

**PRACTICAL DEMONSTRATION OF RAISING CLAIMS DUE TO
CHANGES IN SITE CONDITION, INJURIES AND FLUCTUATIONS**

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INTRODUCTION

- **Every construction contracts is associated with claim. Depending on the condition of contract in use and the applicable clauses.**
- **Is one thing for a contractor to suffer some injuries under a given contract and is another thing for him to recover.**
- **This is subject to whether the contractor has an ‘Active Claims Policy’ which open the path to claim and Right to Recovery.**
- **Basic Procedures for Claims and Change Order Administration**

INTRODUCTION CON'T

Basic Procedures for Claims and Change Order Administration

- • **Contract knowledge—ability to recognize and identify changes,**
- • **Notification,**
- • **Systematic and accurate documentation,**
- • **Analysis of time and cost impacts,**
- • **Pricing,**
- • **Negotiation, and**
- • **Dispute resolution and settlement.**

This paper will focus on practical demonstration of whether contractors adhere to this basic procedure in claim administration for recovery.



INTRODUCTION CON'T

- ▶ **This paper will focus on investigating the practical approach to claims administration process on construction contract in Nigeria.**
- **A case study of 2 different claims administrated on 2 different projects is considered in this demonstration. The objectives is:**
 1. **To observed the contractors's approach to claim administration in contruction contract.**
 2. **The determine the client compliance attitude to the provision in the contract conditions.**
 3. **To observe the role of the consultants QS in administration of claim vis-a-vis the provisions in the contract conditions.**
 4. **To brainstorm and debate on the legitimate contractual position and right of recovery of the claims.**

CASE STUDY "A"

PROJECT - A MEGA-CONSTRUCTION PROJECTS IN ABUJA

Contract Sum - N3,435,560,500.45

- **Form of Contract - JCT form of contract 1996**
- **Bases of the Claim - Provision of ground beam in substructure for 5 no blocks**
- **Reason - Inadequate soil capacity**
- **Claimed amount based on physical measurement - withheld**

CASE STUDY "A"

Excerpt from contractors' project file

- **the change order was covered by an AI in accordance with the contract**
- **the contractor complied accordingly and executed the work**
- **the work was valued and certified**
- **Interim certificates including valued additional works was sent to the client and a copy received by the contractor.**

Client's Position On The Matter

Since the provisions for additional works and contingencies in the BoQ have already been expended, we cannot provide any addition funds for payment of any claim. Reasons being that:

- 1. a provision in the article of agreement have made it very clear that *“the contract sum is fixed and cannot be varied”*.
- 2. Although an AI was issued to cover the execution of the additional work however, that cannot be a ground that supersede the provision in the signed article of agreement.
- 3. Therefore the contractors' compliance with the AI to carryout the additional work is at his own risk.

CASE STUDY “A”

Conclusion

The application is still hanging awaiting client written response. Despite several reminders, no further action is taken by either the consultants, the contractor nor the client.



The unanswered Questions

Between the Article of agreement and Contract conditions which document supersede the other?

No clarification is given by the consultants QS on the matter despite several letters sent to him by the contractor seeking for his intervention. Could this be call a double standard?

What is the legality of the client's position regarding the recovery of the claim?

CASE STUDY 'B'

COMMAND BARRACKS PROJECTS

- **Contract sum - N7, 567,600,430.30**
- **Form of Contract - BPP SBD 2011**
- **Bases of the Claim - Fluctuation in prices of materials and components**
- **Starting from 20 September, 2023 to Date**

CASE STUDY 'B' con't

COMMAND BARRACKS PROJECTS

- **Contract sum - N7, 567,600,430.30**
- **Commencement Date - July, 2023**
- **Duration - 24 Months / Ongoing**
- **Form of Contract - BPP SBD 2011**
- **Bases of the Claim - Fluctuation in prices of materials and components**
- **Starting from 20 September, 2023 to Date**

CASE STUDY 'B' con't

PULL OUT FROM CONTRACTORS FILE

- **The Client was notified on the occurrence of price hike effective from 20th september, 2023 in a letter dated 2nd February, 2024.**
- **Fluctuation claim was prepared and sent to the client with a covering letter dated 17th February, 2024 invoices and receipt as supporting documents**
- **The QS received the application with acknowledgement on the 18th February, 2024.**
- **QS vetted the submission and recommend for approval/payment of about 85% of the claimed amount.**

CLIENT'S POSITION ON THE MATTER

1. The client position was that the event begins since 1st August, 2023. The contractor ought to have notify him (Client) much earlier than 2nd February, 2024.

2. *“Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC” (Clause 66.1)*

3. Also, as refered in clause 66.1 of the GCC *“ The Contract is not subject to price adjustment’.*

therefore, the claim will not be paid.

Conclusion

- 1. No correspondence from the consultant QS or the Architect on the matter. could this be called negation of responsibility? or are they acting on instruction by their employer? if yes, is it ethical?**
- 2. Does the BPP SBD 2011 for public works did provide time limit within which to provide notice on fluctuation?**
- 3. Could these actions be seen as lack of adherence to the basic procedures for claims administration on the part of the contractor?**

THANK YOU

