

Construction Industry Council

Committee on Procurement

Meeting No. 003/13 of the Committee on Procurement was held on Monday, 23 September 2013 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)	
	Siu-hung CHAN	(SHC)	
	Paul CHONG	(PC)	
	Irene CHENG	(ICG)	Hong Kong Housing Authority
	Peter Kar-shing CHENG	(PChg)	New World China Land Limited
	Steve GRIFFIN	(SGN)	MTR Corporation Limited
	Thomas Kwok-kwan HO	(KnH)	Hong Kong Institute of Surveyors
	Raymond NG	(RyN)	Independent Commission Against Corruption
	Andrew SIMPSON	(ASN)	Centari Consulting Limited
	Frankie FUNG	(FFg)	Development Bureau (<i>on behalf of Kelvin LO</i>)
	Percy HAU	(PHu)	Development Bureau (<i>on behalf of Kelvin LO</i>)
	In Attendance	: Rocky FOK	(RF)
Christopher TO		(CT)	Executive Director
Carmen LIU		(KML)	Manager – Council Services 6
Apologies	: Anthony CHAN	(AnCN)	
	Duncan PESCOD	(DWP)	
	Reuben CHU	(RCU)	
	Kevin POOLE	(KP)	
	Sing-mo HO	(SMH)	CLP Power Hong Kong Limited
	Kelvin LO	(KLo)	Development Bureau
Kwok-hung LI	(KkHL)	Civil Engineering and Development Department	

PROGRESS REPORT

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3.1 Confirmation of the Progress Report of the Committee Meeting No. 002/13

Members took note of the Paper CIC/PCM/R/002/13 and confirmed the Progress Report of Meeting No.002/13 of the Committee on Procurement (Com-PCM) held on Wednesday, 19 June 2013.

3.2 Matters Arising from the Previous Meeting

(a) Item 2.4 – Issues on Construction Programme

Regarding the proposed scope of a possible research study on the issues on construction programme, a “Research Proposal on Benchmarking of Construction Programme for Private and Public Projects in Hong Kong” was received from the Hong Kong Construction Association (HKCA). Details were discussed under Agenda Item 3.4.

3.3 Issues on On-Demand Bonds

Members took note of the Paper CIC/PCM/P/016/13 regarding the issues on on-demand bonds. KML briefed Members on the background and the relevant previous discussions and recommendations of the Com-PCM.

[ICG joined the meeting at 2:45pm]

Chairman invited Members to reconsider the idea of issuing guidance notes, in the form of an alert or other suitable forms, on on-demand bonds in construction contracts. Key points of Members’ deliberation were as follows:

- Chairman reminded Members that, as at the last meeting of the Com-PCM, no consensus was reached on the way forward due to differing views amongst Com-PCM Members. Whilst Members from the main contractors and sub-contractors’ associations were in favour of requesting support from the CIC to put a ban on the use of on-demand bonds, Members from the employers’ organisations considered that on-demand bonds were needed as part of

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their risk management plan.

- Chairman expressed that it would be inappropriate for the Council to make a statement that “no on-demand bond should be used in the construction industry”. As the key concern of the contractors was associated with the irresponsible calling of on-demand bonds, Chairman suggested Com-PCM to consider issuing guidance notes, in the form of an alert or other suitable forms, reminding industry stakeholders to act in a responsible manner when implementing on-demand bonds. He suggested a small Special Group be formed to undertake the drafting of the guidance notes.
- SKC questioned as to whether the proposed guidance notes could include an expression that “the use of on-demand bonds in construction contracts was not encouraged or recommended”. SKC also pointed out that the main issue of concern of the contractors was not about the amount or percentage of the bonds but the adverse effect that the calling of a bond had on the creditability of the contractors.
- In response, SHC commented that the views and concerns of the contractors as well as the employers were discussed in detail at the previous meetings and there appeared no clear conclusion as to whether the use of on-demand bonds should be discouraged. It was suggested that, given its existence in the market, the use of on-demand bonds must have its merits. It was further suggested that industry stakeholders should be given the freedom to choose risk sharing instruments that suited their projects and that the Com-PCM should let the market decide.
- SHC further expressed that, if on-demand bond was procured properly, it would be an effective risk management tool. He agreed with the Chairman that, given the prime concern of the contractors was on the abuse of on-demand bonds, a guidance notes giving recommendations on good practice on the use of on-demand bonds should be prepared and a Special Group should be formed.
- PC commented that the previous presentation by the

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quantity surveyors was quite general. He suggested that a more indepth study which looked into the relationships between the use of on-demand bonds and the tendering methods and payment options could help Members to understand the underlying issues and to give directions on the way forward.

