



# Key construction contract documents for parties to a construction project

By Geoffrey E. Odongo



A construction contract incorporates a number of documents so as to properly define the nature of the works to be conducted together with the obligations and liabilities of all persons involved in the construction works. Where there have been a number of different versions of a document the final agreed version that is incorporated into the contract should be given an appropriate name and parties should sign their acceptance to each of the documents to be incorporated into the contract (usually just on the front page) so as to limit disputes.

Some of the pertinent documents that are incorporated into the construction contract include the following:

## 1. Conditions of contract

This will frequently incorporate or be based on one of the industry standard forms such as contracts in the JCT, NEC or FIDIC suites. The conditions of contract will set out the parties to the contract, key dates, the intended works, the contract sum together with other agreed terms of the contract.

## 2. Employer's requirements (ERs)

These set out what the employer wants the works to entail and how it wants them to be carried out and will normally include the following:

- a specification setting out the requirements in detail for the materials, products, installation procedures, quality aspects and standard of workmanship.  
Specifications can be prescriptive or performance-based, or a mixture of both. Prescriptive specifications dictate the materials that the contractor must use and the method of installing them. A performance specification provides for what the final installed product must be capable of doing (i.e., the operational requirements of a component or installation) but enables the contractor to decide how to achieve the end result..
- basic or outline design drawings in a design and build contract
- a schedule of rates (for use in valuation of variations)
- Bills of quantities

### 3. Contractor's proposals (CPs)

This set out the contractor's proposals, submitted to the employer as part of its tender, for the delivery of the project set out in the Employers Requirements. CPs will include working drawings and the contractor's proposed programme.

### 4. Contract sum analysis

This is produced by the Contractor and sets out a detailed breakdown of the contract sum agreed with the employer.

### 5. Bill of quantities (BoQ)

This is a list of items, or units of work, together with estimates of the quantities of each that will be required for completion of the works. It is used where contracts are not fixed price or lump sum and

is prepared by the employer's quantity surveyor. It initially form part of the invitation to tender package issued to contractors and enables the contractor to estimate its total price for the project for the purposes of its tender. The final contract price will then be calculated based on as-built quantities and will take into account any adjustments (up or down), between the estimated quantities set out in the BoQ in the contract and the final as built quantities used in the completed works. The rates in the BoQ can also be used as a basis for the valuation of variations, where the work is the same or substantially similar.

### 6. Programme

This is prepared by the contractor and is updated regularly in the event of variations or extensions of time. Where the programme becomes a contract document, the contractor's compliance with it will become an obligation under the contract and any deviation from it will be a breach of contract.

### 7. Pre-contractual/tender documentation

he above list may be supplemented by the inclusion of documents such as the contractor's original tender, revised tender, requests for clarifications, responses to such requests and post-tender minutes.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from construction contracts while ensuring your interests are protected.

Do reach out to us on the contacts below for assistance:

Nairobi Office: +254 722 367 647

Mombasa Office: +254 708 158 832

Kisumu Office: +254 776 401 133