

Construction Industry Council
4th Progress Report of Committee on Procurement

Purpose

This paper outlines the main points discussed at the 4th meeting of the Committee on Procurement held on 24 April 2008. The record of attendance is at Annex A.

Issues Discussed

2. Members discussed the following topics –
 - work plan;
 - financial reimbursement for unsuccessful tenderers of design and build (D&B) contracts; and
 - Partnering – A Brief Review and Some Predictions.

Progress on Matters Arising from 3rd Meeting on 8 October 2007

3. On paragraph 14, Members noted that financial reimbursement to unsuccessful tenderers of design and build (D&B) contracts would be discussed in latter parts of the meeting.

Work Plan

4. Members considered the work plan for the following five priority tasks identified in the 1st meeting of the Committee on 17 May 2007 –
 - (a) procurement approaches;
 - (b) selection of consultants and contractors;
 - (c) tools for project management;
 - (d) procurement arrangements for repair and maintenance (R&M) works of buildings; and
 - (e) procurement practices of other industries.

5. Members agreed that the Committee would focus on developing CIC guidelines on procurement approaches, selection of consultants and contractors and tools for project management. Consideration would be given to the need for forming task forces to work on these guidelines.

6. The deliberations on procurement practices of other industries would be subsumed under procurement approaches given their close relation. ICAC would submit a paper on the procurement arrangements for R&M works for buildings for discussion at the next meeting of the Committee. The Hong Kong Housing Society (HKHS) would be invited to brief Members on the provision of support services on R&M works to individual building owners through its Property Management Advisory Centres.

7. The Secretariat would revise the work plan in accordance with the discussions at the meeting for submission to CIC.

[Post meeting note – The revised work plan is at Annex B.]

Partnering – A Brief Review and Some Predictions

8. Mr Colin Jesse briefed Members on the recent development in partnering in Hong Kong and other economies. Since 2001, various organizations had adopted partnering in their construction contracts including the adoption of non-contractual partnering in public works and public housing contracts for facilitating more effective collaboration and the use of gain share and pain share in some MTRC contracts for sharing of risk and providing incentives for achieving cost savings. Mr Jesse observed that there were local interests in adopting the NEC Contract (which was being promoted by a UK organization with the same name) to implement contractual partnering. It was envisaged that contracts based on NEC would involve integrated management teams, incentives based on key performance indicators, balanced risk sharing and collaborative problem solving. The success factors of this approach would depend on support from leading client organizations, management commitment and cultural change. On the other hand, the use of inappropriate project teams, the inertia against accepting changes and lack of senior management support could be risks hindering successful implementation.

9. Mr Jesse introduced the experience of alliancing in Australia whereby the client, contractors and designers were become parties to a single project agreement for delivering the project through an integrated

team. The parties would jointly develop a target cost estimate (TCE) which included all expected direct cost, allowances for project risk and a fee or profit for each party (other than the client). All parties would share the gain of any cost savings and the pain of cost overruns. There could be further gain or pain share for non-cost key result areas such as time and environment management. Impressive results achieved through alliances were claimed for several resources, infrastructure and building projects. One of these was the North Side Storage Tunnel which was delivered under tight schedules despite considerable difficulties caused by ground conditions.

10. Members considered that CIC should support the use of innovative procurement approaches such as partnering in achieving better value in construction procurement. Members generally agreed that partnering would be more suited to technically complex projects. On the other hand, the traditional approach could be sufficient for normal projects that did not call for sophisticated risk management. Furthermore, only part of the market was ready for partnering since some players might lack the resources and knowledge for this mode of project delivery.

Financial Reimbursement for Unsuccessful Tenderers of D&B Contracts

11. Given that the cost of tendering for D&B contracts was much higher than traditional contracts because for the professional services required to develop comprehensive and quality design submissions, HKCA proposed that unsuccessful tenderers of D&B contracts should be reimbursed for part of the expenses for making such efforts. The proposal would also benefit clients through encouraging contractors to develop comprehensive design, prepare reliable estimate and offer the lowest possible tender prices. Clients could also acquire intellectual right of the submissions of the unsuccessful tenderers thus enabling them to take advantage of desirable features that could help reduce cost and enhance quality. Precedents for reimbursing unsuccessful tenderers had already been established in other economies. There were statutory provisions in the United States for doing so. The practice was adopted in some D&B contracts in New Zealand and public-private participation projects in Australia.

12. Members generally supported HKCA's proposal in view of the significant cost of preparing tender submission for D&B contracts. Members considered that the financial reimbursement should be stipulated clearly in invitation for tenders and should only be made for

submissions that complied with the tender requirements. Subject to agreement of CIC, the consensus of the Committee would be conveyed formally to DEVB for consideration. DEVB advised that the subject would be examined under a consultancy scheduled to start in May 2008 and for completion by the end of 2008.

