



UNIVERSITY OF NAIROBI.

THE CONTRIBUTION OF CONTRACT ADMINISTRATORS TOWARDS PREVENTION
OF ESCALATION OF CONTRACTORS' CLAIMS INTO DISPUTES.

BY

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DECLARATION

I, **Kausi Obutu Ronald** registration number (B53/8628/2017), declare that this research project is entirely my original work that I have done with the guidance of my supervisor and that it has never been presented for award of a degree elsewhere in any other college or university.

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DECLARATION OF THE SUPERVISOR

I declare that this research project has been submitted for examination with my approval as a supervisor in the Department of Real Estate and Construction Management, College of Architecture and Engineering, University of Nairobi.

Signature: Date:

NYAGAH B. KITHINJI

ACKNOWLEDGEMENT

I thank the Almighty God for sustaining me to reach this milestone in my academic endeavors.

Secondly, I sincerely acknowledge the support from my supervisor Nyagah B. Kithinji who guided me through to completion of this study.

DEDICATION

I dedicate this research project to Qs. Robinson Kariguh who believed in me and allowed me to practice at his firm while studying this program. Through his nobility and benevolence, I managed to raise necessary resources that catered for my studies. Besides, the exposure I got while practicing as an assistant Quantity Surveyor under his supervision inspired me to pursue this research topic.

ABSTRACT

Standard forms of contracts provide mechanisms of resolving claims through determination by Contract Administrators. Failure to resolve claims at the Contract Administration level leads to a declaration of disputes. Despite the existence of such contractual provisions, there has been a sustained increase of disputes arising from unresolved contractor's claims which are subsequently escalated to adjudication, arbitration or even litigation. After a review of literature, the research identified impartiality, procedural fairness, trustworthiness and accuracy of determination as the main factors that influence satisfaction with Contract Administrators' determinations on contractor's claims.

The aim of this research study was to evaluate the performance of Contract Administrators towards prevention of escalation of contractors' claims into disputes in terms of whether they maintain impartiality, procedural fairness, trustworthiness and accuracy during the evaluation of claims. Impartiality, procedural fairness, trustworthiness was rated by 5-Pont Likert Scale whereas accuracy was measured by comparing Contract Administrators' determination with arbitration or adjudication awards on the same claims. The target population was contractors. Purposeful sampling was done on a sample size of 51 contractors and responses were collected through questionnaires. 38(75%) contractors returned their filled questionnaires. The data was analyzed through Microsoft Excel and SPSS to give out descriptive statistics in terms of means and standard deviation.

The results showed that contractors were overly neutral with an average mean of 3.13 and 3.01 on their assessment of Contract Administrators' manifestation of impartiality and observance of procedural fairness respectively when evaluating contractors' claims. However, on the question of whether Contract Administrators demonstrate trustworthiness, the results posted a mean score of 2.9 indicating disagreement with the statement. On Contract Administrators' determination of contractors' claims in comparison with adjudication decisions or arbitration awards, in 52 (73%) of the claims, the findings in adjudication or arbitration were different and favorable to the contractors compared to the findings made by the Contract Administrators. In 57(77%) claims, the amount awarded by arbitration was significantly higher than the amount determined by the Contract Administrators whereas, in

26(37%) of claims, the findings in arbitration were the same but the amount awarded were significantly higher than what was initially recommended by the Contract Administrators.

The study concluded that the performance of Contract Administrators in the prevention of declaration and escalation of disputes arising from disputed contractors' claim is not satisfactory. The rate at which contractors win arbitration cases is a sign that Contract Administrators do not give fair determination during the evaluation of contractors' claims and is serving as the reason for contractors to escalate more claims into disputes and arbitration. The study recommends training of Contract administrators on how to practice impartiality, procedural fairness, trustworthiness, and accuracy during the evaluation of contractors' claims. Finally, the research recommends further study on what could be the possible reasons for the differences in findings and determinations made by Contract Administrators when compared to adjudication or arbitration awards.

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LIST OF ACRONYMS AND ABBREVIATIONS

ADR – Alternative Dispute Resolution.

CPM- Construction Project Manager

DAB-Dispute Adjudication Board

DRE – Dispute Review Expert

FIDIC- Federation of International Consulting Engineers.

JBC – Joint Building Council

PPRA- Public Procurement Regulatory Authority

SD – Standard Deviations.

SPSS- Statistical Packages for Social Sciences

CHAPTER ONE: INTRODUCTION.

1.1 Background to the Study.

1.1.2 Contract Administration

In Construction, contract administration is the undertaking of all functions to manage the preparation of contract documents, supervision of the execution of the contract, closure of contracts and discharge of parties (Kwakye, 2014). The functions of Contract Administrators during the construction stage includes certifying payments, administration of variation control processes, evaluation of claims, attending meetings and keeping records of site meetings and correspondences. They are also responsible for monitoring performance, preparation of performance progress reports and distribution of such reports and other information to relevant parties (Kwakye, 2014).

The roles of contract administration can be undertaken by the Lead Consultant of a consortium of consultants which includes the Architect, Quantity Surveyors, Services Engineers, and Structural Engineers. The Lead Consultant could be the project Architect in building projects or a Civil and Structural Engineer in civil construction projects. In other circumstances, a Contract Administrator could be Construction Project Manager (CPM) who is relieved with direct design responsibilities. The CPM is appointed to manage both the performance of the contract and the delivery of inputs of the project design team.

The cardinal objective of contract administration is to perform all activities that will lead to completion of a construction project within the contract period, approved budget and quality all as per the specifications provided for in the contract (Gilbreath, 1992). One of the factors that directly impact on both the time and cost of a construction project is disputes. Unfortunately, Steen (2002) described the construction industry as an adversarial industry where disputes on construction projects are frequently experienced. Further, Harmon (2003) observed that, in a project environment, disputes are byproducts of the challenges of managing the complexities of organizational activities. Harmon's (2003) observations were confirmed by Yates and Hardcastle's (2003) study which revealed that there is a steady rise in disputes in the construction industry.

