

Construction Industry Council

Committee on Procurement

Meeting No. 004/12 of the Committee on Procurement was held on Friday, 7 December 2012 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
	Andrew CHAN	(AC)	
	Paul CHONG	(PC)	
	Thomas On-sing HO	(TH)	
	Wo-hei LAM	(WHL)	
	Irene CHENG	(ICG)	Hong Kong Housing Authority (<i>on behalf of Duncan PESCOD and as a Co-opted Member</i>)
	Thomas Kwok-kwan HO	(KnH)	Hong Kong Institute of Surveyors
	Sing-mo HO	(SMH)	CLP Power Hong Kong Limited
	Steve GRIFFIN	(SGN)	MTR Corporation Limited
	Andrew SIMPSON	(ASN)	Centari Consulting Limited
In Attendance	: Kelvin LO	(KLo)	Development Bureau
	Wah-hoi MOK	(WHM)	Independent Commission Against Corruption
	: Kwok-hung LI	(KkHL)	Civil Engineering and Development Department
	Mickey WONG	(CWW)	Architectural Services Department (<i>on behalf of Francis LEUNG</i>)
	Alex LEUNG	(AL)	Senior Manager – Council Services 1
In Attendance	: Carmen LIU	(KML)	Manager – Council Services 6
	Angus NG	(ANg)	Graduate Trainee
Presenter	: Russell JONES	(RJ)	Hong Kong Construction Association (<i>for Agenda Item 4.3 of the Open-Door Session only</i>)
	David LEONG	(DLG)	Hong Kong Construction Association (<i>for Agenda Item 4.3 of the Open-Door Session only</i>)

Apologies : Siu-hung CHAN (SHC)
Duncan PESCOD (DWP)
Kevin POOLE (KP)
Peter Kar-shing (PChg) New World China Land
CHENG Limited
Francis LEUNG (FLG) Architectural Services
Department

PROGRESS REPORT

Open-Door Session

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4.1 Confirmation of the Progress Report of the Committee Meeting No. 003/12 (Open-Door Session)

Members took note of the Paper CIC/PCM/R/003/12 and confirmed the Progress Report of Meeting No.003/12 of the Committee on Procurement (Com-PCM) - Open-Door Session held on Monday, 24 September 2012.

4.2 Matters Arising from the Previous Meeting (Open-Door Session)

(a) Item 3.3 – The Competition Ordinance and the Summary of Views and Concerns of the Construction Industry

ASN, Chairman of the Task Force on Competition Law (TF-CLW), edited the article on the Competition Ordinance previously submitted to Members at the last meeting of the Com-PCM to make it more accessible to a wider audience. Details were discussed under agenda item 4.5.

(b) Item 3.4 (a) – Possible Deliverables of the Task Force on Competition Law

It was proposed that the aforesaid article on the Competition Ordinance might be further developed for publication at the CIC website in the form of a factsheet or a newsletter. Details were discussed under agenda item 4.5.

(c) Item 3.7 – Proposed Formation of a Task Force on Employer-Procured Insurance Policies in Construction

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Contracts

A Task Force on Employer-Procured Insurance Policies in Construction Contracts (TF-EPI) was being formed. SGN, Chairman of the TF-EPI, proposed to include nomination from the Hong Kong Confederation of Insurance Brokers (HKCIB) to join the Task Force. Details were discussed under agenda item 4.8.

4.3 Hong Kong's Construction Industry Vision 2020 of the Hong Kong Construction Association (HKCA's Vision 2020)

(a) Presentation by the Hong Kong Construction Association

Members took note of the Paper CIC/PCM/P/024/12 enclosing a copy of "Hong Kong's Construction Industry Vision 2020 – June 2012" prepared by the Hong Kong Construction Association (HKCA) and the Construction Industry Group (CIG) of the British Chamber of Commerce.

Representatives from HKCA, RJ and DLG, attended the meeting and briefed Members on HKCA's Vision 2020. RJ drew Members' attention to the five focus areas, namely Safety, Health and Quality Life; Environment and Natural Resources; Project Procurement; Productivity; and Viability of the Industry, addressed in HKCA's Vision 2020. RJ used pre-fabrication, as an example, to illustrate to Members the interdependence of the five focus areas.

