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**MINUTES OF A COMMERCIAL COMMITTEE MEETING**

**Date:** Thursday 18th March 2021

**Time:** 10:00am

**Location:** Online via Webex

**Present:**

Paul Kelly (PK) Dawson WAM

Tom Allen (TA) Rock & Alluvium

Mike Parkes (MP) Cementation Skanska

Andy Goddard (AG) Franki Group

Malcolm O’Sullivan (MOS) Van Elle

Simon Lyons (SL) Central Piling

Stephen Edmondson (SE) Foundation Piling

**In the Chair:**

Mark Sheridan (MS) BAM Ritchies

**In Attendance:**

Ciaran Jennings (CJ) FPS Secretariat

Melissa Bramley (MB) FPS Secretariat

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| **No** | **TOPIC** | **ACTION** |
| **1.** | **APOLOGIES FOR ABSENCE** |  |
|  | Andy West (Bachy Soletanche)  |  |
| **2.** | **MINUTES OF THE LAST MEETING** |  |
|  | The minutes of the meeting held on 24th September 2020 were approved.  |  |
| **3.** | **MATTERS ARISING** |  |
|  | 1. **Fair Certification**

**Common Standard for Evidence (pre-read)**MS stated this was often confused with fair payment. MS stated he previously had spoken about the creation of a Common Standard of Best Practice of what should be supplied to customers where there is not enough evidence. MS asked if there was a standard set of evidence that can be produced and was there any benefit of that being of a common style.MS asked if this was a good idea to work towards a common set of documents for the Customer.SE said he felt a common base would be useful, but it could be difficult to have a commonality of records, perhaps some FPS guidelines on records would be worth looking at.MS said the topic was not necessarily raised until there was a problem, and wondered if the FPS could promote an agreement of what would be provided in advance of any issues. MS asked what would suit the Customer, and provide the least hassle. MOS said the fair certification is a good starting point, and a commonality of guidance notes.MOS agreed he would often experience a situation where an agreement had been made on price but then found the work was not certified, with payment being withheld. MOS asked if others also experienced this and wondered how it would be possible to get to fair certification, and formalise the process. SE said Foundation Piling experience the issue, and detailed situations when, on working on a smaller local project, the records were signed by someone who was not authorised to certify the work, according to the client. SE stated Foundation Piling try to avoid this issue by stating the person who is signing the document is confirming they are authorised to sign the records.MS asked if a customer was to undertake fair certification, why this would be better for the Client.The Group agreed they were in favour of progressing work on Fair Certification, but needed to define the benefit for the client. A discussion took placed on creating a Guidance note on the Commonality of Records, with CJ stating the original idea occurred due to a conversation with Build UK, who mentioned this in connection with retention and the common standard of evidence that is pre-agreed with the main contractor. MS asked if the behaviour was being driven by the Piling IndustryThe Group discussed Policy Number 8 in the Construction Playbook - ‘benchmarking and should cost models’ and wondered if there was a case on educating customers on outturn values, and very often best value was substituted with lowest cost. MOS felt it would be prudent to get other Associations aligned with these suggestions. CJ said main contractors had a collective average margin of -1%. MS asked everyone to consider if someone was to give fair certification all of the time, how this would allow an FPS Member to increase their service level for the client?MOS said he felt the service level would increase when there is a good relationship.Paul Kelly said he looked at the risks of the projects when they occur and if the client was a Tier 1, and was aware of the changes that might happen, he would instigate a dialog to stop the risks occurring, and suggested the use of a risk register.Mike Parkes stated the starting point would be the fair application which should then lead to fair certification, and how this is defined.MS felt the use of a risk register would give a much more accurate outcome, including a plethora of improvements, and through a certification programme, it would free up training understanding and innovation. CJ said he felt Sustainability would bring with it a licence to operate. MOS said discussing the risks allows the FPS Member to increase their margin and the risk register would then become the opportunity register, and an open conversation at the start will end up as a better project for the Customer.MS asked if Tier 1 Contractors were not the barrier, he would like to seek to understand where the barrier was, and whether this was on site QS, Contracts Managers, or Supply Chain departments . MP felt it was all of the roles ahead. MOS felt it needed to start with FPS Members.MS wondered whether an article on why you should ‘fair certify’, should be created detailing the changes and record keeping that need to be tackled. MOS felt this was a reasonable plan. MOS felt there was a benefit to collating the information, however this would need to be anonymised, and wondered how this could be collated in relation to the rules. CJ stated Build UK published league tables of payment performance on their website, but this did not go into Fair Certification, and wondered if it would be worth lobbying Build UK to display Fair Certification. MS said there was an assumption that Customers know that money is added on when Customers do not certify properly. MS said he would write an article on Why should you fair certify and benefits to all. MOS urged for participation wider than just attendance at the meeting. Action: MOS to circulate thoughts following the meeting1. **Chair Position**

