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**Legislative Council
Panel on Transport**

**Subcommittee on matters relating to the
implementation of railway development projects**

**Minutes of meeting on
Monday, 4 March, 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-yee, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon CHAN Kwok-keung
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LAU Ping-cheung
- Members absent** : Hon LAU Chin-shek, JP
Hon TAM Yiu-chung, GBS, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
- Public officers attending** : Transport Bureau

Mr Arthur HO
Deputy Secretary for Transport
- Attendance by invitation** : Kowloon-Canton Railway Corporation (KCRC)

Mr Michael TIEN
Chairman, KCRC

Mr K Y YEUNG
Chief Executive Officer, KCRC

Mr James BLAKE
Senior Director, Capital Projects, KCRC

Mr Samuel LAI
Senior Director, Finance & Management, KCRC

Mr David FLEMING
Company Secretary & General Counsel, KCRC

Mr Leo MAK
General Manager, Railway Systems (Ag), KCRC

Mr Akber KHAN
General Manager, Corporate Affairs (Ag), KCRC

Mr Raymond WONG
Senior Corporate Affairs Manager (Ag), KCRC

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Alice AU
Senior Assistant Secretary (1)5

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- I West Rail project update - contract management**
(LC Paper No. CB(1)1138/01-02(01) - Information paper provided by the KCRC;
LC Paper No. CB(1)1197/01-02(03) - Letter dated 26 February 2002 from Hon CHENG Kar-foo to the Chairman of KCRC;
LC Paper No. CB(1)1197/01-02(04) - KCRC's reply to the letter from Hon CHENG Kar-foo;
LC Paper No. CB(1)1197/01-02(05) - Information paper on "KCRC Contract Strategy"; and
LC Paper No. CB(1)1209/01-02(01) - Information note on "Build-up of the \$98 million negotiation mandate for the DB-1500 supplemental agreement")

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The Chairman advised that the present meeting was convened to continue discussion with the Kowloon-Canton Railway Corporation (KCRC) and the Administration on issues related to KCRC's handling of the West Rail (WR) telecommunications systems contract (DB-1500) awarded to Siemens Limited (Siemens) and the other 26 supplemental agreements (SAs) with contractors for WR contracts. KCRC's response to the questions and concerns raised by members at the Subcommittee meeting held on 4 February 2002 was issued vide LC Paper No. CB(1)1138/01-02(01). A list of questions raised by Mr CHENG Kar-foo and the reply given by KCRC were issued vide LC Paper Nos. CB(1)1197/01-02(03) and (04) respectively. Two information papers provided by KCRC, one on "KCRC Contract Strategy" and another on "Build-up of the \$98 million negotiation mandate for the DB-1500 supplemental agreement", were issued vide LC Paper No. CB(1)1197/01-02(05) and CB(1)1209/01-02(01) respectively.

2. The Chairman invited members to go through these documents. Members' discussion with KCRC and the Administration were summarised in the following paragraphs.

Contract DB-1500

Use of technical weighting as evaluation criteria

3. Referring to the table in paragraph 6 of KCRC's answer to question (a) (LC Paper No. CB(1)1138/01-02(01)) which set out the findings of the technical assessment team on Siemens as the lowest conforming tenderer and the next lowest conforming tenderer, Mr LAU Kong-wah observed that it was clearly evident that Siemens' overall technical performance was not as good as the next lowest conforming tenderer as Siemens only got good rating in five out of the ten items assessed while the number of good ratings scored by the next lowest conforming tenderer was eight. In particular, he pointed out that Siemens only got a passing rating for the Passenger Information Display System (PIDS) and the Closed-circuit TV (CCTV) System, i.e. two of the three subsystems which were delayed, while the next lowest conforming tenderer's rating was good for both. In this connection, Mr LAU questioned why the 70:30 weighting for technical and financial aspects of a tender was not used as the basis of tender evaluation for contract DB-1500. He considered that if due regard was given to the technical performance of the tenderers, the next lowest conforming tenderer should have been selected and the subsequent delay caused by Siemens might have been avoided.

