

Construction Industry Council

Committee on Procurement

Meeting No. 003/11 of the Committee on Procurement was held on Wednesday, 7 September 2011 at 2:30 pm at Meeting Room 1, CIC Headquarters, 15/F, Allied Kajima Building, Wanchai, Hong Kong

Present : Tai-chong CHEW (TCC) Chairman
Andrew CHAN (AC)
Thomas HO (TH)
Wai-wah HO (WWH)
Wo-hei LAM (WHL)
Kam-hung YU (KHY)
Wah-hoi MOK (WHM) Independent Commission
Against Corruption
Kevin POOLE (KP) Airport Authority Hong Kong
Alex KWAN (AKN) Association of Consulting
Engineers of Hong Kong
Ming-wai LAU (MWL) Chinese Estates Holdings
Limited
Thomas Kwok-kwan HO (THO) Hong Kong Institute of
Surveyors
Steve GRIFFIN (SGN) MTR Corporation Limited

In Attendance : Kwok-hung LI (KkHL) Civil Engineering and
Development Department
Sing-mo HO (SMH) CLP Power Ltd
Ricky LI (RLI) Development Bureau
(for Mr. David TONG)
Francis LEUNG (FLG) Architectural Services
Department (for Ms Sheron LI)
Daniel CHAN (KLC) Housing Authority
(for Mr. Duncan PESCOD &
Ms Irene CHENG)
Alex LEUNG (AL) Senior Manager (Council
Services) 1
Shuk-ming KWOK (SMK) Assistant Manager (Council
Services) 3

Apologies : Siu-hung CHAN (SHC)
Oi-ki Peter LAM (OKL)
Duncan PESCOD (DWP)
David TONG (DT) Development Bureau
Sheron LI (SNL) Architectural Services
Department
Irene CHENG (ICG) Housing Authority
Andrew SIMPSON (ASN) Hong Kong Polytechnic
University

PROGRESS REPORT

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3.0 **Opening of the meeting**

The Chairman welcomed Mr Daniel Chan from Housing Authority attended the meeting on behalf of Mr Duncan Pescod and Mrs Irene Cheng while Mr Francis Leung from Architectural Services Department attended the meeting on behalf of Ms Sheron Li.

3.1 **Confirmation of the Progress Report of the Committee Meeting No. 002/11**

Members took note of the Paper CIC/PCM/R/002/11 and confirmed the progress report of the last meeting held on Friday, 13 May 2011 with the following amendment.

The third paragraph of item 1.2 on P. C16, “Association of Consultant Quality Surveyors” should read “Association of Consultant Quantity Surveyors”.

3.2 **Matters Arising from the Previous Meeting**

(a) Agenda item 2.5 – Proposed Terms of Reference and Membership List for the Task Force on NEC3 Collaborative Contracts

Invitation letters asking for nomination of representative were issued to relevant organizations, including Development Bureau on 19 May 2011. Further details were discussed under agenda item 3.4.

(b) Agenda item 2.6 – Proposed Terms of Reference and Membership List for the Task Force on Competition Bill

Invitation letters asking for nomination of representative were issued to relevant organizations on 20 May 2011. Further details were discussed under agenda item 3.3.

(c) Agenda item 2.7 – Progress Report of the Task Force on Contract Price Fluctuation System (CPFS)

The revised draft Guidelines on CPFS was submitted to the Council in June 2011 and comments were received. Further revised draft was sent to DEVB for their advanced information and review, and details were discussed under agenda item 3.6.

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- (d) Agenda item 2.9 – Potentiality of developing Guidelines on Interim Payment Schedule (IPS) / Milestone Payment (MS) Paper CIC/PCM/P/016/11 was discussed. SGN reported that initial discussion by Task Force (TF) of CPFS had identified three categories of milestone payment, i.e. multiple milestones, stage payments, and milestones combined with interim payment. In view of the various payment schemes in place across the industry which were generally working well and there would not be able to reach consensus among different interest groups, the TF had little appetite to develop guidelines and suggested to drop or defer the topic.

Having considered that the Council would hold the view that any guidelines issued by the CIC should be universally practicable to stakeholders of public sector and private sector, instead of guidelines, Members suggested the TF to consider preparing an investigation document / reference document to provide reference points and good practices for the industry consumption or their own choice of decision.

SGN was asked to consider reviewing with TF Members at appropriate time and advising them the intention of not publishing guidance document but possibly a reference document providing good reference relating to multiple milestones, stage payment, milestone combined with interim payment approach etc, as a way to guide the industry.

SGN

- (e) Agenda item 2.10 – Issue on Risk Sharing
This item raised by Mr. Thomas HO would be discussed under agenda item 3.8.

