

Alternative dispute resolution methods and procurement



The term of procurement method is frequently complex network of relationships which are formed between clients, consultants and construction companies, to enable a building project to be realized. Quantity Surveyors know how to provide a full Procurement solution at the inspection stage.

There are essential client's requirements at inspection stage such as; Advice on procurement method, Contractual advice, Contractor selection, Preparation of tender and contract documentation, Forms of contract, etc.

Particularly on the construction project it is vitally important to arrangement of the right method of procuring the construction works. There are different types of procurement arrangements and options exist in the construction industry Such as; Traditional (Design-bid-build), Design and Build, Management Contracting, Construction Management, Design and Manage, etc.

ADR typically refers to processes and techniques of resolving disputes that fall outside of the judicial process (HG. org Worldwide Legal Directories)

ADR is takes few variety forms as Negotiation, Mini-trial, Mediation, Conciliation, Mutual fact-finding, Expert Determination, Private judging, Dispute resolution boards, etc.

INTRODUCTION

This report emphasize for identifying critical phases of the Construction procurement and Alternative dispute resolution methods Therefore, especially highlight concerning significant phases of procurement and disputes.

And also critically discuss key role of Quantity Surveyor for Disputes resolution and opinions to improve the procurement methods.

MAIN BODY DISCUSSION

Explain the quantity surveyors' role in the various needs of client for selection of procurement at inception stage of the construction project.

What is the Procurement method of Construction Project?

The term of ' procurement method' is frequently complex network of relationships which are formed between clients, consultants and construction companies, to enable a building project to be realized. It is important to discriminate the contractual relationships from managerial links, and in complex modern procurement systems. (Which Contract? 4th edition by Sarah Lupton, Stanley Cox and Hugh Clamp)

Client's Requirements at the Inspection Stage

Quantity Surveyors know how to provide a full Procurement solution at the inspection stage of project for all clients, such as Main Contractors, Private & Public Clients. Whatever level of construction procurement is required; Quantity Surveyors have the knowledge and experience to guide clients toward a successful construction project. Hence as identified essential client's requirements at inspection stage those can be specify as follows;

- Advice on the most appropriate procurement method for the project,
- Contractual advice,
- Contractor selection advice,

- Preparation of tender and contract documentation (bills of quantities & schedules of rates),
- Forms of contract,
- Reviewing tender documents (drawings and specifications).

Quantity Surveyor Role based on Client requirements at for select the Procurement methods

Quantity surveyors have an important role to perform in building procurement selection at the inspection stage based on client requirements because choosing the right procurement method is vital to the success of a building project. Some experience clients who may have their own professional team and an effective procurement policy and inexperience client have little or no knowledge of procurement methods; hence they require extensive professional advice at the inspection stage. Below mentioned are the vital important roles as identified.

Advice on the most appropriate procurement method: -as a specialty of construction Contracts, Quantity Surveyor has to advice for select a suitable procurement methods based on client requirement. Since some clients need different type of procurement methods according to their project scope.

Contractual advice: -as an important part of contract at the initial stage of project, required preparing an agreement to obtain clear understand and less disputes until finish the project. Hence Quantity Surveyor involves selecting and advising proper suitable contract agreement for the project as per client requirements.

Advice for Contractor selection: –selection of suitable contractor is complex process within role of Quantity Surveyor, because project success is depend on which selected contract organization. Hence Quantity Surveyor involves at the project inspection stage considering client needs for select a reputed contractor according to the standards procedures.

Preparation of tender and contract documentation: –Quantity Surveyor involves directly for preparation of calling tenders and documentations, such as, Company guarantee, Sectional Completion, Limitation of Contractors Liability, Price Adjustment for Inflation , Bonus for early Completion, Delay Damages , Changes in Law, Condition of contract, Additional Conditions, Bills of quantities & schedules of rates, etc.

Forms of contract: –Quantity Surveyor involves selecting suitable form of contract expelling having advantage to the project when select most suitable form of contract according to the considering client requirement. One of those as JCT forms FIDIC form, NEC form, ICTAD form of contract in Sri Lanka.