4. In response, Mr James BLAKE, Senior Director, Capital Projects of KCRC (SD/CP, KCRC), advised that in accordance with KCRC's procurement rules, a set of evaluation criteria was approved by the Corporate Tender Board (CTB) before tenders were invited. For contract DB-1500, there was no technical weighting as such. The requirement was for the tenderer to demonstrate its ability to achieve a pass rating in all of the relevant technical aspects for further consideration on the price. Before

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tenders were invited, the basis of evaluation must be communicated to all tenderers via the instructions to tenderers which was confirmed by CTB. Mr K Y YEUNG, Chief Executive Officer of KCRC (CEO of KCRC), also stressed that it would be unfair to the lowest conforming tenderer if additional evaluation requirements were imposed during tender evaluation. In that case, the Corporation might be subject to challenge for violating the relevant provisions in the World Trade Organization Agreement on Government Procurement (WTO-GPA).

5. SD/CP, KCRC further elucidated that in the Corporation's marking scheme, the distinction between pass and good ratings was that a pass rating was 60% while a good rating was 80%. The ratings scored by the two tenderers were merely recorded for accuracy and completeness and the denominator was to achieve a pass rating in all aspects. Against this evaluation criteria, the overall conclusion reached was that the contract could be awarded to either Siemens or the next lowest conforming tenderer as both had demonstrated full conformity with the technical and contractual aspects of the instructions to tenderers and relevant specifications.

6. To supplement, CEO of KCRC explained that in some contracts, the basis of tender evaluation might be a mix of technical and financial scores where, for instance, 70% of the evaluation rating would be based upon a tenderer's technical proposal and 30% would be based upon its financial proposal. It was more commonly used for those projects which were more complex, involving difficult technical requirements, involving a lot of software design and development, or for procurement of products of a high wear and tear nature, for example, the procurement of rolling stock or the Main Control System. Mr Leo MAK, General Manager, Railway Systems (Ag) of KCRC (GM/RS, KCRC), also advised that as the seven subsystems under contract DB-1500 only required equipment built upon tried and proven technology, no such evaluation criteria or requirements were included in the tender.

7. While reiterating that the requirement was for the tenderer to demonstrate its ability to achieve a pass rating in all of the relevant technical aspects, CEO of KCRC emphasized that the three subsystems under contract DB-1500 were delayed not because of technical incompetence on the part of Siemens or its specialist subcontractor, Optical Network Limited (ONL). It arose as a result of commercial issues between Siemens and ONL. In addition, he said that a pre-qualification exercise was conducted for contract DB-1500 and Siemens was one of the five pre-qualified companies. Hence, the Corporation's decision was in no way affected by Siemens' reputation. Nonetheless, CEO of KCRC assured members that in future projects, the Corporation would critically examine whether technical weighting should be imposed on a need basis.

8. Notwithstanding KCRC's explanation, the Chairman called on the Corporation to consider making all necessary adjustments to its contract procurement strategy taking into account the views and suggestions made by members. In response, Mr Michael TIEN, the Chairman of KCRC, said that the points raised by members were well-taken and much wider issues were involved. In this respect, he considered that

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it would be most important to ensure that all projects undertaken by the Corporation were value-for-money. Hence, appropriate contract strategy should be adopted on a case-by-case basis. Clearly for those projects which involved public safety, technical scores should be considered. However, for projects which did not necessitate such a weighting, a pass rating in all relevant aspects should suffice. Otherwise, the project cost might be increased unnecessarily and thus, affecting the Corporation's competitiveness and the level of fares. Acknowledging members' grave concern in this matter, he said that the Corporation would learn from this incident and try to strike a right balance between these considerations.

Admin 9. Mr LAU Kong-wah remarked that in his opinion, telecommunications system was an important system which involved public safety. To facilitate members' understanding, he requested the Administration to provide supplementary information on the use of technical weighting in the award of telecommunications system contracts for similar railway projects, including KCRC's Ma On Shan to Tai Wai Rail Link (MOS Rail), as well as the MTR Corporation Limited's Tseung Kwan O Extension and Airport Railway.

KCRC 10. Responding to Mr CHENG Kar-foo, Mr Samuel LAI, Senior Director, Finance & Management of KCRC, reported that the relevant East Rail Extension contracts were awarded to Siemens in February and April 2001 respectively. As a related issue, Mr CHENG Kar-foo requested for a detailed breakdown of any SAs entered into by the Corporation for the MOS Rail project. CEO of KCRC agreed to provide the requested information in writing after the meeting.

11. In reply to the Chairman's follow-up enquiry on the use of technical weighting for the signalling system contract, SD/CP, KCRC explained that as one of the most important systems in railway operation, a funnelling arrangement would be used. Basically, the Corporation would go out to all signalling system contractors around the world and solicit their initial technical proposals. After evaluation, the Corporation would decide which of those would conform with its requirements. A more advanced technical evaluation would then be conducted to identify those tenderers who could conform technically. Afterwards, the Corporation would receive priced tender from these selected tenderers.

