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Construction Development Board

MANUAL - 2007

(REVISION 4)

MINISTRY OF WORKS & HUMAN
SETTLEMENT

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Foreword

The development of physical infrastructure in Bhutan began with the implementation of the First Five-Year Plan. Construction of motorable roads, for instance, started only in 1959 with the commencement of the Construction of the 179-km Phuentsholing-Thimphu Highway.

In the initial Plans Period, until about the 6th Plan, most of the infrastructure development projects were executed by the Government Departments as there was no private sector construction industry to shoulder this responsibility. In the late 1980's, the Royal Government of Bhutan started to encourage the development of the private sector, and thereby entrusting the responsibility for execution of infrastructure projects to the private sector construction industry. At present, almost all the infrastructure development projects are being executed through the private sector construction industry. The Royal Government is committed to build an efficient and quality based construction industry in the country.

To assist and support the private sector construction industry, a Construction Development Board (CDB) was instituted in 1987 as an independent inter-agency representative organization of the Royal Government with the unique mandate to act as overseer and promoter of the construction industry through the following:

- I. Policy Reforms;
- II. Classification, Categorization and Registration of Contractors;
- III. Assisting the private sector within the Construction Industry to implement fair competition;
- IV. Dispute Resolution through arbitration.

In 2001, the Construction Development Board revised its Manual of 1997 by outlining the roles and functions of the CDB. However, the concept of construction industry being fairly new in Bhutan, the CDB Manual had its shortcomings. The Manual served more like a registration Manual for contractors while the Board functioned like a registration body. With the rapid growth of the construction industry since 2001, the Manual became almost redundant. Despite the good intentions, many initiatives taken by CDB became subject to different interpretations because of the lack of clarity on the roles, functions and authorities of the Board specified in the Manual. An exercise was therefore initiated in 2007 to revise and update the CDB Manual to clearly define the roles, functions and authorities of the Board. Attempts have been made by CDB to separate the registration and other functions. Thus, the CDB Manual 2007 and the Registration Manual 2007 was prepared.

I sincerely hope that the CDB Manual 2007 and the Registration Manual 2007 would provide clear directions to both the Board and the CDB Secretariat in carrying out their functions of promoting and regulating the ever-growing construction industry. I also hope that these documents will prove to be useful reference documents for the construction industry.

Tashi Delek.

Kinzang Dorji
Zhabtog Lyonpo
March 2008

Definitions

Unless the context indicates otherwise, the singular shall include plural and masculine shall include feminine in the provisions of this manual.

"Bidder" means an eligible individual or legal entity who participates in a competitive bidding.

"Board" means the executive organ of the Construction Development Board constituted (formed) in accordance with the Procurement Manual 2007.

"Competent Authority" means the official authority authorized to approve various acts in the procurement process including contract awards, contract amendments, pre-qualification and bid evaluations as specified in the Manual.

"Collusion" means a secret understanding between two or more persons/parties for a fraudulent, illegal, or deceitful purpose.

"Construction Development Board" means the Board constituted in accordance with the provision of Section 2.3.3.1 of the Procurement Manual 2007.

"Construction Industry" means an industry encompassing all productive construction activities of infrastructures & different stakeholders involved in such activities.

"Consultant" means an individual or a legal entity entering into a contract to provide consultancy services in construction sector.

"Contract" means a formal agreement in writing entered into, between the procuring agency and the contractor on mutually acceptable terms and conditions, resulting from public procurement proceedings.

"Contractor" means an individual or a legal entity entering into or offering to enter into a contract in agreement to execute works/projects.

"Consultancy Services" means hiring of services provided by the firm/individual on a specialized expertise & skills as to prepare and implement a project, conduct training, provide technical assistance, conduct a research and analysis, work out a design and supervise the contract execution

"Engineer-in Charge" means a technical person or a consulting firm authorized/appointed by the employer to act as an engineer for the purposes of the contract and named as such in the contract.

"Employer" means the Public agency which enters into a contract with a contractor for execution of works for the public entity. The terms "procuring agency", "implementing agency" and "employer" are synonymous.

"Executive Director" means the person who shall function as the Head of the Secretariat of the Construction Development Board.

"Fronting" is the process by which a License Holder cedes all or virtually all of the risks & responsibilities and does not have any management control over the assigned work or establishment. The license holder simply functions as a commission agent or charges certain percentage of the business as service charge/commission.

"Procuring Agencies" means all ministries, departments, Dzongkhags/local public authorities and agencies of Royal Government of Bhutan and, or public enterprises which are majority owned by The

Royal Government of Bhutan as well as any other person or entity to whom public funds have been allocated for use in public procurement;

"Public Works" means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar and/or related services;

"Procurement" means the acquisition by procuring entities by any contractual means of public works, goods or services funded out of public funds.

"Registered Contractor" means any contractor who has registered with the CDB pursuant to fulfilling the competency requirements in the jurisdiction for which the registration is issued.

"Secretariat" means the administration and operational wing of the Board manned by the professional staff.

Abbreviations

AFD	Administration & Finance Division
CAB	Contractors Association of Bhutan
CDB	Construction Development Board
CDF	Construction Development Fund
DOL	Department of Labour
DOR	Department of Road
Dzongkhag	A District of Bhutan
HRD	Human Resource Division
MoF	Ministry of Finance
MoLHR	Ministry of Labour & Human Resources
MoWHS	Ministry of Works & Human Settlement
MoEA	Ministry of Economic and Affairs
MTNS	Manpower & Training Need Study
NITs	Notice Inviting Tenders
OIMS	Online Information Management System
PA	Personal Assistant
PPD	Policy & Planning Division
RBIA	Royal Bhutan Institute of Architect
RCSC	Royal Civil Service Commission
SPBD	School Planning & Building Division

CHAPTER I: INSTITUTIONAL MANDATE OF CDB

1.1 Introduction

The Construction Development Board (CDB) was established in 1987 as an independent interagency representative organization of the Royal Government of Bhutan with mandate to act as *promoter* and *overseer* of construction industry and to develop an *efficient & quality based* construction industry within Bhutan. The Procurement/Financial Manual empowers CDB to formulate its own working procedures for the administration of the construction industry related activities.

With the fast evolving changes in the governance and complexity of divergent work procurement practices, clear understanding of the role of CDB and its function and power to bring about accountability is of paramount importance for which purpose this 'Institutional Mandate' is developed to clearly spell out the same, as outlined in the following sections.

1.2 Purpose

This '*Institutional Mandate*' is developed in order to:

- 1.2.1 Define clearly the roles and functions of CDB and its Secretariat as the promoter, overseer and regulatory body for the construction industry with matching power in carrying out its activities with purpose and effect;
- 1.2.2 Accord clarity on the constitution of the Board, its representatives/ obligations and authority, keeping in mind the political change and the development needs;
- 1.2.3 Recognize CDB as an independent interagency representative organization of the Royal Government of Bhutan mandated to act as both overseer and promoter of the construction industry, with jurisdiction over all procuring agencies including local governments and the Secretariat as the implementing arm of the CDB; and
- 1.2.4 Bestow the Ministry of Works & Human Settlement to extend administrative support to the CDB Secretariat, as parent Ministry for the construction industry, without prejudice to CDB's independence.

1.3 Role

The CDB shall:

- 1.3.1 Act as promoter as well as regulator of the Construction Industry;
- 1.3.2 Act as bridging organization to take the roles of coordinator, facilitator and enabler to develop construction industry by mobilizing the efforts and resources of both public and private sector;
- 1.3.3 Assist the private sector in undertaking more expansive part in the industry through business, technology and manpower development;
- 1.3.4 Assist the government in obtaining increased returns on its investment through the promotion of an efficient and quality based construction industry;
- 1.3.5 Ensure fair and equal access to the award of contracts as well as treatment in the execution of contracts; &
- 1.3.6 Provide essential services to construction industry and to act as a catalyst to fulfill the needs of the industry.

1.4 Objectives

To promote, improve and streamline the growth and expansion of the construction industry to a level that is capable of producing and delivering high quality construction works, value for money and responsive to the national needs, amongst others:

- by *assisting* the private sector within the construction industry to implement fair competition;
- by *encouraging* and *facilitating* the effective use of best practices, enhance quality of constructions; and
- by *identifying* necessary construction skills and *assisting* and, where appropriate, *coordinating* the creation and improvement of skills training and certification programmes.

1.5 Functions

CDB's functions are, but not limited to, the followings:

1.5.1 Registration and Coordination

- 1.5.1.1 Administer registration, classification and monitoring of contractors (including international contractors who wish to work in Bhutan & Joint Ventures) including cancellation, suspension or reinstating their CDB registration to serve the procurement needs of government departments, statutory bodies and other public sector organizations;
- 1.5.1.2 Register construction personnel resources including engineers and architects, engineering & architectural consultancy firms towards enhancing professionalism;
- 1.5.1.3 Verify resources to ensure fulfillment of classification requirements of the contractors and consultancy firms;
- 1.5.1.4 Coordinate with private construction sector and Government institutions to promote a (public-private) partnership for construction industry development;
- 1.5.1.5 Maintain information on contracts awarded/completed with specific details of value, contract period and other details of the work;
- 1.5.1.6 Monitor quality of works delivered by contractors, undertake inspection & random checks on construction practices including fronting and collusion;
- 1.5.1.7 Review and investigate any disputes arising out of the legal status/false submissions/tampering of tender documents by contracting/consulting firm during the participation/award of contract works;
- 1.5.1.8 Create enabling environment for regional recognition of Bhutanese contractors & consultants;
- 1.5.1.9 Administration of institutional capacity and performance of the contractors; &
- 1.5.1.10 Conduct Workshops and meetings to address problem areas confronted by the construction industry, highlight any innovations and explain new rules and requirements as and when decided by the Board.

1.5.2 Technology Development

- 1.5.2.1 Promote the development, improvement and expansion of the construction industry in cooperation with appropriate agencies;
- 1.5.2.2 Promote in co-operation with appropriate institutes, the development of effective construction quality and improve construction technologies / techniques and materials;
- 1.5.2.3 Monitor and recommend improvements to the practices of procurement and contracting of works from time to time; &
- 1.5.2.4 Promote Research & Development into any matter relating to the construction industry in collaboration with relevant government/private organizations.

1.5.3 Dispute Resolution

- 1.5.3.1 Facilitate dispute resolution during the contractual & post contractual phases (pre-contractual procurement disputes shall be resolved by the Ministry of Finance in accordance to the Procurement Manual 2007);
- 1.5.3.2 Maintain an empanelment of Arbitrators;
- 1.5.3.3 Facilitate training & exposure for Arbitrators in resolving contractual disputes relating construction;
- 1.5.3.4 Review the procurement decisions and make necessary suggestions to the implementing agencies/contractors which shall be binding on all parties.

1.5.4 Data and Information

- 1.5.4.1 Collect and disseminate construction industry information and statistics required for planning, monitoring, and decision making;
- 1.5.4.2 Create information databank of Certified/Registered Contractors and Consultancy firms;
- 1.5.4.3 Promote IT in construction;
- 1.5.4.4 Provide online access to information on contractors, consultancy firms, architects/engineers; and tenders; &
- 1.5.4.5 Provide a ONE Window services on all NITs of the government.

1.5.5 Manpower Development

In co-operation with appropriate institutions:

- 1.5.5.1 Promote and facilitate the creation of certification and skills assessment programmes for engineers and other construction related manpower (other than skilled craftsmen which will be done by MoLHR)
- 1.5.5.2 Ensure speedy localization of manpower in Construction Industry through incentives and imposition of penalties;
- 1.5.5.3 Facilitate/Conduct appropriate refreshers courses for various level of technocrats, contractors & construction workers;
- 1.5.5.4 Conduct awareness programs and trainings in contractual requirements (e.g. contract administration), workshops to address problem areas and to highlight innovations;
- 1.5.5.5 Develop & promote technical and managerial skill within the private construction sector, in collaboration with relevant agencies.