Reviewing tender documents: –Quantity Surveyor involve to review drawings and specifications for tenders process, also tender evaluation based on predetermined estimate and preparing final report for tender award.

Analyze the different type of procurement arrangement (process of conducting with advantages and disadvantages).

Particularly on the construction project it is vitally important to arrangement of the right method of procuring the construction works. Not only is it important to choose the right contractor but it is vital that the contract documentation and form of contract is appropriate to the project.

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In basic terms Procurement is the process used to obtain construction projects. It involves the selection of a contractual framework that clearly identifies the structure of responsibilities and authorities for participants within the building process.

There are different types of procurement arrangements and options exist in the construction industry as follows;

- Traditional (Design-bid-build)
- Design and Build
- Management Contracting
- Construction Management
- Design and Manage

Traditional (Design-bid-build)

Generally Traditional methods can be described under few forms procuring process as follows;

Cost Reimbursed Contract

Cost plus percentage

Cost plus Fixed fee

Cost plus Targets

Lump Sum Contract

Measure and pay contracts

Engineers

Main Contractor

CLIENT

Cost Consultant / Quantity Surveyor

Nominated

Sub-Contractor

Domestic

Sub-Contractor

Consultant

The client who is appoints an Architect as initial appointment to the project under this method, subsequently the architect appoint his design team and other consultants as requires to the project. And also the design team provides advice to the client until completion of project execution.

Furthermore understand of Contractual relationship shows by below given chart. (Refer to diagram 01)

Diagram 01- Contractual relationship

Cost Reimbursed Contract

Introduction

This method is not constructive for any client due to absence of tender sum or final predicted final cost. Hence cost reimbursed contract also often provide some incentive to contractors to control costs. This method generally used only for following situations; Emergency projects, when the correct scope is unavailable where payments will be paying day work basis etc.

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Cost plus percentage: – The contractor paid for cost of labour, material, plant and subcontractor's overheads & profit. And Profit directly subsists with contractor's expenditures. Hence this is not constructive for clients.

Cost plus Fixed fee: – Profits of Contractors are pre-determined and agree with both client and contractor under this method before the start of work. Also contractor will try to control the project cost by reducing his management costs etc.

Lump Sum Contract

This method generally both contractor and client agree for a fix amount before the commencement of the project. The contractor is responsible to carrying out works according to the contract documents referring to the agreed cost. Further lump sum contract obtain two forms as with Quantities and without Quantities.

Measure and pay contracts

Particularly the Contractor is paid for actual work done according to the contract documents. There are several types of methods under this process, based on provide Drawing and Specification, Performance specifications, Schedule of rates, Bill of quantities, Bill of Approximate quantities, etc.

Advantages of Traditional Method

- The total cost of the project Client is familiar with early,
- Tender price is little,
- High tender quality and superlative tender competition,
- Allow to design changes,

- Assist the cost management process.

Disadvantages of Traditional Method

- Acquire additional time to start work execution from inception,
- Risk of design mistake occur to project delay,
- Lack of participation of contractor with design process.

Design and Build

Employ of a contractor is directly by Client instead of appointing an architect to a project under this method. Hence the Contractor is responsible for both designing and execution of the project. Also appoint a design team for develop the design using tender process by Clint. The contractor is invited by the client to develop and build the design which is done by the client's consultant under this form. (Refer to diagram 02)

Design and build Contractor

Client

Nominated

Sub-Contractor

Domestic

Sub-Contractor

Cost Consultant / Quantity Surveyor

Architect

Consultants

Licensees

Diagram 02- Contractual relationship

Advantages

- Contractor can't make any charge on client for design errors,
- High level of price certainty exists,
- Reduced project duration and enhanced degree of buildability,
- Not necessary to appoint employees other than the Contractor.

Disadvantages

- Difficult Cost management and comparison of tenders,
- The building may aesthetically less acceptable if the constructor's organization is smaller or less experienced team,
- Less knowledge about the value for money client has.

