

Construction Industry Council

Alternative Dispute Resolution Methods in Public Works Projects

Purpose

This paper outlines the current approach of the Government on the use of alternative dispute resolution (ADR) methods in public works projects.

Use of Dispute Resolution in Public Works Projects

2. The Government and our counterparts of the construction industry have all along made collaborative efforts to enhance the security of payment in the industry. Resolution of disputes in a speedy and cost-effective manner would facilitate justified payments to contractors, thereby contributing to improvement of their cash flow.

3. Prior to 1990, arbitration was the only dispute resolution method in public works contracts. Since 1990, we have introduced mediation as an additional tier of the dispute resolution mechanism. Non-contractual partnering has been used in public works projects since 1997. The dispute resolution advisor (DRA) system was first used by Architectural Services Department in building contracts in 1990s and has been gradually extended to all building contracts and foundation contracts of Housing Department since 2004. In 2005, the Works Group has launched a pilot scheme to use the DRA system in selected civil engineering contracts. Under the pilot scheme, we have also piloted the use of voluntary adjudication (VA) in public works contracts. A summary of the application of various dispute resolution methods in public work projects is at **Annex**.

4. On 12 October 2009, together with the Construction Industry Council (CIC), we organized a forum on dispute resolution (the Forum). At the Forum, industry stakeholders shared experience and exchanged views on ADR methods and their use in construction contracts. Participants were supportive to the wider use of dispute resolution methods in lieu of protracted litigation procedures.

5. At the 5th CIC Meeting held on 30 October 2009, members exchanged views on the draft Guidelines on Dispute Resolution prepared by the Committee on Subcontracting. The Permanent Secretary for Development (Works) undertook to seek further views from government Works Departments on the Guidelines.

6. At the 11th Works Policies Coordination Committee (WPCC) Meeting held on 2 December 2009, government Works Departments exchanged views on the use of various ADR methods in public works projects and the recommendations of the CIC draft Guidelines on Dispute Resolution.

Government Approach to ADR Methods

7. Government Works Departments will continue to adopt the existing two-tier mechanism for mandatory arbitration and voluntary mediation to resolve disputes. We will also encourage wider use of non-contractual partnering and will arrange more trials on contractual partnering. As regards the use of ADR methods in public works projects, the government Works Departments are of the view that-

- (a) we will encourage wider use of ADR on a voluntary basis in public works projects. We consider most disputes in civil engineering works contracts involve multiple issues and the amounts at stake are substantial, such complex disputes might not be similar to building contracts. They would need proper consideration. Moreover, the Government would need to review the application of the ADR methods in more contracts and different context. We consider we have to accumulate further experience to understand and evaluate the operation, implication and effectiveness of the processes before we are in a position to formulate a comprehensive policy for ADR;
- (b) we will encourage wider use of DRA in public works projects and promote enlisting of DRAs, especially for those with civil engineering background. We will collaborate with our counterparts of the construction industry to organize training courses and seminars for professionals of the Government, consultants and contractors; and
- (c) we will review our internal guidelines to set out the criteria for the application of various ADR methods and to establish a mechanism within works departments for reviewing contracts adopting ADR methods.

Summary

8. Members are requested to note the Government's current approach outlined in paragraph 7 above and offer views in promoting ADR methods.

Works Branch
Development Bureau
December 2009

Dispute Resolution Methods in Public Work Projects

Dispute Resolution Methods		No. of contracts with provisions for different dispute resolution methods							
		ASD	HD	CEDD	DSD	EMSD	HyD	WSD	Total
Mandatory Dispute Resolution Methods									
(1)	Arbitration	All (8)	All (0)	All (14)	All (5)	All (0)	All (6)	All (6)	All (39)
(2)	Short Form Arbitration	66 (0)	71 (0)	-	-	-	-	-	137 (0)
Voluntary Dispute Resolution Methods									
(1)	Negotiation (extra-contractual)	All (1)	All (0)	All (7)	All (4)	All (0)	All (5)	All (0)	All (17)
(2)	Mediation	All (1)	All (0)	All (11)	All (5)	All (1)	All (7)	All (8)	All (33)
(3)	Adjudication	10 (0)	-	7 (0)	15 (1)	-	12 (0)	4 (0)	48 (1)
(4)	Dispute Resolution Advisor	66	71	5	12	-	8	2	164
(5)	Non-contractual partnering	21	100 approx.	10	17	2	23	13	186
(6)	Contractual partnering	4*	-	1*	1	-	1*	2*	9

Note 1: Figures inside brackets are numbers of contracts in which dispute resolution methods have been conducted in the past five years. In respect of contractors' requests for negotiation, mediation and adjudication in the past five years, Government has responded positively to 86%, 90% and 100% of the requests respectively.

Note 2: * selected upcoming contracts using contractual partnering.

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