

LegCo Panel on Transport

Subcommittee on matters relating to the implementation of railway development projects

KCRC West Rail Contracts

This note provides information on Kowloon-Canton Railway Corporation (KCRC)'s handling of the contract for the West Rail telecommunications systems awarded to Siemens Ltd and the 27 supplemental agreements with contractors for 18 West Rail contracts.

2. The detailed information provided by KCRC is at **Annex**. As members are aware, in response to concerns expressed by the public on these issues, the Managing Board of KCRC has asked the Corporation's external auditors, KPMG, to conduct a thorough investigation into the Corporation's tender evaluation and contractual performance monitoring systems in connection with the West Rail telecommunications contract. The external auditors will also investigate and report on the 27 supplemental agreements.

3. The Government welcome the KCRC Managing Board's decision to conduct an investigation.

4. The Government will continue its monitoring of the West Rail project to ensure that KCRC would complete the project on schedule and within budget. Overall the project has been progressing satisfactorily and the target remains to achieve the commissioning of the West Rail before the end of 2003.

KOWLOON-CANTON RAILWAY CORPORATION

WEST RAIL, PHASE I

CONTRACT DB1500 – TELECOMMUNICATIONS SYSTEMS

BACKGROUND

In 1999, after open competitive tender, the Corporation accepted a conforming tender and awarded Contract DB1500 to Siemens Limited in the sum of HK\$287 million, which was 37% lower than the second lowest conforming tender.

2. During 2000, Siemens fell behind on works for the development of software to integrate the operation of three of the seven systems, namely, the public address system, the passenger information display system and the closed circuit television system. In December 2000, the Corporation accepted Siemens' proposal to employ a specialist sub-contractor to undertake software development for the three systems.

3. Also included in Contract DB1500 was the provision of a radio system for the Police. In August 2000, the Corporation introduced a variation to Siemens' contract to cater for a general change in the police radio system from an analogue to a digital system. This major variation resulted in Siemens submitting a claim for alleged disruption and delay to its works.

POSITION IN NOVEMBER 2001

4. By November 2001 the critical software development programme for the three systems was some 13 weeks behind schedule. There was no legal basis for terminating the contract but the Corporation was of the view that this situation could not be allowed to continue if the target completion date for West Rail were to be met. Given the circumstances, the Corporation decided that the best way to resolve the situation, while protecting the Corporation's interests, was to try to reach a commercial settlement with Siemens.

5. A negotiating team was formed and went to Germany in November 2001 to negotiate with Siemens' top management. The negotiations were on an *ad referendum* basis, in that any provisional agreement reached by the team had to be submitted to the Managing Board of the Corporation for final approval.

THE NEGOTIATIONS

6. Negotiations took place in Germany between 23 November 2001 and 27 November 2001. The key issue addressed in the negotiations was how to resolve the delays in software development work for the public address system, the passenger information display system and the closed circuit television system. The negotiating team made it very clear to Siemens that the Corporation would not consider compensating Siemens for the consequences of its commercial misjudgement. The team stated that the Corporation was only prepared to accept legitimate contractual entitlements for variations and historic claims. However, the Corporation would be prepared to consider reasonable costs which Siemens might incur in implementing delay recovery measures to re-establish key dates.

7. Siemens proposed to replace the under-performing specialist sub-contractor with three separate specialist sub-contractors, as follows –

- (a) for the public address systems, a firm which had undertaken similar work on East Rail in a timely and satisfactory manner;
- (b) for the passenger information display system, a firm which had undertaken similar work in Hong Kong; and
- (c) for the closed circuit television system, a firm which had previous Hong Kong experience and had undertaken large CCTV projects internationally.

The negotiating team was satisfied that the three sub-contractors had proven systems in operation, and only a minimal amount of customisation would be required to meet the specifications for West Rail.

8. Following the three days of negotiations, an agreement was reached which was subsequently approved by the Corporation's Managing Board in December 2001.

CONCLUSION

9. The Corporation had little alternative but to adopt a supplemental agreement approach to resolve the manifest problems that had arisen with this contract. Through the negotiations a previously negative position was turned into a positive one. Siemens has pledged that it will commit all additional resources necessary to meet its contractual obligations under the supplemental agreement. The key dates were re-established and subsequent payments under the supplemental agreement to Siemens are linked to the successful achievement of the milestones in the programme. The Corporation has agreed to pay the sum of \$100 million for variations, settlement of claims and

recovery of time lost. The \$100 million only covers part of Siemens' additional costs.

Kowloon-Canton Railway Corporation
1 February 2002

West Rail, Phase I, Contracts
Grounds For Entering Into Supplemental Agreements

Delay Recovery Measures

Where the contractor has a valid case for extension of time, the Corporation may ask the contractor to utilize more resources to recover time lost and to bring progress back to meet original milestone dates. The amount of money to be paid for such recovery measures has to be agreed between the Corporation and the contractor, together with the timing of such payment. This mechanism allows the Corporation to buy back delays and hence preserve the programme for completion of West Rail by the end of 2003.

