

Construction Industry Council

Committee on Procurement

The Meeting No. 002/09 of the Committee on Procurement was held on Thursday, 21 May 2009 at 2:30 pm at Room 1201, Murray Building, Garden Road, Central.

Present : Russell BLACK (RB) Chairman
Francis BONG (FB)
Andrew CHAN (AC)
Teresa CHENG (TC)
Tat-tong CHEUNG (TTC)
Conrad WONG (CW)
James CHIU (JC)
Shing-see LEE (SSL)
Ada FUNG (AF) For Permanent Secretary for
Transport and Housing
(Housing)
Wah-hoi MOK (WHM) Government Representative -
ICAC
Colin JESSE (CJ) Evans and Pecks (HK) Ltd
Hugh WU (HW)
Ian COCKING (IC) Minter Ellison Lawyers
James BLAKE (JB) Kowloon-Canton Railway
Corporation
Mohan KUMARASWAMY (MK) University of Hong Kong
Steve GRIFFIN (SGN) MTRCL
Charles CHOW (CC) Architectural Services
Department
Edward LEE (ELE) Civil Engineering and
Development Department

In Attendance : Christopher TO (CL) Executive Director
Alex LEUNG (AL) Senior Manager (Council
Services) 1
Claudia AU (CA) Manager (Council Services) 1
Raymond KWOK (RKK) Manager (Council Services) 3
Enoch LAM (EL) Deputy Secretary (Works) 2
Development Bureau
T F LEUNG (TFL) Chief Assistant Secretary
(Works) 7

Development Bureau

Apologies	:	Wo-hei LAM	(WHL)	
		Billy WONG	(BW)	
		Thomas HO	(TH)	
		Lung-hing CHEUNG	(LHC)	Construction Site Workers General Union
		Chun-kay LAU	(CKL)	Hong Kong Federation of Electrical and Mechanical Contractors
		Nap-ming CHAN	(NMC)	Housing Department
		Margaret COATES	(MC)	CLP Power Hong Kong Ltd.
		David TONG	(DT)	Government Representative - Development Bureau

PROGRESS REPORT

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2.0 Opening of Meeting

The Chairman welcomed all Members in attending the meeting and extended his warm welcome to Mr Steve GRIFFIN, Procurement and Contracts Manager of MTRCL, who joined the meeting for the first time.

Members supported the Chairman's recommendation that Mr GRIFFIN, with his extensive experience and expertise in Contract Price Fluctuation System ("CPFS"), to join the Committee as a Co-opted Member to contribute on procurement matters to the Committee. Mr GRIFFIN would also assume the Chair of the Task Force on CPFS for Private Sector Construction Contracts to lead the way forward in developing the Guidelines on CPFS.

2.1 Confirmation of the Progress Report of the Committee Meeting No. 001/09

Members took note of Paper CIC/PCM/R/001/09 and approved the progress report of the last meeting held on Thursday, 5 February 2009 at Murray Building.

2.2 Matters Arising from the Previous Meeting

- (i) Agenda item 1.3:
The formation of a Task Force on CPFS for Private Sector Construction Contracts with proposed Terms of Reference and Membership Composition would be discussed under agenda item 2.3.
- (ii) Agenda item 1.5:
The progress of the discussion regarding ICAC's proposal on the formulation of a Consultants' List and Cost Database would be discussed under agenda item 2.5.

2.3 Contract Price Fluctuation System (CPFS) for Private Sector Construction Contracts

Members took note of Paper CIC/PCM/P/004/09 which set out the background for establishing the Task Force on CPFS for Private Sector Construction Contracts, plus the proposed Terms of Reference and Membership List of it.

Members agreed to adopt the proposed Terms of Reference and Membership List subject to deleting one word from the Terms of Reference as follows:

“1. To review the ~~successful~~ experience of applying CPFS in housing projects and public works, as well as the latest development of CPFS by MTRCL;...”

Mr GRIFFIN kindly accepted the invitation to take up chairmanship of the Task Force. The detailed work plan and considerations of the Task Force would be deliberated and confirmed at its first meeting.

**SGN/CIC
Secretariat**

The Chairman urged Members to contribute their expertise and experience in CPFS by joining the Task Force. The CIC Secretariat would extend invitations to Members and the agreed relevant industry organizations accordingly.

