

**Construction Industry Council**

**Committee on Procurement**

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Meeting No. 002/12 of the Committee on Procurement was held on Wednesday, 13 June 2012 at 2:30 pm at Meeting Room No.1, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

Present : Tai-chong CHEW (TCC) Chairman  
Siu-hung CHAN (SHC)  
Paul CHONG (PC)  
Thomas On-sing HO (TH)  
Kevin POOLE (KP)  
Joseph MAK (JM) Hong Kong Housing Authority  
(on behalf of Duncan PESCOD  
and Irene CHENG)  
Kelvin LO (KLo) Development Bureau  
Wah-hoi MOK (WHM) Independent Commission Against  
Corruption  
Steve GRIFFIN (SGN) MTR Corporation Limited  
Andrew SIMPSON (ASN) Hong Kong Polytechnic  
University  
Thomas Kwok-kwan (KnH) Hong Kong Institute of Surveyors  
HO

In Attendance : Francis LEUNG (FLG) Architectural Services  
Department  
Alex LEUNG (AL) Senior Manager – Council  
Services 1  
Carmen LIU (KML) Manager – Council Services 6  
Priscilla NG (PN) Assistant Officer – Management  
Support

Apologies : Andrew CHAN (AC)  
Wo-hei LAM (WHL)  
Duncan PESCOD (DWP)  
Irene CHENG (ICG) Hong Kong Housing Authority  
Sing-mo HO (SMH) CLP Power Ltd  
Kwok-hung LI (KkHL) Civil Engineering and  
Development Department

## PROGRESS REPORT

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#### **2.1. Confirmation of the Progress Report of the Committee Meeting No. 001/12**

Members took note of Paper CIC/PCM/R/001/12 and confirmed the progress report of the last meeting held on Monday, 16 April 2012.

#### **2.2. Matters Arising from the Previous Meeting**

(a) Item 1.5 – Concerns on NEC Sub-Contracting Arrangement

The concerns raised at the last meeting of the Committee on Procurement (Com-PCM) regarding NEC sub-contracting arrangement were discussed at Meeting No. 002/12 of the Task Force on NEC3 Collaborative Contracts (TF-NEC) held on 7 June 2012. Further details were discussed under agenda item 2.4.

(b) Item 1.7(b) – Issues on Risk Sharing

After reviewing the various risk sharing issues raised by Members, Chairman of the Task Force on Contract Price Fluctuation System (TF-CPFS) proposed to form a new Task Force on Review of Employer-Procured Insurance Policies in Construction Contracts. Details were discussed under agenda item 2.6.

(c) Issues on Indices and Worker's Wages

It was reported that TF-CPFS had previously deliberated the issue on indices before finalisation of the Guidelines on Contract Price Fluctuation System.

The issue on worker's wages was referred to the Committee on Subcontracting (Com-SBC) which discussed the issue at its meeting held on 25 April 2012. Com-SBC decided to publish a poster with key messages to remind workers on securing their rewards and legitimate rights.

#### **2.3. Report of the Task Force on Competition Law**

ASN gave an update on the status of the Competition Bill's legislative process. It was reported that the Competition Bill had received its Second Reading at the Legislative Council (LegCo) meeting held on 6 June and as at 13 June 2012, the Committee of the whole LegCo was considering the

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amendments to the Bill at the Committee Stage. (*Post meeting note: The Competition Bill passed its Third Reading at the LegCo meeting held on 14 June 2012.*)

It was reported that the summary of views and concerns of the Construction Industry was received by the Bills Committee on Competition Bill and registered as Paper No. CB(1)1577/11-12(01) in LegCo. TF-CLW and the Secretariat would follow-up on the status of LegCo's responses to the views and concerns raised by CIC.

**ASN/CIC  
Secretariat**

TF-CLW was tasked to review the amended Competition Bill and highlight any potential opportunities and challenges and key areas to watch out for by the construction industry.

**TF-CLW**

TF-CLW proposed to organise a Technical Forum on Competition Law tentatively in November 2012 to enhance industry practitioners' understanding on the Competition Law. The Forum would also aim to highlight the possible implications of the Competition Law to the local Small and Medium Enterprises (SMEs).

**2.4. Report of the Task Force on NEC3 Collaborative Contracts**

(a) Presentation on "Is Hong Kong Ready for NEC?"

AL reported that at Meeting No. 002/12 of TF-NEC held on 7 June 2012, Mr Keith KEOWN presented his Society of Construction Law Hong Kong (SCLHK) award-winning paper entitled "Is Hong Kong Ready for NEC?". In the presentation, Mr KEOWN shared with TF-NEC his UK experience. He highlighted several key features and advantages of the NEC, including its project management system and proactive, forward-looking and joint problem solving philosophy, and discussed several disadvantages of the NEC, including the need for Project Manager (PM) to make rapid and early decisions and the heavy administration burden involved. Mr KEOWN outlined a number of measures that would be required to make NEC work in Hong Kong including the need for education and training and for a change of mind-set of industry stakeholders.