1.5.6 Overseer of the Industry

As overseer for the industry, CDB shall carry out the following task across all government procuring agencies including corporation(s) in the following areas:

- 1.5.6.1 Plan the direction of the industry in collaboration with various agencies and construction industry players.
- 1.5.6.2 Address the pertinent issues and problems faced by the Industry.
- 1.5.6.3 Address procurement grievances relating to works (during & post contractual period). Grievances may include but not limited to unfair applications/interpretations of contract clauses.
- 1.5.6.4 Arbitrate contractual dispute of post contractual disputes including intervention during the ongoing execution phase.
- 1.5.6.5 Review of Policies affecting the Construction Industry for Amendment.
- 1.5.6.6 Formulate rules and policies geared towards enhancement of Bhutanese construction industry in collaboration with various agencies and construction industry players;

1.6 Authority

The Board shall have the authority to formulate its rules and regulations within the framework of the authority given to it by Chapter 17 (Procurement) of the Financial Manual 1988. The Board shall modify or amend the objectives and functions of CDB as and when necessary to meet the needs of the construction industry.

Since CDB is a cross-sectoral interagency represented by Appropriate Level Board Members, the CDB shall have powers to take decisions and enforce them on all matters related to construction industry. The decision of the CDB on all matters within its mandate shall be binding on all involved parties. Specifically, CDB shall exercise the following powers:

CDB shall have full authority to:

- 1.6.1 Physically verify the registration requirements of the contractors and consultants/consultancy firms at any time;
- 1.6.2 Upgrade, downgrade/suspend, blacklist & cancel the registrations of the contractors & consultants based on evidence of non-fulfillment of requirement/illegal/unethical practices;
- 1.6.3 Prescribe & conduct any pre-requisite fulfillments of individual contractors/consultants;
- 1.6.4 Investigate fronting / collusion practices and any unethical practices in the construction industry including demanding submission of any information to prove otherwise;
- 1.6.5 Review, recommend and enforce (including interventions such as reward & penalties etc. in Standard Bidding Document; national recognition schemes etc.) to encourage localization of manpower in the construction industry;
- 1.6.6 Inspect any on-going construction sites and make necessary enquires related to contract work with the site staff/in-charges in order to assess contractor's capacity & its performance;
- 1.6.7 Take immediate action at the site including suspension of the on-going activities if there is violation of any of the contractual clauses pertaining to quality and safety or violation of CDB norms;

- 1.6.8 Collect information pertaining to the construction industry;
- 1.6.9 Prescribe appropriate Design, Management & Monitory Systems & Software;
- 1.6.10 Give its assessments/judgment of procurement complaints which may nullify the decision of the implementing agency against whom the grievance has been made;
- 1.6.11 Facilitate arbitration cases during & post construction phases;
- 1.6.12 Facilitate/recommend the required training programmes of personnel of the construction industry;
- 1.6.13 Specify the technology development and research activities to the relevant stakeholders;
- 1.6.14 Facilitate partnership with research institutions & establishments of the region;
- 1.6.15 Represent the interests of the construction industry amongst various stakeholders;
- 1.6.16 Represent in any IMLTC as an observer;
- 1.6.17 Establish the Construction Development Fund and generate funds (upon becoming authority);
- 1.6.18 Take disciplinary action against contractors in very limited circumstances such as:
 - i. Fraudulent misrepresentation of any facts during the process of registration or classification purposes or during the process of procurement of works;
 - ii. Misappropriation of Government funds or property;
 - iii. Non-compliance with CDB norms, relevant laws and regulations of Bhutan;

1.7 Responsibilities

CDB shall be manned with staff of the highest level of integrity and professionalism entrusted with the responsibility of regulating and promoting the construction industry with special emphasis on the promotion of the private construction sector. By virtue of it being an interagency of the Royal Government, it shall also be responsible to address the pertinent issues faced by the construction industry, planning the direction of the construction industry and advice the government on aspects related to the formulation of relevant policies for the industry.

1.8 Institutional Set-up

CDB shall be an independent interagency organization of the Royal Government of Bhutan with mandate to act as both overseer as well as promoter of the construction industry. The institutional set-up of the CDB shall be as follows:

1.8.1 Board

The Board shall be represented by professionals / appropriate level of members of related Ministries, private sector representatives and other professionals as may be necessary, duly approved by the Government.

The Board shall be under the Chairmanship of Hon'ble Minister for Works & Human Settlement (MOWHS) and a Vice Chairman elected amongst the members by majority vote. The Executive Director of CDB shall be the Member Secretary.

The Board shall have the authority to appoint committees and observers comprising of competent members as and when necessary.

The Board shall from time to time review and approve the organizational requirements including its staffing requirements of the Secretariat.

1.8.2 Removal of Board Members

Board Members shall cease to be a Member if he/she:

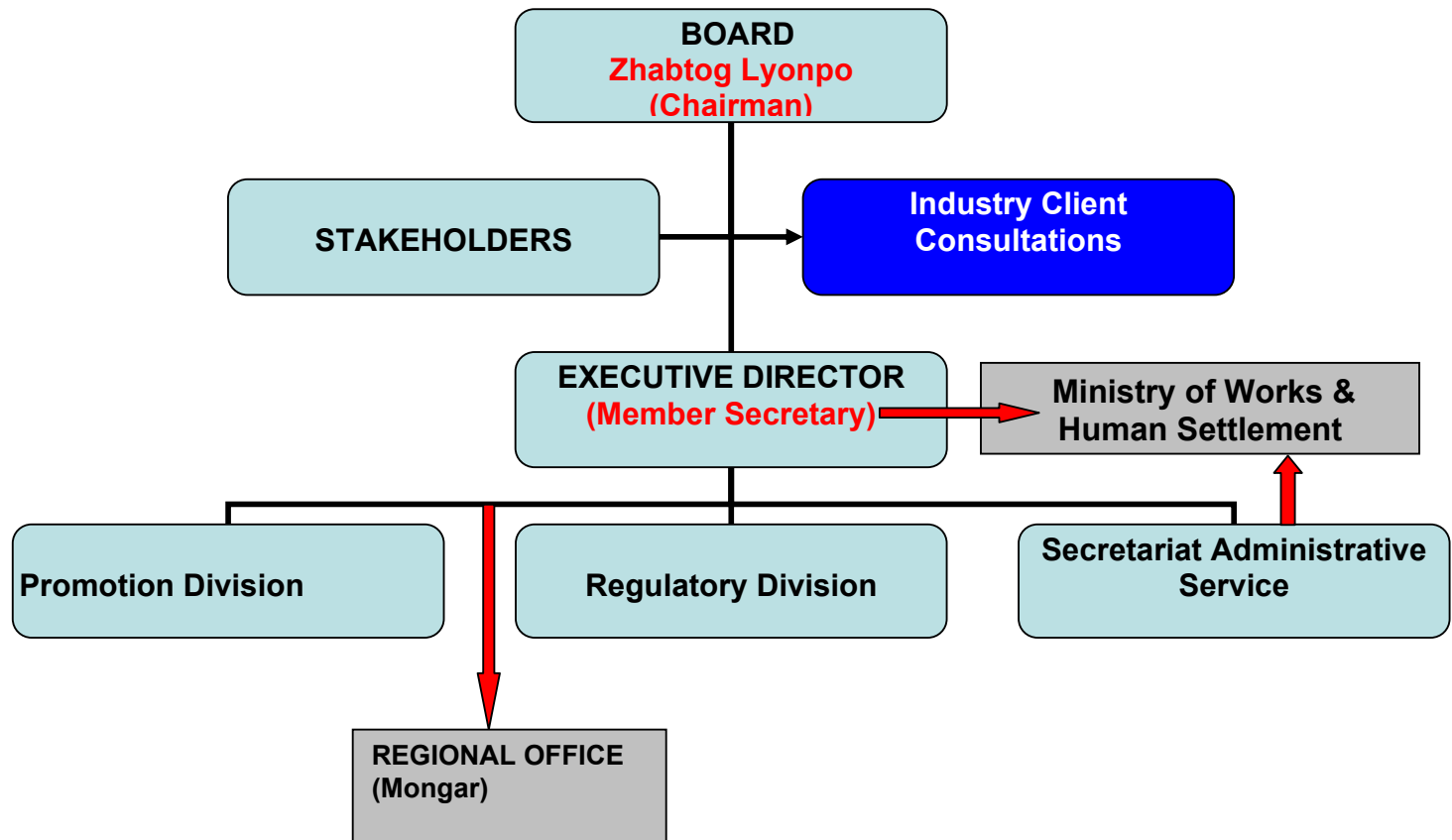
- i. Does not attend the Board Meeting for 3 (three) consecutive meeting;
- ii. Has leaked details of any remarks/sensitive discussions that take place in the Board Meeting;
- iii. Is implicated for any wrong doing in his/her regular duties of parent organization

1.8.3 Secretariat

The CDB shall have a Secretariat to implement its policy directives and decisions headed by the Executive Director/Director General, who shall be the Member Secretary to the Board. The Secretariat shall be responsible for all administrative and operational functions of the Board.

1.9 Organizational Structure of the Secretariat

The Board shall approve the constituents of the Secretariat to be established, including Regional Offices to meet the growing needs of the industry from time to time as may be necessary to carry out the assigned functions. In principle, the CDB Secretariat's organizational structure shall be as illustrated below:



1.10 Administration and Manpower

The CDB is governed by the current Government Rules and Regulation. The Secretariat shall develop procedures for performing its duties and functions which shall be approved by the Board. The CDB Secretariat shall be manned by civil servants and governed by the rules and regulations of the Royal Civil Service Commission. The Board shall recommend the manpower needs including HRD plan to the RCSC, through the MoWHS.

1.11 Budget & Finance

The budget requirement for the CDB Secretariat shall form a separate part of the MoWHS fiscal plan and therefore vest as the responsibility of the MoWHS AFD & PPD including custodian of the appropriations. The CDB Secretariat however shall provide its budgetary requirement estimates as per the norms administered by the Ministry's AFD/PPD in pursuance to the Financial Manual.

1.12 Construction Development Fund

The CDB shall initiate the establishment of a Construction Development Fund in order to support the development activities of the construction industry. Once the CDF becomes operational, the Board shall come out with comprehensive operational guidelines, which shall be the basis of its operation (*to be implemented once it becomes an authority*).

1.13 Statutory Requirement

The Board shall meet every quarter of a year, which date may be set by the Board during its meeting.

The Secretariat may also call extra-ordinary meeting of the Board for important matters of emergency nature, in consultation or as may be directed by the Chairperson.

1.14 Operational Policies and Guidelines

The Board shall have the authority to formulate rules and regulations for carrying out the functions and modify or amend the objectives and functions as and when necessary to meet the changing needs of the governance and the construction industry.

1.15 Applications

These provisions acquiring the status of rules & regulations shall apply to all government owned implementing agencies and the contractors & consultants involved in the construction contracting except where the Procurement Manual provides exemption to special cases in connection with procurement.

CHAPTER II: OPERATIONAL PROCEDURES OF CDB

2.1 Vision and Mission

Vision: An agency for promoting a robust and vibrant Construction Industry at par with the best in the region.

Mission: Development and promotion of an efficient, effective, quality based & corruption free Construction Sector enhancing healthy & competitive growth.

2.2 Strategies

The CDB's strategy is premised within its mandate and with utmost desire to optimize the contribution of the construction industry in meeting national construction demand, in promoting technological, social and economic development objectives, industry performance and competitiveness, and realizing better value of money to the clients.

