

# **TYPES OF CONTRACTS**

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# **SPECIFIC OBJECTIVES**

- To enable the learner understand types of contracts in common use.
- To differentiate their desired application with the nature of contract.
- To adopt the most commonly used as may be to the need of the client and its benefit.

# PREVIEW

- All is well that ends well – Shakespeare
- When is an agreement a contract?
- What are the conditions of the contract?
- Why there are different types of contracts and various terms of payment: How do they motivate contractors?
- Contracts are agreements enforceable by law
- Contracts are based upon competitive tendering

# **A CONTRACT IS A MEANS TO AN END**

**Illustration.....**

# VALIDITY OF A CONTRACT

- There must be an offer made and acceptance of that offer by the offeree: it must be definite and be accepted in the manner prescribed.
- It must have 'form' or be supported by consideration signed, sealed and delivered.
- Both parties must be legally capable of undertaking the obligation imposed by the contract.
- Consent to a party must be genuine. Not obtained by fraud, misrepresentation, duress, undue influence or mistake.
- Subject matter must be legal

# REMEDIES FOR BREACH OF CONTRACTS.

## **Damages:**

- Sum of money which will as far as practicable place assigned party in same position as if contract had been performed.

## **Order of payment of a debt:**

A debt is liquidated or ascertained sum money due from the debtor to the creditor and is recovered by an action of debt.

## **Specific performance:**

An order of court directing a party to a contract to perform his part of agreement.

## **Injunction:**

An act of court directing a person not to perform a specified act.

## **Rescission:**

An order of court counseling or setting aside a contract and results in setting the parties back in position that they were before the contract was made

# **CONTRACT DOCUMENTS**

## **CONDITION OF CONTRACT**

Represents legally binding agreement among parties, projects expected completion date of work, methods and timing of payments, access to the works, sequence of construction, storage areas available.

# Cont...

## **CONTRACT DRAWINGS**

Representation of actual works in drawing for ease of understanding.

## **SPECIFICATION**

Details the quality required in the works.

## **BILL OF QUANTITY**

Itemises the works and describes it in full giving the quality, quantity and cost.



# REASON FOR USE OF BILL OF QUANTITY

- All tendering contracts base their prices on same information hence comparable.
- Contractors are saved time to take off quantities from drawings themselves.
- Bills provide a fair basis for valuing variations and adjustments for the final account.
- Provide convenient basis for valuation of certified stage payment during contract before the accurate remeasurement figures are available.
- Bills provide an accurate checklist for the contractor to order materials and their resources.
- Bills provide data for cost analysis for use in cost planning of future projects.

# TYPES OF CONTRACTS

## 1. **Cost reimbursement contract.**

Used in situations where the client is in a hurry to jumpstart prior to actual documentation.

Client reimburses contractor based on a suitable 'cost plus' basis where actual cost of work is paid together with a fee depicting management, technical costs and overheads and profit.]

### **Remedy**

Close supervision, trust, and good record keeping.

# Cont...

- **2. Target cost contracts.**

Similar to cost reimbursement but a provisional estimate of prime cost is prepared but this time the figure is agreed as being realistic by both contractor and client before work commences. To this a sum is added to the contractors' fee for overheads and profit and resulting figure becomes 'target cost'.

# Cont...

## **3. Continuity contracts**

If a client envisages further work beyond the immediate project, he may wish to maintain continuity of work with same contractor. E.g. SGR from Mombasa to Nairobi expected to be completed by July 2017. Phase two if done by the same firm; it shall be a continuity contract under similar conditions. Client normally expects some reprieve in costs.

## **4. Special contracts**

Here at tender stage rival contractors are informed that the successful firm will be called upon to carry out a number of future separate contracts each of which will be very similar if not identical to the original.

# Cont...

## **5. Term contracts**

Is a continuity contract which has been adopted to suit a situation where a continuous programme of work is required on a particular site or within a certain defined area? Used in government organizations, industrial sites, oil refineries etc where regular maintenance is paramount. Here schedule of rates covering most of the work encountered in such sites.

## **6. Two stage tendering contract**

Here contractors compete openly and are eliminated at evaluation stage until the most successful one is chosen. Used on complicated projects where type and scope of work is known at the early stage where client will benefit from the advice and expertise of the contractor.

# Cont...

## **7. Design and build (package deal) contract**

A client invites selected contractors to price the work but also design, plan and organize the contract. The contractor provides an all in service or 'package deal' from sketch schemes once appointed; the successful contractor can be expected to make good progress working to his own well tried and familiar design.

## **8. Drawing and specification**

This is applicable in extensions and alterations. The successful contractor may have to write his own specification to safeguard against being underpaid.

# Cont...

## **9. Management contracts**

The main contractor assumes full responsibility for the organization and carrying out the work. He is reimbursed on a percentage basis or lump sum fee for his expertise. Work to be carried out is specified in a separate work packaged each of which is tendered on a competitive basis by specialist sub-contractors. The MC does:-

- Supervision of sub-contractors.
- Integration with design team (regular meeting).

## **10. Bills of quantity contract**

See prior notes.

**END.**