Exercise of due enquiry during tender evaluation

12. Referring to paragraphs 6 and 7 in the reply to question (b), Mr LAU Kong-wah enquired about the details of commitment and substantiation provided by Siemens which had led the tender assessment team to conclude that "Siemens fully understood what was required of and from them under the contract, and that they could perform and deliver fully in conformity with the Corporation's specifications". As it turned out, Siemens had clearly failed to do so.

13. Mr CHENG Kar-foo pointed out that the tender submitted by Siemens was exceptionally low, i.e. 66% lower than the Corporation's pre-tender estimate. In

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particular, Siemens' price for PIDS was 30% lower than that of the second lowest conforming tenderer. As such, he was concerned that despite the relatively better technical performance of the second lowest tenderer, the Corporation was more or less drawn in by Siemens' exceptionally low tender price as well as its international stature when the decision for the award of contract was being made. In this respect, Mr CHENG asked whether the Corporation had ever doubted Siemens' commitment or ability, both technical and financial, in performing its contractual obligations, and whether the Managing Board had been duly informed about the situation at the time.

14. In reply to Mr Abraham SHEK's enquiry about the basis of the Corporation's pre-tender estimate, SD/CP, KCRC explained that as there was no up-to-date information to rely on, the Corporation had adopted a general approach by going out to the market for rough estimates. In certain areas where there was no directly comparable prices, an estimate was built up from the basic cost elements on the basis of subjective judgement. Noting that only a speculative answer could be given, he would expect that estimates of this nature would normally have a margin of about 20% above market price. CEO of KCRC supplemented that reference had also been made to available prices from airport railway projects.

15. Regarding the Corporation's handling of exceptionally low bids, CEO of KCRC stated that according to KCRC's procurement rules, the tender assessment team was required to exercise particular care under those circumstances. Accordingly, the assessment team had put certain specific questions to Siemens, all of which were designed to probe Siemens' ability to perform and deliver. Noting the concerns raised by the members, he agreed that the Corporation might need to further examine whether improvements could be made.

16. GM/RS, KCRC also advised that at that time, specific questions were asked in respect of the resources for the installation of systems and the relevant quantities in respect of the subsystems to establish whether Siemens understood the requirements of the tender. In its response, Siemens provided clarification with substantiation to demonstrate their understanding and also added resources in some areas. Most importantly, Siemens stated its commitment to provide whatever resources were necessary to meet its obligations under the contract. In every case, Siemens provided substantiation which was included in a Letter of Clarification. In other words, the assessment team asked Siemens the question: "Can you demonstrate that you can perform and deliver these (under-priced) items within your total tender price?" Siemens' response was an unequivocal affirmation with substantiation.

17. GM/RS, KCRC further said that after preliminary assessment and initial clarification, Siemens and the second lowest priced tenderer had satisfactorily answered all technical, commercial and financial questions. At that stage, only the conformity of the Radio System, Metropolitan Area Network and platform-to-train CCTV System in respect of the two conforming tenders were still subject to verification. SD/CP, KCRC supplemented that a team was thus sent to visit Siemens and the next lowest priced tenderer in September 1999 to verify critical aspects of

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these three subsystems which were the weakest in technical compliance terms and were all substantially under-priced.

18. In this respect, Mr LAU Kong-wah asked whether during KCRC's site visit, Siemens had been asked to confirm its arrangement for subcontracting and whether the technical performance of prospective subcontractors was evaluated. GM/RS, KCRC replied that any subcontracting arrangements for specific items of work in the contract would have to be stated clearly when tenders were submitted. The plan for the site visit was to assess only those subcontractors whose experience was doubtful at that time, which were the platform-to-train CCTV, radio and Metropolitan Area Network, and definitely not any of the three subsystems in question. For contract DB-1500, Siemens had not proposed the use of subcontractor for these three subsystems as its original intention was to undertake the relevant software development and hardware integration with in-house resources. However, as the project progressed, it was not evident that adequate resources were pitched in by Siemens. ONL was brought in only after pressure from the Engineer to recover design delays that had arisen because of Siemens' failure to find acceptable in-house software resources need for these subsystems.

