

A REVIEW OF ICTAD STANDARD BIDDING DOCUMENT 02 (2007) FOR MAJOR CONTRACTS

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ABSTRACT

For every type of construction contract a set of Conditions of Contract is an essential constituent for its sustainability. Conditions of Contract create a legal framework with rights and obligations of the parties under which the parties are to operate. The two types of Conditions of Contract, i.e. a) Conditions of Contract drawn up by parties to the contract and b) Standard Conditions of Contract published by independent professional organisations have inherent advantages and disadvantages. A set of Standard Bidding Documents have been published by the Institute for Construction Training And Development (ICTAD) to be used within Sri Lankan construction industry out of which Standard Bidding Document 02 (SBD 02) is intended for major contracts. Since the usage of SBD 02 is only limited to construction industry of Sri Lanka, literature is somewhat scarce in regard to the limitations of Conditions of Contract of SBD 02. Therefore, the aim of this study is to explore the limitations of the Conditions of Contract of SBD 02.

Research problem was approached through a series of semi-structured interviews with local Consultant Quantity Surveyors who are currently practicing in private sector of Sri Lankan construction industry.

Findings of this research render that there are limitations associated with Conditions of Contract of SBD 02 which are affecting the sustainability of the application of SBD 02. Those limitations are required to be addressed in order to enhance the quality of SBD 02.

Keywords: *Conditions of Contract; Consultant Quantity Surveyors; Standard Bidding Document.*

1. INTRODUCTION

Ashworth (1991) explained that the term ‘form’ stands for a peculiar procedure associated with the expression of agreement. This formality gives a binding character to the agreement. According to Bunni (2005), standard forms of contract ensure the optimum protection of one or both parties’ interest.

Due to multi party involvement and higher risk associated with construction industry, standard forms of contract are widely used in construction industry. Bunni (2005) pointed out that, it ensures a common basis for the comparison and evaluation of tender. The people, who are using a particular standard form of contract continuously, will become familiar with its strengths, limitations and the suitability to their own purpose. It can be considered as the foremost advantage of using a standard form of contract. Clough and Sears (1994) stated, “Standardisation of contract forms has done much to eliminate areas of disagreement among owners, architect- engineers and contractors” (p.143).

According to Bunni (2005), standard forms of contract which were developed by reputed independent professional organisations are more preferable rather than the standard forms of contract which were developed by parties to the contract. There are widely used and internationally accepted standard forms of contracts such as Federation Internationale Des Ingenieurs-Conseils (FIDIC), Joint Contracts Tribunal (JCT) and World Bank. The general contents of almost all these forms are similar. But there are wide differences in the detail and interpretation of some clauses.

Ashworth (1991) explained that most of standard forms of contracts contain three main sections. They are articles of agreement, Conditions of Contract and appendix to Conditions of Contract. Out of above

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mentioned three sections, Conditions of Contract create a legal framework that establishes relationship of the parties to the contract.

Main purpose of the Conditions of Contract is to prescribe the rights and obligations of parties connected to the contract. Claims, problems can be arisen due to limitations of Conditions of Contract. Those claims can badly affect to the sustainability of the construction project.

Sri Lanka has its own standard forms of contract published by Institute for Construction Training and Development (ICTAD). Those were prepared largely based on international standard forms of contract such as FIDIC and World Bank Conditions of Contract. ICTAD published set of standard forms of contract such as Standard Bidding Document 01 (SBD 01), SBD 02, SBD 03 and SBD 04. Even though, standard forms of contract published by ICTAD have been prepared largely based on international standard forms of contract, there are some deviations from international standard forms. This study addressed the question of “what are the limitations of Conditions of Contract of SBD 02 (2007) for Major Works, which can affect the sustainability of a construction contract?”

To achieve the above mentioned aim, it was found necessary to achieve the following objectives:

- To identify the advantages and limitations of using standard forms of Conditions of Contract;
- To identify the aspects to be considered when evaluating Conditions of Contract;
- To propose modifications to address the limitations of the Conditions of Contract of SBD 02 (2007) for major contracts.