In respect of project procurement, RJ stated that the two major issues were security of payment and collaborative working. On security of payment, RJ stated that the government was looking into legislating for security of payment in the construction industry and this together with the adoption of adjudication should help to reduce the number of payment disputes ending up in arbitration or litigation. On collaborative working, RJ stated that more collaborative working was needed and there was a need to explore ways of getting the participants to work together on a project at the earliest possible time. He added that the recent initiatives of adopting the NEC and target cost

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contracts were working towards that. RJ further quoted the pre-fabrication example to illustrate the importance of alternative procurement strategy and early contractor involvement which, he considered, could help to resolve the issues on unbalanced risk allocation in traditional procurement.

RJ drew Members' attention to the "Indicator of Success Timeline" which set out the sequence of activities over time (from 2012 to 2020 and beyond) in HKCA's Vision 2020.

In closing, RJ emphasised that the construction industry needed a vision and a roadmap, and that HKCA was committed to doing its part in achieving the objectives set out in HKCA's Vision 2020. RJ urged the CIC to consider adopting and endorsing HKCA's Vision 2020 and encouraging each of its relevant committees to adopt and implement the Vision.

(b) Members' Deliberation

Chairman stated that in terms of construction safety, initiatives such as "pay-for-safety" had been introduced in construction contracts. Since the issuance of the Report of the Construction Industry Review Committee (the Tang's Report), the accident rate had dropped significantly although there were challenges in depressing further the fatality rate. On the environmental aspects, Chairman expressed that many organisations had put up corporate sustainability policies that helped to protect the environment and natural resources.

On project procurement, Chairman stated that the Development Bureau was committed to trialling out some twenty projects using the NEC3 Collaborative Contracts of value totalling over HK\$8 billion in the coming 3 years. MTR was also looking at trialling out the use of NEC3 in one of its projects to investigate how such contract form would help to enhance efficiency in the delivery of construction contract.

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On productivity and viability of the industry, Chairman questioned RJ as to the level of construction activities, in terms of GDPs, that HKCA was looking at in its Vision 2020. In response, RJ and TH stated that an annual turnover of some HK\$120 to 130 billion (including public and private sector projects but excluded RMAA works) was expected. Members further debated as to whether the use of imported labour might help to counter the problem of fluctuation of workload within the industry.

To supplement the discussion on the expected level of construction activities, TH informed Members that HKCA had issued a report on “Visionary Transport Infrastructure Study 2030” which should be read in conjunction with HKCA’s Vision 2020.

In response to Members’ questions as to the course of action that HKCA would like the Com-PCM to take, RJ advised that the way forward would be to encourage the government and developers to look at more collaborative way of working. RJ stated that the government had adopted a number of NEC trail contracts of increasing sizes and was moving in the right direction. RJ added however that the concept of collaborative working had not yet penetrated into the private sector. He suggested the CIC to look into ways of encouraging more developers to adopt collaborative form of contracts or arrangements.

SGN commented that a lot of the items stipulated in HKCA’s Vision 2020 relating to the Com-PCM were already dealt with by its Task Forces, such as the Task Force on NEC3 Collaborative Contracts (TF-NEC) and the Task Force on the Selection of Consultants and Contractors (TF-SCC).

Chairman also expressed that collaborative working was gaining momentum and beginning to take shape in the construction industry of Hong Kong. He further stated that, at present, the Com-PCM was looking at the issues of unfair contract terms in construction contracts raised by the HKCA and had a Task Force looking at the Competition

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Law to ensure there was a fair and open market for all in the industry. Other committees were also looking at issues such as construction safety and security of payment.

In response to Chairman's question as to whether HKCA had any specific near-term action plan for the Com-PCM, TH advised that, referring to the "Indicator of Success Timeline" in HKCA's Vision 2020, HKCA would like the Com-PCM and its Task Forces to embrace the mid-term vision of achieving ">75% of contracts for major projects procured using collaborative forms of contract by 2015".

