

A Study of Conflict in Construction Industry

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Abstract— Present day construction projects are becoming more complex and costly as compared to previous time. The complex nature results in complex claims and disputes. The main goal of this paper is to overview the factors of conflict in construction industry. The study highlighted the common causes of conflict in construction industry. The common dispute resolution techniques are discussed in this paper. This paper was hoped to be guidance for conflict management in future construction projects.

Key words: Dispute; Construction industry; Conflict; Contract

I. INTRODUCTION

Today's construction projects become more complex in nature. —The complex, relational and lengthy process of designing and building makes construction a process in which disputes are virtually ensured[1]. Construction project itself is intricate and conflicts easily occur among the parties. The construction industry had undergone heaps of time of costly and time consuming legal conflicts historically. Until today, the conflict problems are still remaining, irresolvable even go beyond months and years, and often occur in construction industry. The involvement of multidisciplinary in the construction project also leads to conflicts among the parties. It seems that conflict and disputes are inevitable to the construction industry especially when most of construction projects are facing with so many uncertainties [2].

If conflicts are not well managed, they quickly turn into disputes. Disputes are one of the main factors which prevent the successfully completion of the construction project. Thus, it is important to be aware of the causes of disputes in order to complete the construction project in the desired time, budget and quality. In this article, the analysis is focused on conflicts between the parties directly participating in the construction process, i.e., between the client and the customer.

II. WHAT IS CONFLICT?

Conflict occurs when there are one party disagree or negatively affect the interest of another party. It involves opposition and different perspective towards others opinion. Conflict is an incompatible activity which occurs when there are interfere or obstruction of one party's actions by another party's behaviour. Conflict process will involve more than one party. Thus, it can be said that conflict is the struggle of conflicting ideas between two or more parties. Every industry have different view towards the conflict, some of them view conflict as negatively, and think on avoid it as possible. Conflicts can be said as common in nowadays, it may positive and negatively affect the project depending on how to manage it. It can be concluded that if the conflict can be manage well, the negative impact to the project is still can under control

III. CAUSE OF CONFLICT IN CONSTRUCTION INDUSTRY

A. Changes in Contract-Work (Extra Work) [3]

The client may effect some changes in the contract work resulting in the increase or decrease of contract cost. Due to the restrictive wording for working out an equitable price adjustment under this clause, it is better for contractor to read the clause very carefully before bid.

B. Different Unusual Site Conditions Encountered

Such data includes information about ground conditions, depth of groundwater table, rainfall and temperature data, availability of power and water, etc. The estimates of a contractor are based on the ground data provided with the tender documents, though depending upon the size of the project and the means of a contractor, the letter also at times carries out an independent assessment of the data provided. Obviously, any difference between the ground reality during execution and the conditions provided in the contract could easily be the reason for disputes

C. Unreasonable Attitudes:

It should be b born in mind that in order to complete the work professionally, it is important that the parties involved resort to unilateral action to preserve an environment of mutual trust. Thus both the client and the contractor need to have a professional approach to the project, including areas where there could be disagreement on interpretation, etc. Measures such as suspension of the contract or invoking of causes related to imposition of liquidated damages should be resorted to only in the most extreme cases, as they vitiate the atmosphere of the project, and also affect the work on other contracts. Delays in payment of bills should also be avoided to ensure that the contractor does not get cash-strapped, which will obviously affect his ability to perform.

D. Suspension of Work

According to this clause, the client reserves the right to suspend any part of the contract's work. But he is to be paid the necessary compensation for doing so. Generally, this compensation is limited only to the contractor's stand by costs and extended overheads, determination of which may not be easy particularly if verification of its estimates is subject to client's audit.

E. Variations in Quantities

In an item-rate contract, the client may want a price adjustment owing to variation (increase/decrease) between actual and initially estimated quantities, due to various reasons (e.g. desired change in extent of work, change in design assumptions, change in site conditions etc.). Generally, if there is a variation in quantities by 10 to 15%, the contract document may not allow any compensatory increase in unit prices of the work-items.

F. Damage due to Natural Disasters and 'Force-Majeure

Natural disasters cover unprecedented or unusual floods, rains, heat, cold, wind, earthquake, fire and the like. These together with occurrence of riots, civil commotion, insurrection, and all other such happenings are outside the control of the contractor and not attributable to his fault. The contract document usually specifies as to which of these risks, the contractor should cover against financial loss through insurance policy in his own interest.