The paper is basically organised as follows. The research gap was discovered under the next heading. Then the limitations of the study were discussed. An overview of standard forms of Conditions of Contract was presented through a literature survey. After that, the research methodology was described. Finally, research findings were presented along with the conclusions.

2. RESEARCH GAP EXPLORATION

Technology, rules and regulations regarding the construction industry can be varied from country to country. As far as a country is considered, it is foremost important to have a set of standard Conditions of Contract which has been prepared considering the construction context of the respective country.

SBDs were published considering Sri Lankan construction industry. It is foremost important to identify and address the limitations of Conditions of Contract of SBDs to increase the usage of SBDs. De Zoysa (1993) conducted a study regarding the suitability of the ICTAD SBD (1987) Conditions of Contract to Sri Lankan building construction. Since, the usages of SBDs are limited to Sri Lankan context, studies investigating the limitations of Conditions of Contract of SBD 02 (2007) cannot be found. Therefore, present study aims to identify the limitations of Conditions of Contract of SBD 02 (2007) which can affect the sustainability of the application of SBD 02.

3. LIMITATIONS OF THE STUDY

This study was restricted to Conditions of Contract of SBD 02 (2007). The research findings (limitations of Conditions of Contract of SBD 02 (2007)) are unique to SBD 02 (2007). Also, the interview survey was confined to senior Consultant Quantity Surveyors who are practicing in private sector.

4. STANDARD FORMS OF CONDITIONS OF CONTRACT

According to Ashworth (1991), in construction industry, there are many standard forms. Further he argued that the purpose of standardisation is to eliminate the areas of disagreements between parties. Besides, he explained that there is an increment in usage of such standard forms. Almohawis and Bubshait (1994) specified that “standardised conditions lessen the possibility of misunderstanding, undue compensation, the likelihood of change orders, and the occurrence of claims or litigation arising out of the contractual performance” (p.133). There are both advantages and disadvantages of using standard Conditions of Contract. For Sri Lankan construction contracts FIDIC documents, SBDs are widely used as standard Conditions of Contract.

4.1. ADVANTAGES OF USING STANDARD FORM OF CONTRACT

4.1.1. DOCUMENTS ARE MORE ACCURATE DUE TO PERIODICAL REVIEW AND REVISE

According to the study by Davis (as cited in Kumarasinghe, 2010) standard Conditions of Contract documents are reviewed and revised periodically. Therefore, the clauses are updated with the changes in law and practice. Also the possibilities of missing important clauses, adding vague clauses will be minimised in standard Conditions of Contract. Apart from that, current clauses will be altered according to the new laws and trends in construction industry. Therefore accuracy of the standard Conditions of Contract is higher than the Conditions of Contract drawn by parties to the contract.

Therefore, higher level of accuracy can be considered as a major advantage of using standard forms of contract.

4.1.2. WIDELY ACCEPTED

Davis (as cited Kumarasinghe, 2010) in his study mentioned that one of the main advantages of using standard Conditions of Contract is that they are widely accepted.

Apart from that, Clough and Sears (1994) stated following: “Standard forms have the advantage that their record of use has proven them to be both equitable and workable, and many of the provisions have been tested in the courts” (p.143). Those widely accepted standard Conditions of Contract can be used in any country in the world. FIDIC, NEC (New Engineering Contract) and JCT can be shown as examples. Similarly Senevirathne (2005) stated that, “Conditions of Contract drawn up by reputed independent professional institutes rather than the parties to the contract are much more likely to gain acceptance of all concerned” (p.6). Standard Conditions of Contract are periodically reviewed and revised. Also new clauses will be added according to changes in laws and new construction trends. Therefore accuracy of the Conditions of Contract is high. This also can be considered as another reason for widely acceptance.

Therefore standard Conditions of Contract are widely accepted, it can be considered as another advantage of using them.

4.1.3. PROMOTE EFFICIENCIES OF ALL PARTIES

Almohawis and Bubshait (1994) stated that, efficiencies of the clauses of Conditions of Contract will be tested and the areas of inefficiencies will be corrected. According to Bunni (2005), standardisation has been done for the purpose of the efficiency. He explained that efficiency will be increased from the repeated use of the standard Conditions of Contract.