Disputes directly affect the success of a project in various ways. According to Yates and Hardcastle's (2003) study, it was found that disputes have been contributing to high consequential costs incurred as expenses used in resolving them. These costs were categorized as direct cost which included the costs of hiring legal and other professional experts to support or defend disputed claims, loss in time spent in solving disputed claims which eventually leads to delay of completion of a project. The other category was indirect costs which included deterioration of working relationships, mistrust between participants and loss of synergy all of which ultimately undermine the success of a project. (Diekman, et al, 1994).

1.1.2 Claims

Implementation of construction projects usually involves many players who have different competing objectives and interests. This environment creates a breeding ground for the emergence of conflicts. Kumaraswamy (1997) defines conflict as the existence of incompatibility of objectives which manifests itself when on one hand, a party's mind forms an opinion that the other party has prevented the attainment of his or her objectives.

For example, a conflict can be said to exist when a contractor's progress of work has been slowed down because the employer has not given the contractor full access to the site. Using this illustration, if the contractor will not have achieved practical completion of the project within the contract duration, he will make an application for extension of time and cost of extended preliminaries. Besides, the contractor may make an application for compensation for expense and loss of profit for the labor and equipment which were underutilized during the period of partial access to the site.

The request for extension of time, compensation for damages, expenses or loss incurred by a party to a contract is referred to as claim (Fenn & et al, 1997). The submission of a claim is an assertion of right for compensation for failure to achieve certain objectives where the specific failure is attributed to frustration caused by acts of omission or commission of the employer (Fenn & et al, 1997).

The purpose of a contractor's claim is to reinstate him to his original financial position before the occurrence of an event that made him incur additional cost and loss of profit. Without provision for making claim and subsequent fair compensations, contractors could suffer serious losses may be incapacitated to the extent that they cannot execute their obligations under the contract.

Khekale and Futane (2015) classify claims into contractual, common law, and ex-gratia. Contractual claims are submitted on the basis of a specific clause of the contract. In the standard forms of contracts, there are provisions which entitle contractors to claim for appropriate compensation. Common law claims have no specific provision within the contract but are anchored on the basis of the other party's breach of contract under common law. Ex-gratia claims are made without any basis in contract or common law. However, the claimant relies on the assumption that he has a right for compensation based purely on moral grounds.

1.1.3 How Contractor's Claims Escalate into Disputes.

Verster and other (2010) observed that the submission of a claim is not an indication that a dispute exists. A dispute will be declared only after the claim has been rejected, or a contrary opinion annulling the claim has been issued by the defendant thereby triggering a disagreement on the claim. More precisely and definitively, Hawker and Timms (1986) stated that a dispute exists when a claim by the claimant is disallowed by the defendant and that dismissal is not acceptable to the claimant.

A dispute, therefore, is a divergence of opinion over whether a there is right for payment or the amount of payment a party has claimed. In the matter of **Fastrack Contractors Ltd v Morrison Construction Ltd (2000)** and **Edmund Nuttal Ltd v RG Carter Ltd (2002)**, it was held that a dispute could only have arisen out of a claim if the responding party had rejected the claim submitted by the claimant. The same observation was made in the matter of **Cowlin Construction Ltd v CFW Architects (2003)**, where the court stated that a dispute will automatically exist once the money is claimed and the defendant has objected that the amount claimed is not due and therefore not payable.

In light of the above definition of conflicts, claims, and disputes, this research adopts a view that disputes out of contractor's claims arise when a claim made by a contractor has been

disallowed by the employer or his agents and the contractor has registered a notice of dissatisfaction with the rejection.

1.1.4 Application and Evaluation of Contractors' Claims

This study review three most commonly used standard forms of contracts on Kenya. One of them is the Agreement and Conditions of Contract for Building Works by the Joint Building Council (JBC), 1999 edition (Green Book). This is arguably one of the most commonly used standard form of contract for private sector projects in Kenya.

Secondly, there is the International Federation of Consulting Engineers (FIDIC, 1999) contract for civil engineering works is administered by the Engineer (Red Book). This contract is mostly used in large civil engineering projects especially those funded by foreign and multinational companies such as World Bank and Africa development bank due to its extensive use and familiarity in other countries.

Thirdly is the Standard Conditions of Contract Document for Procurement of works - building and associated civil engineering works (PPRA, 2007). This is a standard for of contract published in line with Government of Kenya's Public Procurement and Assets Disposal Act. It is used in the administration of all public projects in Kenya.

The JBC 1990 contract is administered by the Architect who also communicates decisions made regarding the administration of the contract. However, key Contract Administration decisions are made in consultation with the other consultants especially the Quantity Surveyor. In case a contractor intends to make a monetary claim, clause 37.4 of JBC 1999 contract requires the contractor to write a notice to the Architect communicating his intention to submit a claim. Thereafter and in not more than 30 days, the contractor is required to submit the full claim with grounds and sufficient details. The burden of supporting the claim shall remain the responsibility of the contractor.

The Quantity Surveyor is responsible for evaluating monetary claims after which he makes a fair determination on the amount due for compensation. Though the contract provides that the contractor should submit his claim with sufficient details, the Quantity Surveyor may request additional records required to enable him make a fair determination. In claims for extension of

time, the Architect is the one makes a determination since there is no express provision that requires him to consult another consultant. According to Clause 5.4 and 6.1 of JBC 1999 contract, both the Architect and Quantity Surveyor are expected to act impartially when making any determination, decision, valuations, consent or approval on any matter irrespective of whether or not it affects the rights of the employer.

In the event the contractor is dissatisfied with the determination made, he is allowed to proceed to arbitration. The resolution of the claim shall have left the jurisdiction of the Contract Administration level. Thereafter, under clause 45.1 of JBC, 1999 contract, the contractor will proceed to issue a notification to the Employer to submit the dispute to arbitration for determination and to seek concurrence as to the appointment of an arbitrator in not more than 30 days.

The International Federation of Consulting Engineers (FIDIC, 1999) contract for civil engineering works is administered by the Engineer. Clause 20.1 of FIDIC 1999 contract provides that where the contractor intent to submit a claim, he shall submit his claim accompanied with sufficient supporting details to the Engineer. The Engineer calculate and give a fair determination of the amount for compensation to be due to the contractor under clause 3.5 of FIDIC, 1999 contract. If the contractor is dissatisfied with the Engineer's determination, he shall escalate the resolution of the disputed claim to the Dispute Adjudication Board (DAB). If DAB will fail to resolve the claim, the contractor can attempt resolution through amicable settlement after which he is allowed to escalate the dispute to Arbitration.

