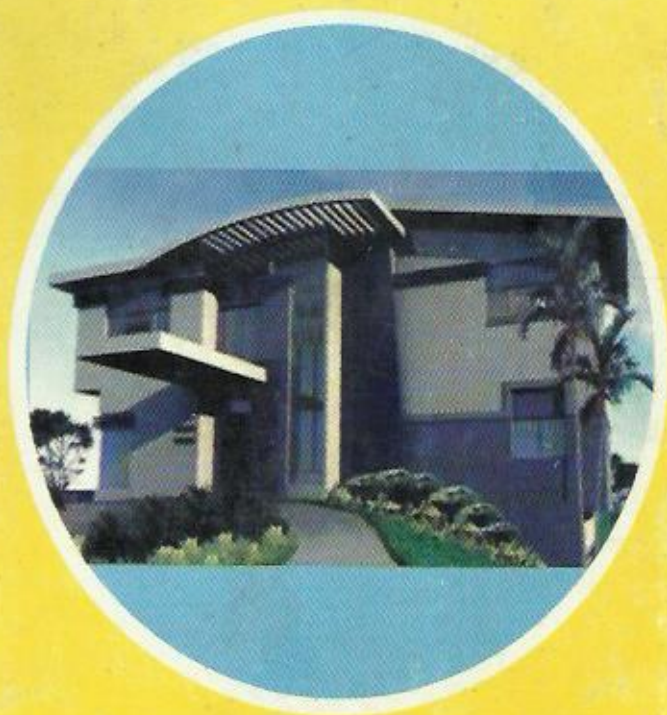


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BUILDING CONTRACTS ADMINISTRATION AND THE NIGERIAN NATIONAL BUILDING

CODE: A SYNERGISTIC OVERVIEW

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ABSTRACT

The overall system of contract administration in Nigeria takes after the Joint Contract Tribunal (JCT) Conditions of Contract applicable in the U.K the performance of the nation's projects in terms of meeting predetermined contract objectives has remained a source of worry for construction industry stakeholders in spite of wide adoption of contract documents for their administration. Scholars and practitioners alike are having a growing concern for a critical review of them for achievement of synergy. This paper aims at sensitizing building industry stakeholders of the dynamics of a rapidly changing construction environment and the need to harmonise existing contract documents to meeting local construction criteria while complying with global best practices. The methodology of study involved a critical exposition of existing relevant literature and case studies of related construction scenarios. The findings of the study include the imperatives of revising the subsisting Standard Form of Building Contract (SFBC) in Nigeria, by infusing the values of the National Building Code (NBC) for improved project performance. The study concludes with a need to explore all areas of interface between the SFBC and the NBC; with an aim of achieving a synergy that would enrich the documentation of the Conditions of Contract and its adaptation in building contracts in Nigeria. The study recommends a harmonisation of key contract documents especially the Standard Form of Building Contracts (SFBC) with the National Building Code (NBC) for improved building contract administration, minimisation of building collapses and enhancement of the built environment in Nigeria.

Key Words: Building Contracts, Conditions of Contract, National Building Code

1.0 INTRODUCTION

1.1 The Building Construction Industry:

The Nigeria construction industry involves an array of industry players and is a visible industry which activities affects and transforms the natural environment into the built environment. It provides the roads, bridges, airports, dams, seaports, jetties, buildings of all kinds.

The industry is unique with large, heavy, immobile and capital intensive products. Also, all other industries depend on the construction industry for its physical infrastructure; as such, a fulcrum for the realisation of other sub-sectors of the national economy.

Civilizations are built by construction efforts; and each civilization has construction industries that foster its growth and quality of life (Peurifoy et al. 2006). Akindoyeni (2004) refers to the building industry as an important cog in the wheel of national development that deepens the capital formation of the nation. Citing (NIOB, 1988), Okoro (2009) refers to the building industry as the focal point of development in any country. It is responsible for the core development of all sustainable human settlements (Obiegbu, 2006).

There is no universally accepted definition of the construction industry; it however includes the numerous general contractors, specialist contractors, consultant architects, and engineers, quantity surveyors, building material manufacturers, labour organizations, clients-comprising private and public consumers, and government agencies (Adindu, et al, 1993).

Amobi (2009) posits that the development of the human society led to developments in the fields of science and technology of the building construction industry; which resulted in the expansion of its disciplines.

The built environment professions have distinct but overlapping facilitation roles from the pre-design, design, construction and post-construction stages of project development. The estate surveyors, land surveyors and town planners facilitate the pre-design stage; at the design stage, the facilitators include the architects, engineers and quantity surveyors; the architects, builders, engineers, quantity surveyors and town planning professionals play active roles at the construction stage of project implementation; while at the post-

construction stage, the estate surveyors and builders play active facilitation roles.

