

Tendering Procedures in IFAWPCA Member Countries

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edited by CERIK

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The International Federation of Asian & Western Pacific Contrators' Associations
Construction Association of Korea

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FOREWORD

It is a distinct pleasure to write a foreword to this publication edited by Construction & Economy Research Institute of Korea with the backing of member countries of IFAWPCA. ‘Tendering Procedures in IFAWPCA Member Countries’ contains valuable information on construction industry and bidding system of various countries. Moreover, the joint effort put into the book, in my opinion, epitomizes the cooperative spirit pursued by IFAWPCA.

The project was first initiated by CERIK at the 30th IFAWPCA Convention held in Nepal. The idea was to collect and distribute information on tendering process for public construction works so as to enhance business opportunities of the member countries’ construction firms. However, this introductory book will be also useful to scholars and policy-makers, and to those with general interest in the Asian and Western Pacific region’s construction market.

We are living in a drastically changing world. The traditionally land bound construction industry is expanding its activities across the border, and WTO is encouraging changes in the rules and regulations to accommodate such trend. To adept to the inevitable new order of the world economy, all economic agents need to focus on the rapidly transforming social and business environment. Coping with the trend of increasing global competition and cooperation poses as a huge challenge to the construction industry. The publication on hand hopes to lead the industry a step toward the harmonious solution.

I would like to thank the member countries for their contribution. In addition, my gratitude goes out to CERIK for their timely orchestration of editing the book and Jong-woong Park, Board Member of IFAWPCA representing Korea, for his active support. I personally hope that this output is first of many more to come from IFAWPCA.

Chang, Young-Soo
President of Construction Association of Korea
Chairman of Construction & Economy Research Institute of Korea

EDITOR'S NOTE

This publication contains the procurement procedures practiced in the IFAWPCA member countries. The manuscripts of country reports differ widely in their scope and depth. CERIK chose the role of being a neutral editor adding only minor changes needed for cosmetic purpose. Therefore, the main body of this report mostly reflects the reports sent in by the member countries.

The principal objective of the contract system is to ensure a delivery of the best value product for a customer. Here, the best value product is defined in terms of timeliness, quality and cost, which can be interpreted to include the life cycle cost for the operation and maintenance of the facility, and also administrative cost of product delivery. If one translate the time value in a cost term, the guiding principle of contract system is to warrant the best value product, which is simply acquiring the products with specific attributes at the lowest cost. IFAWPCA member countries use various procurement systems. However, the basic elements of the contract include invitation to bid, pre-qualification, bidding and final contract awarding.

The types of contracts for construction projects can be categorized into three groups. The first group is separated procurement systems, where separate entities carry out the design and construction aspects of a construction project. This group includes not only the conventional system but also its variants such as two-stage selective tendering, negotiation, and cost reimbursement methods. The second group is integrated procurement systems, where design and construction become the responsibility of one organization. Design-and-Build contracts and Build-Operate-Transfer (BOT) contracts belong to this category. The third category is management-oriented procurement systems, where the emphasis is placed on overall management of the design and construction of the project.

Among the three categories, separated procurement systems are the most widely used in IFAWPCA countries. Some countries, however, are beginning to adopt non-standard form of contracts such as BOT and Design-and-Build methods.

Tendering procedures can also be classified by the way how procurement authorities invite bids. Under open tendering systems, all interested contractors are free to submit a tender. Under selective tendering system, only contractors on the relevant lists of approved contractors are invited. Single or restricted tendering

methods are used when the works have to be commenced as soon as possible or if only one or a small number of contractors has the ability to execute the works. For the complex or high-value construction projects, pre-qualified tendering systems are adopted to ensure financial and technical capabilities of tenderers.

Each IFAWPCA member country's procurement system compiled in this volume emphasizes different aspects of tendering procedures. The Australian procedures emphasize the principle of ethical behavior. Collusive tendering, participation in price-fixing cartels, 'bid shopping' or any other practices which seeks to limit competition, are specially prohibited.

The Government of Hong Kong emphasizes achieving best value for money through tendering procedures. For this policy objective, the Government takes into account in tender evaluation not only the competitiveness of the tenders, but also past performance of the tender and whether the tenders conform with specifications, terms and conditions laid down in the tender documents. The government is not bound to accept the lowest tender.

In Japan, the design and construction phases of most construction projects are carried out separately. The Japanese procurement authorities have developed elaborate systems to evaluate the ranking of construction firms. Under the system of selective bidding by public invitation, only firms whose ranks qualify them to bid on a project are publicly invited to provide technical documents. Based on these documents, approximately ten firms are selected for the eligibility to submit bids. The Japanese introduced a new type of contracting system by enacting the Private Finance Initiative law in 1999. Under this system, contractors use their funds and managerial and technological capabilities to construct, maintain, and operate public facilities.

Korea is undergoing a complete overhaul of the tendering procedures. Tendering methods regulated by region and by the size of the contractors are being replaced by more competitive modes, and use of lowest bidder contract system is increasing. However, its emphasis on transparency is restricting the orderer's ability to exercise the conventional wisdom. The system will be continuously tuned to achieve the fine balance.

In Nepal, contracts can be awarded through two-envelope procedure for the works which will cost more than the amount set by the law.

In Thailand, negotiation methods and price inquiry methods are used for small construction projects. The Thai tendering procedures encourage government agencies to purchase local products or materials and to make contracts with Thai enterprises.

The Taiwan, ROC procedures underline the principle of protecting public interests

and fairness. To achieve this principle, the Taiwanese procedures restrict certain activities of former procurement personnel and procurement supervision personnel. Like Thailand, domestic contractors are favored to a certain extent.

Some of IFAWPCA member countries did not submit the country reports within the time scheduled for this publication. However, many of them identified the source information for the subject matter, which can be found in Appendix of this report.

Editors are well aware of the fact that the material provided here only serves to show the glimpse of complex and very important facets of construction market in the countries of the IFAWPCA region. We only hope this volume to trigger a consolidated effort to push forward for a series of comparative studies on the major issues in the construction industry in the member countries.

I would like to thank the IFAWPCA member countries for their cooperations. I would also like to extend my appreciation to the CERIK team headed by Dr. Heung Soo Kim for finishing the job on time.

Sung Woong Hong Ph. D
President of Construction & Economy Research Institute of Korea

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AUSTRALIA

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Construction Market and Industry of AUSTRALIA

1. Macro Economy and Construction Market

1.1 Macro Economic Review and Outlook

Australia's 2000/2001 budget will deliver current Governments fourth consecutive budget surplus of approximately A\$2.8 billion and further surpluses are in prospect. By the end of 2000/2001 the Government will have reduced net debt by around A\$50 billion. Australia continues to enjoy the benefits of strong economic growth, with growth of around 4.25 per cent in 1999/2000. Australia's growth in 2000/2001 is forecast to be a healthy 3.75 per cent. Employment growth is set to continue with an unemployment rate falling to 6.25 per cent by June 2001.

Australia has embarked on a new tax system reform measure which provides for a 10 per cent goods and services tax which will apply to most products and services with the exception of basic food, education and exports. The tax replaces a range of existing wholesale sales taxes and also heralds cuts in personal income tax.

The economic outlook for Australia remains positive with continued economic growth at current levels albeit that recent interest rate increases have the potential to slow growth, particularly as the Goods and Services tax reform takes effect.

1.2 Construction Market Review and Outlook

The building and construction industry is a vital part of the Australian economy. As well as its own output it has a significant impact on the efficiency and productivity of other industries. It promotes investment through its own activities and generates

further investments in the broader economy.

The output of the industry has an impact on all of us. It provides both the physical infrastructure that underpins the economy and the built environment that more directly influences the quality of our lives. Some 95 per cent of people work in the built environment and 90 per cent of Australia's Gross Domestic Product (GDP) is generated there.

The building and construction industry is a key element of national competitiveness. If the industry uses its resources better and raises its efficiency by reducing construction costs and time, Australian industry as a whole will be more competitive.

The introduction of the Goods and Services Tax brought forward a significant demand for new homes prior to the introduction of the new tax system. However, the latest housing, finance and building approval figures show that housing is headed for one of the hardest falls in recent history.

The total number of dwellings financed in June 2000 fell by a seasonally adjusted 14.5% to 38,841 dwellings.

The number of loans for the construction of dwellings, a leading partial indicator of new housing activity slumped by a seasonally adjusted 17.4% to 4,264 dwelling and alarmingly the lowest since 1987. Lending levels are now 42.4% lower than October 1999.

The value of construction in 1998/99 was A\$18 billion in the engineering section, A\$33 billion in the commercial sector, A\$17 billion in the residential sector and A\$3 billion in residential alterations.

The current number of persons in employment in all sectors is approaching 700,000 or about 8% of Australian's total workforce. The industry's contribution to Gross Domestic Product in all sectors is 11%.

The Australian building and construction industry varies considerably in terms of the size of firms operating in the industry. In Australia the industry is dominated by small businesses who sub-contract to major national/international companies and account for 95 per cent of employment.

1.2.1 Major Project Programmed and Underway

The major projects in the industry were dominated in the last few years by the extensive building program in preparation for the Sydney Olympics. This consisted of a major stadium, swimming and other special event venues as well as the Olympic village. Other major projects included airport developments, rail networks, road networks including the A\$1.5 billion Citylink project in Victoria. Major projects

planned in 2000/2001 include residential developments in Melbourne and Brisbane and a major rail link between Darwin and Alice Springs. Other projects include major gas refining terminals.

1.2.2 Property Market Review and Outlook

Strong economic conditions buoyed the office property market in the March quarter. A key source of office demand growth has been in the e-business sector for space in the CBD and decentralized business parks. Record low vacancy levels in the Australian office property market have yet to flow into strong growth in values. Accordingly, most major office markets continuing their upswing in the property cycle.

In regard to specific state markets the CBD office market is showing a late upturn, Melbourne CBD office capital growth is running at 3.5 per cent and the Adelaide and Canberra office market are Australia's weakest at present.

The outlook for the office property market is positive with investor sentiment improving and office property values should rise slowly over the next two years.

Retail property values remain firm with the growth in retail property values picking up in New South Wales, Victoria and Western Australia. The outlook for retail property is for restrained growth and we expect consumer spending to grow at a modest pace in 2000/2001.

The Australian industrial property market is firm in most regions with values up 2.9 per cent over the year to the March quarter 2000. The industry property market for warehousing and distribution will depend on growing activity in the manufacturing, wholesale and retail sectors.

The outlook for the industrial property markets will be finely balanced in 2000/2001. The strong growth in industrial property values over the last two years should slow to a more moderate rate over the next 21 months.

The hotel market improved strongly with total takings growing 8.3 per cent over the year to the March quarter 2000. Hotel room supply rose 3 per cent whilst room demand rose 5.9 per cent. We expect hotel property values to improve marginally over the next year. Limited new supply and firm demand growth from international tourists will underpin the robust conditions in the hotel market in 2000/2001.

1.2.3 Registration/Licensing of Contractors

In Australia individual states have a mix of both registration or licensing arrangement.

In terms of registration all facets of the construction industry must be registered.

This includes architects, engineers and other consultants, contractors, sub contractors and building certifiers and generally covers all types of construction work.

The registration requires technical and managerial qualifications and financial qualifications.

In terms of licensing this is applied to contractors and sub contractors only and the extent of the license depends on the individual jurisdiction. For example NSW licenses are only required for residential construction whereas in the ACT licenses are required for all construction work, both commercial and residential. Not all states require sub contractors to be licensed unless they are specialists such as electricians, plumbers etc. The licensing criteria is similar to the registration criteria in that it is generally technical, managerial and financial qualifications.

1.2.4 Policy on the Construction Industry

At a federal level of Government a recent report was prepared that analysed the future actions that were required to strengthen the building and construction industry. The building for growth report called for action in the following key areas.

Pursuit of innovation in all procurement elements of the industry, adoption of high level information technology, the pursuit of business improvements, the development of networks and alliances, adoption of an environmental and energy efficient regime and lastly regulatory reform as well as the development of international markets.

2. Introduction to The National Code of Practice for the Construction Industry

The construction industry is an important of Australian economy because of its direct contribution to the national economy and its influence on other sectors of the economy. In peak periods the industry produces almost seven per cent of Gross Domestic Product and employs nearly five per cent of the work force.

The construction industry in Australia must be efficient and competitive if it is fulfil its potential to contribute towards national economic growth.

A major share of output across all construction sectors is generated by the continuing demand for public asset and infrastructure development. This demand is generated by direct government development and, increasingly, through joint arrangements between the public and private sector for the provision of community infrastructure.

As major clients of the industry Governments are providing leadership in effecting major improvements in the way business is conducted, encouraging changes in industry production processes to raise productivity, and other actions that will help develop an industry which achieves internationally-competitive standards.

The National Code of Practice for the Construction Industry (the Code) expresses the principles which Commonwealth, State and Territory Governments agree should underpin the future development of the construction industry in Australia.

The Code emphasizes the maintenance of the highest ethical standards in all construction-related activities. The core principles of the Code, supported by the practices and initiatives of each jurisdiction, are aimed at ensuring that the industry:

- is client-focused and respects the rights of clients.
- builds relationships on a foundation of trust.
- observes the highest ethical principles in tendering.
- maintains a positive commitment to continuous improvement and best practice.
- supports broadly-based workplace reform.
- maintains high standards in occupational health safety and rehabilitation and in environmental management, and
- encourages responsible industrial relations leading to economically sustainable arrangements.

The principles incorporated in the Code represent the Governments' agreed positions regarding the industry issues detailed. Individual governments will be able to maintain existing codes or develop codes to suit the priorities and circumstances relevant to particular jurisdictions.

It is acknowledged that existing codes or new codes developed will be consistent with the principles established in the Code. Where a relevant State/Territory Code provides for provisions in addition to the Code those provisions will apply in that State/Territory. the Code provides the minimum level of compliance.

3. Application of The Code

The construction industry in Australia is one of the largest employers in the country. Its activity in residential and non-residential building and engineering construction produces much of the infrastructure that drives our economy. It also facilitates the delivery of services to the community by government, and contributes to a better working and living environment for everyone.

The construction industry includes all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering

This National Code of Practice for the Construction Industry in Australia was developed by the Commonwealth, State and Territory Governments.

The Code establishes a set of principles and standards of behaviour that is expected to apply in dealings between clients, their representatives and members of the construction industry. The private sector is to be encouraged to adopt the code on a voluntary basis.

Any party wishing to do business with governments or work on government construction projects will be required to comply with all aspects of the Code applicable to their activities:

- the term 'party' in the Code includes but is not limited to: clients, principal contractors, subcontractors, suppliers, consultants, employees, unions-their officials, employees and members and industry associations whilst undertaking a representative role.

Adoption of the Code expresses a commitment to deal only with organizations and personnel in the construction industry whose standards and behaviour conform with the principles expressed in the Code. In particular coercion of any form is prohibited.

Achievement of best practice throughout the industry is the responsibility of all participants and adoption of the principles on private sector projects is strongly encouraged. The industry as a whole and the community will be best served if industry participants adhere to high standards of honesty and integrity.

4. National Principles

4.1 Client's Rights and Responsibilities

Clients have the right to choose with whom they do business and to determine and communicate the standards of performance and behaviour they expect from all industry participants.

Clients recognize that their expectations play a central role in driving industry improvement and, in future, they will apply even more stringent criteria to identify, encourage and reward better performers.

Clients will base their decisions on the track record of service providers in terms of

trust, capacity and capability to perform and demonstrated ability to deliver high quality solutions.

Clients will also respect the need for fairness and equity in all business transactions and selection processes, and apply these standards consistently in all dealings with the industry.

4.2 Relationships

Business relationship must be built upon essential qualities of trust, cooperation, equity, and honesty. These qualities must be reflected at all links in the contract chain.

All jurisdictions have clearly defined expectations for service providers which reflect this principle and have implemented business practices which help participants to focus on successful project outcomes.

Industry participants are expected to respond to these requirements by a positive commitment to develop relationships that are: cooperative (i.e., founded on shared objectives and shared benefits); built upon the essential qualities of openness, trust, equity and honesty; established for the long rather than short term; complement and enhance the business outcomes of all parties involved

To facilitate a cooperative approach a number of jurisdictions are promoting approaches such as Partnering and Alternative Dispute Resolution. These approaches require a commitment by all parties to address dealings positively and cooperate in finding solutions to problems or disputes should they arise.

4.3 Competitive Behaviour

Principles of ethical behaviour must be adhered to by all parties, at all times, and at all levels. Tendering processes must be conducted with commitment, honesty and fairness. Anti-competitive behaviour or any other practice which denies other participants legitimate business opportunities are unacceptable. These practices are inconsistent with the establishment and maintenance of ethical business practices which must underlie good working relationships between a client and a service provider and between service providers.

All clients emphasize the need for ethical behaviour at all levels of a project. These expectations are essentially based on the following nine ethical principles:

- all aspects of the tendering process must be conducted with honesty and fairness at all levels of the industry.

- parties must conform to all legal obligations.
- parties must not engage in any practice which gives one party an improper advantage over another.
- tenderers must not engage in any form of collusive practice and must be prepared to attest to their probity.
- conditions of tendering must be the same for each tenderer on any particular project.
- clients must clearly specify their requirements in the tender documents and indicate criteria for evaluation.
- evaluation of tenders must be based on the conditions of tendering and selection criteria defined in the tender documents.
- the confidentiality of all information provided in the course of tendering must be preserved.
- any party with a conflict of interest must declare that interest as soon as the conflict is known to that party.

These principles apply to all parties in the contractual chain thus the terms ‘client’ and ‘tenderer’ are interchangeable at each link in the chain. For example, a contractor will act as a client when seeking tenders for subcontract packages.

All jurisdictions emphasize that collusive tendering, participation in price-fixing cartels for either service or supplies, ‘bid shopping’ or any other practice which seeks to limit competition, are specifically prohibited. Prohibited practices include:

- agreement between tenderers as to who should be the successful tenderer
- any meetings of tenderers to discuss tenders prior to the submission of the tenders if the client is not present.
- exchange of information between tenderers for the payments of money or the securing of reward or benefit for unsuccessful tenderers by the successful tenderer.
- agreements between tenderers to fix prices or conditions of contract (this means any collaboration between tenderers on prices or conditions to be included in contracts or commissions without the consent of the client).
- any assistance to any tenderer to submit a cover tender (that is, a tender submitted as genuine but which has been deliberately priced in order not to win the contract or commission).
- any agreement between tenderers prior to submission of tenders to fix the rate of payment of employer or industry association fees where the payment of such fees is conditional upon the tenderer being awarded the contract or commission.

All jurisdictions agree to promptly report suspected cases of anti-competitive behaviour to the appropriate authority.

The Commonwealth, State and Territory Governments also have a particular responsibility to ensure that the principles in the National Competition Policy Agreements are observed in their own practices and in dealings with industry.

4.4 Continuous Improvement & Best Practice

A positive commitment to best practice is required of all industry participants. This commitment will be demonstrated by evidence of continuous improvement; excellent business practices and relationship; effective organisational systems and standards; exceptional people management policies and practices; and, superior time, cost, and quality outcomes.

A commitment to fostering industry development is expected of all service providers and suppliers by clients.

This extends to performance in terms of such things as: business relationships and practices; organisational systems and standards; employee qualifications; people management policies and practices; time, cost and quality outcomes; value for money; training; research and development; equal employment opportunity; effective management of occupational health safety and rehabilitation issues; security of payment; cooperative contracting; pro-active project planning (which includes environmental, business and financial issues); and, ensuring contract management is undertaken with an appropriate level of competence.

The Commonwealth, State and Territory Governments have agreed to use pre-qualification as one strategy to drive the development of a national industry committed to best practice, international competitiveness and the highest ethical behaviour.

Wherever possible the commitment to best practice will be tested and measured using criteria incorporated into pre-qualification and other selection processes. Service providers will be expected to justify claims by reference to past performance or evidence of the implementation, where appropriate, of appropriate business and operating systems and standards. Service providers may also expect to be monitored, reviewed and/or audited during the contract period. Post-contract analysis of performance may also be undertaken.

4.5 Workplace Reform

Industry participants are encouraged to adopt a broad-based agenda to improve productivity through the development of workplace and management practices that are flexible and responsive to the business demands of the enterprise and its clients' requirements. An Enterprise with this focus will achieve a workplace culture that is recognised for value, quality, innovation and competitiveness and will be a preferred partner for clients' projects.

A broad agenda is being encouraged, aimed at achieving improved productivity by: effective communication; teamwork; high standards in OHS&R; competency-based training and skill formation opportunities; flexible workplace practices; implementation of policies designed to promote access, equity and equal employment opportunity; continuous improvement and best practice.

Clients encourage reform through their own work practices and policies and by requiring evidence of these practices at an appropriate level when selecting service providers.

4.6 Occupational Health Safety & Rehabilitation (OHS&R)

OHS&R obligations must be actively addressed by all industry participants. Unequivocal commitment to OHS&R management must be demonstrated in systems that address responsibilities, policies, procedures and performance standards to be met by all parties involved in a project and are directly linked to quality OHS&R outcomes.

The highest priority has been given by all jurisdictions to improvement in the management of OHS&R in the Construction industry.

Service providers must meet their OHS&R obligations according to relevant laws whether working on private or government clients' projects and sites. Additionally, they are expected to prove that they have an appropriate OHS&R management system operating within their individual enterprise.

They may also be expected to establish a site specific OHS&R management plan before work commences on a government project or site.

Clients will prefer to deal with service providers who recognise that the active management of OHS&R issues leads to superior safety and less costly outcomes than reliance on the lowest common denominator approach typified by simple regulatory compliance.

4.7 Industrial Relations

It is agreed by Australian Governments that the industrial relations principles embodied in this Code are to apply to their construction projects.

4.7.1 Awards and Legal obligations relating to employment

All parties must comply with the provisions of applicable:

- awards and workplace arrangements which have been certified, registered or otherwise approved under the relevant industrial relations legislation; and
- legislative requirements.

4.7.2 Workplace Arrangements

Workplace arrangements which reflect the needs of the enterprise are important elements in achieving continuous improvement and best practice.

The content of the workplace arrangements are a matter for the parties to those arrangements, subject to them meeting legislative requirements.

However they may encompass:

- improved OHS and rehabilitation practices;
- training and skill formation strategies;
- multi skilling; and
- flexible work practices, for example in relation to working time.

A party must not, directly or indirectly, pressure or coerce another party to enter into, or to vary or to terminate a workplace arrangement. Nor may they pressure or coerce them about the parties to and/or the contents or the form of their workplace arrangements. This does not prevent action sanctioned by relevant industrial relations legislation.

4.7.3 Overaward Payments

‘Overaward payment’ is defined to mean any payment and/or benefit above that is set out in the relevant award, registered agreement and/or legislation. This includes payments provided for in workplace arrangements.

Decisions on over award payments, including superannuation, redundancy and workers’ compensation insurance, shall be made by the individual employer to suit the needs of the enterprise. No employer may be compelled to pay benefits above that prescribed in the relevant workers compensation legislation.

A Party must not, directly or indirectly, coerce or pressure another party to make

over award payments. No employer may be compelled to contribute to any particular redundancy or superannuation fund, or similar body unless that there is an award or legal requirement to do so. This does not prevent action sanctioned by relevant industrial relations legislation.

4.7.4 Project Agreements

Project agreements will only be appropriate for major contracts. Accordingly project agreements incorporating site-wide payments, conditions or benefits may be negotiated where the strategy has first been authorised by the Principal.

The integrity of individual enterprise agreements must be maintained. This means project agreements cannot override the workplace arrangements of individual contractors, subcontractors, consultants and suppliers, nor may they provide conditions which by their nature have effect beyond the duration of the project, such as, for example, redundancy pay and superannuation contributions. While there may be provisions in a relevant workplace arrangement that enables the parties to the arrangement to encompass provisions in a project agreement, there shall be no double counting of 'over award' payments.

There shall be no flow on of the provisions of project agreements.

Such agreements should be developed, where possible, in consultation with the subcontractors working on the project. The agreements shall be certified or otherwise approved under the relevant industrial relations legislation.

4.7.5 Freedom of Association

All parties have the right to freedom of association. This means that parties are free to join or not to join industrial associations of their choice and that they are not to be discriminated against or victimised on the grounds of membership or non membership of an industrial association. A person cannot be forced to pay a fee to an organisation if not a member.

4.7.6 Dispute Settlement

All parties are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level. in accordance with the procedure outlined in the relevant award or workplace arrangements.

4.7.7 Strike Pay

No payment shall be made to employees for time spent engaged in industrial action, unless payment is legally required or properly authorised by an industrial

tribunal (where this is permitted by relevant industrial legislation).

4.7.8 Industrial Impacts

The client of the principal contractor shall be advised during the progress of the work, and at the earliest opportunity, of any industrial relations or OHS&R matter which may have an impact on the construction program, the principal contract, other related contracts or project costs.

4.8 Security of Payment

To ensure that all parties receive payments due to them, the highest ethical standards must be observed throughout the contract chain. This specifically includes ensuring the timely progress of the processing, management and finalisation of claims, payments, retentions and securities due under the contract for all parties.

The commonwealth, State and Territory Governments are applying the following set of principles to security of payment in their jurisdictions:

- Participants have the right to receive full payment as and when due;
- All cash security and retention monies should be secured for the benefit of the party entitled to receive them;
- Payment periods lower in the contractual chain should be compatible with those in the head contract;
- Outstanding payments to participants, to the extent consistent with Commonwealth and State legislation, should receive priority over payments to other unsecured creditors;
- All construction contracts should provide for non payment to be a substantial breach;
- All construction contracts should make provision for alternative dispute resolution mechanisms.
- Only those parties who have the financial and technical capacity and business management skills to carry out and complete their obligations should participate in the industry;
- All construction contracts in the contractual chain should be in writing.

5. Compliance Principles

The Commonwealth, State and Territory Governments are developing appropriate

sanctions, consistent with their business activities and the laws applicable in their respective jurisdictions, to encourage compliance with the principles.

Each jurisdiction will establish effective compliance and enforcement mechanisms to apply to the national code subject to the following principles:

- Sanctions are based on the right of the client to choose who they do business with.
- the type of sanctions that is to be applied for an infringement will vary according to the nature of the specific breach and other circumstances.
- in the case of non compliance by a party the sanction may include but not be limited to:
 - the reporting of the breach to an appropriate statutory body or law enforcement agency;
 - a formal warning that continued non-compliance will lead to more severe sanctions;
 - reduction in the number of tendering opportunities that are given eg by excluding the non-complying party from tendering for Government work above a certain value;
 - preclusion from tendering for any Government work for a specified period; and/or
 - publication of details of the breach and the identification of the party committing the breach; and
 - referral of the breach to the appropriate industry association for action consistent with industry codes of practice

Full use is to be made of existing remedies and sanctions under existing legislation particularly under federal and state industrial relations laws.

Each jurisdiction will be expected to ensure that there are avenues for appeal and review where a sanction has been or is to be imposed-appropriate administrative or commercial law mechanisms should be available.

- The Code and/or State Codes should be established as a condition of the tendering process.
- Jurisdictions will establish or provide effective coordinating mechanisms to ensure that the code is applied effectively in all agencies.

Breaches of the Code in one jurisdiction will be regarded as a relevant factor by other jurisdictions when considering the suitability of parties for government projects.

- Labour Ministers will monitor the effectiveness of the industrial relations and

occupational health and safety elements of the Code as a standing agenda item On the Labour Ministers' Council meeting.

- Construction Ministers will monitor the effectiveness of the broader construction elements of the Code as a standing agenda item on the Construction Ministers' Council meeting.

6. Full Text of The Code

6.1 Scope

This Standard sets out the ethics and the obligations of the Principal and Tenderers in tendering in the construction industry. A Separate Standard covers the selection of consultants providing professional services.

6.2 Application

This Standard applies equally to Principals, their agents, contractors, subcontractors and suppliers and their associations and professional organizations.

6.3 Definitions

6.3.1 Construction industry

includes all building, refurbishment, maintenance, civil engineering, process engineering, mining and heavy engineering projects. It excludes cottage construction.

6.3.2 Intellectual property

all copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

6.3.3 Principal

any party inviting and receiving tenders. A Principal may include a contractor or subcontractor.

6.3.4 Tenderer

any party submitting tenders, including contractor, subcontractor and supplier.

6.4 Ethics

This standard is based on the following principles:

(A) Tendering at all levels in the construction industry shall be conducted honestly and in a manner that is fair to all parties involved.

(B) Parties shall comply with all legislative obligations including those required by trade practices and consumer affairs legislation.

(C) The Principal shall have regard to the costs of tendering and the number of Tenderers, recognizing that the cost of tendering is a significant industry overhead.

(D) Tenderers shall only tender where they intend to carry out the work.

(E) The Principal shall call for tenders only after the principal has arranged funding for the project and has made a firm commitment to proceed with the project.

(F) The conditions of tendering shall be the same for each Tenderer.

(G) Parties shall not engage in practices such as collusion on tenders, inflation of prices to compensate unsuccessful Tenderers, secret commissions, or any other such improper arrangements.

(H) The Principal and Tenderers shall be prepared to attest to their probity, if necessary by Statutory Declaration or other reasonable means.

(I) Tender documents shall specify the Principal's requirements as clearly and precisely as possible and, when documents are altered, sufficient time shall be allowed for all Tenderers to review and revise their tenders.

(J) The Principal shall specify what information in the tender documents is required to be treated by Tenderers as confidential. However, it is acceptable to have public openings of tenders and disclosure of tender prices.

(K) Any Party with a conflict of interest shall immediately disclose that conflict of interest.

(L) Tenderers shall retain their right to intellectual property submitted with tenders, including title thereto.

6.5 Tendering Procedures

The following procedures give practical effect to the principles contained in this Standard.

6.6 Obligations of The Principal

6.6.1 Pre-tender

(A) Project definition - The Principal shall ensure that project brief is clear and specific and adequately defines the project for which tender documents are to be prepared. Adequate time shall be allowed by the Principal for project definition, design and documentation.

The Principal shall ensure that quality assurance principles apply to the entire process of defining and documenting the Principal's requirements as well as to the design and construction processes.

The Principal shall use best endeavours to select a procurement strategy best suited to the project to be undertaken, bearing in mind the advice of its consultants.

The Principal shall arrange adequate finance to carry out the project. An officer of the Principal who is in a position to know, shall provide to the Tenderers particulars of such project funding arrangements.

(B) Tender documents - Documentation shall be complete, bearing in mind the procurement strategy, so as to enable the Tenderer to prepare and complete its tender. The Principal shall have regard to the costs to the industry and the community at large. For instance, the Principal shall avoid the requirement to price multiple options or repeated rounds of tendering.

The tender documents shall conform to the following objectives:

- Clearly state the contractual obligations of the parties including, for instance, responsibility for safety matters and industrial relations.
- Provide full details of all work required to be covered by the tender.
- Provide all information known to the Principal which is relevant to enable Tenderers to evaluate the risks in the project.
- The Principal shall ensure that the time allowed for both tendering and construction is reasonable.
- Use General Conditions of Contract that are standard in the industry and use Special Conditions only when there are special circumstances warranted by specific site and project requirements. General Conditions of Contract including Special Conditions should observe the principle that the party best able to control a risk should bear that risk.
- Clearly identify any Special Conditions required to be included in the contract which are not normally part of the General Conditions of Contract.
- Clearly identify any supporting information required from Tenderers.
- Clearly state whether each Tenderer is required to state the Tenderer's main

subcontractors, or a small panel from which those main subcontractors will be selected, for that project.

- Nominate a person for the provision of additional information.
- Provide positive encouragement to Tenderers to incorporate maximum innovation while still satisfying the Principal's basic commercial and technical objectives, by allowing them to submit options in addition to a conforming tender.
- Avoid Tenderers having to provide undue amounts of design and documentation work prior to the acceptance of a tender, unless the Principal offers to pay for such design work.
- Specify the method and time of lodgement of tenders, opening of tenders and public acknowledgment of Tenderers.
- Where appropriate, provide guidance to Tenderers as to the process of evaluation of tenders.
- Specify the tender validity period.
- Inform Tenderers of their obligation to comply with this Standard.
- Clearly state any Code of Practice which is applicable.

(C) Selecting tenderers - In determining who shall be invited to tender, the Principal shall, where applicable Code of Practice.

The Principal shall not discriminate against a prospective Tenderer who declines an invitation to tender.

The Principal shall be expected to provide equal opportunity to all prospective Tenderers who are able to demonstrate their ability to carry out the work.

6.6.2 Tendering

(A) General - The Principal has an obligation to arrange the project funding before commencing the tendering process. Having called tenders, the Principal recognizes the commitment to proceed with the project.

(B) Call for tenders - The Principal shall allow sufficient time between inviting tenders and the closing of tenders, for Tenderers to make site visits and undertake any other work necessary to allow them to respond fully. The Principal shall make the site reasonably available for inspection by Tenderers.

Where tenders are advertised, the advertisement shall include the following:

- An adequate description of the work required.
- Details of when and where tender documents may be obtained.
- Details of when and where tenders shall close.

- The tender validity period.
- Details of any tender documentation deposit or purchase price required, if applicable, and the method of obtaining a refund of that cost.
- Whether and, if so, what Code of Practice is applicable.
- The name, address and telephone number of the Principal's appropriate contact person.
- Whether the Principal will be providing an 'in house' tender price as part of the tender process.

In relation to Clause (B), Principals should have regard to the fact that the practice of a Principal providing an 'in house' tender price as part of the tender process is seen as contrary to the normal commitment of a Principal to proceed with the most advantageous tender. Public companies, when contemplating an 'in house' tender, should also have regard to the requirements of PART 3.2A of the Corporations Law.

(C) Tendering methods - While it is the prerogative of the Principal to use any method of selection, contracts would normally be entered into as a result of one of the following procedures:

- Selected tenders - The Principal may maintain a register of approved prospective Tenderers whose capability has been confirmed. A small number of registrants is invited to tender on an appropriate rotational basis. The Principal should regularly advertise for prospective Tenderers wishing to be considered for inclusion on the register and regularly review and amend the register.
- Open tenders - The Principal invites by public advertisement without restriction on the number of tenders sought. The Principal would normally require Tenderers to prove they have the necessary competence, resources, industrial relations, quality and safety management and financial capacity to carry out the work. The Principal may maintain a register of prospective Tenderers whose capability has been confirmed.
- Preregistered tenders - The Principal invites expressions of interest for preregistration for a specific project or specific types of projects. Applicants are evaluated and a small number of those meeting the required criteria are invited to tender.
- Invited tenders - The Principal invites tenders from a number of prospective Tenderers known to have the ability to undertake a project of the type proposed.
- Negotiation - The Principal negotiates with a single prospective Tenderer to achieve an acceptable tender. Negotiations shall be carried out in good faith.

(D) Tender inquiries - The Principal shall not give to any Tenderer information that is not also given to all other Tenderers.

The Principal shall nominate a person with knowledge of the work required to respond to all inquiries from Tenderers. All such inquiries shall be recorded, noting time and date of receipt and the issue discussed.

Where an inquiry reveals a significant error, omission, ambiguity or discrepancy in the tender documents, the information provided to resolve the error, omission, ambiguity or discrepancy shall be promptly conveyed in writing to all Tenderers.

Where briefing meeting are held for Tenderers, such meetings shall be minuted. The minutes shall be forwarded to all Tenderers, and become a part of the tender documents.

(E) Amendments to tender documents - The Principal has an obligation to avoid amendments to the tender documents.

Where matters of significance make it necessary to amend tender documents during the tender period, the amendments shall be advised as an addendum forwarded to all Tenderers in sufficient time for all Tenderers to consider the addendum properly and fully before tenders close.

Where appropriate, the tender period shall be extended when an addendum is issued.

The addendum shall state clearly that it is meant to be incorporated in the tender documents.

