

MINUTES OF A COMMERCIAL COMMITTEE MEETING

Date: Thursday 23rd March 2017

Time: 10:00am

Location: Friends House, 173-177 Euston Road, London, NW1 2BJ

PRESENT:	Quinton Mawoneke Andrew West Steve Wood Nicholas Rogers Mike Parkes Simon Lyons Gemma Richardson Barry McCormack Paul Goodwin Dan Cairney Terry Martin Andy Goddard Dave Colven	Aaarsleff Ground Engineering Bachy Soletanche Balfour Beatty Ground Engineering Bauer Cementation Skanska Central Piling Expanded Geotechnical FK Lowry Piling Franki Foundations Keller Limited Murphy Ground Engineering Rock and Alluvium Roger Bullivant
Guest Speaker:	Joanna Mikoda	Cementation Skanska
In the Chair:	Mark Sheridan	BAM Ritchies
In Attendance:	Ciaran Jennings Grace Hawkins	FPS Secretariat FPS Secretariat

No	TOPIC	ACTION
1	APOLOGIES FOR ABSENCE	
	Apologies had been received from, Craig Macklin (Franki Foundations), Roger Barrett (Keller) Greg Haynes (Keltbray), Ian Walker (Martello Piling), and Shane Ryan (Murphy Ground Engineering).	
2	MINUTES OF THE LAST MEETING	
	The minutes of the meeting held on 8 th November 2016 were approved.	
3	MATTERS ARISING	
	<p><u>Unexploded Ordinance</u></p> <p>At the last Commercial Committee meeting Nicholas Rogers raised the issue of unexploded ordinance. It was suggested the subject should be included in the FPS Facilities and Attendances document after Bauer recently found some ordinance at a site. These could be considered in the same way as a cable strike when reporting on these.</p> <p>The Secretary reported the Safety and Training Committee are making an amendment to the Piling Pre-commencement Standard to take account of the need for main contractors to ensure the site is free of UXO.</p> <p>A discussion was held on the level of checks that should be required. It was acknowledged that cities bombed in the 1940s and military sites are at higher risk and should be surveyed and scanned. It was suggested that for all sites there should be a minimum desktop study carried out to assess whether there is a likelihood of UXO being present. Dave Colven commented that there was consideration for an EU regulation that required checks on any sites within a 20 miles' radius of any ex-military site, but this failed to make it to the statute books. Steve Wood highlighted BBGE have worked sites which are considered high risk. Finding unexploded ordinance can push a</p>	

	<p>job back three months.</p> <p>Nick Rogers agreed to provide some wording for inclusion in the Facilities & Attendances.</p>	Nicholas Rogers
4	MARKET TRENDS	
a)	<p>FPS 4th Quarter Statistics</p> <p>Mike Parkes noted there was an increase in the third Quarter under the housing sector despite it having been even all last year. The increase came directly after the EU Referendum result for Brexit, the group agreed there was a sense amongst the industry that work was being put on hold until after the vote which would explain an increase.</p> <p>The Ground Investigation industry is quite slow; Mark Sheridan felt this is due to the majority of UK Ground Investigation companies are working on the HS2 project. There are also concerns that with the large projects being carried out on the mainland, there will be a shortage of concrete for HS2. Members reported that the start of the year had been reasonably slow.</p>	
5	CAPS ON LIABILITY POSITION PAPER	
	<p>This paper has now been written and submitted to the FPS Executive meeting, in which Ciaran Jennings reported they are happy with it to be published and it should be promoted to Build UK.</p> <p>The EFFC are looking to adopt it as a European paper, however they want to add the subject of ground risk and will publish it. They are willing to support to the FPS on this issue as it is seen as part of the wider issue of appropriate sharing of risks. It will be promoted to FIEC as part of a drive to educate main contractors about the risks in the ground. It was asked why this was felt to be necessary by the EFFC, the Secretary explained that the risks associated with the ground are often pushed down to the piling contractor on the basis that they are the specialist contractor.</p> <p>Mark Sheridan added the industry is now in a place where it is exceptional to not have a cap in place. Dave Colven and Andrew West both stated their companies do not accept jobs without caps, however they note some companies compete on basis they do not need Caps. Mark highlighted there is increasingly an understanding caps are good for the industry and it is recommended but cannot be enforced.</p>	
6	PROJECT BANK ACCOUNTS POSITION PAPER	
	<p>It was reported the FPS Executive are keen for the Commercial Committee to support use of Project Bank Accounts, however the group have a negative view on these. The lack of knowledge and inexperience of their use by clients can prolong the process of getting paid. However, it was noted that when used correctly the use of Project Bank Accounts can improve payment speed, but they tend to lead to payments being under certified.</p> <p>Steve Wood stated if Commercial Committee are going to recommend this then there is a need for advice in the position paper on how to set these up properly. Steve added Build UK do not currently promote this. Dan Cairney highlighted the last sentence detailing reduction in disputes should be made more clear and should distinguish between the disputes. It was also agreed there needs to be more on the potential pitfalls. The group agreed further discussions are required; it will be discussed at FPS Quarterly Meeting.</p>	Qtly Agenda
7.	FAIR CERTIFICATION POSITION PAPER	
	At the last Commercial Committee meeting it was requested members think about	

