

ABSTRACT

Construction projects are increasingly becoming complex, resulting in complex contract documents. Complex construction can likewise result in complex disputes. Disputes are inevitable in construction projects which predominantly arise from complexity and magnitude of works, multiple prime contracting parties, poorly prepared and/ or executed contract documents, inadequate planning, financial issues and communication problems. Depending on the nature of the relationship between the parties involved in the disputes and the circumstances under which the dispute is evolved, different methods of dispute resolution techniques may be preferable. The objective of this study is to identify the cause of dispute, to identify the existing practice of dispute resolution techniques in construction projects, to evaluate the prevailing dispute handling methods and recommend the most appropriate method. The method adopted for the study was through questionnaire survey where the target respondents were clients, consultants and contractors. Based on the analysed data, there are disputes caused by the clients, consultants and contractors which are capable of resulting to loss of reputation and sour relationship between the stakeholders and also loss of profit and business viability. Negotiation was observed as the most appropriate method of dispute resolution in construction projects in Nigeria as it non time consuming, cost effective and restores business relationship. From the findings it can be concluded that construction disputes are a cause of concern in every project and the solution to this problem is to avoid and cautiously manage them for smooth running of construction process.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Construction is plagued, perhaps more than any other industry, with disputes due to the inherent conflict of interest between the buyers of construction services (i.e. the owner or employer) and the sellers of the services (i.e. the contractor). The buyer wants to receive the most value for its construction finance whereas the seller wants to spend the least amount of money while meeting its contractual obligations. Unfortunately, these obligations are seldom, if ever, stated in clear enough language to preclude misunderstandings. Over the years, the industry has learned to rely on the design engineer or the architect, who formulates the construction documents, i.e. the most likely author of the misunderstanding, to clarify it and to decide on the corresponding responsibilities of the parties (Steve Revay, 1995).

Construction projects are among the most complicated of human enterprises. High levels of art and craft are required to translate an owner's vision into plans and specifications, then into real structures, one that fits

the needs of the individuals and the public. In addition to technical skills, the ability to coordinate the diverse efforts of many individuals is crucial to success.

The parties of a construction contract, the owner and contractor, are a society with a complex set of interrelated relationships requiring cooperation and collaboration to coordinate time, resources, and communication. The main goal of the parties involved in a project's construction is to have a successful project. This is defined as a project that has been constructed in accordance with the plans and specifications, within the time and cost originally anticipated. The success of a project depends on a number of variables, not the least of which is how the organisations approach problems and conflicts (Diekmann et al. 1994)

Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise result in complex disputes. Disputes are inevitable in construction projects which predominantly arise from complexity and magnitude of works, multiple prime contracting parties, poorly prepared and/or executed contract documents, inadequate planning, financial issues and communication problems. Any of these factors can overturn a project and lead to complicated litigation, arbitration, mediation, time overrun; increased costs and a relationship break down among members of different parties involved (Motsa, 2006).

Construction relationships in the construction industry all over the world have become more increasingly strained as years go on and on. Working relationships, communications, and contractual commitments are often not carried in good faith. This has led to most developed countries to search for better alternatives on how to manage disputes in the construction industry. Though it has been seen that disputes in the industry are like an un-incurable disease, means are done to fight the problem.

In the United Kingdom, for example the standard form of contract that is internationally used to new engineering contracts has been subject to change; whereas, in the United States of America the Disputes Review Boards (DRB's) which comprises of three board members to manage disputes in construction sites was introduced. All these exercises undertaken have proved to be successful.

Disputes in the construction industry often involve the resolution of complex technical and factual issues. The formal processes such as litigation may often not be the best way of dealing with this type of disputes. Traditionally, arbitration has widely been used, being even included in standard contracts as a means of dispute resolution and has been found to be cheaper and less time consuming than litigation.

In today's complex construction projects, resolving dispute has become an inevitable part of a project

manager's work. This includes a wide variety of activities ranging from the selection of a dispute resolution process to the participation in the actual negotiation. An understanding of the various forms of dispute resolution processes and their critical factors will no doubt be invaluable to project managers in handling disputes.

Formalised dispute resolution techniques like arbitration and litigation have been well developed for the resolution of construction disputes.

However, many disputes have been amicably resolved satisfactorily, sometimes informally, without the need for arbitration or litigation. ADR methods are the responses to shortcomings of the conventional judicial system such as rigidity and limited choice, especially in the modern commercial world (Hibberd and Newman 1999). Therefore, the introduction of ADR methods is to formalize the informality. The new commercial environment appeals to the application of ADR methods with its characteristics of choice. Often, more than one method may be used in the same dispute and parties can then shape the outcome based on the unique circumstances of the dispute. Fenn and Gameson (1992) have advised that ADR does not seek to replace the court processes, nor does the use of ADR imply that litigation and arbitration should not be used at all; they should only be used when other venues have been exhausted.

1.2 STATEMENT OF THE RESEARCH PROBLEM

The construction industry has become very complicated that political and economic trends are increasing the economic pressure resulting in disputes. Construction projects involve diverse participants mainly the user, client, financier, designer, supervisor, executor, etc. These combinations invite more disputes and conflicts between the parties. Due to the nature of the contract when responsibilities are shared between numbers of stakeholders conflicts and disputes occurrence are considerable.

Complex construction has brought about complex disputes in the industry and this eventually becomes a burden to the industry in terms of production. Disputes and conflicts have gained frequent rise during construction of projects and this needs an involvement of a neutral body to resolve disputes as early as possible.

1.3 JUSTIFICATION FOR THE STUDY

Great concern has been expressed in the recent years regarding the dramatic conflicts and disputes in the construction industry in the whole world.

This has led to most developed countries to search for better alternatives on how to manage disputes in the construction industry.

Developing countries are still facing this problem and the research on this topic will be on what to do either to

improve or avoid and manage disputes in our local construction industry.

1.4 AIM AND OBJECTIVES

The aim of this study is to identify the most appropriate dispute resolution technique in construction projects.

The objectives are:

- To identify the causes of construction disputes
- To identify the existing practice of dispute resolution techniques in construction projects,
- To evaluate the prevailing dispute handling methods,
- Recommend the most appropriate method.

1.5 SCOPE AND LIMITATION

This research was undertaken with a careful study on data collected mainly on questionnaire survey exercise. The research was focused on private and government projects in Benue State.

An investigation into the extent of use of dispute resolution techniques in construction project

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