

SECTION 4 REPORT ON CONTRACTORS' PERFORMANCE

4.1 General

4.1.1 The standard proforma of the Report on Contractor's Performance is attached at **Appendix 4A**. The report should be completed in accordance with the Guidance Notes attached at **Appendix 4B**. The category codes are shown in **Appendix 4C**.

4.2 Central Record

4.2.1 A Central Record System is maintained in Development Bureau to monitor the workload, performance and financial status of contractors entering into contracts with Government for capital works including specialist works, term and maintenance contracts and specialist suppliers. This Central Record is maintained by SEO(PS), Development Bureau and is based on the Reports on Contractors' Performance compiled by the Works Departments on all current contracts. Finance Section of Development Bureau also assists in the maintenance of the Central Record by reference to the information received from the tender boards and departments.

4.2.2 Reports held by Development Bureau that are more than 5 years old will be destroyed provided that 10 subsequent reports are held on the contractors for the same category of works. Copies of reports held by a department may be retained for as long as it is deemed necessary by that department. However it should be noted that for purposes of Audit, the copies of reports must be retained for at least 7 years.

4.2.3 The Central Record of the Reports on Contractors' Performance is computerised to enable these to be more readily available for tender assessments and other purposes.

4.3 Managing Department

4.3.1 Please refer to paragraphs 2.1.2 and 3.1.2 above for the role of the Managing Department.

4.3.2 Managing Departments shall receive copies of all Adverse reports on contractors in the relevant category. If, after comparing all the reports on a particular contractor in the category, the Managing Department has reason to doubt the assessment of any individual report, it may request the Reporting Department to review the report.

4.4 Reporting Department

4.4.1 The department which controls a contract and prepares the reports on the contractor's performance on that contract is referred to as the Reporting Department.

4.4.2 After having given the reports appropriate consideration, the Reporting Departments shall send the copies of all Adverse reports to SEO(PS), Development Bureau for inclusion in the Central Record.

4.4.3 Where the Reporting Department is not also the Managing Department, it is important that the Managing Department is fully aware of the existence of the contract and is kept fully informed of the contractor's performance. The Reporting Department shall copy the Letter of Acceptance and all Adverse reports on the contractor's performance to the Managing Department. Where the contractor was required to be in more than one category or was required to be in one of two or more categories and is in more than one of the relevant categories, copies of the Letter of Acceptance and the reports shall be sent to all the relevant Managing Departments.

4.4.4 In addition, Reporting Departments shall send copies of all Adverse reports to all other Works Departments and Housing Authority. If any department requires further details with respect to an Adverse report, that department shall approach the Reporting Department direct who will respond direct, copying correspondence to the relevant Managing Department.

4.5 Reports on Contractors' Performance

4.5.1 Regular reports on contractor's performance are required for all current contracts. Domestic sub-contractors and minor works will not be included in the performance reporting system of Development Bureau, but departments may maintain their own records of sub-contractors' performance and if necessary, recommend to Development Bureau for any follow up action in cases of poor performance.

4.5.2 Subject to paragraphs 4.5.2A, 4.5.4 and 4.5.5 below, the reports should normally be quarterly from the commencement of the Works until the issue of the Maintenance Certificate or the Defects Liability Certificate, or until completion of all Works Orders in the case of term contracts.

4.5.2A It is noted that there may be few activities taking place in the very early period of a contract. To address this situation, the Reporting Officer shall generally not be required to prepare a report on a contractor's performance for a reporting period in which the contract has commenced less than 3 weeks before the ending of such reporting period. The Reporting Officer should include this short period in the report on contractor's performance for the subsequent reporting period instead. Notwithstanding this, if the Reporting Officer considers that a report on a contractor's performance is necessary for such a period, e.g. due to occurrence of a serious incident as defined in DEVB TC(W) No. 3/2009, the Reporting Officer shall prepare the report and provide reasons in the report to substantiate the need for reporting for such a short reporting period.

