

**ADDIS COLLEGE
DEPARTMENT OF CONSTRUCTION TECHNOLOGY AND
MANAGEMENT**

**POSTGRADUATE PROGRAM
Construction Contracts Law
(CoTM 6104)**

CHAPTER TWO

***ADVANCED CONSTRUCTION CONTRACTS AND APPLICABLE LAWS
AS APPLIED TO CONSTRUCTION PROJECTS***

By Belachew Asteray (Ph.D)

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2.1. Overview of Contracts in Construction Projects ...

- In general, a Contract is
 - an **agreement** or **willful promise** between two parties
 - legally **enforceable at law** for both parties
 - obligations to be distinct from those required by law.
- “**Enforceable at law**” means that if the agreement reached between the two parties breached (deviations occur from the promises) by one of the parties, the aggrieved party may bring **a legal action against the other** to demand the enforcement of its rights with the support of law.
- However, not all agreements or promises **are contracts**. Some may **lack enforceability at law**.

2.1. Overview of Contracts in Construction Projects ...

- The general **Law of Contract** is governed under the Civil Code from Article 1675-Article 2026.
- A contract is
 - an agreement whereby **two or more persons** as between themselves **create, vary or extinguish obligations** of a proprietary nature (Article 1675 of the Civil Code).
- The definition contains the following elements:
 - the contract is **an agreement**;
 - The agreement is to be made **between two or more** persons;
 - the agreement is **binding between such** two or more persons;
 - The agreement is to **create, vary & extinguish obligations**;
 - The agreement is to create obligations;
 - That the nature of obligations is proprietary.

2.1. Overview of Contracts in Construction Projects ...

- Contract can be between
 - Individuals
 - Businesses/public institutions
 - Businesses/public institutions to individual
- Contracts can be of:
 - Civil,
 - Commercial,
 - Industrial (labour relation),
 - economic (construction contract) or
 - others.

2.1. Overview of Contracts in Construction Projects ...

- Contracts can be
 - **Bilateral or unilateral**
 - **Bilateral:** obligations on **both parties**
 - **Unilateral:** a promise made by **one party** in return for the performance of an act by the other party
 - **Executory or executed**
 - **Executory:** a contract that has not been fully performed.
 - **Executed:** a contract that has already been performed.

2.1. Overview of Contracts in Construction Projects ...

- **A Construction contract** is
 - a legally binding agreement between the parties identified in the agreement
 - **to fulfil all the terms and conditions** outlined in the agreement.
- Contracts can be made
 - **Orally** and
 - **in writing.**



2.1. Overview of Contracts in Construction Projects ...

- According to Article 1678 (**Elements of Contract**) of the Civil Code:
- No valid contract shall exist unless
 - a. The parties are **capable of contracting** and give their **consent** sustainable at law.
 - b. The **object of the contract** is sufficiently defined and is possible and lawful.
 - c. The contract is made in the **form** prescribed by law.
- The following are the fundamental elements of contract:
 - **Capacity** of the contracting parties;
 - **Consent** of the contracting parties;
 - **Object** of the contract; and
 - **Form of contract**, if any;

2.1. Overview of Contracts in Construction Projects ...

- *Capacity (Article 1678(a) of the Civil Code...*

- Capacity means competence to enter in to a legally binding agreement.
- Parties entering in to an agreement or contract shall, therefore, be capable of contracting.
- Legal capacity is of **two types**:
 - i. Personal (Own) capacity and
 - ii. Representative(Agent) capacity.
- Capacity of persons is **legally presumed** unless the contrary is proved.

2.1. Overview of Contracts in Construction Projects ...

- **Capacity (Article 1678(a) of the Civil Code...**
- Persons could be:-
 - natural (physical) persons or
 - juridical (legal) persons
- **Natural Persons**
 - Natural or physical persons are **human beings**.
 - Their **legal capacity** is determined by law.
 - The scope of capacity of physical persons is **relatively unlimited** unless the contrary is proved.
 - Physical persons are the subject of rights & duties from birth to death (Article 1 of the Civil Code).

2.1. Overview of Contracts in Construction Projects ...

- **Capacity (Article 1678(a) of the Civil Code...**
- **Legal Persons**
- Legal persons are of **two types** in terms of determining their coming in to being & their legal capacity:
 - **By legislation (In case of public bodies)**
- The existence of public bodies (**Ministries, Commissions, Bureaus, Authorities, Agencies ...**) & their legal capacity to enter in to contract & bind themselves emanates from the Civil Code & the special legal instrument (legislation), which establishes that specific public body.
 - **By registration (In case of non-public bodies)**
- The legal capacity of non-public bodies (**PLC's, Share Companies, Corporations...**) & their legal existence comes in to being by registration. The act of registration by competent public authority confers legal personality & therewith (limited) legal capacity to enter into contract & bind themselves.

2.1. Overview of Contracts in Construction Projects ...

- **Capacity (Article 1678(a) of the Civil Code...**
- The following may **not have (legal) capacity to enter in to contract** & bind themselves:
 - **Minors** (under the age of 18);
 - Companies **adjudged or declared bankrupt**;
 - **Judicially interdicted** persons;
 - **Legally interdicted** persons;
 - Persons, whose **civil rights are suspended** by the judgment of the court;
 - Non-nationals, unless permitted by law or special prerogative;
 - Non-authorized Agents;
 - Agents, whose **Power of Attorney** has been revoked;
 - Agents, the **Scope of their Power of Attorney does not cover** the intended transaction (ex. Tendering or Negotiation or Contract Signing, ...)

2.1. Overview of Contracts in Construction Projects ...

- **Capacity (Article 1678(a) of the Civil Code...**
- Natural persons or legal persons may enter in to contract
 - directly **by themselves** (in their **own capacity**) or
 - through **other persons** called **Agents**.
- **The power of agents** (i.e. their representative capacity) should always be checked, with respect to construction project, at:
 - The **tendering** stage;
 - The **negotiation** stage;
 - The **contract signing** stage and
 - The **Contract implementation** stage.

The **Power of Attorney** creates a derivative **legal capacity for agents**.

2.1. Overview of Contracts in Construction Projects ...

- **Capacity (Article 1678(a) of the Civil Code...**
- A contract concluded by the person **not capable under the law** may be **invalidated at the request of such incapable person**, who is party to the contract.

Section 1. Invalidation and cancellation of contracts

Art. 1808. — *Who may require invalidation.*

- (1) A contract which is affected by a defect in the consent or by the incapacity of one party may only be invalidated at the request of that party.
- (2) A contract whose object is unlawful or immoral or a contract not made in the prescribed form may be invalidated at the request of any contracting party or interested third party.