Kwakye (as cited in Senevirathne, 2005) described the following:

The use of standard conditions of contract would promote efficiency of all parties involved by obviating of the need to work with different Contract conditions in respect of each contract and enabling the accumulation of experience gained from their repeated use (p.6).

Furthermore, he described that “such standard forms of contract are intended to reduce the inefficiencies associated with the repeated drafting and reviewing of contracts and to facilitate a greater sense of partnership between Contractors and Employers” (p.6). Finally it is clear that, standard Conditions of Contract promote efficiency between all the parties.

4.1.4. PARTIES BECOME FAMILIAR WITH THE CONTENT WITH THE FREQUENT USAGE

Ashworth (1991) argued that, people who use it regularly become conversant to its contents. Also they would be familiar with its strengths, weaknesses and suitability for their own specific purposes. Similarly, Kwakye (as cited in Jayamanna, 2001) emphasised that the major advantage of adapting a standard form is, people who use it frequently become familiar with the passage of time.

As a final point, it can be said that with the frequent usage of standard Conditions of Contract, parties become familiar with their content reducing inefficiencies.

4.1.5. REPRESENT A DEGREE OF FAIRNESS IN A CONTRACT BETWEEN PARTIES

Almohawis and Bubshait (1994) specified that fairness of Conditions of Contract is very important and Conditions of Contract should be fair to all parties. Bunni (1997) stated that standard Conditions of Contract help to make the contract a fair and just contract. Similarly, Kwakye (as cited in Rodrigo, 2009), specified that standard Conditions of Contract detailed a degree of fairness. Likewise, Gayan (2003) stated that, standard Conditions of Contract fairly allocate risk and responsibilities between parties. In standard Conditions of Contract, risks were allocated to the best party who can control and mitigate risk. Therefore fairness of standard Conditions of Contract is high, compared to Conditions of Contract drawn up by parties to the contract.

Therefore it is clear that standard Conditions of Contract represent a degree of fairness in contract between parties.

4.1.6. MITIGATE PROJECT RISKS

According to Kwakye (as cited in Rodrigo, 2009), standard Conditions of Contract denote a degree of fairness in a construction contract between two parties by signifying a fair allocation of project risk between Contractor and Employer. Similarly Senevirathne (2005) stated following:

The application of standard forms of contract helps to manage and mitigate project risks, as risks which may be overlooked under the pressure of tight project deadlines are likely to have been addressed during the multitude of document review by industry experts (p.6).

Michelson (2013) argued that, in construction industry, the project risk will be mitigated by allocating risks for the party who is mostly capable of controlling risk. Standard Conditions of Conditions are fair to all parties and risk will be allocated between parties fairly. Consequently, Conditions of Contract help to mitigate the project risks.

4.1.7. SAVE TIME AND MONEY

Almohawis and Bubshait (1994) explained that familiarity of the contracting parties with the standard Conditions of Contract will help to minimise the time and effort to prepare and review Conditions of Contract. Senevirathne (2005) described those standard forms of contract are planned to limit inefficiencies due to repeated drafting. Drafting Conditions of Contract should be done by experts. Also it takes a considerable passage of time.

If parties use a standard form of contract for their construction contract they do not want to prepare their own Conditions of Contract. Therefore, the parties can save their money and time.

Moreover, standard conditions of contract make both parties familiar with their rights and obligations, minimise delays and unexpected additional costs and minimise contractual disputes between parties. Those can be taken as other advantages of using standard Conditions of Contract.

4.2. LIMITATIONS OF STANDARD FORMS OF CONTRACT

4.2.1. MAY NOT FIT FOR ALL SITUATIONS

According to Rajapakse (2004), standard Conditions of Contract are not always performing perfectly. Robert and Day (as cited in Rajapakse, 2004) explained that standard Conditions of Contract will be inappropriate to the particular contracting situation. Also, the philosophical assumptions which were used to prepare standard Conditions of Contract will not be suitable for another contracting situation.