**CIC
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It was deliberated and concluded that two representatives from Hong Kong Construction Association (HKCA) and the Hong Kong Federation of Electrical and Mechanical Contractors

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(HKFEMC) respectively would be invited to join the Task Force in view of the significant impact to and possible input from the contractors. However, it has been decided that only one vote would be given to each invited organization as listed on the Membership List as deemed necessary.

2.4 Progress Report of the Task Force on Partnering

Members took note of the Paper CIC/PCM/P/005/09.

The Chair of the Task Force (CJ) briefed Members of the deliberations made at the Task Force meeting of 30 March 2009 and reviewed with Members all sections of the second draft of the Guidelines on Partnering annexed to the aforementioned Paper. CJ informed that other than incorporating the appropriate comments from Committee and Task Force Members, the Working Group had standardized the syntax and format of the Guidelines. Sample projects which had adopted partnering would be appended to relevant sections of the Guidelines for illustration purposes.

Members supported the contents in general with several suggestions provided for fine-tuning the Guidelines. Members were requested to provide any comments and suggestions, as well as examples of partnering projects, for enhancing the Guidelines. The revised draft was due for completion by 9 June 2009 and would be submitted for Members' review and comments in due course.

All to note

CJ

As support from developers would contribute to successful adoption of partnering in the industry, CJ informed that Committee Members, WHL and TH, had approached REDA and Sun Hung Kai Properties Ltd. with a view of soliciting their support for adopting partnering in their construction projects. It was discussed that the revised version of the draft Guidelines could be provided to REDA for comments with a covering letter enlisting their support on the matter.

**CIC
Secretariat**

When promulgating the finalized Guidelines, Members supported that non-contractual partnering which was more popular than contractual partnering in Hong Kong should be

promoted first. After gaining sufficient experience and support from industry personnel in adopting non-contractual partnering, then promotion of adopting contractual partnering could follow.

The Chairman extended his appreciation to the efforts contributed by CJ and Members of the Task Force and the Working Group for their invaluable hard work provided in preparing the draft Guidelines.

[CJ left the meeting at 3:20pm.]

2.5 Summary Notes of Informal Meeting for ICAC Proposal on the Formulation of a Consultants' List and Cost Database

Members took note of Paper CIC/PCM/P/006/09 which summarized the discussions made by participants of the aforementioned informal meeting held on 18 May 2009.

Close liaison would be maintained with Buildings Department with regard to their upcoming Registered Inspectors List which would basically form the proposed Consultants' List.

Due to the complexity in the scope of the Repair and Maintenance (R&M) works and variations of price for different products, it might not be meaningful to benchmark the costs of R&M works. Members took note that Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) would be invited to attend future informal meetings to deliberate on the feasibility in establishing and maintaining a cost database, including possible commissioning of academia to conduct review and publish reports on successful R&M projects undertaken by HKHS and /or URA.

Members were informed that ICAC has produced a tool kit on Building Maintenance which focused on the integrity and quality building management and maintenance from a procedural perspective.

Further informal meetings would be convened to deliberate on the way forward on the ICAC proposal and the necessity to

establish a Task Force for taking forward the matters.

[TC left the meeting at 3:30 pm]

2.6 **Year Plan 2009**

Members took note of Paper CIC/PCM/P/007/09 and agreed to re-schedule tasks of the Year Plan for the Committee in 2009/10 by prioritizing those with consideration of current circumstances and future development of the industry as follows:

1. Partnering;
2. CPFS for Private Sector Construction Contracts;
3. Milestone Payment;
4. Selection of Consultants and Contractors
5. ICAC Proposal on the Formulation of a Consultants' List and Cost Database for Repair and Maintenance Works

As the selection of consultants and contractors is a complicated and onerous task, Members suggested that a Task Force could be set up for considering the way forward in tackling the issues. Furthermore, due to the difference of job nature between the consultants and contractors, it was suggested that the study of the two should be distinguished.

On the other hand, in view of the similar aspects of managing payment and cash flow in the construction industry, plus the similar expertise required for handling the issues, Members concurred that the Task Force on CPFS for Private Sector Construction Contracts could also take up the task on considering the way forward for managing Milestone Payment in the initial stage. SGN has kindly accepted to take up this task in the newly formed Task Force on CPFS.

[JB left the meeting at 4:00pm]

A revised proposal with time frame would be circulated for Members' comments and endorsement.

(Post Meeting Note: The revised draft paper was circulated to

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Members for further review on 1 June 2009 and the finalized version is prepared on 2 July 2009. See Annex A.)

