



Professor Arthur McInnis continues his review of the Report of the Construction Industry Review Committee ("CIRC"). This month he looks at its recommendations on risk management, quality, value management, sub-contractor registration, structured site supervision and independent audits — as well as a proposed new institutional framework.

Dr. McInnis is an Associate Professor of Law at the Faculty of Law of the University of Hong Kong, the author of Butterworths Building Law Handbook and a Consultant with Denton Wilde Sapte. Questions or comments on this article may be emailed to jam@dentonwildesapte.com.hk

Construct For Excellence II

Risk Management

Chapter five of the Report, *Achieving Value in Construction Procurement*, sets forward the Committee's views on risk management. The views are orthodox in terms of international practice though unorthodox in so far as Hong Kong is concerned. The orthodoxy builds on work published in the United Kingdom.¹ The opening quote above makes the point that a more systematic approach is required. What would this entail? In short, it would seek to assist project managers (1) identify, assess and rank risks explicitly; (2) make better informed decisions and plan for contingencies; (3) better control and monitor uncertain aspects of construction projects; and (4) limit potential damage should a risk materialise. The result of this suggested approach in the report would be to improve the chances of satisfying the linked parameters of time, cost and quality. The systematic assessment of risks is not common in Hong Kong though the report mentions that the MTRC is working toward this end and recommends that the Housing Authority and Works Department follow suit. The fruition of this would be stand alone risk assessment and management procedures coupled with guidance notes. These procedures would serve to further the elaboration of a comprehensive set of standards integrating all aspects of risk management as well as hazard control.

The report takes a frank view of how risks are apportioned and priced locally. In the view of the committee, the result is that responsible contractors are often penalised and not awarded contracts because they have priced for the risks. On the other hand, irresponsible contractors "when work is scarce...tend not to price the risks and seek instead to submit claims, if the risks materialised, to mitigate

their loss". As for the unfair allocation of risks in the first instance by employers the committee observed "onerous allocation of risks to the contractors in a climate of severe competitive tendering that drives prices down can lead to substandard workmanship and other malpractice to cut corners." The current predicament that the Housing Authority finds itself in is a case in point. The irresistible conclusion that one is driven to is that it is in the best interests of both parties that risks are allocated equitably. Once again, there are established principles upon which this may be undertaken. Perhaps the most important recommendation following from this, which the committee makes, is that the government should revisit key parts of the Jesse Grove Report, which have been rejected.

Quality

Quality fell within the specific Terms of Reference of the review and its goal was exceedingly ambitious. The standard that the committee settled upon was not merely improvement but excellence. This can only be achieved with a process of continuous improvement. Let us take another example and contrast the construction industry with the personal computer industry. In that sector not only do costs often half from year to year but productivity doubles as well. These results cannot be achieved in any sector that is complacent and while not likely within reach of the construction industry in any event it nevertheless throws down a challenge to it to improve. Where does one begin in improving quality? Seven issues need to be addressed according to the Report: (1) enhancing the knowledge and involvement of the client; (2) recognising the importance of the planning and design stages; (3)

affirming the need for realistic project programming; (4) establishing clear accountability; (5) addressing shortfalls in subcontracting; (6) stepping-up site supervision and quality assurance; and (7) bettering the standards of renovation contractors and decorators. In the committee's and my view, each and every one is achievable.

Value Management

Recommendations address the necessity to move toward value management techniques. This is a process that is intended to better define and address not only the client's needs but those of other stakeholders as well. One might expect superior and earlier defined project objectives and specifications too as a more comparative approach to evaluating construction methods and inputs. It is a way of enhancing decision-making and improving project outputs and has proved to be beneficial when introduced in other jurisdictions.

Subcontractor Registration

Subcontracting has its advantages and some were noted in the report; however, the emphasis was clearly upon its shortcomings. To redress some of these, the report adopts a cautious approach that seeks to put in place a voluntary system of registration for trade subcontractors. To this end subcontractors would have to meet stipulated criteria in terms of capital, managerial and technical expertise and amount of direct labour employed. Once established it would then fall to clients to require their main contractors to engage only registered subcontractors. Subcontractors who failed to meet the criteria would also be liable to disciplinary action. It will be left to the industry to determine how best to take this forward and administer, though it was also suggested that the Organised Specialist Subcontractors System could be built upon in this regard.

Structured Site Supervision and Independent Audits

Following initiatives begun by the Buildings Department ("BD") and Works Bureau ("WB") stepped up supervision and independent audits may become the norm.

Since last August the BD has adopted additional site supervision requirements that mandate inspections at certain critical stages of construction for foundation works and ground investigation. The BD measures also lay down required qualifications and experience for supervisors. The report proposes that the BD consider extending the measures to superstructure works. The Works Bureau's Independent Audit Scheme ("IAS") was introduced in 1999 to deter and facilitate the detection of malpractices on site. The IAS may be expanded by WB and adopted by others as well. The recommendations to extend these initiatives is all well and good, but it seems that they serve largely to replicate, in part, the more comprehensive and rigorous system of oversight pertaining under the Buildings Ordinance. Government is currently considering the advisability of bringing public sector housing construction within the ambit of this legislation and the report seeks to encourage that prospect. It is a desirable end.

A New Institutional Framework

Past experience has taught us that the best way to ensure implementation of a set of recommendations is to set up an institutional framework to take them forward. Nowhere was this more successfully done recently than in the United Kingdom following the release of the *Latham Report*. In that report, Sir Michael Latham sketched the contours of a Construction Industry Board that would serve as an umbrella body and change agent for reconfiguring UK industry. The CIRC saw this success first hand on a visit to the UK and no doubt it influenced their recommendation to establish a new institutional framework locally. The report makes two key suggestions in this regard. The first is that the Works Bureau assumes the role of a lead agency to better co-ordinate policy-making. The second recommendation is to create a new industry co-ordinating body. The new body is intended to deliberate on as well as generate consensus among members on strategic issues affecting industry, as well as communicate industry's needs to government. More specifically, the body will: (1) further self-regulatory functions of industry through the formulation of codes

of conduct and administer registration schemes; (2) provide guidance and direction to the Construction Industry Training Authority; (3) promote research; (4) assume responsibility over standardisation; (5) promote knowledge sharing and good practices; (6) devise performance indicators; and (7) organise award schemes in co-operation with government. The makeup of the new body will be both broad and representative of all stakeholders plus independent members. It will be given a permanent secretariat to oversee operations and be funded from levies under the Industrial Training (Construction Industry) Ordinance and possibly other ordinances.

Summing Up

I have tried to give a flavour of the variety and importance of the recommendations in the Tang Report in my last two columns. There is of course still much that I have not touched upon, ranging from committee support of target cost contracts to their suggested legislating of security of payment or perhaps a new safety regulatory regime. The recommendations are bold, demand widespread support and immediate action. In the report, it was remarked that Hong Kong is at a crossroads — but which crossroads. It is not the crossroads of the harbour tunnels or the Lantau links but the crossroads in districts throughout the SAR. While one may marvel at its tunnels and bridges Hong Kong is also more and less than them. This sense was not lost on the committee and they deserve the fullest credit for putting on record, that the industry has not distinguished itself on the whole in terms of the quality of its work, its productivity, safety or environmental performance. In sum, the predominant theme in *Constructing Excellence* is one of the need for change and improvement. For the committee and for Hong Kong the record can be improved; improved by enhancing integration across industry, in its processes and among its participants. Surely, this order cannot be taller than Tsing Ma bridge. ■AAC

¹ *Report on Engineering Construction Risks*, published by the Science and Engineering Research Council, United Kingdom.