Consequently, it is clear that inappropriateness of Conditions of Contract for all situations can be considered as a major limitation of standard Conditions of Contract.

4.2.2. ALTERATION OF CLAUSES MAY CAUSE PROBLEMS

Rajapakse (2004) expounded that since standard Conditions of Contract are not fit for all situations, standard conditions have to be amended by the parties to the contract. He explained that those amendments will be done by modification, deletion and addition of certain clauses. Moreover he argued that, due to alterations of standard Conditions of Contract, benefits of standardisation will be reduced. According to Kumarasinghe (2010), doing amendments to Conditions of Contract without an expert will lead single party or both parties to a dangerous situation. Therefore alteration of standard Conditions of Contract must be done by an expert. But that will consume additional money, time and effort.

Consequently, it is clear that alteration of standard Conditions of Contract must be done by an expert even though it consumes time and money without leading one party or both parties into dangerous situations.

5. PATENT AMBIGUITIES

The definition for ambiguity is following:

Ambiguity is uncertainty or doubtfulness of the meaning of language. When language is capable of being understood in more than one way by a reasonable person, ambiguity exists. It is not the use of peculiar words or of common words used in a peculiar sense. Words are ambiguous when their significance is unclear to persons with competent knowledge and skill to understand them. (Ambiguity, 2008, para. 1)

“Patent ambiguity is an obvious inconsistency in the language of a written document” (Hill and Hill, 2005).

Patent ambiguities can be considered as one of the limitations of Conditions of Contract. There can be patent ambiguities in standard Conditions of Contract as well as Conditions of Contract drawn up by parties to the contract.

6. CONTRA PROFERENTUM RULE

Contra Proferentum rule can be identified as the interpretation against the draftsman. It is a universally accepted rule which will be applied in construction contracts also. According to this rule, the person who includes the particular clause would be liable for the ambiguities caused by that clause.

In construction contracts Employer is liable for patent ambiguities of standard form of contract. That is because the Employer is the person who has the responsibility of preparing Conditions of Contract.

7. ASPECTS TO BE CONSIDERED WHEN EVALUATING CONDITIONS OF CONTRACT

Almohawis and Bubshait (1994) explained about eleven aspects to be considered when evaluating Conditions of Contract (refer Table 1).

Table 1: Aspects considered in evaluation of Conditions of Contract

Aspect	Classification
Clarity	The ease with which the language of the general conditions can be understood and the absence of ambiguities.
Conciseness	The degree to which the general conditions are free from unnecessary (superfluous) information.
Completeness	The degree to which the general conditions cover all contractual aspects.
Internal consistency	The level of conflict (if any) between clauses of general conditions.
External consistency	The level of conflict (if any) between clauses of general conditions and other related regulations.
Practicality	The feasibility of implementing the requirements of the general conditions.
Fairness	The degree to which the general conditions are fair to the contracting parties.
Effect on quality	The degree to which the general conditions promote the meeting of the project's established requirements of materials and workmanship.
Effect on cost	The degree to which the general conditions promote the completion of a project within the estimated budget.
Effect on schedule	The degree to which the general conditions promote the completion of a project within the allocated time duration.
Effect on safety	The degree to which the general conditions promote the completion of a project without major accidents and injuries.

Source: Adapted from Almohawis and Bubshait (1994)

8. SBD 02 (2007)

SBD documents published by the ICTAD are used as standard Conditions of Contract in Sri Lankan construction industry. For different construction contracts, ICTAD has published different SBD documents. Up to now, ICTAD has published six SBD documents. SBD 02 is for contracts above Rs. 100 million. Also it can be used for contracts having lesser value but of complex nature. Conditions of Contract of SBD 02 were developed largely based on FIDIC Conditions of Contract (1999).

9. METHODOLOGY

This section presents the research methodology which was followed by the researcher throughout the study in order to achieve the aim and objectives.