Tenders shall be required to confirm its receipt in writing, and should be required to confirm in their tenders that allowance has been made for each addendum. Minor changes to tender documents may be dealt with in precontract negotiations.

6.6.3 Receipt of tenders

All arrangements necessary shall be made to safeguard the security and confidentiality of all tenders. No information provided in a tender by a Tenderer shall be divulged by the Principal to another Tenderer at any stage during the tender process or after it has concluded. However it is acceptable to have public openings of tenders and disclosure of tender prices, provided it is advised in advance in the tender documents.

Late tenders shall not be accepted, except where it is both clear that circumstances beyond the Tenderer's control were the cause of lateness and that the integrity of the tendering process will not be compromised by acceptance of a late tender. Where a late tender is received, the time and date of receipt shall be noted on the document and endorsed by the recipient.

6.6.4 Closing of tenders

It should be accepted procedure for the closing of tenders to be as follows:

- Not earlier than 2.00 p.m.
- Not on a Monday or day following a public holiday.
- At least one clear day after a weekend, building industry holiday or rostered day off.
- At least one week after the recognized industry Christmas close down.

6.6.5 Evaluation of tenders

Any tender which does not comply with the tender documents is liable to be rejected.

The tender most advantageous to the Principal should be considered for acceptance.

The Principal may reject any tender provided the Principal acts honestly and with probity in so doing.

Tenderers may be encouraged to offer alternative proposals which shall satisfy the Principal's requirements. Principals shall specify the conditions under which alternative proposals are to be submitted. Unless otherwise stated, alternative proposals should only be considered when submitted with a conforming tender.

Where a Tenderer offers an alternative proposal, comparable prices for the alternative shall not be obtained by the Principal from other Tenderers nor shall the alternative be used as the basis for the re-call of tenders. However with the written consent of the Tenderer submitting the original alternative design or method of construction, the Principal may re-tender or require re-pricing of tenders incorporating alternative designs or methods of construction.

If the Principal decides not to accept any tender and to re-call tenders, the original Tenderers shall be advised of the reasons for re-calling and, as a general principle where appropriate, invited to submit a new tender.

If a previous tender condition which prevented a Tenderer from submitting a tender is removed, that Tenderer should be permitted to submit a new tender when re-called.

Evaluation of tenders and Tenderers should include consideration of the following:

- Compliance with pre-qualification criteria and the applicable Code of Practice.
- Conformity with the tender documents.
- Value for money.
- Construction period.
- Technical, managerial, physical and financial resources.
- Other commitments affecting capacity to carry out the contract.

Each of these factors may have a varying weighting or priority depending on the Principal and project involved. Tender evaluation criteria should be advised to the Tenderers.

6.6.6 Negotiation and selection

In post-tender negotiations, the Principal shall not engage in unconscionable conduct by trading off different Tenderer's prices against others in an attempt to seek lower prices.

The Principal should first exhaust negotiations with the initially preferred Tenderer, before negotiation with a subsequent Tenderer.

If none of the tenders is acceptable, negotiations for an amended tender may be conducted, in the first instance, with the initially preferred Tenderer.

The successful Tenderer and the price which was accepted should be disclosed in writing to the Tenderers.

6.7 Obligations of Tenderers

6.7.1 Call for tenders

Tenderers shall only submit tenders if they genuinely believe they the competence and capacity to undertake the work being offered.

In the case of selected, preregistered or invited tenders, a Tenderer may decline to tender, and should promptly advise the Principal of the decision.

6.7.2 Return of tender documents

Unsuccessful Tenderers shall return tender documents to the Principal, provided Tenderers are informed of this requirement prior to receiving the documents.

6.7.3 Evaluation of tender documents

Tenderers shall thoroughly familiarize themselves with the documents, and the site upon which the project is to be constructed, and if in doubt seek clarification from the Principal, to ensure that their tenders are complete and reflect a full understanding of the documents and the work required.

No Tenderer shall seek or expect to be given information that is not also provided to all other Tenderers.

During the tender period, Tenderers shall promptly advise the Principal of errors, omissions, ambiguities or discrepancies in the tender documents of which they become aware.

6.7.4 Formulation of tenders

No Tenderer shall engage in any uncompetitive behaviour or other practice which denies legitimate business opportunities to other Tenderers or other participants in the tender process including, but not limited to the following:

- The payment of unsuccessful tender fees.
- The payment to any third party of moneys, incentives or other concessions contingent upon the success of the tender, which do not relate to the provision of bona fide services relevant to the object of the tender.

Tenderers shall observe all relevant statutory and other legal requirements in the formulation of their tenders and shall not

- accept or provide secret commissions:
- collude with other Tenderers:
- submit inflated tenders (i.e. cover prices) to advantage another Tenderer:
- enter any improper commercial arrangements with any other contractors, subcontractors, suppliers, agents or any other party.
- seek to influence contract decisions by improper means: or
- accept incentives to provide contracts or services to other contractors, subcontractors or suppliers which financially disadvantage the Principal.

6.7.5 Submission of tenders

As a safeguard against malpractice, Tenderers or, where the Tenderer is a corporation, a representative of the Tenderer, shall, if requested by the Principal, demonstrate or attest to:

- Whether the Tenderer has entered into any contract, arrangement or understanding to pay any moneys to an association and, if so, the details of the contract, arrangement or understanding.
- Whether the Tenderer has entered directly or indirectly into any contract, arrangement or understanding with other Tenderer, and if so, the details of that contract, arrangement or understanding.
- Whether the Tenderer has entered into any contract, arrangement or understanding with anyone else which shall or may have the effect of increasing the tender price of all Tenderers.
- Whether the Tenderer has any knowledge of the tender price or cover price or a price which can be used as a cover price of any other Tenderer and, if so, the details of that knowledge.

6.8 Confidentiality

All information provided between Tenderers and the Principal shall be treated as confidential information. Both the Tenderer and Principal shall undertake to maintain that information as confidential and commercial in confidence.



HONG KONG

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Tendering Procedures in HONG KONG

1. Overview of Construction Industry

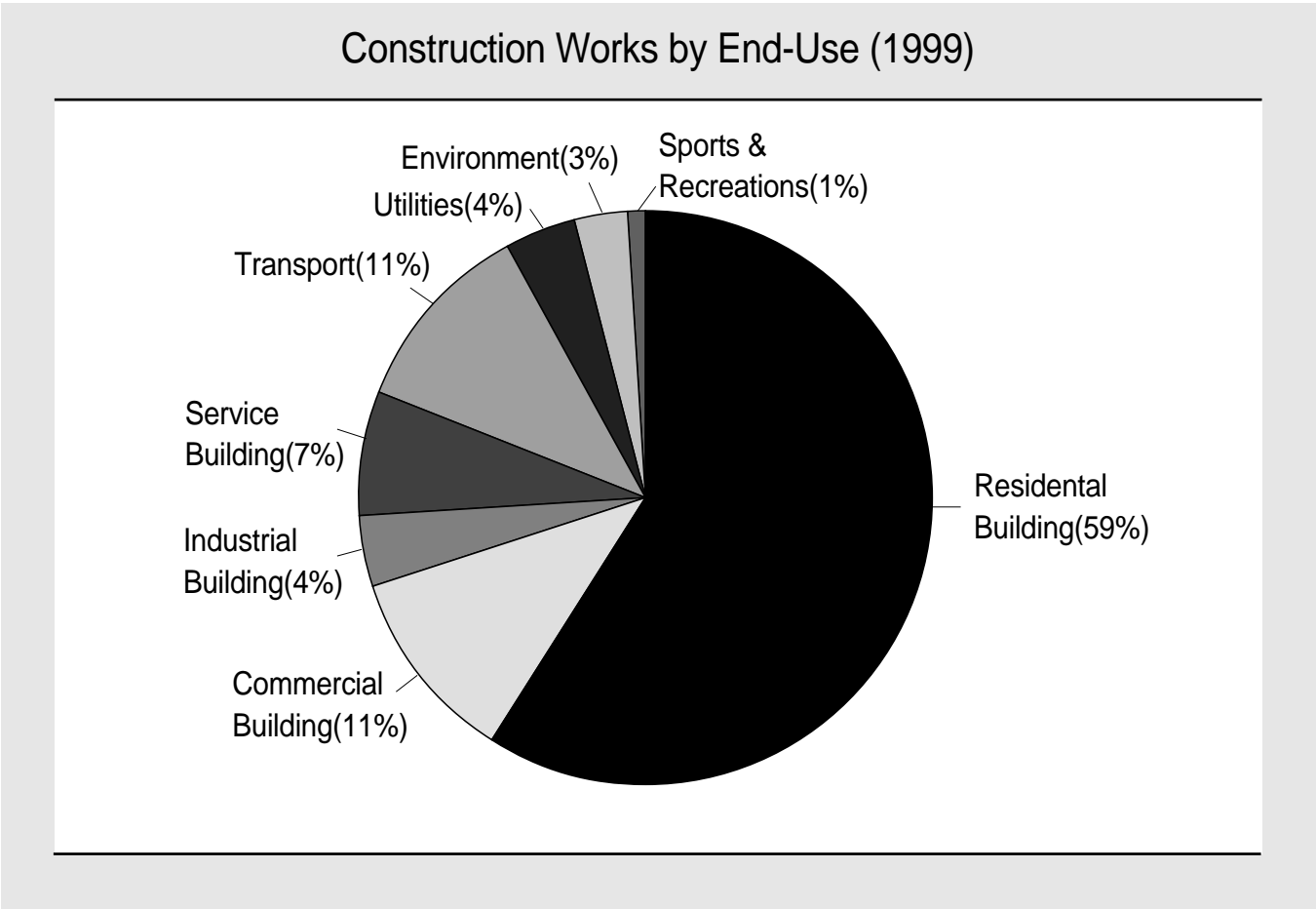
1.1. Values of Construction Works

(million HK\$)								
Year	Residential Buildings	Commercial Buildings	Industrial & Storage	Service (buildings)	Transport	Utilities & Plant	Environ-ment	Sports & Recreation
1988	14441	4984	2889	2754	4224	942	904	240
1989	16342	5545	3256	3912	6064	1232	1294	335
1990	19176	8045	3207	4214	6282	1798	1471	524
1991	19441	9078	3666	5045	5690	2132	2314	399
1992	19967	7814	3224	5016	6503	2447	3843	324
1993	19086	6799	2312	4399	13718	2730	4578	356
1994	20301	8238	3290	5074	17184	4039	4884	386
1995	20496	8038	5223	5937	22929	4071	6543	346
1996	26888	11865	4538	7068	26827	3254	6275	467
1997	36633	17553	5813	9027	23027	2176	4266	379
1998	48761	18726	4966	10172	12438	2809	3470	633
1999	56197	10235	3458	6628	10275	3695	2488	481

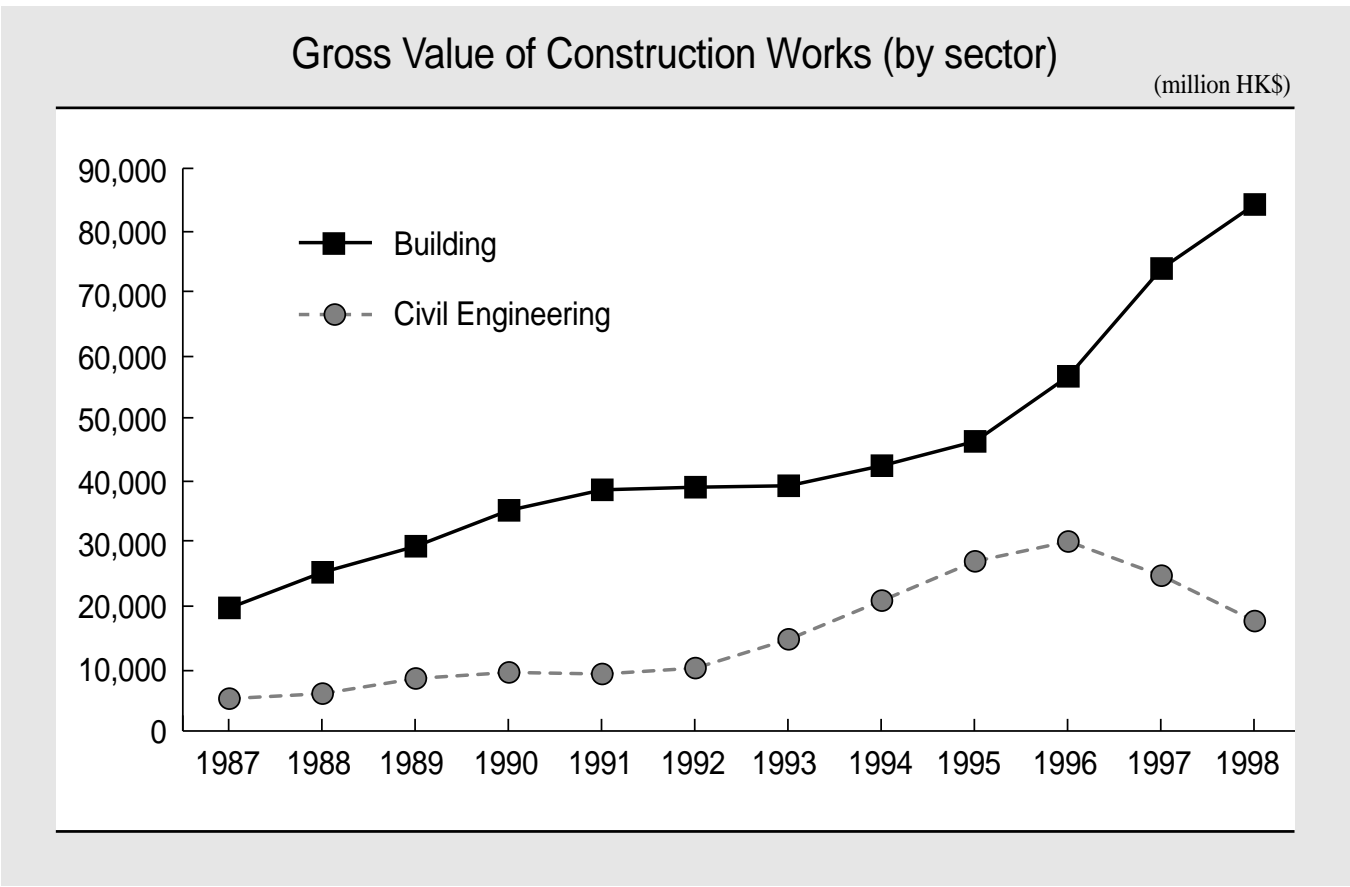
note : 1US\$=7.8HK\$

1.2 Structure of the Construction Industry

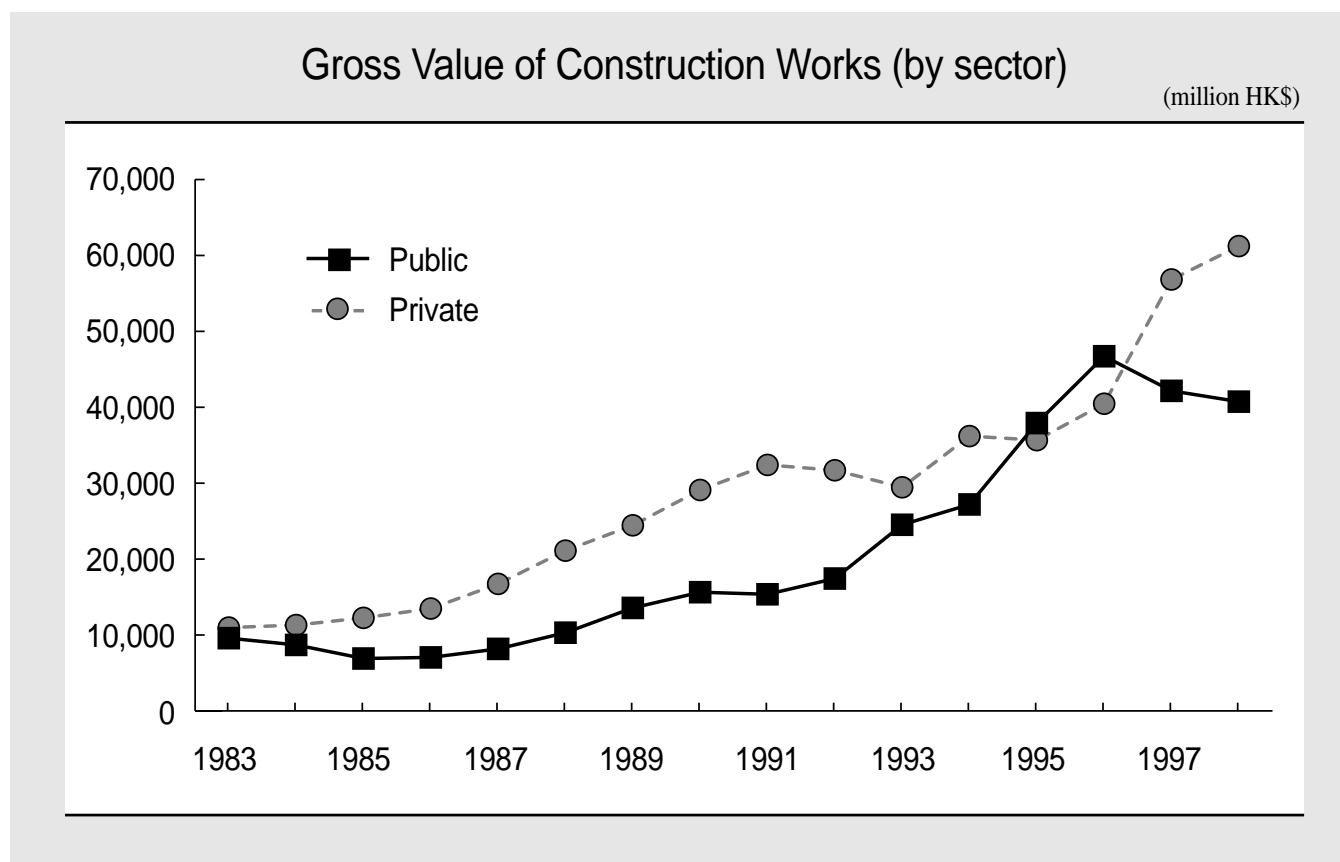
1.2.1 Construction Works by End-Use (1999)



1.2.2 Civil Engineering vs. Building Construction



1.2.3 Private vs. Public Construction



1.3 Public Works Contractors

They are two government organizations, namely Works Bureau and Housing Department, keeping two separate lists of public works contractors. The list that Works Bureau controls is called the Public Works Programme (PWP) Contractors List, which is classified into three groups as follows:

- Group A - bidding contracts of value not exceeding \$20 millions
- Group B - bidding contracts of value not exceeding \$50 millions
- Group C - bidding contracts of unlimited value

The list is further classified into five categories according to the natures of construction : Building, Roads & Drainage, Site Formation, Port Works, and Waterworks. PWP contractors may only tender for contracts in those works categories and groups in which they are classified.

Construction projects of Housing Department are mainly public housing. There are also a small number of civil engineering projects. Housing Department keeps two lists of contractors, namely New Works (NW) and Maintenance (M). Each of the list is further classified into two groups:

- NW1 - bidding contracts of value less than \$450 million

Category	Group A	Group B	Group C
Building	72	49	85
Port Works		20	56
Roads & Drainage	41	30	85
Site Formation		42	56
Waterworks	20	7	42

- NW2 - bidding contracts of value more than \$450 million
- M1 - bidding contracts of value less than \$20 million
- M2 - bidding contracts of value more than \$ 20 million

2. Tendering Policy and Procedures of Public Works

2.1 General Information

The government is responsible for public infrastructure and utilities works, government office buildings hospitals, schools, other public buildings and public housings. It is responsible for planning and tendering of these types of projects. Since these types of projects are financed by public monies there are strict policy and procedures controlling the tendering process.

The government does not involve itself in supervising the tendering activities of projects of the private sector. There are no laws governing private sector tendering. Private sector projects are mainly residential, commercial and industrial buildings. Developers of these types of projects employ construction professionals to manage the process. They are driven by the philosophy of ‘value for money’ .

2.2 Public Works Tendering Policy

The Government of Hong Kong is guided by two policy objectives in calling tenders for public works contracts. These objectives are:

- achieving best value for money; and
- maintaining open and fair competition.

To achieve these two policies the following principles are adopted:

2.2.1 Open and Fair Competition

The Government treats all tenderers on an equal footing and ensures that the laid down contract specifications will not create unnecessary obstacles to tenderers. All potential tenderers are given the same information for them to prepare their bids.

2.2.2 Value for Money

To achieve best value for money, the Government takes into account in tender evaluation not only the competitiveness of the tender prices, but also past performance of the tenderers and whether the tenders conform with the specifications, terms and conditions laid down in the tender documents.

2.2.3 Transparency in Procedures and Practices

The Government ensures that procedures and practices for tendering are clear and transparent to facilitate better understanding amongst contractors. To encourage contractors to submit responsive and competitive tenders, the Government aims to provide them with all the necessary information in the tender documents.

2.2.4 Public Accountability

As public works expenditures are all public money, the Government has to be accountable to the public for the tendering policies and decisions.

2.3 Tendering Procedure

While the Works Departments of the HKSAR are responsible for the tendering of the public works contracts, the authority on acceptance of tenders vests with the two tender boards which are appointed by the Financial Secretary. The boards considers the tender recommendations submitted by the Works Departments and decides whether or not to accept the tenders as recommended.

2.3.1 Central Tender Board

The Secretary for Treasury is the chairman Central Tender Board. Its members include the Secretary of Works, representative from Department of Justice, Director of Government Supplies and Deputy Secretary for Treasury. The board is responsible for dealing with tenders for construction and engineering services exceeding \$15 million.

2.3.2 Public Works Tender Board

The Deputy Director of Architectural Services is the chairman of the Public Works Tender Board. Its members include Government Quantity Surveyor and assistance directors of Highways Department, Civil Engineering Department or Drainage Services Department on rotational basis. The board is responsible for dealing with tenders for construction and engineering services not exceeding \$15 million.

2.4 Types of Contracts

The types of contracts adopted by the Government for public works contracts are as follows:

2.4.1 Re-measurement contract containing Bills of Quantities

Before tender, the Engineer/Architect calculates the quantities of various items of works based on the tender drawings and then builds up the Bills of Quantities. Tenderers are required to price against each item in the Bills of Quantities so that the total cost of each item can be computed. The tendered sum is the summation of cost of all items in the Bills of Quantities. When construction works are completed, the Engineer/Architect will measure the actual quantities of works executed on site. The contractor will be paid based on actual works done and the rates priced in the Bills of Quantities.

2.4.2 Measurement contract containing a Schedule of Rates

The Schedule of Rates in this type of contracts lists out various items of works that may be ordered during execution of the contract. The Schedule contains no quantities of works, as they cannot be ascertained before tender. During the contract period, the contractor will be instructed to carry out any of the works. When the construction is completed, he will be paid based on the actual quantities of works done and the rates priced against these items of works in the Schedule of Rates.

2.4.3 Lump sum contract with firm Bills of Quantities

In this type of contracts, contractor tenders a lump sum and commits to complete the works based on the drawings and bills of quantities. The Engineer/Architect compiles the bills of quantities basing on the drawings and the tendered lump sum is the summation of the costs of executing all the items of works listed in the bills of quantities.

2.4.4 Lump sum contract with drawings and specification

The Engineer/Architect will provide the tenderers with detailed drawings and specifications for the works in this type of contracts, without the bills of quantities. The tenderers are required to measure the quantities and tender a lump sum price for completing the whole works in accordance with the drawings and specifications.

2.4.5 Cost reimbursement contract

This type of contract is usually used for repair works or urgent works with a very tight programme. The contractor is paid based on the actual cost of works it has incurred in the execution of works plus the indirect cost and profit.

2.4.6 Design and build contract

In this type of contracts, the contractor is responsible for both the design and construction of the works, based on a set of contract requirement and specifications. These contracts are normally priced at lump sums.

In general, civil and building contracts will adopt the form of lump sum contract with firm Bills of Quantities. However, in cases there are uncertainties as to the quantities of works in the contract, remeasurement contract containing Bills of Quantities is used. As to term contracts for the maintenance works, works of recurrent nature and minor works, measurement contract containing a Schedule of Rates is mostly be used.

2.5 Types of Tenders

The Government invites tenders in the following ways:

2.5.1 Open Tendering

Tender invitation notices are published in Government Gazette on every Friday, on the Internet, and, if necessary, in the local press and selected overseas journals. All interested contractors are free to submit a tender. For those contracts covered by WTO Government Procurement Agreement (GPA), the government will also notify consulates and overseas trade commissions.

2.5.2 Selective Tendering

(A) Tender invitations are published in Government Gazette on every Friday, or are sent by letter to all contractors on the relevant government lists of approved contractors. For those contracts covered by WTO GPA, the government will also

notify consulates and overseas trade commissions, where appropriate. Contractor not already on government's approved list may be considered provided that it can get the qualification before the tender closing date.

(B) Works Bureau currently manages two lists of public works programme approved contractors, namely the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors. Housing Department manages its own lists.

2.5.3 Single or Restricted Tendering

(A) Under special circumstances, for example when the works have to be commenced as soon as possible or if only one or a small number of contractors has the ability to execute the works, the government can recommend to invite tenders from these prescribed contractors subjected. This special tendering arrangement requires the approval of the Secretary for the Treasury.

(B) For tenders below HK\$1 million, single or restricted tendering can be used without the approval of the Secretary for the Treasury.

(C) Tenderers are not informed that the tender being invited is on a single or restricted basis. The government advises tenderers to submit their tenders in the same manner as open and selective tender procedures.

2.5.4 Pre-qualified Tendering

(A) There may be circumstances that require the prequalification of a list of financially and technically capable tenderers. These contracts may include works:

- of extremely complex nature, high value or subject to very rigid completion programmes;
- calling for a high level of co-ordination, technically demanding;
- adopting a non-standard form of contract, e.g. Build-Operate-Transfer (BOT) or Design-and-Build contracts.

(B) The use of pre-qualified tendering and the evaluation criteria for pre-qualifying applications require the prior approval of the Central Tender Board. Invitations for pre-qualification are published in Government Gazette and local press and selected overseas journals, if necessary. The government also informs consulates and trade commissions in Hong Kong.

(C) The pre-qualification document includes an outline of the contract, a description of works and the selection criteria. It also tells the tenderers the information and documents that they are required to submit. The tenderer selection

criteria have to be approved by the Central Tender Board prior to sending out the invitation. After receipt of the pre-qualification submissions, the government sets up an Assessment Panel to evaluate the applications.

(D) Selection of applicants is carried out in two stages. The first stage is primarily intended to screen out those applicants who are so patently ineligible unnecessary. Applicants who do not satisfy Stage 1 screening are not considered further.

(E) Stage 2 assessment comprises a detailed technical evaluation of all applicants who fulfil the requirements of the Stage 1 screening. The criteria for Stage 2 assessment contain the applicants' experience, reputation, past performance, available plant and equipment, the availability and experience of the managerial, professional and technical staff, and other relevant factors. A relative weighting determined for each criterion is applied together with an appropriate marking scheme. Selection criteria are carefully chosen and worded to avoid introducing inequalities and uncertainties that could unfairly influence the assessment of the applicants.

(F) Having assessed all the applications for pre-qualification, the government would submit a report and make a recommendation to the Central Tender Board on a list of pre-qualified applicants from whom tenders will be invited. In general, all applicants are included into the list provided that they pass the assessment criteria. However, under special circumstances, for example for design and build contracts, the government normally includes into the list three to four applicants whose scores are the highest. The report to Central Tender Board contains an analysis of the strengths and weaknesses of all the applicants and gives detailed reasons of why an applicant is rejected.

(G) The government may permit any changes in the particulars of the pre-qualified tenderers, which occur between the pre-qualification and final tendering exercise subject to the prior endorsement of the Central Tender Board. If a pre-qualified tenderer has ceased to meet the pre-qualification requirements, the government may disqualify it at any time prior to acceptance of the tender.

2.6 Tendering Process

The tendering process involves the preparation of tender documents, tender notices, receipt and opening of tenders, evaluation of tenders and award of tenders. Each stage of the process is described below:

2.6.1 Preparation of Tender Documents and Specifications

(A) The government is required to provide in the tender documents all the necessary information to assist the bidders to prepare their tenders. In drawing up tender specifications for works contracts, it is required to ensure that the specifications are based on functional and performance requirements. Where standards are referred to, these should be international standards.

(B) All tender documents must be completed prior to calling for tenders. Tender documents for civil and building works normally comprise the following:

- General and Special Conditions of Tender including the conditions which a tenderer has to observe when submitting a tender, the tender validity period, the currency to be used for the contract, etc;
- General Conditions of Contract covering the conditions which the contractor has to comply with in executing the contract;
- Special Conditions of Contract covering any conditions peculiar to the contract;
- Offer to be Bound to be signed and completed by the tenderer to include his address and the tendered sum;
- General and Particular Specification;
- Bills of Quantities; and
- Drawings.

2.6.2 Tender Notices

(A) Tender notices generally appear in two consecutive issues of the Government Gazette. If necessary, public tender notices may also be advertised in the local and/or international press.

(B) Tender notices list out the following information:

- a broad description of the various requirements of the works contracts;
- the closing date and time for tenders;
- the place for lodging the tenders;
- whether the contract is covered by WTO GPA;
- where to obtain tender document; and
- name of the office or officer and a telephone contact for enquiries.

(C) Normally, the government allows at least three weeks for tenderers to submit their bids. For contracts covered by WTO GPA, at least 40 days should normally be allowed for receipt of tenders and no less than 25 days for applications to be prequalified to tender. In the case of extreme urgency, the period for receipt of tenders can be reduced at the prior approval of the Secretary for the Treasury.

2.6.3 Receipt and Opening of Tenders

(A) Tenderers must submit their tenders and deposit them into the prescribed tender box before the tender closing date and time stipulated in the tender notices. Tenders received after the tender closing time or submitted not in accordance with the tender notices are not considered. These tenders are not opened and are returned to tenderers.

(B) At the closing time of tenders, the tender opening team designated by the tender boards will open the respective tender box. Only tenders that are due are opened and authenticated by the tender opening team. The tender opening team makes appropriate records on file of the tenders received and then send the originals of the authenticated tenders to the originating department for evaluation.

2.6.4 Evaluation of Tenders

(A) From the time tenders are received and opened until the decision is made on the acceptance or otherwise, all correspondence regarding the tenders are classified as 'RESTRICTED (TENDER)'. Correspondence on prequalification and single or restricted tendering shall also be so classified to ensure the confidentiality of the information.

(B) The government's works department is responsible for the evaluation of tenders. After receipt of the original tenders from the tender opening team, the department checks that the tenders contain inter alia all the required information. Tenderers are invited to provide any information that is missing. Where a tender contains some technical ambiguities or qualifications, the government seeks clarification by a reasonable deadline. If there are arithmetical errors found in the tender resulting in a correction of the tendered sum, the government would ask the tenderer to confirm whether it is prepared to abide by the corrected tendered sum. Other than corrections arising from arithmetical errors, the government does not accept any change in tender price offered by a tenderer after the opening of tenders and during tender evaluation. In the tender evaluation, only the original tender price (adjusted for arithmetic errors) is used in determining the price ranking of the tenders received. If there are qualifications or counterproposals put forward by a tenderer, the government must consider the implications very carefully. Care is exercised in approaching a tenderer for clarification of qualifications. Where information is provided to a tenderer in the process of seeking clarification or in response to a tenderer's enquiry, the government ensures that the same information is provided to all tenderers.

(C) The government examines tenders against the technical specifications, terms

and conditions laid down in the tender documents to determine whether they are fully conforming. It must satisfy itself that the recommended tenderer is both technically and financially capable of undertaking the contract concerned satisfactorily as well as all other contracts already in his hand. Besides, the recommended tenderer should also meet the financial requirements laid down by Works Bureau. Before recommending a tender for acceptance, government's works department takes into account the following factors:

- tender prices;
- technical and financial capability of the tenderers and their past performance records. For works contracts, past performance records should also include conviction records for employing illegal immigrants, conviction records for site safety related offences, conviction records for site safety related offences, conviction records under the Employment Ordinance, environmental performance records, if applicable, and any past history of claims for contracts with a value exceeding \$100 million;
- timely delivery or completion;
- compatibility with existing or planned purchases;
- after sale support and services including maintenance and spare parts provision; and
- running (e.g. power consumption) and maintenance costs.

(D) In recommending the acceptance of a tender to a tender board, department should have value for money in mind. If the tendered sums are very close or if the contract to be awarded involves payments over a number of years, the department should compare the tenders by discounting future to obtain the present value.

(E) The government is not bound to accept the lowest tender. If the tender does not conform with the terms of contract, or if the past performance of the tenderer is not good, or other special reasons, the responsible government department can always recommend other than the lowest tender to the tender board. However, the department is required to give detail reasons to support its recommendation.

(F) For contracts of a high-value, complex, technically demanding as well as those which are subject to a very rigid completion programme and require a high level of co-ordination, the responsible government department may consider prequalification. However, if there is not enough time to do so, the responsible government department may adopt a marking scheme in tender evaluation, which gives weights to the tender sum, technical proposal, past performance of the contractors and other factors. The tender with the highest overall technical and price score is recommended

to the relevant tender board.

(G) After the tender evaluation is completed, the responsible government department will submit a tender report to the relevant tender board and recommend acceptance of a particular tender or any other course of actions. The tender board will consider the tender report and notify department whether or not to accept the recommendation therein.

(H) If none of the tenders received is fully conforming with the conditions laid down, the responsible government department will cancel the tender exercise and re-tender with revised specifications, terms and conditions. In case the responsible government department wishes to recommend a non-conforming tender, it must state clearly in the tender report any deviation of the recommended tender from the specifications and terms and the reasons for making the recommendation.

2.6.5 Award of Tenders and Notification of Tender Results

(A) Upon receipt of the approval from the tender board to accept a tender, the responsible department will send a letter to the successful tenderer and invite him to sign the contract with the representative from the responsible department on behalf of government. The department will also inform unsuccessful tenderers of the outcome of their bids. To respect commercial confidence, the department ensures that the details given will not disclose tender information provided by another tenderer.

(B) The government will publish the name of the winning contractor and the contract sum in the Government Gazette and on the Internet.

2.7 Scope and Coverage of International Bidding

On 20 May 1997, Hong Kong became a signatory to the World Trade Organisation Agreement on Government Procurement (WTO GPA). The object of the WTO GPA is by means of prescribed procedures to ensure that all the procurement entities under the WTO GPA to provide for open and fair competition amongst domestic and foreign suppliers and services providers. For all public works contracts above the value of 5,000,000 SDR (Special Drawing Rights, an international currency unit set up by the IMF), i.e. about HK\$55 million, the tendering has to be conducted in accordance with the provisions of the Agreement. Although the tendering policies and procedures are in general consistent with the spirit and objectives of the WTO GPA, the government still requires aligning some procedures for full compliance with the provisions of the Agreement. One of the major changes is to extend the tendering period of public of public works contracts from 21 days to 40 days. The

government has also set up a bid challenge system to deal with complaints and to decide appropriate follow-up remedial actions.

3. Tendering Procedures of Private Developments

3.1 General Information

The attitude of the Hong Kong government is not to involve and interfere private developments and commercial agreements. Hence, the government has not established any tendering procedures for the private sector to follow. However, the design and construction works must comply with the Building Regulations under the supervision of Buildings Department.

Most property developers have their own company policy and procedures for the tendering. They usually adopted selective and invited tendering methods. The tendering procedures are usually controlled by their project managers and the consultant firms, which are employed by them. The tendering procedures are almost the same as that for public works projects.

