MANAGERIAL CONTRUCTION PROJECT DISPUTES

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ABSTRACT

Construction projects are complicated and complex more and more all the time , resulting in complicated contract documents. Complicated construction could also lead to complicated disputes. Disputes cannot be avoided in construction projects which mainly appear from intricacy and importance of works, multiple contracting parties, poorly prepared and executed contract documents, poor planning, financial issues and communication issues. These factors can overthrow a project and head to complicated litigation, arbitration, mediation, time overrun, increased costs and a relationship break down among members of different parties engaged. This study aims to recognize the root causes of construction disputes and their influence on customer satisfaction as well. The methodology of study adopted was through questionnaire survey where the target respondents were clients, consultants and contractors. Based on the analyzed data, there are nine root causes of construction disputes caused by clients, five root reasons caused by consultants and four root reasons caused by contractors have been identified in the local construction industry. The influence of construction disputes in client's organization as found in the study are time-consuming, cost effective, loss of reputation between stakeholders and loss of profit too. Alternative dispute resolution (ADR) was observed as the best method of resolving disputes because it refers to a variety of processes that help parties resolve disputes without a trial. Typical ADR processes include mediation, arbitration, neutral evaluation, and collaborative law. From the findings it can be concluded that construction disputes are a cause of concern in every project and the best solution to these problems is to avoid and manage them for smooth running of construction process, prevention is believed better than cure.

INTRODUCTION

1.1 Introduction to the Problem

Construction relationships in the construction industry all over the world have become more increasingly strained as years goes 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 is like an un-incurable disease, means are done to fight the problem.

During the last two decades the construction industry has been in an intense period of introspection, specifically examining how it can improve its performance and productivity. Time and cost overruns in construction projects has become a ubiquitous feature of the industry. Significant factors that have been identified as contributing to time and cost overruns in construction projects are rework, variations, incorrect design and incomplete documentation, and late authority approvals. As a result of such issues arising in projects, conflict and disputes may occur, which can lead to the disruption of construction schedules, increased project costs, and even adversely influence relationships between project participants. If a dispute is not resolved promptly, then it may escalate, and ultimately require litigation proceedings, which can be extremely costly for the parties concerned.

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. Alternative dispute resolution is therefore essential for the industry in order to improve its performance.

Project Methodology

The methodology of the project consists of two stages

i) Stage one

Gathering data and information from journals, periodicals, internet and book .Literature revision on reasons of construction disputes, the impacts upon Client's Organization and methods of dispute recovery.

ii) Stage two

The second stage of this study was conducting a survey and discussion with pertinent stakeholders, collecting data from pertinent stakeholders, analyzing the data and discussions, conclusions.

LITERATURE REVIEW

So long as human nature is what it is there will always be disputes, and those disputes whatever their features are , they will be resolved if society is to exist in a civilized way and this issues should be resolved as quickly, as cheaply and as pleasing as possible. Conflict resolution is likely the most important area for the mankind future and the continued existence of the world. Is it good enough to have it served in inadequate manner? (Lord Justice Roskill, Alexander Lecture 1978).

"Conflict is seen to be a normal phase in the industry of construction and time has come for professionals to come out with ideas and notions over how to manage the situation to normal.

Disputes are roughly certain in the fulfilling of construction contracts and with those of significant magnitude or time span, the tendency for dispute is bigger". (Hellard, 1987).

Study and research over the reasons of disputes and tussles in this industry was considered fundamental if the industry performance has to improve. Disputes and disagreements are a heavy load in this industry though there are means to resolve them. The methods are to be upgraded if an alternative resolution is neglected. There are some disciplines in the construction process work as a team in a short period. Large amounts of money are also in this construction process. These amounts of money must be shared among the members of the team, and that is where the problem is seen or starts.

According to Hellard (1987) types of disputes, conflicts that have been seen in contractual relationship are summarized as follows; i. Time related disputes "delayed processes". ii. Financial issues "claims and payments". iii. Workmanship Standards "manual works and designs". iii. Relationships and people's conflict in the industry.