9.1. DATA COLLECTION

Taylor (2010) stated that the designs which have narrative interpretation of data are called Qualitative approaches. In this study, as the research findings, Qualitative data was gathered. Therefore, it can be said that, this research is more towards Qualitative approach. Since this study was not aiming to explore something deeply and the time period for this study was limited, Surveys were used as the research approach.

Since this research involved in identifying the limitations of Conditions of Contract of SBD 02, which was kind of exploratory and opinion survey, semi-structured interview was the research technique for this study. For selection of senior Consultant Quantity Surveyors in Sri Lanka, Convenience sampling method was used considering the time constraints associated with the research.

Nine local, senior Consultant Quantity Surveyors who have been serving for more than fifteen years in the Sri Lankan construction industry (private sector) were interviewed in order to gather information.

9.2. DATA ANALYSIS

The qualitative data which was gathered through semi-structured interviews were analysed using the content analysis technique. To assist in Content analysis process NVivo (NUD*IST Vivo Version 8) produced by Qualitative Solutions and Research Ltd. Was used.

10. RESEARCH FINDINGS AND ANALYSIS

This section presents the limitations of Conditions of Contract of SBD 02 which were found out through semi-structured interviews and proposes modifications to address these limitations.

10.1. SUB CLAUSE 1.1.2.4 (DEFINITION OF THE ENGINEER)

According to this Sub-Clause, in absence of Engineer is named in Contract Data, the Employer himself can be the Engineer. This will be a major problem which leads to disputes. Employer being the Engineer is unfair to the Contractor.

The sentence “In the absence of such appointment the Employer himself” (Ministry of Housing and Construction, 2007, p.40) should be removed from this Sub-Clause.

10.2. SUB CLAUSE 3.3 (INSTRUCTIONS OF THE ENGINEER)

According to this Sub-Clause, always Engineer’s instructions have to be given in writing. It is impractical because most of the times, the Engineer issues verbal instructions.

There should be a provision mentioning that the Contractor should be able to confirm the Engineer’s verbal instructions by sending a ‘Confirmation of Verbal Instruction’ (CVI) to the Engineer.

10.3. SUB CLAUSE 4.2 (PERFORMANCE SECURITY)

In this Sub-Clause the situations where the Employer can claim for the amount of Performance Security have not been given. The completeness of this sub-clause is less.

The situations where the Employer can claim for the amount of Performance Security should be mentioned. According to FIDIC there are four situations.

10.4. SUB CLAUSE 12.1 (WORK TO BE MEASURED)

The extent to which the re-measurements should be done is not mentioned properly. Clarity of this Sub-Clause is less.

The situations where the re-measurements should be done have to be mentioned. SBD 02 does not reveal about the situations where re-measurements should be done. Whether the errors in BOQ should be considered as Variations is a problem.

10.5. SUB CLAUSE 12.3 (EVALUATION)

The 2nd requirement, “change in quantity multiplied by such specified rate for this item exceeds 1 % of Initial Contract Price” (Ministry of Housing and Construction, 2007, p.74) is difficult to fulfil. Therefore, this Sub-Clause is impractical.

The 2nd requirement should be, “change in quantity multiplied by such specified rate for this item exceeds 0.01 % of Initial Contract Price”.

10.6. SUB CLAUSE 13.4 (PROVISIONAL SUMS)

b) ii) of this Sub-Clause should contain the attendance fee also. Not adding attendance fee is unfair to the Contractor because, if the Work to be sub contracted, the Contractor should be paid for the services supplied for the Sub-Contractors by himself.

Attendance fee should be added to b) ii) of this Sub-Clause.

10.7. SUB CLAUSE 14.8 (PAYMENT OF RETENTION)

This Sub-Clause does not contain the way of releasing the Retention Money in the circumstances of issuing of Taking over Certificate only to part of the Works. Therefore, the users faced the problem of calculating Retention Money for part of the Work. Therefore, the completeness of this Sub-Clause is less.

The method of releasing the Retention Money when Taking over Certificate has been issued to a part of the Work and the method of calculating Retention Money for such situations must be included to this Sub-Clause.