2.1. Overview of Contracts in Construction Projects ...

- **Consent (Article 1678 (a) and Article 1679- Article 1710 of the Civil Code)**
- **Consent**
 - is a **declared will of the individual** to enter in to contract.
 - is the **willingness of the parties** to enter in to a legally binding relation.

Art. 1679. — Consent necessary.

A contract shall depend on the consent of the parties who define the object of their undertakings and agree to be bound thereby.

- Consent of the intended contracting parties decomposes in to :-
 - Offer and
 - Acceptance.

2.1. Overview of Contracts in Construction Projects ...

- **Consent ...**

- **Offer**

- Is a proposal expressing the **declared willingness of the offeror** to enter in to an agreement, if the offer is accepted.
- is a legal process which is **a declaration of willingness or intent** to be bound by specific terms set out.

- **Acceptance**

- is a **declaration of will** to enter in to a **legally binding contract**.
- By acceptance, a contract shall be completed, where the offeree accepts the offer **without any reservation**.

2.1. Overview of Contracts in Construction Projects ...

- **Consent...**

Art. 1681. — Form of offer and acceptance.

- (1) Offer or acceptance may be made orally or in writing or by signs normally in use or by a conduct such that, in the circumstances of the case, there is no doubt as to the party's agreement.**
- (2) The party who makes an offer may stipulate a special form of acceptance.**

Art. 1693. — Withdrawal of offer and acceptance.

- (1) An offer shall be deemed not to have been made where the offeree knows that it is withdrawn before he knew or at the time when he knows of the offer.**
- (2) The provisions of sub-art. (1) shall apply where acceptance is withdrawn.**

2.1. Overview of Contracts in Construction Projects ...

- **Consent...**

Legal Sanction

Art. 1696. — Invalidation of contract.

A contract may be invalidated where a party gave his consent by mistake or under deceit or duress.

- **Defects in consent:**

- **Mistake** (Art. 1697-1703 of the Civil Code) –law or fact
- **Fraud** (Art. 1704-1705 of the Civil Code)
 - a **false representation** conduct made knowingly or recklessly
- **Duress** (Art. 1706-1709 of the Civil Code)
 - a **threat of imminent danger**- future or immediate

2.1. Overview of Contracts in Construction Projects ...

- **Object of Contracts**
- Object of Contracts
 - Stated in Article 1678 (b),
 - Article 1711 – Article 1718 of the Civil Code.
- The object of contract is **the very obligations of the contracting parties**
 - For Example: in the construction contract
 - the obligations of the **Employer and the Contractor**

2.1. Overview of Contracts in Construction Projects ...

- *Object of Contracts...*

- The possible objects

Art. 1711. — *Determination of object.*

The object of a contract shall be freely determined by the parties subject to such restrictions and prohibitions as are provided by law.

Art. 1712. — *Obligation to give, to do or not to do.*

(1) A party may undertake to procure to the other party a right on a thing or to do or not to do something.

(2) The party who undertakes to do something may undertake to procure to the other party a specified advantage or to do his best to procure such advantage.

- The obligations of the contracting parties could be divided in to two broad terms: **Promises and Considerations.**

2.1. Overview of Contracts in Construction Projects ...

- *Object of Contracts...*
- **Promises and Considerations in Construction Contracts**
- In the construction contract, the whole purpose of **all parts of the contract documents** is to sufficiently define the object of the construction contract, i.e. the very **respective obligations** of the contractor & the employer.

Contract documents

- the BOQ,
- the Drawing,
- the Technical Specification,
- the Conditions of Contract (both General and Special Conditions of Contract), and
- other documents

2.1. Overview of Contracts in Construction Projects ...

- **Object of Contracts...**
- **Promises and Considerations in Construction Contracts...**
- In the construction contract, **the obligations** are the very promises & considerations of the contractor & the employer.
- **The contractual obligation of the contractor** (i.e. Promises)

What to do: i.e. to construct:-

- water supply dam & systems; or
- irrigation dam; or
- Hydropower dam; or
- other hydraulic structures; or
- road; or
- building; or
- other type of structures;

In terms of its:-

- scope;
- quality;
- cost;
- time;
- safety; and
- Other aspects of its promises

2.1. Overview of Contracts in Construction Projects ...

- *Object of Contracts...*
- **Promises and Considerations in Construction Contracts...**
- **Obligations of the Employer**
- The Payment, obligation to do, or (Considerations) and other contractual rewarding obligations of the Employer:

- **Payment obligation**

- extent of contract price
- types of payment
- timing for payment
- conditions of payment
- other related issues

- other obligations in terms of
 - other benefits,
 - exchanges, &
 - rewards.

- ***Object of Contracts...***
- The object of contract shall be **lawful**.
 - If the contract found to be **unlawful or immoral**, the legal remedy available is **invalidation of the contract** at the request of any contracting party or interested third party (**Art. 1808(2) of the Civil Code**).

Section 1. Invalidation and cancellation of contracts

Art. 1808. — *Who may require invalidation.*

- (1) A contract which is affected by a defect in the consent or by the incapacity of one party may only be invalidated at the request of that party.
- (2) A contract whose object is unlawful or immoral or a contract not made in the prescribed form may be invalidated at the request of any contracting party or interested third party.

- ***Form of Contracts***
- Form of Contract under the Civil Code
 - Article 1678 (c)
 - Article 1719 – Article 1730

Art. 1719. — *Form of contracts.*

- (1) Unless otherwise provided, no special form shall be required and a contract shall be valid where the parties agree.**
- (2) Where a special form is expressly prescribed by law such form shall be observed.**
- (3) The parties may stipulate that the contract shall be made in a special form.**

- *Form of Contracts...*

- Form may mean **types of contract**.
- Form may also mean **the making of the contract orally or in writing**.
 - in certain prescribed form
 - with the validity & proof of the contract itself.

• *Form of Contracts...*

Art. 1725. — Contracts for a long period of time.

The following contracts shall be in writing:

- (a) contracts of guarantee; and**
- (b) insurance contracts; and**
- (c) any other contract in respect of which such form is required by law.**

Art. 1726. — Agreed form.

A contract which the parties agree to make in a special form not required by law shall not be deemed to be completed until it is made in the agreed form.

Art. 1727. — Written form.

- (1) Any contract required to be in writing shall be supported by a special document signed by all the parties bound by the contract.**
- (2) It shall be of no effect unless it is attested by two witnesses.**

• ***Form of Contracts...***

Art. 1728. — Signature.