- KnH pointed out that the previous presentation was only an experience sharing session. KnH suggested the Com-PCM to consider commissioning a research to examine the issues instead of forming a Special Group. In response, Members commented on the extended period of time required to undertake research studies. Chairman also questioned on the appropriateness and necessity for commissioning research studies.
- SGN pointed out that on-demand bond was only part of a suite of risk management tools. He suggested the Special Group to focus the proposed guidance notes on the responsible use of on-demand bonds with due consideration given to the other forms of securities.

After much deliberation, it was agreed that a Special Group should be formed to deliberate on the issues and to undertake drafting of the guidance notes. The Special Group should also review the appropriateness and necessity for commissioning a research study and give recommendations on any other courses of action required for the Com-PCM's consideration. In consultation with the Chairman, the CIC Secretariat would prepare the draft Terms of Reference and proposed Membership List of the Special Group for Members' comment.

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3.4 Issues on Construction Programme

Members took note of the Paper CIC/PCM/P/017/13 regarding the issues on construction programme. Members were briefed on the background to the issues and the relevant discussions at the previous meeting of the Com-PCM. Members also took note of the "Research Proposal on Benchmarking of Construction Programme for Private and Public Projects in Hong Kong" submitted by the HKCA.

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In response to HKCA's proposal on setting benchmarks for reasonable construction programme for different types of works in Hong Kong, Chairman suggested the CIC research team to undertake an initial study to gather feedback and information from overseas organisations, such as those in Singapore, Korea, Japan, Australia and United Kingdom, to facilitate Com-PCM's onward discussion and decision on the way forward.

3.5 Report of the Task Force on Competition Law

Chairman of the Task Force on Competition Law, ASN, updated Members on the development of the Competition Law legislation and the progress of the Task Force.

ASN informed Members that the Competition Tribunal, which was a specialist court established by the Competition Ordinance to hear administrative cases brought before it by the Competition Commission, was formed. The President and Deputy President of the Competition Tribunal were appointed with effect from 1 August 2013. ASN further informed Members that the Competition Commission had announced that public consultation on the draft enforcement guidelines would take place in 2014.

ASN reported that with an aim to raise the awareness of the construction industry on the importance of competition law compliance, the Executive Director of the CIC presented at the Hong Kong Global Competition Law Forum Asia 2013 on 29 August 2013 on the topic "Anti-Competitive Conduct in the Construction Industry?". Members were also advised that the Task Force had embarked on drafting a further Fact Sheet on the Competition Law and that the Task Force Chairman would work in association with the CIC Secretariat to prepare a road map for the Task Force for Com-PCM's consideration.

3.6 Report of the Task Force on NEC3 Collaborative Contracts

KML briefed Members on the progress of the Task Force on NEC3 Collaborative Contracts.

Members were informed that drafting of a Frequently Asked Question (FAQ) document on NEC3 Collaborative Contracts

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was in progress. The Task Force Chairman, Section Leaders and the Reviewer held a meeting on 9 September 2013 to discuss the comments gathered from Task Force Members and that a revised draft FAQ document was being prepared.

Members were further advised that the revised draft FAQ document would be circulated to the Real Estate Developers Association (REDA) and/or the Independent Commission Against Corruption (ICAC) for comment, as appropriate, and the Section Leaders and Reviewer would continue to edit the document and hold further meeting(s) to discuss and fine-tune the document before finalising it for formal submission to the Com-PCM for endorsement in 2014.

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

KML briefed Members on the progress of the draft Reference Materials on the Selection of Consultants.

Members were informed that further to the last meeting of the Task Force, comments were received from Task Force Members on the draft Reference Materials. The Task Force Chairman, KP, was working in collaboration with the Report Editor to review the received comments and address them before re-submitting to the Task Force and/or the Com-PCM for further review.

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

Members took note of the Paper CIC/PCM/P/018/13 enclosing a copy of the draft Progress Report of Meeting No. 002/13 of the Task Force on Employer-Procured Insurance Policies in Construction Contracts for Members' information.

Chairman of the Task Force, SGN, informed Members that the next meeting of the Task Force would be scheduled for October or November 2013. He added that, at the meeting, the Task Force would continue the sharing of experience and to start deliberating on the possible way forward and deliverables

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of the Task Force.

3.9 Year Plan for 2013/2014 – Progress Review

KML introduced the Paper CIC/PCM/P/019/13 regarding the progress review as well as updating of the Year Plan 2013-2014 for the Com-PCM. Members noted and confirmed the Year Plan.

The CIC Secretariat would update the Year Plan to include the work plan for the second stage deliverables of the Task Force on Competition Law.

3.10 Any Other Business

Nil.

3.11 Date of Next Meeting

Wednesday, 13 November 2013 at 2:30pm at Meeting Room 1, **All to note**
CIC Headquarters, 15/F Allied Kajima Building, Wanchai,
Hong Kong.

There being no further business, the meeting adjourned at 4:00pm.

CIC Secretariat
September 2013