10.8. SUB CLAUSE 15.5 (EMPLOYER'S ENTITLEMENT TO TERMINATE)

According to this Sub-Clause, the Employer has to hand over his project to another Contractor one year after the Termination. That is unfair to the Employer because his project will be delayed by another year due to this Sub-Clause. Once the parties terminate the contract they have their own rights to do whatever they wish. After the Termination, the Employer should have the power to assign another Contractor to his project as soon as possible in order to get the benefits from the project earlier.

The part "After this termination, the Employer shall not be precluded from executing the Contract himself or by another Contractor, after a period of one year lapsed ..." (Ministry of Housing and Construction, 2007, p.86) should be deleted from this Sub-Clause in order to avoid that unfairness.

10.9. SUB-CLAUSE 19.1 (CONTRACTOR'S CLAIMS)

Not having a time bar for the Contractor to submit his claims can be considered as a limitation. Because of not having a time bar clause, the Contractors tend to submit their claims during any time of the project duration. Therefore, the Engineers faced difficulties in evaluating such claims because those incidents happened a long time ago.

The consistency of this Sub-Clause is less. At the last paragraph of this Sub-Clause it is mentioned about a 2nd paragraph which is actually not included in this Sub-Clause. The last paragraph of this Sub-Clause has been drafted assuming that there is a time bar clause as the 2nd paragraph.

It is better to add a time bar clause for submitting Contractor's claims as the 2nd paragraph of this Sub-Clause. Then the inconsistency of this Sub-Clause can be avoided.

10.10. SUB-CLAUSE 19.3 (PROCEDURE FOR ADJUDICATION)

In this Sub-Clause, it is mentioned that, "In the event the Parties are unable to reach agreement on the appointment of the Adjudicator within (14) Days from the date of such request, either Party may make an application to the ICTAD to appoint an Adjudicator" (Ministry of Housing and Construction, 2007, p.92). But practically, ICTAD is not maintaining a list of Adjudicators to appoint if two parties made such a request.

ICTAD has to maintain a list of experienced and qualified Adjudicators to appoint upon a request of two parties. ICTAD should be able to respond for such requests as soon as possible.

If not the power of appointing Adjudicators for a contract should be passed to the judge (Litigation system).

10.11. HAVE TO GET THE PRIOR APPROVAL OF THE ICTAD TO DO THE CHANGES

In the Guideline of SBD 02, it is mentioned following:

Modifications or amendments to the Volume 1 of this bidding document should not be done unless they are really essential. Any such changes should be provided only in the Volume 2, Section 2- Bidding Data and Section 4- Contract Data as amendments to Instructions to Bidders and Conditions of Contract respectively only with the prior consent of the ICTAD.” (Ministry of Housing and Construction, 2007, p.v)

According to this statement the parties have to get prior approval of the ICTAD, if they wish to do a change to SBD 02. This is impractical and this statement makes the SBD 02 a rigid document. If the parties think to change the Conditions of Contract of SBD 02, there is no procedure in ICTAD to correct the Conditions of Contract agreed by parties and approve it and return it to the parties.

10.12. LIMITATIONS IN DISPUTE RESOLUTION PROCEDURE

The clarity of dispute resolution procedure mentioned under Clause 19 (Claims, Disputes and Arbitration) is less. Not including “Amicable Settlement” as a one step of the dispute resolution procedure is a limitation. This procedure only has the dispute resolution feature. Dispute avoidance feature has not been included.

It is important to redraft the Sub-Clauses under Clause 19 avoiding loopholes and improving the clarity of the Clause. DAB (Dispute Adjudication Board) should be introduced as the method of adopting Adjudication, since DAB has the dispute avoidance feature.

If the parties are dissatisfied with the decision of DAB, parties should be encouraged going for “Amicable Settlement” without directly heading to Arbitration.

10.13. NOT HAVING CONDITIONS FOR SUB CONTRACTS

There is no any SBD document containing Conditions of Contract for sub contracts. When parties use SBD 02 as their Conditions of Contract, they have to draft Conditions of Contract for sub contracts by themselves. Not having Conditions for sub contracts is unfair to the Employer because he has to pay additional money to get it drafted.