19. Mr LAU Kong-wah however considered that except for those subsystems which might appear to be problematic at the outset, other subsystems under the contract should also be covered during the overseas site visit. He also expressed concern that notwithstanding the Corporation's enquiry with Siemens in the first place, Siemens' commitment to perform and deliver within its tender price using its own resources, as well as Siemens' subsequent delay recovery promises, Siemens had totally failed to honour its promises and provide the necessary resources to meet its obligations under the contract. In this connection, Mr LAU asked whether there was any negligence or oversight on the part of SD/CP, KCRC as the leader of the project and CEO of KCRC as the then Chairman-cum-Chief Executive of KCRC.

20. Mr CHENG Kar-foo also opined that given the substantially lower price entered by Siemens, all aspects of the contract should have been critically evaluated in every opportunity. The Corporation should have adopted a cautious approach in accepting the substantiation given by Siemens on paper alone. It was particularly important because under the relevant WTO-GPA provision, the employer was only obliged to award a contract to the lowest conforming tenderer if due enquiry had been made to the satisfaction of the employer in case of an abnormally low tender compared to other tenders. As such, he considered that if the Corporation had exercised due enquiry and Siemens was not able to satisfy the Corporation in all aspects, the Corporation should not be bound to award the contract to Siemens. He took the view that this might be an area of oversight by the tender assessment team and the KCRC management team.

21. In response, SD/CP, KCRC stressed that the assessment and review process for contract DB-1500 lasted about three months after tenders were received. The tender assessment team was questioned in turn by a Tender Review Panel (TRP) led by

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himself to oversee the evaluation process. The TRP was satisfied that the exercise which was basically a paper-driven exercise, was fully in conformity with the Corporation's procedures for tender assessment as well as the WTO-GPA requirement. During assessment, the tenderers were required to demonstrate that they had conformed with the instructions to tenderers. That process was completed in detail. The TRP was satisfied that it had been done properly and that report was sent to CTB.

22. SD/CP, KCRC also did not agree that there was any negligence at the time tender assessment was completed. He reiterated that in every tender, the subcontracting resources must be identified to the employer's satisfaction. In every contract, the contractor would have the opportunity to undertake the works using such subcontracting resources. However, there was also the requirement that the contractor must replace those resources if they were proving to be unsatisfactory. As explained earlier, when the original resources were failing to deliver, Siemens came up with the alternative of employing ONL as the specialist subcontractor. But unfortunately, its alternative likewise was unable to deliver in the time that was available.

23. Responding to Mr LAU Kong-wah's question, CEO of KCRC stated that as the then Chairman-cum-Chief Executive of KCRC, he had all along monitored the situation as regards contract DB-1500. Noting the low tenders received, he had instructed SD/CP, KCRC and the WR Division to make further enquiry. Also, as the Chairman of the CTB, he had scrutinized the relevant findings reported by the tender assessment team whose conclusion was that Siemens' tender was acceptable notwithstanding its low price. As such, the CTB endorsed a contract award to Siemens on 3 November 1999 and subsequently made a recommendation to the Managing Board on 22 November 1999. Notwithstanding the subsequent delay for the three subsystems, CEO of KCRC reaffirmed his stance that under the circumstances, contract DB-1500 should be awarded to Siemens, a pre-qualified company which had submitted the lowest-priced conforming tender. It was in line with the Corporation's contract procurement strategy for the WR project.

24. Mr LAU Kong-wah quoted the Tsing Ma Bridge contract as an example of not awarding to the lowest tender, the decision of which also involved CEO of KCRC, Mr K Y YEUNG, as the Secretary for the Treasury at that time. He still was not convinced why DB-1500 had to be awarded to the lowest tender which eventually turned out to be not performing. CEO of KCRC clarified the difference was that the lowest tender for the Tsing Ma Bridge contract did not comply with the tender requirements, whilst Siemens' tender for DB-1500 was in full compliance.

25. Given KCRC's explanation, Mr Abraham SHEK said that he would accept the management team's decision to award the contract to Siemens as the lowest conforming tenderer. In this connection, he asked whether Siemens' track record in undertaking similar projects for either the East Rail or Light Rail was a factor considered during tender evaluation. In reply, SD/CP, KCRC said that the Corporation's previous experience with Siemens was taken into account during pre-

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qualification. The indication was that its performance was satisfactory.