	<p>alternative methods for achieving fair certification so that a position paper can be produced.</p> <p>Mark Sheridan commented there are lots of considerations including whether specialist contractors were treating their supply-chain fairly. It was acknowledged that there is no incentive to customers to certify payments accurately. Dave Colven observed that under certification may be culturally driven with an older base of commercial managers passing on bad practice to new commercial graduates. Dan Cairney advised Keller send a reminder three days before the deadline for payment to customers whom they have a feeling there may be a problem.</p> <p>Mark Sheridan stated there is an education problem within the supply chain. Steve Wood agreed, he has noted some main contractors are understaffed and sometimes they send all the information out due to a lack of understanding.</p> <p>Mark asked for some bullet points from each member on why is it a problem, how can it be remedied and what our opinion on it is to bring into the next meeting.</p>	All
8.	FPS WEBSITE REBUILD	
	<p>Ciaran Jennings reported the progress of redesign of the FPS Website; it is in process. He explained a functional build next month is due to be approved by FPS Quarterly Committee and the FPS Executive.</p> <p>He explained the site will be mobile compatible and there will be a more video content. He mentioned that the Safety Committee were keen to include video tool box talks in order to promote safer practices. Ciaran asked if any members have good practice videos please send these in to the FPS Secretariat. At the next Commercial Committee meeting the group will be able to look at the progress more critically. Dan Cairney asked if there was any guidance on the size of video clips; Ciaran replied anything more than a few minutes may lose interest so members should bare this in mind.</p> <p>Ciaran asked for video content that featured office environments and people carrying out design work in order to reflect this part of the industry.</p> <p>Steve Woods requested that consideration be given to ensuring the FPS Members are strongly differentiated on the site from non-Members. The point should be made that Members are independently audited and therefore represent high quality operations and are more engaged with the supply-chain via the Associate Membership scheme.</p>	All
9.	CONTRACTS AND TERMS	
<p>a)</p> <p>i)</p>	<p>Build UK</p> <p>Pre-Qualification</p> <p>Ciaran Jennings reported Vic Handley who was working on this issue on behalf of the FPS has now retired. The FPS will need to select a replacement.</p> <p>It was reported that Build UK have put together a proposal on the principles of a PQQ system and are now keen to look at how to incorporate Trade Association audit processes into it. Steve Wood asked if there is a way to promote membership of the FPS through this. The Secretary indicated that it has not been determined how the audit would be integrated. He speculated that it may be that the audit schedules are incorporated into the PQQ question set. This would then require Members to submit their scores in each category and for non-Members to be scored against them. In this scenario the FPS Members should naturally score higher and be differentiated. Steve commented that as Build UK members, the FPS Members should get preferential treatment or promotion through the system. Ciaran agreed and said it may be that Members would simply not have to fill out the audit questions on the PQQ and be able to simply provide proof of Membership.</p>	