MS stated he had been in the position since 2015, and believed rotation would bring fresh thinking and a different impetus for the Committee. MS said his intention was to find someone to become the new Chair and Vice Chair, and was seeking volunteers. MOS said the tenure would be for two years, with the expectation the Vice Chair would move to be the Chair following this period. MOS said the position showed a willingness to change the industry, and the frustration can be the length of time it takes to come to decisions. MS wondered if there might be individuals within organisations who were not present in the meeting who might wish to participate. MS said he hoped the next meeting will bring the change of Chair handover.4 x Committee Meetings a year and 4 x Quarterly Meetings**Action: Self nominations to CJ**1. Future Meetings

CJ stated lockdown would be ending in June, and wondered if the meetings should be kept as virtual. It was agreed the meeting should take place in person as soon as possible. MS suggested there was a facility to join electronically – but not preferable. A challenge for the Chair would be to encourage greater participation / attendance, but the next two meetings should be face to face, with a lunch in November. MS said there was a standing invitation to bring a member along who would not usually gain exposure to this type of discussion and encouraged the group to reinvigorate this initiative.**Action: MOS is there a representative from each FPS Member on the Committee****Action: Circulate the topics discussed** 1. **FPS Audit**

CJ said the next audit round will be in 2022, and there were inserts into this, and needed a volunteer to review the audit schedules and update these. In relation to Commercial this would no doubt be around Quality.**Action: Volunteers to CJ to review**1. **PI Insurance**

SE said he felt it had been raised previously but had not seen the FPS view of it. SE said his view was that the premiums had increased fivefold, despite never having had any claims, and felt this was astonishing. SE said the view of the insurance industry is that foundations could be a ‘ticking time bomb’ for issues in the future. The Committee agreed they were experiencing this too.MS felt the only was to increase the deductible, to become self-insured, and felt this is where the industry was heading. SE said the certification was required to sign off warranties, with PI insurance being seen as a secondary form of guarantee.MOS said this was an industry problem and had never had a PI claim that he had taken to fruition but wondered how it would be possible to influence the industry. SE said the question was not whether the insurance could be removed entirely but whether there was FPS guidance to provide to the insurance companies that could show the assurance of what is provided by using an FPS Member. CJ said he had spoken to Lloyds of London to talk to insurers about Geotechnical Risk, and struggled to locate those who assessed the risk. CJ wondered if speaking to Build UK might be a good route, and a representation to the FPS Executive Committee would be worthwhile.CJ wondered if it would be worth raising the issue at GeoTechnica in July (an event run by Julian Lovell of Equip, and current AGS Chair). MS felt it would be worth speaking about Fair Certification during the event too. SE said he had been thinking of an insurers CPD session at Lloyds of London, but agreed the approach of Geotechnica would work.**Action: CJ to raise with Suzy Nichols at Build UK****Action: CJ to collate records of PI Premiums and Claims made**1. **Build UK Construction Playbook (pre-read)**