3.2 Preparation of Tender Documents

Tender documents are prepared by qualified professionals of the consultant firms. The standard conditions of contract prepared by the Hong Kong Institute of Architect and the UK Royal Institute of Chartered Surveyors (Hong Kong Branch) is the most common form of contract used. The final tender documents are inspected and approved by the developers before they are sent out to contractors. Some developers may sometimes employ lawyers to participate in the preparation of tender and contract documents.

Each consultant firm has its own set of standard tender documents, including specifications and Bills of quantities etc. Though the documents are quite similar in the contents and scope covered.

3.3 Inviting Tenders

The developer would decide the list of invited contractors. They would usually consult the professional consultant firms before making the final decision.

Contractors of private sector development works must be Registered Contractors of

the Buildings Department. The Buildings Department does not directly supervise the building projects. It is the law enforcer of the Buildings Ordinance and Regulations, which control the design and construction of private sector developments. There are five Registered Contractors Lists, namely: General Building Contractors, Demolition Contractors, Foundation Contractors, Site Investigation Contractors, and Ventilation Contractors.

The developer would invite contractors from the lists according to the nature of the development project.

3.4 Tendering and Return of Tender

In general, pre-tender meeting is seldom held. Since the schedules for private developments are usually very tight and developers make changes frequently, it is very common that tender addenda are issued. Extension of tender period also usually happens.

3.5 Tender Analysis and Evaluation

Similar to government system, every consultant firm and developer has its own standard procedures of tender analysis and evaluation. The consultant firm is usually responsible for preparation of tender report. Acceptance of the lowest tender is usually the adopted principle. In the circumstances when the lowest tender is unreasonably low or there is very serious calculation mistakes the lowest tender might not be considered.

3.6 Tender Award and Execution of Contract

After the consultant firm sends the tender report to the client for its approval and the client accepts the tender, the consultant firm will issue letter of acceptance to the successful tenderer. They will also prepare the formal contract for execution by the client and the contractor.



JAPAN

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Construction Industry Trends and Issues in JAPAN

1. Macroeconomic Review and Outlook

1.1 Summary

(A) After two consecutive years of negative growth in the Japanese economy, the real GDP growth rate for fiscal 1999 finally climbed to a positive 0.5%. After the overall economic slowdown following the collapse of the bubble in the early 1990s and the further stagnation resulting from the 1997 financial crisis, the Japanese economy has finally begun to see the light at the end of the tunnel.

The real GDP growth rate for first quarter 2000 rose by 2.4% from the previous quarter (or 10% on an annual basis), and was the first increase in three quarters. Private capital investment in particular showed fresh signs of recovery, with a 4.2% increase and there have been remarkable signs of private-demand-led recovery. The second quarter growth was also 1.0% real positive growth.

However, individual consumption and residential construction levels have remained relatively unchanged. The forces stimulating autonomous economic recovery had not yet reached strong levels in the first half of 2000, but the real growth rate for fiscal 2000 is sure to exceed the real growth rate (0.5%) for fiscal 1999.

(B) On the other hand, due to the consecutive Issuance of public bonds for financing the deficit of their revenue and the series of economic policies implemented after the collapse of the bubble, the total outstanding debt of national and local government organizations is in excess of ¥600 trillion, significantly exceeding GDP (nominal ¥494 trillion yen in fiscal 1999). For this reason, the task

of fiscal policy reform is, along with economic recovery, a major issue facing the Japanese economy today.

1.2 Overview of the Macro Economy

1.2.1 Economic Situation up to 1999

The Economic Planning Agency announced in June that the economy had hit the bottom of its recessionary valley in April 1999, after which it began to show signs of recovery. After the recession that followed the collapse of the bubble economy in the early 1990s and the further slowdown caused by the 1997 financial crisis, the Japanese economy, though still weak, is beginning to see the light at the end of the tunnel.

Economic growth in fiscal 1999 recovered to a positive 0.5%, thus ending the succession of negative growth rates in 1997 and 1998. Originally the Economic Strategy Council, an advisory body to the prime minister, indicated that the Japanese economy had the potential to achieve 2% growth. Today, however, the tremendous volume of non-performing loans left over from the collapse of the bubble economy has hindered the ability of the Japanese economy to get back on track toward the growth rate of 2%.

On the other hand, due to active fiscal investment and large tax reductions implemented as part of the government's economic policy and reduced tax collections due to the recession, the national government's outstanding debt amounted to a whopping ¥493 trillion as of the end of March 2000. This is almost equal to Japan's GDP (nominal ¥494 trillion in FY 1999). Add to this the outstanding debts of local government institutions, and the figure rises to more than ¥600 trillion. Over the mid- to long-term, this enormous amount of outstanding debt is expected to cause economic distortions, thus making the task of fiscal policy reform, along with economic recovery, a major issue facing the Japanese economy today. A major point of contention in the general election held in June was whether to place higher priority on the economy or to simultaneously promote fiscal reform and economic countermeasures. Though the current administration (a three-party coalition of the LDP, New Komeito, and the New Conservative Party), which favors economic policies, ended up losing some of its seats, it clung to a comfortable majority and therefore retains political control. For now, therefore, policies favoring economic countermeasures will continue.

1.2.2 Economy in the First Half of 2000

The real GDP growth rate for the first quarter 2000 rose by 2.4% from the previous quarter after seasonal adjustments (an annual rate of 10.0%), yielding the first increase in three quarters.

Private investment in plant and equipment has clearly expanded, with a 4.2% increase, and there have been remarkable signs of private-demand-led recovery. Exports to Asia, where economic conditions are improving, have been on the rise, and have helped improve the economic situation in the first half of 2000.

However, individual consumption has remained fairly flat, and the forces stimulating autonomous economic recovery have not yet reached strong levels. Residential construction has also remained unchanged, while public works investments have fallen compared to 1999 when active fiscal injections were made in this area.

The employment situation has shown some minor signs of recovery, but continues to pose problems. The overall unemployment rate remains high at 4.7% (as of June, seasonally adjusted), and the job availability rate remains low at 0.59 jobs available per job seeker (as of June, seasonally adjusted).

Thus, the Japanese economy in the first half of 2000 has shown signs of recovery spurred by private demand, particularly private investment in plant and equipment. However, the negative effects of reduced public works investment are hampering the economy's ability to recover, and thus foiling attempts to predict what will happen next.

1.3 Economic Outlook in the Next Decade

Since the bubble collapsed in the late 1980s, the Japanese economy has shifted from growth and expansion into a phase of stability and maturity, and, as mentioned earlier, was originally estimated to have a potential growth rate of 2%. Over the span of the next decade, the economy is likely to get back on that 2% growth track as a result of the current trend toward moderate recovery.

The aging of society and the population decrease are expected to put some constraints on the Japanese economy in the near future. The population of Japan is going to hit a peak in the year 2007, after which it will begin to decrease. At the same time, the aging of society will progress at an accelerated pace, such that the percentage of senior citizens (aged 65 and older) to the entire population is expected to rise from its 1999 level of 17% to a massive 22% by 2010. The population decrease will trigger reductions in the scale of economic activity, and the aging of

society will inevitably increase the burden on working people in terms of taxes and social security. The savings rate is also expected to decline, thereby reducing the society's overall resources available for investment. In 2010, the pace of population decrease will still be moderate, but if extraordinary technological innovations or means of increasing productivity are not unearthed, the Japanese economy will have a difficult time getting back on a track of positive growth over the mid- to long-term.

The aging of society will result in an increased reliance on fiscal measures, especially social security expenses, and will make fiscal reform even more difficult. Once the economy gets back on the track of autonomous recovery, fiscal reform must urgently be promoted by rationalizing and streamlining government administration.

On the other hand, the globalization of the world economy is also going to have an impact on Japan's future economy. In a post-Cold War environment where most countries have adopted a market economy and the information revolution has intricately affected the global market, Japan has been able to retain its high international competitiveness. This has made it essential to create a framework for implementing deregulation, promoting the IT revolution, and building infrastructures for transportation and telecommunications networks. In terms of its role within Asia, Japan needs to promote technology transfers to other countries and the liberalization of the Japanese market, while also playing a more active role in pursuing economic ties with its Asian neighbors.

Another imminent issue is the increased impact that global environmental problems are going to have on the economy. Cross-national efforts in areas such as global warming have already begun, but Japan is pouring its efforts into creating an international framework for dealing with environmental problems and providing government development assistance in the environmental sector. Domestically, the government is promoting a shift to a recycling-oriented social economy that addresses waste management and recycling issues.

As can be seen from the above, the outlook for the Japanese economy over the next decade is not one of unbridled optimism, but instead one that recognizes the various problems that remain to be addressed. Increased wisdom and effort will be required if the Japanese economy is to continue to thrive now that it has shifted from a growth orientation to maturity.

	1996	1997	1998	1999	2000
GDP & Components (monetary unit : billion yen)					
GDP at real prices	490,018.4	489,664.4	480,165.2	482,350.8	489,573.3
GDP growth(%)	4.4	△0.1	△1.9	0.5	1.5
GDP at current market prices	504,391.4	507,632.0	497,255.8	493,818.4	511,904.3
Agriculture, Forestry, Fishing, Mining & Quarrying	10.469	9,715	9,614	—	—
% growth	0.4	△7.2	△1.0	—	—
Manufacturing sector	122,526	124,494	117,216	—	—
% growth	2.7	1.6	△5.8	—	—
Services sector	320,034	323,500	324,304	—	—
% growth	3.6	1.1	0.2	—	—
Construction sector	51,362	49,923	46,122	—	—
% growth	2.1	△2.8	△7.6	—	—
Demographic Indicators					
Populaton(1000)	125,869	126,156	126.420	126,665	126,892
Population growth rate(%)	0.24	0.23	0.21	0.19	0.18
Total labour force(1000)	67,380	68.000	67.920	67,930	67,400
Labour force growth rate(%)	0.94	0.92	△0.12	0.01	△0.78
Unemployment rate(%)	3.4	3.5	4.4	4.7	4.6
Financial Indicators					
Short term interest rate(%)	0.52	0.61	0.66	0.17	0.08
Long term interest rate(%)	2.751	1.991	0.972	1.836	1.762
Changes in consumer price index(%)	100.1	101.9	102.5	102.2	101.7
Base lending rate(Commercial banks)	1.625	1.625	1.5	1.375	1.375
Base lending rate(Finance companies)	2.5	2.3	2.2	2.2	2.2
Change against US\$	108.78	120.99	130.90	113.91	106.71

Notes : 1. Construction Economy Forecast (RICE, May 2000); Annual Report on National Accounts (Economic Planning Agency, March 2000); Institute of Population Problems home page, Economic Data from Overseas (compiled by the Economic Planning Agency, Research Bureau, Overseas Research Division, June 2000), Management and Coordination Agency home page, and the Bank of Japan Monthly Bulletin (compiled by the Research and Statistics Department, April 2000).

2. GDP and gross production figures are for the fiscal year. GDP figures for 2000 are estimates. Real figures based on FY 1990 prices.

3. All gross productivity figures are in nominal terms.

4. Populations figures are estimates.

5. Figures for labor force population and unemployment rates are seasonally adjusted. Figures for 2000 are current as of May.

6. The consumer price index assumes a baseline figure of 100 for 1995.

7. Interest rate figures are from year-end statistics (except for 2000 figures which reflect interest rates as of March 31).

8. Short-term interest rates reflect the average interest rates published in the domestic commercial papers.

9. Long-term interest rates reflect interest rates on long-term (10-year) government bonds.

10. The consumer price index for 2000 is as of April 30.

11. The base lending rates (Commercial Banks) reflect the short-term prime rates.

12. The base lending rates (Finance Companies) reflect the long-term prime rates.

13. Exchange rate figures are annual averages (except for 2000 figures, which reflect the average for March).

Construction Investment (or market) Volume

(at 1990 prices)

Fiscal Year		1999 (billion yen)	1996 (%)	1997 (%)	1998 (%)	1999 (%)	2000 (%)	2001 (%)
Residential Construction(A)		20,382.0	12.9	-19.9	-10.9	3.6	-0.9	-5.5
	public	1,786.4	6.7	-12.4	0.7	5.0	0.6	-13.8
	private	18,595.6	13.4	-20.4	-11.9	3.5	-1.0	-4.7
Non-Residential Construction(B)		12,015.7	6.4	-3.2	-12.5	-8.6	2.6	1.2
	public	3,202.8	-1.3	-4.7	-9.2	-7.1	-3.9	-7.4
	private	8,812.9	9.3	-2.7	-13.6	-9.1	5.0	4.0
Civil Engineering Construction(C)		34,741.8	-3.1	-2.4	1.5	-0.2	-5.4	-9.4
	public	28,113.1	-2.8	-1.3	2.9	1.5	-7.3	-12.7
	private	6,628.7	-4.0	-6.2	-3.8	-6.6	2.4	3.0
Total Construction Investment(A+B+C)		67,139.5	3.9	-8.7	-5.3	-0.7	-2.6	-6.2
	public	33,102.3	-2.1	-2.3	1.4	0.7	-6.5	-12.2
	private	34,037.2	8.9	-13.4	-10.9	-2.1	1.2	-0.8
Repair and Maintenance(D)		—	—	—	—	—	—	—
Total Construction Market(A+B+C+D)		—	—	—	—	—	—	—

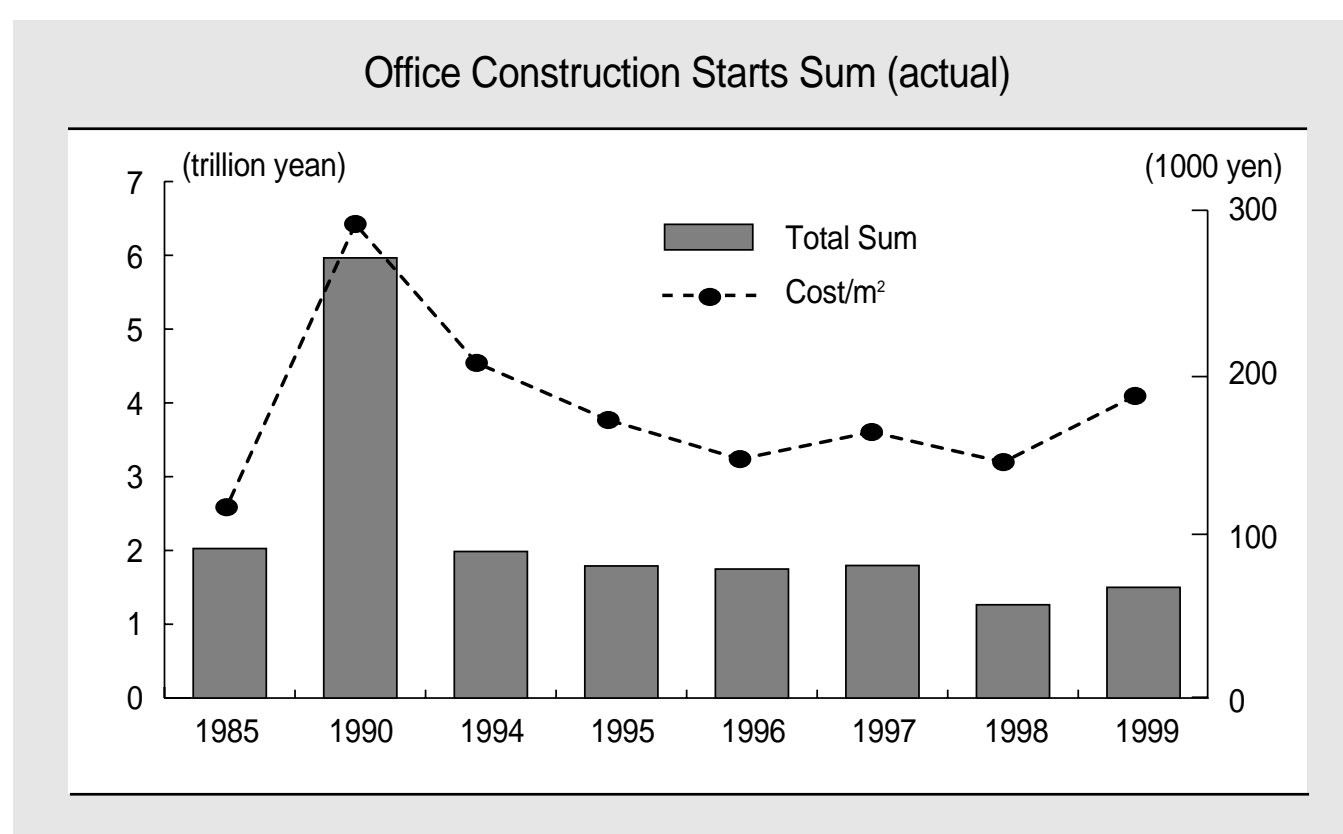
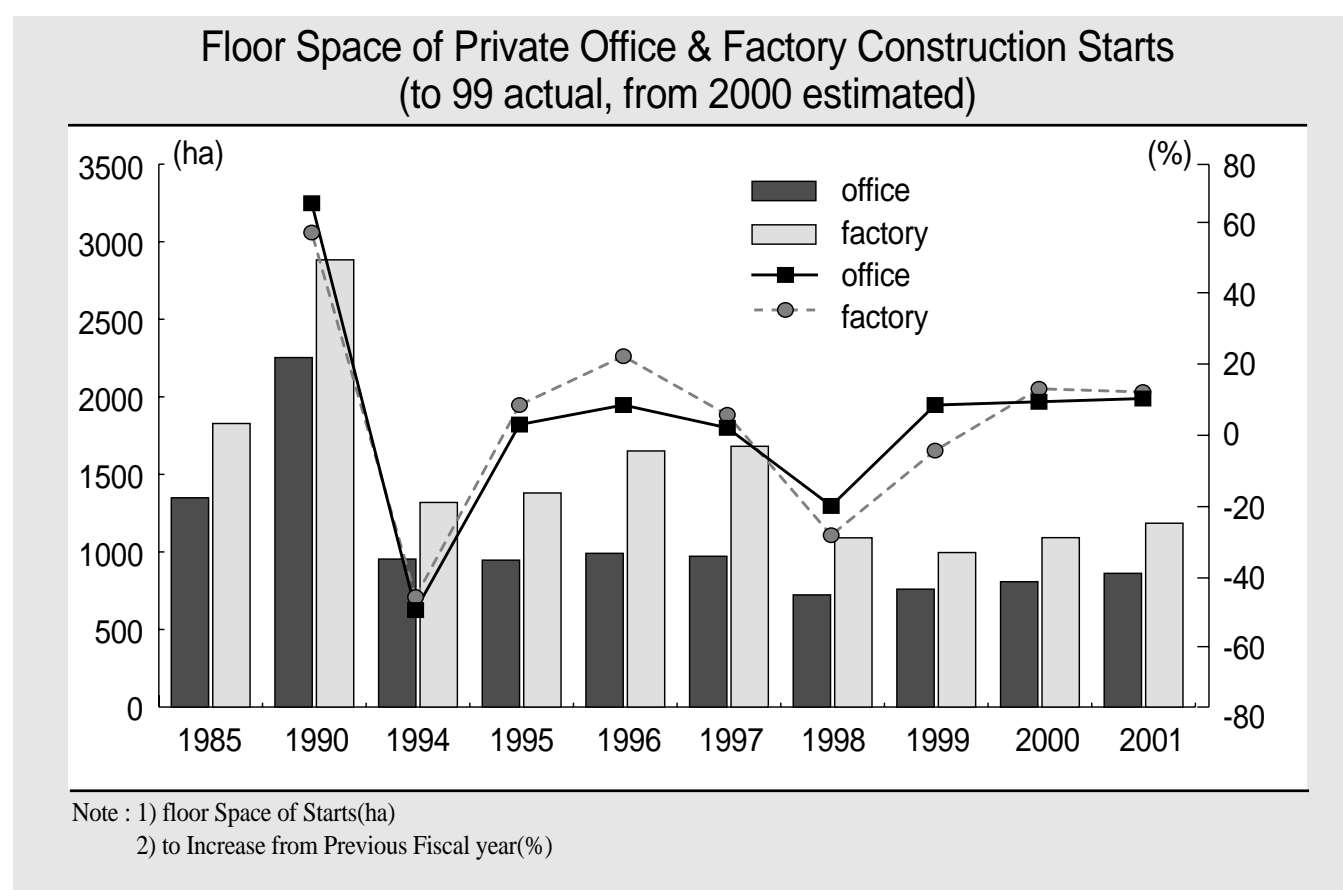
(at current prices)

Fiscal year		1999 (billion yen)	1996 (%)	1997 (%)	1998 (%)	1999 (%)	2000 (%)	2001 (%)
Residential Construction(A)		21,650.0	14.2	-19.0	-12.0	3.1	-0.3	-4.8
	public	1,882.9	7.9	-11.3	-0.3	4.4	0.5	-14.0
	private	19,767.1	14.8	-19.5	-13.0	3.0	-0.4	-3.9
Non-Residential Construction(B)		12,628.5	7.3	-1.9	-13.2	-9.3	2.3	1.3
	public	3,366.1	-0.5	-3.3	-10.0	-7.7	-3.7	-7.5
	private	9,262.4	10.3	-1.4	-14.2	-9.8	4.5	4.3
Civil Engineering Construction(C)		36,580.9	-2.6	-1.1	0.7	-0.8	-6.0	-9.5
	public	29,733.5	-2.3	0.0	2.2	0.8	-7.7	-12.7
	private	6,847.4	-3.9	-5.0	-4.7	-7.5	1.8	3.2
Total Construction Investment(A+B+C)		70,859.4	4.8	-7.6	-6.1	-1.3	-2.8	-6.0
	public	34,982.5	-1.5	-1.1	0.6	0.1	-6.9	-12.3
	private	35,876.9	10.0	-12.4	-11.8	-2.7	1.3	-0.4
Repair and Maintenance(D)		—	26.5	-7.3	-8.7	—	—	—
Total Construction Market(A+B+C+D)		—	4.6	-4.0	-7.5	—	—	—

Note : 2000 and 2001 are forecast.

Source : Construction Economy Forecast, Research Institute of Construction and Economy.

Statistics on Construction Undertaken, The Ministry of Construction.



2. Construction Market

(A) In fiscal 1999, public construction investment remained fairly stable and private residential investment rose into positive numbers for the first time in three years. However, the reduction in private non-residential construction investment

hindered overall construction investment, which decreased by 1.3% from the previous year, and resulted in a third consecutive year of negative growth.

(B) Due to reduced public construction investment and a dip in private residential investment in fiscal 2000, overall construction investment fell by a nominal 2.8% from last year. Private non-residential construction investment showed an increase for the first time in four years due to a round of corporate inventory adjustments, but will not be able to offset the decline in government construction investment and private residential investment.

(C) Overall construction investment for fiscal 2001 will fall by a nominal 6.0% from the previous year. Government construction investment will fall drastically if economic policies do not generate any additional investment. Though private residential investment is also expected to drop, private non-residential construction investment is expected to increase further. This is not, however, expected to help pull overall construction investment back into the black.

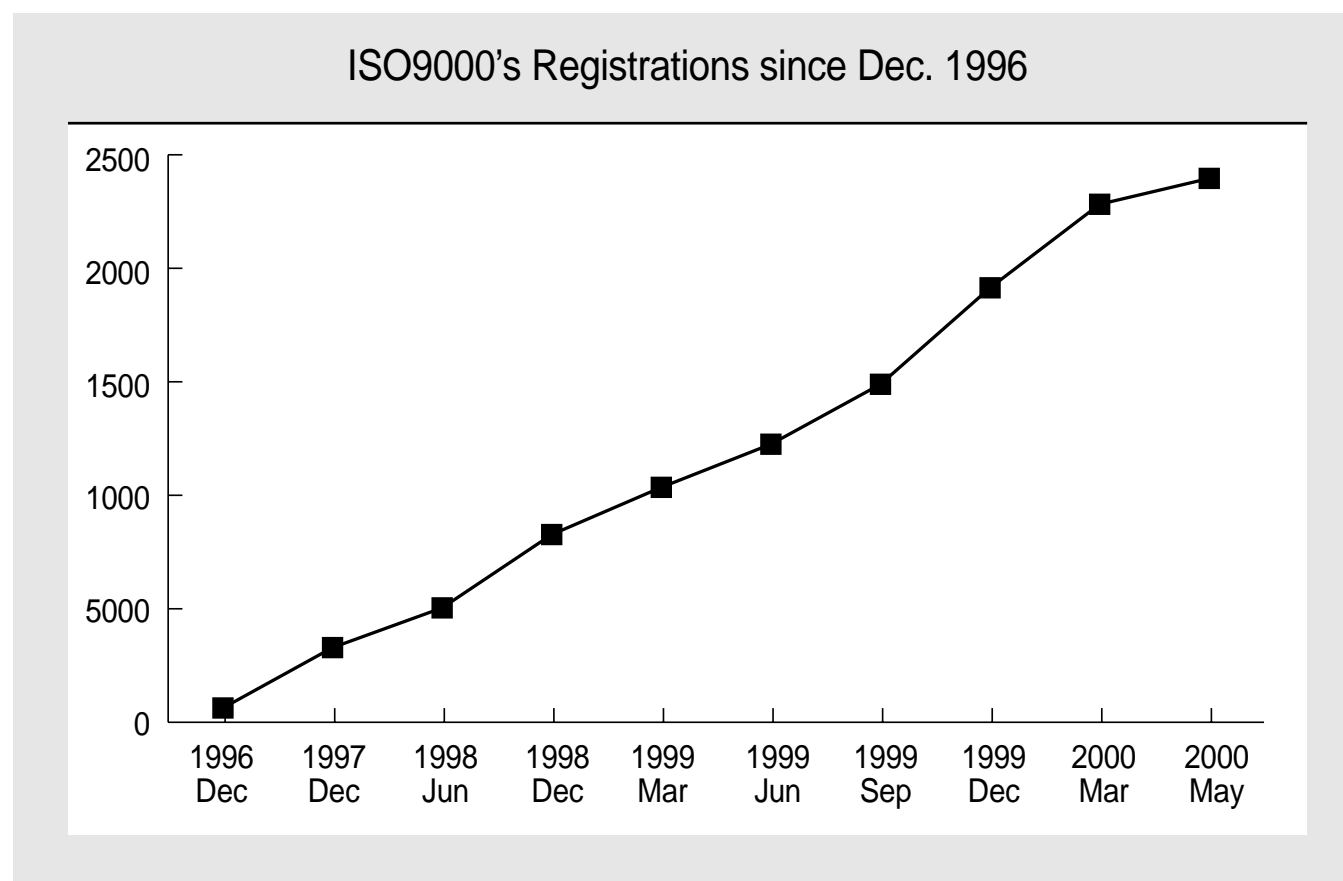
(D) The above indicates that construction investment is now in a phase of short-term contraction. Private investment is expected to be stimulated as economic recovery progresses, but massive improvements cannot be anticipated even over the medium to long term due to the negative effects of fiscal belt-tightening, the aging of the population, and population decreases.

3. Several Issues of Construction Industry

3.1 Quality

3.1.1 Enhancement of Quality Assurance

(A) Enhancement of quality assurance through ISO9000 series compliance - The Ministry of Construction has been working since 1996 on about 50 pilot projects to promote a better understanding of the ISO9000 series, and to engage a wide range of interested parties in a discussion concerning the benefits and problems associated with the application of ISO9000 standards to public works projects. As a result, the Ministry of Construction has determined that there is a high potential for the application of ISO9000 series standards to effectively serve as a means of improving quality assurance standards on public works and other construction projects. In fiscal 2000, in light of its findings, the Ministry of Construction announced 36 ISO9000 series compliance projects, primarily projects with an especially high degree of difficulty, that require project bidders to obtain ISO9000 series certification.



(B) ISO9000 series certification - Japanese construction companies first began working in 1995 to achieve ISO9000 series certification. Since then, the number of certified companies has risen rapidly. As of May 31, 2000, 2396 construction companies have registered with the Japan Accreditation Board for Conformity Assessment (JAB) for certification in the construction sector. More small and medium-sized construction companies have been obtaining certification in recent years.

3.1.2 Enhancement of Skills of Workforce

The Ministry of Labour has implemented a skill assessment system for the purpose of improving workers' skills and their interest in skill acquisition. This system comprises a four-level skill assessment for 38 types of construction-related jobs such as rebar work, and workers are assigned to a skill level based on their ability to pass both written and hands-on exams.

The Ministry of Construction is also working to develop training programs for 'multi-skilled workers' who can work in several different sector of construction, as well as for 'core workers' who can devise efficient construction methods for contracting engineers (supervisors) and who can coordinate work with the managers of other sector of work. In April 1997 the MOC opened the Cross-technique Training School to further these goals. To promote the training of core engineers, the Ministry of Construction is supporting the establishment of a system for evaluating them, and

plans to investigate evaluation systems for companies that utilize core engineers, such as the public evaluation system, 'specialized construction companies strength index.'

Also, the MOC is conducting a preliminary training program for new hires in the construction industry for small and medium-sized companies and specialized construction companies who hire few new people and thus cannot efficiently implement their own independent training programs. It is also planning to join construction- companies to enhance construction skill training by providing industrial high schools with tools and materials, teachers, and volunteer lecturers.

3.1.3 Enhancement of Supervisory Level

Enhancement of skills of supervisors is largely being pursued through private instruction. Each company holds its own regular technology exchange meetings, provides quality control and safety and sanitation education, and has safety and sanitation coordinators conduct construction site safety patrols. In recent years, an increasing number of companies have been striving to elevate their technological capabilities by actively supporting to take qualification of execution management engineer and professional engineers and by sharing construction techniques that use information technology.

Skill Level of Workforce and Supervision Level

	Total Construction Workforce (a)(millions)	No. of workers (b) (millions)	Skill level (b/a) (%)	Ratio of Supervisor to Workers (1:X)
1996	6.70	4.42	—	10.28
1997	6.85	4.55	—	11.10
1998	6.62	4.34	—	10.09
2000	6.57	4.32	—	10.29
Long-term target	—	—	—	—

Note : Skilled Workers section is noting
Source : Labor Force Survey (Ministry of Labor)

3.2 Information Technology

The initiative of the major general construction companies in using information

technology in the construction industry include electronic procurement of materials over the Internet, electronic collection of project companies, sharing of data (CAD, project information), using extranets with cooperating companies, and increasing distribution efficiency.

The Ministry of Construction established the Construction CALS/EC Action Program in June 1997, and aims to achieve construction CALS/EC in the projects under its direct jurisdiction by 2004. The major goals of the construction CALS/EC are as follows:

- Use of electronic procurement for all projects.
- Contracting through EDI (Electronic Data Interchange).
- Online submission of applications and bid notification for all public projects.
- Creation of a comprehensive database of project information.
- Information linking and integrating using a GIS (Geographic Information System).

The MOC is promoting the early implementation of construction CALS/EC by providing active assistance to preparations for its introduction which are being conducted by various construction industry organizations.

3.3 Construction Technology

3.3.1 Research and Development Investment

Research and Development			
	Total investment in research and development(billion yen)	Construction sector investment(billion yen)	Percentage of total construction investment(%)
1995	9,395.8	204.4	0.26
1996	10,058.4	224.5	0.27
1997	10,658.4	225.2	0.30
1998	10,800.1	176.7	0.25
1999	N.A.	N.A.	—
Long-term target	—	—	—

Source : Survey of Research and Development (Management and Coordination Agency) and the Forecast of Construction Investment (RICE, Economic Research Association).

3.3.2 Development of New Technology in the Major Construction Companies

New Construction Technologies

technology & brief Description	Developer
Chemical-Free Semiconductor Plant To minimize the pollutants produced in semiconductor manufacturing environments, this project selected clean-environment machines and finishing materials based on the appropriate selection, installation, and performance of filters that eliminate pollutants. A rational use of space was employed at the various facilities, especially clean rooms. Takenaka Corporation has reduced its building and equipment construction by 10% over other projects, and will be able to complete the entire process from basic design to manufacturing equipment installation in a short 8.5 months.	Takenaka Corporation
Hybrid TASS (Taisei Shake Suppression System) Method This is a new earthquake-resistant construction method that uses elastic sliding bearings and laminated rubber bearings. The strength and width of the buildings vibrations are greatly reduced by the effect of the compound bearings, and costs are lowered by slimming down the upper part of the frame. Using sliding bearings also reduces the cost of the earthquake-resistant structure itself.	Taisei Corporation
Cyber Building This is a building that can comprehensively respond to problems involving electromagnetic waves using electromagnetic wave shield technology. Shimizu Corporation is devising preliminary estimates of possible problems using environmental measurement and simulation technologies, and is performing appropriate electromagnetic environmental engineering on the entire process from planning to maintenance.	Shimizu Corporation
Hybrid Slip form Method This is an extremely fast method of constructing tall bridge piers that uses steel pipes for the reaction abutments and raises a slip form (PC form). Steel pipes are used as the main reinforcement, and a complex structure using a line from the PC strand is used in the tie. As a result, Obayashi Corporation has improved construction safety, reduced the energy needed for the process of rebar fixer, and increased the speed of construction.	Obayashi Corporation
Comprehensive Tunnel Construction Management System This system makes it possible to build high-quality, reliable structures when constructing tunnels that pass through mountains. This system is comprised of a (1) information construction system which uses methods of prospecting vibration, electromagnetism, and drilling, a (2) design support system which provides design assistance using data obtained from the (1), and a (3) quality control system which uses sophisticated tunnel cross-section measurement devices.	Nishimatsu Construction
TBM Automatic Spraying Robot By loading an automatic concrete spraying robot into a TBM (tunnel boring machine), this system is the first in the world to allow the simultaneous performance of both excavation and lining work. It automatically performs tasks involved in the TBM method, such as washing the walls of the excavated area, taking cross-sectional measurements, and calculating the concrete spraying thickness. This system can help improve the work environment, raise quality, shorten construction times, and reduce costs.	Sato Kogyo

(58 page countinued)

Description of new technology	Developer
Earthquake-Resistant Bridge Pier Rapid Construction Method (REED Method) This is a method of structurally forming and constructing structural steel concrete compound structure bridge piers using studded H beam (which can bear tensile force) and a highly durability cast in from (which can bear compressive force). As a result, this method enables fast-paced construction through the repetition of simple tasks, improved earthquake resistance through the use of highly rigid H beam, and enhanced aesthetic beauty and durability through the use of pre-cast from.	Maeda Corporation
Fiber-Reinforced Cement Mortar with Metal-Like Malleability Properties (High Ductility FRC) High ductility FRC achieves high malleability that can resist deformations 200 times the degree of conventional mortar by incorporating inexpensive high-strength fiber in its structure. Taking advantage of the characteristics of fiber to make a highly earthquake-resistant member with outstanding safety properties makes it possible to reduce the volume of other earthquake-resistant materials, thereby greatly reducing costs. Also, since this technology can also be expected to help control the size of cracks, it may have applications for highly durability structures.	Kajima Corporation
Ashcrete This is a new type of concrete. Instead of the standard components of normal concrete, Ashcrete uses fly ash, a high-volume by-product of coal fired power plants. Because of its added strength under water, durability, and water-retarding properties, it has all the properties necessary to make an ideal material for undersea applications. Ashcrete also has a wide range of applications because its added volumes of metal slag enable adjustable specific gravity.	Hazama Corporation
Positioning Management System Using GPS This is a construction management system for ocean civil engineering construction that uses GPS positioning technologies and underwater ultrasonic waves. It allows structure installation positions to be managed accurately and easily without interference from weather and other conditions above the ocean surface even at extremely deep levels of about 200 m, levels at which it has thus far been difficult to attain precise measurements.	Penta-Ocean Construction

3.4 Environment

3.4.1 Environmental Impact Assessment Law

Japan's environmental impact assessment system used to be left to the discretion of government officials based on the Cabinet's Guidelines Concerning the Performance of Environmental Impact Assessments, but since the process of establishing the Basic Environment Law and the Basic Environment Plan revealed the need for revisions to this system, the Environmental Impact Assessment Law (Environmental Assessment

Law) was enacted in 1997.