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(b) Issues on NEC Sub-Contracting Arrangement

The issues on NEC sub-contracting arrangement were also deliberated at Meeting No. 002/12 of TF-NEC. It was reported that under the NEC Core Clauses, the Contractor is required to submit the proposed conditions of contract for each sub-contract to the PM for acceptance unless an NEC contract is proposed or the PM has agreed that no submission is required.

AL reported that TF-NEC shared the experience of the Drainage Services Department (DSD) Fuk Man Road Contract where the Contractor sought PM's approval to adopt a non-NEC form of sub-contract. Task Force Members suggested that it would be up to the PM and the Contractor to decide and agree on whether to adopt the NEC form of sub-contract after considering factors such as the possible merit of adopting a coherent contract form of contract as well as the readiness of the industry and the challenges that might be involved for adopting NEC at the sub-contracting level.

(c) Deliberation on the Way Forward

KLo highlighted Development Bureau (DevB)'s initiatives to try out different forms of NEC contract through a range of civil engineering and building projects of contract sums totalling well over HK\$10 billion. Members were advised that there were currently four government contracts adopting the NEC form in the construction stage, four contracts in the tender stage and more than ten contracts in the pipeline. He encouraged construction stakeholders to get trained up and familiar with the contract forms so as to build up the skill capacities early.

FLG also shared Architectural Services Department (ArchSD)'s NEC experience and added that, of the four NEC contracts currently administrated by ArchSD, one contract was in the post-contract stage - i.e. a term contract on slope maintenance works, one contract was at the tender stage - i.e. the Tin Shui Wai Hospital, and two other contracts were in the pipeline.

In view of the surge of NEC contracts in Hong Kong, Members suggested that there could be a need to bring industry stakeholders up to speed with the NEC. TF-NEC

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was tasked to consider the matter and deliberate on the way forward of the Task Force.

Chairman of Com-PCM further planned to visit the NEC UK to gather views on the course of actions that the NEC User Group would take to cope with the large number of NEC projects in Hong Kong. Members would be kept informed of the outcome of the visit.

**2.5. Report of the Task Force on the Selection of Consultants and Contractors**

**(a) Progress of the Task Group on the Selection of Consultants**

KP reported that drafting of Guidelines on the Selection of Consultants was in progress. Revised drafts taking into account his comments were received from the lead authors and compiled into a draft document which was currently under scrutiny by an independent reviewer to ensure coherency. After receiving inputs from the reviewer, Task Group on the Selection of Consultants (TG-SCT) and Task Force on the Selection of Consultants and Contractors (TF-SCC) would review the document and undertake final editing before submitting the draft Guidelines to Com-PCM for comment.

**(b) Progress of the Task Group on the Selection of Contractors**

KP advised that framework of Guidelines on the Selection of Contractors would be similar to the one for the Selection of Consultants. Drafting of Guidelines on the Selection of Contractors would hence commence upon finalisation of the Draft Guidelines on the Selection of Consultants.

A request was received from the Chartered Institute of Building (CIOB) for their Council Member, Mr LAM Wai-choi, to join the TF-SCC, and it was accepted by the Com-PCM and Task Force Chairman.

**2.6. Report of the Task Force on Contract Price Fluctuation System**

Member took note of Paper CIC/PCM/P/010/12 regarding the proposed formation of a new Task Force on Review of Employer-Procured Insurance Policies in Construction Contracts (TF-EPI).

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(a) **Proposed Formation and Chairmanship of the New TF-EPI**

It was reported that TF-CPFS had completed its missions and having considered the various risk sharing issues raised by Members, Chairman of TF-CPFS proposed to form a new Task Force on Review of Employer-Procured Insurance Policies in Construction Contracts (TF-EPI). Members agreed that a study on Employer-Procured Insurance Policies would be beneficial to the industry and supported the formation of the new Task Force. Members also endorsed the proposal for Mr Steve GRIFFIN to chair the new TF-EPI.

(b) **Proposed Terms of Reference and Membership List of the New TF-EPI**

Members reviewed the draft Terms of Reference (ToR) of the proposed new TF-EPI and commented that in addition to exploring the benefits and other relevant factors of promoting Employer-Procured Insurance policies, a comparison between Employer-Procured Insurance policies and Contractor-Procured Insurance policies should also be made. Chairman of the new TF-EPI and the CIC Secretariat would revise the draft ToR based on the aforesaid comment and prepare a proposed membership list for the new Task Force for Members' endorsement.