Follow-up Actions

13. The following follow-up actions were agreed –
- (a) ICAC would submit a paper on the procurement arrangements for R&M works for buildings for discussion at the next meeting of the Committee. HKHS would also be invited to attend to brief Members on the provision of support services on R&M works to individual building owners;
 - (b) the work plan for the Committee would be submitted to CIC;
 - (c) the Secretariat would discuss with Members on the need for forming task forces for the drafting of the guidelines on procurement approaches, selection of consultants and contractors and project management; and
 - (d) CIC would be requested to convey to DEVB the consensus of the Committee that financial reimbursement should be made to unsuccessful tenderers of D&B contracts.

CIC Secretariat
April 2008

Committee on Procurement

**4th Meeting held at 2:30 pm on 24 April 2008
in Conference Room 1201, Murray Building**

Record of Attendance

Present

Mr Russell Black	Chairman
Mr Francis Bong	
Mr James Chiu	
Mr Thomas Ho	
Mr LAM Wo-hei	
Mr S S Lee	
Mr Billy Wong	
Mr Conrad Wong	
Mr T T Cheung	
Mr James Blake	Kowloon-Canton Railway Corporation
Mr Hugh Wu	Macao Studio City
Mr Ian Cocking	Minter Ellison Lawyers
Mr Colin Jesse	Evans and Pecks (HK) Ltd.
Ms Margaret Coates	CLP Power Hong Kong Ltd.
Prof. Mohan Kumaraswamy	University of Hong Kong
Mrs Irene Cheng	Housing Department
Mr W H Mok	ICAC
Mr David Tong	Development Bureau

Absent with apologies

Dr Andrew Chan	
Ms Teresa Cheng	
Mr C K Lau	Hong Kong Federation of Electrical and Mechanical Contractors
Mr CHEUNG Lung-hing	Hong Kong Construction Site Workers General Union

In attendance

Mr Christopher To	Executive Director/Construction Industry Council (designate)
Mr Charles Wong	Executive Director/Construction Industry Council (acting)
Mr K K Yeung	Principal Assistant Secretary for Development (Works) 1 (designate)
Mr K H Tao	Chief Assistant Secretary for Development (Works) 1
Mr Solomon Wong	Assistant Secretary for Development (Works) Public Works Systems Administration 1

Work Plan**(I) Procurement approaches****(A) Partnering**

Milestone	Task	Deliverable
May – Aug 2008	Taking stock of experience of partnering in Hong Kong and in other economies in particular forms of partnering and their application in construction procurement and project management	Experience in partnering Forms of partnering and their applications
Sep – Oct 2008	Formulating good practices on partnering Identifying directions for further development of partnering in Hong Kong	Good practices on partnering Directions for further development
Oct – Nov 2008	Drafting of guidelines on partnering for endorsement by Committee	Guidelines on partnering
Dec 2008	Endorsement of guidelines by CIC for promulgation	

(B) Other procurement approaches

Milestone	Task	Deliverable
Sep 2008	Identifying the need for issuing guidelines on other procurement approaches taking into account the experience in developing the guidelines on partnering	

(II) Selection of consultants and contractors

(A) *Selection of consultants and contractors under the designer-led approach*

Milestone	Task	Deliverable
Jul – Aug 2008	Taking stock of current practices on selection of consultants and contractors and identify problems and issues	Current practices and problems and issues
Sep 2008	Formulating measures for resolving the problems and issues	
Oct 2008	Drafting of guidelines on selection of consultants and contractors	Guidelines
Nov 2008	Endorsement of guidelines by Committee	
Dec 2008	Approval of guidelines by CIC for promulgation	

(B) *Selection of consultants and contractors under other procurement approaches*

Milestone	Task	Deliverable
Sep 2008	Identifying the need for issuing guidelines on selection of consultants and contractors under other procurement approaches taking into account the experience in developing the guidelines on partnering	

(III) Tools for project management

(A) *Milestone payment*

Milestone	Task	Deliverable
May 2008	Drafting guidelines on milestone payment	Guidelines
Jun 2008	Endorsement of guidelines by Committee	
Aug 2008	Approval of guidelines by CIC for promulgation	

(B) *Alternative design*

Milestone	Task	Deliverable
Aug 2008	Drafting of guidelines on alternative designs	Guidelines
Sep 2008	Endorsement of guidelines by Committee	
Oct 2008	CIC to approve guidelines for promulgation	

(IV) Procurement arrangement for repair and maintenance works

Milestone	Task	Deliverable
Jun 2008	<p>Presentation on procurement for repair and maintenance (R&M) works for buildings by ICAC and Hong Kong Housing Society</p> <p>Formulation of Committee's view on procurement arrangements for R&M works and assess the need and the determine the scope of CIC's input into this subject</p>	<p>Comments on procurement arrangements for R&M works for buildings</p> <p>Scope of input of CIC into such procurement arrangements</p>