RESEARCH METHODOLOGY

The main research goal is to determine the underlying causes behind of construction disputes. The study of this research was contacted in two stages, the first stage gathers information. The second stage collects data from involved and competent parties in this industry. The research methodology is described as follows:

Stage One

The related information to the problem were collected from trusted sources which in this case were from the internet. This were most in recently published journals on issues related to reasons of construction disputes and conflicts. As well as the ways and means of avoiding them and alternative resolutions to conflicts. Such information would help in resolving the problem at hand.

The related books to the problem were used also. So is was to provide the basic information on construction disputes. They were to promote the researcher to focus on the statement of problem research. Such information were available at the College Library. Past information is believed to be of good help for researchers in order to come out with constructive solutions.

Stage Two

Having collecting the information from sources, data were then obtained from the parties believed to be essential part of the problem. Questionnaires were distributed. The questionnaires focused more on reasons of disputes caused by each of the following agencies; clients, consultants and contractors. These were to promote the study to reach up to

the best results that would benefit the industry faced with similar problems.

The questions were answered in such a way that the respondent was to pick up the significance on which the cause were occurring. For example, the following is a bunch of questions related to reasons of construction disputes caused by client.

Reasons of Construction Disputes caused by Client

Indicator,

1 - Very rare
2 - Rare
3 - Average
4 - Often
5 - Very often

5 4 3 2	1	Failure to respond in timely manner.	1
5 4 3 2	1	Inadequate tracing mechanismsfor RFIs.	2
5 4 3 2	1	Reluctant to check for constructability, clarity and completeness.	3
5 4 3 2	1	Discrepancies or ambiguities in contract documents.	4
5 4 3 2	1	Poor communication among membersof the team.	5
5 4 3 2	1	Failure to appoint an overall project manager.	6
5 4 3 2	1	Lowest price mentality in engagement of contractors And designers	7
5 4 3 2	1	The absence of team spirit among members of the team.	8

The same thing was done with the disputes reasons caused by designers and contractors. This would enable the researcher to observe the major reasons of construction disputes. By doing so, recommendations were initiated to capacitate the gotten results .

The second section of the questionnaire focused on the end results of the disputes in the client's organization. This question would promote the researcher in identifying the side effects of construction disputes in general.

The last question of the questionnaire was on the most favorite method of conflict resolution among the three that are commonly used in the world; mediation, arbitration and litigation.

This again might help in using one method in resolving construction disputes. In case the dispute has not been managed or properly handled such that it would need the intervention of the third party.

Disputes were noticed as a threat in the industry so it affected to the performance of the industry in the past years. This study aims to avoid such characters to normalize the situation and even recover it for the best. The flow chard diagram (figure. 1.1) illustrates the process of the research methodology to be used in this study.

3.4Analysis of Questionnaire

Fortheaim ofanalysis ofdatacollectedthroughthequestionnaire,the researchusedfrequencyanalysisandaverageindex.Theaverageindexiscalculated as follows (Al-Hammad, 1996; AbdMajid&MacCaffer, 1997 and AbdMajid 1997).

$$\text{Average Index} = \frac{\sum a_i x_i}{\sum n}$$

Where,

a = constant expressing the weight given to i

x = variables expressing the frequency of response for i = 1, 2,3,4,5

Inordertodeterminethesignificanceofthefactorsinthissubjectmatter the classification of rating the scale wasas follows:

1.0 < Average Index < 1.5	Very rare
1.5 < Average Index < 2.5	Rare
2.5 < Average Index < 3.5	Average
3.5 < Average Index < 4.5	Often
4.5 < Average Index < 5.0	Very

The grade of the outcomes was to indicate the contribution factor of the question into the issue. "Very rare" to "Rare" were considered as non-contributing factors to the issue. "Average" were factors specified as averagely contributing to the issue. "Often" and "Very often" were specified as major contributors to the issue and these were the very same factors to focus on in how to avoid this or rather how to solve them in order to normalize the situation.

Conclusions and Recommendations

Based on the results obtained, conclusions and recommendations were developed. All the factors listed can cause serious conflict to the extent that the project can stop. But there are those factors seen to be frequently occurring, so they are the factors identified as major contributors and they have suffered the performance of the industry at large. Based on the results, conclusions and recommendations were later suggested on these factors on how to handle them for the better performance of the industry in future. The next chapter has detailed information on the above mentioned statement.