The Standard Conditions of Contract Document for Procurement of works - building and associated civil engineering works (PPRA, 2007) form of contract is administered by the Project Manager. The supporting roles of consultants (Architect, Quantity Surveyors, and Engineers) are not expressly mentioned in this contract. However, in practice, the Project Manager carries out his contract administrative functions by making decisions after considering the advice and opinion of the consultants. At the consultancy level, the Architect is normally the Team Leader (Lead Consultant) who communicates the opinion or advice of the consultants regarding any matter including assessment made by consultants on a contractor's claim to the Project Manager.

The Project Manager communicates the determination to the contractor. If the contractor is not satisfied with the decision of the Project Manager, he will dispute the decision. To settle the dispute, the contractor will issue a notification to the other party (Employer) to submit the dispute to arbitration and to seek concurrence in the appointment of an arbitrator within 30 days.

From the above analysis of the three standard forms of contract, it is evident that failure to resolve claims at the Contract Administration level leads to the declaration and subsequent escalation of contractors' claims into disputes. Evaluation and resolution of claims at the Contract Administration level should assist the parties in resolving potential disputes and consequently averting escalations of disputes. The goal of early evaluation and settlement of claims is, therefore, to prevent declarations of disputes thus averting of scenarios where aggrieved parties resort to arbitration for settlement. (Verster, 2006).

Sound strategies in the management of claims should be at the heart of contract administration if prevention and control of disputes are to be realized (Fenn, 2008). Contract Administrators should actively focus on ways of expeditiously and amicably resolving claims to prevent declaration and escalating of disputes to arbitration or litigation. In any case, one of the obligations of any construction project consultant is to prevent disputes from arising in the first place (Spiess and Felding, 2008) Therefore a mechanism of early resolution of claims is considered as the most important intervention of curbing the escalation of claims into arbitration for settlement.

1.1.5 Significance of Resolving Contractors' Claims at Contract Administration Level.

Resolution of claims at the Contract Administration level has many advantages. First, it is time-saving and less costly. There is no cost incurred since parties do not separately pay Contract Administrators to assess and determine claims since claim assessment and evaluation is normally part of their job description. Unlike FIDIC 1999 contract which has a clear provision for (DAB) resolution mechanism before escalation to arbitration, JBC 1999 and PPRA 2007 contracts provide for arbitration as the ultimate and binding mechanism of settling disputes. Though these three standard forms of contracts provide for amicable settlement of disputes, there are no clear and strict procedures that regulate amicable settlement as enshrined in these contracts. This creates a lacuna that makes arbitration an inevitable choice by default in an event a claim has not been resolved at the Contract Administration level.

Arbitration started with positivity as being a quick way of resolving disputes which could take between 6 to 12 weeks under normal circumstances. However, recent trends show that arbitration proceedings can be ballooned into as much as five years of 6 hours of 4 or 5 days per week. (Cheung & et al, 2003). In theory, arbitration proceedings appear to follow customary rules of arbitration but in reality, the arbitrators have been observed to entertain a scenario where so much of the time is spent in discovery (Stipanowich, 2014).

Furthermore, arbitration is becoming imponderably expensive. The visible expenses include cost paid to lawyers and other professional expert witnesses. There are also less visible costs which range from allocation of firms' funds to the dispute resolution processes and lost profitable prospects. Other costs are damage to commercial relations (Stipanowich and Lamare, 2014). Increase in time and cost of arbitration has been partly driven by the inclusion of lawyers. The inclusion of lawyers has further characterized arbitration proceedings as being driven by litigious mentality thus losing the underlying objective of arbitration altogether (Stipanowich, 2014).

1.1.6 Sources of Dissatisfaction with Contract Administrators' Determinations on Contractors' Claims.

The evaluation and issuance of settlement proposal of a contractor's claim by the Contract Administrator can be rejected and disputed in two ways. The first is where the contractor feels satisfied with the determination but the employer raises dissatisfaction and objections that the claim amount has been overvalued or the extension of time granted is too much. If the employer raises such dissatisfaction, either the contractor or the employer may declare a dispute and escalate into arbitration or adjudication depending on the contract. Secondly, the employer may be satisfied but the contractor raises dissatisfaction with the determination. Even in this scenario, either the contractor or the employer may apply for arbitration or adjudication.

For a party to have been satisfied with a determination, such a party has to perceive that the determination was fair. A fair determination arrived at through a process that is conducted fairly, justly, and with procedural regularity by an impartial third party (Rawls, 2009; Kasper, 2013). The term 'just' refers to being impartial, even-handed, candid, or reasonable. It can also mean ethically and legally right and correct. A correct determination is one which is accurate, factual and faultless.

While holding other factors constant and remaining within the confines of the definition of ‘a fair determination’, this research narrows down to three causes of dissatisfaction with the Contract Administrator’s determination on claims. These are procedural unfairness, open partiality, and incorrect determination. The additional fourth factor is the lack of trust (distrust). Procedural fairness is an assessment by individuals on the fairness of the process out of which a determination has been borne (Tyler, 2000). Perception on the fairness of the process drives peoples’ satisfaction with a determination and also influence their adherence to the implementation of the determination (Thibaut & Walker, 1975; Jennic, 2003; Pruitt & et al, 1993; Lind & Bladder, 1993).

Impartiality refers to the act of treating all parties to a dispute fairly by making determinations based on objective criteria devoid of prejudice. According to Tyler (1984), the perception of partiality is a major cause of dissatisfaction with the determination made on a dispute (Tyler, 1984)

On the other hand, a correct determination is one that is established on verifiable facts. It is a decision that is accurate and faultless. A correct determination on a claim is one which is rightly anchored on the provisions of the law (be it contract or common law). It should be free from calculation errors. Such decisions discourage parties from challenging them at arbitration due to an understanding that they will be found to be just right, meticulous and faultless.