Unforeseen Ground and Other Conditions

KCRC's contract strategy is based upon an equitable form of contract which fairly apportions risk between the Corporation and the contractor. Where the contractor's progress is disturbed, resulting in delay and/or extra cost due to matters beyond his control, he is entitled to be compensated, provided he can demonstrate a valid case. Were these provisions not to be included in the contract, then the contractor would have to allow for all risks which would significantly inflate tender prices. Examples of matters which would result in extra time or work are unforeseen physical conditions or artificial obstructions, variations and delays occasioned by third parties, such as Government Departments, public bodies or other contractors.

Remeasurement

Remeasurement provisions are contained in the West Rail contracts to cover items where the exact scope of the work involved is difficult to accurately determine at the time of tender. Examples are the final depth of piles, which depends upon the actual geological conditions, the amount of filling material in embankments and the quantity of reinforcement placed in structures. In such instances, the work will be remeasured upon completion of the item and valued at agreed unit rates, in accordance with the contract.

West Rail Phase I - Supplemental Agreements
Status at 31 January 2002
西鐵第一期補充協議/截至二零零二年一月三十一日的情況

No	Civil/ Ros	Contract No 合約 號碼	Contract Description 合約內容	Value of SA (\$million) 補充協議 價值 (以百萬計) (A+B+C)	Breakdown of SA Values (\$million) 補充協議的分類 (以百萬計)		
					Delay Recovery Measures (DRMS) 彌補工程 延誤 (A)	Unforeseen Ground And Other Conditions 難以預知的地質 問題和其他情況 (B)	Remeasurement 重新估量 (C)
1	Civil	CC-201	Viaduct-Kam Sheung Road to Tin Shui Wai 高架橋 - 錦上路至天水圍	42.00	42.00	0.00	0.00
2	Civil	CC-201	Viaduct-Kam Sheung Road to Tin Shui Wai 高架橋 - 錦上路至天水圍	188.10	0.00	115.10	73.00
3	Civil	CC-202	Yuen Long and Long Ping Stations 元朗及朗屏站	89.20	29.50	59.70	0.00
4 (*)	Civil	CC-203	Tin Shui Wai Station 天水圍站	0.00	0.00	0.00	0.00
5	Civil	CC-203	Tin Shui Wai Station 天水圍站	62.00	13.30	48.70	0.00
6	Civil	CC-211	Viaduct-Tin Shui Wai to Siu Hong 高架橋 - 天水圍至兆康	42.00	42.00	0.00	0.00
7	Civil	CC-212	Viaduct-Tin Shui Wai to Siu Hong 高架橋 - 天水圍至兆康	69.90	0.00	62.00	7.90
8	Civil	CC-212	Siu Hong Station 兆康站	175.00	117.00	58.00	0.00
9	Civil	CC-213	Tuen Mun Station 屯門站	255.00	174.00	81.00	0.00
10	Civil	CC-300	Tsuen Wan Station 荃灣站	11.40	0.00	11.40	0.00
11	Civil	CC-402	Nam Cheong Station 南昌站	150.00	35.00	102.70	12.30
12	Civil	CC-403	Tunnel-Mei Foo to Nam Cheong 隧道 - 美孚至南昌	1.00	1.00	0.00	0.00
13	Civil	CC-403	Tunnel-Mei Foo to Nam Cheong 隧道 - 美孚至南昌	4.70	0.00	4.70	0.00
14	Civil	CC-404	Mei Foo Station 美孚站	103.00	56.00	48.00	0.00
15	Civil	CC-601	Pat Heung Maintenance Centre 八鄉維修中心	43.30	2.80	39.60	0.90
16	Civil	CC-602	Kam Sheung Road Station 錦上路站	0.50	0.00	0.50	0.00
17	Civil	CC-602	Kam Sheung Road Station 錦上路站	1.90	0.00	0.00	1.90
18	Civil	CC-602	Kam Sheung Road Station 錦上路站	2.90	2.90	0.00	0.00
19	Civil	CC-602	Kam Sheung Road Station 錦上路站	47.80	0.00	47.80	0.00
20	Civil	CC-604	West Rail Building 西鐵大樓	42.00	0.00	37.00	5.00
21	Civil	DB-320	Kwai Tsing Tunnels 葵青隧道	24.50	16.50	8.00	0.00
22	Civil	DB-350	Tai Lam Tunnels 大欖隧道	6.70	0.00	6.70	0.00
23	Civil	DB-350	Tai Lam Tunnels 大欖隧道	8.10	8.10	0.00	0.00
24	ROS	CC-1820	Permanent Way (North) 軌道 (北)	35.20	27.00	0.00	8.20
25	ROS	DB-1500	Telecommunications 電訊設備	100.00	81.50	4.70	13.80
26	ROS	DB-1700	Platform Screen Doors 月台幕門	27.30	0.00	0.00	27.30
27	ROS	SI-1120	Escalators 扶手電梯	3.20	0.00	0.00	3.20
Total				1,536.70	647.60	735.60	153.50

(*) This SA relates to earlier payment, and does not affect the overall contract sum.
此補充協議只涉及提前付款，並不影響合約總值。

Kowloon-Canton Railway Corporation
1 February 2002