The quality of professional input dictates the standard and quality of the expected output. Farowaja (2005) advocates that professional collaboration is essential for building blocks of professional life cycle. Additionally, the pursuit of professional culture and expert infusion of ideas and concepts is imperative for construction quality assurance and quality control.

Synergy is necessary and advocated in the building industry considering its multi-disciplinary and interdependent nature. Okoro (2009) notes that although each of the building industry professions have different roles, often times the roles overlap thus necessitating strict professional ethics to avoid role conflict.

Akindoyeni (2003) and Adekemi (2008) agree that without prejudice to their training, building industry professionals are interdependent to the extent of understanding the scope of the other's skills, expertise, responsibilities and performance limits. It is this synergy, and the need for safe, qualitative buildings,

among others that led to the development of Nigeria National Building Code.

2.0 LITERATURE REVIEW/ T H E O R E T I C A L FRAMEWORK

The National Building Code (NBC) and Standard Form of Building Contracts (SFBC)

Jambol (2008) asserts that the environment needs to be coordinated by codes and regulations if it is to be preserved and sustained. Futhermore, Adekemi (2008) states that the NBC is a document aimed at establishing certain minimum standards on quality, environment, building pre-design, design, construction and post-construction stages to ensure quality, safety and proficiency in the building industry. Obiegbu (2007) asserts that building codes are an expression of acceptable means and technology to meet prescribed needs at a point in time. He went further to state that building codes have been around in some form for years; and that the first national building code was established in the United States in 1905.

The existing conditions of our cities and environment characterised by

absence of proper planning of our towns and cities; constant collapses of buildings; use of quacks; poor workmanship; among others were some primary reasons for evolving the National Building Code (NBC) in Nigeria. It is therefore imperative that the revision of the subsisting Standard Form of Building Contracts (SFBC) by the infusion of the values specified in the NBC will ameliorate the existing conditions of our cities and environment.

Various forms of contracts abound in the construction industry, however, the General Conditions of Contract (G.C.C) sets out the powers, responsibilities, obligation and liabilities of the parties in the contract including payments, extension of time, alterations, disputes, adjudications etc. (Harris & McCaffer, 2005). The Conditions of Contract generally in use in Nigeria is referred to as 'The Standard Form of Building Contract in Nigeria'. Considering contemporary global best practices in modern times, the document is fraught with various undefined roles and operational ambiguities. This has thus created loopholes and made it possible for the Nigeria Building Construction Industry in to be infested with untrained personnel.

Bamisile (2004) states that the building industry in some countries is an all-comers affair where un-professionalism is being practiced with impunity, thus, constituting a major cause of defects and building failures. He further stressed that the issue of all-comers affair is one of the major characteristics of the construction industry especially in developing countries.

On the other hand, the subsisting Conditions of Contract portends that once the design teams are done with their documentations; any entrepreneur/contractor(s) is good enough to manage the production process.

Obiegbo (2006) posits that buildings do not collapse on paper and that the real work of ensuring safety and stability lies in the actual construction activities. Although effective project delivery is strongly advocated in the nations building industry, the Conditions of Contract in use in Nigeria makes no specific mention on the role of the professionals in building production processes and in the management of personnel responsible for construction quality, health and safety. Akindoyeni (2004), states that there are seven (7) professional

groups and twenty one (21) sundry trades groups in the construction and completion of a building. Unfortunately these tradesmen do not understand the science and technology of their trades; leading to different standards, the effect of which is unwholesome project delivery and ravaging collapses of buildings.

The Conditions of Contract for building projects conceptually establishes the basis for smooth contract administration, but would require periodic revision to suit local buildability parameters while complying with global best practices.

Identified Clauses of the SFBC for harmonisation with the NBC.

According to Adebayo (1991) each of the clauses of the conditions of contract is vital and requires proper study.

Clause 1 – Contractor's Obligations:

This clause features on the contractor's obligations but fails to outline the basic qualities required of a building contractor. This situation makes contracting susceptible to abuse and an all-comers affair. In recognition of this oversight, the

National Building Code (2006) via Section 13.12.3 of states *inter-alia* that 'any contractor who is engaged to carry out construction work in accordance with this code shall satisfy the professional registration laws of the country'.

It is therefore advocated that this Section 13.12.3 be worded, cited and adopted as the first sub-clause to Clause 1 of the envisaged revision to the SFBC in Nigeria.

Also advocated for inclusion in clause 1 of the SFBC is Section 13.3 particularly those of 13.3.1, 13.3.2 and 13.3.5 of the NBC; in order to forestall Building developers and consultants from evading this provision. This assertion corroborates the views of Obiegbo (2007) which posits that 'every participant in the construction of a project must be in tune with the concept of bringing the project 'on-line' in the safest possible condition; the best guide to this being the provisions of the building regulatory system.

