

## **IDENTIFYING STRATEGIES FOR PREVENTING DISPUTES IN BUILDING CONSTRUCTION PROJECTS IN NIGERIA**

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**Abstract:** Disputes in building construction projects have been so rampant and has adversely affected the objectives of clients in the Nigerian Building Construction Industry. This paper addresses the strategies for minimizing disputes in building construction projects. Preliminary data were collected by way of questionnaire survey. Out of 220 questionnaires distributed to respondents, 129 valid responses were obtained from a combination of client, consultants and contractors. This data collected were analysed using relative importance index. The result revealed that adequate contract documentation, early negotiations, engagement of experienced contractors, avoidance of ambiguous and unclear descriptions in bills of quantities, clear communication lines, detailed and accurate bills of quantities, design contract documents that are fair to all, team spirit among stakeholders prompt and timely payments to contractors and subcontractors, as strategies for preventing disputes in building construction projects. This paper recommends that experienced consultants to prepare clear, concise and unambiguous contract documents, detailed and accurate bills of quantities, early negotiation and experienced contractors should be engaged in building construction projects.

**Keywords:** Investigating, Strategies, Preventing, Disputes, Building Projects.

### **1.0 INTRODUCTION**

Conflict is indispensable as peace since the only reason for seeking peace is because there is a conflict, which is inevitable in the construction industry as in other areas of human endeavour as (Ogungayo, 2013; cited in Lee, 2011).

According to Peasupap and Cheang (2015) cited in Peasupap and Tachi (2013), changes are also widely acknowledged by both owners and contractors as having effects that are difficult to quantify and frequently lead to disputes. In particular, changes can provoke conflicts between parties regarding to time, cost, and quality. For example, changes may bring a breakdown of the relationships between project stakeholders, especially if they result in project time extension, claims and disputes.

Wilmot and Hocker (1998) defined conflict as an expressed struggle between at least two independent parties who perceive incompatible goals, scarce resources and interference from

other achieving those goals. It must be noted that disputes is entirely unavoidable in the building construction industry, the degree and scale however, vary from project to the other.

According to Khahno and Hussain (2014; cited in Kumaraswamy 1997).

Conflicts and disputes in construction projects affect the performance of all stakeholders, such as owners, design and supervision of the consultant team, contractors and subcontractors. Meaning that construction sector involves four groups or large parties and their actions can lead to the conflict.

The efforts of all these four major parties are essential to the project to become a reality and a success story. Project cost, quality and timelines depends on several factors. These four major parties work for completing the general interest of the project objectives. The owners have an interest in the project objectives. The owners have an interest in obtaining a quality structure of most economic quality.

The objective of this research is to identify Strategies for preventing disputes in the building construction industry in Nigeria.

## **2.0 LITERATURE REVIEW**

Disputes occurrences is an integral part of human relationship. The perception by an individual or organization that the attainment of a particular goal or objective is being hindered or blocked will usually lead to conflict and eventually the occurrence of disputes if not well managed. Leung and Chenng (2002) cited in Khatino and Ali (2004) stated that; conflict rooted in construction, continued conflict management, which should focus on the strategy to avoid or minimize conflict as soon as possible. This is due to the fact that, despite the different methods of conflict management and conflict resolution techniques that have been identified and these are continued to be explored but still the industry is experiencing tremendous growth in conflicts.

According to Khekale and Funtane (2013; cited in Yusuwana and Adnanb, 2013), given the uncertainties involved in a construction project and the magnitude of funds involved, it is only natural to have disagreement between parties, but these need to be resolved in an amicable manner, without having to resort to a more formal mechanism, the parties at times agree to disagree and seek redressal through independent intervention. Although, in principle, the discussion falls under the purview of construction law, effort has been made to discuss some of the aspects related to disputes and dispute resolution with as little legalese as possible.

Technically, a dispute implies assertion of a claim by one party and repudiation thereof by another. Thus, neither a mere claim without repudiation, nor a pair of claim and counterclaim, can be called a dispute.

