

A Study on Contractors' Contractual Relationship within Joint Venture Projects in Tanzania

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Abstract Contractors in Tanzania has been undertaking some construction projects in the joint venture. The relationship between contractors within Joint Venture (JV) is very complex, their duties sometimes subjected to misunderstandings and conflicts among themselves. In most cases their conflicts affect the performance of the projects. Also, there are no specific criteria's for choosing the partner between contractors in the joint venture. This study aimed to investigate the contractual relationship between contractors within the joint venture. In achieving this, natures of the contractor's contractual relationship were examined and challenges in the JV relationship were assessed in Tanzanian context. The study was carried out in Dar es Salaam, Tanzania; purposively sampling was used to obtain the sample size. Questionnaires survey used to collect data from contractors undertaking joint venture projects, 20 questionnaires were distributed, 16 questionnaires were returned making 80% of success rate. The study revealed that the nature of contractors' contractual relationship in Tanzania is joint venture bidding projects, contractors established joint venture contractual relationship due to bids requirement for the particular construction project. Challenges identified are, poor management of money for the joint venture project by partner(s), interruption and termination of work by the client, loss of trust among partners, low experience and capability of the partner(s), non-adherence to the contract and change in labor and material costs. Others challenges are client and government policy oriented challenges. It is recommended that, there should be continuous and long Term partnership between contractors that will improve understanding between themselves. Before forming a joint venture, contractors should establish clear understanding terms of agreements between them and they should preliminary plan on how to undertake the particular joint venture project successively. Emphasize has to made by the Contractors Registration Board (CRB) of Tanzania on regular training and seminar on successfully JV.

Keywords Join Venture Construction Projects, Contractual Relationship, Challenges of JV

1. Introduction

Construction Industry Institute, (1991) defines a joint venture as a short-term or long-term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant resource. Their relationship is based on trust, dedication to common goals, and an understanding of each other's individual expectation and values. A construction Joint Venture (JV) is like an "economic marriage". Like marriage itself, a joint venture offers great opportunities to exploit and share resources, skills and financial strength. This type of organization may permit two firms acting as a unit to undertake projects which neither could have accomplished alone, (Rowan, 2005).

JVs in construction fall broadly into two categories, that of integrated and non-integrated. In the case of non-integrated JV, the overall responsibility for the contract usually has to be negotiated by the JV board. The advantage of this type of venture is that for the contractors entering into a partnership, each can complement the others in term of skills and other resources. However, there is the disadvantage that some contractors have to put in more effort than others, thus leading possibly to internal conflicts at a later stage (Simkoko, 1989 and Norwood and Mansfield, 1999).

Integrated JV has primary characteristic of sharing of profit and losses in proportion to their interest in joint venture (Norwood and Mansfield, 1999). Each member is taken for specific scope of work and is responsible for the profit or losses associated with that scope of work (Kale et al. 2006). Each member is solely responsible for the resources necessary to perform its specified scope of work. Kale et al. (2006) explained that the advantage of this type of joint venture is that for the contractor entering in to the joint venture, each can complement the others skills. However, the disadvantage is that some contractors have put more efforts than others, thus leading to internal conflicts.

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Published online at <http://journal.sapub.org/ijcem>

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Partner selection process is considered to be of crucial importance to the formation and operation of JVs. According to Mohr and Spekman, (1994) and Adnan and Morledge (2003) partner-related factors are concerned with variables which are specific to the character, culture and history of the involved partners, for example, experience in the management, past association between partners, business compatibility between the partners, the corporate culture of the partners and prior JV experience.

A good JV agreement is an essential success factor and can avoid a great deal of trouble and conflict in future JV operations and also must be drafted in clear terms and conditions that can be easily understood by all partners as well as the working staff, and each partner's authority and responsibility in the JV must be clearly understood. Basically, a JV should be established based on mutual trust and understanding, but the agreement must be more concrete and precise regarding liability (Bing and Tiong, 1999; Adnan and Morledge, 2003 and Minja, et al. 2012).

In a study by Sridharan (1997) and Veerasak and Apichart, (2007) found that conflicts between partners caused poor performance in JVs and some to fail. The rate of failure reported by the past studies is a very disturbing fact, requiring a thorough examination of the various factors that affect the satisfactory functioning of the JVs in general.

To run a joint venture effectively and without conflicts has in several cases proven to be problematic. The need for good relationships between the partners is therefore necessary. It is of great importance that the partners' objectives and contributions to the venture are clearly described and the control and ownership structure of the joint venture is properly defined (Xuefang and Anders, 2000). Other studies by Beamish, (1988); Luo, (2002); Likhitrungsilp and Mekkiengkrai, (2007) and Campbell and Netzer, (2009) have identified problems which hinder joint venture and project management practice for the joint venture.

