THE HONG KONG HOUSING AUTHORITY

Memorandum for the Building Committee

Proposed Ex-Contractual Arrangements to Settle the Final Account
Long Ping Estate Phase 1
(Contract No. 234 of 1983)

PURPOSE

To seek Members’ approval for proposed ex-contractual arrangements to settle the subject long-standing Final Account.

BACKGROUND

2. The contract began in March 1984 and was completed in stages between November 1984 and May 1987. Full contract details are attached at Annex.

3. Variations during the course of the contract resulted in substantial extensions of time being granted. The Contractor, Hopwell Construction Co., Ltd., has hitherto held that these also merit re-rating to key aspects of the work in the Commercial Centre. Arbitration has been threatened. The Department has never accepted this contention, and the impasse resulted in the long delay to settling the Final Account.

4. Recently the Contractor has conditionally dropped the claim for re-rating, establishing a basis for these proposals.
THE PROPOSED SETTLEMENT

5. It is proposed the settle the Final Account at $202,051,766.23, calculated as follows -

   (a) Measured Amount, as established by the Department’s Quantity Surveyor and (subject to (c) below) agreed by the Contractor: $197,221,766.23

   (b) Amount of Loss and Expense in relation to extra time awarded, as established by the Surveyor on the basis of the “formula” method, and (subject to (c) below) agreed by the Contractor: $  4,830,000.00

   (c) Liquidated Damages of $2,235,635.68 not being imposed (see paragraphs 7-9 below) : $         0.00


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\text{Total: } $202,051,766.23
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6. In consideration of the non-imposition of Liquidated Damages the Contractor has agreed to drop all claims for re-rating, has undertaken not to seek finance charges as paragraph 8 (b) below, and has agreed to the Final Contract-Sum as paragraph 5 above.

NON-IMPOSITION OF LIQUIDATED DAMAGES

7. The Contractor has accepted the Surveyor’s Measured Amount and assessed Loss and Expense, paragraphs 5(a) and (b) above dependent on the non-imposition of Liquidated Damages.
8. It is recommended that favourable consideration be given to this proposal on the following grounds -

(a) the Department is confident that its position against re-rating can be successfully defended at Arbitration. Nonetheless, outcome at law can never be assured; and defense would be expensive;

(b) The last payment to the Contractor was in April 1990, bringing the total payment to date to $196.214M. Based on the recommended Final Contract Sum, outstanding final payment will be $5.838M. The estimated finance charge for this amount between June 1990 and December 1998 is $1.114M. The Contractor has agreed to forego claiming this finance charge;

(c) As noted in Annex parts of the contract were finished on time or ahead of time. Blocks 1 and 2 were completed 147 days early, with a benefit to the Authority in terms of rental income, calculated on Liquidated Damages per day, in the region of $2.655M;

(d) The primary school was also finished early by 93 days, enabling classes to begin on schedule on 1 September 1986.

9. The notional benefit to the Authority of $3.769M as paragraphs 8 (b) and (c) above exceeds the proposed non-imposed LD of $2.236M by $1.533M.

**PROPOSED FINAL CONTRACT SUM**

10. The proposed Final Contract Sum of $202.051,766.23 is within the original Contract Sum of $229,332,853.22.
RECOMMENDATION

11. It is recommended that -

   (a) Liquidated Damages of $2,235,635.68 should not be imposed; and

   (b) on this basis the Final Account be settled for the sum of $202,051,766.23.

PRESUMPTION

12. It is not thought that Members will have any objection to the recommendation at paragraph 11 above. If no objection or request for discussion is received by the Committees’ Secretary by noon on 25 February 1999, Members’ approval will be presumed.

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