### Dispute Causation in Construction Projects

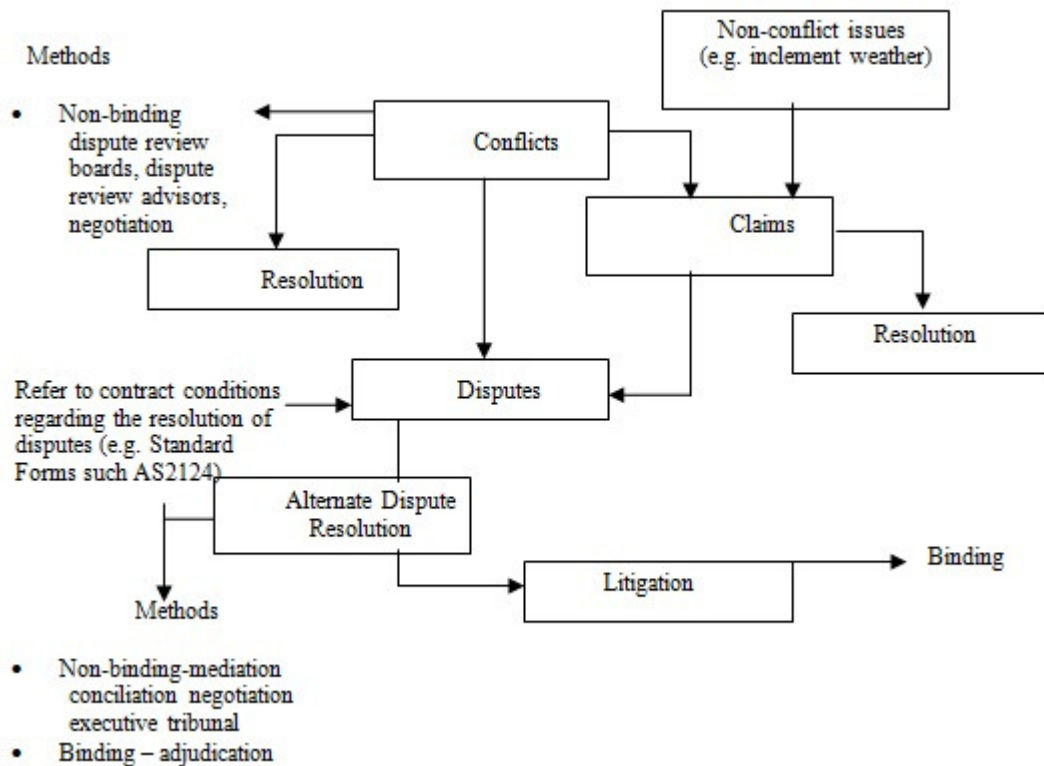


Figure 1: Conflict, claims and disputes (Adapted from Sinba and Wayal; cited in Kumaraswamy, 1997)

### PREVENTION OF DISPUTES IN THE BUILDING CONSTRUCTION INDUSTRY

It is advisable to explore various ways and strategies aimed at minimizing building construction disputes so that the clients can realize their objectives of early completion, at the minimum cost and at the highest quality.

Khekale and Funtane (2014) identified allocating fair risk, Drafting dispute resolution clauses and team as strategies for preventing disputes.

#### i) Allocating fair contract risk

It is common local practice for architects/engineers (A/E) to prepare construction contract documents simply by adding to or deleting from a set of previously employed contract documents, and while this cut-and-paste method may save time in preparing the construction contract, it often leads to problems, since documents are not read and prepared as a whole for

the specific project. Such practices increase the unforeseen risks for the contractor. It comes as no surprise that parties to a contract often include contract language designed to shift risk to the other party so that the bases for claims and disputes are eliminated. For example, making a contractor responsible for the impact of unanticipated site conditions may effectively preclude recovery of additional costs caused by such conditions. Similarly, contract dispute clauses can be drafted so that even the submission of a valid claim is made nearly impossible, a practice which actually encourages litigation. Such contract provisions, however, do not prevent disputes from occurring. Often, they only create fractious relationships among the parties involved in the project. Construction-project owners generally have two concerns when they shift unanticipated risks to a contractor, the contractor will build a contingency into the price to cover the risk or he will not have a contingency and will face financial problems. Unfair shifting of risk, transferring of all responsibility on a party that is not generally expected to control the risk, can result in that party having to spend time and effort looking for ways to stay alive in the project, usually to the detriment of the project itself. As the costs and risks of construction continue to rise, more construction-industry professionals are turning to a system that fairly distributes risk among all the parties involved, the architect/engineer, the owner, the contractor and the subcontractor(s). Fairness is an elusive concept, but the objective as defined here is to allocate the risk to the party best to control it. An equitable contract serves as the first step in building cooperation and close coordination among the project participants, and providing a strong foundation for working out the inevitable disputes before they lead to divisive claims that can negatively affect the schedule and cost of construction.