The CDB shall undertake following main, but not limited to, activities to achieve its broad objectives as enumerated under section 1.5 of Chapter I of this manual. In particular, the following broad functions shall be undertaken:

- i. Provide "**industry support**" by assisting the private sector within the construction industry to develop and expand its market and to implement fair competition through policy reforms to ensure economy, efficiency and transparency in the industry;
- ii. Promote "**technology development**" by encouraging and facilitating the effective use of best practices, appropriate techniques of the construction and quality supplies and materials;
- iii. Launch "**awareness initiatives**" to apprise both the Contractors and Implementing Agencies of Rules and Regulations, Procurement Procedures, Safety and Health standards and Current requirements and services provided by CDB; and
- iv. Undertake "**manpower development**" by identifying necessary construction skills and assisting, where appropriate, coordinating the creation and improvement of skills training and certification programmes for the personnel involved who are active in the construction activities of the industry.

2.3 Organization

The CDB shall function under the umbrella of the Ministry of Works & Human Settlement. It shall consist of two institutions: (1) the Board comprised of the Board members and (2) the Secretariat, comprising permanent professional staff.

2.4 Division of Tasks:

The Board shall be the executive organ of CDB with authority to make policy decisions regarding the functioning and activities of CDB. It shall direct the Secretariat, which shall be responsible for the administrative and operational affairs of CDB. The Secretariat shall have the duty to report to the Board on its activities and, based on the construction industry information at its disposal, make recommendations to the Board for further action.

Subject to the detailed provisions set out below, the broad schematic division of tasks is as follows:

THE SECRETARIAT	THE BOARD
Day to day administration of the automated registration and classification system	Determination of complaints concerning classification and registration
Identification of problems with system and possible improvements	Decision on any improvements suggested by Secretariat
Compilation of construction industry statistics to be presented to the Members in an Annual Report	Approval of Annual Report and directions on dissemination
Secretariat of Construction Arbitration Committee and proposals for members of the List of Arbitrators	Approval of appointment to the List of Arbitrators and authority to appoint arbitrator in the event of the failure of the parties
Preparation of Agenda for Quarterly Meeting of Board Members relating to Secretariat activities	Quarterly meeting to assess activities of Secretariat and to approve activities for the following quarter
Preparation and submission of annual budget for the operation of CDB	Approval of annual budget for consideration by Ministry of Finance
Monitor and coordinate activities in the construction industry (as defined in Technology and Contract Support Development categories) according to the direction of the Board	Assess these activities and the results and give directions on further action. Assign tasks to Secretariat based on its report or at the initiative of the Members.
Liaise with any institutions involved in the above	Approve/facilitate liaison and direct further action
Advise Members on the above and initiate proposals for consideration, including draft circulars and interpretative documents to the construction industry	Approve direction of CDB and assign implementing tasks to the Secretariat. Approve and issue circulars and interpretative documents

2.5 The Board

The Board shall functions as the main decision making body of CDB. It shall comprise of eminent personalities of the important ministries and private sector representatives.

2.5.1 Board Members:

The Board shall consist of the following:

1. Zhabtog Lyonpo, Hon'ble Chairman
2. Secretary, MoEA
3. Secretary, MoWHS
4. President, CAB
5. Director/ Director General, DoL
6. Director, DOR
7. Joint Director, SPBD
8. Dy. Director, MoF
9. Representative from Classes A & B contractors
10. Representative from Classes C & D contractors
11. Executive Director, CDB as Member Secretary

2.5.2 Meeting Schedule

The Board shall meet as and when necessary to deal with matters arising but shall, at least, hold a quarterly meeting in a year. The Secretariat shall propose and circulate the agenda for the meeting at least one week prior to meeting except where urgent matters are to be considered. The first meeting of each year shall, in addition to dealing with its usual business, (1) consider and approve for dissemination, the Annual Report of the CDB, prepared by the Secretariat on the basis of information received pursuant to this Manual, relating to the previous year's activities in the construction industry and (2) review the Secretariat's annual financial statement and pass the budget proposal for the subsequent year for consideration by the Ministry of Finance.

2.5.3 Quorum

Two thirds of the Board members are required to constitute the decision-making powers of the Board at any given meeting. If the representative of a member agency is unable to attend, the agency shall appoint an alternate officer of equal rank to participate in decision making. In the event that a representative of equal rank is not available, the proposed alternate officer should be only one rank lower than the permanent representative.

2.5.4 Decision making

All issues for the Board's consideration shall be decided by a simple majority of votes of the members who attend the Board Meeting. In the event of a tie, the Chairperson shall cast the deciding vote. Decisions are not required to be reconfirmed at any subsequent meeting.

2.5.5 Minutes of Meetings

The Head of the Secretariat shall be the secretary of the Board and he/she shall be responsible for preparation of minutes of the meetings. The minutes of the meetings shall be circulated by the head of the Secretariat and, following incorporation of the comments of the Board members, approved by the Chairperson of that meeting. The minutes shall be circulated to all members of the Board. Records of meetings including minutes shall be maintained by the Secretariat.

2.5.6 Notification of Decisions

Parties affected by Board decisions shall be notified promptly. Notification may include mailing or by fax, publication in Media or announcement in Radio/News Channel or by any other means, as appropriate.

2.5.7 Code of Conduct

Members of the Board and employees of the CDB Secretariat shall maintain a strict code of proper conduct, act without any prejudice and shall not make improper use of their position.

2.5.8 Term of Office

The term of office of the Board members representing private sector/contractors shall be 2 years.

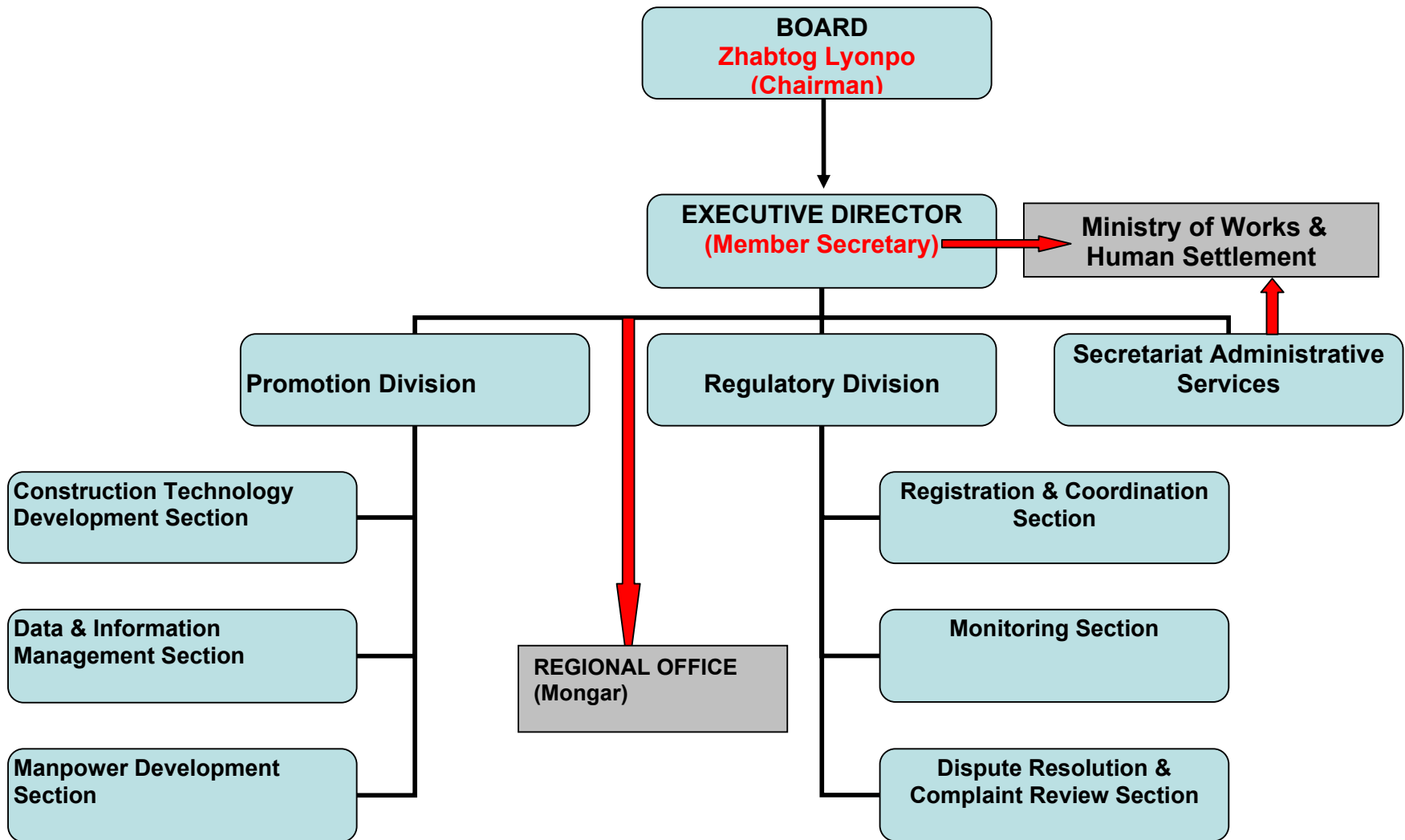
2.6 The Secretariat

The CDB shall have a Secretariat, which shall be responsible for all of the administrative and other operational functions of CDB as mentioned in the Institutional Mandate (Chapter I).

Notwithstanding the Secretariat's role as coordinator, facilitator and enabler of Construction Industry, its ability to effectively carry out these tasks for the benefit of Bhutan's construction industry will be dependant on its staffing levels.

2.6.1 Organization of the Secretariat

The CDB Secretariat shall consist of three Divisions headed by Executive Director who shall be of PCS EX-3 level and above. The Organizational Structure of CDB Secretariat is as shown below:



The Secretariat shall, in the initial stage, consist of the following Divisions & Sections:

(I) The Secretariat Administration Division will be headed by the Executive Director

The Secretariat shall have a Personal Assistant, Adm. Assistant, a Dispatcher, a Driver(s) & a Sweeper/caretaker.

The Executive Director of the Secretariat shall be responsible for all administrative and operational duties, functions and activities of CDB. The Executive Director shall be supported by the following Divisions:

(II) Regulatory Division shall be headed by Chief Regulatory Officer and shall have the following sections under its arm:

- a) Registration & Coordination Section
- b) Monitoring Section
- c) Dispute Resolution & Complaint Review Section

The principal responsibilities of the Registration & Coordination and Monitoring Sections are:

- i. Registration, classification and monitoring of consultants, contractors/consultancy firms, JV, International firms who desire to work in Bhutan and architects/engineers, monitoring their performance, and maintaining their list based on their capacity, capabilities and performance;
- ii. Establishing qualification criteria for each category, verifying fulfillment of classification requirements and taking appropriate actions including downgrading or de-classifying firms as appropriate;
- iii. Coordinate with private sector and Government institutions to promote a (public-private) partnership for construction industry development;
- iv. Organizing coordination meetings with relevant stakeholders;
- v. Updating registration procedures and preparing awareness workshops, seminars, and training programs in coordination with relevant stakeholders to apprise contractors, engineers, and architects on registration and performance evaluation systems and their functions;
- vi. Collecting and disseminating useful construction industry information derived from the systematic collection of construction data;
- vii. Carry out performance assessment of construction firms and take appropriate actions;
- viii. Register contract/project works with specific details of value, contract period and other details of the work;
- ix. Check quality of works delivered by contractors; undertake inspection & random checks on construction practices in the on-going construction sites;
- x. Review and investigate any fronting/collusion disputes arising out of the legal status/false submissions/tampering of tender documents by contracting/consulting firm during the participation/award of contract works;
- xi. Create enabling environment & initiatives for regional recognition of Bhutanese contractors & consultants;
- xii. Administration of institutional capacity and performance of the contractors;
- xiii. Conduct Workshops and conferences to address problem areas, highlight innovations and explain requirements and procedures; and

