MANAGEMENT OF DISPUTE RELATED TO CONTRACTORS LIABILITY UNDER DIFFERING SITE CONDITIONS IN DESIGN AND BUILD PROJECTS

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Master of Science in Construction Law and Dispute Resolution

Department of Building Economics

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Sri Lanka

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Dissertation submitted in partial fulfilment of the requirements for the Master of Science in Construction Law and Dispute Resolution

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Sri Lanka

October 2022
DECLARATION

I declare that this is my own work, and this dissertation does not incorporate without acknowledgement any material previously submitted for a Degree or Diploma in any other University or institute of higher learning and to the best of my knowledge and belief it does not contain any material previously published or written by another person except where the acknowledgement is made in the text.

Further, I acknowledge the intellectual contribution of my research supervisor Ch. QS. Prof. (Mrs.) B.A.K.S. Perera for the successful completion of this research dissertation. I affirm that I will not make any publication from this research without the name(s) of my research supervisor(s) as contributing author unless otherwise, I have obtained written consent from my research supervisor.

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15 October 2022

The above candidate has carried out research for the Dissertation under my supervision.

....................................................  ....................................................

Ch. QS Prof. (Mrs.) B.A.K.S. Perera

Date

Signature of the supervisor:
Management of Dispute Related to Contractor’s Liability Under Differing Site Conditions in Design and Build Projects

ABSTRACT

The Design and Build Procurement method is one of the most frequently used procurement methods in the present construction industry. It releases Employers from the design responsibilities and transfers design and construction responsibilities to the Contractor. Further, Differing Site Conditions are one of the unforeseen, unpredictable risks construction projects face, and it acquires considerable additional time and cost to complete the project. Hence Contractors are keen on claiming the Differing Site Conditions situation, one of the highly disputed claim types in the Design and Build projects. Thus this research aims to manage the contractual disputes related to the Contractor’s Liability under Differing Site Conditions in Design and Build Projects. Initially, a comprehensive literature survey was conducted, followed by selection of three case studies. Document review and expert interviews helped gather information about the Design and Build Projects in Sri Lanka. The research findings revealed that Contractors’ Differing Site Conditions liabilities towards the D&B projects and types of Differing Site Conditions disputes from the literature review were validated via interviews. In addition, the interviews disclosed the new Differing Site Conditions liabilities of the Design and Build Contractor and Differing Site Conditions disputes. The research disclosed the D&B Contractor’s non-perform DSC liabilities and reasons for the non-performance. The study outcome reveals that validation of Employer-provided data and not conducting a proper site investigation before bid submission are some DSC liabilities non-performed by the D&B Contractors. The research further identified that the main reasons for this non-performance are the negligence and unawareness of the DSC liabilities by D&B Contractors and the cost and time limit to include a detailed site investigation during the bidding period. The literature revealed the contractual and technical parameters to manage each type of Differing Site Conditions dispute, and the interviews introduced new parameters to manage the Differing Site Conditions disputes. The interview results revealed that establishing the DSC parameters, DSC evaluation techniques, and identifying DSC risk responsibilities in the Contract are primary contractual parameters. Doing a detailed site investigation and obtaining technical experts’ knowledge to identify and analyse the potential DSC risks are a few technical parameters to manage the DSC risk as of the interview response. Managing the Differing Site Conditions disputes in the construction project is a win-win situation for both the Employer and the Contractor. This research can be a benchmark for further study in Differing Site Conditions disputes.

Keywords: Differing Site Conditions, Design and Build Contracts, Contractor’s Liabilities
I dedicate this research to my little angels - son and daughter - for their patience and support ......
ACKNOWLEDGMENT

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<td>Differing Site Conditions</td>
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<tr>
<td>D&amp;B</td>
<td>Design and Build</td>
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<tr>
<td>FIDIC</td>
<td>Fédération Internationale Des Ingénieurs-Conseils</td>
</tr>
<tr>
<td>EPC</td>
<td>Engineering, Procurement and Construction</td>
</tr>
<tr>
<td>ENAA</td>
<td>Engineering Advancement Association of Japan</td>
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