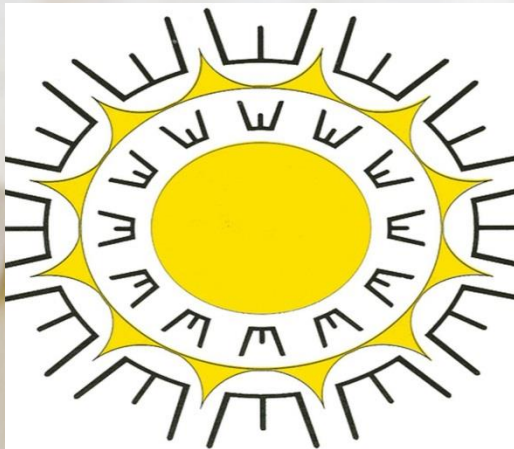


**WELCOME TO
THE CONFERENCE
ON**

**COVID-19 Impact on the Construction Industry
(GCC Clauses analysis and Recommendation)**



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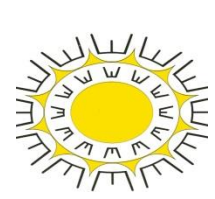
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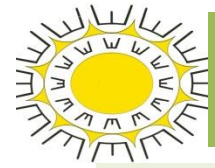
June, 2020

Addis Ababa



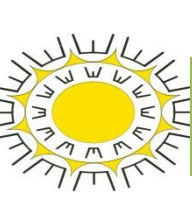
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1. Introduction

- The novel corona virus was discovered on January 9th in Wuhan province in China.)
- The first case in Ethiopia was found in March 13, 2020.
- Ever since then until its declaration as a pandemic by WHO, it has sadly destroyed peoples' lives, devastated nations, disrupted businesses & our normal ways of lives.
- Briefly to be addressed are the assessment of the different Conditions of Contracts on the pandemic, Impacts of the current Corona Pandemic on the construction Industry, Actions required from the Project stake holders during the pandemic, Possibility of Claims from the Contractor's side, Impacts of the Pandemic on Consultants' Services and Conclusions & Recommendations.



2. Assessment of different GCC and the Civil Code

2. Assessment of different GCC

2.1. Disruption:

Sub-Clause 6.3 of the GCC, MoWUD December 1994 discusses about **Disruption of Progress**.

It discusses about disruption of works due to delayed drawing submission – does not address the current Pandemic

2.2. Excepted Risks:

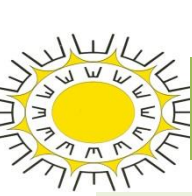
Sub-Clause 20.2 of the GCC, MoWUD December 1994 deliberates about **Excepted Risks**.

2.3. Exceptional Risks

Clause 44 of the GCC, PPA 2011 stipulates about **Exceptional Risks**

2.4. Employer's Risks:

- **Sub-Clause 20.2 of the GCC, PPA 2006** describes about Employer's Risks
- **Sub-Clause 20.4 of FIDIC 4th edition, 1987** has also contained Employer's Risks



2. Assessment of different GCC and the Civil Code.... Cont'd

2.5. Special Risks:

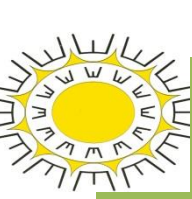
- **Sub-Clause 65.2 of the MoWUD December 1994 GCC defines Special Risks**
- **Clause 65.2 of the FIDIC 4th edition, 1987 has defined Special Risks**

2.6. Suspension of Works:

- **Sub-Clause 40.1 of the MoWUD December 1994 GCC describe about Suspension of Works**
- **Clause 20 of the PPA 2011 GCC states about Suspension of Works**

2.7. Frustration:

- **Clause 66 of the MoWUD December 1994 GCC describes about events of frustration and payment in such event**



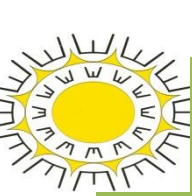
2. Assessment of different GCC and the Civil Code.... Cont'd

2.8. Release from Performance:

- **Clause 66 of the MoWUD December 1994 GCC** describes that *“if a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the Contract, the parties are released from further performance”*.
- **Clause 62 of the PPA 2006 GCC** included provision for **“Release from Performance”**
- **FIDIC Conditions of Contract for Plant and Design-Build, First Edition, 1999 Sub-Clause 19.3** stipulates *Release from Performance under the Law*.