- xiv. Support the Executive Director on matters related to Board Meetings including preparation of reports, agenda and recording of proceedings, taking follow up actions of the decisions;

Dispute Resolution & Complaint Review Section shall be headed by a Legal Officer:

The principal responsibilities of the Dispute Resolution Section are:

- i. Establishing a procedure for dispute resolution including identification of respected professionals to participate in reviewing claims by either Client or contracted entities and to render a decision regarding any dispute or difference;
- ii. Conducting awareness workshops in coordination with relevant agencies, to apprise contractors of their rights and obligations under the construction contract including roles of the parties, record keeping and correspondence;
- iii. Performing administrative functions related to arbitration and settlement of disputes and complaint review including appointment of arbitrators in accordance with approved procedures.
- iv. Support the Executive Director on matters related to National Arbitration Committee Meeting including review of case and preparation of reports, agenda and recording of proceedings, taking follow up actions of the decisions;

(III) Promotion Division shall be headed by a Chief Engineer and shall have the following sections under its arm:

- a) Construction Technology Development Section
- b) Data & Information Management Section
- c) Manpower Development Section

The principal responsibilities of the Manpower & Technology Development and Data & Information Management Sections are:

- i. Promoting in cooperation with other appropriate institutes, the development of quality in the construction industry;
- ii. Monitoring the state of the art in construction and design technology in consultation with SQCA and promoting the use of appropriate construction technologies;
- iii. Monitor and recommend improvements to the practices of procurement and contracting of works from time to time;
- iv. Promote Research & Development into any matter relating to the construction industry in collaboration with relevant government/private organizations in areas of appropriate technologies & building materials; construction mechanization, seismic considerations etc;
- v. Promote IT in construction;
- vi. Provide online access to information on contractors, consultancy firms, architects/engineers; and tenders;
- vii. Provide a ONE Window services on all NITs of the government;

- viii. Collecting and disseminating industry information and statistics as well as planned long term construction programs of government and Private Sector agencies;
- ix. Preparing awareness workshops, seminars, and training programs in coordination with appropriate agencies to apprise contractors, engineers, and architects of appropriate technologies, industry best practices and quality assurance measures being employed in the Bhutan construction industry;
- x. Operate, improve and maintain CRPS;
- xi. Establish and maintain list of registered contractors, consultancy firms, architects, engineers and such other information as directed by the Board;
- xii. Support other Section in matters related to maintenance and operation of CRPS and the proposed OIMS;
- xiii. Establishing a programme for recognition of excellence in the Bhutanese Construction Industry including coordination of an annual "Construction Excellence Award";
- xiv. Developing an Online Information and Monitoring System (OIMS) application to allow updating of CRPS, **Posting with required safeguards reports generated through CRPS**, tender notices and tender documents and other information such as job opportunities, Downloading of selected documents;
- xv. Organizing the preparation of a Manpower and Training Needs Study (MTNS) to estimate the market for the domestic construction industry over the next five years to include equipment, material and human resource requirements as well as a training needs assessment for both the Government and Private Sectors to meet this demand;
- xvi. Promote and facilitate the creation of certification and skills assessment programmes for engineers and other construction related manpower (other than skilled craftsmen which will be done by MoLHR);
- xvii. Ensure speedy localization of manpower in Construction Industry through incentives and imposition of penalties (by means of provisions in the Standard Bidding Documents but not limited to such initiatives only);
- xviii. Facilitate/Conduct appropriate refreshers courses for various level of technocrats, contractors & construction workers;
- xix. Conduct awareness programs and training in contractual requirements (contract administration);
- xx. Develop & promote technical and managerial skill within the private construction sector, in collaboration with relevant agencies; and
- xxi. Managing Regional Offices in Monger.

(IV) Regional Office

The Regional Office shall be head by Executive Engineer:

The principal responsibilities of the Regional Office are:

- i. Represent the CDB in the regions providing service to contractors as required in accordance with the CDB mandate;
- ii. Collect, review and assist contractors in the preparation of documentation required for registration in CDB;
- iii. Input contractor registration data into the OIMS after it becomes operational;
- iv. Coordinate and conduct as appropriate awareness workshops and seminars developed by CDB; and

- v. Check quality of works delivered by contractors; undertake inspection & random checks on fronting, collusion and construction practices in the on-going construction sites.

2.7 Registration of Contractors

As mandated by the Financial Manual 1988, the CDB shall establish and maintain the List of Registered Contractors which shall be divided into a number of classes and categories of works based on the financial capacity, technical capability and past experience. The registration system is a system of formal pre-qualification and is not limited to a particular contract. Proof of enrolment on CDB's Registration System should constitute a presumption of overall suitability, unless proved otherwise, and should qualify contractors to participate in the bidding within the range of their class and category of works.

2.8 Registration System

The CDB has developed the System for Classification, Categorization and Registration of Contractors. Only CDB registered contractors are eligible for obtaining contract license from the Ministry of Economic and Affairs.

The registration of contractors, re-registration, upgrading to various classes and any matters related to contractors registration shall be carried out strictly in accordance with the principles and procedures incorporated in the System. All Ministries/Departments/Dzongkhags and their procuring agencies, whenever they resort to the use of registered contractors, are required to use these Registered Contractors according to their classification and categories in the execution of public sector works.

2.9 Registration/Classification Disputes

In the event that a contractor disputes his/her registration or classification by the Secretariat, he shall submit a written petition, giving full reasons for his/her disagreement, to the Secretariat and addressed to the Chairperson of the CDB.

The Board shall have full power to make a final decision on the registration and/or classification of the contractor submitting such a petition. In reaching their decision, the Board may, as the circumstances dictate, either

- (i) Delegate the decision to the Chairperson and one or more Board members; or
- (ii) With the agreement of the contractor and at the cost of the contractor, nominate one member of the Panel of Arbitrators to sit as an Adjudicator and to provide his opinion on the matter.

The decision of the Board shall be final.

2.10 Contractors' Records and Contractors' Performance

- (i) Contractors' Records

The CDB shall maintain complete information on contractors including their work history and performance. Details of the contractor's on-going works should also be available on its data sheet so as to

advise the procuring agency concerned whether a further contract should be awarded to this contractor or not.

The consideration of performance in the contractor registration requires CDB to track contractor's performance. To track contractor's performance requires data about each contract awarded to each contractor and the evaluated performance of the contractor for that contract. CDB has developed contracts reporting practices and procedures which cover activities from the bidding stage to the completion of works for that particular contract. CDB requires this information not only for the purposes of recording a contractor's work history but also in order to produce significant statistical data for the further development of the national construction industry.

All Ministries/Departments/Dzongkhags and their procuring agencies shall provide to the CDB Secretariat the requested information in the standard form, as appropriate, regularly and as soon as the relevant reporting stage is reached.

(ii) Contractor's Performance

The CDB shall introduce the practice of assessing contractor's performance on a regular basis and the information shall be recorded in the contractor's history and also used for the improvement of the contractor's performance and quality works. The purpose is twofold:

- (a) To identify problem areas encountered by contractors with a view to improvement and
- (b) To identify contractors who demonstrate good or poor performance.

Those with a poor performance history will be identified by a poor track record, open for inspection and those with a good performance history may be rewarded by, for example, in the case of the direct contract procedure, ensuring that contracts are awarded to contractors demonstrating consistently good performance or, in case of a limited tender, ensuring that only contractors with a good performance history are listed.

The Guidelines for the Assessment of Contractor's Performance is developed to provide a uniform assessment system for all procuring agencies of the Government in the evaluation of contractor performance. The procedures established in the Guidelines shall be followed in the assessment of contractor performance.

2.11 Registration of Consultants

The CDB shall maintain a register of Consultants who wish to provide consultancy services in Construction Industry and only those who are registered with CDB shall be permitted to practice consultancy services in Bhutan. At this initial stage, a very simple registration system is operated which will provide information about a consultant's financial strength, manpower and technical qualifications, equipment and facilities to perform the services, past experience in different engineering fields etc. in order to help distinguish consultants' capacity. However, the CDB does not presently plan to use the registration system as a classification system to assess a consultant's capacity to perform specific work. It will be left to the procuring agencies to use this information, along with the reported details of past works, in their evaluation of potential consultants.

The CDB has developed the Simple Registration System for Consultants, which is provided in the Registration Manual 2007. Only licensed consulting firms or individuals shall be eligible for registration. The registration shall be carried out strictly in accordance with the principles and procedures incorporated in the System.

2.12 Arbitration and Settlement of Disputes

Disputes arising from the implementation of the provisions of a contract in the construction industry should first be sought to be settled by way of negotiations between the parties in order to arrive at an amicable settlement. Only if negotiations fail, should the parties have recourse to other mechanisms of dispute settlement, in the courts or by way of arbitration.

The CDB, in its capacity as "*a bridging organization between the private and public sectors*" and pursuant to its original mandate, offers itself as a neutral third party in dispute settlement. It does this by providing an optional service to all participants in the construction industry for the resolution of contractual disputes. Such disputes may be between one or more contractors; contractors and their sub-contractors; contractors and Government agencies; and between joint venture partners. The system is not mandatory but is provided solely for the benefit of participants in the construction industry as a speedy and effective means of resolving disputes. To adopt this system of dispute resolution, contractual parties may either insert an appropriate clause in their contracts or, following a dispute, submit the dispute by agreement to arbitration.

To this end, the CDB has developed a System for Arbitration that which is described in the "**Rules and Procedures of the Construction Arbitration Committee**". All requests for arbitration shall be processed and disputes shall be resolved in accordance with the provisions of these Rules and Procedures.

CDB does not arbitrate disputes itself; it merely facilitates the selection of qualified arbitrators by the parties themselves through the establishment of an independent and competent panel of Arbitrators (membership of which is open and transparent) and provides a mechanism by which such a selection may be made. CDB further provides a formalized mechanism and procedure by which the arbitration takes place through the provision of simple forms to be completed by the parties which will set in motion a procedure which is clear and well-defined, enabling all parties to have full confidence in the system.

The administrative tasks of the Construction Arbitration Committee and all clerical matters arising out of the conduct of arbitrations shall be carried out by the CDB Secretariat and expenses therefore shall be paid to CDB according to the fees prescribed in the Rules. All other costs of the arbitration will be borne by the parties in accordance with the decision of the arbitrators.

2.13 Construction Industry Information

Given the country's need for good and reliable statistics about its construction industry for continued development, CDB will collate all useful statistics derived from the systematic collection of construction contract data. Since this contract data is required by the Contractor Registration System to determine the work history of contractors, it is ideal that the CDB also assume the responsibility for collecting and disseminating this industry data.

The system provided for above will produce the following types of industry information:

- (i) Total number & value of contracts awarded and completed annually in each sector of the industry
- (ii) Distribution of contract works among contractors
- (iii) Distribution of contract works among different classes of contractors;
- (iv) Industry manpower statistics
- (v) Average cost/duration ratio of contracts
- (vi) Bid/win ratio of selected contractors
- (vii) Common problems found in submitted bids

- (viii) Increases/decreases in the number of construction works and each sector
- (ix) Common problems found in the completion of construction works
- (x) Delays in construction works and common causes for delays
- (xi) Cost overruns in construction works and common causes

The CDB shall, in addition, specifically collect the following types of data:

- Basic contractor information;
- Contract bid information, including particulars about bidding, bidding procedures, name & types of contractors participate in bidding contractors and outcome of the bid evaluation;
- Contract award information, including details about the contract awarded, including start/end dates, costs and parties involved; and
- Contract performance data.

The CDB Secretariat shall produce useful construction industry information under the guidance of the Board and shall circulate to selected information to the relevant ministries, departments and Dzongkhag administrations to keep them updated on the latest construction performance.

