

THE HONG KONG HOUSING AUTHORITY

Memorandum for the Building Committee

QUALITY HOUSING : PARTNERING FOR CHANGE **Piloting for** **the Dispute Resolution Adviser System**

PURPOSE

The purpose of this paper is to seek Members' approval on the proposal to pilot the dispute resolution adviser system.

JUSTIFICATIONS

Background

2. Traditionally, the Housing Authority (the Authority) has been adopting the procedures for dispute resolution under the standard Government Form of Contract which operate on the conventional, reactive and adversarial mode.

3. Instigated by the Housing Quality Reform and the need for change to meet the future housing production, we have reviewed, amongst others, the effectiveness of our current disputes resolution procedures to identify scope for improvement. In our Quality Housing Reform, we have included the proposal to expedite disputes resolution as a Quality Housing Initiative (QHI) No. 6 under Pillars 5 and 7 - Establishing the Partnering Framework and Reinforcing the Partnering Culture, by way of piloting alternative dispute resolution mechanism that operates on the basis of the partnering spirit.

The Forerunner

4. In this pursuit, it is necessary that we make reference to initiatives taken by other works departments with mode of operations similar to ours, namely the Architectural Services Department (ArchSD). When ArchSD launched a number of its more time-critical and complex projects in 1991, the department had since introduced, amongst other measures, an alternative method referred to as the dispute resolution advisor (DRAd) system, to expedite the resolution of disputes so that the timely delivery of these projects were not affected. As at March 1999, the mechanism has been adopted in 27 of ArchSD's projects^{Note 1}.

Our Proposed Move

5. Vide Paper BC No. 60/91, the Authority did consider the merits of the system and came to the conclusion that it should be used only if a project of sufficient complexity warranted it. Now that the Authority is moving towards the site-specific mode of production, we will be faced with a more complex delivery process and contract administration. There is therefore a need to minimize disputes and disruptions proactively and to ensure expeditious resolution of the disputes that may arise. In the light of the implementation experience on ArchSD's projects, we consider it desirable to test out the application of the DRAd system on the Authority's projects.

The Mechanism

6. To give Members a full appraisal of the working mechanism, we set out a brief account of the salient features of the DRAd system, including procedures for the following –

- (a) listing and management in **Annex A**;
- (b) appointment on contract basis, in **Annex B**; and
- (c) contract administration in **Annex C**

^{Note 1} At present, it is adopted on ArchSD's capital projects with an estimate exceeding \$200 million, or exceptionally, nominated complex projects exceeding \$100 million.

7. The recommendation of the DRAd is *non-binding upon the parties* and dissatisfied party may still proceed with other procedures such as short form arbitration subsequently. From ArchSD's experience, the system has served the wider interests of the Employer well in that it –

- (a) encourages and fosters a partnering spirit and promotes joint problem-solving and avoidance, through the facilitation of the DRAd, to prevent disputes from arising;
- (b) maximizes the chance that, where disputes that do arise, they will in the first instance be resolved jointly by the site level representatives of the Employer^{Note 2} and the Contractor; that is to say, by those who possess the most direct and contemporaneous knowledge of the problem;
- (c) resolves any disputes not settled at the site level as expeditiously and cost effectively as possible, with the intermediary of the DRAd,
- (d) obviates disruptions that may be caused to the progress of the works through protracted disputes and contentious proceedings; and
- (e) minimizes the number, if any, of the disputes that survive the completion of the works.

Contracts For Piloting

8. We *propose* to pilot the DRAd system on one piling and two building contracts for the construction of new housing development adopting the listing and selection arrangements and relevant special conditions developed by the ArchSD^{Note 3}. To avoid straining manpower resources during the current

^{Note 2} For the purpose of the DRAd system, the “site level representatives of the Employer” shall include the Contract Manager and/or the Surveyor and their representatives.

^{Note 3} Whilst the benefits of the DRAd system are recognized from ArchSD's implementation experience, we are not able to implement the proposal more extensively on housing projects partly due to the limited number of listed DRAd at present, i.e. only 38 as at 15 November 2000.

peak production period, we **propose** to select those contracts with works commencement in the second half of year 2001. The projects tentatively selected are –

- (a) Piling to foundation of Fanling Area 36 Phase 3, comprising three New Harmony blocks, based on engineer's design;
- (b) Construction of Tin Shui Wai Area 101 Phase 2, comprising 2,112 domestic flats of Group I category under the site-specific design approach; and
- (c) Construction of Upper Wong Tai Sin Phase 3, comprising 740 domestic flats of Group I category under the site-specific, design and build approach, with foundation works combined under the same contract.