2.7 Any Other Business

Nil.

2.8 Next Meeting

9 July 2009 (Thursday) at 2:30pm at Room 1201 of Murray **All to note** Building.

There being no further business, the meeting adjourned at 4:30pm.

Remarks: The mentioned papers discussed in the meeting of the Committee on Procurement can be made available to the Council Members from the CIC Secretariat upon request.

**CIC Secretariat
July 2009**

Revised on 2 July 2009

Construction Industry Council

Committee on Procurement

Year Plan 2009

1. Purpose

- 1.1 This paper is for Members to note the revised Year Plan 2009 which has been incorporated with the comments received from Members of the Committee on Procurement (Com-PCM).

2. Introduction

- 2.1 Progress of various tasks currently undertaken by the Com-PCM has been reviewed. With consideration to the development of the industry in the coming years, the CIC Secretariat has formulated a year plan for the Com-PCM in 2009. The plan intends to prioritize tasks and define the time frames for achieving key deliverables.

3. Tasks Prioritized for Action in 2009

The following tasks are proposed to be the priority items for consideration in 2009 and possibly the following year as well.

3.1 Partnering

Partnering is a structured project management approach to facilitate different teams and affected stakeholders of a project working across contractual boundaries. The key objective is to align the parties involved in progressing the contracts in a collaborative manner with a common goal of completing the project in a cost-effective and timely way. Partnering approach has been applied in a limited number of local public works project, e.g. non-contractual partnering previously applied by the MTRCL on its Tseung Kwan O Extension project, and subsequently by KCRC for West Rail and East Rail Extension projects, which all proved to be successful as

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the projects were completed in advance of the programme, within budget and with quality. For the long term benefit of the industry, it is desirable for the Com-PCM to dedicate special attention on this task. A Task Force has been set up in coordinating the effort in the development of Guidelines on Partnering to facilitate its understanding and application by the stakeholders in various sectors of the construction industry. The Guidelines could help to provide guidance on the application of partnering to the industry stakeholders including the clients, consultants, contractors and sub-contractors to work together against the challenges of the construction project rather than against each other. The focus is on jointly improving value and lowering cost through cooperation, enhancement in efficiency and innovation, instead of gaining an advantage through onerous contract terms or contractual claims.

3.2 Contract Price Fluctuation System (CPFS) for Private Sector Construction Contracts

The objective of the Contract Price Fluctuation System (CPFS) is for risk sharing between the client (as the employer) and the contractor. It is an equitable risk sharing mechanism as payments to the contractor can be adjusted either upward or downward in response to the changes in costs. With contract price fluctuation provision, the contractor is aware at the time of tender that the contract will be subject to CPFS from the outset. It helps to remove uncertainty of inflation and hence the contractor can price his tender on the current market value without building in unpredictable inflation. On the other hand, CPFS allows the client to pay for what should be paid taking into account the prevailing inflation or deflation. CPFS was widely used in the past for government contracts and re-introduced by the HKSAR Government for public works contracts in Hong Kong with conditions as specified in Technical Circular (Works) 21/2003. It is a risk management mechanism for sharing construction inflation costs risk between Government as the employer and the contractors. The Government benefits from tender assessments and contract awards based upon market value, with any fluctuation element to be priced for in the future or on actual cost basis. Similar benefits would probably be realized by the private sector clients depending on the scale and nature of the construction projects. The development of Guidelines on CPFS for the

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private sector construction contracts will probably need more deliberations among the key stakeholders in order to come up with the way forward. In view of the complexity and specialty of the issue, the Com-PCM has recently agreed on the formation of a Task Force with leadership from an expert on CPFS to take it forward.

3.3 Milestone Payment

Under milestone payment arrangement, payment will be made on the achievement of pre-defined milestones so as to provide incentive for contractors to make progress. It also helps to avoid possible disputes arising from the monthly measurement process. The railway Corporations and Government have successfully adopted milestone payment methodology, as early as the MTRCL Tsuen Wan Line project which commenced in 1979. The adoption of milestone payment would streamline the processing of interim payments thus improving the cash flow along the supply chain. In view of the similar expertise possessed by the Task Force on CPFS in terms of procurement and contracts management, it has been suggested that the new Task Force on CPFS for Private Sector Construction Contracts would also take up this mission in the initial stage. The effort and resources required for the completion of this mission will be kept in review.