2.14 Contractor Incentives and Penalties

2.14.1 Performance Incentives

The CDB shall draw up a list of those contractors whose track record has been consistently satisfactory over the previous 2 years. Procuring entities, based on the provision on the Procurement Manual, may decide that only such contractors shall be eligible for:

- (i) Direct contracting works to be let by Government agencies; and/or
- (ii) Inclusion on a list of bidders to be invited to submit tenders for contracts in a limited bidding procedure to be let by Government agencies; and
- (iii) Participation in a pre-qualification procedure initiated by Government agencies.

2.14.2 Disciplinary Action

CDB Powers

Disciplinary action may still be necessary against contractors in very limited circumstances:

- (i) Fraudulent misrepresentation of any facts during the registration or classification process or during the process of procurement of works;
- (ii) Misappropriation of Government funds or property;
- (iii) Non-compliance with CDB norms, relevant laws and regulations of Bhutan.

In such cases, the CDB may, after submitting a reasoned opinion based, where appropriate, on a decision of a Court or Arbitration Tribunal, and depending on the severity of the contractor's offence:

- (i) issue an appropriate warning letter to the contractor

- (ii) Suspend the contractor's registration for a period of between 6 months and 2 years
- (iii) Suspend the contractor's registration indefinitely.

2.14.3 Procedure

Any Government agency that claims that a contractor has committed any of the offences detailed above shall report the nature of its complaint in writing to the CDB Chairperson. The CDB Secretariat shall investigate the complaint and provide a full report to the CDB. Before assessing the claim and before recommending any penalties against the contractor to the CDB, the Secretariat shall:

- (i) give a fair chance to the contractor to present his explanations and defense against the complaint;
- (ii) in the event that a contractual or other dispute arising out of the same subject-matter has been submitted to a competent judicial or arbitral authority, the decision of such authority shall be treated as final and binding.

CHAPTER 3: RULES & PROCEDURES OF THE ARBITRATION COMMITTEE

SECTION I: General Provisions

Article 1 Purpose

The purpose of the Construction Arbitration Committee shall be to provide a readily available and competent forum for the speedy and efficient resolution of disputes arising within the construction industry in Bhutan between one or more contractors, contractors and their sub-contractors and between contractors and employers.

Article 2 Lists of Arbitrators

- a. To this end, the Construction Development Board shall prepare a list of appropriately qualified and impartial (independent) arbitrators possessing high degree of integrity from whom the parties submitting their disputes for arbitration under these rules may select the arbitrator/arbitrators who will constitute the Arbitral Tribunal (of one or three).

[NOTE: For small value cases a sole arbitrator should be adequate.]

- b. The List of Arbitrators, together with their relevant qualifications, shall be open to inspection at the offices of the Construction Development Board and a copy of such list shall be sent to all interested parties upon request.

Article 3 Submission to Arbitration

Arbitration shall be initiated only with the agreement of the parties in dispute. Such agreement may take two forms:

- a. a valid clause inserted in the contract in dispute which provides for the resolution of disputes by way of the Construction Arbitration Committee pursuant to the model clause contained in Appendix 1 appended hereto; or
- b. a valid separate agreement or a written understanding between the parties that any or all disputes related to the specific construction contract shall be arbitrated through the Construction Arbitration Committee;
- c. A request by the person seeking arbitration (“the Claimant”) for arbitration under these rules submitted to the Construction Development Board which is accepted by the person against whom the request for arbitration is submitted (“the Respondent”).

Article 4 Secretariat

(1) The business of the Construction Arbitration Committee and all clerical matters arising out of the conduct of arbitrations under these rules shall be carried out by a Secretariat operated (administered) by the Construction Development Board. In particular, all requests for arbitration, acceptance of arbitrations and subsequent communications shall be addressed to the Construction Arbitration Committee at the Secretariat unless otherwise specified (in the contract).

(2) Copies of all relevant forms to be used under these provisions shall be available for collection at the offices of the Construction Development Board and a copy of such forms shall be sent to all interested parties upon request.

Notice, Communication and Calculation of Time of Limit:

(i) For the purpose of these Rules, all notifications from the Secretariat or Arbitral Tribunal shall be made to the last address of the party and is deemed to have been received if it is physically delivered or sent through registered post, courier, fax or any other means of communication that would provide record of sending and delivering thereof.

(ii) For the purpose of these Rules, the specified time shall start to run on the day following the date of notification or communication is received. If the first day and the last day of period of time is an official holiday, the period of time shall commence and expire on the first following and at the end of the following business day respectively.

Article 5 Representation

A party may appear in person or may be represented by persons of their choice. The names and the addresses must be communicated in writing to the other party and the Arbitral Tribunal.

Section II: Request for Arbitration

Article 6 Request

- a. The Claimant or Claimants requesting for arbitration under these Rules shall submit the following documents to the Secretariat together with the fee required in accordance with the Schedule of Administrative Fees stated in Appendix 2, appended hereto
- b. A written request for arbitration in the form provided for on Form CAC01;
- c. A certified copy of the document evidencing the agreement between the parties, which forms the subject matter of the arbitration under these Rules;
- d. A reference to the arbitration clause or the separate arbitration agreement that is invoked;
- e. Certified copies of contract in connection to which the dispute arises and any other documentary evidence relied upon in support of the claim set out in the request for arbitration;
- f. A description of the nature and circumstances of the dispute giving rise to the claim(s) and the statement of the relief or remedy sought;
- g. A list of witnesses of fact and expert witnesses intended to be called to give oral evidence;
- h. Where the request is made by an agent of the Claimant, an appropriate power of attorney should be furnished;
- i. Preference for sole arbitrator or by a Tribunal of three, if not already agreed upon.

Article 7 Receipt

- a. The Secretariat shall verify that the Request is in conformity with the provisions of Article 6 and, where the request is based on an arbitration clause inserted in the contract in dispute, that the said clause or provision of a separate agreement between the parties to refer the dispute to arbitration is sufficient to establish the jurisdiction of the Construction Arbitration Committee (a valid clause or an agreement).

- b. Where the Secretariat is satisfied that the conditions of the preceding paragraph are met, it shall record receipt of the Request in the Register of Arbitrations and assign it a Case Reference Number.
- c. Upon recording receipt, the Secretariat shall immediately notify the Respondent or Respondents of the Request and include with the notice a complete copy of the Request.
- d. The date upon which the notification is made shall be the operative date.
- e. Any Request found not to be in conformity with paragraph 1 above shall be rejected and returned to the Claimant with the reasons for rejection. The Claimant may then re-submit its corrected Request.

Article 8 Reply

Within 15 days of the operative date, the Respondent or Respondents shall submit to the Secretariat a Reply containing the following documents:

- a. A written Reply to the claim contained in the Request for arbitration in the form provided for in Form CAC02;
- b. Where the Request is not based on an arbitration clause inserted in the contract in dispute or on a separate agreement, an indication, as required on Form CAC02, of whether the Respondent accepts to seek resolution of the dispute in accordance with these rules;
- c. Comments on the nature and circumstances of the dispute giving rise to the claim and the its response to the relief sought and on preference for sole arbitrator or by a Tribunal of three, if not already agreed upon;
- d. Certified copies of any documentary evidence relied upon in support of the Reply;
- e. A list of witnesses of fact and expert witnesses intended to be called to give oral evidence;
- f. Where the Reply is made by an agent of the Respondent, an appropriate power of Attorney.

Note: Based upon the complexity of the case or due to force-majeure or any other special conditions, the Committee may extend the time limit for submission of the Response/Counterclaim for a period not exceeding 15 days.

Article 9 Counterclaim and Response

- a. Where the Respondent seeks to make any Counterclaim to the claim made in the Request, it should describe the nature and circumstances of the dispute giving rise to the Counterclaim and the relief sought and submit it in the Reply on the Form CAC02;
- b. Where a Counterclaim has been made, the Secretariat shall immediately forward such Counterclaim to the Claimant who shall be given a further 10 days period in which to submit its Response;
- c. The parties shall supply with the Response and Counterclaims, if any, all documentary evidence relied upon in the support of the Counterclaim or Response;
- d. Preference for a Sole arbitrator or by a Tribunal of three.

Article 10 Registration

- a. Following receipt of the Reply and, where applicable, the Counterclaim, the Secretariat shall verify that the Request is in conformity with the provisions of Article 8. Following which it shall register the commencement of the arbitration procedure in the Register of Arbitrations.
- b. Where the Secretariat is satisfied that the conditions of the preceding paragraph are met or, where applicable, following the receipt of a Response to Counterclaim, it shall register the commencement of the arbitration procedure in the Register of Arbitrations. (Response to counterclaims is not necessary to register the case)
- c. The date of registration shall be the date of commencement.
- d. At the date of registration, the Secretariat shall ensure that all parties have been provided with copies of the Request, Reply and, where appropriate, the Counterclaim and Response, if any.

Article 11 Default Award

- a. Where the Request for arbitration is based on a valid arbitration clause inserted in the contract in dispute and where the Respondent or Respondents fail to submit a Reply within the specified or extended time limit, the Secretariat may proceed with the appointment of an Arbitral Tribunal composed of a sole arbitrator, within 15 days of the operative date.
- b. The Arbitral Tribunal shall, if it is satisfied that the Request was duly served on the Respondent or Respondents and the party has failed to serve a Reply without good cause, have power to proceed with the arbitration and such proceedings shall be deemed to have been conducted in the presence of all parties.
- c. The Secretariat shall inform the Respondent or Respondents of the appointment of the Arbitral Tribunal and of the date of the hearing.
- d. If, following the operative date, the Respondent or Respondents seek to submit a Reply or Counterclaim or to make representations before the Arbitral Tribunal, such Reply, Counterclaim or representations shall be received by the Arbitral Tribunal only where, in the opinion of the Arbitral Tribunal:
 - i. the Respondent or Respondents show good cause for their delay;
 - ii. The Respondent or Respondents comply strictly with any directions given by the Arbitral Tribunal with regard to the subsequent conduct of the arbitration.

Article 12 Acceptance of Arbitration

1. Where the establishment of the Arbitral Tribunal is subject to the acceptance of the Respondent or Respondents pursuant to Article 3(ii) and no such acceptance is given within the relevant time limit, the Secretariat shall record the absence of acceptance in the Register of Arbitrations and mark the arbitration as non-acceptable.
2. The non-acceptance of the arbitration shall be notified to the Claimant or Claimants forthwith.

Section III: Appointment of the Arbitral Tribunal

Article 13 Qualification

1. All arbitrators shall be appointed by the parties failing which by the Committee, from among those qualified and competent arbitrators appearing on the List of Arbitrators established by the Construction Development Board.
2. If the parties appoint arbitrator(s) not listed with CDB, parties or a party shall forward the CVs of the arbitrator(s) so appointed to CDB and make a request for confirmation in accordance with Article 16 of these Rules.
3. Every arbitrator appointed must be and must remain independent of the parties to the arbitration.
4. No arbitrator having a beneficial interest in the case under arbitration or any financial relationship with either party shall sit as an arbitrator in that case.
5. Before appointment, a prospective arbitrator shall disclose in writing to the Secretariat, which shall provide a copy to the parties, any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence or impartiality in the eyes of the parties and the parties shall be given the opportunity of commenting upon the facts or circumstances within a time limit fixed by the Secretariat.
6. The obligation of paragraph 4 above is a continuing obligation on the arbitrators appointed. They are required to disclose immediately to the Secretariat any such facts or circumstances which arise between the date of arbitrator's appointment and notification of the final award.
7. Each arbitrator is under a continuing duty to keep confidential all information either written or oral disclosed during the arbitration proceedings.

