

Measuring the Level of Knowledge of Construction Contracts Procedures: A Case Study of Botswana

Authors : Babulayi B. Wilson

Abstract : Unsatisfactory performance of construction projects in both the industrialised and developing countries indicate that there could be several defects in construction projects phases. Notwithstanding the fact that some project defects are often conceived at the initiation phase of construction projects, insufficient knowledge of contract procedures has been identified as one of the major sources of construction disputes. Contract procedures are a set of rules that outlines the primary obligations and liabilities of parties involved in the implementation of a construction project. Engineering professional bodies often codify contract procedures into standard forms of contract such as the Institution of Civil Engineers (ICE, UK) and Association of Consulting Engineers (ACE, UK) and keep them under constant review by updating any clause to reflect any change in case law or relevant piece of legislation. Even so, it is the responsibility of a professional body or conditions of contract draftsman to introduce contract-specific clauses that may be necessary for business efficacy but not covered in the chosen standard conditions of contract. In Botswana, the use of clients' drafted and/or un-adapted for environment of use international forms of contract in conjunction with client-drafted pricing schedules is common. The product of the latter often impact negatively upon contractors' claims and payments, in that, tender rates and prices can only be deemed to be sufficient if the chosen conditions of contract compliment the pricing schedule (use of standardised procurement documents). In addition, client drafted and the use of borrowed forms of contract such as FIDIC often conflict with domicile law resulting in costly disputes on the part of the client. It is upon the preceding text that the object of the research is to measure the level of knowledge of contract procedures amongst key stakeholders in the Botswana construction industry by requesting a representative sample from the industry and academia to respond to tutorial questions prepared from two commonly used forms of contract for civil works, that is, FIDIC (International Form of Contract) and ICE (UK). The questions were prepared under the following captions: (a) preparation of tender documents (b) obligations of the parties (c) contract administration; and (d) claims, variations, and valuation of variations. After ascertaining that the level of knowledge of contract procedures is insufficient among most practitioners in the Botswana construction industry, major procurement entities, and engineering institutions of learning; a guide to drafting a condition of a construction contract was developed and then validated through seminars and workshops. In the present, the effectiveness of the guide is not yet measured but feedback from seminars and workshops conducted indicates an appreciation of the guide by the majority of major construction industry stakeholders.

Keywords : contract procedures, conditions of contract, professional practice, construction law, forms of contract

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