

LCQ17: Potential conflicts of interests in public works projects

Following is a question by the Hon Mrs Regina Ip and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (April 27):

Question:

In 2018, the Government commissioned an Expert Adviser Team (EA Team) to investigate into the incident of malpractices in the construction works of the MTR Shatin to Central Link (SCL) project. It is pointed out in the final report of the investigation that while Atkins China Limited (Atkins) was employed by the MTR Corporation Limited (MTRCL) as the Detailed Design Consultant for the SCL project, it was also engaged by Leighton Contractors (Asia) Limited (the Contractor) as the design consultant for the MTR Hung Hom Station Extension works. As Atkins was responsible for checking the Contractor's design in addition to working on the design of the entire SCL project, the EA Team considered that potential conflict of interest arose from such an arrangement, and recommended that the Highways Department should enhance the monitoring of government railway projects undertaken by MTRCL in future. Nevertheless, the MTRCL awarded a design consultancy contract for the Tung Chung Line Extension project to a joint venture set up by Atkins and Ove Arup & Partners Hong Kong Ltd. (Arup) in 2020, while Arup was also tasked with preparing the Environmental Impact Assessment Report (EIA Report) for the project. Regarding the potential conflicts of interests in public works projects, will the Government inform this Council:

(1) with regard to the potential conflicts of interests concerning the organisations involved in the aforesaid SCL project, whether the authorities have followed up with these organisations; if they have, of the details; how government departments enhance the relevant monitoring work in respect of the railway projects undertaken by the MTRCL;

(2) given that Arup was tasked with preparing the EIA report for the Tung Chung Line Extension project while being the design consultant for the same project, whether the Government has assessed if conflict of interest is involved in such arrangement; and

(3) of the list of public works contracts awarded by the authorities in the past five years to (i) Atkins, (ii) Arup, (iii) the joint ventures set up by these two companies, and (iv) the subsidiaries of either of these two companies, as well as the contract values involved?

Reply:

President,

Having consulted Development Bureau, the Environmental Protection

Department (EPD) and relevant department, the reply to the question raised by the Hon Mrs Regina Ip is as follows:

(1) In light of the investigation results submitted by the Commission of Inquiry into the construction works at and near the Hung Hom Station extension under the Shatin to Central Link (SCL) project and the Expert Adviser Team for SCL project, the Highways Department had requested the MTR Corporation Limited (MTRCL) to provide explanation to the potential conflict of interest in the appointment of design consultants. According to the MTRCL's explanation, in general, the same design consultant would not be employed by the MTRCL and its contractor to work on the same contract. In exceptional circumstances where there is an advantage, the MTRCL had corporate-level guidelines in place to guard against conflict of interest by introducing a procedure which clearly defines and separates the workflows of the respective consultant teams to ensure that effective firewall is provided and the same staff are not working for both teams. To avoid potential conflict of interest, the Highways Department had requested the MTRCL and its contractor not to appoint the same design consultant in new consultancy under the SCL project.

In addition, the Government had requested the MTRCL to review its internal policies with reference to the Government's requirements for avoidance of conflict of interest in direct appointment of consulting firms, and meanwhile to ensure that future consultancy agreements entered into under the SCL project and future railway projects of similar nature should follow similar conflict of interest policy in general. The Government will include provisions related to conflict of interest in the project agreements to be signed with the the MTRCL for new railway projects in future, in order to avoid conflict of interest arising from the employment of consultants by the MTRCL and its contractors. The Government will monitor the implementation of the relevant provisions through a committee and the monitoring and control mechanism to be established under the project agreements.

(2) The Tung Chung Line Extension project is taken forward using the ownership approach. Under the ownership approach, the MTRCL is responsible for the funding, design, construction, operation and maintenance of the railway, and will ultimately own the railway.

According to Environmental Impact Assessment (EIA) Ordinance (Cap. 499), the Tung Chung Line Extension Project is a designated project which requires EIA study to be carried out. The MTRCL employed an engineering design consultant and an EIA consultant to carry out the engineering design and to assess environmental impacts arising from the project. To ensure accuracy of the EIA, the EIA Ordinance has set objective standards for various aspects. The EIA consultant is required to review project arrangements in accordance with the relevant requirements of the EIA Ordinance, existing regulations and standards so as to ensure that the design, construction and operation of the project comply with the statutory requirements.

The EPD and the relevant statutory authorities review EIA reports of all designated projects (including Tung Chung Line Extension) in strict accordance with the regulations, principles and procedures stipulated in the

EIA Ordinance and its Technical Memorandum. According to statutory requirement, after the Director of Environmental Protection has determined that the EIA report complies with the relevant requirements, the EIA report is publicly displayed for public inspection and submitted to the Advisory Council on the Environment. Members of the public may raise comments on the EIA report according to the mechanism during the public inspection period. The entire EIA process is open and transparent. Regarding the EIA report for Tung Chung Line Extension, the public inspection period expired on April 1 this year. The construction of the Tung Chung Line Extension project can only commence after approval of the EIA report and obtaining the environmental permit. During the construction and operation stages, the environmental permit holder (i.e. MTRCL) has to ensure that the mitigation measures recommended in the EIA report are properly implemented.

An important principle of the EIA mechanism is that project proponents are required to take environmental factors into consideration and try to avoid or minimise environmental impacts during the project planning and design stages. Therefore, the EIA study and engineering design often have to interact, co-operate and co-ordinate. It is more effective to provide environmental-related opinions during the project planning stage; assess the environmental impact of various conceptual schemes; review repeatedly and adjust the engineering design accordingly based on the results of the assessment so as to better meet the standards and technical requirements of the EIA Ordinance and its Technical Memorandum. Hence, the participation of the same consultant in EIA study and engineering design does not constitute a conflict of interest.

(3) According to Development Bureau, the consultancy agreements approved to Atkins China Limited and Ove Arup & Partners Hong Kong Limited by the Engineering and Associated Consultants Selection Board, the Architectural and Associated Consultants Selection Board and the Departmental Consultants Selection Committee in the past five years (from 2017 to 2021) are listed in the following table:

Consultant	Number of awarded consultancy agreements	Total amount of consultancy agreements (\$ million)
Atkins China Limited	25	316.4
Ove Arup & Partners Hong Kong Limited	50	1,032.7

Note: The two consultants have no joint venture nor subsidiaries undertaking

consultancy agreements.

Please refer to appendix for a list of the above-mentioned consultancy agreements.