Article 14 Number

1. The number of arbitrators shall be either 1 or 3.
2. Where the establishment of an Arbitral Tribunal is made by the agreement of the parties by way of a valid clause inserted in the contract in dispute which provides for the resolution of disputes by way of the Construction Arbitration Committee pursuant to the model clause contained in Appendix 1 appended hereto, the number of arbitrators and the method of selection shall be made according to the provisions of that agreement.
3. Where the establishment of an Arbitral Tribunal is the result of a request by the Claimant or Claimants under these rules which is accepted by the Respondent or Respondents, the number of arbitrators shall be the number agreed upon by the parties.
4. Where, pursuant to sub-paragraph 3 above, the parties cannot agree on the number of arbitrators within 10 days of the date of commencement, the number of arbitrators shall be 1.
5. In the case of the preceding paragraph, when one of the parties has requested the appointment of 3 arbitrators and the Secretariat, in consideration of the nature of the case, finds this request to be appropriate, the number of arbitrators shall be 3.

Article 15 Method of Appointment

1. Where the parties have agreed to appoint 1 arbitrator or where 1 arbitrator is to be appointed pursuant to Article 14.4, the parties shall appoint 1 arbitrator by mutual agreement.

2. If the parties fail to make the appointment within 10 days of the date of commencement, the Secretariat shall make the appointment taking into account, wherever possible, the intentions of the parties. (The time limit of 10 days, provided for in 14.4 has to expire to take action by the Secretariat. The period would therefore start at the expiry of 10 days from commencement i.e. 20 days)
3. Where the parties have agreed to appoint 3 arbitrators, each party shall nominate their chosen arbitrator in their Request or Reply, respectively. The parties shall also nominate a second choice arbitrator in the event of either (1) the unavailability of their first choice or (2) a challenge to their first choice. The third arbitrator, who shall also act as Chairman of the Arbitral Tribunal, shall be appointed by the common agreement of the two arbitrators appointed by the parties.
4. Where the arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within 10 days of the date of (appointment of last of the two arbitrators), the third arbitrator shall be appointed by the Secretariat within a further 5 days.
5. In the case of Article 14.5 above, the parties shall be given 15 days from the date of commencement in which to appoint their chosen arbitrators. In the event of the failure of either or both parties to make the appointment, the Secretariat shall make the appointment of the arbitrator on behalf of the party or parties. Those arbitrators shall, by common agreement, appoint the third arbitrator. The provisions of paragraphs 3 and 4 apply to the selection of the third arbitrator.
6. Where there is more than one Claimant or Respondent and where 3 arbitrators are to be appointed, the Claimants or Respondents shall by common agreement jointly appoint a single arbitrator on behalf of the said Claimants or Respondents, respectively. In the event of failure to reach common agreement, the arbitrator shall be appointed by the Secretariat.

Article 16 Confirmation of Appointment

1. The appointment of all arbitrators shall, where the appointment is not made by the Secretariat, be notified to the Secretariat, which shall record the confirmation of the Arbitral Tribunal in the Register of Arbitrations.
2. Confirmation of the arbitrators shall be notified forthwith to the parties.
3. The date of confirmation of the Arbitral Tribunal in the Register of Arbitrations shall be the effective date of the arbitration proceedings.
4. In the event of challenge pursuant to Article 17 below, the effective date shall be the date upon which the appointment of the replaced arbitrators is confirmed.

Article 17 Challenge

- (1) If a party wishes to challenge the appointment of an arbitrator by another party or by the Secretariat on any one of the grounds enumerated in Article 13, he shall apply in writing to the Secretariat within 10 days of the appointment of the arbitrator giving the reasons for the challenge.
- (2) If the Secretariat agrees with the challenger on the merits of his challenge, then within a period of 10 days, as the case may be,

- (i) the party whose choice of arbitrator was challenged, shall appoint a new arbitrator, or
 - (ii) Where the Secretariat's choice of arbitrator was challenged, the Secretariat shall appoint a new arbitrator.
- (3) If the subsequent choices of arbitrator under paragraph (2) (I) above is unacceptable to any of the parties, the arbitrator shall be appointed by the Secretariat.

Article 18 Replacement

- (1) An arbitrator shall be replaced upon his death, resignation or upon the acceptance by the Secretariat of a challenge arising during the course of the proceedings pursuant to Article 13.
- (2) Replacement shall take place in accordance with Article 15 above at the direction of and according to the time limits imposed by the remaining arbitrators or, in the case of a sole arbitrator to be replaced, by the Secretariat.

Section IV: The Arbitration Proceedings

Article 19 Opening of Arbitration Proceedings

- (1) Within 5 days of the effective date, the Secretariat shall:
 - (i) appoint from its staff a Clerk to the Arbitral Tribunal who shall be responsible for all clerical activities on behalf of the Arbitral Tribunal and for all communications between the parties and the Arbitral Tribunal;
 - (ii) prepare and provide to the Arbitral Tribunal terms of reference as described on Form CAC03;
- (2) The Arbitral Tribunal shall at a date to be fixed by mutual agreement, hold a preliminary meeting with the parties and, taking into account the nature of the case defined in the Terms of Reference shall determine the order, time and place of the Hearing or Hearings, provided always that the Arbitral Tribunal shall provide equal treatment to all parties in the presentation of their case.

Note: The Arbitral Tribunal shall also draw up Terms of Reference of the arbitration in the presence of the parties that shall contain Name and Description of the Parties, Notifications, Summary of Facts and Parties' respective Claims, their general positions, relief sought, issues of arbitration, Arbitral Tribunal and Place of Arbitration. This TOR should be drawn up by expert Arbitrators in the presence of the parties and not the Secretariat.
- (3) At the request of the parties, the Arbitral Tribunal may proceed to make their decision in the absence of a Hearing. In such a case, the Arbitral Tribunal, if satisfied that it can make an award on the basis of the terms of reference, may proceed to make an Award without a Hearing.
- (4) In determining the order and time of the Hearing or Hearings, the Arbitral Tribunal shall give sufficient consideration to preventing the delay of the proceedings.
- (5) The Clerk to the Arbitral Tribunal shall communicate the decision of the Tribunal in the form of an order for directions to the parties within 10 days of the preliminary meeting.

Article 20 Applicable Law

- (1) In conducting the arbitration the Arbitral Tribunal shall apply the laws of Bhutan and shall have regard to any relevant trade usages.
- (2) Where, in the opinion of the Arbitral Tribunal, it is necessary to seek guidance on the applicable laws or interpretation of any Law or document based on such Law, the Arbitral Tribunal shall make an appropriate application to the High Court of Bhutan.
- (3) The arbitration proceedings shall be suspended pending the decision of the High Court.
- (4) Where explicitly requested by all parties, the Arbitral Tribunal shall have power to sit as commercial men and to reach a decision in accordance with the general principles of law and justice recognized in Bhutan, but, in such cases, it shall have regard to the provisions of the contract in dispute and to any common industry practices.

Article 21 Hearing

- (1) The Hearing or Hearings shall take place in the manner provided for by the contract, in absence of which as decided by the Arbitral Tribunal's order for directions.
- (2) If one of the parties, despite having received notice of the Hearing in accordance with Article 19.3, fails to appear, the Arbitral Tribunal, if it is satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the arbitration and such proceedings shall be deemed to have been conducted in the presence of all parties.
- (3) The Arbitral Tribunal shall determine the language or languages of the arbitration taking into consideration the wishes of the parties and relevant circumstances, in particular, the language of the contract.
- (4) The Hearing or Hearings shall be closed to the public save that, with the consent of the Arbitral Tribunal, persons having a justifiable interest in the proceedings may be admitted.
- (5) All information disclosed during the course of the arbitration proceedings whether written or oral shall remain confidential as between the parties and the Arbitral Tribunal.
- (6) The Clerk to the Arbitral Tribunal shall, for each Hearing, take and keep minutes stating the time, place and the names of those attending together with a summary record of the Hearing.
- (7) The Clerk to the Arbitral Tribunal shall take a stenographic record of the Hearing where the Arbitral Tribunal has so ordered or where there has been an application for such a record by one of the parties.

Article 22 Evidence

- (1) All relevant documentary evidence relied upon by the parties in support of their claims, replies and counterclaims shall be put before the Arbitral Tribunal in the Forms CAC01 and CAC02.
- (2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Arbitral Tribunal, it is relevant and only with its consent.
- (3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses or expert witnesses listed in the Request or Replies submitted by the parties.

- (4) The Arbitral Tribunal shall, during the preliminary meeting, give directions as to the service of the written witness statements in advance of the hearing.
- (5) The Arbitral Tribunal may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.
- (6) The Arbitral Tribunal may, where it deems necessary or on the application of a party, conduct inspections or investigations in the presence of the parties.
- (7) Save in cases where a party has failed to appear, the Arbitral Tribunal shall not accept evidence except in the presence of all parties.

Article 23 Conclusion of the Proceedings

- (1) The Arbitral Tribunal shall, when it is satisfied that all contentions and evidence of the parties have been submitted, conclude the arbitration proceedings.
- (2) Without prejudice to paragraph (1), the Arbitral Tribunal shall have the power to re-open a Hearing where, in its opinion, that is necessary for the proper conduct of the case.

Section V: Arbitral Award

Article 24 Time of Award

The Arbitral Tribunal shall make its award within:

- a. 10 days of the conclusion of the proceedings in the case of an arbitration with a hearing, or
- b. 20 days of the date of the notification of the decision of the Arbitral Tribunal to make an award in the absence of a Hearing pursuant to Article 19.5.

Article 25 Award

- (1) Where 3 arbitrators have been appointed, the award is given by a majority decision. The Chairman has the casting vote. If there is no majority, the Award shall be made by the Chairman of the Arbitral Tribunal.
- (2) The Award shall state the reasons and be formulated in accordance with Form CAC04.
- (3) The Clerk to the Arbitral Tribunal shall notify all parties of the Award within 5 days of the Award.

Article 26 Award by Consent

Where the parties reach a voluntary settlement of their dispute following the effective date and before the date of Award, the settlement shall be recorded as an arbitral award by consent of the parties and signed by the Arbitral Tribunal. Such award by consent shall include agreement as to the sharing of the costs of the proceedings and shall be deemed final.

Article 27 Arbitration Costs

- (1) In addition to making an award on the merits of the case, the Arbitral Tribunal shall also make an award on the costs, including administrative costs based on Secretariat's account

statement, for the case. The Tribunal shall also decide which of the parties shall bear the costs or the proportions of the costs to be borne by each party.

- (2) Without prejudice to paragraph 1, the arbitrator's fees and travel expenses shall be as follows:

Arbitrator's Fees:

The fees due to each arbitrator shall be based on the value of the sum of money in dispute. The fees are expressed as minimum and maximum amounts. Whilst some arbitrators may charge higher fees depending on their experience and qualifications as arbitrators, the purpose of the minimum and maximum fees is to enable account to be taken of the number of days involved in the arbitration. Thus, an arbitration lasting one or two days would incur the minimum fees. Longer arbitrations would imply increased fees up to the maximum figure. In no case, may the Panel award fees higher than the maximum fee indicated herein.

The figures are expressed in Ngultrum.

SUM IN DISPUTE	MINIMUM FEE	MAXIMUM FEE
UP TO 100,000	4000	10.00%
FROM 100,000 TO 250,000	6,000	6.00%
FROM 250,001 TO 500,000	8,000	5.00%
FROM 500,001 TO 1,000,000	10,000	3.00%
FROM 1,000,001 TO 2,500,000	12,000	1.50%
FROM 2,500,001 TO 5,000,000	0.60%	1.00%
FROM 5,000,001 TO 10,000,000	0.40%	0.80%
FROM 10,000,001 TO 25,000,000	0.25%	0.50%
FROM 25,000,001 TO 50,000,000	0.20%	0.40%
FROM 50,000,001 TO 100,000,000	0.15%	0.30%
ABOVE 100,000,000	0.10%	0.25%

Schedule of Administrative fees:

The following fees shall be paid to the CDB Secretariat by the Claimant(s) at the same time that a Request for Arbitration is lodged. In the event of success in the arbitration, these fees will be reimbursed to the Claimant(s) and collected from the losing party or parties.