3.3 **Task Force on Competition Law**

AL sent apologies for TF Chairman, Dr. Andrew Simpson, who was not available to attend the meeting, and introduced the paper CIC/PCM/P/010/11 on the latest progress of the TF.

(a) Membership List

Members were advised that :

- (i) Nominations of representatives to join the TF had been received from all relevant organisations except that the Real Estate Developers Association of Hong Kong (REDA) responded they had no nomination to join the

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TF;

- (ii) Mr. Ming-wai Lau of Chinese Estates Holdings Limited and Mr. Sunny Yeung of K. Wah International had agreed to join the TF to provide views from the developer's perspective.
- (iii) TF Members confirmed Com-PCM's endorsed Membership List with recommendation of including REDA in the list of organisations to be consulted so that their opinions and advices on the draft guidelines / information produced by the TF could be sought at a later stage.

Members agreed to include REDA in the list of organisations to be consulted.

(b) Terms of Reference

Members were advised that the proposed Terms of Reference was refined by the TF Chairperson, and was confirmed at meeting No. 001/11 of the TF.

Members suggested the TF to consider whether Guidelines or Code of Conduct on Competition Law for the Hong Kong Construction Industry should be produced as if necessary.

(c) Information paper on Competition Bill

Members were briefed about the information paper on Competition Bill for the collection of views and concerns on the possible implications of the future Competition Law from organisations of TF Members. Members were welcomed to provide any information on Competitive Bill for the reference of TF to the CIC Secretariat.

3.4 Verbal Report of the Task Force on the Selection of Consultants and Contractors

KP reported that two meetings of Task Group (TG) on the Selection of Consultants were held since last Com-PCM Meeting.

The first TG meeting rationalised the outline contents of the guidelines for the selection of consultants and allocated chapters to different parties for their expansion in bullet form to better describe the contents of each chapter.

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The second meeting considered the draft guidelines content expanded in bullet form and agreed changes. Each party was tasked to draft the respective chapter and return input to CIC Secretariat by the end of September 2011.

The change in stance of the Government in not actively participating in the drafting of the guidelines was also reported.

Members were advised that the next TF meeting would be fixed in early Oct 2011 and the concerns raised by the Association of Consulting Engineers of Hong Kong (ACEHK), Association of Architectural Practices (AAP) and Association of Consultant Quantity Surveyors of Hong Kong (ACQS) would be discussed. The TF intended to invite ACEHK, AAP and ACQS to make a presentation on their concerns at the coming TF meeting.

The TF targeted on working out the Guidelines for Selection of Consultants first.

3.5 Verbal Report of the Task Force on Contract Price Fluctuation System (CPFS)

SGN reported that after the Council Meeting held in June 2011, the “Guidelines on CPFS” was revised. Further comments on the revised guidelines from the Development Bureau (DEVB) were constructive and helpful, and would be incorporated to the final document.

In reply to Chairman’s enquiry on whether DEVB agreed to issue the documents as Guidelines, RLI suggested that Guidelines should provide guidance on what to do but not necessarily giving a variety of choices for selection. SGN advised that the revised guidelines was an informative and all-inclusive document which intended to provide guidelines on selecting different options. SGN also responded that the TF was keen to issue the document as a “Guidelines” rather than a “Reference Document”.

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3.6 **Strengths of Hong Kong Construction Industry**

AL introduced the paper CIC/PCM/P/012/11 regarding the strengths of Hong Kong construction industry. Members were invited to deliberate on the topic and were informed that the conclusion of such would be reported to the Strategic Planning Steering Committee at its upcoming meeting scheduled in early Nov 2011.

The following strengths of Hong Kong were identified and discussed:

(a) Professionalism, Commitment and Ethics

Hong Kong construction industry maintained high values and ethical standard, including integrity, team spirit, and high standard of self-regulation on the compliance of both contracts and statutory requirements.

(b) Well Established Procurement System in Public Works Projects

The Government had well established procurement system, including procurement policy, contractor management, contractor listing and performance assessment, for which Mainland was lacking. Besides, contractors and consultants of Hong Kong were familiar with such procurement system through participating in public works projects.

(c) Good Project Management

Hong Kong construction industry was good at project management in terms of project planning, programming, site safety management, monitoring and supervision as well as management of different professionals for construction projects in different ways. Although the Mainland did have good safety and management system in place, their implementation and monitoring of the same were far behind standard when comparing with Hong Kong due to difference in culture.

(d) One Stop Integrated Services

Hong Kong construction industry provided one stop services, including co-coordinating and managing different disciplines of construction practitioners. Besides, working

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closing with a common goal among different disciplines for the project was the culture of Hong Kong construction industry. In the Mainland, most of the parties of a construction project worked independently and were lacking communication and co-ordination with their counterparties, e.g. design team and construction team.

