

## 2. NPWC TENDER CODE

The National Public Works Conference has prepared a draft Code of Tendering which it hopes will be a guide to Public Authorities and private clients in calling and evaluating tenders for building and engineering construction work. The intent of the Code is to encourage uniform practices and procedures to ensure that parties to the tendering process are treated fairly and equitably and to minimise costs.

This project was proposed to the National Public Works Conference and the National Building and Construction Council several years ago by the Australian Federation of Construction Contractors, due to the diversity of tendering rules, practices and procedures in use in the industry and problems which occasionally arise in the tender process.

The draft Code has been circulated by NPWC to interested industry groups for examination and comment. The draft Code is comprised of a Code of Tendering, Notice to Tenderers, Conditions of Tendering and Optional Clauses.

The National Public Works Conference is hoping to have the Code of Tendering finalised by November, 1989. The features of the Code will be commented upon after this date.

## 3. NEW SOUTH WALES TENDER INQUIRY

The New South Wales Legislative Council's Standing Committee On State Development has been requested by the Premier to inquire and report upon:

"Contracting arrangements between the private sector and government, semi-government and local authorities in New South Wales, with a view to recommending any changes to those arrangements that might advance State development and produce a more cost-effective contracting system.

The Committee plans to examine all stages of tendering and the contracting process, including matters such as:

- the tender process and procedures;
- tender documentation;
- Bills of Quantities;
- costs of preparing tenders;
- procedures for evaluating tenders;
- negotiating with tenderers;
- disclosure of information about tenders;
- standard and model contracts;
- monitoring performance;
- documentation and progress payments;
- handling disputes: negotiation, arbitration;
- evaluation of goods, services and projects.

It remains to be seen whether the findings of this Inquiry will be made public. It is to be hoped that the findings will be published, as there is a potential that the Inquiry could be of interest to other Governments, private clients and to the industry generally.

## 4. NEW SOUTH WALES INQUIRY INTO LIABILITY AND INSURANCE

The New South Wales Attorney General, Mr Dowd, has apparently instituted an inquiry into liability and insurance, which will cover amongst other things malpractice claims against professionals such as architects and engineers.

This is good news for professional organisations such as the

Royal Australian Institute of Architects and the Association of Consulting Engineers of Australia, which could be forgiven for thinking that several years of work, expressions of concern and proposals to Governments for tort reform were achieving no more than shouts into a vacuum.

The inquiry is apparently in response to the Government's concerns to head off development of a litigation scenario akin to that in the U.S. and to make insurance available and affordable by placing limitations on liability.

No documents are currently available from the inquiry and it remains to be seen whether the Government will be willing to tackle the problem. Apparently, the New South Wales Attorney General's investigations into liability will be discussed at the next meeting of the Standing Committee of Attorney Generals.

## 5. BUILDING AND CONSTRUCTION CONTRACTS IN THE VICTORIAN PUBLIC SECTOR

The Victorian Government established a working party in mid 1988 to review forms of building and construction contracts in the public sector. The working party's brief was to recommend measures to extend the incidence of lump sum fixed price contracts in the public and, possibly, the private sectors. The working party was also to recommend measures to enhance the management of both construction and industrial relations in the industry and on Government works.

The working party's Report recommends more frequent use of a single contract encompassing both design and construction as a means of allocating responsibility and accountability to the contractor. The Report notes that such a contract may specify a guaranteed maximum price. The following are some of the general recommendations contained in the Report:

- Promote the use of Project Management and Design and Construction Management arrangements which have a guaranteed maximum price.
- Encourage development and adoption of more uniform conditions of contract.
- Support the principle of convergence of the various forms of contract used throughout Australia.
- Promote fast and effective mechanisms for the resolution of contractual disputes.
- Include a code of employment and industrial relations practice as a condition of contract.
- Require that Agencies normally do not include rise and fall provisions in contracts of less than twelve months.
- Require agencies to document a formalised process for project planning and management to be used for all works projects.
- Agencies to adopt formal consultant and contractor selection procedures which lay emphasis on performance against time, cost and quality criteria.
- Conduct a thorough assessment of regulations which impinge on the industry. Recommend means of promoting greater rationalisation and simplification of regulations and regulatory processes.
- Investigate and recommend means of reducing the time and cost of inter-agency disputes over regulations.
- Recommend means of moving away from the prac-

tice of nominating specialist subcontractors which are to be engaged by the contractor for specific components of a project.