Contractual obligations in the Conditions of Contract revolve around the ambits of the developer, consultants and contractor. Adebayo (1991) asserts that each condition

has a cost implication to the contractor- some positive, others negative and defines his rights and responsibilities. The introduction of the prescribed sub-clauses will open up each project to proper construction scrutiny and implementation criteria. Also, the wholesome interactions of project stakeholders and the Planning Authorities will satisfy the wider national interest of health, safety, and environmental friendliness by curtailing the preponderance of building collapses in Nigeria. This is without prejudice to clause 4 of the Conditions of Contract which compels the contractor to comply with all statutory obligations, notices, fees and charges as relevant and applicable within the jurisdiction of a particular project.

The proposed sub-clauses are also aimed at enforcing the collective responsibilities of project stakeholders to project quality assurance and control.

Clause 3: Contract Documents

Contact documents describe all the production documents that guide project implementation, monitoring, and control.

Clause 3 of the Standard Form of Building Contract in Nigeria (1990) lists these documents as:

- i. The contact drawings
- ii. The contract bills
- iii. Variations in accordance to clause II (I)
- iv. Description Schedules in accordance to clause 3 (3)
- v. Details or Amplified Drawings in accordance to clause 3 (4)
- vi. Articles of Agreement and
- vii. Conditions of Contract.

On the other hand, The National Building Code, in section 2.32 outlined and amplified contract documents to include the following.

- a) Contract drawings and specifications prepared by registered architects and registered engineers.
- b) Priced Bill of Quantities prepared by registered quantity surveyors.
- c) Construction programme, project quality management plan, project health and safety plan prepared by registered builders.
- d) Conditions of Contract
- e) All-risk insurance for the building works, personnel and equipment.

The Code went further in section 13.2 to outline the scope of control of Building works; and in 13.2.3 stated that all these contract

documents are required at the construction stage.

The highlight of this is in 13.2.3.2, which states that the Code Enforcement division/section/unit shall ensure that all the above contract documents as in section 2.3.2 are submitted with notice to commence construction, prior to the requisite approval by the Code Enforcement division/section/unit for project execution to commence.

Considering the above prescriptions, it is recommended that clause 3 of the conditions of contract be changed to imbue section 2.32 of the Code, as listed in a-e above.

Clause 8: Person-In-Charge

Clause 8 of the Conditions of Contract prescribes that the contractor maintains on site a competent English speaking Person-in-charge. This basic qualification is grossly adequate and without consideration for technical competence of the 'Person-in-Charge'.

An obvious oversight is the person in the person in the capacity of the Site Agent. This is non-specific in the subsisting 'Standard Form of

Building Contract' and in other building contract administration documents in Nigeria. It is therefore prescribed that clarity be added to the role of the 'Person-in-Charge' while its qualification should be enriched with technical and basic managerial ability.

Clause 10: Clerk of Works

Clause 10 is another clause that needs to harmonize with the NBC. The clause as it stands provides that the Employer shall appoint a Clerk of Works whose duty is to superintend on behalf of the Employer. This implies that such an employee should be an expert representing the general interests of the client on a project. His perceived responsibilities include the monitoring of contractor's production process for better service delivery through insistence of compliance to specifications, statutory requirements and other building regulations. His general duties among others include on and off-site quality management, adherence to health and safety requirements, monitoring fire prevention and protection procedures, preparing progress reports, liaison with consultants and/or employer.

Clause 29: Artisans and Craftsmen

Clause 29 of the Conditions of Contract empowers the employer to engage artisans and craftsmen to undertake certain aspect of the works. Tradesmen, that is, artisans and craftsmen are skilled workers engaged for their specific skills and craftsmanship in project accomplishment. Bamisile (2004) posits that in spite of advancement in technology, the construction industry still relies heavily on individual skills of tradesmen. Twenty one (21) skilled tradesmen groups are relevant for the construction and completion of a building (Akindoyeni 2004). Abdulgafaru (2003) states that they are persons who have acquired vocational training and education and are skilled at manually beautifying things with great attention to details.

Section 13.12.3 of the NBC mandates the contractor to comply with the Registration laws of the country. Impliedly, the Contractor will have in his employ all the relevant professionals required for successful delivery of a building project in order to qualify for project executive capacity.

It is imperative that a contractor's

site team be qualified and positioned to deal on behalf of the employer with all aspects of the project that requires the engagement of tradesmen and artisans.