It is important to add Conditions of Contract for sub contracts to SBD 02.

10.14. LESS TIME DURATIONS PROVIDED FOR EACH WORKS

For most of works, SBD 02 provides only 14 days and it is impractical. In Sub-clause 8.1 (Commencement of Works), the construction work should be started within 14 days after the Contractor receives the Letter of Acceptance. If the project is massive, 14 days will not be enough for commencement.

Moreover the Contractor must submit the Programme within 14 days after the notice of commencement. For a construction project the Programme is critical.

Therefore, to do a Programme properly, the Contractor should be given sufficient time. To develop a Programme for a massive construction 14 days will not be enough.

Sufficient time durations should be given for each work.

10.15. NOT HAVING PROVISIONS TO COVER NON NEGLIGENCE INSURANCE

Damages can be happened to a 3rd party due to the construction process which could not have been foreseen and are not attributable to negligence of the Contractor/Engineer. There should be non-negligence insurance to cover up such damages. But SBD 02 does not provide a Sub-Clause for non-negligence insurance. Not having a Sub-Clause for non-negligence insurance can be majorly unfair to the Employer.

It is important to have Sub-Clause covering non-negligence insurance.

10.16. SOME ESSENTIAL SUB-CLAUSES WERE NOT INCLUDED TO SBD 02

It is a major disadvantage that not having a Sub-Clause for Employer's financial arrangements. Not having that Sub-Clause is unfair to the Contractors.

Moreover Sub-Clauses for "Replacement of Engineer", "Electricity, Water, Gas", "Employer's Equipment and free-issue materials", "Engagement of Staff and Labour", "Manner of Execution", "Surface requiring Reinstatement", "Right to Access" and "Schedule of Payments" have not been included in SBD 02. Without having the above mentioned Sub-Clauses it is difficult to fulfil the requirements of the project.

"Employer's Financial Arrangements" and other important Sub-Clauses should be added to SBD 02.

10.17. NOT HAVING PROVISIONS FOR BOI (BOARD OF INVESTMENT) PROJECTS

In Sri Lanka there are a lot of BOI (Board of Investment) projects. For such projects, parties have to undergo different procedures. Therefore, all Conditions that are used in general contracts cannot be applied for BOI projects.

It is important to have set of provisions for BOI projects.

10.18. LESS INTERNAL CONSISTENCY OF THE CONTENTS OF SBD 02

Basically, SBD 02 was prepared amending Conditions of Contract of FIDIC 1999 (Red Book). Most of changes were done, deleting some parts of the provisions of FIDIC. Some internal inconsistencies can be identified in SBD 02 due to deleting some parts of the provisions. Sub-Clause 19.1 can be mentioned as an example.

The redrafting of the areas having inconsistencies is advisable.

10.19. NOT HAVING PROVISIONS TO COVER CO-LATERAL WARRANTIES

There is no any Sub-Clause for co-lateral warranties in SBD 02. It is unfair to the end users of the property. It is important to have a Sub-Clause regarding co-lateral warranties in order to safeguard the end users.

11. CONCLUSIONS

Conditions of Contract are essential for construction contracts due to the high risk involved with the construction projects. The limitations of Conditions of Contract can affect to the sustainability of a construction contract.

For the usage of Sri Lankan construction industry ICTAD has published a set of Standard Bidding Documents, out of which SBD 02 is for major construction contracts.

Conditions of Contract for a construction project can be considered as a must, since they specify the rights and obligations of the two parties. The standard forms of contract which consists of standard Conditions of Contract help to eradicate the areas of disagreements between parties. There are advantages and limitations in using standard Conditions of Contract.

The aim of this study was to identify the limitations of Conditions of Contract of SBD 02 (2007). The limitations of Conditions of Contract of SBD 02 have been identified and suggestions for improvements have been presented in this study.

According to the results of the study there are some limitations in the SBD 02 which require addressing. Those limitations make entanglements between parties to the contract, affecting to the sustainability of the construction contracts. Usage of SBD 02 in Sri Lankan construction industry can be increased by addressing those limitations.

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