All businesses over a certain size are automatically required to conduct studies, provide estimates, and perform, at their own expense, assessments of the impact of their business activities on the environment before engaging in those activities. Companies must then use the results of those studies to take the relevant environmental issues into consideration in carrying out their business.

The new law marks a watershed in the history of environmental conservation because it requires that the assessment procedures include mechanisms for ensuring that the views of local residents are reflected in the assessment.

3.4.2 Building Construction Materials Recycling Law

The Japanese government has designated the year 2000 as the 'first year of the recycling-oriented society' and has decided to enact legislation regarding a basic framework toward that end. The government has thus compiled the Basic Law Promoting the Formation of a Recycling-Oriented Society which sets out the basic principles of recycling policies, such as regulations regarding waste disposal and the collective responsibility of producers.

It has also enacted the Revised Waste Disposal Law which requires waste disposal companies to ensure final waste processing and the Building Construction Materials Recycling Law (Construction Recycling Law) which systematizes the registration of demolition companies and requires the recycling of concrete, asphalt, and lumber.

Construction waste accounts for about 20% of total industrial waste, about 40% of the volume of final processed waste, and about 90% of illegal dumping, thus making the promotion of construction waste recycling an extremely important issue.

While new laws have been introduced to promote the proper disposal and recycling of waste, such as the Basic Law Promoting the Formation of a Recycling-Oriented Society, Revised Waste Disposal Law, and the Building Construction Materials Recycling Law (Construction Recycling Law), the construction industry is being urged to undertake active environment-oriented efforts and to achieve stringent goals.

It is essential that recycling plans be implemented if the construction industry is to be viewed favorably by society as an industry that makes an important social contribution.

3.4.3 ISO14000 Efforts

The number of companies in Japan obtaining certification under the ISO14000 series of international standards for environmental management systems is rapidly increasing.

Many companies in the construction industry are moving forward with preparations for obtaining certification for such purposes as fulfilling their corporate mission (social demand), preserving the global environment, improving their corporate image, bolstering their company's stature, or establishing an environmental management system.

The statistics on ISO14000 certified companies compiled by the Japan Standards Association as of April 2000 indicate that a total of 3,693 companies have obtained certification. Of those, 207 are general construction companies (5.6%) and 44 are facility and equipment construction companies (1.2%).

4. Globalisation of the Construction Market

4.1 Government Policy on Liberalization

The construction industry in Japan has not traditionally discriminated against foreign entrants to the market regarding requirements for obtaining construction business licenses and other measures. In 1994, however, in response to the growing movement toward international construction market liberalization evidenced by ongoing negotiations to revise the WTO Agreement on Government Procurement, reforms to Japanese bidding and contracting procedures were enacted with the Cabinet Resolution approving the Action Plan on Reforms of Bidding and Contracting Procedures of Public Works (hereafter the 'Action Plan'). This plan aimed to ensure the high quality of public works projects while increasing the transparency, objectivity, and competitiveness of bidding and contracting procedures, ensuring the thorough application of the principle of non-discrimination against foreign companies, and making it easier for foreign participants to become familiar with Japanese bidding and contracting practices. In addition to having the same forward-looking character as the WTO Agreement on Government Procurement, which went into effect in 1996, this Action Plan incorporated other independent government measures aimed at market liberalization. The major components of the plan are as follows:

- Projects valued over a standard amount set out in the agreement are subject to open bidding, and design/consulting work is handled through either public invitation bidding or competitive public invitation bidding.
- Broadens the items by which foreign companies were evaluated.
- Establishes procedures for handling complaints.

The WTO Agreement on Government Procurement (GPA) went into effect later in 1996. A comparison of the Action Plan and the GPA reveals that while the Action Plan applies to national government-related construction and design/consulting work, the GPA is broader in scope and is applied at the level of prefectural and designated city governments. Also, while the Action Plan is applicable to construction as well as design/consulting work, the GPA applies again more broadly to the procurement of goods and other services.

4.2 Legal Regulations Applying to Foreign Construction Firms and Technical Specialists Entering the Japanese Market

4.2.1 Legal Systems and Procedures for Establishing a Business Office

When a foreign corporation establishes a business office in Japan for its representatives, it need not obtain any licenses or permits, nor must it register with the Regional Legal Affairs Bureau. When a foreign corporation establishes a branch (or sales office) or a corporation in Japan, it is required to: a) register the branch (corporation) in accordance with commercial laws, b) submit reports or documents in accordance with the foreign exchange and international trade laws, and c) submit various documents to the tax authorities.

4.2.2 Obtaining a Construction Business License

A company engaging in the construction business in Japan must obtain a construction business license in accordance with the Construction Business Law. A permit is not required if the company is only a subcontractor for light construction work as defined by law, but if the company engages in any other kind of construction work, it must obtain a construction business license regardless of whether it is a domestic or foreign firm. Also, a major requirement for obtaining that business license is that the company employ a person with a certain number of years of management experience in Japan, but special approval may be obtained by the Ministry of Construction for persons with the same degree of experience in foreign countries if the Ministry recognizes that person as having the same or greater level of capabilities as is needed to fulfill this requirement. Likewise, the requirement of employing specialized engineers with certain qualifications or with actual work experience in Japan may be able to be met by getting the Ministry of Construction to approve personnel with qualifications or actual work experience overseas.

(For details regarding construction business licenses, see 5, Construction Business Licensing System.)

4.3 Penetration of Foreign Construction Firms in the Japanese Domestic Market

Number of Foreign Corporations and Foreign-Capitalized Japanese Corporations that have Obtained Construction Business Licenses					
Country	Foreign companies	Foreign-capitalized japanese companies	Total	By permit	
				Minister of Construction	Prefectural governor
U.S.A.	8	22	30	9	21
South Korea	8	1	9	9	0
Germany	0	6	6	1	5
Holland	1	5	6	1	5
Switzerland	0	5	5	3	2
Sweden	0	4	4	0	4
France	1	1	2	1	1
England	0	2	2	1	1
China	0	1	1	0	1
Finland	0	1	1	0	1
Singapore	1	0	1	0	1
Total	19	48	67	25	42

Notes : 1. As of September 30, 1999.
2. Foreign corporations: Companies whose entire (100%) capital comes from a foreign firm.
3. Foreign-capitalized Japanese corporations: Companies whose majority (50% or more) capital comes from a foreign firm.
Source : Ministry of Construction

4.4 Effects of Liberalization on WTO Participation

Since the Action Plan on Reforms of Bidding and Contracting Procedures of Public Works was enacted in 1994, the number of public works projects undertaken by foreign firms has steadily increased. The increase in the number of orders received by South Korea has been especially remarkable since it became a party to the WTO Agreement on Government Procurement in 1997.

Public Works Orders Received by Foreign Firms (million yen)					
	Fiscal year	1996	1997	1998	1999(Apr.-Nov.)
Orders received by foreign firms	Construction work	9,798	13,736	15,631	10,803
	Design and consulting	491	256	261	327
	Total	10,289	13,991	15,891	11,130
Orders received by South Korean firms	Construction work	16	1,008	4,084	7,039
	Design and consulting	0	0	0	0
	Total	16	1,008	4,084	7,039

Note : Includes orders planned by third sector public institutions as well as national government institutions and local public organizations.
Source : Ministry of Construction

4.5 Policies and Plans Aimed at Cooperation in the Asian Construction Market

4.5.1 ODA Technological Cooperation Projects

Japan is the world's second largest economy and the world's top contributor of ODA. In addition to helping to raise the level of trust and respect that other countries have for Japan, the Japanese government grants ODA with the basic understanding¹⁾ that it helps promote the national interests of Japan, a country that is dependent on world peace and stability and that relies on the international community for resources, energy and food. In light of this knowledge, technological assistance projects that utilize Japanese firms and take advantage of the experience of specialists at universities, think tanks, local governments, and private companies, and which aim at transferring useful technologies and managerial skills are one of the most important means through which Japan provides overseas aid. Various technological cooperation programs are already underway in the construction sector in areas such as construction materials development (Indonesia), new housing technology research (China), and increasing construction productivity (Philippines).

4.5.2 Cooperation with Local Firms through ODA Projects

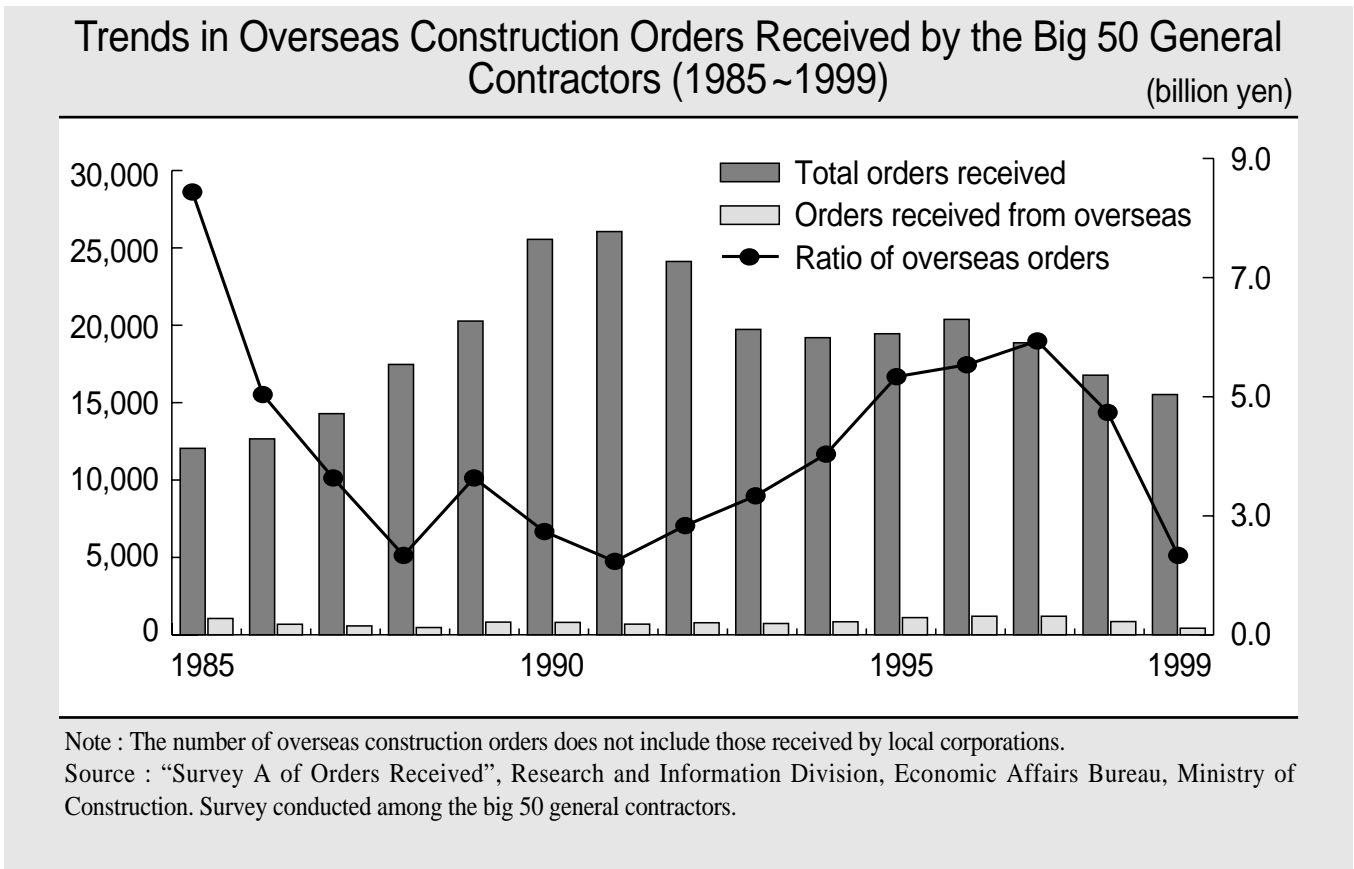
Overseas contract amounts for Japanese construction companies were valued at ¥729.7 billion for fiscal 1999. A breakdown of orders reveals that ¥492.3 billion were placed with Japanese companies (branches or sales offices), and ¥237.4 billion were

1) "Mid-Term Policies Concerning Government Development Assistance, August" 10, 1999.

placed with local companies. There is a large gap between the value of orders received from Asia, Japan’s leading overseas source, whose overseas contract value of ¥483.5 billion accounts for 66.3% of its overseas contracts, and those from the second runner-up, North America, with ¥138.1 billion²⁾. By undertaking projects in Asia, Japanese construction companies which operate as main contractors or joint venture participants are able to form close cooperative relationships with local subcontracting firms and other joint venture participants. They are also able to engage in technology transfers in areas of construction such as process management, quality control, and construction methods. As a result, they not only help to improve the technological capabilities of the local companies with whom they share a cooperative relationship, but also raise the overall level of the construction industry in the countries in which they operate.

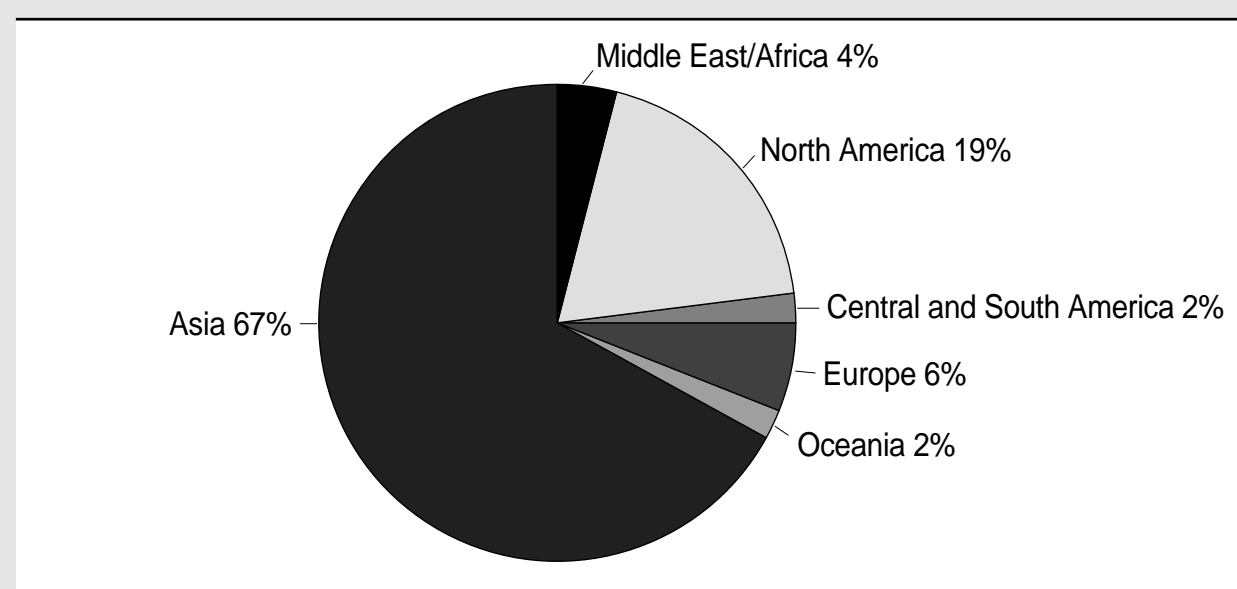
4.6 Overseas Construction Orders Received by Domestic Construction Firms and Orders for Construction in Japan Received by Foreign Construction Firms

4.6.1 Overseas Construction Orders Received by Domestic Construction Firms
 Overseas construction orders received by major construction firms and order ratios by region are shown below.



2) Overseas Contract Association of Japan, Totals for the 54 member companies.

Overseas Construction Contracts in Fiscal 1999 (ratio of order values by region)



Source : Overseas Contract Association of Japan. Totals for the 56 member companies.

4.6.2 Contracts for Overseas Construction Orders by Country

The Ministry of Construction conducted a survey of business activity at the end of the most recent accounting period or between accounting periods among Japan's big 56 domestic construction companies (36 general contractors, 20 facility and equipment construction companies) that operate internationally. The countries from which the companies have received the most overseas construction orders as well as those with whom they want to expand their business (respondents could give up to 5 answers) are shown below.

Countries with Large Numbers of Construction Orders Last Year
(unit : Companies)

1999 Survey Countries with large numbers of construction orders	Primary service seekers			
	Japanese firms	Other private organizations	Public organizations	Total
1. Singapore	9	10	5	24
2. Thailand	9	3	5	17
3. philippines	10	2	5	17
4. China	6	4	5	15
5. U.S.A.	9	4	2	15
6. Malaysia	6	6	2	14
7. Others	28	14	41	83
Total	77	43	65	185

Countries with Whom Expanded Business is Desired (unit : Companies)				
	Primary service seekers			
	Japanese firms	Other private organizations	Public organizations	Total
1. China	11	3	4	18
2. Philippines	9	3	6	18
3. Singapore	5	6	3	14
4. Thailand	6	2	5	13
5. Vietnam	6	0	6	12
6. U.S.A.	7	2	2	11
7. Others	26	16	51	93
Total	70	32	77	179

Source : 1999 Construction Activity Performance Survey(Ministry of Construction, Economic Affairs Bureau, Research and information Division).

5. Construction Business Licensing System

5.1 License Categories

There are two types of construction licenses, national licenses granted by the Ministry of Construction and prefectural licenses granted by prefectural governors, and two types of construction firms, special and ordinary construction firms.

A single construction firm cannot simultaneously hold both a national and prefectural construction business license, nor can a single firm be categorized simultaneously as both a special and ordinary construction firm.

5.2 Difference between a National License and a Prefectural License

When a company intends to establish offices and do business in two or more prefectures, it must obtain a national construction license. If a company intends to establish an office and do business in only one prefecture, it must obtain a prefectural license from the prefecture that has jurisdiction over that location.

5.3 Difference between Ordinary Construction Licenses and Special Construction Licenses

All construction firms-both general contractors and subcontractors-must obtain an ordinary construction license unless they only intend to perform extremely small jobs. A special construction license, however, must be obtained to engage in general contracting where contracts worth ¥45 million or more are received directly from the end client, or to engage in subcontracting involving contracts worth ¥30 million or more.

The special construction license is part of a system designed to protect the interests of subcontractors and to ensure that projects are carried out properly. The required qualifications for a special construction license are more stringent than those for an ordinary license.

Trends in Number of Construction Business License Holders(1975~1999)

	Total	Growth rate	Permit from Minister	Growth rate	Permit from governor	Growth rate
1975	350,817		6,331		344,486	
1980	488,520	39.3%	7,465	17.9%	481,055	39.6%
1985	518,964	6.2%	8,337	11.7%	510,627	6.1%
1990	508,874	-1.9%	8,944	7.3%	499,930	-2.1%
1991	515,440	1.3%	9,022	0.9%	506,418	1.3%
1992	522,450	1.4%	9,124	1.1%	513,326	1.4%
1993	530,665	1.6%	9,332	2.3%	521,333	1.6%
1994	543,033	2.3%	9,619	3.1%	533,414	2.3%
1995	551,661	1.6%	9,871	2.6%	541,790	1.6%
1996	557,175	1.0%	10,062	1.9%	547,113	1.0%
1997	564,849	1.4%	10,485	4.2%	554,364	1.3%
1998	568,548	0.7%	10,742	2.5%	557,824	0.6%
1999	586,045	3.1%	10,815	0.7%	575,230	3.1%

Note : Numbers of companies are as of the end of March in each year.
Source : Ministry of Construction.

6. Contract Award Procedures (Methods of Selecting Public and Private Sector Contractors) and Contracts Types

6.1 How Public-Sector Clients Select a Contractor

The main features of the bidding and contracting system for public works projects

in Japan are as follows:

(The qualification of bidders is largely based on Corporate Capability Assessment System which is explained below.).

6.1.1 Selective Bidding System

(A) Selective bidding - Selection committees invite selected firms to submit bids. The selection is made on the basis of track record and each client's own ranking system. This system is widely used by local governments of medium size or smaller and for small-scale construction projects.

- Used for small-scale projects (usually under ¥100 million).
- Used by clients who do not have staff that are qualified to review the bids submitted in an open bidding procedure, and by clients who require a construction firm with some special construction technology.

(B) Selective bidding by public invitation - Under this system, both the project and the construction firms are ranked. Firms that have registered their interest in the relevant type of construction project, and whose rank qualifies them to bid on that project, are publicly invited to provide technical documents. On the basis of these documents, roughly ten firms are selected to submit bids.

- This system is used for basically the same type of projects for which the "selective bidding by project interest registration" system is used. The difference is that selective bidding by public invitation is used when an unusual type of construction technology is required.
- Used primarily for projects with a contract value of ¥200-720 million.
- An explanation of why a particular firm's bid was not selected will be provided upon request.

(C) Selective bidding by project interest registration - At the beginning of each fiscal year, construction firms register with prospective clients to indicate what types of construction projects they wish to bid on. When it comes time for a contract to be awarded for a particular project, the client requests 10 or 20 registered firms to provide technical documents (provisional selection). On the basis of these documents, about ten companies are selected to submit bids.

- Used primarily for projects with a contract value of ¥100-200 million.
- An explanation of why a particular firm's bid was not selected will be provided upon request.

6.1.2 General Competitive Bidding System

This system is used primarily by the national government, institutions affiliated with the national government, prefectural governments, and designated cities. It is used for:

- contracts worth more than ¥750 million (4.5 million SDR) that are issued by the national government; or
- contracts worth more than ¥2.50 billion (15 million SDR) that are issued by: (1) institutions affiliated with the national government; (2) prefectural governments; or (3) designated cities.

Bidding eligibility

- The point score assigned to the company on the basis of the business assessment criteria must be above a certain threshold.
- The company must have experience with the same type of construction project.
- The company must have qualified technical personnel available for the project.

6.1.3 Negotiated Contract System

This system is used primarily: (1) for projects that must be done by a particular firm due to the fact that it requires special technologies, equipment, or machinery; or (2) when severe time constraints make it impractical to carry out the competitive bidding process.

6.1.4 Other Bidding Systems

(A) Design-build system - In principle, the design and construction phases of public works projects in Japan are carried out separately, but a small number of clients (such as the Housing and Urban Development Corporation and local government-affiliated housing corporations) are beginning to use the design-build system.

(B) Value engineering (VE) system - This system is beginning to be used occasionally (by the Ministry of Construction, and local government-affiliated housing corporations) in conjunction with open bidding, selective bidding, and negotiated contracts. It is reported that many prefectural and local governments are examining the possibility of using this system in the future.

The VE system is carried out during bidding, performance of the contract, and after contract completion, and is intended to serve as a means of improving both functionality and cost.

(C) Contract award based on price and technology - In addition to price, the client

using this system also calls upon bidders to submit technical proposals, which the client then evaluates from various perspectives, including quality, speed, design, and safety.

(D) Private Finance Initiative (PFI) - The Private Finance Initiative (PFI) Law was enacted in July 1999, and the Basic Guidelines based on that law were released this March. Under this system, contractors are chosen by open competition and through public invitation, and those selected use their own funds, managerial capabilities, and technological capabilities to construct, maintain, manage, and operate public facilities.

6.1.5 Corporate Capability Assessment System

The principal system used in Japan for assessing a construction firm's capabilities is the business assessment system.

For construction firms that receive direct contracts for public works projects, business assessments are carried out by the Minister of Construction or a prefectural governor. These assessments entail an examination of a specifically formulated list of Objective Criteria for Assessing the Business of a Construction Firm. The assessment results are used to assign the company a point score, which is publicly announced (see the table below).

		Assessment criteria
Scale of operation	X1	Average annual construction revenue, classed by type of project
	X2	Shareholder's equity, number of employees
Business condition	Y	Ratio of revenues to operating profit; Ratio of capital to ordinary profit; Ratio of cash flow to revenue; Ratio of require working capital to monthly turnover; Ratio of account receipt and work in process to annual sales; Ratio of accounts receivable to monthly turnover; Equity ratio; Ratio of interest-bearing debt to monthly turnover; Net interest Payments ratio Ratio of shareholder's equity to fixed assets; Ratio of fixed assets long-term capital; Ratio of value-added output to fixed assets
Level of technical expertise	Z	Number of technical employee, classed by type of business
Other assessment criteria	W	Non-wage benefits; Working days per year; On-site safety record; Number of construction industry accountants on staff

Organizations that place orders for public works projects assign each prospective

contractor a ranking, taking into consideration the results of the contractor's business assessment as well as the results of the organization's own 'qualification assessment' based on the contractor's construction performance.

$$\text{Total points (P)} = 0.35X1 + 0.10X2 + 0.20Y + 0.20Z + 0.15W$$

6.2 How Private-Sector Clients Select a Contractor

Private-sector clients most often select contractors by means of the mission method (a decision is made after price negotiations with a single company) or by getting estimates from several companies. There are two main types of contracting systems, the 'blanket construction-only contract system' and the design-build system, and gross price contracting (lump-sum contracting) is the predominant method of contract payment. Examples of Construction Management (CM) and Project Management (PM) contracting have also arisen, but their use remains quite limited.

In addition, electrical power companies have begun to use the VE system, and real estate developers have begun to use direct contracting (in which major real estate developers dispense with general contractors and award contracts directly to specialized contractors).

7. Construction Work Force

7.1 Classification of Construction Industry Workers by Job Type

Breakdown of Construction Industry Employees				
(Unit: 1,000 people, avg. per year)				
Type of work	1990	1995	1998	1999
Specialists and technicians	290	430	430	420
Management staff	340	350	350	340
Clerical staff	840	930	960	940
Sales staff	220	290	310	320
Workers	3,950	4,380	4,340	4,320
General laborers	80	90	90	80
Others	160	150	150	150
Total	5,880	6,630	6,620	6,570

Source : Annual Report on the Labor Force Survey, Management and Coordination Agency.

Two-thirds of construction industry workers are on-site workers. There has been no change in the actual numbers of workers since 1995, but recently the number of sales

7.2 Employment Situation at Major General Contractors

According to a survey conducted by the Ministry of Construction among the big 36 general contractors, the number of workers in all job types has decreased in recent years. In 1999, the fifth consecutive year of decrease, the number of employees dropped by about 5.9% from the previous year.

Trends in Number of Employees by Job Type					
	Clerical staff	Technical work	Skilled work	Other	Total
1994	62,731	118,145	4,484	4,677	190,037
1995	59,735	117,979	4,751	3,871	186,336
1996	57,909	116,500	4,403	4,360	183,172
1997	55,831	114,768	4,371	3,408	178,378
1998	50,093	112,907	3,751	2,803	169,554
1999	49,053	104,732	3,732	2,068	159,585
(1999 change from prior year)	(-2.1%)	(7.2%)	(-0.5%)	(-26.2%)	(-5.9%)
Source : 1999 Construction Activity Performance Survey, Ministry of Construction.					



KOREA

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Construction Market and Tendering Procedures in KOREA

1. Construction Market and Industry

1.1 Macro Economic Review and Outlook

As many other East Asian countries Korea has experienced a severe economic depression triggered by foreign currency crisis in December of 1997. Bail out financing from the IMF helped Korea to overcome the immediate financial panic, and the economy is now slowly recovering.

In 1998 the economic growth fell to -6.7% level from 5.0% of the previous year, and recorded an all time high unemployment rate of 6.8%. Consumption and investment decreased dramatically with the construction investment following the trend. All the while consumer price increased by almost 8% showing signs of stagflation. Foreign trade sector fared better due to the low won with 123 billion US\$ trade surplus which helped building up the foreign currency reserve.

After a strict, long overdue structural reform on financial institutions, business management and government system, the worst seemed to be over by 1999. The economic growth rate returned to brisk 10.7% level, and unemployment rate slightly improved to 6.3%. Consumer price increase stayed at below 1%, and trade surplus again reached 29 billion US\$. However, the confidence of consumers and investors were still shaky and consumption and investment remained depressed.

The prediction on this year's economic performances is being continually adjusted because the economic situation is still volatile. Currently, economic growth of 8.6% and unemployment rate of 6.3% are expected. Consumption and investment are also picking up. The size of current account surplus will come down to a more modest

Main Macro Economic Indicators(% change at constant price)

	1999* ¹	1996(%)	1997(%)	1998(%)	1999(%)	2000 * ² (%)
GDP	483.8	6.8	5.0	-6.7	10.7	8.6
Private final consumption	318.5	7.1	3.2	-11.4	10.3	7.6
Government final consumption	48.8	8.2	1.5	-0.4	-0.6	2.0
Fixed capital formation	135.2	7.3	-2.2	-21.2	4.1	15.7
Construction investment	84.1	6.1	2.3	-10.1	-10.3	4.1
Exports of goods & services	145.5	3.7	5.0	-2.8	9.0	17.9
Imports of goods & services	116.8	11.3	-3.8	-35.5	28.3	36.5

*1 : Nominal price in trillion won, trade figures in billion USD

*2 : 2000 figures are forecasts of KDI

level.

Economic performance wise, Korean economy seems to be getting back on the right track. However, the difficulties facing Korea are far from being over. Whether we can completely ride out of the crisis depends on the continuation of economic reform that started at the times of hardship. Most difficult task will be changing people's minds and attitudes towards more open and free economy. Hopefully, through this painful process Korea will regain confidence from the world.

Main Demographic and Price Indicators

	1997	1998	1999
Population(millions)	46.0	46.4	46.9
Households(millions)	11.5	11.7	11.9
Rate of unemployment(%)	2.6	6.8	6.3
Consumer price index(% change)	4.5	7.5	0.8
Construction deflator(1990=100)	112.7	115.5	116.8
Short term interest rate(call rate) * ¹	5.0	3.0	4.7
Long term interest rate(return on corporate bond) * ¹	13.4	15.0	8.7
Annual average exchange rate with USD	951	1,399	1,190

*1 : Year end figures

1.2 Construction Market Review and Outlook

The construction industry thrived during the 90s with the increase in housing

demand and then infrastructure demand. In 1998 however, the total contract amount decreased rapidly due to the economic emergency. The construction sector, by its nature, felt deeper impact from the economic current than other industries. Even before the onset of the crisis many experts predicted that two-digit increase in total amount will slow down to around 5% level by the year 2005. The cold reality was ushered in sooner than expected.

The government has done its best to boost the expenditure on construction so as to support the general economy and employment, but the fiscal constraint offered little room for such policy. Therefore, the difficulties confronting the construction industry will persist well into the future.

1.2.1 Sectoral Trends

For quite some time private sector demand overtook the public sector and maintained 6:4 ratio. Consistent increase in the private building construction was the main force in the reversal. Similarly, the share of building and civil construction was kept at more or less 7:3 ratio. Overall, the construction market enjoyed healthy growth with private building activities as the dominant force.

The financial crisis changed these trends completely. In 1998, the total contract value dropped by more than 40% due to the sharp decrease in the construction investment, severely damaging already oversized industry. Moreover, faced with an interest rate higher than 20%, many contractors went bankrupt and the rest were hovering for survival in the future. To remedy the situation the government increased its expenditure on construction to pump-up the economy. As a result, the role played

Construction Market by Order Received(general contractors)

	1999 *1	1996(%)	1997(%)	1998(%)	1999(%)	2000 1/4(%)
Private building construction	23,080.3	11.4	1.7	-58.4	46.5	138.1
Private civil construction	3,612.1	7.1	60.7	-59.0	37.8	44.2
Total private construction(A)	26,692.4	11.0	7.4	-58.5	45.2	125.0
Public building construction	7,259.2	10.3	6.3	-13.0	2.3	16.9
Public civil construction	17,185.0	84.4	10.4	-18.3	-23.3	16.3
Total public construction(B)	24,444.1	59.2	9.4	-17.1	-16.9	16.4
Total contract amount(A+B)	51,136.5 (43.0) *2	28.1	8.3	-40.1	6.8	71.6

* 1 : Nominal price, billion won
 * 2 : Billion USD

by the public and civil construction increased visibly, but it had only limited effect in reviving the construction economy.

In 1999, as in other industries, deferred demand led the market, and total contract amount started to grow again. However, it was rather a technical rebound from the previous year's bottom, and for the industry the hardship continued. We expect a better year in 2000 as is evident in the first quarter figure. The overall contract amount will increase dramatically this year with the private sector leading the way. Even in the infrastructure area, private sector participation is expected to increase under the improved institutional set-up introduced in 1999.

1.2.2 Major Projects Programmed and Underway

Name	Total cost (trillion won)	Construction period	Explanation of project
Seoul-Pusan Rapid Railway	est. 17.6	1992-2005	TGV type railway(400km)
Inchon International Airport	est. 7.3	1992-2000	First phase(2 runways) 2 more run- ways will be added by 2020
Yongjungdo Free Trade City	est. 5.2	at feasibility study stage	Focal point for attracting foreign in- vestments in the Inchon Airpot region
Seoul-Inchon Airport Highway	est. 1.1	1995-2000	Private sector participation(Samsung etc.)
Kyungjin Canal	est. 1.4	1998-2002	Waterway connecting Seoul and Inchon, Private sector participation (Hyundai etc.)
Seoul 9th Subway	est. 2.3	1998-2004	50% of total cost matched by Seoul
West Coast Highway	est. 4.5	1990-2002	Built to promote regionally balanced growth
Southwest Region ICD & Freight Terminal	est. 1.2	1998-2006	Improve freight logistics of the region, about 60% invested by private sector
Gadok(Pusan) New Harbor	est. 6.1	1996-2011	Around 60% of the project led by Samsung consortium

1.3 Property Market Review and Outlook

The property market, with no exception, was struck by the force of the financial

crisis and ensuing structural reform. During the developmental era the property price increased sharply, outpacing the economic growth rate. Even though with the introduction of the drastic measures of 'public concept of land' in late 80's the property market somewhat calmed down, it was never doubted that the price would go up sooner or later. As this price expectation settled in, many companies stocked up property in their investment portfolio far above what is directly needed. Now the real estates are pouring into the market as firms, pressured by the financial institutions, are trying to convert them into cash. Thus, the 'myth of property speculation' collapsed along with the bubble in the property value.

The average property price fell by 30-40% over the last couple of years and the market function of matching demand and supply did not work properly. The situation was much worse for the land than the buildings. The flow of Korean economy was being strangled at the bottleneck of the property market, impeding the economic restructuring process. This was creating a vicious cycle of depressed economy causing depressed property market and vice versa, or so called complex depression.

To remedy the situation the government lifted such anti-speculation measures as transaction permit system, apartment allocation rule, greenbelt regulations, ban on the alien ownership etc. On the more active side, it bought up lands from firms and financial institutions through government agencies. The government is also trying to introduce asset based securities(ABS) to finance land purchase and increase convertibility of real estates.

Whether these efforts will be able to turn the tide remains to be seen. One certain fact is that there still is a gap between our perception and foreign evaluation of the price level. We are still thinking in terms of past price whereas foreign investors base the valuation of the property on the current and future returns. This means it will take some time before the property market regains its usual function. However, the transaction and price seem to be slowly picking up in the property market this year.

1.4 Outlook on Construction Industry

The construction industry played a major role in the rapid economic growth of Korea. To support economic development, the construction market grew faster than the average, increasing its share in GDP. From late 80s more than 20% of GDP was invested in the sector, a very high figure by any standards. We believe that the high construction investment ratio is one of the reasons for the compact economic growth shown by Korea. The construction industry was also the most favored recipient of the fruits of the economic growth. Entry into the market was regulated by the licensing

system such that existing contractors could increase their size and efficiency. The wage of construction workers and the price of construction materials were also held low by the government guidelines. These measures helped the industry maintain their competitiveness in both domestic and overseas construction markets.

However, the winds of change in the political arena and the talks at Uruguay Round and joining of OECD in the 90s brought about a completely new business environment. Construction market is opened up gradually and rules and regulations related to the industry are revised to conform to the international business practices. In addition, the unprecedented depression is causing a havoc in the construction industry. The upcoming five years will be a painful time for the industry going through a complete restructuring process.