4.5.3 For reporting of contractors' performance during the maintenance or defects liability periods, "Attitude to claims" and a minimum of four out of the ten major aspects of performance shall be assessed and rated. It should be noted that the performance to be reported during such periods would mainly cover performance of outstanding works and repair or rectification of defects.

4.5.4 After the Maintenance Certificate or the Defects Liability Certificate has been issued, quarterly reports are no longer required. Instead, except for term contracts for

which no further reports are required, a report on the contractor's performance should be made upon issue of the final payment certificate (which will cover the resolution of claims).

4.5.5 If a contractor's overall performance is poor and close monitoring is desirable, additional six-weekly intervening reports between the normal reporting periods may be made by the Reporting Officer provided that the contractor shall be given written notice of not less than 7 working days before the next reporting date. The contractor will be informed when the intervening reports are no longer required.

4.5.6 The reports should be prepared by the Architect's/Engineer's Representative and be agreed by the Architect/Engineer. Where a consultant is named as the Architect/Engineer for the contract, the report should be endorsed by the appropriate officer (D1 or above) of the Reporting Department.

4.5.7 The circulation of reports and correspondence relating to reports shall be classified as Restricted (Administration).

4.5.8 The prevailing requirements under Sub-section 4.5 in the Revision A of this Handbook shall continue to apply to existing contracts where the Completion Certificate has been issued on or before the effective date of the Revision B of this Handbook (ie 1 July 2005).

4.6 Review of Reports on Contractors' Performance

4.6.1 General

- (a) In order to ensure that reports on contractors' performance are properly reviewed and considered, particularly when action is likely to be taken as a result of poor performance, departments shall establish, where these do not already exist, two Contractors' Performance Review Committees, namely Reporting Review Committee (RRC) and Managing Review Committee (MRC).
- (b) The RRC shall be established within the Reporting Department to review the performance of all the contractors undertaking work for the department. It will endorse/amend the Architect's/Engineer's assessment and forward the reports together with recommendations when appropriate, to the secretary of the relevant MRC. The MRC shall be established within the Managing Department to review the performance of those contractors in the relevant category with respect to all contracts in this category.
- (c) Where a Managing Department employs only contractors from the categories it manages, it may combine the two committees into a single Reporting/Managing Review Committee. However, if other departments employ contractors from the categories the Managing Department manages, its Reporting/Managing Review Committee must meet at the time for MRCs (see later) so that Reporting Departments have time to forward copies of their reports.

- (d) Where a department establishes RRCs for one or more of its Offices, rather than a departmental RRC, the Office Reporting Review Committees shall send copies of the report and recommendations direct to the relevant MRC. Reports with recommendations may be routed through departmental headquarters if required by the department.

4.6.2 Reporting Review Committee

- (a) Membership shall be: - Chairman : a D2 officer or above

Secretary : Senior professional officer or above

Members : at least a D1 officer or above and one
other officer of at least professional rank

- (b) Functions: -

- (i) The RRC should preferably review the reports on all contracts under its jurisdiction. However, this may not be practicable for some departments, who have a large number of small contracts. The RRC should, however, review and endorse/amend at least all Adverse and borderline reports. These shall be brought to the RRC's attention by the secretary. The Chairman may authorise the secretary to endorse all other reports on his behalf.
- (ii) The Architect/Engineer may be in attendance as the RRC requires and should normally be so when an Adverse report has been given. In addition, when the Architect's/Engineer's Representative anticipates, towards the end of the reporting period, that he will give the contractor an Adverse report, he must advise the officer who will agree his report. The officer concerned should take particular measures, which would normally include visiting the site, to satisfy himself that the anticipated assessment is correct.
- (iii) The RRC shall decide which reports are to be confirmed as Adverse reports and endorsed accordingly by the Chairman. The reasons for amending the Architect's/Engineer's assessment must, when applicable, be recorded on the report. In case the RRC does not accept the Architect's/Engineer's assessment, the remarks by the Architect/Engineer, or his representative, will still be stored in the computerised Central Record in Development Bureau.
- (iv) With respect to Adverse reports, the committee shall decide, in consultation with the Architect/Engineer, what action should be taken or recommended to the Managing Department. In any event, the Chairman shall write to the contractor concerned advising him that the report is Adverse and warning him of the possible consequences.

