

Construction Industry Council

Committee on Procurement

Meeting No. 003/12 of the Committee on Procurement was held on Monday, 24 September 2012 at 2:30pm at Meeting Room No.1, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

Present	: Tai-chong CHEW	(TCC)	Chairman	
	Andrew CHAN	(AC)		
	Siu-hung CHAN	(SHC)		
	Paul CHONG	(PC)		
	Thomas On-sing HO	(TH)		
	Wo-hei LAM	(WHL)		
	Kevin POOLE	(KP)		
	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
	Peter Kar-shing CHENG	(PChg)		New World China Land Limited
	Sing-mo HO	(SMH)		CLP Power Ltd
	Steve GRIFFIN	(SGN)		MTR Corporation Limited
	Andrew SIMPSON	(ASN)		Hong Kong Polytechnic University
Ricky LI	(RLI)	Development Bureau <i>(on behalf of Kelvin LO)</i>		
Wah-hoi MOK	(WHM)	Independent Commission Against Corruption		
Thomas TSE	(CWT)	<i>(Presenter for agenda item 3.13 closed-door session only)</i>		
In Attendance :	Francis LEUNG	(FLG)	Architectural Services Department	
	Kwok-hung LI	(KkHL)	Civil Engineering and Development Department	
	Alex LEUNG	(AL)	Senior Manager – Council Services 1	
	Carmen LIU	(KML)	Manager – Council Services 6	
	Priscilla NG	(PN)	Assistant Officer – Management Support	
Apologies	: Duncan PESCOD	(DWP)	Development Bureau	
	Kelvin LO	(KLo)		

PROGRESS REPORT

Open-Door Session

Action

3.1. Confirmation of the Progress Report of the Committee Meeting No. 002/12

Members took note of the Paper CIC/PCM/R/002/12 and confirmed the progress report of the last meeting held on Wednesday, 13 June 2012.

3.2. Matters Arising from the Previous Meeting

(a) Item 2.3 – Report of the Task Force on Competition Law

The Task Force on Competition Law (TF-CLW) prepared a paper which provided an overview of the Competition Ordinance and its potential implications for the construction industry for Member's information. TF-CLW also undertook a review to examine if the views and concerns submitted by the CIC to the Bills Committee of the Legislative Council (LegCo) were addressed in the Ordinance. Details were discussed under agenda item 3.3.

(b) Item 2.6 (b) – Proposed Terms of Reference and Membership List of the New Task Force on Employer-Procured Insurance Policies in Construction Contracts

A Task Force on Employer-Procured Insurance Policies in Construction Contracts (TF-EPI) was proposed to be formed. In consultation with the Task Force Chairman, the proposed Terms of Reference and Membership List of the new Task Force were formulated. Details were discussed under agenda item 3.7.

(c) Item 2.7 – Procurement Factsheet

An Ad-Hoc Working Group on Procurement Factsheets (WG-PFS) was proposed to be formed. In consultation with the Chairman of the Committee on Procurement, the proposed Terms of Reference and Membership List of the Ad-Hoc Working Group were formulated. Details were discussed under agenda item 3.8.

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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), declared that he is a co-owner and director of a competition consultancy firm.

Members took note of the Paper CIC/PCM/P/015/12 on the Competition Ordinance and the Submission for the Summary of Views and Concerns of the Construction Industry.

ASN advised that subsequent to the request of the Com-PCM at the last meeting, TF-CLW Member, Ms Alice To, in association with ASN, prepared a paper entitled “Competition Ordinance, Cap 619” which summarised the main provisions and the effect of the Competition Ordinance. The paper was circulated to the TF-CLW in August 2012 and was intended to serve as the first step for the TF-CLW to examine the possible implications of the Ordinance for the construction industry. A copy of the paper was appended in Annex A of the Paper CIC/PCM/P/015/12 for Members’ information.

ASN confirmed that a formal reply from the Bills Committee of the LegCo on CIC’s Submission of the Summary of Views and Concerns of the Construction Industry on the Competition Bill would not be available. In the absence of such reply, TF-CLW undertook a review to examine if the views and concerns raised by the CIC were addressed in the Ordinance. Members were briefed on the findings of TF-CLW’s review which were presented in Annex B of the Paper CIC/PCM/P/015/12.

In response to Chairman’s question regarding the target date for the Chief Executive to appoint the Competition Commission and Competition Tribunal, ASN advised that no target date had been announced by the Commerce and Economic Development Bureau yet.

Chairman suggested that a copy of the paper, entitled “Competition Ordinance, Cap 619” (i.e. Annex A of Paper No. CIC/PCM/P/015/12), should be submitted to the Council for information. *[Post-meeting notes: ASN advised that he would*

ASN

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edit the paper and circulate it to Com-PCM at its next meeting before submitting it to the Council.]