- (1) Any party bound by a contract shall affix his handwritten signature thereto.**
- (2) Where a party cannot write, he may affix his thumb-mark.**
- (3) The signature or thumb-mark of a blind or illiterate person shall not bind him unless it is authenticated by a notary, registrar or judge acting in the discharge of his duties.**

Art. 1729. — Witnesses. — 1. Capacity.

- (1) Where witnesses are required by law or agreement, they shall be of age and not judicially interdicted, unless otherwise expressly provided.**
- (2) Sex or nationality shall not be considered in determining the capacity to act as a witness.**

- **Effects of Contracts**
- Effects of contract may have **two dimensions**:
 - The time when the contract is considered bound by the contracting parties; and
 - relates to the **effectiveness of the contract**
 - The fulfillment or performance of the set of promises prescribed in the contract
 - related to the performance of **obligations** of the contracting parties under the contract
- Effects of contract may bring
 - Contractual effects and /or
 - Legal effects;

- *Effects of Contracts...*

- **Major Areas of Effects of Contract in the Civil Code**
- Effects of contract basically concerned with the following four issues:
 1. Interpretation of Contracts (Article 1732-Article 1739)
 2. Performance of Contracts (Article 1740-Article 1762)
 3. Variation of Contracts (Article 1675 & Article 1763-1770)
 4. Non-performance of Contracts (Article 1771-1805)

- *Effects of Contracts...*

1. Interpretation of Contracts (Article 1732-Article 1739)

- Interpretation is the process of **determining the true meaning of a written document.**

Section 1. Interpretation of contracts

Art. 1732. — Interpretation in accordance with good faith.

Contracts shall be interpreted in accordance with good faith, having regard to the loyalty and confidence which should exist between the parties according to business practice.

• *Effects of Contracts...*

1. Interpretation of Contracts...

- **Formal interpretation**

- By the court;
- By the arbitral tribunal;
 - Sub-clause 20.6 of the Harmonized Edition & the applicable law.

- **Informal interpretation**

- **By the Conditions of Contract itself**

- under the Harmonised Edition
 - Sub-Clause 1.1 Definitions; and
 - Sub-Clause 1.2 Interpretation

- **By the contracting parties themselves**

- In case of negotiation or other forms of amicable dispute settlement;
- Article 3307-Article 3324 of the Civil Code; -Compromise
- Article 274-Article 280 of the Civil Procedure Code; Compromise

- **By the Engineer**

- by giving Clarification for ambiguities or discrepancies in the Contract Document
 - under the Harmonised Edition- Clause 1.5- Priority of Documents
- by Determination -under the Harmonised Edition
 - Clause 3.5 cum Clause 20.1 on the Claims of the Contractor;
 - Clause 2.5 on the Claims of the Employer ; and
 - on any requests of the Contractor & of the Employer;

- **By the Adjudicator (DB)**

- Clause 20.3 of the FIDIC Harmonized Edition

- *Effects of Contracts...*

2. Performance of Contracts (Article 1740-Article 1762)

- Performance of Contract may mean *the carrying out or discharge of the obligation* under taken by the contracting parties.

Art. 1740. — Performance by whom made.

- (1) The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed.**
- (2) In all other cases, the obligations under the contract may be carried out by a third party so authorised by the debtor, by the court or by law.**

- *Effects of Contracts...*

2. Performance of Contracts...

- Under the Construction Contracts, the effect of contract is **fulfilled by performance of the very contractual obligations** of the contracting parties:
 - the Contractor must execute the works
 - **within the time** for completion,
 - within the **cost agreed**,
 - as per **the quality specified**...; and
 - the Employer have to pay fully the Contract price, and any other sums agreed in or implied from the contract, to the Contractor.

- *Effects of Contracts...*

2. Performance of Contracts...

Art. 1755. — *Place of payment.*

- (1) Payment shall be made at the agreed place.**
- (2) Where no place is fixed in the contract, payment shall be made at the place where the debtor had his normal residence at the time when the contract was made.**
- (3) Unless otherwise agreed, payment in respect of a definite thing shall be made at the place where such thing was at the time when the contract was made.**

Art. 1756. — *Time of payment.*

- (1) Payment shall be made at the agreed time.**
- (2) Where no time is fixed in the contract, payment may be made forthwith.**
- (3) Payment shall be made whenever a party requires the other party to perform his obligations.**

- *Effects of Contracts...*

3. Variation of Contracts (Article 1675 & Article 1763-1770)

- Variation of Contract could be done:
 1. By the contracting parties, contractual variation, (as a rule); or
 2. By the Court, judicial variation, (as an exception)
- **Variation of Contract by the Parties**
- The contracting parties, in principle, are **free to create & vary their contractual agreement** (Article 1675 of the Civil Code).
- Variation of contract & its effect are regulated **under the Conditions of Contract**
 - Variation of contract, under the construction contract, may result from:-
 - Requirement **change by the Employer**
 - Design **change by the Engineer**
 - Proposal **by the Contractor**

- *Effects of Contracts...*

3. Variation of Contracts...

- **Judicial Variation of Contract** (Article 1763-Article 1770 of the Civil Code)
- Judicial variation or variation of contracts by the court is not allowed, in principle (Article 1763 of the Civil Code).

Art. 1763. — Power of the Court.

The court may not vary a contract or alter its terms on the ground of equity except in such cases as are expressly provided by law.

- Contracts may get their effect through judicial variation, **by way of exception**, however (Article 1763 of the Civil Code).
- Judicial variation of Contracts, as opposed to variation of Contract by the parties, is **regulated by the applicable law**.

- *Effects of Contracts...*

3. Variation of Contracts...

- The Ethiopian court may vary the terms of the contract:
 - Where it is **expressly provided by law** (Article 1763);

Art. 1763. — Power of the Court.

The court may not vary a contract or alter its terms on the ground of equity except in such cases as are expressly provided by law.

- Where a special relationship between the contracting parties exists (Article 1766);

Art. 1766. — Special relationship between the parties.

The court may vary a contract where the parties do not agree and a family or other relationship giving rise to special confidence exists between the parties and compels them to deal with each other in accordance with equity.

- *Effects of Contracts...*

3. Variation of Contracts...

- The Ethiopian court may vary the terms of the contract:
 - Where **one of the contracting parties is a state or one of its institutions** (Article 1767)

Art. 1767. — Contracts with a public administration.

(1) The court may vary a contract made with a public administration where the circumstances in which it was made have changed through an official decision in consequence of which the obligations assumed by the party who contracted with the administration have become more onerous or impossible.