9. On the two building contracts, we **propose** that the sub-contracts between the main building contractor and the nominated sub-contractors shall have a clause requiring the nominated sub-contractors to participate fully in the DRAd system. This will enable the system to be fully tested for wider application in due course.

On-going contracts

10. As we pilot for new projects, we should not lose sight of the need to expedite the settlement of disputes on-going contracts. As an interim measure, we will form ad-hoc dispute resolution panels on the on-going piling contracts. This will incorporate representatives from the Employer, and Contractor where appropriate, to address disputes which the project team has encountered insurmountable difficulty to resolve. In this process, we may jointly with Contractor appoint independent dispute resolution adviser to facilitate agreement. We may also extend this measure to on-going building contracts as appropriate to address subsisting contentious situations.

EFFECTS ON QUALITY

11. We envisage that the proposed DRAd system will enable disputes between parties to be resolved in an amicable manner thereby obviating protracted arbitration and litigious proceedings. With the procedures written into the contract, scarce resources of the parties will more likely be diverted into improving productivity thereby giving better assurance for the built quality. We also believe that the proposal will facilitate project implementation, shorten lead-time for decision-making and replace antagonism with cooperation.

PUBLIC REACTION AND PUBLICITY

The Construction Industry Review Committee (CIRC)

12. The CIRC would likely support the DRAd system for speedier and less adversarial procedures to prevent and speed up resolution of dispute.

Professional Bodies

13. Members from the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, and the Hong Kong Institute of Surveyors have been consulted and they generally welcome the proposals as ones that will improve on the conventional mode of dispute resolution in terms of pro-activity and enhance the readiness of parties to compromise. They expect that more of their experienced members will be interested in pursuing the DRAd listing status.

The Hong Kong Construction Association (HKCA)

14. The HKCA strongly supports the proposal in the light of the following advantages that it sees on ArchSD's projects –

- (a) expedite the agreement of major variations;
- (b) avoid undue development of disputes which may lead to expensive and prolonged arbitration or litigation; and

- (c) facilitate settlement of final account within a reasonable time after the Period of Final Measurement.

Staff

15. In-house staff support the DRAd initiative. Nonetheless, some professional staff are concerned about the pressure imposed on them and in particular the 28 days limit to resolve disputes at the site representatives level. We would need to suitably adjust the workload of staff involved in the pilot projects to enable them to cope with the commitment in a reasonable, satisfactory and effective manner.

FINANCIAL AND STAFFING IMPLICATION

16. Financial and staffing implications of the DRAd proposal could be assessed from the following perspectives –

- (a) The cost of the DRAd services ***will be equally shared*** by the Employer and the Contractor. From the implementation experience of the ArchSD, the Employer's share of this cost is insignificant (***average 0.04% of contract sum***) when compared with the benefits achieved in time for completion^{Note 4} and the final cost of the projects^{Note 5}.
- (b) There will be greater pressure on staff resources of the project team to administer the proposal according to the pre-set time-frame. The additional workload on the in-house pilot projects handled will be met from internal redeployment. For consultant's pilot projects, we ***propose*** to incorporate the requirement into the consultancy tender, or otherwise to negotiate a variation to the awarded consultancy agreements. In both scenarios, the additional pressure during construction will be offset by the minimization of protracted

^{Note 4} In terms of extension of time, the average percentage increase in the contract period for DRAd projects of ArchSD is 7.2% whereas for non-DRAd projects, this is 15.7%.

^{Note 5} In terms of final contract sum, the average percentage saving for DRAd projects of the ArchSD is 2.2% whereas for non-DRAd projects, this is 1.7%.

disputes and a shorter final account period. We expect the implication on fees to be minor in overall terms.

- (c) We expect to derive savings in final contract sum on DRAd projects based on ArchSD's experience (see foot note 5).

WAY FORWARD

17. We will review the implementation experience of DRAd system twelve months after works commencement of the first pilot project in point of time and may recommend to Members wider application subject to the availability of adequate number of listed DRAd. We will also seek ArchSD's agreement for the Department to be represented in the listing and management of the DRAds.

RECOMMENDATION

18. It is recommended that Members' approval be given to –
- (a) the pilot DRAd projects, adopting the ArchSD model (paragraphs 6 to 9); and
 - (b) the interim measures on on-going contracts (paragraph 10).

DISCUSSION

19. At the BC meeting on 21 December 2000, Members will be invited to discuss, endorse the recommendations at paragraph 18.

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