Sheet on Owner-Controlled Insurance Programme in Construction Contracts, and agreed to revert with their comments, if any, in one week's time.

All

[PMN: No comment was received upon the deadline and the draft Procurement Fact Sheet was endorsed. It would be submitted to the Council for approval upon completion of its translation and legal vetting.]

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

Members took note of the Paper CIC/PNS/P/008/14 and endorsed the Terms of Reference and updated Membership List of the Task Force on Enhancements to Subcontractor Registration Scheme (TF-SRS).

The Chairman of the TF-SRS, CYT, updated Members on the progress of the Task Force. The first meeting of the TF-SRS was held on 19 May 2014 to deliberate on the way forward of the Task Force. It was noted that the Hong Kong Institute of Construction Managers requested to join the Task Force but Members decided to decline the request as they considered that there were enough representation from different associations in the Task Force. The next meeting of the TF-SRS would be held on 26 June 2014.

[PMN: The next meeting of the TF-SRS was postponed until further notice.]

1.10 Update on Subcontractor Registration Scheme (SRS) Operations

Members took note of the Paper CIC/PNS/P/009/14 regarding the SRS operations. CWL briefed Members on the progress of the operations of the SRS.

1.11 Any Other Business

Update on the Task Force on the Selection of Consultants and Contractors

The Chairman of the Task Force on the Selection of Consultants and Contractors, KP, updated Members that the revised draft of the Reference Material was circulated to Task Force Members in mid-April for comment. Comments from 7 Members had been received. Appropriate revision would be made and the revised draft would be submitted for further consultation, as appropriate, before submitting to the Com-PNS for comment.

Update on the Task Force on Standard Contracts Provisions and Domestic Subcontracts

The Chairman of the Task Force on Standard Contracts Provisions and Domestic Subcontracts, KCT, updated Members that industry consultation on the draft Standard Form of Domestic Subcontract was extended from mid-April to mid-May as the Task Force was still awaiting comments from relevant organizations. The Task Force would hold a further meeting to conclude the comments received from this consultation, if any, before proceeding to legal vetting. The Task Force was planning to publish the draft Standard Form in late 2014.

Update on the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism

IK updated Members on the progress of the Working Group on the Review of the Implementation of the Dispute Resolution Mechanism as follows:

- (a) Working Group Members generally agreed to a two-level system for nomination of expert for Expert Determination/

nomination of Certifier for Independent Expert Certifier Review, i.e. first by the Hong Kong Institute of Architects (HKIA), Hong Kong Institute of Engineers (HKIE) or Hong Kong Institute of Surveyors (HKIS), failing which, by the Hong Kong International Arbitration Centre (HKIAC).

- (b) The proposal of suggesting CIC as nomination body for Expert Determination and Independent Expert Certifier Review had been suggested to HKIA, HKIE, HKIS and HKIAC.
- (c) Mr. Simon Chee of Hong Kong Construction Arbitration Center's (HKCAC) request for HKCAC to be included as a nomination body for dispute resolution mechanism would be discussed in the upcoming Working Group meeting.

Update on the Task Force on Competition Law

The Chairman of the Task Force on Competition Law, ASN, updated Members that he would work with the Secretariat in the coming weeks to work out the way forward for the Task Force. It was also reported that the Competition Commission had begun public consultation on the guidelines under the Competition Ordinance, and private consultation would begin in October 2014.

Meeting Schedule for 2014

Members noted the Paper CIC/PNS/P/010/14 regarding the tentative meeting schedule of the Com-PNS for 2014.

Possibility of nominating a Vice Chairman

The Chairman asked if it was possible to appoint MW as the Deputy Chairman of the Com-PNS as MW, being the Chairman of the former Com-SBC, was familiar with the subcontracting issues. CT replied that the Secretariat would look into the feasibility of such an arrangement.

**CIC
Secretariat**

1.12 Date of Next Meeting

Wednesday, 17 September 2014 at 2:30 pm at Meeting Room **All to note**
No. 1, CIC Headquarters, 15/F, Allied Kajima Building, 138
Gloucester Road, Wanchai, Hong Kong.

*[PMN: The meeting was rescheduled to Friday, 17 October
2014 at 10:00 am.]*

There being no further business, the meeting adjourned at 4:15pm.

CIC Secretariat

June 2014