#### 6. I.Arb.A LIST OF CONCILIATORS AND MEDIATORS

As was mentioned in Issue #1 (see item 9.), the Institute of Arbitrators, Australia has decided to become more actively involved in alternative dispute resolution. Further to this decision and an ADR training course held by the Institute in October, 1988, the Institute has now published a list of conciliators and mediators in a booklet entitled "List Of Conciliators And Mediators (Edition No1 - November 1988)".

This development places the Institute of Arbitrators in the ADR arena along with the Australian Commercial Disputes Centre and several other organisations such as the Law Society of NSW. The American Arbitration Association has provided ADR services for some time now and it would seem a logical development for its Australian counterpart to follow suit. The industry should benefit from this development.

The Institute has a proposed clause for insertion in contracts, where mediation or conciliation is the preferred method of resolving disputes. This clause is as follows:

"If any dispute or difference arises between the parties to this contract they will consider resolving it in accordance with The Institute of Arbitrators Australia Rules for the Conduct of Commercial Conciliations."

Copies of the Institute's Conciliation Rules and List of Conciliators and Mediators is available from your local Chapter of the Institute of Arbitrators.

#### 7. DRAFT SAA HOME BUILDING CONTRACT

The Standards Association of Australia has published a draft home building contract for public review, prior to finalisation. The draft is entitled "Draft Australian Standard General Conditions of Contract For Domestic Construction Without An Architect In Attendance".

Although the closing date for comments is March 1989, from experience, SAA committees usually give late comments full consideration, provided that they are not so late that committee work is too advanced to do so. Interested readers who were not on the SAA's mailing list should contact the SAA to obtain a copy of the Draft. Those wishing to use the Draft as a contract prior to finalisation should contact the SAA with respect to permission to do so.

The SAA committee, which prepared the Draft, was chaired by John Sharkey of Weigall + Crowther, Solicitors, Melbourne and was established after an SAA Conference on Home Building Contracts in 1986 found that there was a need for a National Standard on construction of domestic homes. The SAA organised this Conference in response to a formal request from the South Australian Minister Of Consumer Affairs that the SAA prepare a standard form contract for domestic building work.

The S.A. Department of Public And Consumer Affairs had been concerned for some time about problems experienced by prospective home owners with building contracts in use in South Australia. In response to these concerns, the Department carried out an investigation and in 1985 published a report entitled "Proposals Paper On The Reform Of Home Building Contracts". One of the recommendations in this report was for the preparation

of a fairer standard form contract to replace those then in use in South Australia.

The features of the contract will be discussed in a future article in the Newsletter, when the SAA has finalised and published the Draft. After publication of the finalised Draft, SAA intends to proceed with the preparation of a companion contract covering alterations and additions to existing homes.

#### 8. ARCHITECT'S CHECKLIST

The Royal Australian Institute of Architects has published a checklist system for all in-office aspects of architectural design, documentation and project administration. Called **CHECKIT! - Project Quality Record**, the system includes a progress reporting system based on the checklists.

**CHECKIT!** can be customised for particular projects by indicating in a check-box whether the particular checklist item is appropriate for the project. Additional checklist items unique to the particular project may be added.

The system comes in a plastic binder with tabbed cardboard checklist sheets designed for repeat use on more than one project and a pad of Project Quality Reports for insertion in each checklist category.

**CHECKIT!** organises the tasks common to most projects into sequential phases of a typical project, commencing with "Pre-Agreement" and continuing through to "Post Contract Evaluation". There are 26 phases in all, with up to 28 tasks per phase.

According to the introductory comments **CHECKIT!**, purposely does not include many of the tasks that architects would routinely do anyway; it is designed to prompt attention to the co-ordination aspects of managing a project. The system is particularly designed to assist less experienced team leaders in taking care of the diverse tasks required by an architectural commission.

The concept is an excellent one, which has been well thought through and executed. The system deserves and no doubt will receive great support. In fact, the concept appears so good that one wonders whether it wouldn't form a good model for the development of similar management check systems for other disciplines in the industry, such as for project and construction managers, design and construct contractors, engineers and quantity surveyors.

The system should assist architects in the establishment and implementation of risk management.

Copies of **CHECKIT! - Project Quality Record** are obtainable from the RAIA Practice Division at \$45, plus \$6 for handling and postage. Cheap at twice the price!

#### 9. BUILDING BRITAIN 2001

The U.K. National Contractors Group commissioned Reading University's Centre For Strategic Studies In Construction to prepare a Report on action required by the U.K. construction industry to remain competitive domestically and internationally through to the start of the next century.

The Report studies the current position of the industry, future change and sets out an action plan. **Building Britain 2001** is of interest and relevance to the industry in Australia. The Report makes the following comments under the heading "Contracts":

"The contractual issues to be resolved by the industry have never been easy but the present situation in the UK