#### **ii) Drafting Dispute Resolution Clauses**

In addition to identifying responsibilities and allocating risks, a contract should contain language for addressing disputes and claims at the relevant stage in a project. This includes clauses containing explicit provisions and instructions for parties to resolve disputes as they arise, during the course of the project. For example, provision for a binding resolution can include dispute resolution arbitration under the American Arbitration Association (AAA) Construction Arbitration Rules. Contractual provisions should always require that parties first try to settle all disputes by some non-binding techniques, such as mediation. The American Institute of Architects, the Associated General Contractors of America and the American Arbitration Association have each published suggested guidelines and model contract terms for each provision. The guidelines can be helpful in tailoring the dispute-resolution

provisions of a contract to each specific need. The contract language can also be drafted in such a way as to emphasize the notice provisions, which are of paramount importance. The essential elements contained in most notice provisions are: the form of communication, the individual or organization to which the notice should be directed, the time limits, and other procedures to be followed. Less frequently the contract may require an assertion that additional compensation or time is expected. Often, the contract will contain references to the change clause for additional guidance.

### **iii) Team Building**

Team building is another dispute-resolution technique that can be instituted at the beginning of a construction project to help allow for better cooperation and coordination among the parties. One such process, partnering, has gained increasing popularity in recent years. It involves an extra contractual understanding among all parties to form a partnership of sorts to achieve mutually determined goals and objectives as well as to minimize disputes and claims. This agreement is often reached through a partnering workshop, wherein all parties agree to take specific steps to work together, fairly allocate risk and responsibilities and recognize their common goal—a successful project. Although partnering may initially require more manpower and effort, its benefits can be invaluable, creating a more harmonious, less confrontational process and, on completion, a successful project free of litigation and claims. Partnering allows the parties to move from an adversarial relationship to cooperate team work, from a win-lose strategy to a win-win plan, from a stressful project to a satisfying one, from a litigation focus to solutions and accomplishments, and from finger-pointing to a hand-shake mind-set; it also allows bureaucratic inertia to dissolve and risk-taking to be endorsed. In the past few years, a process called partnering realignment has evolved to help stakeholders deal with problems arising during the project, rather than resolving them in court after the project is completed. This process, when embraced and carried through, has helped turn around troubled projects. Partnering realignment is a corrective process implemented during the project, to help organizations resolve issues, set a new course and maximize the remaining potential for success. It is an attempt to regain and retain control of the project and to plan ways of avoiding future problems.

According to Sinba and Wayal ( ) project management organization and people are strategies for minimizing construction disputes.

Verna (1998) cited in Okuntade (2014) identified the following steps and strategies that can be adopted to minimize conflicts in the Nigerian Construction Industry.

## **Project Management**

This minimization of scope changes is fundamental to dispute mitigation. Initially focusing on obtaining scope certainty and providing adequate time to plan and develop the contract documentation can reduce the probability of scope changes. Clients and stakeholders (e.g., end-users) need to be kept constantly informed and integrated within the design process. Design by its very nature is an iterative process and as the design evolves and materializes through various developmental phases then the client should be required to 'sign-off' after each phase is completed so as to acknowledge their requirements are being met and translated into a workable solution. Tools such as quality function deployment can be used to extract detailed requirements during the scope development process, though their use in practice has been limited (Love et al., 2003).

The procurement strategy and the selection of contractors and consultants is an area that requires attention. The identification, allocation and proactive management of risk are central to dispute mitigation. Standard forms of contract should be used, as both parties are generally familiar with the obligations assumed by each party. The use of competitive tendering often results in the lowest 'price' being accepted by a client. Lowest price does not necessarily result in best value for money. Often the contractor with the lowest bid will have the smallest margin. If this margin is depleted then there is a possibility they may adopt opportunistic practices to recover any losses that may have been made. The use of negotiated or selective tendering with a policy whereby contractors openly present their margins and how they priced the project could potentially breakdown any 'them and us' barrier that is perceived to prevail. In addition, the sharing of knowledge through the establishment of inter-organizational communities of practice would encourage joint problem solving and possibly reduce the incidence of conflict between parties.

## **Organization**

From an organizational perspective, the key issue contributing to disputes relates to the production of contract documentation. Research suggests that a major factor contributing to poor contract documentation is the level of fees paid to consultancy firms and the resultant managerial practices that are implemented (Love et al. 2003). Tendering for consultancy services has typically resulted in sub-optimal design solutions and contract documentation being produced. In addition, the business environment within which client's operate has resulted in increasing demands being placed on consultants to design and document within tight and often unrealistic timeframes.