- Where it is **partially impossible to perform the contract** (Article 1768);

Art. 1768. — Partial impossibility of performance.

The court may reduce the obligations of one party where the performance by the other party of his obligations has become partially impossible and there is no ground for cancelling the contract.

- *Effects of Contracts...*

4. Non-performance of Contracts (Article 1771-1805)

- Non-performance of contracts means
 - **the failure of the contracting party or parties to carry out the obligations** they have undertaken under the contract.

- *Effects of Contracts...*

4. Non-performance of Contracts ...

- Non-performance involves the following legal concepts:
- **Notice requirement**
 - Notice **necessary** (Article 1772-Article 1774)

Art. 1772. — *Notice necessary.*

A party may only invoke non-performance of the contract by the other party after having placed the other party in default by requiring him by notice to carry out his obligations under the contract.

Art. 1773. — *Form and time of notice.*

- (1) Notice shall be by written demand or by any other act denoting the creditor's intention to obtain performance of the contract.

- *Effects of Contracts...*

4. Non-performance of Contracts ...

- Non-performance involves the following legal concepts:

- **Notice requirement;**

- Notice unnecessary (Article 1775)

Art. 1775. — *Notice when unnecessary.*

Notice need not be given where:

- (a) the obligation is to refrain from certain acts; or**
- (b) the debtor assumed to perform an obligation which the contract allows to be performed only within a fixed period of time and such period has expired; or**
- (c) the debtor has declared in writing that he would not perform his obligations; or**
- (d) it is agreed in the contract that notice shall not be required and the debtor shall be in default upon the expiry of the time fixed.**

- *Effects of Contracts...*

4. Non-performance of Contracts...

- Non-performance involves the following legal concepts:
- **Specific performance** (Article 1776-Article 1783)

Art. 1776. — *Specific performance.*

Specific performance of a contract shall not be ordered unless it is of special interest to the party requiring it and the contract can be enforced without affecting the personal liberty of the debtor.

- *Effects of Contracts...*

4. Non-performance of Contracts...

- Non-performance involves the following legal concepts:
- Cancellation of contract;
 - Cancellation by court (Article 1784-Article 1785);

Art. 1784. — *Cancellation of contract by the Court.*

A party may move the court to cancel the contract where the other party has not or not fully and adequately performed his obligations within the agreed period of time.

- *Effects of Contracts...*

4. Non-performance of Contracts...

- Non-performance involves the following legal concepts:
- Cancellation of contract;
 - Cancellation by the contracting party (Article 1786-Article 17890);

Art. 1786. — Cancellation by a party. — 1. Under the contract.

A party may cancel the contract where a provision to this effect has been made in the contract and the conditions for enforcing such provision are present.

Art. 1787. — 2. Expiry of time limit.

A party may cancel the contract where the other party has failed to perform his obligations within the period of time fixed in accordance with Art. 1770, 1774 or 1775 (b).

Art. 1788. — 3. Performance impossible.

A party may cancel the contract even before the obligation of the other party is due where the performance by the other party of his obligations has become impossible or is hindered so that the essence of the contract is affected.

- *Effects of Contracts...*

4. Non-performance of Contracts...

- Non-performance involves the following legal concepts:
- Damages;
 - Liability for damages (Article 1791-Article 1798)
 - Quantum of damages (Article 1799-Article 1805)

Art. 1791. — *Damage when to be made good.*

(1) The party who fails to perform his obligations shall be liable to pay damages notwithstanding that he is not at fault.

(2) He shall not be released unless he can show that performance was prevented by force majeure.

- Damages may be requested due to
 - Non-performance of the contract; and
 - Invalidation of the contract.

- ***Extinction of Obligations***

Art. 1806. — *Obligation performed.*

An obligation shall be extinguished where it is performed in accordance with the contract.

Art. 1807. — *Other causes of extinction.*

An obligation shall be extinguished where:

- (a) the contract in which it is provided is invalidated or cancelled; or**
- (b) the parties or one of them enforce a provision made in the contract for the termination of the contract; or**
- (c) the parties agree to substitute a new obligation for the original obligation; or**
- (d) the debtor's obligation is set off by an obligation owing from the creditor to the debtor; or**

• *Extinction of Obligations...*

- As per the Civil Code, the obligations of the contracting parties may come to an end on the following grounds.
 - By performance of the contract (Article 1808 & 1740-Article 1762)
 - By invalidation of the contract (Article 1807 & Article 1808-1818)
 - By cancellation of the contract (Article 1807 & Article 1808-1818)
 - By termination of the contract (Article 1807 & Article 1808-1818)
 - By remission of debt (Article 1825)
 - By novation (Article 1807 & Article 1826-1830)
 - By set-off (Article 1807 & Article 1831- 1841)
 - By merger (Article 1807 & Article 1842-1844)
 - By limitation of action (Article 1807 & Article 1845-1856)

• *Extinction of Obligations...*

- By performance of the contract
 - This is the case where the Contractor & the Employer under the Construction Contract perform all of their obligations under the said Contract.
- By invalidation of the contract
 - Invalidation of contract may result with respect to void & voidable contracts.
 - A contract is voidable due to vices of or defects in consent & incapacity. That is the contract was concluded as a result of mistake, duress, or fraud.
- By cancellation
 - Cancellation of contract may result from non performance of contract.
 - The contract may be cancelled by the party to the contract or by the court.
- By termination
 - A contract could be terminated by both parties to the contract (jointly) or by one of them (unilaterally).

• *Extinction of Obligations...*

- By remission of debt
 - Remission of debt results where the creditor releases the debtor from its obligation.
- By novation
 - Novation occurs where the parties agree to substitute therefore a new obligation which differs from the original one on account of its object or nature.
- By set-off
 - Set-off occurs where two persons owe debt to one another.
- By merger
 - Merger shall occur & the obligation shall extinguish where the positions of creditor & debtor are merged in the same person.
- By limitation of action
 - This is the effect of time on rights, unless exercised within the legally allowable time.
 - The creditor may lose his rights unless he demands within a given time.