3.4 Selection of Consultants and Contractors

The approaches and methodologies for the selection of consultants and contractors are often the key concerns of the construction industry. Review of the current practices in the selection of consultants and contractors, as well as the possible development of Guidelines on it would probably be useful to the industry. In view of the differences on the key considerations between the selection of consultants and contractors, the criteria to be adopted in these two areas may be different. It is worthwhile for the Com-PCM to set up a new Task Force and allocate effort to study this issue and propose any recommendations on the way forward for the Com-PCM's consideration.

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3.5 ICAC Proposal on the Formulation of a Consultants' List and Cost Database for Repair and Maintenance Works

With the recent introduction of the Fire Safety (Buildings) Ordinance, Cap 572, and the proposed launch of the Mandatory Building Inspection Scheme (MBIS) in the future, it is anticipated that the building Repair and Maintenance (R&M) works would increase. ICAC opined that it might result in an upward trend of corruption reports concerning building management and maintenance of private buildings. Allegations might include contractors trying to secure works contracts by colluding with project consultants resulting in tender rigging, over-pricing and substandard output. As such, ICAC proposed to establish and maintain a consultants' list for R&M works, as well as a cost reference database. An initial discussion has been held among ICAC, Buildings Department, Development Bureau and several concerned members of the Com-PCM on this issue. It is expected that continuous discussions with the ICAC and the relevant parties would be necessary to identify the possible and feasible way forward.

4. Recommendation

- 4.1 The proposed Year Plan 2009 for the Com-PCM with regard to the status of the priority tasks is prepared and shown at Appendix 1.

5. Advice Sought

- 5.1 This paper is an updated version which has been incorporated with comments and suggestions received from Members of the Com-PCM. The proposed Year Plan as discussed in paragraphs 3, 4 and Appendix 1 are deemed to be acceptable to the Com-PCM.

CIC Secretariat
July 2009

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Committee on Procurement Work Plan 2009																														
Task Ref. No.	Task	2008				2009												2010											Current Status	Remarks
		9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11		
A. Partnering																														
A. 1	Take stock of experience of partnering applied in HK and other jurisdictions	■	■																									completed		
A. 2	Formulate good practices on partnering and identify direction for further development			■	■																							completed		
A. 3	Drafting of Guidelines					■	■	■	■	■	■	■	■	■	■	■												in progress		
A. 4	Seek endorsement by the Com-PCM and the CIC for issuance																													
B. Contract Price Fluctuation System (CPFS) for Private Sector Construction Contracts																														
B. 1	Prepare TOR and Membership List for Com-PCM endorsement, and invite the agreed stakeholders to join the Task Force									■	■	■	■	■	■													completed		
B. 2	Take stock of experience of CPFS applied in HK (and other jurisdictions if necessary)																											in progress		
B. 3	Consolidate useful CPFS principles applicable to HK and identify direction for further development																													
B. 4	Drafting of Guidelines																													
B. 5	Consult stakeholders on the draft Guidelines and fine-tuning																													
B. 6	Seek endorsement by the Com-PCM and the CIC for issuance																													
C. Milestone Payment (assuming the same Task Force on CPFS for Private Sector Construction Contracts)																														
C. 1	Initial discussion																											in progress		
C. 2	Take stock of experience of "milestone payment" applied in HK (and other jurisdictions if necessary)																													
C. 3	Drafting of Guidelines																													
C. 4	Seek endorsement by the Com-PCM and the CIC for issuance																													

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Committee on Procurement Work Plan 2009																													
Task Ref. No.	Task	2008				2009												2010										Current Status	Remarks
		9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10		
D. Selection of Consultants and Contractors																													
D. 1	Prepare TOR and Membership List for Com-PCM endorsement, and invite the agreed stakeholders to join the Task Force																												
D. 2	Deliberate the concerns, approaches and criteria in the selection of consultants and contractors																												
D. 3	Consolidate the agreed principles and consult stakeholders																												
D. 4	Propose recommendations on the way forward and further actions for consideration by Com-PCM																												
E. ICAC Proposal on the Formulation of a Consultants' List and Cost Database for R&M Works																													
E. 1	Initial discussion																												
E. 2	Identification of needs and actions																												
E. 3	Review progress of actions and way forward																												
E. 4	Wrap up conclusions for decision by Com-PCM																												

Legend: original schedule (baseline)
 actual progress
 - - - - - as of 1 July 2009