- (v) The secretary shall send copies of all Adverse reports, duly endorsed, to SEO(PS), Development Bureau and to the secretaries of the appropriate MRC together with details of any action being taken as a result of Adverse reports and/or any recommendations for suspensions (voluntary or mandatory), downgrading or deletions. In addition, the secretary will provide the name of the member of the RRC the relevant MRC may contact with respect to each Adverse report. Where downgrading or deletion is being recommended, the member of the Committee named should attend the meeting of the relevant MRC when the contractor concerned is being considered.
- (vi) When an interview with the contractor by the Reporting Department is considered necessary as a result of Adverse reports, the Chairman or his representative will interview the contractor.
- (vii) The Chairman shall keep the relevant MRC fully informed of interviews held and any action taken.

4.6.3 Managing Review Committee

- (a) Membership shall be: - Chairman : D3 or above

Secretary : Senior professional officer or above

Members : at least a D2 officer and one other officer of at least senior professional rank

- (b) Functions: -

- (i) The secretary shall maintain a record of all reports on contractors in the relevant categories and lists.
- (ii) The MRC shall review the overall performance of each contractor who receives an Adverse report by referring to all the current reports on that contractor's performance in the relevant category or list. After considering the action being taken and the recommendations made by the RRC(s), the MRC shall decide what action it considers appropriate and recommend accordingly.
- (iii) For mandatory suspension, downgrading or deletion, the Director of the Managing Department, or the Chairman of the MRC or the Deputy Director, if the Director so wishes, should interview the contractor prior to a recommendation being made to Development Bureau. The Architect/Engineer, together with others considered necessary by the Director of the Managing Department, should attend the interview. Where a consultant is the Architect/Engineer, the officer from the Reporting Department who endorsed the report should also attend the interview.

- (iv) For voluntary suspension, the Chairman of the relevant RRC should interview the contractor if requested to do so by the Director of the Managing Department. The contractor shall send written confirmation of his acceptance of voluntary suspension to the Director of the Managing Department who will circulate this confirmation to all Works Departments, Housing Authority and Development Bureau.
- (v) As soon as the MRC has considered the reports, the secretary shall forward to Development Bureau the minutes of the MRC's consideration of Adverse reports.

4.6.4 Timetable for Reporting on Contractors' Performance

- (a) Subject to paragraphs 4.5.4 and 4.5.5 above, the reporting date shall normally be the last day of February, May, August and November.
- (b) On or before the third working day after the reporting date (Saturdays not being counted as working days), the Reporting Officer shall prepare and send the soft copy of the performance report together with a duly signed hard copy to the secretary of the RRC for review and endorsement.
- (c) At the same time, the contractor shall be sent an advance copy of both Parts I and II of the Report on Contractor's Performance, after agreement by the Engineer/Architect or endorsement by the Chief Engineer/Architect in the case of consultant administered projects. The report shall be sent to the contractor's head office by fax or by hand with a caveat that it will be subject to endorsement by the Chairman of the RRC. Where the report is subsequently amended by the Chairman of the RRC, the contractor shall be notified accordingly.
- (d) In the event of disagreement with the grading in the performance report, the contractor should notify the RRC on or before the 6th working day after the reporting date (Saturdays not being counted as working days) and submit written representations to the RRC in accordance with sub-paragraph (f) below.
- (e) On or before the thirteenth working day after the reporting date (Saturdays not being counted as working days), the RRC shall complete the review on all the reports except those where the contractors have indicated disagreements in accordance with sub-paragraph (d) above and, if the RRC does not propose any alterations to the performance report, it shall send the reviewed Adverse reports, together with details of action being taken and recommendation, to reach the secretary of the relevant MRC, with copies to Development Bureau (Attn: SEO(PS)), other Works Departments and Housing Authority. Simultaneously, the Reporting Department shall arrange to upload all the performance reports to the Contractor Management Information System (CMIS) and dispatch written notification to the Managing Department and Development Bureau (Attn: SEO(PS)) with all details of the contract number, contractor name, the contractor's classification and remarks (stating whether

