

expansion and development.

Issue 3: Amend the Labor Union Law to set reasonable rules for union representation.

The Labor Union Law gives a union the right to negotiate with management on behalf of its members regarding such issues as official leaves of absence by union representatives to handle union affairs, the number of representatives on the employee welfare committee and pension committee, and the number of employees that may be outsourced in future, etc. But if the union members do not exceed one-half of the total number of employees – regardless of whether union membership is compulsory or voluntary – the union cannot claim to represent the bulk of the employees.

During its current consideration of amendments to the Labor Union Law, the CLA should take the opportunity to deal with that point. If the union membership is less than half of total employment, the Law should stipulate that its representation on the employee welfare and pension committees should be pro-rated and its legal rights limited. In addition, the law should specify whether “total employees” refers to total employment at “one site” or “one company.”

Issue 4: Eliminate the work experience requirement for foreign employees of non-tech companies.

Except for technology-oriented industries, current regulations still require that foreign professionals hired to work in Taiwan have at least two years of related work experience.

As encouraging foreign talent to work in Taiwan is an effective way to provide a more internationalized working environment for the benefit of Taiwan’s own talent – and since neighboring countries are competing to attract the best and brightest from all over the world – the Taiwan government’s conservative and protectionist approach is both unnecessary and counterproductive to its own policy goal of upgrading Taiwan’s international living environment. We urge the Taiwan government to swiftly revise the regulations to eliminate this requirement.

INFRASTRUCTURE

Since Taiwan’s accession to the WTO’s Government Procurement Agreement (GPA) in July 2009, an impressive number of tenders have been opened to companies from GPA member countries. We applaud that good performance and specifically recognize the superb efforts of the Public Construction Commission (PCC) in coordinating and executing the response to the GPA commitments. The Committee welcomes PCC’s open attitude and appreciates the opportunities it has had for frequent dialogue with the Commission in seeking solutions to our members’ concerns. We look forward to continuing that constructive working relationship.

The Committee believes, however, that much more can be done to attract U.S. companies’ participation in Taiwan’s

procurement market. Given the Obama Administration’s recent launching of a National Export Initiative, this is a subject that the U.S. government should be ready to pursue. As discussed below, it is also in Taiwan’s interest to attract more international involvement in its infrastructure development. We suggest that this topic be added to the agenda of the next U.S.-Taiwan bilateral trade talks.

In last year’s position paper, we cautioned that due to the Taiwan government’s overly ambitious short-term CO₂ reduction target, it has become increasingly difficult to gain approval to build low-cost, coal-fired power plants. Unfortunately, little improvement in the situation occurred during the past year, and the timelines for all coal-fired power plants under planning have now been delayed by more than four years.

As the Committee has pointed out in the past, if the completion of low-cost, coal-fired power plants continues to be delayed, the only way for the Taiwan Power Co. (Taipower) to meet future power demand will be to increase its dependence on very expensive gas-fired power projects. Recent developments have confirmed the basis for that concern. Currently, four gas-fired units are scheduled to be completed before any new coal-fired units. As the cost of gas is much higher than for coal, the replacement of one base-load 800MW coal-fired unit by a gas-fired unit of the same capacity will result in additional fuel expenditure of NT\$10 billion (US\$317.5 million) per year. The extra cost for four gas-fired units would exceed US\$1.2 billion annually, damaging Taiwan’s competitiveness. This year we once again reiterate our long-term plea that the government review and revise its policy on CO₂ reduction goals.

Issue 1: Adopt a practical and achievable CO₂ reduction target.

In the wake of last year’s Copenhagen Conference, the Taiwan government has revised its original CO₂ reduction plan. The new target is to reduce CO₂ emissions in 2020 to the 2005 level and in 2025 to the 2000 level. Comparing these targets with the CO₂ emission levels that will be brought about by Taipower’s announced power development plan for the next 10 to 15 years, however, it is quite clear that these ambitious targets are not achievable.

A power project takes a very long time to complete. For a fossil-fuel power plant, at least 10 years is needed, considering the time required for site selection, feasibility study, environmental impact assessment, and construction. The process is even longer for a nuclear power plant. To meet projected power demand for the next 10 to 15 years, Taipower has prepared a long-term power development plan, updated annually, which takes into consideration such factors as the current power supply/demand and base/medium/peak load, long-term economic growth, power demand forecast, domestic/international fuel market, changes in power generation technology, the status of private power plants, etc. The plan also forecasts total power-plant installed capacity,

and the kinds of power plants (nuclear/fossil/renewable) to be put into operation. Through careful analysis of the power development plan, it is easy to calculate how much CO₂ emission the power industry will generate in the next decade.

