



DRAFT

REPORT OF THE WORKING GROUP

ON

PROCUREMENT SYSTEMS & DISPUTE RESOLUTION FOR CONSTRUCTION SECTOR

12th PLAN

(2012-2017)

Contents

	Page
1.0 Preface	2
2.0 Overview	4
3.0 Impediments faced by the Industry	5
4.0 Thrust Areas	5
5.0 Good practices	6
6.0 Way Forward	7

1.0 Preface

In the context of the formulation of the Twelfth Five Year Plan, Planning Commission has set up a Steering Committee on Construction to study and analyze the Indian Construction Industry to suggest policy framework and to recommend the measures for self regulation for the constituents of the Construction Industry along with the mechanism for implementation of the recommendations.

For facilitating work by the Steering Committee, a working group on Procurement Systems & Dispute Resolution for the Construction Sector has been constituted as per CIDC Letter No.2253/12th-National Plan/WG2011 dated 22rd September, 2011 (Annexure-1). Composition of the Working Group is as below:

1. Shri. Chandra Shekhar Prasad, Director General,
Central Public Works Department (C.P.W.D). - Co-Chairman
2. Shri. Cherian Varkey, President,
Builders Association of India (BAI) - Co-Chairman
3. Shri Sunil Mahajan, Director, CIDC - Convenor
4. Mr. Palash Srivastava, Director, PPP Initiatives, IDFC Foundation
5. Shri. S.P. S. Bakshi, Chairman cum Managing Director, Engineering
Projects (India) Ltd.
6. Prof. M Subramaniam, Chairman, R&M Infrastructure Services (P) Ltd
7. Shri Nilaya Mitesh, IAS, Director, Ministry of Finance
8. Shri Gopal Jain, Advocate, Supreme Court
9. Shri A K Sharma, CE, CPWD
10. Shri Gyan Ghosh, Sr. GM, B G Shirke ConstructionCo.
11. Er. O P Gupta, Consultant, ICC
12. Shri Tarun Bhasin, Director, Bhasin & Associates
13. Shri D L Desai (Shankarbai), Trustee, Builders Association of India
14. Shri Arun Chopra, Universal Enterprise

This report of the Working Group has been prepared based on the discussions held during the working group meetings, Planning Commission document – Approach to 12th Plan and the study of similar initiatives being undertaken globally.

2.0 Overview

- Construction Sector is an integral part of India's economy. The realization of Indian Vision 2025 to emerge as a major economic power requires rapid growth in Infrastructure. Construction industry plays a pivotal role in developing country's infrastructure and accounts for nearly 45% of the total investment in the Infrastructure. Construction sector is also the second largest employer after the agriculture sector.
- Construction industry cannot be visualized as a single industry in view of the wide range of types and sizes of construction works. It covers a spectrum of activities carried out by a group of linked organisations providing design and engineering, supplying materials and equipment, carrying out construction work and providing operation and maintenance services.
- Construction industry can be broadly classified into two sectors i.e. organized and unorganized. The organized sector includes more than 30,000 organisations whereas the standalone contractors in the unorganized sector number more than 120,000.
- Significant contribution of the construction sector to the Indian Economy needs to be given more thrust in the 12th Five Year Plan. One of the reasons of indifferent state of Construction Industry, and rampant time and cost overruns experienced while executing the construction projects, is lack of formal training and systems related to skill assessment and certification of construction workmen.

3.0 Impediments faced by the Industry

- ❖ Non standardized Contract documents is the main handicap
- ❖ ITEM RATE CONTRACTS must be limited to a minimum & it is time India moves over from to the globally accepted practice of E.P.C CONTRACTS.
- ❖ DISPUTE RESOLUTION & MITIGATION is presently not structured into the Contract: thereby leading to litigation & consequent delays.
- ❖ INDIAN ARBITRATION ACT 1996 AMENDMENT duly reviewed & agreed to: has not been ENACTED as yet.
- ❖ ADHOC ARBITRATIONS have caused undue delays & road blocks.b) There is no regulation to insist on Certification for employment.

- ❖ There is no adjudicator system for the day to day findings.
- ❖ There is no centralised agency to publish Cost Index for the projects.
- ❖ Disputes are referred as Civil suits.
- ❖ Procurement systems based on least cost principle need to be reviewed as they may not be suitable for all types & speed of procurement
- ❖ The contract Conditions being followed are not standard & the contractual clauses are not equitable.
- ❖ The mode of dispute resolution is Ad-hoc and results in inordinately long time for the resolution of disputes.
- ❖ The enabling planning of the projects is not done by the departments.
- ❖ The work & contract manuals being followed by the departments are archaic & in many cases self contradictory.

4.0 Thrust Areas

The following thrust areas were outlined that need to be addressed by the Working Group on procurement systems & dispute resolution issues for the construction sector for the 12th plan.

- Standardization of Bidding & Contract Documents for each Sector
- Procurement issues at National level & International Trade issues
- Institutionalization of Arbitration/ Mediation.

Procurement Systems should have following five necessary steps-

- i. Standard Operating Procedures (SOP)
- ii. General Escalation
- iii. Contract Conditions
- iv. Mode of calculating Cost Indices
- v. Viable Dispute Resolution Mechanism

5.0 Good Practices Recommended

- Planning Commission Govt. of India & CIDC: must organize one day work shops at every state capital: for the respective state Govt's Engineering Universities & Construction entities therein: to put forth on the funds available at the Govt. of India for the various categories & the mandate extended by the Govt. of India, National skill development council: to CIDC for augment of Human Resources in.
 - (i) Construction & Engineers
 - (ii) Construction & skilled workmen.

- Planning Commission, Govt. of India & CIDC: create a structured interface with Ministry of HRD, UGC, AICTE: on mandate extended to CIDC of Govt. of India, National skill development council augment of Human Resources in.
 - (iii) Construction & Engineers
 - (iv) Construction & skilled workmen.

- Contract conditions standardization would bring comparable assessment & enable review monitor optimization.

- FIDIC clauses have built in safeguard on dispute resolution, dispute review boards & concept of owner's engineer.

- Dispute resolution through arbitration would need amendment of Indian arbitration act 1996: which awaits enact.

- Similar lines of Administrative Tribunal, IT Tribunal, Institute of Chartered Accountants etc.

- Japanese procurement practices

- The standard contract document prepared for the Ministry of Statistics & Program Implementation may be taken as the base document.

- The Arbitration rules & procedures being subscribed by the construction Industry Arbitration council be adopted Nationally.

6.0 Way Forward

- Members realized that for smooth functioning of the projects, there is a need of uniform contract conditions which should clearly mention –
 1. Time of completion, which should be realistic should be clearly mentioned.
 2. Methodology of executing the projects to be defined.
 3. Clause of Escalation need to incorporate star rates.
 4. Clause of Arbitration need to be modified for introduction of Institutional Arbitration.
 5. Specific provisions for Compensation events.

- Adjudicator System

- A separate organisation exclusively for Construction Industry who will publish cost indices for projects, Materials, labour, machinery & POL.

- Disputes should be dealt by a Tribunal for Construction Industry comprising members from Technical, Judicial, Administration.

- Median cost principle for some procurements may be studied for their applicability

- A standard contract form should be followed for better transparency. CIDC along with the constituents of Construction Industry under the auspices of the planning Commission should develop this, which should be made mandatory for all public funded projects.

- The Arbitration processes to be adopted should be Institutional rather than being Ad-hoc.

- the works/ contract manuals to be followed by all the works departments should be harmonized & updated taking in cognizance the contemporary exigencies.