ii)	<p>Cabinet Office Working Group for Models of Procurement Mark Sheridan advised the group this group had been disbanded due to the Brexit result requiring civil service resources to be diverted.</p> <p>iii) Payment Group The BEIS has published their guidance; however, Build UK are concerned about the Construction Act, where the government is consulting on retention and potentially looking to find ways to retain them via trusts or other mechanisms. Also new requirements come into force in April to report on payment days for companies that meet two out of three requirements –</p> <ul style="list-style-type: none"> • Have 250+ employees • A turnover of £35m+ • £18m balance sheet total. 	
b)	<p>JCT Report</p> <p>JCT still needs to decide how Build UK is represented in the group, Build UK are seeking seats within the main contractor group to round out their representation within the JCT.</p> <p>They discussed 2016 revisions to the standard forms of contract. Build UK are keen to collect the standard amendments that are commonly made to these. All Members were asked to send these through to Dave Colven so that they can be passed on.</p>	All
10.	TRAINING AND SEMINARS	
a)	<p>Rig Bearing Pressure Spreadsheet Seminar Seminars on the correct usage of the Rig Bearing Pressure spreadsheets took place on the 1st November 2016 and on the 1st December 2016. The FPS Secretariat reported it will be running again, possibly in June 2017. If members have anyone who would benefit from attending the seminar, please send interest to the FPS Secretariat.</p>	All
11.	NEXT GENERATION OF NEC CONTRACTS: NEC4	
	<p>Ciaran Jennings reported the release of the next generation of NEC contracts have been issued and that a summary of the changes has been produced. The Chairman commented that the latest changes are very good and introduced “Scope” in place of works information and requirements to pay what you can justify. The summary will be circulated to Members for discussion at the next meeting</p>	FPS Secretary Agenda
12.	DIGITAL CONSTRUCTION	
	<p>Ciaran Jennings reported John Chick put together a survey which was circulated to Members with the intention to help shape an understanding of where the FPS is with Digital Construction at a strategic level to inform and FPS strategy.</p> <p>The survey results hope to realise the readiness for BIM and looking at what do members want to get out of using Digital Construction. John will be reporting back at the next FPS Quarterly Committee. The FPS Technical Committee are also looking at how Digital Construction is defined and is looking at bringing in piling data into the AGS Data Format. It was agreed to discuss and expand on this item as a topic at the next Commercial Committee meeting.</p>	
13.	EQUALITY, DIVERSITY AND INCLUSIVITY	

	<p>Mark Sheridan explained he added this item to the agenda following the last FPS Quarterly Committee meeting; it was discussed that the Commercial Committee Members should invite someone with a commercial background who would not usually have access to this type of meeting to the next meeting. They would be welcomed to contribute to the group discussions and actions that come out of the meetings. The group agreed this is a good suggestion; the industry is changing and the committee should recognise this. It was agreed to take place at the next meeting, the FPS Secretariat agreed to organise a larger room. Members to send in feedback and topics will be invited from guests.</p>	<p>FPS Secretariat All</p>
14.	EFFC	
	<p><u>Sustainability Charter</u> Ciaran Jennings explained the EFFC Sustainability Charter looks at several areas and he asked for thoughts to be sent to the FPS Secretariat about what do the FPS expect from contractors in terms of sustainability. The intention is for the EFFC to update their Charter to set a voluntary standard that represents good practice in the foundations industry in relation to sustainability.</p>	<p>All</p>
15.	SOCIAL EVENTS	
a.)	<p>Summer Ball 2017 The FPS Secretariat reported the Summer Ball for 2017 will be taking place on the 24th June 2017; it will be held at Coombe Abbey in Coventry. The FPS Secretariat highlighted that sponsors for the event are needed.</p>	
b.)	<p>Annual Dinner 2017 The FPS Secretariat reported the Annual Dinner for 2017 will be taking place on the 20th October 2017; it will be held at the Sheraton Hotel.</p>	
16	ANY OTHER BUSINESS	
	<p><u>Promotion of the FPS</u> Steve Wood asked that an item agenda is added to discuss the promotion of the FPS. The FPS Secretariat to add this to the next agenda as an item.</p> <p><u>Conflict Contracts</u> Dave Colven asked the group if other members have been receiving requests from Kier regarding conflict contracts. Nicholas Rogers replied Bauer was receiving these however not from Kier specifically.</p> <p><u>HSE Penalty Fines</u> Mark Sheridan wanted to highlight to the group to be aware the HSE have recently changed the ways in which they are giving fines; it is now based on total of percentage of turnover.</p>	<p>FPS Secretariat</p>
17	GUEST SPEAKER- Joanna Mikoda, Cementation Skanska	
	<p>Joanna Mikoda from Cementation Skanska presented to the group on her dissertation research on Contractual Issues in Piling Subcontracts. Joanna is a graduate studying for an MSc in Construction Law and Dispute Resolution. She is writing a research paper and had requested the FPS Secretariat distribute a link to an online survey which was circulated to FPS Members. The results of this were included in her presentation; for Joanna's presentation please click here.</p> <p>Joanna is happy for members to contact her via email mikoda.joanna@gmail.com</p>	
18	DATES OF 2017 MEETINGS	

	<p>Next meeting dates held at Friends House, 173-177 Euston Road, London, NW1 2BJ:</p> <p>10th May 2017 28th September 2017 9th November 2017</p>	
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