the report is Adverse or Not Adverse, and other remarks, if any) of each of the performance reports uploaded to the CMIS on or before the twenty-second working day after the reporting date (Saturdays not being counted as working day). Except for Adverse reports, hard copies of the performance reports need not be sent to the Managing Department and Development Bureau.

- (f) Subsequent to notifying the RRC of its disagreement with the grading in the performance report in accordance with sub-paragraph (d) above, the contractor should submit written representations to the RRC for a review of the grading by fax or by hand on or before the sixteenth working day after the reporting date (Saturdays not being counted as working days). The RRC shall inform the contractor in writing as soon as a decision has been made.
- (g) If the RRC intends to alter any grades in the performance report, it shall notify the contractor its intention in writing on or before the fourteenth working day (Saturdays not being counted as working days). In the event of disagreement with such proposed alterations, the contractor should notify the RRC on or before the sixteenth working day (Saturdays not being counted as working days) and submit written representations to the RRC for a review of the grading by fax or by hand on or before the twenty-first working day (Saturdays not being counted as working days). The RRC shall inform the contractor in writing as soon as a decision has been made.
- (h) On or before the twenty-sixth working day after the reporting date (Saturdays not being counted as working days), the RRC shall complete the review on the disagreement of the contractor with the grading in the performance report or its proposed alterations, and send the reviewed reports, together with details of action being taken and recommendation, to reach the secretary of the relevant MRC, with copies to Development Bureau (Attn: SEO(PS)), other Works Departments and Housing Authority. Simultaneously, the Reporting Department shall arrange to upload all the performance reports to the CMIS and dispatch written notification to the Managing Department and Development Bureau (Attn: SEO(PS)) with all details of the contract number, contractor name, the contractor's classification and remarks (stating whether the report is Adverse or Not Adverse, and other remarks, if any) of each of the performance reports uploaded to the CMIS on or before the thirty-fifth working day after the reporting date (Saturdays not being counted as working day). Except for Adverse reports, hard copies of the performance reports need not be sent to the Managing Department and Development Bureau. The RRC shall inform the contractor in writing as soon as a decision has been made.
- (i) On receipt of the reviewed Adverse reports from the RRC, the MRC shall conduct further review on such reports, the actions being taken and the recommendations made by the RRC. The minutes of the MRC meeting and copies of the reports (where applicable) shall then be prepared and dispatched to Development Bureau (Attn: SEO(PS)) on or before the thirty-fifth working day after the reporting day (Saturdays not being counted as working days).

- (j) When additional six-weekly intervening reports between the normal reporting periods are required pursuant to sub-paragraph 5.4.5 (b) (iv) of Section 5, the Reporting Officer shall proceed with such reporting once the notification has been sent in accordance with paragraph 4.5.5 even if the review result of the MRC is not yet available.
- (k) When reports are being made for periods with reporting dates different to the normal quarterly reporting dates, the Architect/Engineer should complete the report within the time frame mentioned in sub-paragraph 4.6.4(b) above. However, the Review Committees shall exercise discretion in scheduling the reviews of reports as they deem appropriate to the circumstances, i.e. either immediately or as part of the normal review meeting.
- (l) It is recommended that MRCs should fix the dates of their normal review meetings at least twelve months in advance and advise all RRCs such that all appropriate representatives will be made available to attend MRC meetings if required.
- (m) The above timetable is illustrated in **Appendix 4D**.