Distrust is a situation where a person loses trust as a result of previous experience and emerging knowledge and information about someone or something. According to Lewick and Tomlinson (2003), trust is the willingness of a person to be susceptible to the decision of another person based on a legitimate expectation the trusted person will decide and competently, benevolently and with high integrity. Trust has been acknowledged as a key element in the resolution of potential disputes.

In a nutshell, Contract Administrators have a role to assess and attempt to resolve claims at the contract administrative level. This helps in preventing such claims from turning into dispute and subsequently escalating into adjudication, arbitration, and even litigation. How Contract Administrators handle claims influence perception on the fairness of the process, impartiality, trust on their competences and whether if their determination can be overturned if challenged

through in arbitration. These four parameters affect satisfaction with Contract Administrators' determination on claims and ultimately influence whether or not parties opt to declare disputes and subsequently escalating the matter to arbitration.

1.2 Problem Statement.

The JBC 1999, FIDIC 1999 and PPRA 2007 contracts provide for arbitration as the final alternative method of settling disputes. However, the process of settling construction-related disputes through arbitration has proved to be time-consuming, costly and very detrimental to a business relationship just as much as what ordinary litigation can do (Stanford, 2017). The inclusion of lawyers in arbitration has further brought fierce litigious, arrogant and greed thus losing the underlying objective of arbitration altogether (Stipanowich, 2014).

The available literature points out that unresolved claims are the main precursor of disputes which if not resolved end up in arbitration or litigation (Verster & et al, 2010; Fenn, 2008; Hawker and Timms, 1986). JBC 1999, FIDIC 1999 and PPRA 2007 contracts provide for mechanisms of resolving claims before the aggrieved party seeks to register disputes for arbitration. In the spirit of preventing escalation of disputes into arbitration or litigation, it is expected that claims should be settled by Contract Administrators.

A survey by Stipanowich and Lamare (2014), shows that there is a continued registration of disputes in arbitration. One could be forgiven to think that aggrieved parties do not know that that Contract Administrators have a role of being the first one to evaluate claims. On the contrary, parties apply for arbitration after giving Contract Administrators a chance to make their determination. This conforms with the JBC 1999, FIDIC 1999 and PPRA 2007 standard forms of contract, application for arbitration is done in the full knowledge of the Contract Administrator.

Therefore, the reality is that parties apply claims to the consultants seeking their evaluation and determination hoping that a just determination will be made. When Contract Administrators make their determination on a certain claim, the determination is either rejected by either contractor or the employer. The contractor often cites that their claim has been undervalued. On the other hand, employers often reject the Contract Administrators' determination on a claim

on the basis that the Contractor's claim has been overvalued or did not deserve any consideration at all. The contractor's claim is consequently rejected. It is at this point that claimants declare disputes and opt to proceed to arbitration (Hawker and Timms, 1986).

This study focuses on four underlying factors that contribute to dissatisfaction with Contract Administrators' determinations. The first one is procedural fairness. Perception on the fairness of the process drives peoples' satisfaction with a determination and also influence their adherence to the implementation of the determination (Thibaut & Walker, 1975; Jennic, 2003; Pruitt & et al, 1993; Lind & Bladder, 1993). This confirms with an old general principle of administering justice which states that claimants recognize that justice has been done only and until they are not only been served with justice but also after they have seen justice being served.

The second factor that influence dissatisfaction is the perceived impartiality of Contract Administrators during evaluation. Impartiality refers to the act of treating all parties to a dispute fairly by making determinations based on objective criteria devoid of prejudice. According to Tyler (1984), the perception of partiality is a major cause of dissatisfaction with the determination made on a dispute (Tyler, 1984)

Thirdly, the motivation to escalate a claim to arbitration is attributed to the realization that Contract Administrators determination can be overturned in arbitration. This realization happens when the Contract Administrators' determination is incorrect and inaccurate. Such incorrect determination emboldens parties whose claims have been rejected to proceed to arbitration since they see a huge chance of winning.

The fourth source of dissatisfaction is loss of trust on the Contract Administrators' ability to evaluate a claim competently, with integrity and benevolence. Lewick and Tomlinson (2003) identify trust as a key element of successful resolution of potential disputes.

The main purpose of this study, therefore, was to investigate Contract Administrators' contribution towards enhancing procedural fairness, impartiality, trust and accuracy with their evaluation and determination on contractors' claims which ultimately lead to prevention of declaration and escalation of contractor's claims into disputes.

1.3 Research Questions

- i. Do Contract Administrators evaluate contractors' claims in a procedurally fair process?
- ii. Do Contract Administrators evaluate contractors' claims in an impartial manner?
- iii. Do Contract Administrators evaluate contractors' claims in manner that inspires trust in their (Contract Administrators') ability/competence, integrity, and benevolence?
- iv. Do Contract Administrators make findings and determinations that are similar to the determinations made by arbitration or adjudication?

1.4 Objectives of the Research.

- i. To establish whether Contract Administrators evaluate contractors' claims in a procedurally fair process
- ii. To establish whether Contract Administrators evaluate contractors' claims in an impartial manner
- iii. To establish whether Contract Administrators evaluate contractors' claims in a manner that inspires trust in the process.
- iv. To establish whether Contract Administrators' findings and determinations are similar to the determinations made in arbitration or adjudication.
- v. To identify solutions to improve Contract Administrators' demonstration of procedural fairness, impartiality and trust during evaluation of contractors' claims.

1.5 Significance of this Research.

The research contributes to the body of knowledge on specific factors that promote declaration and escalation of contractors' claim into disputes. This has been achieved by identifying Contract Administrators' actions of omissions and commissions that contribute to escalations of contractor's claims into disputes.

This research could help stakeholders to pinpoint areas of weaknesses in the administration of claims that should be improved so as to increase the level of contractor's satisfaction with Contract Administrators determination of contractors' claims. If these areas are improved, it will ultimately help to prevent declaration and escalation of contractors' claims into disputes.

From the findings, majority of Contract Administrators' initial determination on contractors' claims were found significantly different, low and therefore unfair to contractors, this has provided areas of further academic research to determine whether there could be lack or little understanding on settlement of claims or there could be outright impartiality and lack of professionalism on the part of Contract Administrators.