To improve the quality of documentation that is produced, firms must initially adhere to policies and procedures, especially those embedded within quality assurance. Consultants should be paid a realistic level of fees for the work they undertake. For example, initially through the process of negotiation a lump sum and then additional work paid on a cost-plus basis. Consultants have an obligation and a responsibility to produce documentation that can be used effectively to construct a building that is required by the client, undertaking design verifications, reviews and audits is a necessary. In fact, in large complex projects the use of a third party auditor to review the design and documentation could prevent scope changes, omissions errors, and design errors manifesting downstream on-site thereby reducing the likelihood of rework and a dispute.

### **People**

Firm need to make conscious decisions about the people they use to procure their projects. Differing personality types are needed for specific types of project because of the client's nature and the team they are working with. Firm need to select personnel who have the emotional intelligence to deal with the challenges that are imposed upon them. Thus, it is imperative that firms have a sound understanding of their staffs' personality type, their emotional intelligence and how they are able to cope with the pressures associated with their role in the specific project. Personality tests should be undertaken, as part of the recruitment process to determine how individuals fit with the affective context of the organization and the projects they will be involved with. For complex projects, for example, consideration should be given to the composition of the project team in terms of their personalities and how they could potentially solve problems that may arise. The development of an emotionally intelligent team that is able to stimulate creativity and solve problems that arise during design and construction will be able to manage conflict more effectively and resolve issues through negotiation as a project progresses.

Verma (1998) cited in Okuntade (2014) identified the following steps and strategies that can be adopted to minimize conflicts in the Nigerian construction industry.

**1) Expecting conflict:** The sources of conflicts, technical issues, administrative personality, and cost) will vary with the phase of the project. With an experienced team, the focus of conflict is within the team itself. If the project goals are vague and loosely defined, the focus of the conflict will likely be between team and upper management or between the project managers and the client. The project managers should analyze the reasons or source of the conflict.

- 2) **Planning ahead to handle conflict:** after analyzing the source, intensity and focus of conflicts, how to deal with conflict should be plan which involved developing a frame work within to view conflict objectively.
- 3) **Facing the conflict:** Although conflict is one of the things most of us dislike intensely, it is inevitable. Most of them when we try to avoid conflict, it will nevertheless seek us out. Some people wrongly hope that conflict will go away if it is ignored. In fact, conflict ignored is more likely to get worse. The best way to reduce conflict is to confront it.
- 4) **Surface the real issues:** conflicts that remain below the surface can have negative impacts on a project in many ways, such as distorted or withheld information, slipped schedules, unplanned absence from project meeting, lack of initiatives to solve problem. Surfacing the real issue can be accomplished by getting all the background information associated with the conflict. This process may uncover important aspects of the project that will lead to serious consequences.
- 5) **Resolving the conflict:** due to dynamics and sometimes nature of projects, a substantial amount of management tome is dedicated to resolving conflicts. In some cases, disagreement can be handled by straight forward decisions. All project participants involved in a conflict situation must work together to achieve a win-win situation for everyone.
- 6) **Look for win-win alternative:** of the inter-personal conflict resolution styles, confronting (negotiating and problem solving) is the most effective approach because it started with an understanding by both parties that they must search for solution that satisfy everyone.
- 7) **Cut your losses when necessary:** sometimes a project may have gotten too deep in a hole, which leads to conflicts. Should the project continue or should someone review the situation, try to estimate the bottom-line to completion, and make a rational decision on whether to abandon the project.
- 8) **Formulate conflict management strategies:** conflicts can be resolved or kept under control by using a proactive approach that anticipates conflict and its impact. When using this approach, it is important to understand the project leader's relationship with other project stakeholders.

### 3.0. METHODOLOGY

A survey of experts on methods of preventing disputes in Building construction projects in Nigeria was conducted. A well structured questionnaire was designed and administered to construction stakeholders.



These groups comprise Building Owners, Contractors and Consultants on building projects (Architects, Structural Engineers, Mechanical Engineers, Electrical Engineers and Quantity Surveyors). The questionnaires were distributed to a random sample of 40 Clients, 70 Contractors, 110 Consultants located in Lagos State.

### 3.1. Data Analysis Procedure

Of the 220 questionnaires that had been sent out to targeted groups, 117 questionnaires were returned which yield an overall response rate of 58.5 which is 25 from Clients, 40 from Contractors and 52 from Consultants.

Most of the questions in the questionnaire involved assessing some of the effects of delays on building construction projects on a five (5) point Likert's Scale. The data analysis therefore employed the following steps:

- (a) Computation of Relative Importance Index using weighted average formula.

$$RII = \frac{5n_1 + 4n_2 + 3n_3 + 2n_4 + 1n_5}{5N}$$

Where  $n_1$  = frequency of respondent for very high,  $n_2$  = frequency of respondents for high,  $n_3$  = frequency of respondent for moderate,  $n_4$  = frequency of respondents for low, while  $n_5$  = frequency of respondent for not relevant.