- ***Proof in Relation to Contracts (Article 2001-Article 2026)***

- Proof or evidence is important to prove the existence or non existence of a given fact, which is disputed or denied.
- Admitted facts do not need proof.
- Laws do not require proof.
- The form of proof in relation to Construction Contract could be:
 - Documentary evidence;
 - Factual witness;
 - Expert opinion;
 - Project site visit;
 - Others, if any;

• **Proof in Relation to Contracts (Article 2001-Article 2026)**

• The form of proof in relation to Construction Contract

Documentary evidence

- The Construction Contract itself;
- Records in relation to the Time aspect of the project;
- Records in relation to the Cost aspect of the project;
- Records in relation to the Quality aspect of the project;
- Records in relation to the Safety aspect of the project;
- Records in relation to Payment aspect of the Contract;
- Records in relation to Site & Access thereto;
- Records in relation to other contractual or legal obligations of the Contractor and/or the Employer;
- Records in relation to Variation;
- Outside Records;
- Others, if any;

The records may appear in diverse forms:

- Correspondences or Exchange of Letters;
- Notices;
- Reports;
- Minutes of Meeting;
- Site Diary;
- Site Instructions;
- Payment Certificates or related documents;
- Executed Standard Forms;
- Others, if any;

- **Factual Witness Statements** are prepared by those who have a direct factual knowledge about a given aspect of the project (ex, time, payment, ...)
- **Expert Witness Reports** are prepared & submitted to court or arbitral tribunal to show some professional conclusions about the disputed matter.

- The contract documents are some of **the most important pieces** that help ensure a successful project.
- No matter what the construction, **having a solid contract** represents one of the first steps toward the success of the project.
- Construction “Contract Documents” are legally-binding written documents that define
 - the roles and responsibilities of contracting parties,
 - description and scope of “Work/service/good” under the construction Contract.

- **Components of Construction Contract Document**

- **Contract Agreement:**

- It's an essential component of the contract documents.
- It's the main document to which **most other documents attach** or reference.
- A construction contract agreement is a document that **sets a date and specifies which parties** are going to participate in the construction process.
- Usually, the contract agreement is signed between the **Owner of the project and the contractor or supplier** that is providing the requested services or works.
- Contract agreement contains **several sections of clauses** defining the **scope, terms, and conditions of such agreement.**

- **Components of Construction Contract Document...**

- **Project Description:** a blurb or extract of what the project is about
- **Contract Price:**
 - the type of contract price been awarded and
 - the total amount of money being contracted.
- **Payment Basis:**
 - **How** the money is going to be paid to the service provider.
 - Either on a monthly basis or whatever payment method is preferred, it should also specify what percentage of money should be retained on every application for payment.
 - It will also define when the payment is due, the penalty for late payments, interest being accrued and other applicable situations related to the payment and invoicing terms.
- **Construction Schedule or Calendar:**
 - The total of days or how the project schedule will be divided.
 - It should describe either calendar days or business days and can be presented either through a CPM, Gantt Chart, or just a bar chart.
- **Contract Document List:**
 - A list of all contract documents that form part of the contract agreement.

- **Components of Construction Contract Document...**

- **Construction Scope:**

- Description of all activities including some descriptions of things that will form part of the project. The scope normally can be measured or quantifiable.

- **Construction Conditions & Responsibilities:**

- The section of conditions and responsibilities is the one that sets responsibilities for the owner and the contractor, and the extents of who is responsible for providing documents and information.
- It contains specific terms for liens, penalties, withholding, arbitration rules and specific instructions on how to process claims and proceed with disputes.

- **Contract Laws:**

- Governing laws, liens requirements, claims procedures, arbitration procedures, insurance, substantial completion requirements, final completion, and liquidated damages.
- It can also provide procedures on how to terminate or suspend the work and the agreement with the contractor.

- **Components of Construction Contract Document...**
- **Conditions of Contract**
- **Construction Contract:** Conditions of contract are terms which rule the relationships between the owner and the contractor, define each party's rights and obligations, specify method of payment and determine actions required when existing any disputes between the owner and the contractor.
- **General Conditions of Contract:** They are **standard terms** that suit the majority of projects, they include:
 - Definition of the project
 - Contract components
 - Rights and responsibilities for the owner and the contractor
 - Project schedule
 - Payment method
 - Warranty and delay penalty

- **Components of Construction Contract Document...**
- **Special Conditions of Contract**
 - They are the modifications required to suit the uniqueness of the project, make the contract flexible for the nature of the project and achieve project objectives.
 - This is usually an extension of the contract and an addendum to the general conditions.
 - It should specify certain conditions and clauses that pertain to each particular project or job.
 - Pay special attention to specific instructions and requirements on how to perform the work.
- **Signed Technical Proposals/documents—Approaches and Methodology,**
- **Signed Financial Proposals-**

• **Typical Tender (Contract) Documents**

- The tender documents become contract documents **if completed by the prospective contractor, and finally agreed & signed by the parties** .

• **The Legal Part**

- The Contract Agreement;
- The (latest) Minutes of Meeting, if any;
- The Letter of Acceptance(Award)
- The Tender (NB: Including the Appendix to Tender, if any);
- The Special Conditions of Contract
- The General Conditions of Contract
- Others, if any;

• **The Commercial Part**

- The Performance Security Form
- The Payment Security Form;
- The Advance Payment Guarantee Form
- The Bid Security Form;
- The Insurance Forms
- The Retention Money Security Form
- Others, if any

• **The Technical Part**

- The Technical Specifications;
- The Drawing;
- The Bill of Quantities;
- Schedule of Requirements, if any;
- Others, if any.

2.3. Construction Contract Types

- Construction contract types are usually defined by
 - the way, the **disbursement is going to be made** and
 - details other specific terms, like **duration, quality, specifications**, and several other items.
- These major contract types can have many variations and can be **customized to meet the specific needs of** the project.
- One of the characteristics of construction projects is **uniqueness**.
- Every project has **its special circumstances**, so it's important to select the contract type which suits the project.
- The process of selecting the type of contract is **developed by the owner**.

2.3. Construction Contract Types...

• **Factors which affect the selection of construction contract are:**

1. Project objectives:

- The type of contract should meet with project objectives.

2. Project constraints:

- There is no any construction project without constraints.
- Thus, project constraints should be considered while selecting type of construction contracts.

3. Project delivery method:

- Project delivery method **determines the relationships between parties getting involved in the project** and how they interact with each other from project initiation to project closure.

2.3. Construction Contract Types...

- **Types of Construction Contracts**

- There are many types of contracts used in construction.
- Each type has its **advantages and disadvantages** with respect to the **owner** and the **contractor**.
- They are categorized in ***two major groups*** as per method of payment to the contractor.