These fees are intended to cover the CDB Secretariat's expenses during the administration of an arbitration proceeding. The fees cover processing, photocopying charges, postage and/or courier delivery of documents, telephone, fax or e-mail charges.

The charges are based on (1) the value of the sum in dispute and (2) the number of parties involved. The correct fee payable for a given arbitration is found at the intersection of the relevant rows and columns. Thus, for a contract dispute over a sum of Nu 2,000,000 and concerning 3 parties (one Claimant and two Respondents, for example), the correct fee would be Nu. 4,000 (intersection of row 3/column 2)

NUMBER OF PARTIES SUM IN DISPUTE	(1) 2	(2) 3-4	(3) 5+
(1) UP TO 100,000	1,000	2,000	3,000
(2) FROM 100,000 TO 1,000,000	2,000	3,000	4,000
(3) FROM 1,000,000 TO 25,000,000	3,000	4,000	5,000
(4) FROM 25,000,001 TO 100,000,000	4,000	5,000	6,000
(5) ABOVE 100,000,00	5,000	6,000	7,000

- (3) The Arbitral Tribunal may by decision, where it deems necessary, demand of the parties the advance payment of a proportion of the arbitrators' fees, expenses and administrative costs. Such advance, subject to readjustment at any time during the arbitration, shall be payable in equal shares by the parties.
- (4) The Arbitral Tribunal may, where a party fails to abide by a decision of the Arbitral Tribunal with regard to such fees, expenses or administrative costs, take any measures it deems necessary in respect of such party to ensure compliance with that decision.
- (5) Alternatively, other party shall be free to pay the whole of the advance to be recovered from the defaulting party later through Arbitral Award.

Section VI: Effect of Award

Article 28 Finality

- (1) The arbitral award shall be final and binding on the parties.
- (2) By submitting the dispute to arbitration under these rules, the parties shall be deemed to have accepted these rules in their entirety; to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can be validly made

Article 29 Enforceability

- (1) The agreement to submit to arbitration under these rules is a contractual agreement between the parties and the resulting award is a valid contract under the laws of Bhutan.
- (2) Where one or more of the parties fail to execute the Award, the remaining party or parties may seek enforcement of Award on account of the breach of contract before the High Court of Bhutan.

Section VII: Arbitration Clause

In order to speedily resolve construction contract disputes through arbitration pursuant to the constitution, rules and procedures of the Construction Arbitration Committee, any contractor or sub-contractor may in any contract which it enters into with any other contractor, sub-contractor or Government Authority, acting as employer, insert the following clause:

“Settlement of Disputes”

1. Any dispute, controversy or claim arising out of or relating to this contract or the construction, breach, termination or the validity thereof, shall be referred to and finally resolved by arbitration in accordance with the rules and procedures of the Construction Arbitration Committee in force at the time of the submission of a request for arbitration under the said rules and procedures.

OR

2. All disputes arising out of or in connection with the present contract shall be finally settled by arbitration in accordance with the rules and procedures of the Construction Arbitration Committee in force at the time of the submission of a request for arbitration under the said rules and procedures. (Based on ICC Standard Clause which is more exhaustive)

EITHER

The Arbitral Tribunal shall consist of 1 arbitrator selected by agreement between the parties.

OR

The Arbitral Tribunal shall consist of 3 arbitrators, two to be appointed by each of the parties and the third to be appointed by the common agreement of the two arbitrators selected by the parties.

OR *(if there are more than two parties to the contract and there are to be 3 arbitrators):*

The Arbitral Tribunal shall consist of 3 arbitrators, one to be appointed by the claimant and/or claimants jointly and one to be appointed by the respondent and/or respondents jointly and the third to be appointed by the common agreement of the two arbitrators selected by the parties.

1. In the event of a failure to agree on the appointment of arbitrators, the choice shall be made in accordance with the rules and procedures of the Construction Arbitration Committee.”

GUIDELINES

Guidelines for the assessment of contractor's performance

The Objective

The main objective of Construction Development Board (CDB) is “to promote an efficient quality-based construction industry within Bhutan”. One of the many activities of CDB to realize this objective is to take part as catalytic role for the improvement of contractors' performance. A fairly comprehensive contract completion report system (CCRS) will be introduced to obtain necessary data to assist authorities in addressing the weak areas of the construction industry such as non availability of qualified technicians and skilled labours, lack of construction materials and equipment, standard of drawings and specifications, performance of procuring agency, etc.

The CCRS will also include the assessment of contractor's performance, which is intended to serve for two purposes. The first purpose is to identify problems encountered by many contractors in the execution of the contract, and the second is to identify poor performance contractor and good performance contractors.

The Methodology and Assessment System

The Guidelines is aimed to provide uniform assessment system for all procuring agencies of the government in the evaluation of contractor performance. The fair assessment of contractor performance is a rather difficult task. The system is designed so as to minimize the human judgment as much as possible, but in such system, judgment of the evaluator is required in most of the areas where performance is to be assessed. Further, in most cases, the evaluator himself is involved in the implementation of the contract, and therefore his objective assessment and fairness are sometimes questionable. Even with these drawbacks (on the other hand no evaluation system should be expected as perfect), the introduction of the uniform assessment system for contractor performance is expected to help contractors in executing contract works satisfactorily.

Three main evaluation criteria are used in assessing performance of contractor. These are: (i) Actual Completion Time of Contract, (ii) Quality of Works, and (iii) Financial and Technical Capability. The main criteria will be broken down further into sub-criteria that will be weighted also according to their relative importance. Assessment requires the application of technical knowledge and skills, accompanied by a lot of subjective value judgments. It should therefore be assigned to technical staff who has relevant technical background and who has displayed maturity and objectivity in their official actions.

In case of certain contracts (major works) the assessment should be carried out by the team consisting of two or three members. It is important that the evaluation criteria and methodology be clearly understood by all members of the team. Once assessment has been completed independently by each member, the average scores should be used for the final assessment report. The assessment system is developed through the use of a scoring system attached as Appendix.

Appendixes

Standard Forms

Appendix I: Assessment Scoring Table

Factors	Points Allocated	Maximum Score
I. Actual Completion Time		
(i) Earlier than specified in Contract	25	
(ii) As per Contract	15	
(iii) Delay in Completion: < 5% of CP	12	
(iv) Delay: 5% to < 10% of CP	10	
(v) Delay: 10% to < 20% of CP	7	
(vi) Delay: 20% to < 30% of CP	5	
(vii) Delay 30% of CP and above	0	
		25
B. Quality of Works		
(1) Materials Used		
(a) Major Materials		
(i) Excellent	15	
(ii) Good	8	
(iii) Satisfactory	3	
(iv) Unsatisfactory	0	
(b) Minor Materials		
(i) Excellent	5	
(ii) Good	3	
(iii) Satisfactory	1	
(iv) Unsatisfactory	0	
(2) Workmanship		
(a) Major Work Items		
(i) Excellent	20	
(ii) Good	12	
(iii) Satisfactory	8	
(iv) Unsatisfactory	0	
		40
C. Financial and Technical Capability		
(1) Financial		
(i) Excellent	10	
(ii) Good	5	
(iii) Satisfactory	2	
(iv) Unsatisfactory	0	
(2) Construction Management		
(i) Excellent	10	
(ii) Good	5	
(iii) Satisfactory	2	
(iv) Unsatisfactory	0	
(3) Adhere to Works Program		
(i) Excellent	5	
(ii) Good	3	
(iii) Satisfactory	1	
(iv) Unsatisfactory	0	
(4) Availability of Equipment and Labour		
(i) Excellent	10	
(ii) Good	5	
(iii) Satisfactory	2	
(iv) Unsatisfactory	0	
		35

Construction Development Board

Appendix II: Bidding Report Form (BID03)

(This report to be submitted within 14 calendar days from the date of signing agreement)

1. Procuring Agency: _____
2. Dzongkhag where works site falls: _____
3. Name of contract work: _____
4. Contract description: _____
5. Category/Classification of Works: (LCB, work order, Direct contracting, others _____)
6. Approved Agency Estimate: _____
7. Classification of Registered Contractors: _____
8. Date of invitation of Bids announced in Kuensel _____
9. Date of Bids closed for sale: _____ Bid Opened date: _____
10. Attach annexure of contractor who had purchased bidding documents:
11. Name of contractor who submitted Bids: (attach sheet if necessary).

Name of the Bidder	CDB Certificate No.	Bids as Opened	Evaluated Bid price

12. Name of the Bidders whose Bids were Not evaluated: (attach sheet if necessary) :

Name of the Bidder	CDB Certificate No.	Brief reason for Exclusion

13. Name of the Firm/contractor to whom the work is awarded _____ Bid amount
Nu. _____
14. Date of letter of Acceptance _____ Date of Signing of Contract: _____
15. Work order No. _____ official start date of work _____
16. Completion date _____

Prepared by:

Checked by:

***Name and Signature (Site Engineer)
Procuring Agency***

***Name and Signature (Supervising Engineer)
Procuring Agency***

Construction Development Board

Appendix III: Contract Completion Report Form (C101)
(This report to be submitted on completion of contract)

Part I Contract Execution Data

1. Procuring Agency: _____
2. Name of contract work: _____
3. Category of Works: (W1,W2,W3 & W4) _____
4. Name of Contractor: _____ CDB Certificate No. _____
5. Contract Price (Initial) Nu. _____ Contract price (Final) Nu. _____
6. Amount of Performance Security: _____
7. Amount of Advance Payment: _____
8. Date of Commencement: a. (Official) _____ b. Actual _____
a. Reason for delay. (if any): _____
9. Date of completion: a. (Official) _____ b. Actual _____
a. Reason for delay. (if any): _____
10. Were there any contract variation: Yes No Minor Major
a. Give reason for change if major _____
11. Liquidated Damages imposed to the Contractor (if any): Nu. _____
12. Time of completion actual (in days/Month) _____
13. Date of Taking-Over-Certificate: _____
14. Date of Final Payment to the Contractor: _____
15. Assessment of performance:

Rate the scope of work satisfactory me the requirement of the project:

Fully satisfactory Satisfactory Unsatisfactory
If unsatisfactory, give reason. _____

Part II Performance of Contractor

Performance of Contractor

1. Any problem encountered by the Contractor in the submission Of Performance Security: Yes No
If yes, # of days delay in signing of the contract: _____ days
2. Any problem encountered by the Contractor in the submission Of Counter Bank Guarantee for advance payment: Yes No
If yes, # of days delay in signing of the contract: _____ days
3. Procurement of Construction Materials: Yes No
 - (I) Were there delays due to lack of materials at site?
 - (ii) If yes, how did the delay affect the execution/quality of works:

of times that the approved WP was revised due to the lack?

Of materials at site: _____ times

b) Number of days delay as the result of lack of materials at site:

days

(iii) What was the degree of PA's supervision required to obtain materials available?

- Minimal, contractor acted on his own
- Supervision required, but not frequently
- Constant supervision was required.

Rate the Financial capability of contractor base on above performance

Excellent	Good	Satisfactory	Unsatisfactory	Remarks

4. Submission of Work Program (WP)

(i) On-time as per contract: Yes No

(ii) Date of Approval by the PA (if resubmitted): _____

(iii) Work Program (WP) Satisfactory? Yes No

(iv) Did the work carried out as per work programmed? Yes No

(iv) If no, No. days delayed in completion of works _____ (days/month)

Rate the Contractor's performance based on adherence to work program

Excellent	Good	Satisfactory	Unsatisfactory	Remarks

5. Mobilization:

(i) On-time in accordance with the WP? Yes No

If No, indicate the problems encountered that are attributable to the Contractor and give a brief description: _____

(ii) Number of days delay as a result of the above problem(s) (if any): _____ days

Rate the Contractor's management based on Mobilization

Excellent	Good	Satisfactory	Unsatisfactory	Remarks

6. Availability of Construction Equipment:

(i) Were there delays due to lack of equipment at site as required? Yes No

(ii) If Yes, how did the delays affect the execution/quality of works:

a) # of times that the approved WP was revised due to lack of equipment at site:- ____times

b) No of days delay as the result of lack of equipment at site: _____ days

(iii) What was the degree of PA's supervision required to obtain the necessary equipment?