1.6 Scope of the Study

The study was carried out in Nairobi County in Kenya. The target population were contractors. The study undertook an overview of the concept of conflict, claims, and disputes. It has analyzed common contractor's claims and their causes. The study has further attempted to give a detailed step by step process of application, assessment and determination of contractor's claims, claims-dispute escalation path and the alternative dispute resolution mechanisms all as provided for in JBC 1999, FIDIC 1999 and PPRA 2007 standard forms of contract.

To develop the conceptual framework, the study reviewed the theory of impartiality, procedural fairness, the concept of trust and the opposing motivation and beliefs of parties during the evaluation of contractors' claims.

1.7 Limitations of the Study.

The study was limited to contractors' perspective.

1.8 Assumptions of the study.

Employers and contractors fully cooperate with the consultants when the consultant is undertaking evaluation of a claim.

1.9 Operational Definitions of Terms

Employer – means the legal person for whom a structure is constructed.

Contractor - means a firm that contracts with the employer for the construction of a structure.

Contract Administrator - This refers the Lead Consultant in charge/responsible of supervising and managing a construction contract (with the help of members of a consortium consisting of various specialized consultants) who have been outsourced to work for the Employer.

Parties – Refer to the contractor and the employer.

Contractor's claim – An application by a contractor for extension of time and additional payment which was not anticipated in the contract.

Evaluation of a contractor's claim – Analyzing and making determination on a contractor's claim.

Standard forms of contract – Refers to JBC 1999, FIDIC 1999 and PPRA 2007 standard conditions of contract.

1.10 Organization and Outline of the Study.

The study has six chapters.

Chapter 1- Covers the introduction which covers the background information, statement of the problem, questions, objectives, significance, limitations, and assumptions of the research.

Chapter 2- Covers literature review. This includes the concept of conflict, claims, and disputes. A highlight of common contractor's claims and their causes, detailed step by step process involved in the administration of contractor's claims. Claims-dispute escalation path and the alternative dispute resolution mechanisms all as provided for in JBC 1999, FIDIC 1999 and PPRA 2007 standard forms of contract. The opposing motivation and beliefs of parties during the evaluation of contractors' claims. To derive a theoretical understanding of the drivers of dissatisfaction with Contract Administrators' determination on claims, the chapter covers the opposing motivation of parties during evaluation of contractors' claims, the theory of impartiality, independence of appearance, causes of biased/irrational judgments, theory of procedural justice/fairness and the concept of trust.

Chapter 3- Covers the research methodology by focusing on the research design, research methods, and data collection instruments, gathering, analysis tools, limitations, and ethical considerations.

Chapter 4- To cover the data analysis and discussion of findings.

Chapter 5- To cover the conclusions and recommendation

CHAPTER TWO: LITERATURE REVIEW

2.1 Generally

The literature review is a process of selecting and analyzing past literature which contains information, ideas, conclusions and recommendations that express certain viewpoints regarding a current research topic (Hart, 2018). Literature was reviewed to enhance the researcher's knowledge of proposed study area and to help by demonstration of the relevance of prior research in respect to the current research.

2.2 Claims, Conflicts and Disputes.

According to Ntiyakunze (2011), a conflict is defined as a state where two parties have incompatible interests. It exists in the mind of an individual when he recognizes a situation of divergence of goals (Brown and Marriot, 1993). Handy (1983) and Kumaraswamy (1997) argues that conflict begins when one party perceives that the other party is or is about to be a hindrance to the attainment of his or her goals.

A contractor's claim is defined as an application for additional time, compensation for damages suffered, expenses or loss incurred as a result of occurrence of events which cannot be attributed to his default (Fenn & et al, 1997). If the claim is acceded to and the contractor is given his demands, then the matter ends. However, if the contractor's claim is disallowed, the claim takes the form of a dispute (Verster & et al, 2010; Hawker and Timms 1986). Therefore, a disputes is a severe disagreements concerning an existing legal right or concerning the extent over which a claim can be compensated by a party for a violation of right. Such a dispute must be so serious that it can only be settled with the intervention of a third party beyond the contract administration level.

To give an illustration within the context of a construction project, a conflict can be said to exist when the employer has delayed giving access to part of the site thereby preventing the contractor from fully utilizing his or her plants and equipment. In this case, the contractor's intention to make optimum profits are frustrated by the employer's default or failure to give full access to the construction site. The employer's objectives are therefore seen to be incompatible with those of the contractor especially where the employer is not demonstrating that he is putting forth every effort to give the contractor full access to the site. The contractor requests

compensation of loss and expense for underutilized plant and equipment. This request is a claim. If the claim is accepted, the matter ends. However, if it is rejected, the matter becomes a dispute.

2.2.1 Common Contractor’s Claims and their Particular Causes.

Common Contractor’s claims and their claim heads are as follows: -

a. *Claim for extension of construction time/period.*

Claims for extension of time claims are submitted when unforeseen events interrupt the progress of work thereby preventing it from being completed within the planned contract period.

The permissible causes of delay that warrant extension of time are as follows: -

Table 2.1: Permissible causes of delays for extension of time.

Cause of Delay	Relevant Clause		
	FIDIC	JBC	PPRA
Delay in receiving instructions, drawings, details or levels.	1.9, 4.7	36.1.1	24.1(c)
Lockouts, strikes, civil commotion having effects on employed trades upon the works, transporting or manufacturing of materials or goods necessary for works.	17.4	36.1.4	
Force majeure	19.4	36.1.1	
Exceptionally adverse weather conditions	8.4(c)	36.1.2	
Suspension of work by a contract administrator's issued instructions (Engineer, Architect, project manager).	8.9	36.1.5	24.1(e)
Delay attributed to tradesmen engaged by the Employer to perform part of the work.	8.4(e)	36.1.7	24.1(h)
Statutory delays/ delays from the service providing agencies directly engaged by Employer.	8.4(e)	36.1.8	24.1(h)