- **Price-based Construction Contracts**

1. Lump Sum Construction Contract
2. Unit Price Construction Contract

- **Cost-based Construction Contracts**

3. Cost Plus Construction Contract
4. Target Cost Construction Contract

2.3. Construction Contract Types...

1. Lump Sum Construction Contract

- In this type, the contractor bids **a single fixed price for overall activities** in the project scope.
- The contractor is responsible **for estimating project costs from drawings** then adds overhead and his profit to determine the price of the project.
- All risks are **assigned to the contractor**, there isn't any risk carried by the owner.
- The contractor has incentive in this contract as he is rewarded for early finish and there is penalty for late finish.
- This contract is **ideal when the project scope is well defined** at the design stage because there is limited flexibility for modifying the design during construction period.

2.3. Construction Contract Types...

2. Unit Price Construction Contract

- The total price of the project in unit price contract is based **on the price of each item's unit.**
- The contractor is paid **as per the rates of items** specified in the bill of quantity.
- The **risk is shared with the contractor and the owner.**
- This type of contract has **more flexibility for design changing** than the lump sum contract.
- The construction of the project can be started before finishing the designs so the total cost of the project will be uncertain at the early stages of the project.

2.3. Construction Contract Types...

3. *Cost Plus Construction Contract*

- The contractor is paid based on the actual cost of the project including direct and indirect costs plus specific fee. This fee could be a **fixed fee** or **percentage of costs**.
- All **risks** are assigned to the **owner** and he gets involved with the contractor in the management of the project.
- The **contractor has no risk** in case of increasing the cost of the project, also there isn't any incentive for early finish.
- This type of contract is **ideal when the project scope is uncertain** in the early stages of the project.
- The contractor can start the execution of the project before finishing the design. It is **impossible** to estimate the cost of the project before the construction has been finished.

2.3. Construction Contract Types...

4. Target Cost Construction Contract

- Target cost contract has **mutual features** of the **lump sum** and **cost plus contracts**.
- The contractor is paid based on the **actual costs plus a certain fee** either fixed or percentage of total cost in case of the cost of the project doesn't exceed **certain target cost specified by the owner**.
- There is **risk carried by the contractor** in case of increase in cost of construction project.
- The contractor is also rewarded a percentage of any savings between target and actual cost.

2.3. Construction Contract Types...

- **Construction Contract Delivery Systems**
- the way project owners together with project regulators and financiers **determine the assignment of responsibilities to Project Stakeholders** along the Construction Process.
- It is often determined **during the basic planning phase** of the Construction Project.
- Project delivery systems are basically classified in to two broad areas:
 - a) **Force Account and**
 - b) **Outsourced.**

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• Force Account

- When the project owners engage themselves to undertake the project, it is called a force account delivery system.
- Such a system is often promoted if the Project Owners believe that there is a comparative advantage in cost time & quality.

• Outsourcing

- Design-Bid-Build (D-B-B)
- Design-Build (D-B)
- Construction Management (CM At Free & At Risk)
- Design –Build- Operate (D-B-O)
- Design-Build-Operate-Maintain (D-B-O-M)
- Design-Build-Finance-Operate (D-B-F-O)
- Full Delivery or Program Management
- Build-Own-Operate (B-O-T)
- Build Own Operate Transfer(B-O-O-T)

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Categories for Outsourcing Delivery Methods**
 - **Based on: Integration, Segmentation & Financing**

Integrated Process Delivery Methods

Design-Build-Operate

Design-Build-Operate-Maintain

Design-Build-Finance-Operate

External Financing Methods

- Design-Build-Finance-Operate
- Build-Own-Operate
- Build-Own-Operate-Transfer

Segmented Delivery Methods

- Design-Bid-Build
- Design-Build
- Construction Management
- Pure Operations & Maintenance (O&M)

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Design-Bid-Build**

- After Project Owners did prepare the Basic Planning that identifies construction project programs, they call upon the participation of Design and/or Supervision Consultants.
- This Consultant will carry out the design together with the necessary tender documents which will be the basis for tendering to select Contractors.
- This process is called Design-Bid-Build and hence the name for such delivery system.

- **Advantages**

- Long history of acceptance
- Open competition
- Distinct roles are clear
- Owner flexibility
- Easy to tender

- **Disadvantages**

- Innovation not optimized
- Usually cost overruns
- Disputes between parties
- Client retains risks
- Usually low bid-incentive for change orders
- Owner responsible for errors & omissions

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- Design-Build or Turnkey

- Design Build reduces **numbers of procurement processes** engaged in the fragmented process and employ only one procurement process and a single contractor to provide the entire Construction Implementation Process (Design & Construction Implementations).
- In this arrangement, both the ***design & construction liability*** rests with the Contractor.
- In the design-build process, the contracting parties:
 - There is lack of an **independent certification role** in the contract.
 - There is **no architect or contract administrator** to settle differences.
 - There is **no independent quantity surveyor** responsible for preparing the basis up on which contractors tender.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• Design-Build or Turnkey...

• Advantages

- Single source responsibility both for design & construction
- Integrating design & construction
- Reduction in administration
- Innovation
- Cost savings
- Constructability optimized
- Most risks transferred to the design-builder
- Usually guaranteed maximum price (GMP)
- Design reflects

• Disadvantages

- Limiting competition
- High tendering costs
- New method & unfamiliarity
- Client needs quicker decision making
- Clients bringing design requirements(30%)(reduces design innovation)

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Construction Management (CM)**

- Under Construction Management, the **Owner contracts separately, but somewhat simultaneously**, with a design consultant and with a firm whose primary expertise is construction (the Construction Manager).
- The owner procures the management services of the Construction Manager (in most cases a general contracting construction firm) early in the design phase.
- CM is of two types:
 - **CM At Free/as Agent** &
 - **CM At Risk/as Constructor.**
- This distinction determines the contractual approach to CM.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• **Construction Manager (CM) as Agent**

- This is a form of CM under which the Construction Manager **acts as an agent** of, and **advisor to, the Owner**.
- **The Owner enters in to multiple trade contracts with the trade contractors & suppliers.**
- The Construction Manager is retained on a fee for services basis & acts on the Owner's behalf in managing & coordinating the trade contracts in the best interests of the Owner.
- The Owner retains all of the contracting risks inherent in each of the trade contracts.
- It essentially involves the Owner acting as its own general contractor, with the assistance of a Construction Manager.
- This form of CM is sometimes also referred to as the “CM as Advisor” or “owner contacted form of CM”.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Construction Manager (CM) At Risk (as Constructor)**
- This is a form of CM under which the Construction Manager enters in to multiple trade contracts with the trade contractors & suppliers.
- The Construction Manager assumes responsibility for the performance of the trade contracts (subcontracts) much as a general contractor under the traditional method, and is paid for the trade contract work on a cost reimbursable basis.
- The Construction Manager may, or may not, also provide a guaranteed maximum price & schedule to the Owner **under a cost plus type of arrangement**, or enter into a stipulated price contract, when the design is sufficiently complete.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