KCRC

26. Reiterating his concern about the importance to ascertain whether due enquiry had been made in accordance with the relevant WTO-GPA rule, Mr CHENG Kar-foo requested for supplementary information as regards the information provided by Siemens to substantiate its commitment to provide all necessary resources to meet its contractual obligations. In response, the Chairman of KCRC agreed to provide all information which could be located for members' reference. Noting the concerns raised by members, he said that in future whenever such site visits were conducted, a more comprehensive coverage should be considered. Regarding wider issues that were involved, they would be looked into carefully by KPMG's investigation under the guidance of the Steering Committee. In particular, he said that in the award of contracts, it would be most important to ensure that proper accountability was maintained in the delegation of authority.

WTO-GPA provisions

27. Mr LAU Kong-wah enquired about the possible consequences if the Corporation was subject to a bid challenge by Siemens for not awarding the contract to the lowest conforming tenderer. In reply, Mr David FLEMING, Company Secretary & General Counsel of KCRC (CS&GC, KCRC), said that such bid challenge if instituted in Hong Kong would be heard by a specially convened Bid Challenge Review Panel. If Siemens were successful, the Bid Challenge Review Panel could award compensation, correct the breach and under certain circumstances, force the employer to take up the contract with the particular challenger. In general, compensation would be awarded for all losses and damages that the contractor could prove it had suffered as a consequence of the employer's failure to comply with the WTO-GPA provisions.

28. Mr Abraham SHEK asked whether the Corporation's right not to accept the lowest conforming tenderer was enshrined in the contract. In addition, he also expressed concern as to whether due diligence was exercised by the Corporation before the contract was awarded to Siemens.

29. In reply, SD/CP, KCRC advised that all KCRC contracts did contain the qualification that the Corporation had the right to accept any or none of the bids. However, according to the relevant WTO-GPA rules and the Corporation's policy, the lowest conforming tender would be accepted. In the present case, extensive assessment had been conducted prior to the award of contract. The finding was that only two of the original pre-qualified tenderers could bid and conform. Under the circumstances, the Corporation had not contemplated the possibility of conducting another tender exercise as the Corporation might be challenged by both tenderers. Supplementing on the Corporation's legal position, CS&GC, KCRC stated that the particular contract provision referred to was a boilerplate provision intended to protect the Corporation's right in case of exceptional circumstances. However, it did not mean that the Corporation did not have to comply with the law and the WTO-GPA

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provisions. Otherwise, the Corporation would be put in a legal position.

30. CS&GC, KCRC further said that while the relevant WTO-GPA provision on making enquiry in case of exceptionally low bids was only discretionary, the Corporation had made it mandatory and all appropriate steps were taken to ensure that the tenderer could comply with the conditions of participation and be capable of fulfilling the terms of the contract.

31. Referring members to the Corporation's reply to question (d), CS&GC, KCRC advised that as a member of the CTB and the Corporation's General Counsel, he had given advice at the relevant time. As the legal issues involved at that stage were relatively obvious, it was not considered necessary at the time the tender was considered to seek external advice. However, since the issue had become public, KCRC had obtained external legal advice, which concurred with his opinion that the Corporation had no choice but to accept Siemens' tender.

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32. In reply to Mr LAU Kong-wah, CS&GC, KCRC confirmed that after looking through the relevant Board papers, there were no doubts expressed at the time when the CTB's recommendation to award the contract to Siemens was approved by the Managing Board. In this connection, Mr LAU requested the Administration to give the same confirmation after the meeting in writing.

KCRC

33. Notwithstanding the WTO-GPA provisions, Mr CHENG Kar-foo asked whether the Corporation would be extra cautious when evaluating the tenders submitted by Siemens in future. In reply, CEO of KCRC said that a confidential report on the performance of any contractor or consultant employed by the Corporation would be kept for future reference. The Chairman of KCRC also assured members that the Corporation would learn from this incident. Siemens' track record would obviously be taken into account when tenders for future projects were assessed. In addition, he would seek legal advice as to whether the Corporation could refuse to award contracts to contractors on the basis of their bad track record, particularly if they came along with an exceptionally low bid which was conforming, but at the same time without violating any rules against discrimination on these contractors for fair competition. In this respect, Mr CHENG requested the Corporation to revert back to the Subcommittee on such legal advice and any improvement measures in due course.

Negotiation with Siemens and ONL

34. Mr LAU Kong-wah pointed out that notwithstanding the appointment of ONL in late 2000 and repeated delay recovery promises made by Siemens from January 2001 up to October 2001, no noticeable improvements had ever been made. This had eventually led the KCRC's senior management team to conclude that "Siemens' management attention had been focussed far more on its claim for additional time and money, than on progress of the three critical subsystems". As such, he asked whether the Corporation's senior management team and the CEO of KCRC had ever felt

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deceived by Siemens throughout that period.