Delay caused by opening up for work covered up, unless the inspection confirms that the works does not conforms to the contract.	10.3	36.1.9	24.1(d)
Substantial increment in the scope of work	8.4(a)		
Reasonable occurrences beyond contractor's control that prevents the contractor from obtaining materials for works	8.4(d)	36.1.10	
Delays due to late replacement of Engineer, Quantity Surveyor and Architect.		36.1.11	
Late material and good supply of the mandatory items to be supplied by the employers' agents	8.4(e)	36.1.13	24.1(h)
Delay caused by authorities	8.5		
Delays attributed to nominated suppliers or subcontractors.	8.4(e)	36.1.14	24.1(h)
Failed attempts by the contractor to get skilled labor for the works	8.4(d)	36.1.15	
Late possession of site		36.1.17	24.1(a)
The Project Manager's unreasonable delays to approve or failure to approve a subcontractor			24.1(d)
Adverse unanticipated ground condition	4.12		24.1(f)
Delay caused by a change in Law/Legislation	13.7		
Other events described in the Contract or as would be determined by the Project Manager			24.1(k)

Source: Research Data, 2019.

b. Claim for Loss and Expense as result of disruption of progress of works.

This is caused by unanticipated project events and/or circumstances which leads to idles or reduced productivity of a contractor's plants, equipment, and personnel. Common causes of such disruptions are similar to those justify extension contract period. The amount allowable as compensation for under this claim is determined by the Contract Administrator.

- c. *Claim for adjustment of contract price due to fluctuation of duties (V.A.T, tariffs, excise duty, customs and other levies) paid by the contractor.*

This claim is caused by change in tariffs, excise and customs duties, value-added tax, and levies and duties chargeable by statutory institutions of a country where construction works are undertaken. The change must happen within the construction contract period. This claim is provided for in clause 35, 13.8 and 25 of JBC 1999, FIDIC 1999, and PPRA 2007 standard forms of contract respectively.

- d. *Claim for loss of profit after employer has vacated or sublet of part of the contract works which was under the main contractor.*

This claim is largely an extra-contractual claim/common law claim since standard forms of contract do not have specific provision for this compensation. In most cases, Contract Administrators introduce a condition that the employer can at his convenience omit or sublet any part of the works to another subcontractor.

2.2.3 Alternative Methods for Resolution of Claims and Disputes.

2.2.3.1 Fair Determination by Contract Administrators.

FIDIC 1999, JBC 1999 and PPRA 2007 provide for resolution of claims through fair determination by Contract Administrators. The advantage of this method is that it is the least costly method and may save a considerable amount of time. The main challenges to this method are that the determination made by Contract Administrators are not final nor binding to the parties.

2.2.3.2 Amicable Settlement with or without Assistance from Third Parties.

The amicable settlement relates to a method which is characterized by a friendly approach without unpleasant argument even in very difficult and a very conflicting dispute with a high stake of interest. The methods that can be categorized under an amicable settlement with or without the assistance of parties include negotiation, conciliation, and mediation.

2.2.3.2.1 Negotiation

The parties seek to settle a dispute through direct deliberation with each other. If necessary, the parties can agree to attend negotiation meetings with their counsels. Negotiations thrive where there is some level of trust and understanding between parties that the disputed matters

can be solved better by the parties themselves. Settlement of disputes through negotiations is relatively faster and economical (Folberg & et al. 2016).

2.2.3.2 Conciliation:

This is a form of ADR where parties resolve a dispute with the help of a third party who acts as the conciliator. The conciliator is usually perceived by parties as an expert who is capable of figuring out the best solution for the parties. Therefore, the conciliator performs a direct role which includes development possible settlement alternatives. The parties make a decision based on the guidance and the settlement alternatives given by the conciliator (Wenying, W., 2005).

2.2.3.2.3 Mediation:

In this method, parties use a mediator whose main role is to facilitate by providing a conducive environment for communication and discussion between the parties in a dispute. Unlike a conciliator, the mediator does not propose the parties any alternative proposals for adoption. The shortcoming of mediation is that any party can decide to stop the mediation if they believe the process is not likely to be productive (Sgubini & et al. 2004).

2.2.3.3 Dispute Adjudication Board/Dispute Review Expert

FIDIC 1999 contract provides for DAB. Through a mutual agreement, parties appoint Dispute Review Expert (DRE), or 3 persons to form Disputes Adjudication Board (DAB). The member of DAB is mutually agreed by the parties soon after the start of the works. The duties of the DRE or DAB include periodical site inspections, convening and attending review meetings to identify any potential problems. In case of existence of potential sources of disputes, the DRE and DAB will suggest measures to mitigate against such the would-be sources of disputes.

Any party who will not be satisfied with determination made by the Engineer on a claim, will refer the dispute to DRE or DAB. The DRE or DAB will hear the dispute and issue its determination to the parties within 84 days. Even if there is dissatisfaction with the DRE or DAB's decision, their decision shall be bound to be implemented unless and until it has been revised through amicable settlement or arbitration. Upon issuance of DRE or DAB's decision, a dissatisfied party will have to serve a notification to the other party of its intention to refer the dispute to arbitration. The notice must be issued within 28 days after receiving the decision DRE or DAB. If no such notice is given the decision of DRE or DAB shall be final and binding.

2.2.3.4 Arbitration

According to Harmon (2003) and Stipanowich (2014), arbitration is the most frequently used alternative for method of settlement of technical construction related disputes. It is a judicial-like process which incorporates some legal protocol during its proceedings such as gathering and elucidation of evidence and interrogation of witnesses (Stipanowich, 2014). The number of arbitrators is influenced by the nature of the case. The parties have a say in deciding on how many arbitrators will preside over their dispute. However, where more than one arbitrators are needed, the number of arbitrators should be an odd number.

Though it was billed as the best alternative to court litigation, arbitration has arguably failed to live to its billing due to its disadvantages. For example, there is no provision of right of appeal within the process itself even if the arbitrator makes an error of fact or law. There is limited right of discovery unless the arbitration agreement provides for it. Equally, the right of discovery can only be there if the parties or the arbitrator allows it. The arbitration process can be time consuming and costly, especially where there is more than one arbitrator (Stipanowich, 2014; Mazirow, 2008).