G. Re-inspection and Acceptance

Sometimes, the contractor may have to tear-open or uncover the works already completed for inspection by authorised agents of the client's inspectors who may claim that the works done were defective. The contractor does as directed and if the work is discovered to be acceptable, then the contractor should promptly claim for all his costs in tearing open (uncovering), examination and reconstruction as also for the loss of time, notwithstanding the demoralisation.

H. Termination of work for Convenience of the Client

Sometimes the client may want to terminate a contract out of his own interest. Then, settlement has to be made with the contractor on cost basis, duly compensating him for not only his stand by cost extended and already stretched overheads costs, all dismantling and transportation for redeployment, but also for his anticipated profit on the component of work terminated. However, if the contract document has suitable clause to suit this contingency of 'Client wanting to terminate the work for his convenience', then the contractor may not be able to claim for the loss of his anticipated profit on the component of the work termination.

I. Possession prior to Completion

There may be cases when a client wants to take into possession partially completed facility and starts using it even before the completion of the entire projects. In such an event, the contractor should promptly bring to the clients notice that he stands relieved of the responsibility for loss or damage to the work other than that resulting from the contractor's fault or negligence.

J. Escalation of Price Due to Inflation

Most of the projects may have to be executed in an inflation prone area and the labour wages and material prices are expected to suffer an upward revision incident to inflation. To account for this escalation of price, a balance contract document should include necessary escalation payment clause based on any standard recognised empirical formula commonly in use these days.

K. Acceleration of Work Progress

It has to be recognised that all said and done, organising and managing modern-day construction is a very complicated exercise involving long term planning and scheduling of operations, optimised deployment of manpower and machinery and delicate balancing of resources, loan and funds. In spite of this, if the client forces the contractor to accelerate the construction process for an earlier completion of work, he may have to pay necessary compensation to the contractor.

L. Ripple Effect

In some cases, the client may force the contractor to accelerate a part of the whole activity. If this results in the delay of balance work, then the contractor can claim an extension of time for the balanced work. The previously planned work schedule of the contractor is disrupted due to the ripple effect created.

M. Currency Fluctuation Effect

While working in a foreign country and having imported a sizeable amount of hard currency for meeting various mobilisation charges, initial expenditures and purchase of equipment, etc. the contractor may wish to seek protection against a serious downward fluctuation in the currency of that foreign country within whose territory he is working. This matter has to be built into the bid proposal and negotiated in depth, as it can have serious repercussions on the overall resource planning of the contractor.

N. Ambiguity in Specification and Drawings

Where the contractor specification is ambiguous and can have more than one interpretation, precedent legal procedure has proved that it has to be interpreted against the client who authored it or used it as his designated specification. The contractor will carefully study such specification and use them to his cost-advantage by actually following sound engineering practice.

IV. DISPUTE RESOLUTION TECHNIQUES

The basics of the most frequent dispute resolution techniques are [4]:

A. Negotiation

The parties work together to find a solution to any issues that may have arisen. The power to settle the dispute lies with the disputing parties.

B. Mediation or conciliation

The parties undertake an independent, third party neutral solution system to supervise discussions between the disputing parties with the aim of reaching an agreement. This is further explained in the next chapter.

C. Expert determination

The parties sign a contract that states that a third party will make a binding decision for them. The terms are governed by the contract.

D. Adjudication

This process was introduced in 1998 in the UK and has been widely used since. Depending on the contract, if the act is incorporated into the contract documents, then either party may request the appointment of an adjudicator to be made within one week of serving a notice of dispute. The adjudicator has four weeks to issue a binding decision about the dispute to the parties.

E. Arbitration

The contract must contain a written agreement to arbitrate. The parties can express their disputes to an arbitration panel where their cases are heard and ruled. The result is binding. Arbitration is further explained in the next chapter.

F. Litigation

The courts, in most cases, have jurisdiction to rule on disputes in respect to close to anything. If other methods are absent in the contract documents, the parties have a right to refer their matters to the appropriate court where the result is binding for that judicial level.

G. Dispute boards

Dispute boards sit between dispute avoidance and resolution. The board is founded at the start of the project, and three board members are appointed. They get familiar with the project by reviewing project documents and visiting the building site. The board can issue a non-binding recommendation or a written binding decision.

V. CONCLUSION

This paper significantly overview the factors of conflict in the construction industry which is hoped to give clearer scenario to all project teams. Disputes between the parties to construction projects are of great concern to the industry. Both the study of construction industry disputes, and the causes of those disputes, is essential. Beside this, the common dispute resolution techniques are also discussed in this paper.

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