- Minimal, contractor acted on his own
- Supervision required, but not frequently

Constant supervision was required.

(iv) Was the equipment used consistent with the construction method?

Consistent

Fairly consistent

Inconsistent

Rate the Contractor's performance based on Availability of equipments

Excellent	Good	Satisfactory	Unsatisfactory	Remarks

7. Manpower:

a. Name of the Site Engineer _____

b. Qualification: _____ Experience _____ years

c. Was manpower made available at site as per tender document? Yes No.

d. Give reason if not _____

(i) Please assess the contractor's site management organization as against the requirement in tender document?

Excellent

Good

Fair

(ii) Please assess the contractor's Engineer/Supervisor competency?

Excellent

Good

Fair

(iii) Please assess the contractor's Technical Personnel and Skilled Labourers?

Excellent

Good

Fair

Rate the Contractor's performance based on Availability of labour and their skill

Excellent	Good	Satisfactory	Unsatisfactory	Remarks

8. Subcontracting:

(i) Did the contractor employ subcontractors? Yes No

a) Was the use of contractors approved by the PA? Yes No

b) If No, what was the action taken:

Warning given and approval granted

Contractor told to remove subcontractors from site

Work was suspended until subcontractors were removed from site

Action other than above occurred

(ii) If subcontracted, give the total value of work sub-contracted (Nu.): _____

(iii) Percentage of total value of work subcontracted? _____

For Work Category: [W2] [W3] [W4] (Please Tick)

9. Quality of the Materials Used:

Compliance with the Technical Specifications:

	Excellent	Good	Satisfactory	Unsatisfactory
(i) Major/ Important Materials				
(ii) Minor/ Other Materials				

10. Quality of the Workmanship:

A	Better than specified	Good	Satisfactory	Unsatisfactory
(i) Earth fills under structures.				
(a) Soil used is suitable for earth fill as per specifications				
(b) Met Density as specified.				
Majors work item	Excellent	Good	Satisfactory	Unsatisfactory
(ii) Brickwork/Stonework/Hollow Concrete Block				
▪ Quality of works and mortars as per drawings and specifications.				
(iii) Ordinary Concrete/ Reinforced Concrete Work				
▪ Quality of works as per drawings & specifications				
(iv) Wood Work				
▪ Quality of works as per drawings and specifications.				
(v) Structural Steel/ Steel Work				
▪ Quality of works as per drawings and specifications				
(vi) Flooring/Roofing				
▪ Quality of works as per drawings and specifications.				
(vii) Water and Sanitary Works				
▪ Quality of works as per drawings and specifications.				
(viii) Electrical Work				
▪ Quality of works as per drawings and specifications.				
(ix) Finishing/Painting				
▪ Quality of works as per drawings and specifications ¹				
B. Others not listed in above (minor work item)				

Prepared by:

Checked by:

Name and Signature (Site Engineer)
Procuring Agency

Name and Signature (Supervising Engineer)
Procuring Agency

For Work Category: [W1]

11. Quality of the Materials Used:

Compliance with the Technical Specifications:

	Excellent	Good	Satisfactory	Unsatisfactory
(i) Major/ Important Materials				
(ii) Other Materials				

12. Quality of the Workmanship:

	Better than specified	Good	Satisfactory	Unsatisfactory
A. (i) Earth fills under structures.				
(a) Soil used is suitable for earth fill as per specifications.				
(b) Met Density as specified.				
Majors work item	Excellent	Good	Satisfactory	Unsatisfactory
Preparation of sub grade ▪ Rolling and leveling as per drawings and specifications.				
Laying of base course ▪ Quality of works as per drawings and specifications.				
Laying of wearing course ▪ Quality of works as per drawings and specifications.				
Scarifying, metal led (Water bound) ▪ Quality of works as per drawings and specifications.				
Premix carpet • Quality of works as per drawings and specifications.				
Stone Masonry works ▪ Quality of works as per drawings and specifications.				
Road side drain • Quality of works as per drawings and Specifications.				
Camber • As per drawings and specifications.				
Road gradient • As per drawings and specifications.				
B. Others not listed in above (minor work item)				

Prepared by:

Checked by:

Name and Signature (Site Engineer)
Procuring Agency

Name and Signature (Supervising Engineer)
Procuring Agency

Construction Development Board

Appendix IV: Request For Arbitration Form (CAC01)

1. Person(s) or Firm(s) making the Request (“Claimant(s)”):

(i) Name of Claimant: _____
Address: _____

Telephone: _____
Fax: _____
E-mail: _____
Name of authorised representative: _____

IF THERE ARE FURTHER CLAIMANTS, PLEASE CONTINUE ON A SEPARATE SHEET

2. Legal or Other Third Party Representative(s) (“Agent(s)”)

(i) If this Request is made by an agent representing the Claimant, please provide a copy of the document authorising the representation (“power of attorney”) together with the following details:

Name of Agent: _____
Address: _____

Telephone: _____
Fax: _____
E-mail: _____

IF THERE ARE FURTHER CLAIMANTS PLEASE CONTINUE ON A SEPARATE SHEET

3. Person(s) or Firm(s) against whom the Request is made (“Respondent(s)”)

Name of Respondent: _____
Citizenship ID #: _____
Address: _____

Telephone: _____
Fax: _____
E-mail: _____

4. Basis of Arbitration

clause in the contract document (enclose copy)

5. The Basis of the Request (“Claim”)

(i) This Claim is for:

money, compensation or damages in the amount of: _____

others: _____

(ii) The Essence of the Claim is: _____

(Please attach additional sheet(s) where necessary to fully describe your evidence)

6. Evidence

This Claim is accompanied by:

a copy of the contract document between the Claimant and the Respondent(s)

other evidence, as specified: _____

the following list of proposed witnesses of fact and/or expert witnesses

(Please attach additional sheet(s) where necessary to fully describe your evidence)

7. Fee

The administrative fee of Nu. _____ is enclosed herewith based on the Schedule of Administrative Fees prescribed by the Construction Development Board:

8. Statement of Adherence

I/we hereby declare that

(i) the above information is true and accurate to the best of my/our knowledge and belief and that

(ii) I/we accept the constitution, rules and procedures of the National Arbitration Committee in their entirety and undertake to carry out the arbitral award of the National Arbitration Committee faithfully and without delay and that

- (iii) I/we waive my/our right to any form of appeal from the arbitral award insofar as such waiver can be validly made.

(please affix legal stamps)

_____ O _____
Claimant Agent

Location:

Date:

FOR OFFICIAL USE:

1. Verification

Yes

No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Request received in correct form |
| <input type="checkbox"/> | <input type="checkbox"/> | Valid arbitration clause |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract Document enclosed |
| <input type="checkbox"/> | <input type="checkbox"/> | Evidence enclosed |
| <input type="checkbox"/> | <input type="checkbox"/> | Power of attorney enclosed, where appropriate |
| <input type="checkbox"/> | <input type="checkbox"/> | Administrative fee enclosed |

2. Action

- If not verified, return to Claimant with reasons for non-conformity
- Where verified:
- prepare reply form(s) and complete, as appropriate,
- send a copy of the Request and Reply forms to the Respondent(s)

Verified by:

Action taken by:

Construction Development Board

Appendix V: Reply to Request for Arbitration Form (CAC02)

To: _____

1. Request for Arbitration

A Request for Arbitration has been lodged against you at the Secretariat of the Construction Arbitration Committee on _____. A copy of the verified Request is attached.

You are:

the sole Respondent

You are requested to complete and return this form within 15 days of the date of issue.

2. Identity of Respondent

Please confirm the information requested below:

Name of Respondent: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Name of authorised representative: _____

3. Legal or Other Third Party Representative (“Agent”)

If this Reply is made by an agent representing the Respondent, please provide a copy of the document authorising the representation (“power of attorney”) together with the following details:

Name of Agent: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

4. Basis of Arbitration

- (i) As specified in the Request for Arbitration, the arbitration is based on
 arbitration clause in the contract

5. The Basis of the Request (“Claim”)

- (i) The Claim in the Request for Arbitration is a claim for
 money, compensation or damages in the amount of: _____
 others: _____

- (ii) In response to the Claim, please provide the essence of your defence (“Reply”) below:

(Please attach additional sheet(s) where necessary to fully describe your defence)

- (iii) If, in addition to your Reply, you wish to make a Claim against the Claimant (“Counterclaim”), please provide the essence of your Counterclaim below:

(Please attach additional sheet(s) where necessary to fully describe your claim)

6. Evidence

Please indicate what evidence you propose to submit in support of your Reply and, where appropriate, your Counterclaim and enclose copies:

I/we enclose

- the following evidence:

the following list of proposed witnesses of fact and/or expert witnesses

(Please attach additional sheet(s) where necessary to fully describe your evidence)

7. Statement of Adherence

I/we hereby declare that

- (i) the above information is true and accurate to the best of my/our knowledge and belief and that
- (ii) I/we accept the constitution, rules and procedures of the National Arbitration Committee in their entirety and undertake to carry out the arbitral award of the National Arbitration Committee faithfully and without delay and that
- (iii) I/we waive my/our right to any form of appeal from the arbitral award insofar as such waiver can be validly made.

(please affix legal stamps)

Respondent

Or

Agent

Location:

Date:

FOR OFFICIAL USE:

1. Verification

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Reply received within time limit |
| <input type="checkbox"/> | <input type="checkbox"/> | Valid acceptance of arbitration |
| <input type="checkbox"/> | <input type="checkbox"/> | Evidence enclosed |
| <input type="checkbox"/> | <input type="checkbox"/> | Power of attorney enclosed, where appropriate |
| <input type="checkbox"/> | <input type="checkbox"/> | Counterclaim |
| <input type="checkbox"/> | <input type="checkbox"/> | Agreement on number of arbitrators |

2. Action

- Failure of Arbitration : Record failure and notify the Claimant
- Where Counterclaim : send Reply to Claimant and await Response before registration
- Where no Counterclaim :
 - record Registration
 - notify parties of registration
 - verify that all parties have copies of documents submitted
- Request from the parties, giving the appropriate time limits, their agreement on their choice of arbitrators for confirmation

Verified by:

Action taken by:

Name and Date

Name and Date

CONSTRUCTION DEVELOPMENT BOARD

Appendix VI: Arbitrator Application Form (CAC05)

- 1. Name: _____

- 2. Address: _____

- 3. Phone: _____
- 4. Fax: _____
- 5. E-Mail: _____
- 6. Date of Birth: _____
- 7. Occupation: _____
- 8. Academic Qualifications (attach additional sheets if necessary):
 - a. _____

 - b. _____

 - c. _____

- 9. Work Experience (please summarize, and attach CV):
 - a. Position: _____ Dates: _____
Employer: _____
 - b. Position: _____ Dates: _____
Employer: _____
 - c. Position: _____ Dates: _____
Employer: _____
 - d. Position: _____ Dates: _____
Employer: _____

10. Please briefly describe your experience with the Bhutanese legal tradition (attach additional sheets if necessary):

11. Please briefly describe your experience with the Bhutanese construction industry (attach additional sheets if necessary):

12. I hereby claim that the above information is true and correct to the best of my knowledge:

Signature: _____

Date: _____