35. In response, SD/CP, KCRC emphasized that during the whole of that period, there was full level of monitoring by the Corporation. CEO of KCRC also said that positive steps had been taken as and when necessary to correct the situation. However, despite the efforts made by the management team, the promised delay recovery did not materialize and the delay in software design had deteriorated to the point where, unless rapid positive actions were taken, the scheduled opening of WR would have to be delayed. Under the circumstances, the Corporation had to identify and address the drastic options as set out in paragraph 11 of the reply to question (e), with a view always to ensuring that WR could open on time.

36. In reply to Mr LAU Kong-wah, SD/CP, KCRC confirmed that the Corporation had no direct contractual relationship with ONL. It was purely the Corporation's insistence on being able to deal with working level which had enabled direct discussions with ONL with a view to seek to ensure that the commercial issues between Siemens and ONL would not impact on the progress of the works.

Breaking up the contract into smaller work items

37. Ir Dr Raymond HO restated the point he previously raised about the need to suitably break up large public works projects into smaller ones for participation of more companies. He said that as the three subsystems under contract DB-1500 only required equipment built upon tried and proven technology, there was all the more reason to break them up into smaller contracts so that more local companies could bid for the work. This would be a better arrangement in terms of contract management because in case of non-performance by any individual contractor, it would be easier for the Corporation to terminate the relevant contract and re-enter. He thus called on the Corporation to bear this in mind when planning for railway projects in future.

38. SD/CP, KCRC replied that all seven subsystems were equally important in the completion of the project. When the contract was being prepared, these seven subsystems were lumped together as they were seen as talking to each other and needed to be fully integrated, and the installation work was also common in many areas. Therefore they required a single main contractor to put them together. Citing the Airport Core Projects, he pointed out that other problems might arise if many contractors were involved and had to work in the same immediate proximity. In the present case, experience dictated that these subsystems should be tendered out as a single contract.

39. CEO of KCRC also pointed out that if the seven subsystems were divided, another contract would be required to develop software for their integration. Nonetheless, he assured members that the Corporation had already considered the need to break up related projects into separate contracts for the purpose of minimizing risks. The Main Control System which was also related to the telecommunications system had already been split into another contract. Furthermore, he advised that one of the

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five pre-qualified companies was based in Hong Kong. But that company did not enter a bid for the project.

40. Acknowledging the concern raised by Ir Dr Raymond HO in respect of awarding a single contract for related systems, the Chairman of KCRC assured members that as he had previously undertaken, he would pursue the matter in greater detail with the KCRC management team, taking into account the need to ensure system integration.

General comments about contract management

41. Ir Dr Raymond HO stated the following views:

- (a) He pointed out that it was in fact a common industry practice to enter into SAs for construction contracts. Hence, unless there was irregularity in individual cases, he would accept the SAs entered into by the Corporation in respect of the WR contract.
- (b) He would also accept that the employer might sometimes have to pay ex-gratia payment to the contractor to ensure the timely completion of project within schedule.
- (c) In terms of contract management, an early warning system should be put in place so that formal warnings could be issued to the contractor whenever slippage was detected and appropriate contract action could be taken. If that had been done for contract DB-1500, the Corporation might have been able to terminate and re-enter the contract while there was still time to prevent the situation from escalating into a crisis which threatened the whole WR project. He considered that this was an area where improvements should be made.
- (d) He fully appreciated the predicament faced by the KCRC Managing Board at the time. As no better options was available, they would have to come to reluctant decision to negotiate with Siemens for commercial settlement.

42. Mr Abraham SHEK considered that it might help if the performance monitoring mechanism could be formalized in the contract. In response, CEO of KCRC explained that after the award of contract, the Corporation would follow up on progress in a number of ways, such as regular telephone and correspondence exchanges between the Corporation and individual contractors, quarterly progress review meetings between the Corporation and all contractors, factory visits at key stages in preparation for factory acceptance, etc. He assured members that the progress of all contractors would be carefully monitored throughout the contract period.

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- KCRC 43. Summing up the discussion, the Chairman invited the Corporation to take heed to the key concerns raised by members at the series of Subcommittee meetings in connection with contract DB-1500 and the SAs of WR. When KPMG's investigation was completed, she requested that the relevant report be provided to the Subcommittee for information and follow-up.

II Any other business

44. There being no other business, the meeting ended at 10:35 am.

Legislative Council Secretariat
20 September 2002