DATA ANALYSIS AND RESULTS

Introduction

In this chapter, the information obtained have been analyzed and interpreted as presented to attain the objectives of the study. Appropriate measures have been made to overcome the dispute occurrences. The data collected from the questionnaire survey based on the response from client, consultants and contractors. The questions in that survey were analyzed accordingly in the forthcoming sections:

- Results and findings
- Analyzed data were collected fromclient
- Analyzed data were collected fromconsultants
- Analyzed data were collected fromcontractors

There were 40 questionnaires distributed and only 32 responded, and these questionnaires were grouped accordingly, clients, consultants and contractors. Out of the 32 respondents 13 were contractors, eleven were consultants and 8 were clients.

The Causes of Dispute by Client : i) Client Point of View

Scores were graded as mentioned earlier on that is (1) very rare (2) rare (3) average (4) often and (5) very often. The mean index was used to grade the weight of the question on how much it had contributed to the problem.

Table 4.1: Client's Point of View

Mean Index	Scores					Questions	
	5	4	3	2	1		
4.00	2	4	2	0	0	Failure to respond in timely manner	1
4.40	4	3	1	0	0	Poor communications amongst Members of the team	2
3.80	1	4	3	0	0	Inadequate tracing mechanisms For the request ofinformation	3
4.10	3	3	2	0	0	Deficient management, supervision and coordination efforts on the part of the project	4
3.00	0	4	3	1	0	Lowest price mentality in engagement of contractor's designers.	5
3.90	2	3	3	0	0	Reluctance to check for constructability, clarity and completeness	6
4.30	3	3	2	0	0	Failure to appoint a project manager	7
3.90	2	3	3	0	0	Discrepancies/ ambiguities in contract documents	8
3.600	1	3	4	0	0	The absence of teamspirit among the participants	9

ii) Consultant Point of View

The respondents were 11 and the results are as illustrated below in Table 4.2.

Table 4.2: Consultants point of view

Mean Index	Scores					Questions	
	5	4	3	2	1		
3.70	2	4	5	0	0	Failure to respond in timely Manner	1
3.60	2	3	6	0	0	Poor communications amongst	2
3.30	1	4	3	3	0	Inadequate tracing mechanisms	3

						Deficient management, supervision and coordination	4
3.30	0	5	4	2	0	Lowest price mentality in engagement of contractor's Designers.	5
3.40	2	3	3	3	0	Reluctance to check for constructability, clarity and	6
3.50	3	3	2	2	1	Failure to appoint a project Manager	7
3.10	1	3	3	4	0	Discrepancies/ ambiguities in	8
3.40	2	3	3	3	0	The absence of teamspirit	9

iii) Contractors Point of View

The respondents to this question were 30 and the results are as shown below in Table 4.3.

Table 4.3: Contractor's pint of view

Mean Index	Scores					Questions	
	5	4	3	2	1		
3.30	2	4	3	4	0	Failure to respond in timely manner	1
4.30	4	3	3	3	0	Poor communications amongst Members of the team	2
3.20	1	4	5	3	0	Inadequate tracing mechanisms For the request ofinformation	3
3.50	3	3	4	3	0	Deficient management, supervision and coordination efforts on the part of the	4
3.60	3	4	4	2	0	Lowest price mentality in engagement of contractor's	5
3.30	2	3	5	3	0	Reluctance to check for constructability, clarity and	6
3.20	3	3	2	4	1	Failure to appoint a project manager	7
3.50	2	5	3	3	0	Discrepancies/ ambiguities in contract documents	8
3.20	1	4	4	4	0	The absence of teamspirit among the	9

iv) Overall Respondents

The significance of each question shall be grade dinasequence form torevealthe impactithasontheproblem,thiswillshowtheweightofthefactorandthemajor factors arranged in their order of significance. See overall respondents in Table 4.4.