Further, as power generation accounts for more than half of total CO₂ emission in Taiwan, the amount of CO₂ emissions from power plants is a very good indicator of whether the government's targets are feasible. A simple calculation shows that in 2020 the level of CO₂ emission from the power industry will have increased by 40% compared to 2005, and by 100% from 2000 to 2025. It follows that in order to meet the CO₂ emission target (2025 reduced to the 2000 level), emissions from all other sectors – transportation, manufacturing, commerce, household, etc. – will have to be cut to zero. This is clearly impossible.

Alternative power generation from renewable energy sources, such as wind and solar, will account for less than 3% of Taiwan's total power supply, and therefore will not be of much help toward achieving the government's goals.

After the failure of last year's Copenhagen Conference, the future of any new international treaty to replace the Kyoto Protocol (which expires in 2012) is now rather uncertain. In addition, none of the CO₂ reduction technologies currently considered the most promising – renewable, nuclear, and carbon capture and storage – will be able to solve Taiwan's CO₂ emission challenge in the next 10 to 15 years. Should any international treaty be put into effect in the near future, the only option for Taiwan may be carbon trading.

Adopting an impractical objective is not a harmless exercise – it is a threat to Taiwan's future economic well-being, since decisions on future development projects will be based on these targets. We strongly urge the Taiwan government to adopt a more practical long-term CO₂ reduction policy and to revise the current short-term goals accordingly.

Issue 2: Expedite power plant development to prevent a future power shortage.

Almost all power plants in Taiwan that have already been completed or are scheduled for completion in the 16-year time frame between 2000 and 2015 began construction or engineering design before 2000. From 2000 to 2007, new power units were added every year to meet the 4% annual growth in power demand, and Taiwan's total power generation capacity increased by one-third.

The power development status for the years between 2008 and 2015 is less positive. According to Taipower's power development plan of five years ago, Units 1 and 2 of the Longmen Nuclear Power Project were scheduled to be completed in 2009/2010 to meet the projected 2008-2011 growth in power demand. Besides the Longman project, Taipower's original plan was to build a series of high-efficiency supercritical coal-fired power plants from 2012 to 2015 to meet power demand growth for those four years.

The situation changed dramatically in the past five years, however. First, the completion dates for the Longmen

units has been delayed to 2011/2012. All of the planned supercritical coal-fired plants are also facing obstacles, either from the EIA review process or local opposition. Construction is estimated to be at least four years behind schedule, which puts the projected completion dates beyond 2016.

The only reason why no power shortage has resulted from these serious delays is the global economic recession that slashed power demand starting from mid-2008. Power consumption in Taiwan even recorded negative growth for two consecutive years (2008-2009), which was unprecedented in Taipower's history. Even though demand is now beginning to pick up, it may just recover to the 2007 level by mid-2011.

Thus, except for a small private power plant, the 2008-2015 period is scheduled to see only two new power projects (both nuclear units) become operational, and their construction started back before 2000. Moreover, the fate of two planned coal-fired power plants (Changgong and Suao) remains uncertain. If these coal-fired power plants cannot be completed as scheduled, and are then replaced by gas-fired plants (which have a shorter construction schedule), the additional fuel cost will amount to NT\$50 billion (US\$1.6 billion) annually. The financial burden will necessarily require an increase in electricity rates, inevitably affecting the competitiveness of Taiwan's export-oriented economy and discouraging the entry of foreign direct investment. The Committee calls on the government to pay urgent attention to this potentially very serious problem for the Taiwan economy.

Issue 3: Remove barriers to meaningful international participation in Taiwan's government procurement market.

The Committee commends the Taiwan government for faithfully implementing its GPA commitments over the past year. Since Taiwan's accession to GPA in July 2009, a large number of tenders have been opened to companies from GPA member countries. According to PCC statistics, as of February 28 this year, a total of 1,352 Taiwan government tenders valued at NT\$198 billion (US\$6.3 billion) had been opened to GPA members.

Only 195 of the tenders (14% of the total), however, were awarded to foreign companies. The total value of those contracts came to NT\$13 billion (US\$413 million). In addition, it is noteworthy that virtually all of these tenders were for trade items rather than construction-related services.