2.9. Force Majeure:

- **Clause 18 of the PPA 2011 GCC** (which is believed to be currently under use for public projects) included a clause (Clause 18) for Force Majeure
- **FIDIC Conditions of Contract for Plant and Design-Build, First Edition, 1999** includes a clause for Force Majeure



2. Assessment of different GCC and the Civil Code.... Cont'd

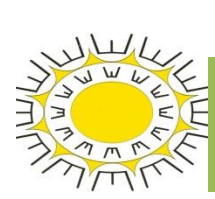
Civil Code: Article 1792- Force Majeure:

- (1) Force Majeure results from an occurrence which the debtor could normally not foresee and which prevents him absolutely from performing his obligations.*
- (1) Force Majeure shall not exist where the occurrence could normally have been foreseen by the debtor or where it renders more onerous the performance by the debtor of his obligations.*

Civil Code: Article 1793- Cases of Force Majeure:

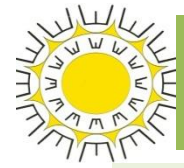
The following occurrences, may according to the circumstances, constitute cases of Force Majeure:

- (a) The unforeseeable act of a third party for whom the debtor is not responsible; or*
- (b) An official prohibition preventing from the performance of the contract; or*
- (c) A natural catastrophe such as an earthquake, lightning or floods; or*
- (d) International or civil war; or*
- (e) The death or a serious accident or unexpected serious illness of the debtor.*



3. Impacts of the COVID-19 on the Construction Industry

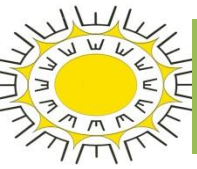
- The impact may vary from zero (0) on one project to a certain degree at another project.
- The issue needs project specific assessment.
- Though the current situation is not explicitly included in the Conditions of Contracts, as
- Presented in the aforementioned section 2 above, it is very difficult to conclude that it has not affected the smooth progress of works at each site
- **Some of the possible areas of adverse impacts are on the following:**
 1. Shortages of labor due to difficulties in mobilization
 2. Disruptions on the supply chain of construction materials due to difficulties in mobilizing Construction materials
 3. Additional costs due to the new Safety and Health requirements
 4. Delay or Additional cost emanated from changes of the law restricting the activities



4. Actions required from the Project stake holders during the pandemic

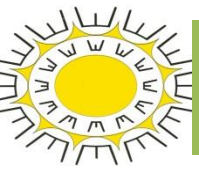
Actions required from the Project stake holders during the pandemic

- a. Actions to be taken by contractors**
- b. Actions to be taken by Engineers/Consultants**
- c. Actions to be taken by the Client**
- d. Actions to be taken by the Regulatory body and Ministry of Urban Development and Construction.**



5. Recommendations

- 1. The Current Corona Virus (COVID-19) Pandemic is a new exceptional event or circumstance to Ethiopia in particular and to the world at large. Thus, it was not foreseen and similar events are not included in any of the Conditions of Contracts. It has to be treated in a new way. We may need to go out of the legal framework box (or Conditions of Contracts box) and treat the issue in good faith. Clients and Contractors conclude their contracts in good faith. One of the parties should not seek undue advantage from the other. Thus, the two contracting parties should closely discuss and agree on the additional time and cost issues emanated from the Pandemic based on the recommendations of the Engineer (Consultant).**
- 2. Considering that the Pandemic is a national threat, Consultants and Contractors may need to absorb their additional expenses. The additional costs they incurred may be considered by the Government as donation to the Government to fight the Pandemic. This will be a landmark for them in discharging their social responsibilities. Certificate of recognition should be given by the Government to the firms.**
- 3. Clients and Contractors may need to assign an adjudicator or Arbitrators (Ad-hoc or Institutional) or as FIDIC suggests a Dispute Avoidance Adjudication Board (DAAB) to handle the EOT and additional cost case on their behalf.**



6. References

References:

- **General Conditions of Contract, MoWUD, Dec. 1994**
- **General Conditions of Contract, PPA 2006**
- **General Conditions of Contract, PPA 2011**
- **General Conditions of Contract, FIDIC 4th edition, 1987**
- **Conditions of Contract for Plant and Design-Build, FIDIC First Edition, 1999**
- **FIDIC COVID-19 Guidance Memorandum, April 2020**
- **Civil Code of the Empire of Ethiopia, Proclamation No.165 of 1960**

THANK YOU