1.4.1 Registration of Contractors

As the government grip on the industry loosened during the late 80s, license began to be issued to eligible contractors first at regular intervals, and then now whenever upon request. Licensing system was also changed to registration with less requirements.

The 'Framework Act on the Construction Industry' , amended in 1996, stipulates that any person who desires to operate a construction business shall be registered to the relevant authority. A general constructor who is given a comprehensive contract for construction work by a construction work ordering person must register at the Ministry of Construction and Transportation(MOCT). A specialty constructor who carries out a specific type of construction usually under subcontract with the general contractor must register with local authority. To register, one must satisfy the minimum requirements on capital amount and technical capacity etc. as per defined and classified by the Presidential Decree. The system of contractor registration is defined as follows;

Classification	Type of License	
General Contractor	3 types	Civil Engineering and Building Building Civil Engineering
Specialty Contractor	27 types of different trades such as	Boring & grouting, steel works, etc.

During the last decade the number of general contractors increased by more than ten fold numbering up to 5,126 firms, and likewise, specialty contractors increased almost seven times to around 25,620 firms. The number of overall construction firms (including contractors in electric works, telecommunication etc.) also more than tripled. Inevitably competition in the industry intensified. In 1988, before the deregulation, there were 468 general contractors each enjoying 21 billion won in contract value on average. As number of contractors increased faster than the total contract amount, the contract amount per firm decreased gradually up to 1997.

In 1996, 196 general contractors and 595 specialty contractors went bankrupt, raising the bankruptcy ratio to 5.6% and 2.8%, respectively. In 1997, the bankruptcy figure increased to 291 general contractors and 1,058 specialty contractors. In 1998, the bankruptcy figure for general contractor almost doubled from the previous year to 522. Last year, the situation somewhat improved to 112 cases of bankruptcy, but many more firms are expected to go under as restructuring progresses continue.

After the financial crisis the situation worsened as newcomers from other industry poured in to take advantage of the low entry barrier and protective measures applied to small and medium contractors. The trend is expected to continue in the near future. The government is reviewing its protective measures for small regional contractors such as preferential treatment and at the same time it is taking actions against ineligible contractors to drive them out of the market.

Number of General Contractors and Orders Received					
	1988	1989	1997	1999	2000 *1
Contract Amount(trillion won)	10	16	79	51	56
Number of Contractors	468	930	3,896	5,126	6,000
Contract Amount per Contractor(billion won)	21.4	17.2	20.2	9.9	9.3

* 1 : Predicted value
Source : MOCT

Increased participation from the foreign companies is also a notable fact. Even before the Uruguay Round negotiation, there already existed a few small specialty contractors as joint ventures. They entered the market on the urge of Korean partners rather than to actively take part in it. However, recently, 100% foreign entities began to apply for general construction licenses.

Foreign companies are showing interests in such mega projects as Incheon Airport

Number of Direct Investment from Foreign Construction Companies

	1997. 6	1998. 2	1999. 5
Japan	14	15	24
Asia	4	5	6
USA	7	8	11
Europe	9	10	13
Others	-	1	1
Total	34	39	54

* Many more foreign companies are active in the fields of engineering and architecture etc.
Source : CAK, White Paper on Construction 1999

and rapid railway projects. In the fields of engineering, architecture and supervision where Korean competitiveness is rather weak we have witnessed much more active foreign entrance to the market. Thirteen foreign companies are participating in projects such as Seoul-Pusan Rapid Railway, Incheon Airport, West Sea Highway, and Gayang Bridge etc.

The government is gearing up for further strengthening of competitive environment. The license system is moving further towards the direction of registration system and the ban on cross holdings of general and specialty license is being reviewed for deregulation. Also additional measures to accommodate foreign contractors are being adopted. If previous attitude can be described as somewhat obligatory and reluctant, current approach can be evaluated as sincere and eager towards foreign participation. Foreign participation is expected to grow.

1.4.2 Number of Employees and Construction Labor

In 1970, construction industry employed 280,000 workers, 2.9% of total employment. The number of workers increased steadily and in 1997 more than 2 million employees worked in the construction field, 9.6% of total employment. Now the number decreased markedly to 1.5 million and 7.3% of total employment in 1999. This year the employment figure is expected to increase to 1.65 million persons.

If we compare the trends of construction industry's share of employment ratio to its share of value added in GDP, 10.9% in 1997 and 8.7% in 1999, we can conclude that the industry's productivity is improving.

The average wage also increased but in more erratic fashion. Up to Seoul Olympic

**Efforts to Open Markets, Relax Foreign Capital Regulations
and Promote Foreign Investment**

Policy implemented	Content	Implementation date(period)
Deregulation measures for effective market access	License issued upon request	1994
	Obligatory membership to construction association and bond company relaxed	1997
	Setting the ceiling amount on one contractor can take through company evaluation abandoned	1997
Other market opening (all construction related markets are opened)	Building rental and marketing services	1998 April
	Land rental and land development & supply services	1998 May
Lifting regulations on alien ownership of land	Restrictive measures on foreign ownership of land lifted, allowing in principle all types of foreign ownership	1998 June 26
Enactment of 'Foreign Investment Promotion Act'	Attitude change from restriction/management to promotion/assistance Provide free foreign investment zone Increase tax incentives Simplify investment process Establish one stop information and service center	1998
Reform 'Private Sector Investment Inducement Act'	Accept unsolicited private sector proposal Make evaluation and selection process more transparent Ensure higher profit margin lower risk Establish specialized organization Change process to accommodate foreign investments	1999

in 1988, the wage increased mildly under the government guidelines. After the Olympic, however, changed political atmosphere and implementation of 2 million housing construction plan caused the wage to go up very rapidly. In 1987 the average wage was 12,903 won. Five years later, in 1992, the wage more than tripled. For the next five years till 1997 the trend of wage hike calmed down. In 1998, wage decreased due to decreased demand. As of 1999 we expect a mild increase.

Average Wage of Construction Outdoor-Worker per Day(won)

1995	1996	1997	1998	1999
65,849	70,847	73,975	70,179	71,137

Source : Construction Association of Korea

1.5 Policy on the Construction Industry: Construction Industry Promotion Plan

In 1996 the ‘Framework Act on the Construction Industry’ was enacted in place of the ‘Construction Business Act’. The substitution aimed at deregulation and simplifying construction related Acts and also to promote construction industry. The Act states that the MOCT must draft and execute a basic plan for the promotion of the construction industry every 5 years. The plan must include fundamental policy direction, measures regarding technology and manpower, ways to secure the quality of construction works, and policies to encourage small and medium construction businesses.

Our diagnosis on the policy environment and present situation is two folds. Due to the financial crisis the construction industry is in great difficulty. This painful experience for the industry would have come anyway with or without the short term shock. A longer term underlying current is that of globalization, localization and digitalization which translates into increased competition, forming of buyers’ market and elevation of importance of the R&D investment for the construction industry. Both the mega-trends of 21 century and financial crisis are pressuring the industry to restructure. However, the crisis factor is inevitably pushing for faster reform than we normally would like to carry out.

Major tasks envisioned in the Plan are as follows: establish fair competition rule, increase productivity, secure environment friendliness and quality of the construction works, set up a new harmonious role for general and specialty contractors, strengthen technology/manpower/material/finance capacity of the industry, and encourage both inbound and outbound overseas construction. Through these and other detailed implemental measures we hope to build a construction industry that can compete with top level construction companies shoulder to shoulder.

2. Tendering And Contracting System

Tendering and contracting system is also being completely revamped and many deregulation and liberalization measures have been taken. Tendering methods regulated by region and by the size of the contractors are being replaced by more competitive mode, and we are seeing increased use of lowest bidder contract system.

2.1 Procurement Entities

Procurement entities can be divided into two groups: private and public. In 1998, the share of each entity was central government 16.3%, regional government 23.7%, public agency 22.7%, private sector 37.3%. Private sector's weight in the total construction demand increased as the economy matured. Basically, private sector does not need to abide by the 'National Contract Act' as long as it stays within the 'Framework Act'. It can give orders to any eligible contractors in any way it wants. However, private entity usually follows procurement rule set by the public entity. Contractors and subcontractors participating in the procurement process must also act within the boundary of rules set by the 'Fair Transaction Act' and 'Subcontract Act'.

Major public procurement entities can be grouped into central government, regional governments and state owned enterprises. Regional governments and state owned enterprises have their own act for tendering and contracting, namely 'Regional Finance Act' and 'Finance Act for State Owned Enterprises' respectively. However, on many of the issues they refer to the 'National Contract Act'. In addition, 'Procurement Act' states that projects above certain scale and all of the turn-key projects and alternative biddings must go through the Central Procurement Agency. Therefore, the basic framework for tendering and contracting can be found in the National Contract Act.

Contract Amount by Ordering Agency(1998, trillion won)					
Ordering agency	Central Govt	Regional Govt	Public Agency	Private Sector	Total
Contract Amount	7.7	11.2	10.7	17.5	47.1
Share(%)	16.3	23.7	22.7	37.3	100.0

Source : Construction Association of Korea

Public entity must not only abide by the internal 'Procurement Act' but also

follow the stricter(in terms of international notification, foreign participation etc) 'Government Procurement Agreement' of WTO for certain scope of procurements. According to the Agreement, every member country must open its procurement procedure to all other member countries. Without an exception, Korea must also carry out international bidding for procurements of all construction facilities above certain thresholds. For instance, all construction works valued at more than 5 million SDR(1 SDR is about 1,500 won), if ordered by central governments and agencies, should be contracted out in an international bidding procedure. Similarly, all construction works of local governments and government-financed agencies should take similar steps if valued at above 15 million SDR.

2.2 Types of Tendering and Typical Procedure

2.2.1 Overview of Tendering System of Public Procurements

The standard method of obtaining tender is to advertise an invitation to contractors to tender for the government work. Advertisements are made through mass-media, including newspapers and government newsletters. This is known as open tendering. This method brings in any contractors who care to bid; amongst whom there could be contractors the orderer may feel less trustworthy. Under the system of open tendering the lowest tender will be chosen regardless of quality and performance. Furthermore, open tendering tends to lead to a wasteful multiplication of tenderings, the cost of which, in the long run, is born by the clients.

Common practice is to modify the procedure and to invite tenders only from a selection of firms that meet the minimum qualification standards and also who are acceptable to the client (e.g., prequalification system, pre-determined eligible list). While this method reduces the cost of tendering to the industry and ensures acceptable tenders, it is subject to certain disadvantages. Above of all, the number of bids may be reduced and this could raise the overall price. Also where the contractors are limited in this way it will be more difficult for new firms to enter the market. Moreover, when the approved list of contractors is very limited, the contractors will tend to behave as oligopolists and collude or form "bid-rigging cartels" by allocating businesses among members in rotation. A low bidder gets the business with an artificially inflated price while the rest submit even higher bids.

A lot of debates went on to rectify these problems at the governmental level, but a proper method of tendering, acceptable to all the parties involved, has not yet been worked out. Historically, the tendering system fluctuated from competitive bidding to various forms of restricted bidding.

2.2.2 Current Tendering System

(A) Company Capability Evaluation System : Previously we had an evaluation system that sets upper limit on the size of a project a contractor can contract. The limit is calculated based on past contract amount, capital size and financial soundness for all general and specialty contractors. It was a mandatory regulation affecting both the public and private sectors.

The system was improved recently such that qualitative performance of a contractor is taken into consideration and obligatory nature of the evaluation is dropped. The factors of evaluation are broadened to measures of technical ability, quality achievement, environment and safety observance, etc. It is computed by the authority in charge of the construction registration for all general contractors and some specialty contractors. The result is announced to the public and is used as a guideline and information in selecting suitable contractors.

(B) Four Major Types of Tendering Format : There are four types of tendering format: open, limited, selective, and negotiation. First three are competitive in nature. Public sector follows strict rules according to contract related laws in choosing tendering method and following processes. It provides a standard guideline for the private sector.

Open tendering, as the term suggests, allows all contractors with relevant registrations and minimum qualification to compete for the order. It is used for small projects. Limited tendering is a modified form of open tendering. It is open to all with pre-notified qualifications. Qualification differs from projects, but generally the criteria of past experience, possession of special technical ability or equipments, and certain level of company evaluation are used. Limited tendering is usually used for large projects.

Selective tendering is used when because of the nature of the projects there are less than 10 eligible contractors, the project is so small such that the cost of open competition is not rationalized, or giving preferential treatment to outstanding small and medium sized firms is appropriate, etc. The selection process must be fair and transparent based on construction and technical ability or equipments. Prequalified or registered list of contractors can be used. At least five must be selected and minimum of two must participate in the bidding.

Negotiation is used only under exceptional circumstances. Natural disaster, national security, contracts between public sectors, ongoing projects where contracting with current contractor is overwhelmingly favorable, or projects of less than 100 million won are some of the cases where negotiation is adopted. To win a contract in the case of negotiation, the bidding price must be above the undisclosed budget amount

predetermined by the ordering party.

Contract Amount by Tendering Method and Ordering Entity(1998)			
	Public	Private	Sum
Open	6.4 * ¹ (6,638) * ²	1.6(1,061)	8.0(7,699)
Limited	18.9(12,929)	0.8(505)	19.8(13,434)
Selective	1.0(1,004)	3.2(1,037)	4.1(2,041)
Negotiation	3.4(12,309)	11.8(5,468)	15.2(17,777)
Sum	29.6(32,880)	17.4(8,071)	47.1(40,951)

*1 : Trillion won
 *2 : Number of contracts
 Source: Statistics Yearbook of Construction Industry, Construction Association of Korea

Public sector makes more use of competitive tender than private sector and for larger projects limited and selective tendering method is adopted. Private sector favors selective tendering or negotiation even for larger projects because of its simplicity. As for the tendering process and contract form, private sector follows the practice used in the public sector.

2.2.3 Standards for Determining the Winner

In typical tenders, the lowest bidding price is selected as the winner. However, to avoid the vicious cycle of dumping and shoddy construction work, a bounded lowest bidding system has been used at times. A bounded lowest bidding system takes the form of a winning bid being the lowest bid among bids above 80%(or 85% etc) of the government pre-calculated cost of a project or the nearest bid to the average of all bidding figures.

In 1995 a new system of qualification test has been introduced to complement the lowest bidding. Using a qualification formula that combines construction capacity and bidding price, bids are evaluated from the lowest to choose a winning bid that passes a certain level of qualification score. If the weight of bidding price is large in the formula, it in fact increases the lower boundary of the winning bid price. Construction works above 10 billion won used qualification test while rest of the projects adopted bounded lowest bidding system. Recently, the usage of qualification test increased over the years and now covers almost all government construction works. For smaller projects the weight given to the bidding price is maintained at a higher level so that small and medium contractors can enjoy higher lower boundary

for bidding price.

Recently, the government announced that in principle it would gradually go back to the lowest bidding system. Starting from 2001, lowest bidding will win contract for construction works above 100 billion won. Gradually the coverage will be extended to other projects, the speed of which will depend on the successful establishment of supervision and surety bonding system. We have yet to develop a lowest bidding system where price competition leads to innovation and progress.

For certain types of projects greater than 10 billion won, prequalification method is used. Among the qualified competitors the lowest bidder may be selected as the winner, or depending on the technical nature of the project, two stage selection process where technical ability is considered with as much weight as price is used in deciding the winning bid.

As previously explained, Korea became a member of the Government Procurement Agreement(GPA) in 1996 and thus, for the government projects covered by the GPA, special act has been enacted to observe the international agreement. For projects larger than 5 million SDR(around 7.5 billion won) for the central government and 15 million SDR(around 22.5 billion won) for local governments and state owned enterprises, tendering process and winner selection method strictly follow the GPA code. Also construction related services in excess of 130 thousand SDR(around 0.2 billion won) for the central government and 200 thousand SDR(around 0.3 billion won) for regional governments must also follow the tendering process and winner selection method of the GPA code. Procurement of construction related services of the state owned enterprises is exempted from the application of the GPA code.

2.3 Contract and Guarantee

2.3.1 Characteristics of the Contract Format

In Korea, the firm-fixed price contract method is often used. The orderer and the construction firm contract on a total fixed price or unit fixed price. Contracts are awarded primarily on the basis of total price, but unit price is also considered important, because it provides a basis for adjustment. For certain cases, for instance price inflation or design change, price may be adjusted as indicated in the escalation clause of the agreement.

Other than the fixed-price contracts, there are the cost reimbursement contracts. The total expenditure on all inputs such as labor and materials, together with a fee to cover overheads and profit, are paid to contractors. Cost plus fee method sometimes used in other countries is very rarely used in Korea. However, the value engineering

method is accepted for certain cases. In the tendering stage, alternative design bidding is sometimes allowed giving the advantage of the cost saving to the bidder. Also during the construction period, use of cost saving implementation method is encouraged by giving incentives to the contractor.

There are other types of contracts which do not entail competitive bidding; for example, negotiated contracts and serial contracting. The former type of contract as explained before is frequently used when there is only one firm capable of performing the given work satisfactorily or when there is not enough time to go through the competitive bidding. Serial contracting can take place when a firm negotiates further contracts for the same type of construction with a successful completion of the previous contract. These type of contracts are used under restrictive conditions as stated in the procurement act.

Contracting can also be classified in terms of the responsibility and the work coverage of the firm. For example, one can enter the construction-only-contracting whereby a firm will engage in only the construction works. More comprehensive contract in terms of the work coverage is the design-build-finance-and-operate contract, also known as BOT. As a rule, design and building(engineering and civil works) are done separately in Korea. However, for certain projects larger than 100 billion won, turn-key method can be adopted to enhance the synergy effect between design and construction. Even in such cases, joint participation between design and construction firms are recommended rather than having any one company entering the bid alone. In 1999, of 211 cases of larger than 10 billion won projects, 81% have been contracted out separately, 8% in turn-key fashion, and 1% by alternative bidding.

The construction management format, an advanced form of the turn-key type, has just been introduced into Korea and is still in its incipient stage. There are a couple of cases where foreign firms or “key personnels” are hired to assume construction management. For example, Bechtel Corp. was asked to take charge of the Seoul-Pusan high-speed train construction management. It is anticipated that professional construction managers (CM) will be extensively employed in the near future as construction works become more sophisticated and technology-intensive. Markets for construction management and consulting services will expand rapidly as the government emphasizes not only the quality of construction product, but also the safety of the construction sites. The market for engineering consulting and supervision has already been open to foreigners.

2.3.2 Subcontracting

The construction industry depends heavily on subcontractors in its provision of construction services. This also has mitigating effects on the industry's tendency for high concentration. The dependency on subcontractors is ever-increasing now as construction works vary widely and demand specialized skills and know-hows and also as single projects get larger in magnitude. The increase in the number of specialty contractors reflects this trend.

The amount of contract awarded to specialty contractors jumped 61 times during the 20 year period from 521 billion won in 1980 to 31.6 trillion won in 1998, whereas that of the general contractors was an increase of 16 times from 2,973 billion to 47 trillion won during the same period as shown in the table below.

Contract Amount by Contract Method and Contractor Type			
	1980*1	1990	1998
Specialty contractors contract amount	520.5	8,072.8	31,569.9
As original contractor	233.4	3,557.6	9,066.6
As subcontractor(B)	287.1	4,515.2	22,503.3
General contractors contract amount(A)	2,972.8	26,376.5	47,079.9
Ratio: B/A(%)	9.7	17.1	47.8

*1 : billion won
 *2 : Number of contracts
 Source : Statistics Yearbook of Construction Industry, Construction Association of Korea, Specialty

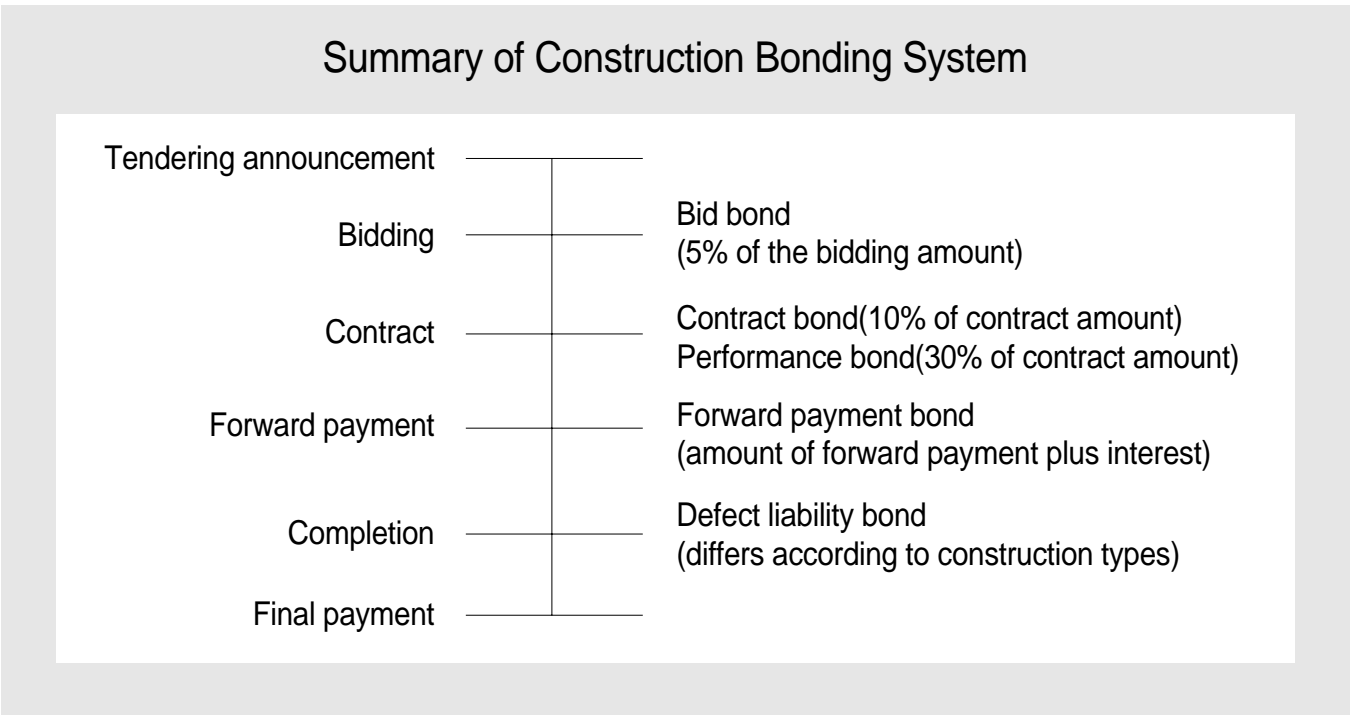
Consequently the ratio of specialty contracts to the general contracts in terms of contractual volume increased from 17.5 percent in 1980 to 67.1 percent in 1998. This clearly suggests the growing importance of the specialty contractors. In addition, the subcontract portion of the total contract for specialty contractors is being regarded as more and more important as general contractors tend to subcontract higher share of their contract amount.

We used to have a regulation that sets the minimum share on total contract amount that must go to the subcontractor to protect the smaller specialty contractors. Instead, we are now reviewing to introduce a system that stipulates the minimum share on total contract amount that must be carried out by the original contractor to assure accountability and quality of work. Subcontractors are also protected from unfairly low price since subcontract with value below 82% of planned cost must go through a reviewing process by the orderer. If found wrongful in the review, changing of the

subcontract can be ordered.

2.3.3 Required Bonds and Insurance

According to the National Contract Act, a contractor must post bid bond, either contract bond or performance bond as required, forward payment bond, defect liability bond at various stages of construction as shown in the figure below.



In the case of insurance, the Act states that when deemed necessary the orderer can request liability insurance from the contactor. Presidential decree further states that major structures in excess of 10 billion won in contract value must have insurance including third party liability. The expense for the insurance is reflected in the cost estimation.

2.4 Dispute Settlement Process

During the construction works, entities involved often face unforeseen events such as changes in engineering condition, price escalation, or force majeure that lead to disputes and claims. It is highly recommendable that these disputes be resolved by mutual agreement, but they may end in the court causing large monetary and time cost. Therefore, for disputes related construction works that usually require quick and efficient solution, less costly alternative dispute settlement processes are recommended. The Framework Act, Subcontract Act, National Procurement Act outline such measures.

2.4.1 Dispute Settlement Mechanisms

Mutual consent is possible when through consultation between parties in conflict, mutually acceptable solution is found. This mechanism preserves the base for future cooperation and leaves least side effects from the conflict. It is the least costly and most recommendable dispute settlement method. However, the success of the process depends on the seriousness of the conflict and degree of mutual trust. Usually, many disputes end up with other forms of settlement.

When parties involved in the dispute cannot agree on a solution, third party(a person or an institution) comes in to mediate. If a mutually acceptable condition can be found it is reflected in the mediation contract. This has the flexibility that the legal suit lacks and since the outcome is accepted by both parties voluntarily it is easier to be implemented.

Before a dispute goes to the court it may seek the help of an independent expert arbitrator by mutual agreement. The process is less rigid and atmosphere also less hostile. The arbitration decision has obligatory power over the parties involved.

As a final resort, dispute can be settled in the court. Due process as any other litigation decision by court is observed. Even though a final decisive verdict can be obtained from the court, it is a very time consuming and costly process. In addition, the process often leaves animosity such that it is difficult to expect cooperation afterwards. It is best to avoid litigation if possible for both parties.

2.4.2 Dispute Settlement Organizations

Construction Dispute Settlement Committee is established under the Framework Act. It is an ad hoc committee that deals with all disputes arising in various stages(design, implementation, supervision) of construction, disputes between orderer and contractor, contractor and third party, contractor and subcontractor, etc., that are not covered by other Acts. Mediation begins when any one of the parties involved makes a formal request through the Committee. The Committee has central and regional presence and it has the power to repudiate or terminate mediation. When both parties accept the mediation scheme, it is deemed as an agreement.

Subcontract Act mandates the establishment of a Subcontract Dispute Settlement Committee in the Contractor's Association. The Committee must be composed of representatives from contractor, subcontractor and also some neutral experts. The Committee acts on the request of the Fair Trade Commission or both parties involved. It has the power to do independent fact finding research, ask for presentation in person or submit necessary documentation. If a decision is reached by the Committee, it has the same enforcing power as that of the Fair Trade Commission.

If the actions taken by the public orderer on claims made with regards to international bidding(coverage, eligibility, project announcement, awarding etc.) is not satisfactory one can ask the International Contract Dispute Committee for dispute settlement. When needed it can order the disputed public procurement process to stop until the matter is settled. If there is no further argument raised within 15 days of its decision it is deemed as a judicial settlement.

Commercial Arbitration Institute was established in 1966 as a corporate judicial body to solely deal with private contractual dispute settlement. By contractual clause or mutually agreed request the Institute can step in to arbitrate disputes. The Institute may attempt mediation before entering arbitration, which is done through private hearings. The result of the arbitration by the Institute must be accepted by the both parties.

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NEPAL

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Tendering Procedures in NEPAL

1. General Information

Nepal is a small landlocked country situated between two big nations - India and China. Its total area is 147,181 sq. km and the population is about 20 million. Population growth rate is 2.37% and per capita income is US \$ 251.

Being a developing country, 40~60 percent of the country's regular budget is spent as development budget and about 80 percent of the development budget are spent in construction. Total government budget of the country for the year 2000/2001 is Rs. 91621335000 (1 US \$ = Rs. 69.00). There is great need for infrastructure development in the country and as a consequence of this infrastructure related construction project dominating the construction market. Therefore government is the major client. However, investment from the private sector is also increasing significantly in construction. Foreign loans and grants are the other major sources for project funding in Nepal.

2. Public Tendering

Public works procedure is governed by the 'Rules for Financial Administration 2056'. Public construction works can be executed through:

- the department itself
- contract
- users committee

The concerned department can execute the works by itself if the estimated amount of the work is less than Rs. 50,000.00. Similarly, for the works of value above Rs. 50,000.00 and less than Rs. 1 million can be executed by evaluating at least three quotations submitted by three different parties. However, for the works of value less than Rs. 5 million (above Rs. 1 million) notice should be published in a national newspaper giving 7 to 15 days duration for submitting quotations. In this way, the works of value above Rs. 5 million is executed by contracting.

2.1 Pre-Qualification (PQ)

For the works of value above Rs. 10 million, in general, PQ of the contractors is to be done. For this, a PQ notice should be published in a national newspaper giving 30 to 90 days for submission of the application. Before opening the applications, the criteria (technical capability, financial capability and experience) for PQ has to be approved by the secretary of the concerned ministry and the applicants must also be informed about the criteria.

2.2 Tendering

For tendering, a tender notice should be published in a national newspaper (not less than 2 times) and in global tender, information regarding invitation of tender shall be circulated to all the diplomatic missions in the country, if not otherwise stated in the agreement. If a foreign party is interested in submitting a tender, such party should furnish the following information:

(A) Any agent has been appointed in Nepal or not.

(B) If yes,

- Name of the agent and address.
- Percentage of the commission to be paid to the agent, types of currency and mode of payment.
- Any conditions agreed with the agent.
- Certificate of the Income Tax Registration of the local agent and acceptance letter from the local agent to become such agent.

(C) If a foreign party submits tender providing false statement in this regard and if it is proved that the party has a local agent or the percentage of the commission is proved as higher than the previously stated, the amount as equivalent to the commission of the local agent will be fined and as per Nepal Act further legal action

will be taken.

(D) If a local agent submits a tender on behalf of the foreign party, the local agent should furnish the information as stated in the clause (B) above.

All the contract documents must be kept ready before inviting bid from the contractors. Cost of tender document has been fixed as given below:

S. No.	Value of works (Rs.)	Cost of tender document (Rs.)
1	50,00,000.00 - 100,00,000.00	1500.00
2	100,00,000.00 - 300,00,000.00	2000.00
3	Above 300,00,000.00	4000.00

While submitting a bid, the bidder is required to deposit an earnest money (2.5% of the estimated amount) or a bid bond and after acceptance of the bid the successful bidder is required to deposit a security money (5% of the estimated amount) or a performance bond.

2.3 Two Envelope Procedure

For the works of more than Rs. 5 million, contract can be awarded following two-envelope procedure. For this purpose, technical and financial proposals are invited in two separate envelopes for evaluation. Under this procedure, the financial proposals of the successful bidders (who are able to score minimum required points) will be opened for evaluation and the contract is awarded to the lowest evaluated bidder. All the financial proposals submitted by the unsuccessful bidders will be returned unopened. No PQ is essential if this procedure is followed.

2.4 Special Provision for the Foreign Party

Followings are the special provisions for tendering from the foreign party through their local agent:

(A) In tender evaluation, the percentage of commission receiving by the local agent should also be considered.

(B) If the tender amount is same of the foreign parties, preference shall be given to the party providing higher percentage as commission to the local agent.

2.5 Special Provision

Following special provisions govern the tender acceptance procedure:

(A) In global tender, if tenders are submitted by the foreign parties only, preference will be given to the party which have formed a joint venture with the local party.

(B) Contract for the local product, service or construction work whose cost will be borne by the government source and if the amount of such work is less than Rs. 60 million, the work should be given to the Nepali citizen only.

(C) If not otherwise stated in the foreign assistance agreement, the contract should be awarded to the Nepali bidder even though the bidding amount is higher by 7.5 percent.

(D) In case of joint venture bidding the following shall govern:

- If a joint venture is formed with local party with 50 percent share, contract should be given to such joint venture even if the bidding amount is 7.5 percent higher than the others.
- If a joint venture is formed with local party having share percentage less than 50 percent and more than 25 percent, contract should be given to such joint venture even if the bidding amount is 5 percent higher than the others.



TAIWAN, ROC



THAILAND

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Procurement Act of TAIWAN, ROC

- Chapter I General Principles
- Chapter II Invitation to Tender
- Chapter III Award of Contracts
- Chapter IV Administration of Contract Performance
- Chapter V Inspection and Acceptance
- Chapter VI Protest and Complaint
- Chapter VII Penal Provisions
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Procurement Act of Taiwan, ROC

Chapter I General Principles

Article 1

This Law is enacted to establish a government procurement system that has fair and open procurement procedures, can promote the efficiency and effectiveness of government procurement operation, and is able to ensure the quality of procurement.

Article 2

The term ‘procurement’ as used in this Law shall refer to the contracting of construction work, the purchase or lease of property, the retention or employment of services, etc.

Article 3

Procurement conducted by any government agency, public school or government-owned enterprise (hereinafter referred to as the ‘entity’) shall be governed by the provisions of this Law. With regard to the matters not provided for in this Law, other relevant laws shall govern.

Article 4

A juristic person or organization which takes a grant from an entity shall conduct a procurement in accordance with this Law and be under supervision by the entity provided that the amount of the grant is not less than half of the procurement value and also reaches the threshold for publication.

Article 5

An entity may entrust a juristic person or organization to conduct its procurement.

The procurement referred to in the preceding paragraph shall be governed by this Law, and the juristic person or organization shall be supervised by the entrusting entity.

Article 6

In conducting a procurement, an entity shall not accord differential treatment to suppliers without due cause.

In executing a procurement contract, the principle of protecting public interests, fairness and reasonableness shall be observed.

The procurement personnel may base on the consideration of public interest, procurement efficiency or professional judgment to make an appropriate procurement decision, to the extent not contrary to the provisions of this Law.

Article 7

The term ‘construction work’ referred to in this Law means the activities performed above or underneath the ground for building, augmenting, altering, repairing, or dismantling structures and their respective auxiliary equipment/facilities, or reforming natural environment, including architectural, civil, hydraulic, environmental, transportation, mechanical, electrical, and chemical construction works and others as determined by the responsible entity.

The term ‘property’ referred to in this Law means any and all articles, materials, equipment, machines, tools, and other personal property, real property, rights, and other properties as determined by the responsible entity.

The term ‘service’ referred to in this Law means professional services, technical services, information services, research and development, business operation management, maintenance and repair, training, labor and other services as determined by the responsible entity.

Where the content of a procurement involves construction work, property and service, or any two of them, and it is difficult to categorize the content of the procurement as construction work, property, or service, the one which takes the highest percentage of the budget of procurement shall govern.

Article 8

The term ‘supplier’ referred to in this Law means any company, industrial or commercial firm under partnership or sole proprietorship, or any natural person,

juristic person or any other institution or organization that may offer construction work, property or service to the entity.

Article 9

The term ‘responsible entity’ referred to in this Law means the Procurement and Public Construction Commission. A Minister without Portfolio shall be assigned concurrently as Chairman of the Commission.

The term ‘superior entity’ referred to in this Law means the entity at a level immediately above the procuring entity. If there is no such superior entity, then the procuring entity shall perform the functional duties of the superior entity as provided for in this Law.

Article 10

The responsible entity shall be in charge of the following matters with respect to government procurement:

1. Researching and formulating government procurement policies and system, and promoting and advocating government procurement policies and regulations;
2. Researching, formulating, amending, and interpreting government procurement laws and regulations;
3. Reviewing, developing, and approving of standard procurement contracts.
4. Collecting, publishing, and compiling statistics of government procurement information;
5. Training of professionals engaged in government procurement;
6. Coordinating and supervising all entities in connection with procurement affairs, and accessing procurement performance thereof;
7. Handling of complaints against central government entities in connection with procurement; and
8. Other matters related to government procurement.

Article 11

In order to provide reference information to the entity for drafting the budget and government estimate, a procurement information center may be established by the responsible entity to compile common business information and classification of equivalent products, and to set up price database for construction materials and equipment. Other than those that have to be kept confidential, the information may be provided to the suppliers with or without charge.

A procurement personnel training center may be established by the responsible

entity for the training of professional procurement personnel.

