

Construction Industry Council

Committee on Procurement

Meeting No. 002/13 of the Committee on Procurement was held on Wednesday, 19 June 2013 at 2:30pm at Meeting Room No.1, 15/F, Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

The following items have been discussed at the Com-PCM Meeting No. 002/13:

Agenda Item	Paper	Major Resolutions/ Progress Highlights
2.1	CIC/PCM/R/001/13 (for discussion)	Confirmation of the Progress Report Members confirmed the Progress Report of Meeting No. 001/13 of the Committee on Procurement (Com-PCM) held on 20 March 2013.
2.2	CIC/PCM/R/001/13 (for discussion)	Matters Arising from the Previous Meeting <u>Item 1.6 – Open-Door Session – Report of the Task Force on the Selection of Consultants and Contractors</u> Regarding the proposed change of chairmanship for the Task Force on the Selection of Consultants and Contractors (TF-SCC), TF-SCC Chairman would shortlist some potential candidates for discussion with the Com-PCM Chairman after the meeting. TF-SCC Chairman would also continue with the leadership of the Task Force until a suitable candidate was appointed. <u>Item 1.13(iii) – Closed-Door Session – Issues relating to “estimated quantities provided as reference to lump sum tender but not forming part of the contract”, “elimination of all</u>

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		<p><u>entitlement to EOT” and “demand to submit signed and undated BA Forms”</u></p> <p>It was reported that, after incorporating the comments from CIC’s legal advisor, the Buildings Department and the Council, the finalised set of Alerts on “Recent Issues of Concern on Tendering of Construction Contracts” was published in the CIC website in May 2013.</p>
2.3	<p>CIC/PCM/P/011/13 (for discussion)</p> <p>CIC/PCM/P/015/13 (for discussion)</p>	<p>Issues on On-Demand Bonds</p> <p>Members took note of the Paper CIC/PCM/P/011/13 regarding the issues on on-demand bonds. Members’ deliberations were summarised as follows:</p> <p>(i) <u>Discussion at Council Meeting No. 002/13</u></p> <p>Members were briefed on the Council’s discussion at Meeting No. 002/13 regarding the issues on on-demand bonds. It was reported that, at the meeting, a Council Member commented on the extended period of time required to undertake a consultancy study, and suggested that, in order to look for possible solutions within a short period of time, the Council should leverage the knowledge and experience of Members to iron out the root cause of concerns.</p> <p>(ii) <u>Experience Sharing by Quantity Surveyors</u></p> <p>Representatives of two quantity surveying experts delivered a presentation on “Performance Bond – Experience Sharing for Committee on Procurement of the Construction Industry Council”. A copy of the presentation material was enclosed in the tabled Paper CIC/PCM/P/015/13.</p> <p>Members were advised on the types, purpose and function of bonds and the operations of</p>

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		<p>the two types of performance bonds, namely default bonds and on-demand bonds. Members were also briefed on the current market situation concerning the use of bonds, the impacts of on-demand bonds, the considerations by both the employers and contractors as well as the possible alternatives to the use of on-demand bonds.</p> <p>The experts suggested several key elements for further research or consultancy study if so demanded. These included a study on the effect of on-demand bond on tender price; availability of alternative protection measures; ease of contractors in procuring on-demand bonds from surety; surety's view on the different types of bond; appropriate bond amount; and relevant legal cases on bonds.</p> <p><i>(iii) <u>Sharing of Views and Concerns by the Main Contractors, Sub-contractors and Consultants</u></i></p> <p>Representatives from the main contractors, sub-contractors and consultants shared with Members their views and concerns on the subject. Key points of discussion were as follows:</p> <ul style="list-style-type: none"> - A Member highlighted the disastrous effect that the calling of a bond had on the creditability of the contractors and stated that the use of on-demand bonds was too onerous for the contractors. It was suggested that performance bonds which required some form of certification would be a more reasonable and acceptable instrument to the contractors. - It was also pointed out that the use of bonds would lead to a significant increase in costs and might limit the number of contractors willing to tender for the projects