Further, studies have revealed that there is possibility of unknown bias or predisposition of an arbitrator towards the appointing party, incompetency of arbitrators in matters technical beyond their knowledge base, tendency to make decision that are generally based on the broad principles of equity without reference to the rule of law and incidences of open compromise or ‘splitting of baby’ awards (Stipanowich, 2014).

2.3 Theoretical Framework.

2.3.1 Opposing Motivations during Evaluation of Contractors’ Claims.

The motivation of a Contractor is to seek compensation for loss, expenses, and damages incurred which are attributable to breach of contract by the Employer or as a result of an event that the Contractor could not have reasonably controlled. However, in some cases, Kumaraswamy (1997) states that Contractors exaggerate claims so that in the event their claim is assessed downwards by the Contract administrator, some amount of the claim will remain payable. This is fueled by the belief that Contract Administrators always would want to reduce the claim.

Even without exaggerating the claims, Contractors will appear to have conviction and belief that their claim deserves attention, consideration, and award. However, one of the source of unmerited conviction of entitlement is that people believe that the conclusion they prefer is most likely to be true and not the other way round (Gilovich & et al, 2002). This brings about biases due to motivated reasoning. According to Kadefors (1999), a Contractor who has lodged a claim is highly likely to suffer from motivated reasoning due to economic interests being at stake.

Employers have conflicting interest to defend both the Contract Documents and the Contract Administrator. This is because they somehow own both of them. But more fundamentally, economic interest overrides the Employers' reaction to the claim since they are the one to directly lose money to the Contractor should the claim be approved Kadefors (1999). Employer's rejection of Contractor Administrators determination on a claim is greatly influenced by the level of trust they have towards the Contract Administrator. The level of trust therefore becomes paramount since it dispels Employers' fear that the Contract Administrator's decision on a claim could have been compromised due to conflict of interest.

When presented with a claim, Contract Administrators are expected to be impartial certifiers as opposed to being Employer's Agents. While evaluating a claim, their actions are influenced by economic interest, civic duty/contractual obligation and desire to maintain status (Kadefors, 1999). Their decision on a claim will be influenced by economic interest since Kadefors (1999) argues that Contract Administrators normally have fears that in case many of the Contractor's claims are awarded, this may adversely affect their Employer's perception on their competence and reputation and consequently reducing chances of getting future appointments from the same Employer.

2.3.2 The Psychological Theory on Procedural Fairness.

Procedural justice refers to the fairness of a process that has been or to be used to reach a determination. It refers to the perception by persons on the fairness of a decision making process. According to Tyler (2000), the feeling that justice has been served is a satisfaction created based on the perceived fairness of the process that was used to deliver it.

Thibaut and Walker (1975) in their extensive studies observed that perceptions on the fairness of the process that was used in making a decision has a direct relationship on the level of

satisfaction that people will have with the outcome in a dispute. Besides, a fair and just process influences how people will comply with the outcomes and settlement proposal issued by the third party who was presiding over the resolution of the dispute (Tyler, 2000; Jennic, 2003).

In a study by Pruitt and others (1993), it was found out that the major driver of whether the parties would adhere to the determination of a dispute is fundamentally more dependent on the perception of procedural fairness experienced during the dispute administration/resolution process, rather than the favorability of the determination. This demonstrates that the perception of procedural justice in a dispute resolution process is a much stronger predictor of acceptance of the decision than how favorable the decision is (Pruitt & et al, 1993).

According to Tyler (2000), the fact that people mind about the fairness of procedure does not entirely mean that they do not care about the favorability of the outcome. Tyler and Bladder (2013) further argue that what procedural fairness is independent from favorability of outcome and as such it separately and independently influence satisfaction with the outcome of a determination of a dispute. Dispute administrators therefore need to be keen by observing procedural fairness since even when people "lose" their case, they are more likely to accept those outcomes if they believe that the process was procedurally fair (Tyler, 2011).

According to Tyler (2011), there are four critical indicators influence peoples' assessment of procedural fairness. The first is whether one has been allowed to present their own story (voice) (Robert, 1997; Lind & et al 1997). Procedures that does not allow people the opportunity to present their evidence, contribute to the feelings of exclusion which ultimately creates a perceptions that the dispute resolution process was unfair (Tyler, 2011).

Secondly, where the decision maker takes time to gather and evaluate the information needed to make an appropriate decision before making the actual determination creates an impression that the process is fair. Similarly, consistency in the application of rules over people and across time also helps in demonstrating procedural fairness (Leventhal, 1980).

Another indicator of fairness of the process is whether the dispute resolver is genuinely attempting to do what is right and for the good of the parties. Procedural fairness is also

enhanced when people recognize that they have been listened to and that their evidences have been considered and taken into account by the dispute resolver.

Further, procedural fairness is influenced by the party's consideration of whether they have been being treated with courteousness (Tyler & et al, 1990; Bies and Moag, 1986). Being treated with courtesy involves both (i) common respect and courtesy and (ii) respect for someone's rights. In a dispute resolution setting, people's rights are both (i) human rights (treatment with dignity) and (ii) legal rights which means having a right present your case and have your views/presentation treated seriously).

According to Creyke (2019), the most critical part of procedural fairness is 'the hearing rule' which demands that a party in a dispute must and should be told the case to be met (summary of the issues being considered by the decision-maker) and given the chance to reply before a dispute resolution authority makes a decision that negatively affects a right, an existing interest or a legitimate expectation which the part hold.

For a process to be viewed to be fair, parties should not only be given a chance or right of reply but also should see that their reply has been genuinely taken into consideration before a determination is rendered. Further, the dispute resolution authority should give parties the criteria to be used in arriving a determination including particular information on which any such determination will be based (Creyke, 2019). The higher the level of justification the more a decision will be assessed as being fairly arrived at (Bies and Moag, 1986)

The person presiding over a dispute need to demonstrate open mindedness when listening to what presentation made for and against the dispute. This includes ensuring that from a disinterested observer's perspective there is no reasonable discernment of prejudice or favoritism. An indication of a closed mind is a source of reasonable perception of predisposition. The decision-maker should inform parties about the main arguments for and against the disputed matter (Creyke, 2019).