Article 12

For a procurement of a value reaching the threshold for supervision, the entity shall, within a prescribed time-limit, submit relevant documents to its superior entity and request the same to send representative(s) to monitor proceedings conducted by the entity including tender opening, price competition under restricted tendering, price negotiation under single tendering, contract awarding, and inspection and acceptance; whereas the superior entity may, based upon the actual needs, prescribe the conditions under which it shall authorize the entity to proceed without its monitoring.

For a procurement of a value not reaching the threshold for supervision, but the value of contract as awarded or as amended subsequently equals to or exceeds the threshold, the entity shall supplement relevant documents to its superior entity for filing.

The threshold for supervision shall be prescribed by the responsible entity.

Article 13

For a procurement of a value reaching the threshold for publication, proceedings conducted by the entity including tender opening, price competition under restricted tendering, price negotiation under single tendering, contract awarding, and inspection and acceptance shall be monitored by its comptroller (accounting) and other relevant units.

Measures of supervising a procurement of a value not reaching the threshold for publication shall be prescribed by either the responsible entity or the municipal or county (city) governments, depending upon whether the procurement is conducted by a central government or a local government. If no other applicable measures are to be prescribed, the provision of the preceding paragraph shall be followed.

The threshold for publication, which shall be less than the threshold for supervision, shall be prescribed by the responsible entity by taking the international standards into account.

Article 14

An entity shall not circumvent the application of this Law by dividing any procurement requirement of a value reaching the threshold for publication. Where there is a need to divide a procurement requirement, and such division is approved by the superior entity, the value of each divided procurement shall be deemed as if

undivided, and the rules for procurement reaching the threshold for publication, or the rules for procurement reaching the threshold for supervision if appropriate, shall apply.

Article 15

Former procurement personnel and procurement supervision personnel shall be prohibited from contacting the entity that he or she previously worked for either for his or her own sake or on a supplier's behalf for three years following his or her resignation for matters related to his or her former duties within five years prior to his or her resignation.

The procurement personnel and procurement supervision personnel shall withdraw themselves from a procurement and all related matters thereof if they or their spouses, relatives by blood or by marriage within three degrees, or other relatives who live with and share the property with them have interests involved therein.

Upon finding that the procurement personnel or procurement supervision personnel failed to withdraw themselves for any cause of withdrawal provided for in the preceding paragraph, the head of the entity shall order such personnel to withdraw and reappoint the personnel for replacement.

A supplier shall not participate in the procurement of a procuring entity in the event that the relationship between the head of the procuring entity and the supplier itself or the responsible personnel of the supplier have the situation as that mentioned in paragraph two. This requirement may be waived provided that enforcement of it is against fair competition or public interests, and that an approval has been obtained from the responsible entity.

The procurement personnel and the procurement supervision personnel of an entity shall report his or her properties status pursuant to relevant requirements of the Law Governing the Report of Properties by Public Officials.

Article 16

Entreating or lobbying is preferred to be in writing or to be recorded.

The anti-corruption office may inspect the said writings or records.

Entreating or lobbying received shall not be used as reference in the evaluation of tenders.

Article 17

The participation of foreign suppliers in the procurement by each entity shall be governed by the rules set forth in the treaties or agreements to which this nation is a

party.

Except for the situation prescribed in the preceding paragraph, the regulations governing the participation of foreign suppliers in the procurement by each entity shall be prescribed by the responsible entity.

The responsible entity may restrict or ban suppliers, products or services from a country to participate in the procurement where the country imposes restriction or ban on the suppliers, products or services from this nation by laws or regulations.

Chapter II Invitation to Tender

Article 18

The tendering procedures for procurement include open tendering procedures, selective tendering procedures, and limited tendering procedures.

The term ‘open tendering procedures’ referred to in this Law means the procedures under which a public notice is given to invite all interested suppliers to submit their tenders.

The term ‘selective tendering procedures’ referred to in this Law means the procedures under which a public notice is given to invite all interested suppliers to submit their qualification documents for pre-qualification evaluation basing upon specific qualification requirements and, after such evaluation, the qualified suppliers are invited to tender.

The term ‘limited tendering procedures’ referred to in this Law means the procedures under which, where no public notice is given, two or more suppliers are invited to compete or only one supplier is invited for tendering.

Article 19

An entity shall apply open tendering procedures to all procurement of a value reaching the threshold for publication, except otherwise provided for in Articles 20 and 22 hereof.

Article 20

Under any of the following circumstances, an entity may apply selective tendering procedures to a procurement of a value reaching the threshold for publication after obtaining the approval of the superior entity:

1. where there is a recurring demand;
2. where the review of tenders takes a long time;

3. where the supplier's cost for preparation of a tender is high; or
4. where the qualification requirements for suppliers are complicated.

Article 21

In order to apply the selective tendering procedures, an entity may conduct qualification evaluation in advance and establish a permanent list of qualified suppliers; provided, however, that the entity shall always allow suppliers to request of qualification evaluation and periodically review and update the permanent list of qualified suppliers.

Where a supplier not on the permanent list of qualified suppliers requests to participate in a particular procurement, the entity shall review the qualification of such supplier provided that the review does not interfere the tendering procedures and can be completed in time. After reviewing, the entity shall invite such supplier to participate in the procurement provided that the supplier is qualified.

The permanent list of qualified suppliers adopted for the procurement in connection with recurring demands shall contain at least six suppliers.

In conducting selective tendering procedures, the entity shall give qualified suppliers an equal opportunity to be invited.

Article 22

Under any of the following circumstances, an entity may apply limited tendering procedures to a procurement of a value reaching the threshold for publication after obtaining the approval of the superior entity:

1. where there is no tender in response to an open or selective tender, or the tenders submitted have been not in conformity with the requirements in the tender, provided, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
2. where the subject of a procurement is an exclusive right, a sole source product or supply, a work of art, or a secret, which can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
3. in so far as strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the subject of the procurement could not be obtained in time by means of open or selective tendering procedures;
4. for additional deliveries by the original supplier which are intended either as follow-up maintenance, or parts and components replacement for existing supplies or installations, or as extension of existing supplies, services, or installations where a change of supplier would not meet the requirements of

compatibility or interchangeability with already existing supplies, services, or installations;

5. where the subject of a procurement is a prototype or a subject first produced or supplied which is developed in the course of research, experiment, or original development;
6. when additional construction work which was not included in the initial contract but which was within the objectives of the original tender documentation has, through unforeseeable circumstances, become necessary, and the entity needs to award contracts for the additional construction work to the contractor carrying out the construction work concerned to achieve the objectives of the initial contract since the separation of the additional construction work from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction work may not exceed 50 per cent of the amount of the main contract;
7. for any further procurement indicated in the tender notice and tender documentation;
8. for property purchased on a commodity market;
9. in the case of contracts for professional services, technical services or information services awarded to the winner selected publicly and objectively;
10. in the case of contracts awarded to the winner of a design contest provided that the contest has been initiated by a public notice and the winner selection has been conducted publicly and objectively;
11. in the case that a government-owned enterprise designates an area for its real property purchase in response to the need of its business provided that the real property purchased has been solicited publicly in accordance with its requirements and criteria;
12. where the subjects of a procurement are supplies or services not for profit provided by organizations of the handicapped, the aboriginal, philanthropic organizations or prisoners; or
13. other circumstances as prescribed by the responsible entity.

The regulations for the selection of suppliers and the formulas for the calculation of service fees under sub-paragraphs 9 and 10, and the implementing rules under sub-paragraph 11 of the preceding paragraph, shall be promulgated by the responsible entity.

Article 23

The tendering procedures to be applied to a procurement of a value not reaching the threshold for publication shall be prescribed by the responsible entity at the central government level; or by the municipal or county (city) government at the local government level. If no other procedures are to be prescribed at the local government level, the procedures prescribed at the central government level shall govern.

Article 24

An entity may, according to the needs of efficiency and quality, conduct the procurement on a turn-key basis. However, a prior approval from the superior entity shall be obtained if the value of procurement reaches the threshold for supervision.

The term 'turn-key' referred to in the preceding paragraph means the procurement of construction work or property by consolidating the procurement of design, work, supply, installation, maintenance in a certain period, etc. into a contract for tendering.

The regulations for the implementation of turn-key shall be prescribed by the responsible entity.

Article 25

An entity may, depending on the characteristics of an individual procurement, specify in the tender documentation to permit joint tendering by a limited number of suppliers. However, a prior approval from the superior entity shall be obtained where the value of procurement reaches the threshold for supervision.

The term 'joint tendering' referred to in the preceding paragraph means the activity of two or more suppliers participating jointly in tendering, executing jointly the procurement contract after being awarded, and assuming the joint and several liability thereunder, with a view to contracting for construction work or to supplying property or services.

Joint tendering shall only be permitted where it can increase the competition among suppliers or not restrain competition without due cause.

A joint tendering by suppliers of the same line of business shall meet the requirements set forth in each of the sub-paragraphs of Article 14 of the Fair Trade Law.

Suppliers participating in a joint tendering shall submit a joint tendering agreement along with the tender.

The regulations for joint tendering shall be prescribed by the responsible entity.

Article 26

For a procurement of a value reaching the threshold for publication, the tender documentation shall be prescribed in terms of function or performance. In the event that there are applicable international standards or national standards, the tendering specifications shall be prescribed therewith.

Technical specification laying down the characteristics of the products or services to be procured, such as quality, performance, safety, dimension, symbol, terminology, packaging, marking and labelling, or the processes and methods for their production and assessment procedures prescribed by the entity, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to competition.

There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific source of origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as ‘or equivalent’ are included in the tender documentation.

Article 27

For open tendering procedures or selective tendering procedures, an entity shall publish a notice of invitation to tender or of qualification evaluation on the Government Procurement Gazette, and also make it available on the information network. The same shall also apply if the notice is amended.

The content of a notice, the number of days for publication, means of publication, and the regulations for publication of the Government Procurement Gazette referred to in the preceding paragraph shall be prescribed by the responsible entity.

Procuring entities shall estimate the number of procurement to be conducted and the value of each procurement. The budget and the estimated value of a procurement may be disclosed in the tender notice.

Article 28

For open tendering procedures or selective tendering procedures, an entity shall prescribe a reasonable time-limit for submission of tenders, which shall not be less than 14 days for tendering from the date of publishing a notice or of invitation to tender. Within the prescribed time-limit, the notice shall also be continuously posted on the entrance of the entity.

The time-limits for submission of tenders as referred to in the preceding paragraph and the minimum time periods from the date of publishing a notice to receive

documents for qualification evaluation under selective tendering procedures shall be prescribed by the responsible entity.

Article 29

Tender documentation for open tendering procedures and the documents for qualification evaluation for selective tendering procedures shall be made publicly available for free or for sale on site or via mail, from the date of publication through the deadline for submission of tender or the deadline for receipt of documents. The names of suppliers to whom the tender documentation is provided for free, for sale, or via mail may not be recorded.

The documentation for selective tendering procedures shall explicitly enumerate the reasons of and the need for supplier qualification.

The documentation referred to in paragraph one shall include all the information required for the submission of tenders by tenderers.

Article 30

In conducting a procurement, an entity shall provide in the tender documentation that a tenderer shall deposit a bid bond, and that the winning tenderer shall deposit a guarantee bond or, in lieu thereof or in addition thereto, other guarantees, except for the following circumstances:

1. where the procurement is for services, the bid bond or guarantee bond may be waived;
2. where the procurement is for construction work or property of a value not reaching one tenth of the threshold for publication, the bid bond or guarantee bond may be waived; or
3. Where there is only one supplier invited for tendering, the bid bond may be waived.

The bid bond and guarantee bond shall be deposited by cash, bank's promissory note, bank's check, certified check, bearer's government bond, certificate of deposit pledged to the procuring entity, irrevocable stand-by letter of credit issued or confirmed by a bank, or bank guarantee or insurance policy under which the bank or insurer shares the liability with the tenderer jointly and severally.

The types, amounts, and ways of deposit, refund, and termination of bid bond, guarantee bond, and other guarantees shall be prescribed by the responsible entity.

Article 31

After award of contract, an entity shall refund or return, without interest, the bid

bond deposited by unsuccessful tenderers. The same shall also apply if the tendering procedure is nullified.

The entity may provide in the tender documentation that the bid bond deposited shall not be refunded or returned to the tenderer and the refunded or returned bid bond shall be recovered if there is any of the following circumstances:

1. the tenderer used forged or altered documents to tender;
2. the tenderer borrowed the name or certificate of another to tender;
3. the tenderer assumed the name or certificate of another to tender;
4. the tenderer withdrew its bid before expiration of the bid;
5. after opening of tenders, the tenderer refused to be awarded or refused to execute a contract;
6. after being awarded, the tenderer failed to deposit sufficient guarantee bond or to provide other guarantees sufficiently within a prescribed time-limit;
7. a bid bond has been served as a guarantee bond; or
8. the responsible entity found that there is a violation of laws and regulations which affects the fairness of the procurement.

Article 32

An entity shall prescribe in the tender documentation the causes not to return the guarantee bond and the interest accruing thereon, or the circumstances under which the liability of a guarantor arises, and also stipulate for the said circumstances the liability for breach of contract, the extent to which the guarantee bond can be offset, and the liability of the guarantor.

Article 33

The tender shall be submitted in writing and sealed, by mail or personal delivery, and at the procurement entity or any designated place before the deadline for tendering.

The suppliers may use electronic devices to send the tender referred to in the preceding paragraph; provided that it is explicitly permitted in the tender documentation, and a formal written tender is submitted subsequently before a prescribed deadline.

The entity may provide in the tender documentation that a tenderer is permitted to amend or supplement its tender before opening of tenders as long as the amendment or supplement does not involve the essential parts of the contract.

Article 34

In conducting a procurement, an entity shall keep confidential the content of the tender documentation before publishing the tender notice, except for the need of conducting a public presentation or soliciting reference data or information from suppliers.

In conducting a procurement, an entity shall not disclose, before opening of tenders, the government estimate, the names and number of the suppliers which have obtained the tender documentation or submitted a tender and any other relevant information which may result in competition restraint or unfair competition.

The government estimate shall be kept confidential till award of contract even after opening of tender. The government estimate shall be disclosed after award of contract except for special circumstances. The entity may, however, basing on actual needs and prior approval of the superior entity, disclose the government estimate in the tender documentation.

Unless otherwise required for official use or provided for in the relevant laws and regulations, the tenders submitted by suppliers shall be kept confidential by the entity.

Article 35

An entity may provide in the tender documentation that a supplier is allowed to submit before award of contract an alternative technology, technical methodology, materials, or equipment to shorten construction period, save expenditure, or increase the efficiency, provided that the original function requirement is not impaired.

Article 36

In conducting a procurement, an entity may prescribe basic qualifications of tenderers based upon actual needs.

For a special or large procurement which must be performed by suppliers of substantial experience, performance record, manpower, financial capability, equipment, etc., specific qualifications may be prescribed for tenderers.

The qualification of and the qualification documents to be submitted by foreign suppliers may be prescribed separately in the tender documentation based upon actual needs. A notarized or certified Chinese translation shall be attached to the qualification document as above required.

The scope and criteria of the basic qualifications referred to in paragraph one and the specific qualifications and the special or large procurement referred to in paragraph two hereof shall be prescribed by the responsible entity.

Article 37

An entity shall not restrain competition unduly and shall only prescribe the qualifications essential to contract performance in prescribing the qualifications referred to in the preceding Article.

The tender submitted by a supplier whose qualification does not meet the requirements referred to in the preceding Article shall not be accepted, unless the supplier submits in lieu a bank guarantee or an insurance policy under which the bank or insurer shares the performance and compensatory liability with the supplier jointly and severally.

Article 38

A political party and a supplier which is affiliated to a political party shall not participate in tendering.

The provisions of 'Affiliated Enterprise' prescribed in the Company Law shall apply mutatis mutandis to the aforementioned supplier who is affiliated to a political party.

Article 39

In conducting a procurement, an entity may entrust to a supplier according to this Law the project management related to planning, design, supply, or contract performance.

The responsible person or partner of the supplier entrusted with the project management shall not at the same time serve as the responsible person or partner of the supplier handling the planning, design, construction or supply.

The supplier entrusted with the project management and the supplier handling the planning, design, construction or supply shall not be affiliated to each other or affiliated to the same other enterprise.

Article 40

An entity may entrust another entity of professional capacity to conduct its procurement.

Article 41

Where a supplier has questions about the content of the tender documentation, such questions shall be submitted in writing to the entity before the deadline set forth for such purpose in the tender documentation.

The entity shall give a written reply to the inquiring supplier before the deadline set

forth for such purpose in the tender documentation, and may publish such reply if necessary. In case that any amendment or supplement to the content of the tender documentation must be made as a result of such questions, the entity shall publish a notice concerning such amendment or supplement, or notify each supplier in writing for cases of soliciting technical proposals and price proposals under selective tendering procedures and for cases of limited tendering procedures, and may extend the time-limit for tendering if required. The aforementioned requirements shall also apply in the event of amending or supplementing the content of tender documentation on the entity's own initiative.

Article 42

For open tendering procedures or selective tendering procedures, an entity may apply multi-step opening of tenders with respect to the qualification, technical specification, and price.

In conducting multi-step opening of tenders, an entity shall publish a notice at the first step and may omit publishing invitation notices at the subsequent steps.

Article 43

An entity conducting a procurement may adopt one of the following measures and specify the measures in the tender documentation, except otherwise prohibited by the treaties or agreements to which this nation is a party.

1. To request from a tenderer commitments to purchase goods locally produced to a certain extent, to transfer technology, to have inward investment, to facilitate local export, or to take any other similar measures, and include such commitments in evaluation, provided that they shall not weigh over one third in the evaluation.
2. Where a foreign supplier's tender is the lowest tender according to the principle of contract award prescribed in Article 52, a domestic supplier may be awarded at such a price by preference.

Article 44

Where a foreign supplier's tender is the lowest bid according to the principle of contract award prescribed in Article 52, an entity conducting a particular procurement may, except otherwise prohibited by the treaties or agreements to which this nation is a party, award by preference to a local supplier which supplies property with at least 50% value added locally, or supplies construction work or service locally, provided that the awarded price shall not exceed the aforementioned lowest

bid by a certain percentage.

The scope, percentage, and implementation rules for the preference prescribed in the preceding paragraph shall be prescribed by the responsible entity together with the relevant competent entities, provided that no preference shall be given except for policies of employment or industrial development, and there shall be no percentage exceeding 3% or period of preference exceeding five years.

Chapter III Award of Contracts

Article 45

Unless otherwise provided for in laws or regulations, an entity shall open tenders in public at the time and place specified in the tender documentation for an open tendering procedure or selective tendering procedure.

Article 46

Unless otherwise provided for in this Law, an entity shall set a government estimate for a procurement. The government estimate shall be itemized based upon the drawings, specifications, and contract requirements by taking into account the costs, market prices, and past award records of government entities, and be approved by the head of the entity or the personnel authorized by the head.

The time for setting the government estimate referred to in the preceding paragraph shall be determined according to the following,

1. in the case of open tendering procedures, prior to the opening of tenders.
2. in the case of selective tendering procedures, prior to the opening of tenders for the step next to the qualification evaluation.
3. in the case of limited tendering procedures, prior to the conducting of price negotiation with one single supplier or price comparison among two or more suppliers.

Article 47

Under the following circumstances, an entity may conduct a procurement without setting a government estimate; provided, however, that the reasons of not setting a government estimate and the terms and principles of awarding the contract shall both be provided in the tender documentation:

1. Where there are actual difficulties in setting a government estimate for the procurement;

2. Where the contract is to be awarded to the most advantageous tender; or
3. For small procurement.

For procurement under sub-paragraphs one and two of the preceding paragraph, a tenderer may be required to enumerate in its tender the content of its price offer in details.

The amount of small procurement shall be set, at the central government level, by the responsible entity, and at the local government level, by the municipal or county (city) governments; provided that the said amount shall not exceed one tenth of the threshold for publication. Where the amount is not set by a local government, the amount set by the central government shall govern.

Article 48

In conducting a procurement pursuant to this Law, an entity shall open the tenders and award the contract in accordance with the timeframe set forth in the tender documentation where there are three or more tenders, except for any of the following circumstances under which tenders may not be opened or awarded.

1. Where the content of tender documentation is amended or supplemented;
2. Where illegal or improper activities that may impair the fairness of the procurement are found;
3. Where the opening of tenders is postponed according to Article 82 hereof;
4. Where the procurement procedure is suspended according to Article 84 hereof;
5. Where the entity corrects its breach of laws and regulations as required by Article 85 hereof;
6. Where there is an emergency;
7. Where the plan for procurement is changed or cancelled; or
8. For any other special circumstances as determined by the responsible entity.

Where the opening of tenders cannot be proceeded due to the lack of three or more tenders, there shall be a second tendering and the time-limit for such tendering may be shortened to half of the time-limit of the first tendering, provided that the shortened period shall not be less than ten days, and in addition the requirement of three tenders of the preceding paragraph shall not apply for the second tendering. For a procurement of a value reaching the threshold for supervision, it shall be approved by the superior entity in advance.

Article 49

In conducting a procurement of a value not reaching the threshold for publication but is not less than one tenth of the threshold, offers or proposals in writing shall be

obtained openly from at least three suppliers, except for the circumstances specified in each sub-paragraph of paragraph one of Article 22.

Article 50

In case that any of the following circumstances occurs to a tenderer, an entity shall not open the tender of such tenderer when such circumstance is found before tender opening, or award the contract to such tenderer when such circumstance is found after tender opening:

1. The tendering does not comply with the requirements of the tender documentation;
2. The content of the tender is inconsistent with the requirements of the tender documentation;
3. The tenderer borrows or assumes any other's name or certificate to tender, or tenders with forged documents or documents with unauthorized alteration;
4. The tenderer forges documents or alters documents without authorization in tendering;
5. The tenderer has any activities in breach of laws or regulations which impairs the fairness of the procurement; or
6. The tenderer is prohibited from participating in tendering or being awarded of any contract pursuant to paragraph one of Article 103 hereof.

When the circumstance referred to in the preceding paragraph occurs to the winning tenderer before the award of contract but is found after award or signing of the contract, the entity shall revoke the award, terminate or rescind the contract, and may claim for damages against such tenderer except where the revocation of the award or the termination or rescission of the contract is against public interest, and an approval has been obtained from the superior entity.

Where the situation of not opening or not awarding a contract as referred to in paragraph one causes the procurement procedures unable to continue, the entity may declare that the procurement is nullified.

Article 51

An entity shall review the tenders submitted in accordance with the requirements set forth in the tender documentation. In case of any ambiguity as to its content, the entity may request the tenderer to clarify.

The entity shall notify each tenderer of the outcome of the review referred to in the preceding paragraph and provide reasons for disqualified tenderers.

Article 52

The award of contract conducted by an entity shall follow one of the following principles and the principle adopted shall be specified in the tender documentation:

1. Where a government estimate is set for the procurement, a tenderer whose tender meets the requirements set forth in the tender documentation and is the lowest tender within the government estimate shall be awarded;
2. Where no government estimate is set for the procurement, a tenderer whose tender not only meets the requirements set forth in the tender documentation and has a reasonable price, but also is the lowest tender within the budget amount shall be the winning tenderer; or
3. The tenderer whose tender meets the requirements set forth in the tender documentation and is the most advantageous one shall be the winning tenderer.
4. To adopt multiple award. An entity may prescribe in the tender documentation that contracts may be awarded to different tenderers by different items or different quantities, but the spirit of competition as to the lowest price or the most advantageous tender shall be respected.

The preceding sub-paragraph three shall only be applied to cases where tenderers are allowed to submit tenders for construction work, property, and services with different qualities and therefore the preceding sub-paragraphs 1 and 2 are not suitable for application..

Tenderers need not be notified to be present upon the award of contract; provided that they shall be notified of the outcome.

Article 53

Where the lowest tender which meets the requirements set forth in the tender documentation exceeds the government estimate, the entity may request the tenderer to reduce the price once. If the reduced price still exceeds the government estimate, the entity may request all tenderers whose tenders meet the requirements set forth in the tender documentation to reduce their prices and then make a comparison. Such price reduction and comparison shall not be more than three times.

If, after following the procedure set forth in the preceding paragraph, the lowest tender still exceeds the government estimate but not over the budget amount, and the entity needs to award the contract for emergency, then the award of contract shall be approved by the person who has approved the government estimate or the authorized personnel of such person, and the value of the winning award shall not exceed the government estimate by more than eight percent provided however that the award of contract shall in addition be approved by the superior entity in advance for cases

where the value of procurement reaches the threshold for supervision and the value of the award exceeds the government estimate by more than four percent.

Article 54

Where an award is conducted in accordance with sub-paragraph 2 of paragraph 1 of Article 52, and the lowest tender which meets the requirements set forth in the tender documentation exceeds the budget amount or an amount recommended by a committee, the entity may request the tenderer to reduce the price once. If the reduced price still exceeds such amount, the entity may request all tenderers whose tenders meet the requirements set forth in the tender documentation to reduce their prices and then make a comparison. Such price reduction and comparison may be limited to certain times which shall not be more than three times. If, after following the procedure set forth in the foregoing, the lowest tender still exceeds either of the said amounts, the tendering procedure shall be nullified.

Article 55

Where an entity plans to award a contract to the lowest tender but cannot award the contract according to the preceding two Articles, the entity may alternatively award the contract through negotiation, provided that such negotiation has been approved by the superior entity and announced in advance in the notice of invitation and the tender documentation.

Article 56

Where an award is conducted in accordance with sub-paragraph 3 of paragraph 1 of Article 52, the evaluation criteria set forth in the tender documentation shall be used to determine the most advantageous tender by comprehensively evaluating the technology, quality, function, commercial terms, or price of the tenders with ranking or score. The price offered or the quotient of price divided by the score resulted from comprehensive evaluation may be used as a sole item for evaluation or the criteria for award of contract. Other items not listed for evaluation shall not be used as a reference for the evaluation. The most advantageous tender shall be determined by the head of the procuring entity or the concurrence of the majority of the evaluation committee. If the most advantageous tender is unable to be determined, negotiations may be conducted, and then make another comprehensive evaluation to determine the most advantageous tender. A determination thereof shall be accompanied with reasons. Such comprehensive evaluation shall not be more than three times.

If, after following the procedure set forth in the preceding paragraph, the most

advantageous tender still can not be determined, the tendering procedure shall be nullified.

Before conducting a tendering procedure that the award of contract is made to the most advantageous tender, the entity shall report to the superior entity and obtain its prior approval.

The evaluation rules for determining the most advantageous tender shall be prescribed by the responsible entity.

Article 57

Where negotiations are adopted according to the provisions of the preceding two Articles, the entity shall conduct the process in accordance with the following principles:

1. The procedures and contents of tender opening, tenders, and tender evaluation shall be kept confidential.
2. No tenderers meeting the requirements set forth in the tender documentation shall be discriminated during the negotiations. If necessary, video or audio recordings shall be used for evidence purpose.
3. Only the content of those items that are specified as negotiable in the tender documentation may be subject to negotiation.
4. Where the negotiable items referred to in the preceding sub-paragraph is amended, all tenderers permitted to participate shall be informed of such amendment in writing.
5. Upon completion of negotiation, tenderers referred to in the preceding sub-paragraph shall be given an opportunity to modify their tenders and re-submit their tenders within a time-limit according to the negotiation.

Article 58

Where a contract is to be awarded to the lowest tender, an entity may set a time-limit for the tenderer offering the lowest tender to provide an explanation or a security if the total or a part of the offered price is so low that it evidently appears to be unreasonable, and the quality of performance is likely to be impaired or the contract is not likely to be performed in good faith, or there is any other extraordinary situations. If such tenderer fails to submit a reasonable explanation or a security before the deadline set forth by the entity, the contract may not be awarded to the tenderer, and the tenderer offering the second lowest tender shall then be deemed as the tenderer offering the lowest tender.

Article 59

For procurement conducted in accordance with selective or limited tendering procedures, the contract price shall not be higher than the lowest price the supplier offered for the same construction work, property, or service under the same market conditions.

A supplier shall not induce the procuring entity to sign a contract by giving others commission, percentage, brokerage, kickback, or any other benefits.

Where a supplier is in breach of the requirements of the two preceding paragraphs, the entity may terminate or rescind the contract, or deduct the over-valued portion and any other benefits from the contract amount.

The provisions of the three preceding paragraphs shall apply *mutatis mutandis* to procurement where the tenders received are less than three.

Article 60

Where an entity notifies a supplier to explain, reduce price, engage in price competition, negotiate, modify the content of the original tender, or re-submit a new price offer in accordance with Articles 51, 53, 54 or 57 hereof, and the supplier fails to respond within a time-limit set forth in the notification, then such supplier is deemed waiving its rights.

Article 61

Except for extraordinary circumstances, an entity shall publish the outcome of an award on the Government Procurement Gazette and notify all tenderers in writing within a specific period of time after award of contract provided that the procurement is of a value reaching the threshold for publication. The foregoing shall also apply if the contract cannot be awarded.

Article 62

The award data shall be provided by the procuring entity to the responsible entity periodically.

Chapter IV Administration of Contract Performance

Article 63

The essential requirements for various types of procurement contracts shall be prescribed by the responsible entity by taking the international and domestic

practices into consideration.

In contracting for the services of planning, design, supervision, or management, the contract shall stipulate the responsibility of the supplier in the event that erroneous planning and design, irresponsible supervision, or poor management has caused damages to the entity.

Article 64

It may be provided in a procurement contract that when continuous performance by the supplier pursuant to the contract is against the public interest due to policy change, an entity may, with the approval of a superior entity, terminate or rescind such procurement contract, in part or in whole, and compensate the supplier for any loss resulting therefrom.

Article 65

The contractor shall perform the contract for construction work or services by itself and may not assign the contract to others.

The term of contract assignment referred to in the preceding paragraph means an arrangement under which a contractor makes another supplier perform all or the major part of the contract for it.

The preceding two paragraphs shall apply mutatis mutandis to a contract for property not readily available and required to be supplied through certain performance process.

Article 66

In the event that a contractor is in breach of the requirement of paragraph 1 of the preceding Article by assigning a construction work to another supplier, the entity may terminate the contract, rescind the contract, or forfeit the contractor's security, and in addition claim for damages.

The assignee referred to in the preceding paragraph and the contractor shall bear the liabilities for performance and damages jointly and severally. The foregoing shall also apply to the cases of re-assignments.

Article 67

A contractor may subcontract the contract to other suppliers. The terms 'subcontracting' means an arrangement not constituting an assignment but pursuant to which another supplier performs a part of the contract for the contractor.

In the event that a subcontract has been reported to the entity for file and that the

subcontracted part has been pledged by the contractor to the subcontractor, the subcontractor will have the mortgage right under Article 513 and the claim based on addition under Article 816 of the Civil Code in terms of the claim of the contractor for the contract value or compensation against the entity.

Under the circumstance referred to in the preceding paragraph, the subcontractor for the part subcontracted to it shares the liabilities of warranty with the contractor jointly and severally.

Article 68

The claim of a contractor against an entity for contract value or compensation under a contract, whether in whole or in part, may be the object of a pledge.

Article 69

In case that an entity and a supplier cannot reach an agreement in respect of a dispute arising from or in connection with the performance of a contract, the dispute may be referred to the Complaint Review Board for Government Procurement for mediation. When the application for mediation hereof is filed by the supplier, the entity shall not reject it.

The requirements of mediation prescribed in the Code of Civil Procedure shall apply *mutatis mutandis* to the procedures and effect of the foregoing mediation conducted by the Complaint Review Board for Government Procurement.

Article 70

An entity conducting a procurement for construction work shall stipulate the responsibility of the supplier for quality control, environment protection, as well as safety and hygiene of the work, and shall also establish inspection procedures and standards for the major items of the construction work.

The entity may effect an inspection by segment during the supplier's performance of the contract, and the outcome of such inspection may be used as a basis for the acceptance.

The two preceding paragraphs shall apply *mutatis mutandis* to a contract for property or services not readily available, and required to be performed through certain performance process.

Chapter V Inspection and Acceptance

Article 71

An entity conducting a procurement for construction work or property shall set a time-limit for inspection and acceptance, and may conduct partial acceptance.

The inspection and acceptance shall be conducted by an appropriate chief inspector, which is appointed by the head of the entity or his/her authorized personnel, and the unit taking or using the work or property shall be informed to accompany the chief inspector for inspection and acceptance.

Personnel of the procurement unit of an entity shall not act as a chief inspector or an inspector for samples or materials of the procurement conducted by the unit.

The provisions of the three preceding paragraphs shall apply *mutatis mutandis* to the procurement for services.

Article 72

In conducting the inspection and acceptance for a procurement, the records thereof shall be made by the entity and signed jointly by the participating personnel. For any item found not in conformity with the requirements specified in the contract, drawings and/or samples after inspection and acceptance, the supplier shall be required, by a notice, to make improvement, to remove the rejected item or to re-do the work, or to recall or to replace the rejected item within a time-limit. Where the result of the inspection and acceptance indicates that the non-conforming item is not material and the remaining items are nonetheless usable, and the entity deems that it is necessary to use such remaining items before the said non-conformity is corrected, a partial acceptance may be conducted for the remaining items and the contract value may be paid partially for the accepted portion, subject to the approval by the head of the entity or his/her authorized personnel.

Where the result of inspection indicates any non-conformity with the contractual requirements, but the non-conformity neither hinders the safety or use required nor decreases the general function or the function designated by the contract, an acceptance with price-reduction may be conducted under conditions that the entity has determined that there is no need or it is difficult to make replacement. Before conducting the foregoing, the entity shall report the case to the superior entity for approval if the value of the procurement reaches the threshold for supervision, or to the head of the entity or his/her authorized personnel if the value of the procurement does not reach the threshold.

The inspectors may, as they deem necessary, disassemble the covered parts of a

construction work or property for inspection or conduct analytical inspection thereof.

Article 73

For a construction work or property which has passed the inspection and acceptance, the inspection and supervision personnel shall sign on the certificate of settlement and acceptance.

The provision of the preceding paragraph shall apply mutatis mutandis to the inspection and acceptance of services.

Chapter VI Protest and Complaint

Article 74

For any dispute between an entity and a supplier arising out of the invitation to tender, the evaluation of tender, the award of contract, the contract performance, or the inspection and acceptance, a protest or complaint may be filed in accordance with this chapter except for the disputes of the nature of private law and having been resorted to arbitration, mediation, or civil procedures by the entity or the contractor.

Article 75

A supplier may, in the period as specified below, file a protest in writing with an entity if the supplier deems that the entity is in breach of laws or regulations or of a treaty or an agreement to which this nation is a party (hereinafter referred to as the 'Laws and Regulations') so as to impair the supplier's rights or interest in a procurement.

1. Where the protest is filed for the content of the tender documentation, one quarter of the period for tendering starting from the date of publication or invitation to tender and a segment of less than one day shall be counted as one day; provided that the whole period shall not be less than ten days;
2. Where the protest is filed for the interpretations, subsequent explanations, amendments or supplements of the tender documentation, ten days from the date of receipt of the notification from an entity or the date of public notice given by the entity; or
3. Where the protest is filed for the procedures or the outcome of the procurement, ten days from the date of receipt of the notification from an entity or the date of public notice given by the entity; or ten days from the date when said procedures or outcome are known or can be known if such procedures or outcome are not

notified or published; provided that the period shall not exceed fifteen days from the date of the award of contract for matters of invitation to tender, the evaluation of tender, or the award of contract.

The entity inviting tenders shall make proper disposition and notify the protesting supplier in writing of such disposition within 20 days from the date of receipt of the protest. In case that such disposition involves amendment or supplement to the content of the tender documentation, the entity shall publish a notice concerning such amendment or supplement, or notify each supplier in writing for cases of soliciting technical proposals and price proposals under the selective tendering procedures and for cases of limited tendering procedures, and may extend the time-limit for tendering if required.