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		<p>particularly in a blooming construction market. In response, Chairman highlighted that employers, knowing additional costs would incur, still opt for the use of bonds because they felt that after evaluating the project/enterprise risk profile, bonds and/or other forms of securities were needed as risk mitigation measures.</p> <ul style="list-style-type: none"> - A Member expressed that the sub-contractors generally did not support the use of bonds of any types and raised concerns on the practices of employers requesting bonds without any expiry dates in Hong Kong. He stressed that the use of bonds greatly hindered the cash flow and bank facilities of the sub-contractors. - A Member further highlighted the difference between consultancy agreements and construction contracts in terms of contract duration and contract value. He questioned on the reasons behind the need for the use of bonds in consultancy agreements. <p><i>(iv) <u>Sharing of Views and Current Approaches by the Employers</u></i></p> <p>Representatives from the employer's organisations shared with Members their views and current approaches to the use of bonds. Key points of discussion were as follows:</p> <ul style="list-style-type: none"> - It was reported that Airport Authority Hong Kong (AAHK) required bonds by their contractors but not always by their consultants, and that historically bonds were requested without an expiry date, but recently AAHK had revised its practice and assigned a fixed expiry date as well as reduced the bond amount. - It was further reported that MTR Corporation (MTRC) required bonds for construction contracts exceeding certain sums but not for consultancy agreements and that it adopted a flexible approach in deciding on the necessity of bonds. In terms of

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		<p>the expiry date of bonds, approximately 80% of MTRC's bonds have an expiry date specified by an event whilst the remaining 20% have a fixed date specified.</p> <ul style="list-style-type: none">- As for government contracts, Development Bureau reported that it had waived its standing policy on requesting bonds in construction contracts since 1997 and that currently bonds were only imposed on particular projects such as those involving tight construction programme, high risks or co-funding with China. On the other hand, Hong Kong Housing Authority shared that, as part of its risk management system, contractors were required to obtain on-demand bonds for most of its new works projects, except minor works projects. <p>(v) <i>Members' Deliberation</i></p> <p>Chairman expressed that, having heard the presentation from the experts and the views and concerns of the contractors, sub-contractors and consultants as well as the employers, he concurred with the Council Member that a consultancy study on on-demand bonds might not help to solve the issues. Instead, he invited Members to deliberate on whether the issuance of guidance notes, in the form of an Alert or the like, giving recommendations on good practices in relation to the use of on-demand bonds, would be a more appropriate and acceptable way forward. Key points of Members' discussion were as follows:</p> <ul style="list-style-type: none">- A Member reiterated that Hong Kong Construction Association (HKCA) generally did not accept the use of on-demand bonds and that it was not just about the level (or the percentage) of the bonds. From HKCA's perspective, the use of on-demand bonds should be removed completely and that the issuance of guidance notes giving

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		<p>recommendations on good practices was insufficient. The Member suggested that, as a minimum, a clear statement stating that “CIC does not support the use of on-demand bond in the construction industry” was required.</p> <ul style="list-style-type: none"> - A Member highlighted the difficulties the sub-contractors faced in obtaining on-demand bonds for the main contractors. The Member, however, stated that he maintained a neutral stand on the issues because bond did serve its purpose in some circumstances. - Chairman and a Member stated that it would be inappropriate for the Council to make an assertion that “no on-demand bond should be used in the construction industry”. - A Member suggested that an on-demand bond responsibly managed was an effective risk management tool. They agreed with the Chairman that the issuance of an Alert or the like reminding “industry stakeholders to act in a responsible and appropriate manner when implementing on-demand bonds” would be a more appropriate way forward. - A Member also suggested that it would be inappropriate for the Council to request for a ban on the use of on-demand bond across the industry because, in addition to offering purely monetary compensation, on-demand bonds might also serve the benefit of ensuring proper performance of the contractors. <p>After much deliberation, Chairman concluded that there were differing views within the Com-PCM and that whilst Members from the main contractors and sub-contractors’ associations were in favour of requesting support from the CIC to put a ban on the use of on-demand bonds across the industry, Members from the employers’ organisations</p>

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		considered that on-demand bonds were needed as part of their risk management plan. No consensus could be reached amongst Members on the way forward.
2.4	CIC/PCM/P/012/13 (for discussion)	<p>Issues on Construction Programme</p> <p>Members took note of the Paper CIC/PCM/P/012/13 regarding the Issues on Construction Programme.</p> <p>A Member expressed HKCA’s view regarding the need to set a benchmark for reasonable construction programme for different types of works in Hong Kong. He suggested the Council to consider commissioning researches to: (i) compare the method of construction and average construction time of similar economies (e.g. Singapore, Japan, Korean, Australia and Europe); and (ii) review critically the inter-relationship of commonly adopted local designs, the normal methods of construction, the number of workers required and the reasonable time of completion.</p> <p>In response to HKCA’s suggestions, Members commented that whilst it might be possible to gather basic data to work out ballpark construction rates for typical public housing works, gathering of information and determination of average construction rates for private sector and civil works projects might be problematic or non-conclusive. Members further suggested that, if researches were to be commissioned, they should more appropriately be focused on local experience.</p> <p>Given the vast amount of variables and site/project-specific factors involved, Chairman</p>

