

[Draft]
Construction Industry Council
5th Progress Report of Committee on Procurement

Purpose

This paper outlines the main points discussed at the 5th meeting of the Committee on Procurement held on 1 August 2008. The record of attendance is at Annex A.

Issues Discussed

2. Members discussed the following topics –
- procurement arrangements for repair and maintenance (R&M) works for private buildings;
 - Contract Price Fluctuation System (CPFS) for private sector construction contracts; and
 - outline of Guidelines on Partnering.

Progress on Matters Arising from 4th Meeting on 24 April 2008

3. Members noted the following –

Paragraph 13(a)

ICAC's paper on the procurement arrangements for repair and maintenance works for private buildings would be discussed in latter parts of the meeting;

Paragraph 13(b)

The work plan for the Committee was endorsed by the CIC at its 9th meeting held on 2 May 2008;

Paragraph 13(c)

Formation of a task force to undertake the drafting of the Guidelines on Partnering would be discussed in latter parts of the meeting; and

Paragraph 13(d)

The consensus reached by CIC on financial reimbursement to unsuccessful tenderers of design and build contracts was conveyed to DEVB through a letter issued by Chairman of CIC dated 23 June 2008.

Procurement Arrangements for R&M Works for Private Buildings

4. ICAC advised that the number of corruption reports concerning management and maintenance of private buildings rose sharply from 715 in 2000 to 972 in 2007 and accounted for over 40% of the private-sector corruption reports. The majority of these reports were alleged malpractices involving collusion by contractors, consultants and members of Owners' Corporations (OC) to benefit through over-pricing of R&M works and acceptance of substandard works. The situation could deteriorate with the enactment of the Fire Safety (Building) Ordinance in 2007 and the implementation of the Mandatory Building Inspection Scheme being taken forward by BD.

5. In line with the proposal made by owners of individual flats, OCs and some Legislative Council and District Council members, ICAC proposed the establishment of the following by CIC to help OCs in handling tenders for R&M works –

- (a) establishing a list of consultants who were ready to commit to ethical practices and were interested in undertaking small or medium size R&M jobs; and
- (b) a reference database on the cost of R&M works containing the unit cost of common work items and values of projects.

6. Members generally agreed that, as these were major initiatives, CIC should consider whether they were justified and, if so, the arrangements and resources for implementation. If a list of consultants was to be established, it would be necessary to assess the competence of the listed firms in R&M works thus necessitating elaborate vetting process and deployment of significant staff resources. Responding to the

need for establishing a list of consultants given that professional institutions could take disciplinary actions against misconduct of its members, ICAC pointed out that such sanctions would apply only to individuals but not to consulting firms. Members also doubted the feasibility of providing cost data that could help laymen in assessing the reasonableness of tender prices and were concerned that the misinterpretation of cost data could lead to unwarranted mistrust between OCs and their contractors and consultants.

7. On the other hand, noting that ICAC was approaching CIC as the last resort after the other concerned organizations had declined to take up the suggested measures, Members agreed that, as the industry co-ordinating body, CIC should take the lead in exploring the solutions through establishing a task force under the Committee and inviting the Hong Kong Housing Society, BD, concerned professional institutions and organizations as well as other interested stakeholders to participate.

CPFS for Private Sector Construction Contracts

8. With the very low volume of works in the past few years, tender prices had remained highly competitive and profit margins had remained very thin. However, the unprecedented rise in the cost of fuel and reinforcement over the recent months were hurting contractors who had to take on the risk of price fluctuations in private sector contracts. As such, HKCA appealed to CIC to promote and encourage inclusion of CPF provisions in private sector contracts so as to avoiding putting all the risks of increase in construction cost on contractors.

9. Members were generally of the view that CPFS was a mechanism for sharing of risk between clients and contractors. While Government might benefit from CPFS in the long term by relieving contractors from the need to price in contingencies for CPF, CIC was not in a position to determine whether similar benefits could be realized by private sector clients given the significant variations in the scale and nature of their works portfolios. CIC should not therefore take any views on how the risk of CPF should be shared in private sector contracts. On the other hand, CIC could draw up guidelines for implementing CPF for voluntary adoption by private sector clients.

Outline of Guidelines on Partnering

10. Members endorsed the outline at Annex B for drawing up the CIC Guidelines on Partnering featured in the work plan endorsed by the Committee at the 4th meeting held on 24 April 2008. The proposed guidelines would feature non-contractual partnering; contractual partnering based on NEC contracts; alliancing; and ways for migrating from non-contractual partnering to contractual partnering. A task force would be formed under the Committee to undertake the drafting of the guidelines in view of the considerable amount of fact finding and research that would be required in the process.

Follow-up Actions

11. The following follow-up actions were agreed –
- (a) the Secretariat would proceed to form a task force under the Committee to consider ICAC's proposal for establishing a list of consultants and cost database for R&M works;
 - (b) the Secretariat would prepare draft of the guidelines on the inclusion of CPF in private sector contracts for consideration; and
 - (c) the Secretariat would proceed to form a task force under the Committee to undertake the drafting of the Guidelines on Partnering.

**CIC Secretariat
August 2008**

Committee on Procurement

**5th Meeting held at 2:30 pm on 1 August 2008
in Conference Room 1201, Murray Building**

Record of Attendance

Present

Mr Russell Black	Chairman
Dr Andrew Chan	
Mr T T Cheung	
Mr Thomas Ho	
Mr LAM Wo-hei	
Mr S S Lee	
Ms Ada Fung	representing Permanent Secretary for Transport and Housing (Housing)
Mr Thomas Tse	representing Mr Conrad Wong
Mr James Blake	Kowloon-Canton Railway Corporation
Mr C K Lau	Hong Kong Federation of Electrical and Mechanical Contractors
Mr Hugh Wu	Macao Studio City
Mr N M Chan	Housing Department
Mr Colin Jesse	Evans and Pecks (HK) Ltd.
Prof. Mohan Kumaraswamy	University of Hong Kong
Ms Margaret Coates	CLP Power Hong Kong Ltd.
Mr Joseph Yung	Development Bureau
Mr W H Mok	ICAC

Absent with apologies

Mr Francis Bong	
Ms Teresa Cheng	
Mr James Chiu	
Mr Billy Wong	
Mr Conrad Wong	
Mr CHEUNG Lung-hing	Hong Kong Construction Site Workers General Union
Mr Ian Cocking	Minter Ellison Lawyers

In attendance

Development Bureau

Mr K K Yeung	Principal Assistant Secretary for Development (Works) 1
Mr K H Tao	Chief Assistant Secretary for Development (Works) 1
Mr Solomon Wong	Assistant Secretary for Development (Works) Policy & Development 3

CIC Secretariat

Mr Alex Leung	Senior Manager (Council Services) 1
Ms Phoebe Leung	Manager (Council Services) 2

Outline of CIC Guidelines on Partnering

1. Introduction
2. Non-contractual partnering
 - (a) procedures
 - (b) local experience
 - (c) benefits of non-contractual partnering
 - (d) tips for achieving good results
3. Contractual partnering based on NEC
 - (a) introduction to NEC
 - (b) experience of using NEC in other economies
 - (c) potential applications of NEC in the local construction industry
4. Alliancing
 - (a) introduction to alliancing
 - (b) experience of using alliancing in other economies
 - (c) local experience in pain share/gain share
 - (d) potential applications of allinancing in the local construction industry.
5. Migration from non-contractual partnering to contractual partnering