### 3.2. Data Presentation and Analysis

Data from expert opinion survey are as presented in the following tables:

**Table 1: Respondent too questionnaire survey.**

Professional Group	Sent No.	Received No.	%
Clients	40	25	62.5
Contractors	70	40	66.61
Consultants	110	52	52.0
Total	220	117	58.5

**Source:** Field survey (2015).

**Table 2: Strategies for preventing construction disputes**

<b>Strategies for preventing construction disputes</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>RI</b>	<b>Ran</b>
						<b>I</b>	<b>k</b>
Adequate contract documentation	0.0	0.0	3.2	32.3	64.5	923	1
Engagement of experienced contractors	0.0	0.0	6.5	38.7	54.8	897	2
Early negotiations	0.0	0.0	6.5	41.9	51.6	890	4
Avoidance of ambiguous and unclear descriptions in Bills of Quantities	0.0	9.7	3.2	19.4	67.7	890	4
Clear communication lines & procedure	0.0	3.2	3.2	38.7	54.8	890	4
Detailed and accurate Bills of Quantities	0.0	0.0	16.1	29.0	54.8	877	6
Designing contract conditions that are fair to all	0.0	0.0	3.2	58.1	38.7	871	8
Team spirit among all stakeholders	0.0	3.2	0.0	54.8	41.9	871	8
Prompt and timely payments to contractors and sub-contractors	6.5	3.2	0.0	29.0	61.3	871	8
Engagement of experienced consultants							
Avoidance of conflicting instructions	0.0	12.9	0.0	35.5	51.6	852	10
Choosing the appropriate project delivery method (Procurement System)	0.0	3.2	16.1	25.8	51.6	832	11
Early involvement of contractors in complex designs	0.0	3.2	32.3	19.4	45.2	813	12
Communication of potential problems or claims at the earliest opportunity	0.0	3.2	22.6	38.7	35.5	813	12
Clear and concise specification	0.0	3.2	19.4	48.4	29.0	806	14
Realistic contract duration	6.5	9.7	3.2	38.7	41.9	800	15
Early information delivery	6.5	3.2	9.7	41.9	35.5	800	15
Anticipating and Recognizing the enhanced	0.0	6.5	9.7	51.6	32.3	787	17
Team building including the introduction of partnering approaches to establish common objectives	0.0	9.7	29.0	38.7	22.6	748	19
Educating those responsible for the administration of the contract on the rights and obligations of all parties under the contract	0.0	12.9	22.6	45.2	19.4	742	20
Setting up of Dispute Review Boards prior to the Start of construction	0.0	16.1	54.8	22.6	6.5	639	21
	9.7	6.5	67.7	12.9	3.2	587	22

1= Not Important, 2= Of Little Importance, 3=Moderately Important, 4=Important, 5= Very Important

**RII= Relative Importance Index, R=Rank**

Source: Field survey (2015).

#### **4.0 DISCUSSION OF RESULTS**

The paper investigated twenty two (22) factors for preventing disputes in building construction projects among clients, consultants and contractors organizations.

Table 1 shows the presentation of the descriptive statistics of relative importance index of dispute factors. The results shows that the most important disputes prevention factors as adequate contract documentation, (RII=0.923), engagement of experienced contractors (RII=0.897), early negotiations, avoidance of ambiguous and unclear description in bills of

quantities, clear communication line, (RII=0.890), detailed and accurate bills of quantities, (RII=0.877 design contract documents that fair to all, team spirit among all stakeholders, prompt and timely payments to contractors and subcontractors (RII=0.871). The above findings are valid because adequate contract document will completely erase misinterpretation, conjectures and doubt. Engagement of experienced contractor will enhance the smooth of execution of the project, avoid wrong interpretation of drawings and instructions. Early negotiation done when issues are still very fresh in the mind of construction participants help to prevent unnecessary argument and quarrels on site. There is no doubting the fact that when bills of quantities are accurate and well detailed, variations and time overrun which might be possible sources of disputes are avoided.

## 5.0 CONCLUSION

Consequences of disputes in the building construction projects are not in the interest of the client and construction stakeholder. Therefore, if the objective of building clients of good quality building, early completion time at the minimum is to be achieved, efforts must be made to avoid or minimize disputes.

The survey has clearly brought to the fore the factors that minimizes disputes in building construction projects. Building construction stakeholder must pay attention to clear and concise and unambiguous contract documents, engagement of experienced and skilled contractors, detailed and accurate bills of quantities, and team spirit among all stakeholders.

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