3.4. Progress Report of the Task Force on Competition Law

Members took note of the Paper PCM/CLW/P/016/12 on the Progress Report of Meeting No. 001/12 of the Task Force on Competition Law (TF-CLW).

(a) Possible Deliverables of the Task Force

ASN reported that at the meeting held on 8 August 2012, TF-CLW Members deliberated on the way forward and suggested the following possible deliverables of the Task Force:

- An article introducing the Competition Law to the construction industry – TF-CLW proposed to further develop the paper entitled “Competition Ordinance, Cap 619” contributed by TF-CLW Member, Ms Alice To, into an article for publication in the CIC newsletter or as a procurement factsheet;
- A Technical Forum, Workshop or Seminar on the Competition Law – TF-CLW proposed to organise a Technical Forum on Competition Law in 2013 with an aim to enhance industry stakeholders, especially the SMEs’, understanding on the Ordinance and provide a platform for practitioners to share views and experience on the Competition Law; or
- A Frequently Asked Question (FAQ) Factsheet /Handbook, Guidelines or Code of Conduct on Competition Law – TF-CLW was gathering ideas for the possible development of a Frequently Asked Question (FAQ) Factsheet/Handbook, Guidelines or Code of Conduct on Competition Law.

To help industry stakeholders to understand better the Competition Ordinance, Chairman suggested ASN to prepare a factsheet summarising the main provisions of the Competition Ordinance and, if possible, issue it before the substantive provisions of the Ordinance were enforced.

ASN

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(b) Technical Forum on Competition Law

Members exchanged ideas on the possible topics, format and speakers for the proposed Technical Forum on Competition Law.

Chairman invited Members to give suggestions on the topics and speakers for the Technical Forum to ASN for consideration.

[RLI arrived at 2:50pm.]

3.5. Progress Report of the Task Force on NEC3 Collaborative Contracts

(a) Progress Report of the Task Force

Members took note of the Paper PCM/CLW/P/017/12 on the Progress Report of Meeting No. 002/12 of the Task Force on NEC3 Collaborative Contracts (TF-NEC).

SMH briefed Members on the following points discussed at the Task Force meeting held on 7 June 2012:

- TF-NEC discussed the possible reasons for the relatively low usage of NEC contracts in the UK private sector. It was suggested that contributing factors might include: (i) the generally lower risk profile of private building works compared to public civil engineering works; (ii) the fragmented characteristic of the building industry and building contracts which made it less suitable for the administrative heavy NEC form of contract; (iii) private sector clients' preference on lump-sum contract and performance driven design and build contract; (iv) limited penetration of the NEC marketing campaign into the private sector; and (v) the short of statistical data to prove NEC's success to date.
- In the discussion session following the presentation of the Society of Construction Law Hong Kong (SCLHK) award-winning paper on "Is Hong Kong Ready for the NEC?", the speaker, Mr. Keith Known, shared his view that traditional forms of contract might be more suitable for simple and well-defined projects whilst the NEC form could be advantageous for special and mega

projects where clients were more prepared to invest on training and resources.

(b) Formation of a Task Group on NEC3 Collaborative Contracts

SMH reported that a Task Group on NEC3 Collaborative Contracts (TG-NEC) was formed to deliberate on the way forward of the TF-NEC. The Task Group discussed the possible deliverables of the TF-NEC. Members were advised that, in view of the current limited NEC experience in Hong Kong, the Task Group proposed to prepare a Frequently Asked Question (FAQ) Factsheet/Handbook, instead of Guidelines, to aid industry stakeholders' understanding on the NEC3 as a form of collaborative contracts.

(c) The Use of NEC in the Hong Kong Construction Industry

In response to a question raised by WHL, Members deliberated on the current level of usage of NEC contracts in the Hong Kong construction industry as follows:

- Hong Kong Housing Authority (HKHA): ICE advised that the HKHA would not be using the NEC. Nevertheless, HKHA would adopt some of the spirit and features of NEC, such as partnering and fair risk allocation, in its new General Conditions of Contract which were currently under drafting.
- Development Bureau (DevB): RLI advised that DevB was planning to roll out some twenty-four NEC contracts in the coming few years to try out the different forms of NEC for both construction contracts and consultancy agreements. RLI stated that the first NEC pilot project, i.e. DSD's Fuk Man Road drainage project, was completed with success and further NEC works contracts were being rolled out. A trial of the NEC Professional Services Contract was also planned to commence in end 2013.
- MTR Corporation Limited (MTRCL): SGN advised that MTRCL was in the process of identifying a suitable contract for trialling out the NEC.
- Other private sector clients: SMH advised that several

private sector clients, namely the Hong Kong Jockey Club, Hong Kong Academy and CLP, had trialled the use of NEC contracts in Hong Kong.