As the Committee has frequently pointed out in the past, international companies are able to bring in new technologies and skills to help upgrade the quality of Taiwan's infrastructure and the management methods being utilized. Foreign participation in these tenders does not mean depriving Taiwanese workers of jobs, as most of the contracts need to be carried out locally. Rather, increased foreign participation in these tenders will enable Taiwan to become more visible in the global marketplace and more attractive for foreign direct investment.

The Committee therefore recommends that the Government develop an action plan to spur more involvement

by international companies in future GPA-applicable tenders. The goal should be to reverse the general perception among multinationals in the construction industry that “Taiwan is a difficult place to work in.” Some of the steps that could be taken are as follows:

- 1. Eliminate tender awards based on Lowest Bid.** Currently, most of the Taiwan government’s procuring agencies favor use of the Lowest Bid system instead of Most Favorable Bid (MFB) or Highest Value/Advantages Bid (HVAB), both of which meet the requirements specified in Taiwan’s government procurement laws and regulations. MFB and HVAB bring the benefit of better quality on public projects, since winners of Lowest Bid tenders often proceed to look for ways to cut corners, and MFB and HVAB tenders can be carried out with the most cost-effective planning and controls, ensuring that the award is based on thoroughly objective criteria. The Committee recommends that the government designate MFB and HVAB as the norm for government tenders and require all government procuring entities to choose one of these methods.
- 2. Accept requests for reasonable contract changes.** In Taiwan, procuring agencies are invariably resistant to contractors’ requests for fair and reasonable adjustments to awarded contracts. This practice places enormous burdens on contractors because many contingencies are impossible to predict before contract execution. Particularly problematic is the habit of many project owners or their representatives of requesting changes in the project without a formal change order. Considering that the construction schedule is often under heavy time constraints, and that the contractor may be held responsible for any delays, the contractor often proceeds to make the requested change – but later finds that no corresponding price adjustment is forthcoming. The prevalence of this phenomenon mars Taiwan’s reputation in the international market.
- 3. Fully privatize the prominent A/E firms.** Some major architectural/engineering firms that were originally government-owned have been reorganized to operate under the supervision of non-profit foundations, but in reality continue to be run under strong government influence. These firms enjoy good business standing, given their size and past project experience. The Committee recommends that the government adopt a more aggressive plan to genuinely privatize these firms to improve the openness and efficiency of the market.
- 4. Place more emphasis on turnkey projects.** Many GPA member countries have adopted the turnkey-project method because of its efficiency and cost effectiveness, but it is still rarely used in Taiwan. We recommend that the government adopt more design/build and engineering/procurement/construction types of turnkey projects. In more efficient markets, these types of projects tend to attract the best players, whose advanced design concepts can help to effectively deliver quality products. If tenders

are based on local A/E design, foreign contractors can rarely compete solely on the construction segment.

- 5. Remove recently imposed restrictions on construction companies.** The Committee considers a recent legislative amendment to the Construction Industry Act, which imposes unwarranted barriers on foreign construction companies wishing to take part in non-GPA-applicable tenders in Taiwan, to be protectionist and cause for concern. While GPA projects would be exempt from the terms of the amendment, it would still impact companies from GPA countries interested in participating in tenders valued below the GPA threshold equivalent to about NT\$1 billion. The revised law bars contracts from being awarded to foreign companies unless they have entered into a joint-venture with local counterparts. Further, the revision tightens the qualification rules for a foreign company to upgrade its construction license from Class B to Class A. These changes represent a step backward from the Ma administration’s stated vision of openness and internationalization.

Issue 4: Follow international norms to improve terms and conditions of government model contracts.

Despite Taiwan’s accession to the GPA in 2009, international contractors still face substantial market-entry difficulties because of unfair terms and conditions in some government contracts, further discouraging international bidders from being active in this market. Below are the major problems facing international bidders:

- 1. Lack of both ceiling on liability and consequential damage liability exclusion.** The availability of fair contract terms and conditions is a crucial factor when experienced international contractors conduct risk management. Whether a ceiling on liability is provided and consequential damage liability is excluded are two of the most significant risk factors for foreign contractors. While some improvement has taken place in recent years in the terms and conditions used in many government contracts, the problem will not be resolved unless the Taiwan government standardizes the terms and conditions for all contracts to incorporate a ceiling on liability and to exclude consequential damage liability. We appreciate PCC’s agreement to study the feasibility of making this change, thereby bringing Taiwan in line with international practice. As part of the study, we encourage PCC to consult with the state-owned or state-controlled enterprises, such as Taipower, CPC Corp. Taiwan (the former Chinese Petroleum Corp.), and China Steel, that are the most active in procuring first-class equipment and construction services from international bidders. By reviewing the terms and conditions used in their procurement contracts, it should be possible to assess whether a ceiling on liability and the exclusion of consequential damage liability are essential for foreign contractors, especially those from the United States and Europe.