Table 4.4: Overall Response

Mean index	Scores					Question
	5	4	3	2	1	
3.81	10	9	10	3	0	1 Failure to appoint a project manager
3.63	6	12	10	4	0	2 Poor communication amongst members of the team
3.63	8	9	10	5	0	3 Deficient management, supervision and coordination efforts on the part of the project
3.53	9	9	6	6	2	4 Failure to appoint a project manager
3.50	3	13	11	6	0	5 Reluctance to check for constructability, clarity and completeness
3.47	6	9	11	6	0	6 Discrepancies/ ambiguities in contract documents
3.44	9	9	6	6	0	7 The absence of teamspirit among theparticipants
3.44	5	11	9	7	0	8 Inadequate tracing mechanisms for the request of information
3.34	4	10	11	7	0	9 Lowest price mentalityin engagement of contractor's design

The Most Preferred method of resolving disputes

Results obtained in this effectshowed a major concernfromall parties due to the fact that disputes occurring in the industry are good business to other professions. The respondents thus preferred to select the best method thathas no effect to them as entrepreneurs. The method was observed to be cheap and very quick in resolving construction disputes without delaying the project. This has resulted in most members preferring ADRs as the most suitable methodto resolve disputes. There were factors though that were identified to be

affecting the selection of the resolving methods, these were the nature of the dispute, interest inthe dispute, technicalities of the dispute and lack of trust among members of the teamthus leading the award being biased.

From interviews conducted with professionals within the city of Johor Bahru, the researcher observed that most cases were not treated fairly thus people preferred to engage lawyers for their selfinterests. The lack of transparency in awarding decisions inthe interviews that were done with professionals , it was observed that most cases were not treated fairly thus people preferred to engage lawyers for their self interests. The lack of transparency in awarding decisions in any dispute occurred it has affected the industry. The engagement of construction professionals has been observed a major concern in this subject matter. The reasons mentioned that professionals in the industry would manage the matter with diligent care. They have an idea about the industry and they have a clear understanding of the technicalities in the construction process. So this would enable them to award fair judgment in any dispute that might occur.

CONCLUSIONS AND RECOMMENDATIONS

Introduction

This is the last chapter of the study; it includes the recommendations based on the findings and conclusion. The main objective of the study is to identify the causes of construction disputes and the their impact in the client's organization. Recommendations will be suggested on how to avoid the causes of construction disputes. This study has also helped in identifying the most preferred method of resolving disputes in the industry that is most preferred by the parties involved.

Conclusions

Some communications were held with some professionals to verify the most important parts that needed most concentration in order to achieve the objectives of the study. The conclusion can be drawn from the findings to justify the results obtained from this study and the data collected being the true reflection of the results obtained. Moreover, the factors observed as major factors to the problem in question - none of them were under-graded, this means there are effective to the industry and a remedy to this is a must to keep the industry performing to its full capacity.

Identifying the Causes of Major Contributors of Construction Disputes

The results reveal that the most important reasons of construction disputes contributed by the designers are incomplete drawings, specifications, designs. Some errors or omissions resulting from uncoordinated civil, structural, mechanical and electrical designs. Poor communication is also a factor that contributes in the disputes in this regard.

The causes contributed by the client are poor management and deficient supervision and coordination efforts on part of the project have ambiguities in contract documents, reluctance to check clarity and completeness of construction process.

Furthermore, the most reasons contributed by contractors are delays, poor supervision, inappropriate management and coordination and lack of understanding how to correctly bid and price works, reluctance to seek clarification, failure to plan and execute the changes.

Recommendations

This study has identified the root causes of construction disputes caused by variouspartiesinvolvedintheindustryandtheywereanalyzedtoidentifytheireffects intheindustry.Theimpactofconstructiondisputesinclient'sorganizationwerealso identifiedandanalyzed tomeasuretheireffectintheindustry andfurthermoreADRs were observed as the best method to resolve disputes in Yemen. However there are recommendations for future researchand these are as listed below:

- The research has been conducted within the city of Sanaa only, this study can be expanded by taking samples in other countries as well.
- The data collected in this research did not specify the categories of contractors as stipulated by the registrar of contractorsinYemen.Data must be collected from contractors at different categories in order to identify the major contributing factors at different levels.
- In this research ADRs are observed as thebest method for resolving disputes. For further studies a better method for resolving disputes can be developed.

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