[PChg arrived at 3:15pm]

In response to the question raised by PC regarding the merits of NEC compared to traditional forms of contract, SMH would consider with his Task Group/Task Force whether it would be useful to prepare a simple comparison table highlighting the key differences between the NEC and traditional forms of contract.

3.6. Report of the Task Force on the Selection of Consultants and Contractors

KP reported that Drafting of the Guidelines on the Selection of Consultants was in progress. The draft Guidelines comprising inputs from various lead authors were scrutinised by an independent reviewer. The reviewer provided comments on the way the Guidelines might be re-structured and re-drafted to enhance the flow of the document and its readability. Chairman of the Task Force on the Selection of Consultants and Contractors (TF-SCC) and the Secretariat were currently identifying a suitable technical writer for the final editing and re-drafting work.

3.7. Proposed Formation of a Task Force on Employer-Procured Insurance Policies in Construction Contracts

Members took note of the Paper CIC/PCM/P/018/12 regarding the proposed formation of a new Task Force on Employer-Procured Insurance Policies in Construction Contracts (TF-EPI).

SGN briefed Members on the draft Terms of Reference of TF-EPI appended in Annex A of the Paper. SGN highlighted that the objectives of the Task Force would be to review the applicability of employer-procured insurance policies in local construction contracts. The review would cover potentially insurance policies on Contractor/Construction All Risks, Third Party Liability and Employees' Compensation Insurance. It might also be extended to cover areas such as Workers' Life Insurance where considered appropriate by the TF-EPI and Com-PCM. SGN further briefed Members on the proposed

Membership List of TF-EPI appended in Annex A and the nomination received from KnH and TH detailed in Annex B of the Paper CIC/PCM/P/018/12.

Com-PCM endorsed the Terms of Reference and proposed Membership List of TF-EPI appended in Annex A of the Paper CIC/PCM/P/018/12 with the comment that CLP Holdings Limited should be included as one of the organisations for nomination of members.

In terms of the nominations received from KnH, Members suggested and KnH agreed that formal invitation should be sent to HKIS for it to nominate Sr KL Wong to join the Task Force as a Co-opted Member. As for the nomination received from TH, Members suggested and TH agreed that that formal invitation should be sent to HKCA for it to nominate Mr Nigel White to join the Task Force as a Member.

PC suggested SGN to consider inviting a representative from an insurance broker to join and contribute in the Task Force. SGN would review the appropriateness of inviting nomination from the Hong Kong Confederation of Insurance Brokers.

SGN

3.8. Proposed Formation of an Ad-Hoc Working Group on Procurement Factsheets

Members took note of the Paper CIC/PCM/P/019/12 regarding the proposed formation of an Ad-Hoc Working Group on Procurement Factsheets (WG-PFS).

AL briefed Members on the draft Terms of Reference and proposed Membership List of WG-PFS. AL highlighted that the objective of the Ad-Hoc Working Group would be to publish and promulgate procurement factsheets which aim to stipulate good procurement approaches or practices agreed by Com-PCM or provide information on procurement related topics that are of interest to the construction industry.

Com-PCM endorsed the draft Terms of Reference and proposed Membership List of WG-PFS appended in Annex A of the Paper CIC/PCM/P/019/12.

3.9. Strengths of the Construction Industry in Hong Kong

Members reviewed the Paper CIC/PCM/P/020/12 on Strengths

of the Construction Industry in Hong Kong. It was considered that the inputs from the six committees had already covered many aspects of the strengths of the construction industry. Members suggested the CIC Secretariat to edit and consolidate the paper and present it in such a way that the paper would represent an overall view from the construction industry rather than views from the individual committees' perspective.

Members also suggested the CIC Secretariat to take out the weaknesses discussed by some committees and to include a section on how the construction industry could enhance, if not just to preserve, the strengths such that they could continue to be the competitive advantages of the construction industry of Hong Kong.

[A closed-door session was held between 4:00pm and 4:40pm. SGN left the meeting at 4:40pm.]

3.10. Year Plan for 2012-2013 – Progress Review

AL introduced the Paper CIC/PCM/P/021/12 regarding the progress review as well as updating of the Year Plan 2012-2013 for the Committee on Procurement. Members noted and confirmed the year plan.

3.11. Any Other Business

(a) LECA Charity Fund

Members took note of the tabled Paper CIC/PCM/P/023/12 regarding the letter from LECA which announced the launching of the Lift & Escalator Contractors Association (LECA)'s Charity Fund on 1 August 2012.

3.12. Next Meeting

7 December 2012 (Friday) at 2:30 pm at Meeting Room 1, CIC Headquarters, 15/F, Allied Kajima Building, Wanchai, Hong Kong.

All to note

There being no further business, the meeting adjourned at 4:50pm.

**CIC Secretariat
September 2012**