Management Contracting

Architect

Engineering Consultants

CLIENT

Quantity Surveyor

Trade Contractor

Management Contractor

Trade Contractor

Trade Contractor

In this method, Contractor employs by the client for manage the whole project by considering past experiences. The management contractor not doing any construction works himself. Generally distributes work packages to sub-contractors and manages them. Also paid by the client for management fee and also any other additional costs for services if has to provide before or during the construction period. (Refer to diagram 03)

Diagram 03- Contractual relationship

Advantages

- Contractor work under client's team, therefore it influence to identify client's requirements.
- Design team can use Contractor's knowledge and management experiences for design requirements.
- Work is able to start early once the design of each work package is completed and also reduce project duration.

Disadvantages

- Final cost of the project available only after the completion of the last work package only.
- The client would have risk on cost which can increase due to design errors.

Construction Management

This is similar to the management contracting but different is each trade contractor has direct contract with the client. The client is appointing a construction manager either consultant or contractor for organize and plan construction work. Also there is responsibility of appointing a design team as client needs.

Advantages

- Every trade contractor have direct contract with the client therefore it is easy to redress delays.
- Easy to avoid or minimize practical troubles due to close relationship between construction manager and design team.
- Work is able to start early once the design of each work package is completed.
- Construction works and Project management integrated directly.

Disadvantages

- Financial commitment difficult to identify to the client until the final work package is signed.
- The client has to deal with another consultant and contractors instead of main contractor more.

Design and manage

Designer

Work Sub-Contractor

Scope designer

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CLIENT

Design & Manage Contractor

This method also similar to the management contracting and however the major difference is additional design responsibility to the management contractor. The form of procurement of this type of contract shows similarities to the design and build contracts but extend of the single point design responsibility. (Refer to diagram 04)

Diagram 04- Contractual relationship

Advantages

- Design team can use project manager's knowledge and management experiences.
- Work is able to start early once the design of each work package is completed.
- Practical problems possible to minimize or avoid and also reduce the project duration.

Explain your view on the construction procurement and suggestion to improve the effectiveness.

Suggestions to improvement of Traditional method

Need to be avoiding design errors and project delays by involvement of a knowledgeable independent professional body at the inception of the project.

Carryout the tendering process separately for each trade package once it is completed and start execution accordingly for reduce the time duration.

Suggestions to improvement of Design and Build method

Client can check contractor's recourses to make sure the capability of the firm to execute his project

It is possible to develop the design by a 3rd party to makes sure better value for money.

Briefly explain each ADR methods with advantages and disadvantages in contract.

Alternative Dispute Resolution (ADR)

Introduction

ADR typically refers to processes and techniques of resolving disputes that fall outside of the judicial process (HG. org Worldwide Legal Directories)

Alternative dispute resolution (ADR) is originated in the USA, was adopted in Britain in the 1980s and is now practiced worldwide... (Page123, Quantity Surveying & Construction Management, 2012)

Goodwill between both parties is very important to achieve good results from ADR applications without wasting time and recourses with Arbitration or litigation. General advantages of ADR applications can review as Private, Quick, Economic, etc.

ADR is takes few variety forms as follows. (Page123, Quantity Surveying & Construction Management, 2012)

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- Negotiation
- Mini-trial
- Mediation
- Conciliation
- Mutual fact-finding
- Expert Determination
- Private judging
- Dispute resolution boards

Negotiation

In negotiation participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. There are no limits for arguments.

Advantages:-

- All Parties can find their own judgments and Time and money saving.
- Fully confidential if third person not involving with the process.

Disadvantages:-

- This might effect to the relationship of the both parties due to unnecessary arguments.

Mini-trial

Mini-Trial involves the top decision makers of the corporations having a dispute by engaging them in the presentation of their respective cases and the subsequent negotiating process. A mini-trial is generally not a binding method unless the parties agree otherwise.