In view of the foregone considerations Clause 29 including sub-clauses 23 (h), 24 (d), 26 (C-vi) of the subsisting Conditions of Contract has questionable relevance.

Clause 30: Certificates and Payments

The first sub-clause to Clause 30 as it relates to appendix 1, which puts the period of Interim Certification at monthly, should be compliant to section 15 of the National Building Code. The section breaks down a project into stages of compliance and attestations referred to as project milestones. It is therefore advocated that valuation of completed works by the client's Quantity Surveyor and subsequent issuance of interim certificate(s) should tally and strictly based on the milestone compliance forms as outlined in the said section 15. This is without prejudice to clause 30(2) of this condition.

A case for an entrenchment of the Project Management function in Building Contracts in Nigeria

Awe (2007) posits that project

management involves complex problems of management and greater responsibilities in the field of contract execution; and that it may involve the coordination of professional actors within the project.

Bamisile (2004) states that some building contracts allow for the Supervising Officer/Project Coordinator/Project Manager who assumes the role of the client's representative, and opined that a Builder, Architect, Quantity Surveyor or Engineer can serve the purpose.

Citing NEDO report (1973), Obiegbu (2002) stated that a single person should be nominated to provide a single interface between client, design team and contractor; hence a client should appoint a project manager to act on his behalf, with the responsibility for the management and coordination of the relationship between the client, design team and contractor. Adesanya (1991) declares that the Projects Manager's responsibility cover Design, Construction and Commissioning with the main role being the control of activities and decisions aimed at project realization.

This implies that the project manager's core roles and duties include creating and providing an interface between all consultants so as to provide a non-restrictive environment for a buildable, maintainable and aesthetically pleasant completed project. These submissions positions the project manager as one who coordinates the activities of all consultants and the contractors as an independent motivator; and ensuring that they perform at their best, devoid of domineering posturing, for an approved standard output.

Hendrickson (2005) recommends that project owners select competent project managers with authority to assume responsibility at various stages of the project. He went further to state that the project manager is the most important person for the success or failure of a project; insisting that he must be broadly educated with a wealth of project management experience.

Bamisile (1999) equally opined that the goal of project management is to provide an efficient procurement system that meets cost and time targets without any reduction in approved quality standard. He went further to state that, among other

objectives, the project manager's role is geared towards developing closer relationship between the employer, the contracting organization and the consultants through his coordinating functions.

Harris and McCaffer (2005) aver that a project manager heads the two main segments of construction delivery – design and contract management, as well as site execution; and that all expertise can be readily obtained and coordinated effectively under the single leadership.

Ifedigbo (2010) states that in today's global economy, Nigeria cannot continue to lag behind; as countries and corporations all over the world are adopting the principles of project management.

It then follows that to key-in to this emerging global trend and for an improved construction output, the overall management of building projects should be facilitated and entrusted on any of the construction professions; knowledgeable and experienced in construction/project management. Okereke (2008) asserts that project management in Nigeria is grossly underdeveloped; and that it is difficult to find projects with checks and balances that

ensures 'earned value management' and completed on time and on budget.

It is proposed that the position of the Project Manager be enshrined in the Conditions of Contract operational in Nigeria. This will enhance teamwork among the design and construction team and put them at their best in contract documentations and administration as outlined in sections 2.32 and 13.12 of the National Building Code.

CONCLUSION

The Conditions of Contract for the procurement of buildings in Nigeria has been of tremendous benefit in project planning, implementation, monitoring and control of building contracts in Nigeria. However, considering rapid changes in building contracting practices the world over, it has become pertinent to review some of the provisions of the Conditions of contract in areas of marked deficiency. In doing this, specific attention is paid to all areas of obscurity, duplicity, inadequacy of prescription, conflict and discrepancies and divergences from the Nigerian National Building Code. There is finally a need to explore all areas of interface between the SFBC and the NBC;

with an aim of achieving a synergy that would enrich the documentation of the Conditions of Contract and its subsequent adoption on building contracts in Nigeria.

RECOMMENDATIONS

1. An integration of the positive values of the NBC with the SFBC for enhanced project delivery.
2. Making the Conditions of Contract adaptive to the local contents in the context of our national values; especially as expressed in the National Building Code.
3. A harmonisation of key contract documents especially the Standard Form of Building Contracts (SFBC) with the National Building Code (NBC) is crucial for improved building contract administration, minimisation of building collapses and enhancement of the built environment in Nigeria.
4. A quest for an in-depth understanding of the contents and workings of building contract documents by both design and construction teams to curb the growing incidence of building failures, and contract mal-administration in the country.

5. An advocacy for the entrenchment of a clause on the services of the Project Manager for the purposes of developing closer relationship between the employer, the contracting organization and the consultants for enhanced project performance.

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