The relationship between contractors within joint venture is very complex. Their duties are subject to misunderstandings, so the construction field has witnessed several problems and conflicts between the contractors in the joint venture. The need for good relationships between the partners is therefore necessary. This study focuses on assessing the contractual relationship between contractors within the joint venture, by examining the nature of contractors' contractual relationship in the joint venture, identify the challenges in a contractual relationship in the joint venture and then to suggest a suitable way forward to improve the contractual relationship between contractors within joint venture in Tanzania.

The study is limited to Dar es Salaam, as most of the contractors, employers and regulatory bodies as a source of information are also found. The study aims at improvement in the contractual relationship between contractors in the joint venture.

2. Aim of the Study

- To examine the nature of contractors' contractual relationship in the joint venture.
- To identify the challenges in a contractual relationship in the joint venture.

3. Methodology

The research methodology is the way that systematically solves the research problem. It is a science of studying how research is done scientifically (Kothari, 2004; Kombo and Tromp, 2006 and Meckson, 2014). This research is descriptive research design aiming to explore matters of the contractors' contractual relationship in Tanzania. The sampled of JV projects were extracted from CRB and undertaken in Dar es Salaam between 2014 and 2017. A selected population considering that JV partners' offices are located in Dar Es Salaam, Tanzania.

According to CRB, there were 40 registered JV projects undertaken in Dar es Salaam, between 2014 and 2017, and those joint venture projects were ranging between classes I up to IV depending on the contract value of the particular project.

Table 1.1. Registered Joint Venture Projects between 2014 and 2017 in Dar es Salaam, Tanzania

JV Type	Project Type	JV Given Class	Total Number of JV
Local	Building, Civil & Electrical	I	15
Foreign	Building, Civil & Electrical		3
Local	Building & Civil	II	10
Local	Building, Civil & Mechanical	III	7
Local	Building & Civil	IV	5
		TOTAL	40

Source: CRB (May 2017)

The sample size for this study was obtained by using the formula below, according to Israel, (1992), where the sample size was 10 out of 40 registered joint venture projects in Dar es Salaam, $n = N / (1 + Ne^2)$; Where: n =Total number of sample size; N = Total number of study population; e =Level of accuracy=26%. Therefore; $n = 40 / (1 + 40 * 0.26^2) = 10.79913607$ $n = 10$.

The data were collected through semi-structured interviews on face to face with sampled JVs contractors to gather the facts and opinions on the various aspects with regards to their JVs projects. A total of 80% (18) of respondents successful gave their views regarding the topic. Table below shows:-

Table 1.2. Response from Distributed Questionnaires

	1 st PARTNER	2 nd PARTNER	TOTAL
Sampled	10	10	20
Responded.	8	8	16
% of Success	80%	80%	80%

Source: Field Data, (2017)

The respondents according to the designation were as follows;- 43.75% of the sample is “Managing Director”, 37.50% of the sample, their designation is “Contractor Quantity Surveyor”, 6.25% of the sample, their position is “Site Engineer”, 6.25% of the sample their position is an “Architect” and 6.25% from the sample his position is an “Accountant”. The higher the percentage of MDs who responded to the questions means that the study achieved to get valuable information from the right people with regards to JV contractual matters.

The collected data from the study sample was analyzed, and whereas some the data presented in the table, charts and some explained in words to come up with the realistic and accurate conclusion from the study sample.

4. Results

1. Analysis of Nature of Contractors Contractual Relationship in Joint Venture

The study revealed the following:

Type of contractors’ contractual joint venture is determined by the purpose of the particular joint venture, from the field data, it concluded that the majority of respondents (62.50%) the purpose of their joint venture is a JV bidding project, it means they entered into a joint venture in order to comply with the terms tender. 25.00% of the respondents their joint venture is purposely for sharing working capital, to transfer technology only 12.50% of the respondents said their joint ventures are for strategic partners and none of the sample joint venture projects is for technology transfer and market expansion.

The most preferred type of joint venture is an integrated joint venture, then non-integrated and the least preferred is combined, data obtained shows that 62.50% of respondents their joint ventures are in integrated form, 25.00% their joint venture projects are of the non-integrated form and 12.50% adopted a form of the combined joint venture. In an integrated joint venture, contractors share profits and losses, while under non-integrated joint venture, there is no sharing of gains and losses, where each contractor in the joint venture is responsible for the profits and losses for the particular part of the work.

From the obtained results it shows that formal joint venture agreement most applied by many joint ventures in Tanzania, where 75.00% agree to enforce formal joint venture agreement, followed by the memorandum of understanding where 56.25% agree to apply it, and the pre-bid joint venture agreement applied at a relatively low level, where only 12.50% from the sample agree on the application of pre-bid joint venture agreement for their joint venture projects. Some partners in joint venture projects used more than one type of arrangement.