(e) Total Life Cycle Asset Management Approach

Apart from design and construction, sustainability including environmental aspects and future operation and management issues, were also considered during project planning stage in Hong Kong.

(f) Environmental Consciousness

Environmental Impact was heavily considered by the Hong Kong construction industry, mitigating measures on the impact to adjacent environment and pedestrian were usually assessed well before the commencement of construction works.

(g) Good Quality Control & Consciousness

Hong Kong construction industry had high quality consciousness and that was the reason for our counterparts in the Mainland in using Hong Kong construction personnel for projects requiring high quality of works, e.g. E&M works.

3.7 **Issues on Risk Sharing**

The CIC Secretariat introduced the paper CIC/PCM/P/013/11 regarding issues on risk sharing raised by a Member in last Com-PCM. Members were invited to discuss and share their views on the issues.

Apart from the examples raised in the paper, i.e. purchase of demand bond for small or medium size projects, issuance of tender without Bills of Quantities, and request of signing all BA forms at tendering stage, TH shared some more examples on unreasonable risk posed on the contractors, including main contractor needed to take up all the risks on underground utility works involving the application of excavation permit which might take half to one year and it would significantly affect the

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works programme; client's request on unreasonable long years of guarantee, e.g. 20 years, on tiles installation which the supplier could only provide it for 5-6 years; contractor had no compensation for compliance with enactment of new / revised legislation.

TH further advised that such unfair issues bothered the Hong Kong Construction Association (HKCA) very much and they would like to have some kind of good practices that could be agreeable and recognized by the industry for the sharing of responsibilities.

After in-depth deliberation on reaching proper balance of risks sharing principle adopted between procurers, suppliers and contractors, SGN was requested to bring such issues to his TF for consideration at a later stage.

SGN

3.8 Progress Report of Task Force on NEC3 Collaborative Contracts

(SMH joined the meeting at 15:50)

SMH introduced the paper CIC/PCM/P/011/11 on the latest progress of the TF.

(a) Membership List

Members were advised that:

- (i) Nominations of representatives to join the TF had been received from all relevant organizations except that the Real Estate Developers Association of Hong Kong (REDA) responded they had no nomination to join the TF;
- (ii) TF Members confirmed the Com-PCM's endorsed Membership List with recommendation of including REDA in the list of organisations to be consulted so that their opinions and advices on the draft guidelines / information produced by the TF could be sought at a later stage; and
- (iii) TF Members' recommendation of inviting Hong Kong Institute of Architects to join the TF as architects played an important role in contract administration.

Members agreed recommendation of inviting HKIA to join the TF and including REDA in the list of organisations to be consulted.

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(Post meeting Notes: Invitation letter was issued to HKIA on 8 Sept 2011 and nomination was received on 21 Sept 2011.)

(b) Terms of Reference

Despite it was observed that some of the TF Members might not keen on applying NEC, the proposed Terms of Reference was eventually confirmed at meeting No. 001/11 of the TF after much deliberation. As the application of NEC in Hong Kong was not that mature, the TF would determine at a later stage for the need on issuance of guidelines / guidance document on NEC. Meanwhile, the TF was collecting information and experience of NEC for TF Members' deliberation.

3.9 Issues for Deliberations

Chairman introduced the paper CIC/PCM/P/014/11 and suggested that the Com-PCM should take a proactive approach in deliberating issues involved in procurement process.

Three topics, i.e. electronic tendering process; how to procure a contract that would generate zero accident; and quality control / assurance of materials procured from area where the costs of them are lower, were suggested as a kick off for Members' deliberation. Members were also welcomed to raise other issues for discussion which would be beneficial to the industry.

After preliminary discussion, sharing of experiences and difficulties on the application of electronic tendering, Members generally supported green procurement process and agreed to consider the application of such in their organisations. CIC Secretariat would prepare a briefing note on electronic tendering for Members' further deliberation.

(MWL left the meeting at 16:18)

**CIC
Secretariat**

3.10 Year Plan for 2011/2012 – Progress Review

AL introduced the paper CIC/PCM/P/015/11 regarding the progress review of the Year Plan 2011/2012 for the Committee on Procurement. Members noted and confirmed the year plan.

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3.11 Any Other Business

No other business was raised by Members.

3.12 Next Meeting

23 November 2011 (Wednesday) at 2:30 pm at Board Room, **All to note**
23/F, MTR Headquarters Building, Telford Plaza, Kowloon
Bay, Kowloon, Hong Kong.

There being no further business, the meeting adjourned at 16:20.

CIC Secretariat
September 2011