**SGN/CIC  
Secretariat**

**2.7. Procurement Factsheet**

Members took note of Paper CIC/PCM/P/011/12 regarding the production and issuance of Procurement Factsheets which aim to provide general factual information or stipulate good procurement approaches or practices agreed by Com-PCM for industry stakeholders' quick reference.

The Procurement Factsheet template prepared by the CIC Secretariat was reviewed and endorsed by the Com-PCM. Members also reviewed the sample Factsheet on e-tendering and suggested that reference should be made to the companies, instead of the names of individuals, which provided information for the production of the factsheet.

Members supported the formation a working group to gather relevant topics and prepare, review and refine procurement factsheets. The CIC Secretariat would consult Members to seek their input and participation in the working group. It was further

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suggested that a set of factsheets should be gathered and vetted by the working group and Com-PCM before formal launching at the CIC website.

(SHC left the meeting at 15:40)

**2.8. Presentation on DevB's Consultation Paper on "Proposed Procurement Approach to Promote Innovation and Creativity in the Delivery of Public Works Projects"**

Representative of DevB, Mr Kelvin Lo, presented DevB's Consultation Paper on "Proposed Procurement Approach to Promote Innovation and Creativity in the Delivery of Public Works Projects" that was appended as Paper CIC/PCM/P/012/12 in the meeting documents.

Members were briefed on the background and objectives of the proposed new procurement approach. Under the new approach, DevB proposed to introduce an innovative and creativity (IC) screening stage to the existing 2-envelope/2-stage system and amend the Technical Proposal (TP) Marking Scheme to reduce the weighting on the tenderer's experience and staffing aspects and increase the weighting on IC-related aspects. KLo also shared some examples of Innovation in Construction and briefed Members on the implementation plan of the new procurement approach.

In response to Members' question regarding the effectiveness of the IC screening on alleviating the situation of a few major players dominating public works consultancies and contracts, KLo advised that DevB was currently undertaking an overall revamp of the procurement system in which IC screening was only one of the many different measures being considered. The IC screening, which would screen out the tenderer with the lowest IC score, aimed to create a competitive environment for tenderers to seriously explore opportunities for bringing in IC in construction. Members further suggested that DevB should consider and emphasis on "value" rather than "cost" in the tender assessment.

KLo clarified that there was a typo in the consultation paper in that the "not" in bullet point no. 7 of Section 5.5(d) should be deleted and bullet point no. 9 of Section 5.5(d) should be removed. In other words, the IC scores would be carried

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forward to Stage B assessment.

**2.9. Membership List of the Committee on Procurement 2012-2014**

Members took note of Paper CIC/PCM/P/013/12 regarding the updated membership list of Com-PCM for Session 2012-2014 and the letters received from the Real Estate Developers Association of Hong Kong (REDA) and the Hong Kong General Building Contractors Association Ltd. (HKGBCA) on Com-PCM co-opted membership.

(a) Co-opted Members of Com-PCM

AL reported that nominations of representatives to join the Com-PCM as Co-opted Members had been received from all relevant organisations except that the Real Estate Developers Association of Hong Kong (REDA) responded they had no nomination. To enable representation of the developer sector in the Committee, Com-PCM agreed to invite and accept Mr Peter Kar-shing Cheng of New World China Land Limited to join the Committee as a Co-opted Member.

(b) Letter from Hong Kong General Building Contractors Association Ltd

On HKGBCA's initiative to join the Com-PCM, Members agreed that it would be valuable and more appropriate to have representative(s) from HKGBCA to join and contribute in the Task Force(s) of the Com-PCM. Currently, representative of HKGBCA is a Member of the Task Force on Competition Law.

**2.10. Year Plan for 2012-2013 – Progress Review**

AL introduced the paper CIC/PCM/P/014/12 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.

**2.11. Any Other Business**

(a) Issues on Unfair Contract Terms

A Member raised Hong Kong Construction Association (HKCA)'s concerns on unfair terms being imposed to the

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Contractors in a number of construction contracts. It was suggested to gather further information from HKCA for consideration by Com-PCM and/or the Council if appropriate.

**(b) DevB's Brainstorming Workshop on Procurement**

It was reported that an invitation was received from DevB for CIC to attend DevB's Brainstorming Workshop on Procurement on 3 July 2012. Chairmen of TF-NEC and TF-SCC as well as the CIC Secretariat would attend the aforementioned Workshop. Chairman of Com-PCM would also attend it subject to his availability.

**2.12. Next Meeting**

24 September 2012 (Monday) at 2:30 pm 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 16:40.**

**CIC Secretariat**  
**June 2012**