Contractors in the joint venture their relationship are mostly regulated by operational documents, where 100% of the joint venture projects agree, and then dispute resolution

documents are moderately also used in controlling contractors relationship within the joint venture, where 37.50% of the sample contractors in the joint venture agree on the application of dispute resolution documents, Least number of contractors 18.75% of the sample contractors make consideration on the termination agreements, termination agreements not much considered because many joint ventures in Tanzania are of integrated nature, where both parties in the joint venture share the profits and losses for the particular joint venture, so if contractors in the joint venture terminate their relationship, both are liable for the damages which resulted from their termination. This makes contractors tolerate until they finish the joint venture project.

The findings also indicated that 75% of the respondents agree to use a legal contract to govern their contractual relationship in the joint venture, while 25% agree to use just a written contract and all the respondents disagree on the verbal contract as their type of contract which governing their contractual relationship in the joint venture. Legal contracts are preferred because under legal contract partners are bound. Also, contractor’s joint venture contract mostly uses legal contract because contractors’ contractual relationship is very complex.

However. The results show that 68.75% of the responding contractors agree that an Advocate/Commissioner of Oath prepares the contract between contractors in the joint venture, 31.25% of respondent contractors agree that the contract between contractors in the joint venture is prepared by both partners as well results indicate that contractors in joint venture highly consider the administrative structure and operation provisions, because many respondents agree that details under administrative structure and operation were highly regarded during the formation of their contractual agreements while business objective, extent, and duration of the agreement not put into writings. Other provisions, confidentiality, insolvency or default of partners, applicable or governing law, Settlement of disputes and the entire agreement highly considered.

Finally, analysis also shows that partner contractors in the joint venture are very keen on the quality of work, in the case of partner not complying on trust among partners in the joint venture, both confidentiality, and communication on joint venture information moderately lead to penalty and the final factor contribute to punishment is not complying with proper handling of joint venture properties. Some contractors in the joint venture in Tanzania does not include this provision in their agreement, and by not including this, contractors face a lot of misunderstandings between them during joint venture project undertakings.

2. Challenges in Contractors’ Contractual Relationship in Joint Venture

Poor management of money for the project by a partner(s) is the challenge which highly hinders contractors’ contractual relationship in the joint venture. Most of the partners in the joint venture in Tanzania do not put clear their

plans on how to allocate money during project execution and sometimes partners in the joint venture use money for the project for their personal use. Also, poor management of personnel and non-adherence to schedule by a partner(s) had been identified as the moderately challenges affecting the contractors' contractual relationship in the joint venture.

Joint venture contractors related challenges includes loss of trust among partners, contractor(s) bankrupt and lack of proper communication between partners. Client-related challenges identified were interruption and termination of work by the client, delays in payment by the client.

Construction related challenges include low experience and capacity of the other partner and shoddy construction work quality by a partner(s). Government policy related includes changes in labor and material costs and Government's tax regimes.

In a nutshell, the most challenges in contractors' contractual relationship in the joint venture in Tanzania are; Poor management of money for the project by partner(s), Interruption and termination of work by client, loss of trust among partners, Low experience and capacity of the other partner and Non-adherence to the conditions of the contract.

5. Conclusions

The study has analysed the nature of contractors' contractual relationship in the joint venture. The findings show that, many joint ventures exist due to bidding requirements; integrated joint venture is mostly adopted by contractors in the joint venture, many contractors in Tanzania apply much formal joint venture agreements only, in regulating the joint venture relationship, contractors mostly use operational documents, the most applied type of contract governing contractors contractual relationship in joint venture is a legal contract, also the agreement is prepared by an Advocate. Complying with the quality of work and conditions of contract by the partner is the most frequently lead to penalty and factor to termination of the agreement between contractors in the joint venture.

On analysing the challenges in the contractors' contractual relationship in the joint venture, it shown that the leading client related challenge is interruption and termination of work by client, poor management of money for the joint venture project is the foremost challenge under management, construction related challenge is low experience and capability of the partner, the most challenge resulted from JV-Contractors is loss of trust among partner, non-adherence to the contract is the leading contractual related challenge and change in labor and materials is the most challenge caused by the government. The opinions by contractors to improve the relationship are Proper financial management, Quality control of work, Time management, Contractors should attend regular seminars and Partners must have preliminary plans on how to undertake the joint venture project.

6. Recommendations

Recommendation towards the improvement of Contractors' Contractual Relationship in the JV includes;-

- i. Proper financial management between partners, first of all, contractors in the joint venture should open joint venture bank account, and then there must be clear agreements on ways of allocating money for the JV project.
- ii. Quality control of work by providing proper technical terms, all partners in the joint venture should employ skilled and experienced personnel to ensure the quality of work that is required by the client.
- iii. Contractors should attend regular seminars on joint venture conducted by CRB and any other regulatory bodies.
- iv. Partners must have preliminary plans on how to undertake the joint venture project, by planning especially at the initial stages, may lead to health contractors' contractual relationship in the joint venture. In Tanzania.

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