In addition, the government's model contract requires that all information and documents be kept confidential, but the period of confidentiality is not defined, thus apparently requiring contactors to keep all such information and documents confidential in perpetuity. We also suggest that procurement entities accept a certificate of insurance instead of the actual policy as proof of insurance.

2. **Lack of consistency in model contracts.** The PCC provides several different model contracts for various types of procurement projects, but the terms and conditions of these model contracts are not uniform. Over the years, some of these have been revised to adopt more internationally accepted terms and conditions, while others still reflect an outmoded approach. We urge the PCC to conduct an overall review of these model contracts with the aim of achieving consistency.

Among these model contracts, the one covering construction projects was amended last year to incorporate a ceiling on liability, exclude the liability for loss of profit, and remove the infringement of intellectual property right from the exceptions to limits on liability. We regard that as a positive step, and encourage the PCC to amend the other model contracts accordingly.

In all these model contracts, bidders have the option – but are not required – to grant the intellectual property rights to the procurement entity. Some procurement entities, however, insist that such IP rights be transferred for free. Procurement entities should respect intellectual property rights and implement fair and reasonable provisions for doing so.

3. **Lack of bilingual versions of tender documents and model contracts.** Currently, most procuring entities provide Chinese-only bidding documents, even for tenders that are supposed to be international tenders, or to be open to international bidders. Since English is the most commonly-used language in international business, Taiwan would make itself a more attractive investment destination for international construction-service companies if it were to provide bilingual versions of tender documents. We also suggest that the government provide an English version of all model contracts. In addition, care should be taken that the bidders' rights and obligations as stated in the Chinese and English versions are identical.
4. **Inadequate nuclear damage insurance.** The scope of nuclear damage insurance adopted by Taiwan has always been far lower than the current international standard. As a result, many first-class contractors in the nuclear field are reluctant to enter this market. We understand that the Atomic Energy Council has been studying this issue, and we look forward to a swift solution in the near future.

Issue 5: Improve government efficiency by reviewing and streamlining administrative procedures.

The Taiwan government's reorganization plan is slated for implementation in January 2012. The plan, which involves

merging various ministries to reduce inter-agency interface, is aimed at improving government efficiency – a goal which we very much support. Another means of enhancing government efficiency would be to conduct a comprehensive review of administrative procedures to ensure that each step is essential and to eliminate any redundancy.

One area that has been notably inefficient is the environmental impact assessment (EIA) review process of the Environmental Protection Administration (EPA). As was pointed out in previous years' *White Papers*, many major infrastructure projects have been hampered by the seemingly interminable delays caused by this review process.

The normal EIA review process, which has been in use for more than 20 years, calls for any EIA report submitted to the EPA to be reviewed by a committee selected from among the 21 EPA commissioners. The committee's recommendation is then forwarded to the EPA's general monthly meeting for a final decision. In 2009, another step was added to the process: an "expert review" during the committee review stage. The "expert group" consists of representatives from local governments, NGOs (mostly environmental groups), and the public or private organizations (project owners) who submitted the EIA report. The "expert review" is redundant, since its function is the same as that of the original review committee. The extra step lengthens the process and makes it more complex, without adding any real value.

Another example of inefficiency is the feasibility study (F/S) review process. In normal practice, when a state-owned enterprise submits its F/S for a project to the State-Owned Enterprise Commission (SOEC) of the Ministry of Economic Affairs (MOEA), the SOEC will invite experts to form a review committee. The conclusions of that committee will be reviewed by the MOEA and then passed to the Executive Yuan (EY) for final approval, after which the EY will forward the report to the Council for Economic Planning and Development (CEPD) for comment.

In a recent case, CEPD asked SOEC to hire an outside organization to do a second review of the F/S report that had already been reviewed and approved by the SOEC's review committee. We cannot see the point of ordering an additional review by an external organization at the end of the process. If any expert's opinion is considered vital, he or she could be invited to testify before the SOEC's review committee.

As these two examples demonstrate, besides Cabinet reorganization there are many simple ways in which government processes could be streamlined if agencies in the bureaucracy take up their designated responsibility instead of passing the buck to other entities.

INSURANCE

The Taiwan life insurance industry has continued to undergo significant change in the last 12 months. Low interest rates, new investment link taxes, and increased consumer protection have added to the existing negative spread and