Article 76

Where the value of procurement reaches the threshold for publication, a supplier may file a written complaint with the Complaint Review Board for Government Procurement ('CRBGP') as established by the responsible entity, or the municipal or the county (city) governments, depending upon the procurement is conducted at the level of central government or local government, within fifteen days from the date of receipt of the disposition if the supplier objects to the disposition, or from the expiry of the period specified in paragraph two of the preceding Article if the entity fails to dispose the case within the period. A local government which does not establish a CRBGP may entrust the responsible entity to handle the complaint.

Article 77

The complaining supplier shall prepare a written complaint including the following particulars and affix its signature or seal thereon:

1. The name, address and telephone number of the complaining supplier and the name, gender, birth date, and domicile or residence of the responsible person;
2. The entity which handled the protest;
3. The facts and reasons of the complaint;
4. Evidence; and
5. Year, month and day of the written complaint.

The complaint can be filed by an agent on behalf of the complainant, and the agent shall submit a power of attorney indicating the name, gender, birth date, occupation, telephone number and domicile or residence of the agent.

The provision of Article 70 of the Code of Civil Procedure shall apply *mutatis mutandis* to the situation referred to in the preceding paragraph.

Article 78

When filing a complaint, the supplier shall also provide a copy of the complaint to the entity. The entity shall present its response in writing to the competent CRBGP within ten days from the date of receipt of such copy.

The CRBGP shall complete its review within forty days upon receipt of the complaint, and shall notify the supplier and the entity of its decision in writing. If necessary, the foregoing period may be extended for another forty days for complaints arising out of the invitation to tender, the evaluation of tender, or the award of contract, or for another three months for complaints arising out of the contract performance or the inspection and acceptance.

Article 79

A complaint shall not be accepted if it is filed beyond the statutory period or is not in conformity with the statutory procedures or format. However, if the aforementioned errors can be corrected, the complainant shall be allowed to make the correction within a specified time-limit. Failure to make the correction within the time-limit shall render the complaint unacceptable.

Article 80

The review of a complaint with respect to a procurement may be conducted only with files.

The CRBGP may, ex officio or upon request, inform a complaining supplier or an entity to present their opinions orally at a place designated by the CRBGP.

In conducting a review, the CRBGP may entrust government authorities, schools, associations, or persons that have professional knowledge and experience to provide examination services, and may also call the relevant persons for explanations or request the entity or the supplier to provide relevant documents and materials.

The CRBGP may collect from the supplier review fees, examination fees, and other necessary expenses before conducting a review. The schedules of such fees and expenses and the methods of payment shall be prescribed by the responsible entity.

The rules for the review of complaints shall be prepared by the responsible entity and be promulgated after approval of the Executive Yuan.

Article 81

A supplier may withdraw its complaint at any time before the service of a review decision. Once a complaint is withdrawn, the complainant is barred from submitting another complaint in respect of the same matter.

Article 82

A review decision prepared by the CRBGP shall be in writing, contain the facts and reasons, and indicate whether the procurement was conducted by the procuring entity in a manner that is in breach of Laws and Regulations. Where there is a breach, the CRBGP may recommend to the procuring entity ways to proceed.

The CRBGP may, before completion of review, notify the procuring entity to suspend the procuring procedures, if necessary.

The CRBGP shall take the public interest, the interest of the relevant suppliers, and other relevant circumstances into account when making a recommendation or notification under the preceding two paragraphs.

Article 83

A review decision may be deemed as a decision on an administrative petition or a proposal under mediation based on its nature, with a time-limit for appeal or objection noted in it.

Articles 417 and 418 of the Code of Civil Procedure shall apply *mutatis mutandis* to the latter situation as referred to in the preceding paragraph.

Where a time-limit for appeal or objection referred to in paragraph one is not noted or noted erroneously in a review decision, the time-limit shall be extended to one year.

Article 84

Where a procuring entity deems that a protest or complaint filed by a supplier is justifiable after reviewing the causes related thereto, the procuring entity shall nullify or change the initial result or suspend the procurement procedures, except for emergencies or public interest, or where the causes of complaint or protest are not likely to affect the procurement.

The procuring entity shall promptly notify the competent CRBGP of any outcome arising from the action it takes according to the preceding paragraph in response to a complaint.

Article 85

Where a review decision specifies that the procuring entity is in breach of Laws and Regulations, the procuring entity shall proceed with a lawful alternative.

Where the procuring entity does not follow the recommendation made by the CRBGP, it shall report the case to the superior entity for approval, and the superior entity shall provide a written explanation with reasons to the CRBGP and the

supplier if the superior entity so approves.

Where the circumstance set forth in paragraph one occurs, the supplier may request the procuring entity to reimburse the necessary expenses incurred by the supplier for the preparation of tender and the filing of protest and complaint.

Article 86

In order to handle the complaints filed by suppliers for procurement at the levels of central government and local government, CRBGPs established by the responsible entity and the municipal and the county (city) governments at each level respectively shall consist seven to fifteen members selected from persons impartial and of the professional knowledge in legal or procurement affairs and appointed by the responsible entity or the municipal or county (city) governments. Two of such members may be high-ranking officials of the responsible entity or the municipal or county (city) governments.

The CRBGP shall perform its official duties impartially. The rules governing the organization of CRBGP shall be prepared by the responsible entity and submitted to the Executive Yuan for approval and promulgation.

Chapter VII Penal Provisions

Article 87

A person who commits violence or threat, or administers drugs, or applies hypnosis with the intent to cause a supplier not to tender or to tender contrary to its real intention, or cause the winning tenderer to forego the award or to assign or subcontract after award shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

A person who commits fraud or uses any other illegal means to make the supplier unable to tender or cause the opening of tenders to have an incorrect result shall be punished with imprisonment for not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

A person who causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of award or to gain illegal benefits, shall be punished with imprisonment for not less than six months but not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

An attempt to commit an offense specified in paragraphs one, three or four is punishable.

Article 88

The personnel of a supplier who is entrusted by an entity to conduct planning, design, project management, or procurement but imposes improper restrictions as to the tendering requirements of technologies, technical methodology, materials, or equipment with the intent to gain personal illegal benefits, and thereby obtains benefits, shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed. In addition, the foregoing personnel who imposes improper restrictions as to the qualifications of tenderers with the intent to gain personal illegal benefits and thereby obtains benefits, shall be subject to the same punishment.

An attempt to commit an offense specified in the preceding paragraph is punishable.

Article 89

The personnel of a supplier who is entrusted by an entity to conduct planning, design, project management, or procurement but discloses or delivers confidential documents, drawings, information, things, or any other data related to the procurement with the intent to gain personal illegal benefits, and thereby obtains benefits, shall be punished with imprisonment for not more than five years or detention; in lieu thereof or in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

An attempt to commit an offense specified in the preceding paragraph is punishable.

Article 90

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a

procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, not to decide on matters with respect to the procurement or to decide on such matters contrary to his/her own mind, shall be punished with imprisonment for not less than one year but not more than seven years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed.

An attempt to commit an offense specified in paragraph one is punishable.

Article 91

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, disclose or deliver the confidential documents, drawings, information, things, or any other data related to the procurement, shall be punished with imprisonment for not more than five years; in addition thereto, a fine of not more than one million New Taiwan Dollars may be imposed.

If death results from the offense specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily injury results therefrom, the offender shall be punished with imprisonment for not less than three years but not more than ten years; in addition thereto, a fine of not more than three million New Taiwan Dollars may be imposed respectively.

An attempt to commit an offense specified in paragraph one is punishable.

Article 92

Where a representative, agent, employee, or any other staff of a supplier who, in performing his/her duty, commits an offense specified in this Law, the wrongdoer shall be subject to the punishment prescribed in the relevant Articles; in addition thereto, the supplier shall also be subject to the fine prescribed therein.

Chapter VIII Supplemental Provisions

Article 93

An entity may execute an inter-entity supply contract with a supplier for the supply of property or services that are commonly needed by entities.

Article 94

An entity conducting an evaluation shall establish an evaluation committee in which there shall be five to seventeen members and at least one third of the members shall be experts and scholars. A recommended roster of experts and scholars shall be prepared jointly by the responsible entity, the Ministry of Education, the Ministry of Examination, and other relevant entities.

The rules governing the organization of and the rules for review by the evaluation committee shall be prescribed by the responsible entity.

Article 95

It is preferred for an entity to conduct its procurement by professional procurement personnel. The rules for the above shall be prescribed jointly by the Executive Yuan and the Examination Yuan.

Article 96

An entity may provide in the tender documentation that preference shall be given to a product which has been permitted to use a label of environment protection approved by the government, and in addition has the same or similar functions. The said preference may include a price preference of not exceeding ten percent. Such preference shall also be given where a product or its raw material is manufactured, used, and disposed in line with the requirements of recycling materials, retrievableness, low pollution, or energy-saving.

The preceding paragraph shall apply *mutatis mutandis* to other products which either increase social benefits or reduce social costs, and have the same or similar functions required.

The categories and coverage of products referred to in the two preceding paragraphs and the implementing rules thereof shall be jointly prescribed by the responsible entity, the Environmental Protection Administration of the Executive Yuan, and other competent entities.

Article 97

The responsible entity may take into account the requirements of the relevant laws and regulations to adopt measures assisting small and medium enterprises in contracting or subcontracting to the extent not less than certain percentage of government procurement in value.

Article 98

A winning tenderer who hires more than 100 employees locally shall employ the handicapped or the aborigines to a minimum of two percent of the total number of employees during the term of contract performance; otherwise, shall pay a fee in substitute.

Article 99

Unless otherwise provided for by other laws, the provisions of this Law shall apply to the procedures under which an entity selects an investor to construct or operate a project approved by the competent authority to be open for private investment, provided that the project is one in transportation, energy, environment protection, tourism, etc., and planned or approved by the government.

Article 100

The responsible entity, the superior entity, and the accounting entity may supervise an entity at any time concerning the progress of procurement, inventory, or service conditions of the subject procured, and may also demand the entity to submit a report.

An entity may transfer its surplus property which is still usable to other government agencies or public schools without charge.

Article 101

Where a procuring entity finds that a supplier has any of the following circumstances, the entity shall notify the supplier the facts and reasons related thereto, and indicate with a note in the notification that it will be published on the Government Procurement Gazette if the supplier does not file a protest:

1. Where the supplier allows any others to borrow its name or certificate to participate in a tender.
2. Where the supplier assumes any other's name or certificate to tender, or tenders with forged documents or documents with unauthorized alteration.
3. Where the supplier has substantially reduced the work or materials without

obtaining a prior approval.

4. Where the supplier has been proved to forge or alter without authorization documents related to tendering, contracting, or contract performance.
5. Where the supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action.
6. Where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced without probation by a court of the first instance.
7. Where the supplier refuses to execute or perform a contract without due cause after award.
8. Where a contract is rescinded or terminated for causes attributable to the supplier.
9. Where an inspection indicates any non-conformity with the contractual requirements, and the supplier fails to file a protest or complaint, or bring an action or take measures according to the relevant requirements within a time-limit specified in notice.
10. Where the supplier is in breach of the requirement of Article 65 by assigning a contract to others.
11. Where the time-limit for contract performance is seriously delayed due to causes attributable to the supplier.
12. Where the supplier is under the procedure of reorganization or bankruptcy.
13. Where the supplier seriously discriminates women, aborigines, or personnel of disadvantaged groups.

Article 102

A supplier who deems that the notification made by an entity according to the preceding Article is in breach of this Law or untrue may file a written protest to the entity within twenty days upon receipt of the notification.

The supplier may file a written complaint with the competent CRBGP within fifteen days from the date of receipt of the disposition of the protest referred to in the preceding paragraph if the supplier objects to the disposition, or from the expiry of a period of twenty days starting from the date the entity receives the protest if the entity fails to dispose the case within such period, no matter whether the procurement is of a value reaching the threshold for publication or not.

Where an entity has notified a supplier pursuant to the preceding Article and the supplier does not file a protest or complaint within the prescribed time-limit, or the complaint filed is not accepted, or the review decision indicates that the notification

is not in breach of this Laws or untrue, the entity shall immediately publish the name of the supplier and the relevant circumstance on the Government Procurement Gazette.

The provisions prescribed in Chapter VI hereof shall apply mutatis mutandis to the handling of protests and complaints provided for in paragraphs one and two.

Article 103

A procuring entity shall provide in a tender documentation that a supplier whose name has been published on the Government Procurement Gazette pursuant to paragraph three of the preceding Article is prohibited from participating in tendering, or being awarded or sub-contracted within the following periods:

1. three years from the date of publication arising from circumstances of sub-paragraphs 1 to 5 of Article 101 hereof, or a sentence of imprisonment under sub-paragraph 6 of the same Article; provided that under the circumstance of sub-paragraph 6 of Article 101, the period shall be suspended where there is a final and irrevocable 'not guilty' verdict; or
2. one year from the date of publication arising from circumstances of sub-paragraphs 7 to 13 of Article 101 hereof; or imposition of detention, fine, or probation under sub-paragraph 6 of the same Article; provided that the period shall be suspended where the supplier has been completed its reorganization procedure.

Where there is a special need for an entity to conduct a procurement without following the requirement of the preceding paragraph, the entity may do so with an approval from its superior entity.

Article 104

Procurement conducted by military entities shall follow the provisions of this Law except where procurement is for weapons, ammunition, war supplies, or related to national security or national defense and has one of the following situations:

1. Where this nation is confronted with a war, in mobilization for a war, or in a war, this Law may not apply.
2. Where the procurement is a confidential or strictly confidential one, Articles 27, 45 and 61 hereof may not apply.
3. Where there is an emergency which may jeopardize an important military mission, Articles 26, 28, and 36 may not apply.
4. Where there is only one supplier invited for tendering, the first sentence of paragraph 3 of Articles 26 may not apply.

The coverage of procurement referred to in the preceding paragraph and the implementation rules thereof shall be prescribed jointly by the responsible entity and the Ministry of National Defense, and be sent to the Legislative Yuan for reviewing.

Article 105

The provisions of invitation to tender and award of contracts of this Law may not apply to the following procurement:

1. Where the procurement is an emergent one in response to wars, natural disasters, epidemics, or economic or financial crises confronted by this nation.
2. Where the procurement is an emergent one in response to imminent danger to the life, body, health, or property of the people.
3. Where the procurement is an acquisition of property or service between governmental entities and approved by an immediate superior entity.
4. Where the procurement from an international organization, a foreign government, or any of their authorized institutions is conducted in accordance with a treaty or agreement to which this nation is a party and which has specific provisions for the invitation to tender and award of contracts.

Where it is necessary to prescribe implementing rules for procurement referred to in the preceding paragraph, the rules shall be prescribed by the responsible entity.

Article 106

Except otherwise prohibited by the treaties or agreements to which this nation is a party, a procurement conducted by an entity stationed abroad either for itself or as agent may be exempt from the provisions of the following sub-paragraphs in response to local circumstances or the constraint of local practices, provided that the ways to handle the matters referred to in the following sub-paragraphs 2 through 4 shall be specified in the tender documentation.

1. The publication on the Government Procurement Gazette under Article 27 hereof.
2. The bid bond and guarantee bond under Article 30 hereof.
3. The granting of priority in price reduction, and price reduction and comparison under paragraph one of Article 53 and Article 54 hereof.
4. The protest and complaint set forth in Chapter VI hereof.

Where a procurement referred to in the preceding paragraph is of a value reaching the threshold for supervision, a report explaining the reasons shall be submitted to the superior entity together with relevant documents for file afterwards.

Article 107

An entity shall, in addition to the documents kept pursuant to the requirements of the Accounting Law or other laws, keep a copy of the procurement documents at a place designated by the responsible entity.

Article 108

The central, municipal, and county (city) governments shall each establish procurement control unit(s) to monitor and supervise procurement affairs.

The rules governing the organization as well as the rules of operation of the control unit referred to in the preceding paragraph shall be prescribed by the responsible entity, and submitted to the Executive Yuan for approval and promulgation.

Article 109

For procurement conducted by an entity, an auditing entity may audit it at any time.

Article 110

The Controller of the Directorate-General of Budget, Accounting and Statistics, the Controller of the Ministry of Audit, or the Prosecutor of the Ministry of Justice may bring an action, join the parties of an action, or appeal on behalf of an entity for a procurement case.

Article 111

An entity shall report annually to the responsible entity the service condition and the efficiency analysis of a subject procured in a large procurement during the service period, and the responsible entity may send its personnel to inspect for verification.

The responsible entity shall have an annual efficiency analysis for the important procurement that have been done, and the outcomes shall be published on the Government Procurement Gazette except those shall be confidential.

Article 112

The responsible entity shall prescribe ethics codes for the procurement personnel.

Article 113

The implementation rules of this Law shall be prescribed by the responsible entity.

Article 114

This Law shall take effect one year after promulgation.

Note : In case of discrepancies between the Chinese version and this English version, the Chinese version shall prevail.



THAILAND

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Tendering Procedures in THAILAND

1. Overview of the Thai Economy

After over a decade of rampant growth which at times put strain on all sectors of the economy, Thailand saw its lustrous performance level off in 1997. Thai currency, Baht, started to devalue since July 2nd, 1997 by over 20% from 25 Baht to 30 Baht to the dollar and slipped further to 35 Baht to the dollar in August 22nd, 1997. During the last half of 1997, the baht continue to fall in value, and at one point in January 1998 fell to over 55 Baht to the dollar. In November 1997, only a year after replacing the Banharn Government, Prime Minister Chavalit was enduring criticism from all sides for poor performance in grappling with the crisis. In November 1998, former Prime Minister Chuan was able to form a new government. The financial crisis while easing slightly would require severe discipline to deal with effectively. Coupled with a big cut backs in Government spending, shrinking domestic demand, it was estimated that unemployment would be exacerbated by the negative growth facing the economy and over two million people would be out of job by the end of 1998.

Amidst the worst economic crisis, Thailand no exception, was also affected since late 1997. IMF's financial injection did help relax the financial strain and to ease the overall economic of the country. Thai government also tried to get financial loan from different sources, one is from Japanese government, the so call MIYAZAWA plan to inject a big amount of money, mainly to create job for those young, newly graduate from colleges and universities, and spending for small construction for rural development. A very slow recovery were in sight. The government gradually amended several laws and regulations to allow more easy in flow of foreign investment. The total economic figures release by the government agencies seem to

be positive more or less, but in fact, the real sectors show very little improvement. In 1997, the economic growth fell a little by -1.7%, but in 1998, a drastically drop of GDP by -10.2% with an unemployment rate of 4.4% or 1.423 million of people were out of work, and with a high inflation rate of 9.2%. Non Performing Loan for the whole financial system soared to a recorded high of 46.48% in the second quarter of 1999 ; the government's commercial banking contain a NPL as high as 70.23% in the same period.

The weakening of Baht helped increasing exporting sector and tourist induce from aboard, that create some surplus in the trade balance which made the foreign reserves look better. After a series of new laws and regulations were issued, as well as resolutions from the cabinet to encourage financial in flow, The GDP growth resumed again, with 4.2% in 1999, and expected to have another GDP growth of 2.5 ~3.0% in 2000.

1.1 Review and Outlook of Thai Construction Industry

The Thai construction industry started to grow since 1990 at the total volume of 441,612 million bahts. In 1991 construction growth as high as 21.71% ; the construction growth rate kept steady at an average of 12% from 1992 to 1996. However, in the later half of 1997, due to the economic melt down, a large amount of foreign debt were due at the same time in all Asian developing countries, Thailand also put on the list. Concurrent with a tremendous devalue of Baht currency, Thai economy was widely effected, construction industry also no exception, as construction industry is in the forefront of other industries. The construction business consecutively decreased by -21.42% in 1997, -28.93% in 1998 and -8.68% in 1999 with total construction volume of 464,435 million bahts, which is equivalent to construction volume in 1990. At present, there are still a lot of unfinished construction project, vacant housing and condominium ; offices and plants were closed down. Also a lot of contractors were gone out of business. The construction industry is still in wreck, it waits for a real economic recovery. Some estimated that it will take for another two year to resume in 2002. The Thai government has been trying hard and by closely consultation with Thai Contractors Association, the government has released a lot of laws and regulations to solve the problems in construction industry in both short term and long term. For short term measure, the government allowed the contractor to request for changing the contract condition, reduce The Value Added Taxes from 10% to 7% etc.

As private construction investment are tremendous reduced, the government are

trying to increase the expenditure on construction in order to create job and keep the economy go on, but the fact that large amount of foreign debt which are due and has to set up budget to repay for the debt is a big constraint on the government spending. The government expenditure on construction has been decreasing by -17.81% in 1998 and -1.65% in 1999. There is no concrete commitment by the government for the future of construction industry, except a few suggestion to restructure and review the whole construction industry to improve its technologies, efficiency and effectiveness for the next era.

The economic crisis totally changed the investment structure in construction industry. Before, most contractors are concentrated in private construction as it is more easy to deal and less burden on the government regulations and procedures. The ratio of private construction investment to government construction expenditure was 2:1 in 1995, but when the economic crisis came, this ratio was reversed and became 1:2, and even worst this ratio reduced to 1:3 in 1999.

The situation in 2000 are stand still, construction industry is no exception, same as other industries, it relied on the financial institutes. So far the financial institutes are still concentrated in solving for its large amount of non-performing loans which is as high as 50%. Most of non-performing loans are dealing with real estate and property market created by speculators, not real investors, which left a huge surplus in demand.

Table 1 give some basic statistic and data on economy both macro and micro, including construction output and foreign investment in construction, as well as the percentage of GDP in construction which is dropping from 7.46% in 1996 to 3.44% in 1999.

Table 2 give some main economic indicator, including GDP growth, main construction material's production, especially cement production, which produced only 25.354 million tons of cement in 1999 which is less than half of the production capacity of over 50 million tons per year. Record of construction permit is only 6.632 million square meters in 1999 comparing with 41.326 million square meters in 1991 and 36.786 million square meters in 1995. Housing unit built also dropped to 10,671 units comparing to 172,419 units in 1995.

Table 3 shows the construction investment in Thailand. In 1999, the construction investment is only 464,435 million bahts which is about half of the investment in 1996 which was 910,745 million bahts. Growth rate in construction investment was in minus since 1997. it was -21.42%, -28.93% and -8.68% in 1997, 1998 and 1999.

Table 4 shows the structures of construction investment. Since 1990, private construction investment on residential building was largest with about 60% of the

Table 1. Demographic and Economic Data

	1995	1996	1997	1998	1999
Population (millions)	59.460	60.116	60.816	61.466	61.662
Total Employee	30.815	31.166	31.714	30.775	31.055
Construction Employee	2.248	2.649	2.502	1.661	1.423
Total unemployment	0.550	0.498	0.495	1.423	1.383
Average Income for Const. Employee (Baht/year)	72,228	63,649	74,064	74,856	74,964
Prime Lending Rates: (%)					
Minimum Overdraft Rates(MOR)	15.75	15.75	15.75	12.00	8.50
Minimum Loan Rates(MLR)	15.25	15.25	15.25	11.50	8.25
Minimum Retail Rates(MRR)	15.50	15.50	15.50	12.00	8.50
Deposit Rates: (%)					
Saving Deposits	5.50	5.00	5.00	4.50	3.00
Time Deposits 12 months	10-13	10-13	10-13	6.00	4.25
Bond Rates: (%)					
State Enterprise 3-10 yrs.	14.00	14.50	14.90	7.25	6.50
Exports (Billion Baht)	1,406	1,411	1,506	2,248	2,214
Imports (Billion Baht)	1,763	1,832	1,924	1,774	1,907
Foreign Investment in Construction(Billion Baht)	1,126	2,489	9,232	10,758	3,226
Construction Output (Billion Baht) (Private Sector)	305.623	343.873	270.012	176.202	161.473
GDP (Billion Baht)	4,185.629	4,608.491	4,727.317	4,635.925	4,688.372
Percentage of GDP in Construction(%)	7.30	7.46	5.71	3.80	3.44

Source : NESDB

total private investment, in 1998 it declined with 50% for residential and 50% for non-residential which an amount of 60,000 million bahts each. On government construction spending, two-third of expenditure is in infrastructures such as highway, reservior, dams, bridges, airports, hydropower, watersupply and wastetreatment plant, etc. Ratio of private construction inveatment to government construction expenditure was 1.85:1 in 1995, the figure changed to 1:2.28 in 1999, with private investment of

Table 2. Main Economic Indicators

(unit : %)

	1994	1995	1996	1997	1998	1999	2000
GDP	4.688 ¹⁾	8.9	5.9	-1.7	-10.2	4.2	2.5-3
CONSUMPTION							
Private consumption	2.629 ¹⁾	13.75	12.61	4.47	-3.56	3.81	2-2.5
Government consumption	0.519 ¹⁾	16.54	13.22	1.31	5.69	3.70	2-2.5
INVESTMENT							
Private investment	0.541 ¹⁾	18.50	5.98	-27.68	- 43.51	-6.94	5-10
Government investment	0.457 ¹⁾	17.73	26.11	16.33	-18.38	2.50	10-15
MAJOR CONSTRUCTION MATERIAL							
Production of Cement	25.354 ³⁾	13.80	13.80	-4.2	- 38.8	+11.6	25-30
Production of Steel	1.227 ³⁾	32.60	5.20	1.5	33.8	12.1	5-10
BUILDING CONSTRUCTION							
Construction Permit	6.632 ³⁾	1.8	-27.3	-18.7	- 65.8	-10.9	5-10
Housing unit	10.671 ³⁾	0.7	3.3	12.8	56.1	83.3	20-30

Source : NESDB

1) Nominal price in trillion Baht.

2) Forecast by National Economic and Social Development Board (NESDB)

3) Million Tons

4) Construction Permit in Million Square meters in Thailand.

5) Housing Unit in Bangkok Metropolitan Area in Thousand units.

Table 3. Total Construction Investment

(Million Baht)

	1995	1996	1997	1998	1999
Private Construction	537,226	547,328	285,680	155,202	116,888
Government Expenditure	290,035	363,417	429,970	353,379	347,547
Total	827,261	910,745	715,650	508,581	464,435
Percentage Growth in Private Construction (%)	8.29	1.88	-47.80	-45.67	-24.68
Percentage Growth in Public Expenditure (%)	17.62	25.30	18.31	-17.81	-1.65
Total Growth (%)	11.39	10.09	-21.42	-28.93	-8.68

Table 4. Structure of Construction Investment

(Million Baht)

	1995	1996	1997	1998	1999
Private : (Total)	537,226	547,328	285,680	155,202	N.A.
Residential	285,744	288,023	133,802	62,131	N.A.
Non-residential	154,609	141,704	109,882	60,231	N.A.
Others	96,873	117,601	41,996	32,840	N.A.
Government : (Total)	290,035	363,417	429,970	353,379	N.A.
Residential	15,718	18,732	23,530	14,426	N.A.
Non-residential	68,939	88,276	80,989	74,413	N.A.
Others	205,378	256,409	325,451	264,540	N.A.
Total	827,261	910,745	715,650	508,581	464,435

Table 5. Government Investment on Infrastructures

	1997	1998	1999	2000
Investment (M.Baht)	313,226	286,240	287,693	300,000
Percentage of GDP(%)	6.6	6.2	6.1	6.5

Source : NESDB.

Table 6. National Plan for Infrastructure Investment between 2000~2006

	Number of Project	Investment (Million Baht)		Total (Million Baht)
		Government	Private	
Irrigation	15	101,907	-	101,907
Transportation	40	504,552	188,760	693,312
Communication	6	36,305		36,305
Utilities (Water&Waste)	16	108,432	4,260	112,692
Energy (Electricity)	16	132,499	-	132,499
Total	93	883,695	196,020	1,076,715

Source : National Economic and Social Development Board.

155,202 million bahts, while government spending in construction was 353,379 million bahts. A drop of 71.11% for private investment and an increase of 21.84% for government spending in construction occurred between 1995 and 1999.

Table 5 shows government's investment on infrastructures since 1997 to 2000. Table 6 shows Thai National Plan for infrastructure investment in total number of 93 project in different categories between 2000 to 2006 in the 8th National Economic and Social Development Plan with combined government and private investment of 1.077 trillion bahts.

1.2 The History of Thai Contractors Association

Thai Contractors Association is originated from 'The Engineering Association of Siam' which established in 1928 with the following policy:

- To promote and develop the scholar of technology and various science.
- To harmonize and up help intimate amongst engineers and members.
- To maintain engineers and member's prestige and behaviour.
- To utilize and facilitate the directorate's recommendations.

The first chairman of the Association was General HRH-prince Kamphang Phetch Akarayothin with 30 elected members. The Association was under his royal patronage by His Majesty The King Rama VII. In 1936, Thailand was ruled by new government under the new constitution, that the name of association was changed to 'The Engineering Association of Thailand' and later changed the name to 'The Contractors Association of Thailand'.

When the second world war was ceased, Thailand was then come to the renaissance and led to a new era of construction expansion widely, there were a lot of construction projects both in the metropolitan and provincial for development works. In 1965, The Thai Contractors Association was nominated as a regular member of The International Federation of Asian and Western Pacific Contractors Association (IFAWPCA) on the conference held in HongKong. This circumstance enabled The Thai Contractors Association had an opportunity to join the meeting international environment, exchanged expertise and work experience, and sought for mutual cooperation, to join as an international joint venture or consortium to tackle a larger complicated construction project.

In 1966, the government enacted a trade and business professional Act that effected to all private firms and associations. All have to registered themselves with the Trade Registration Department. In 1983, the name of the association was change again in

Thai as 'The Construction Industry of Thailand', and no change for the English name. At the same time, the objective of the association also drastically changed as follows;

Objective of The Thai Contractors Association

- To promote the contractual profession of all categories of construction works, so that it will be trusted by the government, organizations, corporations, companies, firms and individual, both local and overseas, in terms of technicalities, prices, quality and ethics.
- To enhance the knowledge of contractual construction profession for the advancement of both academic and administrative skills, by giving training, seminar and exchange of knowledge in the related field in construction, certifying academic degrees and works.
- To act as a coordinator between job owners both government and private and the contractors themselves.
- To organize and arrange social functions and activities entertainment, sports and games for members and their families and related construction professionals in order to uphold unity through social meeting.
- To carry out no political activities.

1.3 Recent Situation of Thai Contractors

During the past two years of economic crisis, and since the Bank of Thailand announced the new money exchange system which has negative impact on all sectors of industries including construction industry as well as trading business. The government has been trying hard to help and support the industry, especially in construction industry, many request has been sending to the government, such as the granting of time extension in the contract, change contract conditions, added advance payment in the contract, change of imported items to be local item in substitution as well as to urge for the promptly payment. However, the government granted only on some requests and to some certain extend, because most of the problems required time-consuming process for considering and resolution.

And Since 1998, the contractors offered their bids with 30-40 percent below the budget set up by the government some even worst, the bids down further to below 50 percent of the budget price, because it is the only way the contractors could keep their employees and machine plant moving. Consequently, the financial institutes do not trust the contractors and rolled out more strict measures which benefit larger and stronger companies. Some governmental departments even set up bidder

prequalification in order to eliminate small and medium companies. So it is the hard time for Thai contractors.

However, the Thai Contractors Association has tried their best to retain the existence and integrity of TCA by asking the government for additional assistant which is obviously not granted in a satisfactory level. TCA has also developed the working relationships with other trade organizations, associations, private sectors, both within and outside of the country, in order to support the correlated business activities. Besides, TCA also take part in being appointed by the government to be put in diffirent committee in the ministerial level, whose work are associated with and has direct effect on the construction business.

TCA has already drafted the Thai Constructor Act, and it will be proposed to the government to be pasted to the congress within an appropriate time. This Act will offer support to construction industry and business in a more advance professional development, promote higher technical and management skill in construction, in order to create the readiness of construction business for the free trade in which Thailand has had commitment with WTO.

At present, Thai Contractors Association have altogether 780 active member who paid the memberfee. Membership has been classified into 3 different categories as shown below;

Life Time Member	186	Companies
Regular Member	337	Companies
Associate Member 1	257	Companies

However, there are many contractor and subcontractor who did not applied for membership due to different reasons, some feel that only little contribution has been done by TCA for the benefit of the members, some contractors are living in a remoted area, so it is not very convenient for them to get involve or participate TCA' s activities. The estimated number of contractor and subcontractor for different trades all around the country is about 30,000 in number and with about 80 foreign contractors in Thailand right now.

1.4 Top Ten Contractors in Thailand(1999)

Belows are the potential Top Ten Contractors in Thailand listed in terms of construction volume in 1999.

- Italian-Thai Development Public Company Limited.
- Ch.Karnchang Public Company Limited.

- Sino-Thai Engineering & Construction Public Company Limited.
- Naowarat Pattanakarn Public Company Limited.
- Vichitbhan Construction Co., Ltd.
- Kamphangphet Viwat Construction Co., Ltd.
- R.N.C. (Thailand) Co., Ltd.
- Benjamas Co., Ltd.
- Thaiwat Engineering Co., Ltd.
- Krung Thon Engineering Co., Ltd.

2. Tendering and Contracting System

Tendering and contracting system are different between government agency and private enterprise, also for small and medium construction project, and large international mega project. No standard procedure for tendering and contracting were established yet. In government organizations, there are different procedures for tendering and contracting system, different practices and procedures from government agency to agency, and also different from ministry to ministry.

Tendering and contracting system for private enterprise are rather diversified and liberated; ranging from simply agreeing to complicated bidding procedures. However, all government procurement shall be conformed to Regulations of the Office of The Prime Minister on Procurement 1992 and the Amendments 1995, 1996, 1998 and 1999 which combined the Regulations of the Office of The Prime Minister on Procurement 1978 ; Regulations of the Ministry of Finance on Purchasing, Contracting for Works and The Engagement of Consultants under Projects Financial by External Loans 1984 . Regulations on Engagement of Design and Supervision of Building Construction 1978, and other Regulations relating to the procurement into one Regulation for the smooth operation.

In government tendering process, several committee are involved ; starting from Price Inquiry Envelop-Opening Committee, Bid Evaluation Committee, Committee in charge of Engagement of Consultant by Selection Method, Committee in charge of Contracting by Selection Method, Committee in charge of Contructing by Selection Method with Specific Terms.

Committee in charge of Procurement ‘CCP’ are composed of Permanent Secretary of Office of The Prime Minister as Chairman and 16 members representing from different government office, all appointed by The Prime Minister for a two-year terms.

The CCP has the following authorities:

- To interpret and make recommendation pertaining to the enforcement of these regulations.
- To consider the complaint in case that the government agency does not comply with these regulations.
- To propose the Cabinet for the alteration or improvement of these regulations.
- To set the price of materials and equipment procured.
- To set the classification or type of materials which are necessary to be purchased from abroad.
- To consider the report on contracting for engagement of consultant by direct negotiation method.
- To set up consultant's remuneration and criteria for advance payment.
- To set up criteria for fixing penalty rate between 0.01 ~ 0.20% of the cost of work.
- To set up criteria, guidelines and procedures as in the Stated Regulations.

2.1 Government Agency Bidding Procedure

Any government agency who requires making a pre qualification for contracting for works can be performed only in the case which necessitate limiting for the qualified bidders. The notice with the specification on criteria and selection method will be put up at a conspicuous place and shall be also submitted to the CCP. In proceeding the pre-qualification, the document concerning the pre-qualification shall contain at least the following details:

- Reason and necessity for the pre-qualification
- Type, money limits and details of the work to be contracted.
- The lowest qualification of bidder i.e. experience and work in the past ; capability concerning staffs, equipment and facilities; financial status, etc.
- Criteria for selection

In preparing a notice for invitation to pre-qualification, the notice at least shall contain the following descriptions:

- Specific details of works to be contracted.
- Experience of works in the same nature.
- Capability concerning staffs, equipment and plants.
- Financial status.
- General criteria.

- Place and Time where pre-qualification documents will be given out or sold.

