

CS-231

## Innovative Procurement System for Public Works

CTI Engineering Co., Ltd. Kenichi Abe

### 1. Reform of Public Work's Procurement System in Japan

From 1993-97, several Japanese delegations of officials, consultants and contractors visited Britain and collected cost data, published papers and references describing tendering and estimating systems, forms of contract etc. related to public works procurements. They also visited ministries and construction sites. Britain attendant criticized that the visitors from Japan worked hard, were polite and diligent, intelligently questioning every details, but there was never a hint of what was going on at home. The Central Council on Construction Contracting Business(CCCCB) submitted their three recommendations, i.e. "Recommendation on the Reforms of Bidding and Contracting Systems for Public Works" (herein after referred as "Recommendation") November 1992, December, 1993 and February 1998.

Transparent, Objective and Competitive procurement procedures was fundamental viewpoint of the "Recommendation" Dec., 1993.

In the "Recommendation", Following procedures were proposed to be adopted;

- (1) Technical proposal type competitive bidding system,
- (2) Technical proposal comprehensive evaluation system,
- (3) Comprehensive Design-Build contracting system.

Following two matters were required to be studied in due course;

- (1) Flexible arrangement of upper limit of Ceiling Price,
- (2) The works shall be awarded following on the Negotiation Procedure between the Client and Tenderers based on their technical and price proposals.

CCCCB also recommended that the government should adopt full-scaled open competitive procurement procedure. Restricted procedure has been continued more than 90 years for the public works procurement system in Japan. CCCCCB recognized that the Recommendation was aimed to propose drastic and historical reform for public procurement system and not partial reform.

In the Recommendation February 1998, OCCCCB proposed to improve bidding and contracting system. OCCCCB also recommended that the government should develop structural improvement of construction industry. The government administration has accepted and implemented "Recommendation" within the existing legislative system in Japan.

### 2. Innovation of Britain Procurement System of Public Works

Sir Michael Latham issued an interim report "Trust and Money" in December, 1993 and the final report "Constructing the Team" in July 1994 followed a year long review of the procurement and contractual arrangements in the UK construction industry. The final report contained 30 main recommendations and many more minor ones. Shortly after "Constructing the Team" publication, the Construction Industry Board (CIB) organized and 12 Working Groups were established to lead the implementation of the recommendations. Total 14 numbers of report had published by May 1997. Based on these reports, Construction related laws and regulations revised and standard form of contract also revised.

It has been made the harmonization with the EC Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts, which included Open procedures, Restricted procedures and Negotiated procedures with economically most advantageous offer assessed on the basis of profitability and time limit for completion and the lowest acceptable compliant tender. Thatcher and followed Major Administration had undertaken administrative and financial reform since 1979. The policies had been implemented to privatize national enterprises and to outsource public services shifting to "Small Government" by Financial Management Initiative. "Value for Money" concept had been developed for public procurement system, which expected to attain economy, efficiency and effectiveness of public services. Private Finance Initiative (PFI) introduced for transportation, health, prison and education projects. Since 1996, Highways Agency have implemented Design-Build-Finance-Operate (DBFO) projects. Blair Administration reviewed PFI and changed it to different name i.e. Public-Private-Partnership (PPP) initiative and is now implementing PPP to meet the requirements of the public.

---

Keywords: Reform of Bidding System, Innovating Contracting method, Administrative Reform  
9th Chuo Bldg. 4-9-11 Nihonbashi-Honcho Chuo-ku, Tokyo 103-8430, Japan

### 3. Administrative Reform and Innovative Contracting Method in USA

The Government Performance and Results Act (GPRA) of 1993 was enacted in January, 1993. GPRA includes 1) Strategic Planning, 2) Annual Performance Plans and Reports, 3) Managerial Accountability and Flexibility, 4) Pilot Projects. The National Performance Review (NPR) was also created by President Clinton in March, 1993. NPR is the Clinton-Gore Administration's initiative to reform the way of the federal government works. Its goal is to create a government that "works better and cost less." Based on these circumstances, Administrative reform and innovation has been expedited all over the federal and state governments.

Federal Acquisition Regulation (FAR) is the primary document of government procurement system. Every about 10 years, FAR revised substantially to meet the requirements of best acquisition practices. Vice president Gore, on the NPR report, recognized the deed for deregulation in the acquisition process and emphasized that the acquisition regulations should be rewritten to provide for empowerment and flexibility. According to the NPR report, the acquisition regulations should; shift from rigid rules to guiding principles; promote decision making at the lowest possible level; end unnecessary regulatory requirements; foster competitiveness and commercial practices; and shift to a new emphasis on choosing "best value" products. General Services Administration (GSA) Council tasked an ad hoc interagency committee to rewrite FAR Part 15, "Contracting by Negotiation" at the first priority in January, 1996. After public comment procedure, final rule of "Contracting by Negotiation" was published on the Federal Register on September 30, 1997 and effective for all solicitations issued on or after October 10, 1997. Other Parts of FAR are now under the review for improvement.

In another case, The Federal Highway Administration (FHWA) initiated Special Experimental Project (SEP) No.14 – Innovate Contracting Practices, in February, 1990. The task force SEP-14 of FHWA investigated for Bidding procedures and other areas. The objective of SEP-14 is to evaluate "project specific" innovative contracting practices, undertaken by State highway agencies, that have the potential to reduce the life cycle cost of projects, while at the same time, maintain product quality. Several "project specific" innovative contracting methods have been used and evaluated by the experience of highway agencies.

Proposed Bidding procedures under SEP-14 were as follows;

- 1) "Cost-plus-time bidding, referred to as the A+B method, involves time, with an associated cost, in the low bid determination. After a five-year evaluation period, A+B bidding method was declared operational on May, 1995
- 2) "Lane Rental" concept is to encourage contractors to schedule their work to keep traffic restrictions to a minimum, both in terms of duration and number of lane closures. After a five-year evaluation period, "Lane Rental" method was declared operational on May, 1995.
- 3) "Design-build" contracting allows the contractor maximum flexibility for innovation in the selecting of design, materials and construction. FHWA's present position is that Federal-aid funds may participate in design-build contracts when approved under SEP-14 and awarded using competitive bidding procedures.

Section 1307 of the Transportation Equity Act for the Twenty First Century of 1998 (TEA-21) requires FHWA to develop limited design-build regulations within 3 years of the date of enactment (June 9, 2001). Not later than 5 years after the date of enactment of TEA-21 (by June 9, 2003), FHWA shall submit to Congress a report on the effectiveness of design-build contracting procedures.

- 4) In August, 1995, FHWA published an Interim Final Rule (IFR) for "Warranty clauses" for projects on the National Highway System. The IFR states that warranty provisions shall be for a specific construction product or feature (for example pavement). The warranty regulation enforced in 1995. FHWA no longer requires the evaluation of warranties. Prior to rule making, several states participated in the evaluation of warranties under SEP-14 and now practiced in the more projects of State highway agencies.

### 4. Conclusion

Due to facing financial crisis and meeting the various requirements of the public, "Small Government Initiative" and "Effective Government Service Strategy" have been implemented since 1970's in U.K. and U.S.A. In these circumstances, review and reform of public works procurement have been inevitably required. The Government implemented the practices with newly enforced legislative system, i.e. Strategic Planning, Next Steps Reports(U.K.) and Accountability Reports(U.S.A.). Innovative contracting method was created and practiced in the public procurement procedure. In Japan, review and reform of the government structures and activities started in 1998. Reform of public works procurement still remains within the existing laws and regulations, official notices and guidelines. New legislative system should be established and innovative procurement system should be introduced.