Members questioned as to how the term ">75% of contracts for major projects procured using collaborative forms of contract" was defined. Members also debated on whether the said target was realistic. A Member commented that different types of contract had their reasons for existence and that the stakeholders should have the freedom to choose a form of contract that was most suited for its project. Collaborative contracts, such as the NEC3, had their own disadvantages and pitfalls and it would be inappropriate for CIC to dedicate or mandate a specific form of contract to the industry. Members further debated on whether the target of having "75% of final accounts on major projects agreed within 6 months of certified completion by 2017" was realistic.

After much deliberation, Members agreed to support in general the "spirit of collaborative working" and the "spirit of having final accounts settled amicably and as soon as practicable" captured in HKCA's Vision 2020, although it was also agreed that some of the targets set might be over-ambitious and might need to be re-visited by HKCA in future.

Chairman further suggested to give recommendation to the Council to support the initiatives set out in the five focus areas in HKCA's Vision 2020. In respect of project procurement, Chairman advised that the Com-PCM and its Task Forces, including the TF-NEC and TF-SCC, had already been pursuing a number of the initiatives set out in

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HKCA's Vision 2020. As such, the current position of the Com-PCM (as stipulated in the Paper CIC/PCM/P/024/12) together with the discussions above would form the possible responses for the Com-PCM on the matter.

4.4 Revised Categorisation of the CIC Publications

Members took note of the Paper CIC/PCM/P/025/12 regarding the revised categorisation of the CIC publications.

AL briefed Members on the background to the revised categorisation. It was stated that over the past years, documents published by the CIC relating to good practices were basically classified under three headings, namely "Guidelines", "Codes of Practices" and "Codes of Conduct", and, recently, "Alerts" were included as an additional type of documents. Since then, comments had been received and there was a call for a clearer definition of each category of the CIC publications as well as the adoption of an easy-to-understand type of terminology to avoid ambiguity. Accordingly, at Meeting No. 004/12 of the Council held on 31 August 2012, Council Members approved the new categorisation of the CIC publications, which comprised "Alerts", "Reference Materials", "Guidelines" and "Codes of Conduct". New descriptions were given to the four categories.

Some members raised enquiries on the new categorisation. Chairman suggested the CIC Secretariat to gather copies of the relevant Council Papers and circulate them for Members' consideration, if appropriate, at the next meeting of the Com-PCM.

**CIC
Secretariat**

Members deliberated as to whether the two documents previously issued by the Com-PCM, namely the "Guidelines on Partnering" and the "Guidelines on Contract Price Fluctuation System" would need to be changed with reference to the new categorisation. After much deliberation, it was suggested that, whilst some Members opined that, on the basis of the change in definition of "Guidelines", the publications should be re-categorised to "Reference Materials", some suggested that the categorisation should be maintained as

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“Guidelines” in order not to lose the impact of the publications. No consensus could be reached amongst Members.

ICG and KLo advised that they would like to consult their departments internally before providing feedback to the Com-PCM at the next meeting regarding re-categorisation of the two Guidelines.

With regards to the recommended categories for future publications, such as the Frequently Asked Question (FAQ) document on NEC3 Collaborative Contracts, Members suggested to defer the decision to a later stage until the draft documents were ready for review by the Com-PCM.

4.5 Report of the Task Force on Competition Law

Further to the last meeting of the Com-PCM, Chairman of the Task Force on Competition Law (TF-CLW), ASN, edited the article on the “Competition Ordinance, Cap 619” previously submitted to Members. The revised article was entitled “Hong Kong’s New Competition Law: An Introduction” and a copy of which was enclosed in the Paper CIC/PCM/P/026/12. ASN briefed Members on details of the aforesaid article.