Advantages

CM At Free

- Provides a managing & administering for all phases of a project;
- Treats planning, design, construction as an integrated tasks;
- Some costs & schedule control;

CM At Risk

- Good for clients with insufficient staff;
- Owner flexibility;
- Responsible for time & cost overrun;
- Holds & manages the trade contractors;
- Constructability design review;
- Same legal position as a General Contractor;
- Provides a guaranteed maximum price (GMP);
- Works closely as a teaming effort & encouraging partnering & trust;

Disadvantages

CM At Free

- No contractual relationship with trade contractors;
- No contractual responsibility for outcomes of a project;
- Client retains the risks;

CM At Risk

- Duplication of administration & additional paperwork;
- More paper work for the client;
- Some duplication of administration;
- Fast tracking difficult to control with designer & CM;
- Sometimes difficult to manage all phased packages with costs, changes & schedules;

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Design-Build-Operate (D-B-O)**

- According to FIDIC, the D-B-O approach to contracting combines **design, construction, and long term (ex. 20 years) operation (and maintenance) of a facility** in to one single contract awarded to **a single contractor** (who will usually be a **joint venture** or consortium representing all the skills for in a D-B-O arrangement).
- The FIDIC has now prepared conditions of contract which facilitate the D-B-O process.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

- **Advantages of D-B-O**

- Time

- With possibilities to overlap some design & build activities, it will be possible **to minimize delays & optimize the smooth flow of construction** activities.

- Finance

- With cost restraints & commitments & other risks being carried by the contractor, there is **less risk of price over-run**.

- Quality

- With the contractor responsible for 20 years operation, he has an interest to design & build quality plant **with low operation & maintenance costs**.
- Not only will then plant be “**fit for purpose**” but it will be built to last.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• Full Delivery or Program Management

- Under full delivery method, the selected contractor shall undertake the whole range of activities from thought to finish & operation inclusive of maintenance.
- The possible activities include:
 - Planning & acquisition;
 - Finance;
 - Design;
 - Construction;
 - Operation;
 - Maintenance;
 - Upkeep & Improvements;

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• Full Delivery or Program Management ...

• Advantages

- Shorter time to project competition;
- Fully integrated process from project inception;
- Maximization of planning & reduction of problems during execution;
- Knowledgeable alternative funding sources;
- Good for large & complex projects;
- Single source expertise;

• Disadvantage

- Difficult to tender & not knowing the costs;
- Compatibility issues with client;
- Quality based selection process(Negotiated);
- Client needs to make decisions quicker;

2.3. Construction Contract Types...

Construction Contract Delivery Systems

• Build-Operate-Transfer (BOT)

- BOT is a form of procurement and contract delivery system that promotes Public Private Partnership (PPP) in which a private company is contracted to finance, design, construct, operate for a certain period (usually 10 years) and transfer the facility to the Project Owner.
- The typical BOT project contract is the process whereby a **government grants a concession to a project development company** to develop & operate what would normally be a **public sector project**, for a given period of time known as the concession period.
- BOT project involves a potentially **complex** contractual structure.

2.3. Construction Contract Types...

Construction Contract Delivery Systems

Conditions of Contract with respect to the Contract Delivery Systems

- **Design-Bid-Build:**

- The Ministry of Works & Urban Development Conditions of Contract for Construction Works(1994), under which the contractor is responsible for construction;
- The PPA Conditions of Contract for Works (2011), under which the contractor is responsible for construction;
- FIDIC Conditions of Contract for Construction for Building and Engineering Works (1999 the New Red Book) under which the contractor is responsible for construction;
- FIDIC MDB Harmonized Edition 2006 Conditions of Contract for Construction(the Red Book) under which the contractor is responsible for construction;

2.3. Construction Contract Types...

Construction Contract Delivery Systems

Conditions of Contract with respect to the Contract Delivery Systems...

- **Design-Build**

- FIDIC Conditions of Contract for plant and Design –Build for Electrical & Mechanical Plant, and for Building & Engineering Works (the New Yellow Book 1999) under which the contractor is responsible both for design & construction.

- **Engineer-Procure-Construct (EPC)**

- FIDIC Conditions of Contract for EPC/Turnkey Projects (the Silver Book, 1999), under which the contractor is responsible for design, construction and/or financing, operation. This may also be adaptable to BOT & other related arrangements.

- **Design-Build-Operate**

- The FIDIC New Conditions of Contract for Design Build & Operate, under preparation, under the intended contractual arrangement, the contractor is to be responsible for design, build & operate a given facility.

2.4. Local Construction Contracts and Laws

- **Public Procurement Agency (PPA-2011)**
 - SBD Consultancy
 - Standard Bidding Document For Procurement of Consultancy Services Request for Proposals (RFP) National Competitive Bidding (NCB)
 - Standard Bidding Document For Procurement of Consultancy Services Request for Proposals (RFP) International Competitive Bidding (ICB)
 - SBD Works
 - Standard Bidding Document (SBD) For Procurement of Works For International Competitive Biddings (ICB)
 - Standard Bidding Document (SBD) For Procurement of Works For National Competitive Biddings (NCB)
 - SBD Goods
 - Standard Bidding Document (SBD) For Procurement of Goods and Related Services For International Competitive Biddings (ICB)
 - Standard Bidding Document (SBD) For Procurement of Goods and Related Services For National Competitive Biddings (NCB)
- **MINISTRY OF WORKS AND URBAN DEVELOPMENT STANDARD CONDITIONS OF CONTRACT FOR CONSTRUCTION OF CIVIL WORK PROJECTS (DECEMBER, 1994)**

2.4. Local Construction Contracts and Laws

• **PPA 2011 Standard Bidding Document (SBD) – General Structure**

Part 1	Bidding Procedures	I
Section 1.	Instructions to Bidders	I
Section 2.	Bid Data Sheet	II
Section 3.	Evaluation Methodology and Criteria	III
Section 4.	Bidding Forms	IV
Section 5.	Eligible Countries	V
Part 2	Schedule of Requirement	VI
Section 6.	Schedule of Requirements	VI
Part 3	Contract	VII
Section 7.	General Conditions of Contract	VII
Section 8.	Special Conditions of Contract	VIII
Section 9.	Contract Forms	IX

2.4. Local Construction Contracts and Laws...

PPA-2011: Basic Structures

General Conditions of Contract: WORKS- National/International Competitive Bidding