MS said he felt the document covered only a small part of the industry, and urged everyone to read these.  vii. **Build UK Transforming Public Procurement (pre-read)** |  |
| **4.** | **MARKET TRENDS: FPS 4thQUARTER OF 2020 STATISTICS**  |  |
|  |  MS stated on investigation the market appeared to be buoyant. MP stated Covid had hit the London Market but HS2 had been their saving grace, but regional work was strong, but the concern was the London Commercial Market. MOS felt prices were not as they were pre-COVID and margins were a little tight. MP challenged the Q1 – 2020 Order Statistics data.**Action: CJ to challenge the data from Q1 2020** | **CJ** |
| **5.** | **POST COVID-19** |  |
|  | It was agreed to remove this from the Agenda |  |
| **6.** | **FPS BALANCED SCORECARD** |  |
|  | MS felt there were several areas to measure organisations on, and asked what was important for the FPS, and the aims and objectives for each of those areas.CJ stated the discussions previously had been around something specific for clients to adopt or whether this was driven from the audit instead. MS said that the document on ‘Why you should use an FPS Member’ should be what this was based on. It was agreed that it had been a struggle to use this document.MOS said he would report back to the Executive Committee.CJ stated the Executive Committee had discussed undertaking formal research on procurement, to then form a strategy on how to target in a sensible way. MOS said perhaps there was a lack of understanding on what customers actually required. MOS summarised to say he did not feel there was currently a huge appetite for the creation of a scorecard at this point. MOS left the meeting at this point. |  |
| **7.** | **SILICA DUST** |  |
|  | 1. **Facilities & Attendances**

CJ said a discussion took place with John Underwood at the HSE, because Silica Dust was now being treated as a carcinogen, and this raised the potential for looking at how this was dealt with in the Facilities and Attendances.CJ shared the document which had been created by the Members of the Safety, Plant & Operations Group, and asked how silica dust was being treated contractually.MS felt there should be a clause within the document stating the Main Contractor held the responsibility for the dust and this should not be limited to silica dust, but all potential carcinogens.**Action: All to review and send in suggested wording** |  |
| **8.** | **ENVIRONMENTAL SUSTAINABILITY**  |  |
|  | CJ mentioned the Environmental Sustainability group had been set up, and was being led by Stuart Norman, Keltbray.CJ said the group would be looking to ask FPS Members to commit to using the EFFC Carbon Calculator tool to tenders over £1m, due to an increase in carbon contribution. CJ mentioned for projects under this amount, carbon per metre cube of diaphragm wall, and hoped this would start progressive conversations about tackling the issue of carbon reduction. CJ said there was a discussion at the Executive Committee in terms of putting a non-compete clause on sustainability akin to the non-compete clause on Health & Safety.MS said BAM saw carbon reduction as a huge differentiator and this would not be acceptable, it would be difficult to fit in with standard carbon calculations. |  |
| **9.** | **COLLABORATIVE WORKING & DIGITAL CONSTRUCTION** |  |
|  | 1. **View on contractual models used in digital construction.**
2. **What requirements or facilities and attendances are needed for digital construction?**

CJ said this had been an ongoing conversation for a while when the Government had looked at pain gain sharing in terms of xx models rather than adversarial models, and wondered where things were at with contracting with projects that are increasingly digital. Did the FPS need to share information on this ?MS said digital construction should just be classed as another evolution, where techniques change, and hand in hand with this the contract process evolves at the same time. MS said the ownership of data, which is now virtual, and shared with this customer collaboratively online. MS said there are two digital environments – so that shared with the customer and the other kept separately. MS used the example of Market Trends and Power BI.Protection of data – hugely important - guidance on protecting data.  |  |
| **10.** | **CONTRACT TERMS & CONDITIONS** |  |
|  | Stephen Edmondson said he had seen Powers of Attorney creeping into contracts, and Mike from Cementation agreed.  |  |
| **11.** | **ANY OTHER BUSINESS** |  |
|  | None. |  |
| **12.** | **DATES OF 2020 MEETINGS** |  |
|  | Next meeting to be held at online via Webex on: 10th June, 23rd September, 25th November 2021 (10am-1pm) Location TBC |  |