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		<p>questioned on the feasibility and appropriateness for the Council to set benchmark on construction periods. To echo Chairman's point, a Member commented on the difficulties involved in achieving a reasonable benchmark and expressed doubts on the usefulness or representativeness of such benchmark values. He also doubted on whether sufficient data would be available to the Council for setting benchmark and the amount of work that would be involved. The Member suggested Com-PCM to consider issuing a one-page Alert, as an alternative to research studies, to draw the industry's attention to the importance of a workable construction programme.</p> <p>Chairman invited the Member to contribute in the drafting of the Alert, if agreed to be issued in future, and HKCA's representative to give suggestions on the proposed scope of a possible research study for further deliberation at the upcoming meeting(s).</p>
2.5	CIC/PCM/P/013/13 (for information)	<p>Report of the Task Force on Competition Law</p> <p>Members took note of the Paper CIC/PCM/P/013/13 regarding the recent publications and deliverables of the Task Force on Competition Law. Members were advised that a number of publications which aimed at introducing the Competition Ordinance and its potential implications for the construction industry were issued. These included a Fact Sheet and articles in the newspaper and CIC newsletter. Members were also informed that a Competition Law cum Security of Payment Forum was successfully held on 3 May 2013 to help inform construction industry stakeholders the key provisions of the Competition Ordinance and some practical steps to avoid infringing the new law. Members commended</p>

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		the event and publications.
2.6	Verbal Report	<p>Report of the Task Force on NEC3 Collaborative Contracts</p> <p>Members were briefed on the progress of the Task Force and Task Group on NEC3 Collaborative Contracts. It was reported that the drafting of a Frequently Asked Question (FAQ) document on NEC3 Collaborative Contracts was in progress. Members were advised that a draft FAQ document was currently under review by a Reviewer to ensure consistency and adequacy. The Section Leaders and the Reviewer would continue to edit the draft FAQ document, and, if appropriate, circulate it to the Real Estate Developers Association (REDA) and/or Independent Commission Against Corruption (ICAC) for comment and hold further Task Force meeting(s) to fine-tune the document before finalising it for formal submission to the Com-PCM for comment in 2014.</p>
2.7	Verbal Report	<p>Report of the Task Force on the Selection of Consultants and Contractors</p> <p>Chairman of the Task Force on the Selection of Consultants and Contractors updated Members on the status of the draft Reference Materials on the Selection of Consultants. Members were advised that a Task Force meeting was held to review the draft document edited by the Report Editor, and that comments were being received from Task Force Members. Upon receipt of the Task Force's comments, Task Force Chairman would amend the document, and if necessary, hold further meetings with Task Force Members and/or the Report Editor to review the document before circulating it to Com-PCM for comment.</p>

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2.8	Verbal Report	<p>Report of the Task Force on Employer-Procured Insurance Policies in Construction Contracts</p> <p>Chairman of the Task Force on Employer-Procured Insurance Policies in Construction Contracts briefed Members on the progress of the Task Force. Members were advised that, at the last meeting, the Task Force explored the potential benefits and pitfalls of the use of employer-procured insurance in Hong Kong and shared a range of local and overseas experience in its application. The Task Force also discussed briefly the difference between employer-procured insurance policies and contractor-controlled insurance policies. The Task Force would continue the sharing of experience at the upcoming meetings and start to deliberate on the possible deliverables and way forward.</p>
2.9	CIC/PCM/P/014/13 (for discussion)	<p>Year Plan for 2013/2014 – Progress Review</p> <p>Members noted and confirmed the Year Plan.</p>
2.10	AOB	<p>In response to the concerns raised by a Member regarding the practice being adopted by a sub-vented organisation overseen by the Architectural Services Department in requesting the consultants to include the costs of Resident Site Staff into the lump sum fee proposal for consultancy services, representative from the Development Bureau stated that he would bring back the matter to the relevant government officials for their attention.</p>