- A. General Provisions (Clause 1-6)
- B. The Contract (Clause 7-29)
- C. Obligations of the Public Body (Clause 30-33)
- D. Obligations of the Contractor (Clause 34-58)
- E. Payments to the Contractor (Clause 59-69)
- F. Performance of the Contract (Clause 70-83)
- G. Acceptance and Defects Liability (Clause 84-89)

General Conditions of Contract: Consultancy Services National/International Competitive Bidding

- A. General Provisions (Clause 1-6)
- B. The Contract (Clause 7-30)
- C. Obligations of the Public Body (Clause 31-35)
- D. Payments to the Consultant (Clause 36-42)
- E. Obligations of the Consultant (Clause 43-55)
- F. Performance of the Contract (Clause 56-68)
- G. Fairness and Good Faith (Clause 69-70)

2.4. Local Construction Contracts and Laws...

MoWUD: **Basic Structures**

MINISTRY OF WORKS AND URBAN DEVELOPMENT STANDARD CONDITIONS OF CONTRACT FOR CONSTRUCTION OF CIVIL WORK PROJECTS (DECEMBER, 1994)

- DEFINITIONS AND INTERPRETATION
- ENGINEER AND ENGINEER'S REPRESENTATIVE
- ASSIGNMENT AND SUB-LETTING
- CONTRACT DOCUMENTS
- GENERAL OBLIGATIONS
- MATERIALS AND WORKMANSHIP
- COMMENCEMENT TIME AND DELAYS
- MAINTENANCE AND DEFECTS
- ALTERATIONS, ADDITIONS AND OMISSIONS
- PLANT, TEMPORARY WORKS AND MATERIALS
- PROVISIONAL SUMS
- NOMINATED SUB-CONTRACTORS
- CERTIFICATES AND PAYMENT
- REMEDIES AND POWERS
- SPECIAL RISKS
- FRUSTRATION
- SETTLEMENT OF DISPUTES
- NOTICES
- CHANGES IN COST AND LEGISLATION
- OTHER MATTERS

2.5. International Construction Contracts and Laws

- There are different standard conditions of contract developed by certain institutions or recommended by international financing or development institutions;
 - **by FIDIC (Fédération internationale des Ingénieurs - Conseils)**
 - **by European Union**
 - **by African Development Bank**
 - **by the World Bank**
- Standard Conditions of Contract developed **by FIDIC**:
 - Conditions of Contract for Civil Engineering Works (Red Book);
 - Conditions of Contract for Electrical & Mechanical Works (Yellow Book);
 - Conditions of Sub-Contract for Works of Civil Engineering Construction;
 - Conditions of Contract for Design-Build & Turnkey (Orange Book);
 - Conditions of Contract for Consultancy Services (White Book);
 - The Sub-Consultancy Agreement;

2.5. International Construction Contracts and Laws

- **By European Union** (through the European Development Fund (EDF);
 - General Regulations for Works, Supply & Service Contracts financed by the EDF;
 - General Conditions for Works Contracts financed by EDF;
 - General Conditions for Supply Contracts financed by EDF;
 - General Conditions for Service Contracts financed by EDF;
- By the **African Development Bank/Fund** (for the procurement of Works, Goods & Services);
- By the **World Bank**. These are Standard Bidding Documents for the procurement works of civil engineering construction.

2.5. International Construction Contracts and Laws

- **The FIDIC (Federation International Des Ingenieurs-Conseils)**
- an international federation of national association of independent consulting engineers.
- founded in 1913 by five national associations of independent consulting engineers within Europe.
- The objectives of forming the federation were to promote in common the professional interests of the member associations and to disseminate information of interest to members of its component national associations;
- It has begun to prepare & disseminate standard conditions of contract since 1957 for international use.
- The FIDIC Conditions of Contract is based on the concepts of **the Common Law Legal System**.
- Recently (1999 & 2006) FIDIC has published many conditions of contract.

2.5. International Construction Contracts and Laws



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

FIDIC

Fédération internationale des Ingénieurs - Conseils

- Contract Conditions for the Construction Market:

- **Red Book**
- **Yellow Book**
- **Silver Book**
- **Green Book**
- **White Book**
- **Orange Book**

Editions: 1987, 1999 (2006)

2.5. International Construction Contracts and Laws

FIDIC: **Basic Structures of books**

- Definitions and Interpretations
- Arrangements for the Contracting Parties
- Institution of the Consultant Engineer
- The Procurement and Award of Contract
- The Duties of the Contracting Parties
- The contract price
- Adjustments and Alterations of the Contract
- Sharing of the risks
- Compromising a Dispute

2.6 Subcontracting

CoTM 6104

- Subcontractor is a **common term used in construction.**
- Due to the uniqueness of each construction project, the work force is transient, multiple craft are involved, each project are planned and worked in short time frames, and variety of materials and equipments required, one single construction project is often sublet to many subcontractors.
- Subcontractors can contribute more than 50%, and can be as much as 90% of total project value to a construction process.
- Subcontractors are **specialist in the execution of a specific job**, they act as a **agents of the production system of the contractor company** in supplying materials, manpower, equipment, tools or designs.

2.6 Subcontracting

CoTM 6104

- A subcontractor is a construction firm that *contracts with a general contractor to perform some aspect of the general contractor's work.*
- In most construction projects, a vital role is played by subcontractors who are hired to perform specific tasks on a project.
- In the usual case, the general contractor will perform the basic operations and subcontract the remainder to various specialty contractors.

- ***What is Subcontracting?***
- Subcontracting is the **practice of assigning part of the obligations and tasks under a contract** to another party known as a subcontractor.
- Subcontracting is especially **prevalent in areas where complex projects are the norm**, such as construction and information technology.
- Subcontractors are hired by **the project's general contractor**, who continues to have **overall responsibility** for project completion and execution within its stipulated parameters and deadlines.

2.6 Subcontracting

CoTM 6104

- **Why Subcontract?**
- Subcontracting is very useful in situations where the range of required **capabilities for a project is too diverse** to be carried out by a **single general contractor**.
- In such cases, subcontracting parts of the project that **do not form the general contractor's core competencies** may assist in keeping costs under control and mitigate overall project risk.
- Some large government contracts or contracts that **impact local community development** may require the primary contractor to hire a certain number of subcontracting entities from the community as part of the contract.

2.6 Subcontracting CoTM 6104

- *Refer the following documents for Subcontracting*
 - ***FIDIC***
 - ***PPA 2011***

Thank you!

- *Questions*
- *Comments*