Advantages:-

- Independent advisor and facilitator is available.
- Time and money saving is exist.
- Unfriendliness is reduced.
- This method is not a trial at all and maintained confidentiality.
- The business relationship of the both parties is maintained

Disadvantages:-

- Resolution if fail, parties can go to the court.
- Process will not succeed if the parties have any doubt on his impartiality and independence.
- Any party at any point of time, there is a possible to withdraw.
- Not much cost effective all the time.

Mediation

Mediation a forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Advantages:-

- Avoid unfriendliness and Less cost than go to the courts.
- Mediator's knowledge helps to the parties guide clear future disputes.

Disadvantages:-

- When parties weak and strong, Possible to make agreement it may be lopsided to favor of the more prominent side.

Conciliation

One party invites to other party to resolve disputes through Conciliation and the process will commence once the invitation is accepted. This process will not commence if other party rejects the invitation. If both parties fail the process they have to go to arbitration to resolve disputes.

Advantages:-

- Both parties attempt to become for negotiation as of the great respect of the neutral person and also it is faster than negotiation.

Disadvantages:-

- Less confidential due to involvement of conciliator.
- Expenses are higher.
- No any binding between both parties.

Mutual fact-finding

All the parties strongly engage and make a report with or without assistance of a mutual expert. The parties can solve their disputes through the report and also this report is possible to use as a trial, as well as can give as evidence to the court or arbitration.

Dispute resolution boards

In the background of construction contracts, a DRB includes a board of one or three persons, independent of the contracting parties, engaged to carry out an overview role of the execution of the project. Its primary function is to assist the parties to avoid disputes if possible or if not, to assist them to a quick, cost-effective and avoid the need for arbitration or litigation. (Dr

Donald Charrett, Barrister, Arbitrator and Mediator Owen Dixon Chambers East, Melbourne)

Advantages

- The panel acts realistically as third person.
- The Panel members are industrial experts.
- Early responses save time and money.

Disadvantages:-

- Select and appoint of members are complicate process.
- Not retain confidentiality.

Expert determination

This is a private alternative to court litigation for the resolution of disputes. It is one of a number of ADR methods available including arbitration, mediation and adjudication. (Daniel Djanogly Forensic Accountants & Chartered Arbitrators)

Advantages

- Cheaper than running a case to trial.
- Allow both parties a greater knowledge of how the factual evidence is likely to be decided if the case goes to trial.

Disadvantages

- The expert has no power to force his findings on the parties.
- One party is probable to have to sure the other to implement determination of the expert.

Private judging

Private Judging is a special type of decisional process, based on arbitration. A retired judge is appointed by parties in dispute to preside over a “ private trial”.

Advantages

- It offers convenience and flexible to all parties.
- The flexibility of this method ownership and control of the litigation to the dispute.
- It is speedy process & confidentially

Disadvantages

- This is some considerably costly method in ADR
- The parties are unable to evaluate the quality of the judgment which given under this method.

The parties entered into the contract they may face to various disputes. Discuss the role of the quantity surveyors’ input, from the inception to completion of the project.

Role of the quantity surveyors for Disputes Resolution

To be identified and scheduled might be occurred disputes at the early stage.

Involving and discuss with line managers regarding the identified disputes.

Advice to the client for selecting an accurate method of dispute resolution.

As an initial action try to be settle by negotiation action to avoid wasting time and money.

If negotiation is unsuccessful, to be advised to the senior management for go to the ADR methods by avoiding go to the Arbitration or Litigation.

Perform to evaluate and advise to select the correct method from available in ADR process.

Collects and prepares all necessary supporting documents required to the ADR process.

Attending for relevant meetings and review the issues of meeting

CONCLUSION/RECOMMENDATION

Basically Construction project disputes are occurred due to selection of inappropriate procurement applications for the project. Hence selection of suitable procurement methods at project inspection stage is a very important responsibility within role of Quantity Surveyor. I recommend every Quantity Surveyor should develop their knowledge in-field of Construction procurement application and disputes resolution methods in practically.