ASN informed Members that the Competition Ordinance (Commencement) Notice 2012 was published in the Government of the Hong Kong Special Administrative Region Gazette on 23 November 2012. The commencement notice brought those provisions in relation to the short title, commencement of the Competition Ordinance, interpretation, guidelines to be issued by the Competition Commission, and other provisions related to the establishment and operation of the Competition Commission into operation on 18 January 2013, and those provisions in relation to the Competition Tribunal into operation on 1 August 2013.

With regards to the progress and possible deliverables of the Task Force, ASN proposed to further edit the article on “Hong Kong’s New Competition Law: An Introduction” for publication at the CIC website in the form of a factsheet or a newsletter. ASN also proposed to co-opt one or two Member(s)

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into the Task Force to help with the preparation of the deliverables of the Task Force. The proposal was endorsed by the Com-PCM.

Members took note that a Forum on “Competition Law cum Security of Payment” was being planned for mid-2013.

[TH left the meeting at 4:05pm]

4.6 Summary Reports of the Task Group on NEC3 Collaborative Contracts

Members took note of the Papers CIC/PCM/P/027/12 and CIC/PCM/P/028/12 on the Summary Reports of the Task Group on NEC3 Collaborative Contracts (TG-NEC).

Chairman of the TG-NEC, SMH, informed Members that the Task Group had embarked on preparing a Frequently Asked Question (FAQ) document on NEC3 Collaborative Contracts. The document would aim at sharing knowledge and experience on the application of NEC as a form of collaborative contracts in Hong Kong. Chairman suggested SMH to circulate a preliminary draft version of the FAQ document at the upcoming meeting of the Com-PCM for Members’ comment. SMH further advised Members that a Casebook on NEC3 Collaborative Contract might be the next form of deliverables of the Task Group if appropriate after issuance of the FAQ document.

**SMH/
TG-NEC**

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

AL briefed Members on the status of the draft Guideline on the Selection of Consultants that was under drafting by the Task Group on the Selection of Consultants (TG-SCT). Members were informed that with the assistance of the Com-PCM Chairman, TCC, a report editor had been identified to aid with the editing work of the draft Guidelines.

Following a briefing session held in October 2012, the report editor prepared the first edited draft of the Guidelines. The

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edited draft was currently under review by the Task Force Chairman, KP, and it was expected that the document would be ready for circulation to the Task Force and hence the Com-PCM after a few rounds of editing or re-drafting. Chairman suggested KP to consider circulating a draft version of the Guidelines for Members to provide input and comment.

**KP/
TG-SCT**

[WHL left the meeting at 4:10pm]

4.8 Formation of the Task Force on Employer-Procured Insurance Policies in Construction Contracts

Members took note of the Paper CIC/PCM/P/029/12 enclosing the Terms of Reference and updated Membership List of the Task Force on Employer-Procured Insurance Policies in Construction Contracts (TF-EPI).

Members were informed that, based on the proposed Membership List as endorsed at the last meeting of the Com-PCM, nominations of representatives to join the Task Force had been received from all the relevant organisations, except the Real Estate Developers Association of Hong Kong (REDA) which replied that they had no nomination.

To enable representation of the insurance brokers in the Task Force, Com-PCM endorsed TF-EPI Chairman, SGN's proposal for inviting nomination from the Hong Kong Confederation of Insurance Brokers (HKCIB) to join and participate in the Task Force.

4.9 Year Plan for 2012/2013 – Progress Review

AL introduced the Paper CIC/PCM/P/030/12 regarding the progress review as well as updating of the Year Plan 2012-2013 for the Com-PCM. Members noted and confirmed the Year Plan.

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4.10 Meeting Schedule for 2013

Member took note of the Paper CIC/PCM/P/031/12 regarding the meeting schedule for 2013. Members noted and confirmed the schedule.

4.11 Any Other Business

Nil.

4.12 Date of Next Meeting

Wednesday, 20 March 2013 at 2:30pm at Meeting Room 1, **All to note**
CIC Headquarters, 15/F, Allied Kajima Building, Wanchai,
Hong Kong.

[A closed-door session was held between 4:20pm and 4:35pm.]

There being no further business, the meeting adjourned at 4:35pm.

CIC Secretariat
December 2012