

CROSSRAIL LIMITED

PROCUREMENT SUB-COMMITTEE

SUBJECT: Main Civils Contract – NEC conditions of contract – Paper 4

SPONSOR: [REDACTED]

MEETING: 03 March 2010

Purpose

The purpose of this paper is to seek the Procurement Sub-Committee's approval to a number of issues relating to the NEC conditions of contract which are currently being prepared for the main civils contracts.

Recommendation

It is recommended that approval is given to the various issues as set out below.

Background

This is the fourth paper presented to PSC to approve matters relating to the conditions of contract proposed for the main civils contracts.

1. Right to set off

Background

It has been considered whether our contracts ought to include a right to set off against monies owed to the *Contractor* any amounts which the *Contractor* owes to an employer under any other contract with a member of the TfL group.

Recommendation

In order to provide a direct benefit to CRL i.e. to enable CRL to recover monies through another TfL contract, the right to set off needs to be included in that other TfL contract. TfL Legal have confirmed that these provisions are standard in all TfL contracts. CRL Legal intends also to seek such confirmation from LUL. It is recommended that such a right ought to be included in CRL's contracts. CRL would have no obligation to exercise the set off if requested to do so by another member of the TfL group but would have the power to do so if considered appropriate.

2. Dispute resolution process

Background

PSC previously approved the principle to establish a panel of adjudicators under the auspices of the ICE. CRL Legal has been in discussion with the ICE over the establishment of the panel and has agreed the following:

1. The panel will consist of an initial list of members who will be agreed with ICE before we enter into the agreement with the ICE. The ICE has provided us with a list of proposed members and we are currently awaiting further details relating to those individuals' particular adjudication and NEC experience.
2. In the event that CRL subsequently considers that any additional or replacement members ought to be appointed, CRL will consult with the President of the ICE who will then appoint any such additional or replacement members. CRL may stipulate the professional qualifications and/or areas of expertise required of these further members.
3. The panel will meet as and when the ICE and CRL agree that a meeting is required or desirable. Any such meetings will be chaired by the Chairman of the ICE dispute resolution panel. It is not presently envisaged that any meetings will be required.
4. The parties to a dispute will initially seek to agree the identity of the adjudicator from the panel but, in the event that agreement cannot be reached, the ICE will nominate a member. Each party to the dispute will have the right to identify one panel member who may not be nominated to conduct that adjudication.
5. Adjudicators' fees will be fixed at the date of their appointment to the panel subject to an annual increase in line with RPI.
6. For each dispute, an adjudicator will be appointed to act under the NEC3 Adjudicator's Contract. There are two points to note in connection with these terms:
 - The adjudicator may obtain help from any third parties which he considers necessary to reach his decision. The cost of these third parties will be payable as expenses.
 - Unless agreed otherwise, the parties to the dispute pay the adjudicator's fee in equal shares. Should one party fail to pay their share, the other party must pay the full amount and then seek recovery from the defaulting party. Whilst this could cause difficulties in recovering sums if no further payments are due to the *Contractor* against which to set off, this is a fairly common provision in adjudicators' terms of appointment who require assurance that they will be paid.
7. The agreement with ICE will continue until 31 December 2018 or any later agreed date.
8. The ICE will provide support and administrative services in respect of the panel and will charge the following fees:

Task	Initial One off fee (excluding vat)	Annual fee (excluding vat)	Other possible associated costs (excluding vat)
Initial ICE set up costs: 20 days @ £350 per day	£7000		
Annual Panel administrative maintenance costs: 15 days @ £350 per day		£5250	
Standard fee for an Adjudicator's appointment by the ICE paid by the referring party.			£295
Additional administrative tasks to assist adjudication process			£350 per day
Total	£7000	£5250	N/A

Recommendation

It is recommended that the Programme Director is authorised to agree the list of panel members and to enter into the agreement, on behalf of CRL, with the ICE on the above basis.