In considering the pre-qualification of bidders and to carry out the bidding, the following committee shall be appointed.

- The pre-qualification inquiry envelop-opening committee.
- The price inquiry envelope-opening committee.
- The bid-accepting and bid-opening committee.
- The pre-qualification and bid evaluation committee.
- The committee in charge of the contracting for works by special method.
- The work inspection committee.

In bid evaluation procedure, in case of price quotation higher than the money limit, if the negotiation with that the lowest bidder first, or all other qualified bidders, is not more than 10% of the money limit, the committee can recommend to contract with such bidder.

2.2 Criteria for Bidding with Two or Three Proposals

For contracting for works which is necessary to consider on technology or the qualification of bidders and their proposals are not on the same basis which may be caused the problem on bid evaluation. It is stipulated for bidders to submit proposals separately as follows:

- Technical proposal and other proposals.
- Price proposal.
- Financial proposal i.e. the BOT contract, etc.

In evaluating the bid, the following procedure shall be performed:

- Consider the technical proposal and other proposals of every bidder and select only the bidders whose proposals are in the line or similar with the standard most required by government agency. Bidders may be invited to give additional explanation in details on their proposals, if necessary.
- Open the price proposals of only bidders selected as in (1) , and return the unopened price proposals and financial proposal (if any) to the bidders who are not selected.

For the contracting for works which permits the bidder to submit his financial proposal, the bidder has to submit it separately and the committee shall open the

financial proposal when price proposal is opened for evaluation and comparison. Method, procedures and criteria for consideration shall be also stipulated in the bidding document.

2.3 Authority for Contracting for Works

Authority for contracting for works by price agreeing method, price inquiring method and competitive bidding method, shall be that of the persons holding the following positions and within the following money limit:

- Head of government agency, not more than 50 million bahts.
- Permanent Secretary, not more than 100 million bahts.
- Minister of State, more than 100 million bahts.

Authority for contracting for works by special method shall be that of the persons holding the following positions and within the following money limit:

- Head of government agency, not more than 25 million bahts.
- Permanent Secretary, not more than 50 million bahts.
- Minister of State, more than 50 million bahts.

And for contracting for works by special case method, the head of government agency can place order for the contracting for works by special case method without the money limit.

2.4 General Provision for Procurement

The government agency has to carryout the procurement plan and follow step by step in accordance with Regulation of The Office of The Prime Minister on Procurement 1992 and the Amendments 1995, 1996, 1998 and 1999 and has to procure as planned.

Procurement procedure shall include:

- Procurement by openness and records of the implementations.
- Inspection of co-interest bidder or server.
- Proceeding in case that the bidder or server has an action impeding fair and free competition.

2.5 Purchasing and Contracting for Works

The government agency has to procure local products or materials and makes contract with Thai enterprises. Where The National standards for the materials exists. It should be specified in the contract.

The government agencies shall act on supervision and provide the support on purchasing of Local products and contracting with Thai enterprises.

2.6 Procedure on Purchasing and Contracting for Works

The purchasing or contracting for works may be carried out in any of the following 5 methods:

- Price agreeing (negotiating) method (not more than 100,000฿).
- Price inquiry (selective tendering) method (100,000 ฿ ~ 2,000.000฿).
- Competitive bidding (open tendering) method (more than 2,000,000฿).
- Special (limited tendering) method (urgent, secret service etc.).
- Special Case Method (by law or Cabinet' s resolution).

2.7 Framework of Prequalification of Contractors

- General description of the owner, funding sources, scope of work and general guidelines for the qualification procedure.
- Description of the works included the project location and description, the main components and approximate quantities of works.
- The bidding and tendering process and time frame.
- The owner' s rights.
- The criteria for qualification.

2.8 Evaluation Procedure

Information required for evaluation of applicants will be the following:

- Application for Pre-qualification as Tenderer.
- Joint Venture Statement (In case joint venture).
- Identification and Financial.
- Joint Venture' s Experience.
- Personnel and Equipment.

3. Registration System for Contractors

Different departments and authorities all having their own registration system for contractor, it depends on the nature and characteristic of works to be done, no such

The Ministry	Department & Authority under The Ministry
Office of the Prime Minister	Electricity Generating Authority of Thailand Office of National Police.
Ministry of Defence	Petroleum Authority of Thailand.
Ministry of Interior	Army, Navy and Air Forces various division. Public Works Department. Metropolitan Electricity Authority. Metropolitan Water Work Authority. Rural Development Department. Expressway Authority of Thailand. Provincial Electricity Authority. Provincial Water Work Authority. Housing Authority of Thailand.
Ministry of Communication	Department of Highway. Port Authority of Thailand. Air Port Authority of Thailand. Second Bangkok International Airport Authority. Telephone Organization of Thailand. Department of Harbour Railway Authority of Thailand.
Ministry of Agriculture and Cooperative.	Irrigation Department.
Ministry of Industrial.	Industrial Estate Authority of Thailand. Oil Refinery Authority of Thailand.
Ministry of Science & Technology.	Industrial Waste Treatment Authority.
Ministry of Education.	Department of Primary Education. Department of Vocational Education. Department of Teaching Education. (All department having their own construction division)
Ministry of Health.	Construction Division in The Department of Health Care.
Other Ministries.	Using service from private consultants under the appointed committee for each individual construction projects.

standard registration system are used. However, any registration system set up, it should not violate those laws, regulation issued by the Office of The Prime Minister on Procurement Acts and The Cabinet’ s resolutions. For example the Department of Public Works attached to Ministry of Interior has been classified construction work into different categories; there are Road Construction, Building Construction, Bridges Construction, Laying Water Supply & Waste Treatment Piping Works, Digging and dredging waterway works. Thailand, so far still did not have The Ministry of Construction. The construction divisions or departments are widely scattering in various ministry. For example ; The Department of Highway, Port Authority, Air-port Authority are attached to Ministry of Communication. Local roads are under the responsibility of Local Administration, like Greater Bangkok Metropolitan look after all road and bridge in Bangkok area. Rural road and Provincial roads construction are under the responsibility of Ministry of Interior as well as Metropolitan Electricity Authority and Bangkok Waterwork Authority are also under the responsibility of Ministry of Interior etc., Table shows the different department and the ministry attached.

4. Required Bonds and Insurance

According to the Regulations of the Office of the Prime Minister on Procurement, a tender or bidder must post bid bond, only the bidder who awarded the contract must also post the following bonds ; starting from contract bond, then the advance payment bond (if it allowed to have the advance payment for the contract) and finally the guarantee bond for the work done or the performance bond. Insurance clause is always put in the contact condition and cost to the contractor. Belows are some guideline of bond and insurance cost by some government agency:

Buy bidding document	→	5% of project cost.
Bid bond	→	5% of bidding amount.
Advance payment bond	→	10% of advance payment.
Performance guarantee bond	→	10% of contract amount for a period of twoyears
Accident liability insurance	→	0.1% of contract amount.
Third party liability insurance	→	0.1% of contract amount.



INFORMATION ON OTHER COUNTRIES

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Tendering Procedures in THAILAND

1. Overview of the Thai Economy

After over a decade of rampant growth which at times put strain on all sectors of the economy, Thailand saw its lustrous performance level off in 1997. Thai currency, Baht, started to devalue since July 2nd, 1997 by over 20% from 25 Baht to 30 Baht to the dollar and slipped further to 35 Baht to the dollar in August 22nd, 1997. During the last half of 1997, the baht continue to fall in value, and at one point in January 1998 fell to over 55 Baht to the dollar. In November 1997, only a year after replacing the Banharn Government, Prime Minister Chavalit was enduring criticism from all sides for poor performance in grappling with the crisis. In November 1998, former Prime Minister Chuan was able to form a new government. The financial crisis while easing slightly would require severe discipline to deal with effectively. Coupled with a big cut backs in Government spending, shrinking domestic demand, it was estimated that unemployment would be exacerbated by the negative growth facing the economy and over two million people would be out of job by the end of 1998.

Amidst the worst economic crisis, Thailand no exception, was also affected since late 1997. IMF's financial injection did help relax the financial strain and to ease the overall economic of the country. Thai government also tried to get financial loan from different sources, one is from Japanese government, the so call MIYAZAWA plan to inject a big amount of money, mainly to create job for those young, newly graduate from colleges and universities, and spending for small construction for rural development. A very slow recovery were in sight. The government gradually amended several laws and regulations to allow more easy in flow of foreign investment. The total economic figures release by the government agencies seem to

be positive more or less, but in fact, the real sectors show very little improvement. In 1997, the economic growth fell a little by -1.7%, but in 1998, a drastically drop of GDP by -10.2% with an unemployment rate of 4.4% or 1.423 million of people were out of work, and with a high inflation rate of 9.2%. Non Performing Loan for the whole financial system soared to a recorded high of 46.48% in the second quarter of 1999 ; the government's commercial banking contain a NPL as high as 70.23% in the same period.

The weakening of Baht helped increasing exporting sector and tourist induce from aboard, that create some surplus in the trade balance which made the foreign reserves look better. After a series of new laws and regulations were issued, as well as resolutions from the cabinet to encourage financial in flow, The GDP growth resumed again, with 4.2% in 1999, and expected to have another GDP growth of 2.5 ~3.0% in 2000.

1.1 Review and Outlook of Thai Construction Industry

The Thai construction industry started to grow since 1990 at the total volume of 441,612 million bahts. In 1991 construction growth as high as 21.71% ; the construction growth rate kept steady at an average of 12% from 1992 to 1996. However, in the later half of 1997, due to the economic melt down, a large amount of foreign debt were due at the same time in all Asian developing countries, Thailand also put on the list. Concurrent with a tremendous devalue of Baht currency, Thai economy was widely effected, construction industry also no exception, as construction industry is in the forefront of other industries. The construction business consecutively decreased by -21.42% in 1997, -28.93% in 1998 and -8.68% in 1999 with total construction volume of 464,435 million bahts, which is equivalent to construction volume in 1990. At present, there are still a lot of unfinished construction project, vacant housing and condominium ; offices and plants were closed down. Also a lot of contractors were gone out of business. The construction industry is still in wreck, it waits for a real economic recovery. Some estimated that it will take for another two year to resume in 2002. The Thai government has been trying hard and by closely consultation with Thai Contractors Association, the government has released a lot of laws and regulations to solve the problems in construction industry in both short term and long term. For short term measure, the government allowed the contractor to request for changing the contract condition, reduce The Value Added Taxes from 10% to 7% etc.

As private construction investment are tremendous reduced, the government are

trying to increase the expenditure on construction in order to create job and keep the economy go on, but the fact that large amount of foreign debt which are due and has to set up budget to repay for the debt is a big constraint on the government spending. The government expenditure on construction has been decreasing by -17.81% in 1998 and -1.65% in 1999. There is no concrete commitment by the government for the future of construction industry, except a few suggestion to restructure and review the whole construction industry to improve its technologies, efficiency and effectiveness for the next era.

The economic crisis totally changed the investment structure in construction industry. Before, most contractors are concentrated in private construction as it is more easy to deal and less burden on the government regulations and procedures. The ratio of private construction investment to government construction expenditure was 2:1 in 1995, but when the economic crisis came, this ratio was reversed and became 1:2, and even worst this ratio reduced to 1:3 in 1999.

The situation in 2000 are stand still, construction industry is no exception, same as other industries, it relied on the financial institutes. So far the financial institutes are still concentrated in solving for its large amount of non-performing loans which is as high as 50%. Most of non-performing loans are dealing with real estate and property market created by speculators, not real investors, which left a huge surplus in demand.

Table 1 give some basic statistic and data on economy both macro and micro, including construction output and foreign investment in construction, as well as the percentage of GDP in construction which is dropping from 7.46% in 1996 to 3.44% in 1999.

Table 2 give some main economic indicator, including GDP growth, main construction material's production, especially cement production, which produced only 25.354 million tons of cement in 1999 which is less than half of the production capacity of over 50 million tons per year. Record of construction permit is only 6.632 million square meters in 1999 comparing with 41.326 million square meters in 1991 and 36.786 million square meters in 1995. Housing unit built also dropped to 10,671 units comparing to 172,419 units in 1995.

Table 3 shows the construction investment in Thailand. In 1999, the construction investment is only 464,435 million bahts which is about half of the investment in 1996 which was 910,745 million bahts. Growth rate in construction investment was in minus since 1997. it was -21.42%, -28.93% and -8.68% in 1997, 1998 and 1999.

Table 4 shows the structures of construction investment. Since 1990, private construction investment on residential building was largest with about 60% of the

Table 1. Demographic and Economic Data

	1995	1996	1997	1998	1999
Population (millions)	59.460	60.116	60.816	61.466	61.662
Total Employee	30.815	31.166	31.714	30.775	31.055
Construction Employee	2.248	2.649	2.502	1.661	1.423
Total unemployment	0.550	0.498	0.495	1.423	1.383
Average Income for Const. Employee (Baht/year)	72,228	63,649	74,064	74,856	74,964
Prime Lending Rates: (%)					
Minimum Overdraft Rates(MOR)	15.75	15.75	15.75	12.00	8.50
Minimum Loan Rates(MLR)	15.25	15.25	15.25	11.50	8.25
Minimum Retail Rates(MRR)	15.50	15.50	15.50	12.00	8.50
Deposit Rates: (%)					
Saving Deposits	5.50	5.00	5.00	4.50	3.00
Time Deposits 12 months	10-13	10-13	10-13	6.00	4.25
Bond Rates: (%)					
State Enterprise 3-10 yrs.	14.00	14.50	14.90	7.25	6.50
Exports (Billion Baht)	1,406	1,411	1,506	2,248	2,214
Imports (Billion Baht)	1,763	1,832	1,924	1,774	1,907
Foreign Investment in Construction(Billion Baht)	1,126	2,489	9,232	10,758	3,226
Construction Output (Billion Baht) (Private Sector)	305.623	343.873	270.012	176.202	161.473
GDP (Billion Baht)	4,185.629	4,608.491	4,727.317	4,635.925	4,688.372
Percentage of GDP in Construction(%)	7.30	7.46	5.71	3.80	3.44

Source : NESDB

total private investment, in 1998 it declined with 50% for residential and 50% for non-residential which an amount of 60,000 million bahts each. On government construction spending, two-third of expenditure is in infrastructures such as highway, reservior, dams, bridges, airports, hydropower, watersupply and wastetreatment plant, etc. Ratio of private construction inveatment to government construction expenditure was 1.85:1 in 1995, the figure changed to 1:2.28 in 1999, with private investment of

Table 2. Main Economic Indicators

(unit : %)

	1994	1995	1996	1997	1998	1999	2000
GDP	4.688 ¹⁾	8.9	5.9	-1.7	-10.2	4.2	2.5-3
CONSUMPTION							
Private consumption	2.629 ¹⁾	13.75	12.61	4.47	-3.56	3.81	2-2.5
Government consumption	0.519 ¹⁾	16.54	13.22	1.31	5.69	3.70	2-2.5
INVESTMENT							
Private investment	0.541 ¹⁾	18.50	5.98	-27.68	- 43.51	-6.94	5-10
Government investment	0.457 ¹⁾	17.73	26.11	16.33	-18.38	2.50	10-15
MAJOR CONSTRUCTION MATERIAL							
Production of Cement	25.354 ³⁾	13.80	13.80	-4.2	- 38.8	+11.6	25-30
Production of Steel	1.227 ³⁾	32.60	5.20	1.5	33.8	12.1	5-10
BUILDING CONSTRUCTION							
Construction Permit	6.632 ³⁾	1.8	-27.3	-18.7	- 65.8	-10.9	5-10
Housing unit	10.671 ³⁾	0.7	3.3	12.8	56.1	83.3	20-30

Source : NESDB

1) Nominal price in trillion Baht.

2) Forecast by National Economic and Social Development Board (NESDB)

3) Million Tons

4) Construction Permit in Million Square meters in Thailand.

5) Housing Unit in Bangkok Metropolitan Area in Thousand units.

Table 3. Total Construction Investment

(Million Baht)

	1995	1996	1997	1998	1999
Private Construction	537,226	547,328	285,680	155,202	116,888
Government Expenditure	290,035	363,417	429,970	353,379	347,547
Total	827,261	910,745	715,650	508,581	464,435
Percentage Growth in Private Construction (%)	8.29	1.88	-47.80	-45.67	-24.68
Percentage Growth in Public Expenditure (%)	17.62	25.30	18.31	-17.81	-1.65
Total Growth (%)	11.39	10.09	-21.42	-28.93	-8.68

Table 4. Structure of Construction Investment

(Million Baht)

	1995	1996	1997	1998	1999
Private : (Total)	537,226	547,328	285,680	155,202	N.A.
Residential	285,744	288,023	133,802	62,131	N.A.
Non-residential	154,609	141,704	109,882	60,231	N.A.
Others	96,873	117,601	41,996	32,840	N.A.
Government : (Total)	290,035	363,417	429,970	353,379	N.A.
Residential	15,718	18,732	23,530	14,426	N.A.
Non-residential	68,939	88,276	80,989	74,413	N.A.
Others	205,378	256,409	325,451	264,540	N.A.
Total	827,261	910,745	715,650	508,581	464,435

Table 5. Government Investment on Infrastructures

	1997	1998	1999	2000
Investment (M.Baht)	313,226	286,240	287,693	300,000
Percentage of GDP(%)	6.6	6.2	6.1	6.5

Source : NESDB.

Table 6. National Plan for Infrastructure Investment between 2000~2006

	Number of Project	Investment (Million Baht)		Total (Million Baht)
		Government	Private	
Irrigation	15	101,907	-	101,907
Transportation	40	504,552	188,760	693,312
Communication	6	36,305		36,305
Utilities (Water&Waste)	16	108,432	4,260	112,692
Energy (Electricity)	16	132,499	-	132,499
Total	93	883,695	196,020	1,076,715

Source : National Economic and Social Development Board.

155,202 million bahts, while government spending in construction was 353,379 million bahts. A drop of 71.11% for private investment and an increase of 21.84% for government spending in construction occurred between 1995 and 1999.

Table 5 shows government's investment on infrastructures since 1997 to 2000. Table 6 shows Thai National Plan for infrastructure investment in total number of 93 project in different categories between 2000 to 2006 in the 8th National Economic and Social Development Plan with combined government and private investment of 1.077 trillion bahts.

1.2 The History of Thai Contractors Association

Thai Contractors Association is originated from 'The Engineering Association of Siam' which established in 1928 with the following policy:

- To promote and develop the scholar of technology and various science.
- To harmonize and up help intimate amongst engineers and members.
- To maintain engineers and member's prestige and behaviour.
- To utilize and facilitate the directorate's recommendations.

The first chairman of the Association was General HRH-prince Kamphang Phetch Akarayothin with 30 elected members. The Association was under his royal patronage by His Majesty The King Rama VII. In 1936, Thailand was ruled by new government under the new constitution, that the name of association was changed to 'The Engineering Association of Thailand' and later changed the name to 'The Contractors Association of Thailand'.

When the second world war was ceased, Thailand was then come to the renaissance and led to a new era of construction expansion widely, there were a lot of construction projects both in the metropolitan and provincial for development works. In 1965, The Thai Contractors Association was nominated as a regular member of The International Federation of Asian and Western Pacific Contractors Association(IFAWPCA) on the conference held in HongKong. This circumstance enabled The Thai Contractors Association had on opportunity to join the meeting international environment, exchanged expertise and work experience, and seeked for mutual cooperation, to join as an international joint venture or consortium to tackle a larger complicated construction project.

In 1966, the government enacted a trade and business professional Act that effected to all private firms and associations. All have to registrated themselves with the Trade Registration Department. In 1983, the name of the association was change again in

Thai as 'The Construction Industry of Thailand', and no change for the English name. At the same time, the objective of the association also drastically changed as follows;

Objective of The Thai Contractors Association

- To promote the contractual profession of all categories of construction works, so that it will be trusted by the government, organizations, corporations, companies, firms and individual, both local and overseas, in terms of technicalities, prices, quality and ethics.
- To enhance the knowledge of contractual construction profession for the advancement of both academic and administrative skills, by giving training, seminar and exchange of knowledge in the related field in construction, certifying academic degrees and works.
- To act as a coordinator between job owners both government and private and the contractors themselves.
- To organize and arrange social functions and activities entertainment, sports and games for members and their families and related construction professionals in order to uphold unity through social meeting.
- To carry out no political activities.

1.3 Recent Situation of Thai Contractors

During the past two years of economic crisis, and since the Bank of Thailand announced the new money exchange system which has negative impact on all sectors of industries including construction industry as well as trading business. The government has been trying hard to help and support the industry, especially in construction industry, many request has been sending to the government, such as the granting of time extension in the contract, change contract conditions, added advance payment in the contract, change of imported items to be local item in substitution as well as to urge for the promptly payment. However, the government granted only on some requests and to some certain extend, because most of the problems required time-consuming process for considering and resolution.

And Since 1998, the contractors offered their bids with 30-40 percent below the budget set up by the government some even worst, the bids down further to below 50 percent of the budget price, because it is the only way the contractors could keep their employees and machine plant moving. Consequently, the financial institutes do not trust the contractors and rolled out more strict measures which benefit larger and stronger companies. Some governmental departments even set up bidder

prequalification in order to eliminate small and medium companies. So it is the hard time for Thai contractors.

However, the Thai Contractors Association has tried their best to retain the existence and integrity of TCA by asking the government for additional assistant which is obviously not granted in a satisfactory level. TCA has also developed the working relationships with other trade organizations, associations, private sectors, both within and outside of the country, in order to support the correlated business activities. Besides, TCA also take part in being appointed by the government to be put in diffirent committee in the ministerial level, whose work are associated with and has direct effect on the construction business.

TCA has already drafted the Thai Constructor Act, and it will be proposed to the government to be pasted to the congress within an appropriate time. This Act will offer support to construction industry and business in a more advance professional development, promote higher technical and management skill in construction, in order to create the readiness of construction business for the free trade in which Thailand has had commitment with WTO.

At present, Thai Contractors Association have altogether 780 active member who paid the memberfee. Membership has been classified into 3 different categories as shown below;

Life Time Member	186	Companies
Regular Member	337	Companies
Associate Member 1	257	Companies

However, there are many contractor and subcontractor who did not applied for membership due to different reasons, some feel that only little contribution has been done by TCA for the benefit of the members, some contractors are living in a remoted area, so it is not very convenient for them to get involve or participate TCA' s activities. The estimated number of contractor and subcontractor for different trades all around the country is about 30,000 in number and with about 80 foreign contractors in Thailand right now.

1.4 Top Ten Contractors in Thailand(1999)

Belows are the potential Top Ten Contractors in Thailand listed in terms of construction volume in 1999.

- Italian-Thai Development Public Company Limited.
- Ch.Karnchang Public Company Limited.

- Sino-Thai Engineering & Construction Public Company Limited.
- Naowarat Pattanakarn Public Company Limited.
- Vichitbhan Construction Co., Ltd.
- Kamphangphet Viwat Construction Co., Ltd.
- R.N.C. (Thailand) Co., Ltd.
- Benjamas Co., Ltd.
- Thaiwat Engineering Co., Ltd.
- Krung Thon Engineering Co., Ltd.

2. Tendering and Contracting System

Tendering and contracting system are different between government agency and private enterprise, also for small and medium construction project, and large international mega project. No standard procedure for tendering and contracting were established yet. In government organizations, there are different procedures for tendering and contracting system, different practices and procedures from government agency to agency, and also different from ministry to ministry.

Tendering and contracting system for private enterprise are rather diversified and liberated; ranging from simply agreeing to complicated bidding procedures. However, all government procurement shall be conformed to Regulations of the Office of The Prime Minister on Procurement 1992 and the Amendments 1995, 1996, 1998 and 1999 which combined the Regulations of the Office of The Prime Minister on Procurement 1978 ; Regulations of the Ministry of Finance on Purchasing, Contracting for Works and The Engagement of Consultants under Projects Financial by External Loans 1984 . Regulations on Engagement of Design and Supervision of Building Construction 1978, and other Regulations relating to the procurement into one Regulation for the smooth operation.

In government tendering process, several committee are involved ; starting from Price Inquiry Envelop-Opening Committee, Bid Evaluation Committee, Committee in charge of Engagement of Consultant by Selection Method, Committee in charge of Contracting by Selection Method, Committee in charge of Contracting by Selection Method with Specific Terms.

Committee in charge of Procurement ‘CCP’ are composed of Permanent Secretary of Office of The Prime Minister as Chairman and 16 members representing from different government office, all appointed by The Prime Minister for a two-year terms.

The CCP has the following authorities:

- To interpret and make recommendation pertaining to the enforcement of these regulations.
- To consider the complaint in case that the government agency does not comply with these regulations.
- To propose the Cabinet for the alteration or improvement of these regulations.
- To set the price of materials and equipment procured.
- To set the classification or type of materials which are necessary to be purchased from abroad.
- To consider the report on contracting for engagement of consultant by direct negotiation method.
- To set up consultant's remuneration and criteria for advance payment.
- To set up criteria for fixing penalty rate between 0.01 ~ 0.20% of the cost of work.
- To set up criteria, guidelines and procedures as in the Stated Regulations.

2.1 Government Agency Bidding Procedure

Any government agency who requires making a pre qualification for contracting for works can be performed only in the case which necessitate limiting for the qualified bidders. The notice with the specification on criteria and selection method will be put up at a conspicuous place and shall be also submitted to the CCP. In proceeding the pre-qualification, the document concerning the pre-qualification shall contain at least the following details:

- Reason and necessity for the pre-qualification
- Type, money limits and details of the work to be contracted.
- The lowest qualification of bidder i.e. experience and work in the past ; capability concerning staffs, equipment and facilities; financial status, etc.
- Criteria for selection

In preparing a notice for invitation to pre-qualification, the notice at least shall contain the following descriptions:

- Specific details of works to be contracted.
- Experience of works in the same nature.
- Capability concerning staffs, equipment and plants.
- Financial status.
- General criteria.

- Place and Time where pre-qualification documents will be given out or sold.

In considering the pre-qualification of bidders and to carry out the bidding, the following committee shall be appointed.

- The pre-qualification inquiry envelop-opening committee.
- The price inquiry envelope-opening committee.
- The bid-accepting and bid-opening committee.
- The pre-qualification and bid evaluation committee.
- The committee in charge of the contracting for works by special method.
- The work inspection committee.

In bid evaluation procedure, in case of price quotation higher than the money limit, if the negotiation with that the lowest bidder first, or all other qualified bidders, is not more than 10% of the money limit, the committee can recommend to contract with such bidder.

2.2 Criteria for Bidding with Two or Three Proposals

For contracting for works which is necessary to consider on technology or the qualification of bidders and their proposals are not on the same basis which may be caused the problem on bid evaluation. It is stipulated for bidders to submit proposals separately as follows:

- Technical proposal and other proposals.
- Price proposal.
- Financial proposal i.e. the BOT contract, etc.

In evaluating the bid, the following procedure shall be performed:

- Consider the technical proposal and other proposals of every bidder and select only the bidders whose proposals are in the line or similar with the standard most required by government agency. Bidders may be invited to give additional explanation in details on their proposals, if necessary.
- Open the price proposals of only bidders selected as in (1) , and return the unopened price proposals and financial proposal (if any) to the bidders who are not selected.

For the contracting for works which permits the bidder to submit his financial proposal, the bidder has to submit it separately and the committee shall open the

financial proposal when price proposal is opened for evaluation and comparison. Method, procedures and criteria for consideration shall be also stipulated in the bidding document.

2.3 Authority for Contracting for Works

Authority for contracting for works by price agreeing method, price inquiring method and competitive bidding method, shall be that of the persons holding the following positions and within the following money limit:

- Head of government agency, not more than 50 million bahts.
- Permanent Secretary, not more than 100 million bahts.
- Minister of State, more than 100 million bahts.

Authority for contracting for works by special method shall be that of the persons holding the following positions and within the following money limit:

- Head of government agency, not more than 25 million bahts.
- Permanent Secretary, not more than 50 million bahts.
- Minister of State, more than 50 million bahts.

And for contracting for works by special case method, the head of government agency can place order for the contracting for works by special case method without the money limit.

2.4 General Provision for Procurement

The government agency has to carryout the procurement plan and follow step by step in accordance with Regulation of The Office of The Prime Minister on Procurement 1992 and the Amendments 1995, 1996, 1998 and 1999 and has to procure as planned.

Procurement procedure shall include:

- Procurement by openness and records of the implementations.
- Inspection of co-interest bidder or server.
- Proceeding in case that the bidder or server has an action impeding fair and free competition.

2.5 Purchasing and Contracting for Works

The government agency has to procure local products or materials and makes contract with Thai enterprises. Where The National standards for the materials exists. It should be specified in the contract.

The government agencies shall act on supervision and provide the support on purchasing of Local products and contracting with Thai enterprises.

2.6 Procedure on Purchasing and Contracting for Works

The purchasing or contracting for works may be carried out in any of the following 5 methods:

- Price agreeing (negotiating) method (not more than 100,000฿).
- Price inquiry (selective tendering) method (100,000 ฿ ~ 2,000.000฿).
- Competitive bidding (open tendering) method (more than 2,000,000฿).
- Special (limited tendering) method (urgent, secret service etc.).
- Special Case Method (by law or Cabinet' s resolution).

2.7 Framework of Prequalification of Contractors

- General description of the owner, funding sources, scope of work and general guidelines for the qualification procedure.
- Description of the works included the project location and description, the main components and approximate quantities of works.
- The bidding and tendering process and time frame.
- The owner' s rights.
- The criteria for qualification.

2.8 Evaluation Procedure

Information required for evaluation of applicants will be the following:

- Application for Pre-qualification as Tenderer.
- Joint Venture Statement (In case joint venture).
- Identification and Financial.
- Joint Venture' s Experience.
- Personnel and Equipment.

3. Registration System for Contractors

Different departments and authorities all having their own registration system for contractor, it depends on the nature and characteristic of works to be done, no such

The Ministry	Department & Authority under The Ministry
Office of the Prime Minister	Electricity Generating Authority of Thailand Office of National Police.
Ministry of Defence	Petroleum Authority of Thailand.
Ministry of Interior	Army, Navy and Air Forces various division. Public Works Department. Metropolitan Electricity Authority. Metropolitan Water Work Authority. Rural Development Department. Expressway Authority of Thailand. Provincial Electricity Authority. Provincial Water Work Authority. Housing Authority of Thailand.
Ministry of Communication	Department of Highway. Port Authority of Thailand. Air Port Authority of Thailand. Second Bangkok International Airport Authority. Telephone Organization of Thailand. Department of Harbour Railway Authority of Thailand.
Ministry of Agriculture and Cooperative.	Irrigation Department.
Ministry of Industrial.	Industrial Estate Authority of Thailand. Oil Refinery Authority of Thailand.
Ministry of Science & Technology.	Industrial Waste Treatment Authority.
Ministry of Education.	Department of Primary Education. Department of Vocational Education. Department of Teaching Education. (All department having their own construction division)
Ministry of Health.	Construction Division in The Department of Health Care.
Other Ministries.	Using service from private consultants under the appointed committee for each individual construction projects.

standard registration system are used. However, any registration system set up, it should not violate those laws, regulation issued by the Office of The Prime Minister on Procurement Acts and The Cabinet’ s resolutions. For example the Department of Public Works attached to Ministry of Interior has been classified construction work into different categories; there are Road Construction, Building Construction, Bridges Construction, Laying Water Supply & Waste Treatment Piping Works, Digging and dredging waterway works. Thailand, so far still did not have The Ministry of Construction. The construction divisions or departments are widely scattering in various ministry. For example ; The Department of Highway, Port Authority, Air-port Authority are attached to Ministry of Communication. Local roads are under the responsibility of Local Administration, like Greater Bangkok Metropolitan look after all road and bridge in Bangkok area. Rural road and Provincial roads construction are under the responsibility of Ministry of Interior as well as Metropolitan Electricity Authority and Bangkok Waterwork Authority are also under the responsibility of Ministry of Interior etc., Table shows the different department and the ministry attached.

4. Required Bonds and Insurance

According to the Regulations of the Office of the Prime Minister on Procurement, a tender or bidder must post bid bond, only the bidder who awarded the contract must also post the following bonds ; starting from contract bond, then the advance payment bond (if it allowed to have the advance payment for the contract) and finally the guarantee bond for the work done or the performance bond. Insurance clause is always put in the contact condition and cost to the contractor. Belows are some guideline of bond and insurance cost by some government agency:

Buy bidding document	→	5% of project cost.
Bid bond	→	5% of bidding amount.
Advance payment bond	→	10% of advance payment.
Performance guarantee bond	→	10% of contract amount for a period of twoyears
Accident liability insurance	→	0.1% of contract amount.
Third party liability insurance	→	0.1% of contract amount.



INFORMATION ON OTHER COUNTRIES

1. Background

Prior May 07, 1999 there was the so. Called AV-1941, a sort of conditions whenever one would like to work or to conduct construction projects one has to follow and obey conditions stated in AV-1941. Aside from that one still has to observe Articles stated in the Civil Law of year 1927.

AV-1941 could also be considered as manual/guidance to conduct a public work.

Period May 07, 1999 up to present.

After a struggle for more than 15 (fifteen) years, by the national contractors, finally a law on construction services i.e. Law no 18 year 1999 was promulgated by the government. This Law was effective as of May 07, 2000.

Points important to note:

- both contractor and owner should be professional.
- projects mandatory to be tendered.
- punishment and award apply.
- skilled and professional construction workers should be certified.
- and others.

2. Tender Procedures

Law no 18/1999 declared the creation of a strong and independent body which will

handle the work beforehand done by the government (national/regional). Such as RKKS or Registration, Classification, Qualification and Certification both the construction workers and construction companies. Projects either private or public mandatory to be tendered.

Nomination of contractors could be on:

- a public tender.
- limited tender.
- direct appointment.
- direct nomination.

PHILIPPINES

The Presidential Decree (PD) 1594 and its IRR are available at the PCA Website, www.philconstruct.com.

SINGAPORE(Guidelines for Tendering Procedure)

1. Checking of Tender Documents

1.1 Determine Scope of Work

Primarily from construction drawings and/or workshop drawings.

Countercheck with other contract documents such as specifications, bills of quantities, written instructions from consultants.

Breakdown the scope to; a trade for the entire project, for a whole floor and for a particular location.

1.2 Check for Discrepancies

Check with Tender and Contract Documents to ensure the scope of work remains consistent.

Between different consultants' drawings on construction detail.

Check practically and builtability of details

1.3 Usage of Materials

Types and sizes

Particular brand

Particular supplier or sub-contractor

1.4 Determine Quantity of Work

From Bills of Quantities
From construction Drawings
From Site Management
Reconcile and/or Finalize Quantities

1.5 Interfacing with Others

Preceding trades affecting the work
Subsequent trades affected by the work

1.6 General Considerations

Events beyond one's control, such as festive season, wet weather or shortages of workers or materials.

Site conditions
Constraint on schedule such as phase completion
Design inputs by contractor or sub-contractors
Provision of warranty.

2. Information Checklist for Submission of Tender

- Site Visit Report
- Extracts from Tender Documentation
- Pricing/Built-up Rate
- Basic Material Prices
- Basic Labour rates
- Preliminaries Pricing
- Equipment Schedule
- Site Facilities
- Site Management Team
- Site Layout Drawing
- Inquiry list
- Review Tender Drawings
- Sub-Contractors Quotation List

- Preliminary Construction Programme
- Construction Method
- Value Engineering
 - Improved alternative in design, materials, method, or cost

SRI LANKA

‘Guidelines on Government Tender Procedure : Part I Procurement Financed by Public Funds’ published by Ministry of Finance and Planning in 1997 has been received. The over 100 pages documentation describes details of tendering procedure in a transparent manner. Members of IFAWPCA are recommended to obtain the publication from the National Construction Contractors Association of Sri Lanka.