Though in most cases, parties are allowed to make their case in writing, procedural fairness requires that parties should be allowed to make oral representations. The decision-maker should make reasonable inquiries or investigations before making a decision. This will show some

seriousness and commitment to resolving a dispute. The decision-maker should never close out any submission or opinion especially those that appear to cast doubt on the impending determination and should strive to conclude the matter without unnecessary delay (Creyke, 2019).

Leventhal (1980), suggested that justice-seeking process must appear to incorporate unswerving, strict adherence and application of a specific criteria. Further, he adds that the process should have some form of internal appeal mechanisms that can review and revise an erroneous determination. Procedural fairness must be in conformity with professional ethics and moral standard (Lind & Tyler, 1988).

2.3.3 Theory of Impartiality.

The basic definition of impartiality is the act of a dispute or conflict resolver of treating all disputants equally and fairly. It is about treating all rivals or disputants equally. The notion of impartiality refers to the lack of pre-judgment of the decision-maker concerning the case or the parties before her. It encompasses both the actual absence of pre-disposition (Tyler, 1984) and conflicts of interest and the perception thereof. Though the view of the level of impartiality is largely about perception, certain actions of a third party will enforce the disputants' mind towards the perception that the third party is impartial. In a conflict setting, the impartiality of the conflict resolver requires that he or she demonstrate impartiality by making decisions based on objective criteria, devoid of prejudice, or allocation of benefit to one party instead of the other without proper justifiable reasons.

In solving disputes, the perception of impartiality largely contributes to dissatisfaction with the determination made on the dispute (Tyler, 1984). To enhance impartiality, the dispute resolver must appreciate the elements of impartiality which includes accuracy, even-handedness, strictly adherence to acceptable standards, balance, neutrality (Tan, 2016), inclusion of alternative view, range of perspectives, absence of prejudgment, not expressing personal views, not promoting particular views (Gadlin and Pino, 1997) and absence of observable conflict of interest.

Some of the observable biases that Contract Administrators can exhibit when evaluating claims are as follows:-

Bounded cognitive rationality bias – Storms (1973) argued biases are results of human information processing limitations. This means that people makes biased decisions depending on the information they had access to.

Optimistic overconfidence bias - Optimistic overconfidence bias results from a tendency to hold a false and misleading assessment of our skills, intellect, or talent, therefore, leading to making biased judgments (Gilovich & et al, 2002). It could also be due to having an illusion that you have full control of the situation and that nothing will get you by surprise when in fact they have very little control (Adler, 2005).

Desirability effect bias - Krizan and Windschitl (2007) defines desirability effect bias a product of “wishful thinking” which leads to an overestimation of the odds of something happening simply because the outcome is desirable. It is a type of bias where people make the mistake of believing that an outcome is more probably just because that’s the outcome they want (Windschitl and Stuart, 2015).

Reactive devaluation bias -Reactive devaluation theory was proposed by Lee Ross and Constance Stillingner (1988). It states that there is a tendency for individuals to dismiss a claim simply because it originate from a perceived opponent. This bias can affect your fair determination as well as the commitment to resolve a dispute. In administration of claim, this theory may apply in instances where a Contract administrator may perceive the Contractor as an opponent and as such end up dismissing his claim before giving it a serious consideration.

2.3.4 Theory of Trust

Lewick and Tomlinson (2003) define trust as a state of mind that enables its holder (trustor) to be ready to make himself vulnerable to another person (trustee). This definition concurs with Mayer and others (1995) and Six and others (2010) who defines trust as a manifestation of “the willingness of a party to be susceptible to the decisions of another party based on the expectation that the other will perform a particular action important to the party.” Trust has been identified as a key driver towards resolution and settlement of disputes. Besides trust is considered to be an enhancer of collaboration and problem-solving.

Lewick and Tomlinson (2003) contents that the tractor's trust on the trustee is dependent on an evaluation that gives confidence that the trustee has three qualities which are ability/competence, integrity and is concerns for the welfare of the trustor.

According to Lewick and Tomlinson (2003), ability refers to knowledge, skill, or competency exhibited by the trustee while performing the duties delegated to them by the trustor. The trustor's trust on the trustee is directly proportional to the confidence that the trustee can perform in a manner that meets the expectations of the trustor.

Trust also is dependent on integrity. The trustor's trust on the trustee also is influenced by the perceived degree to which the trustee adheres to principles that are acceptable to the trustor (Lewick and Tomlinson, 2003). Evaluation of integrity is hinged on consistent past acts of integrity, and proven commitment to standards of fairness without material deviations. A trusted ally gives predictable and consistent outcomes. The author argues the ability, competence, and integrity of the trustee are the most influential drivers of trust.

Thirdly, the demonstration of benevolence by showing concern for others also breeds trust. The trustee must act in a way that respects and protects other people's interest. To retain trust, one must genuinely and as practically as possible show care and concern for others. To this end, where needed, the trustee should be able to give and receive help and assistance

Six and others (2010) further brings together other practical ways of enhancing trust at an organizational level. These practical ways include giving feedback regardless of whether it is positive or negative. Being open to the extent of disclosing information in an accurate and timely fashion, be direct about challenges one is facing in certain task problems among others.

Six and other (2010) further states that to retain trust, the person trusted should be able to share influence. Sharing of influence involves seek and accept the counsel of other people, acting in a manner that recognizes the legitimacy of each other's interests. Further, it involves deliberate and cognitive attempt to see the other people's actions as benevolently intended and worth to be given attention.

The trusted party should be able to manage mutual expectations by clarifying general expectations early on and explore specific expectations in detail and the ability to negotiate

differences in expectations. They should perform competently and always be seen as striving to manifest proficiency when carrying out their obligations (Six & et al, 2010). Further, the trustee should demonstrate predictable consistency and ability to communicate accurately, openly and transparently.

2.4 Provisions for Resolution of Contractors' Claims in Standard Forms of Contracts.

The administration of claims is well anchored in standard forms of construction contract. There is every good reason to use these standard contracts since they have benefit of having been honed over the years and tested over time. For this study, the analysis shall be confined to JBC 1999, PPRA 2007 and FIDIC 1999 conditions of construction contracts.

2.4.1 FIDIC -Red Book-, (1999) Contract.

Step 1-The occurrence of a risk event that is compensable. Where one party's acts of omission and commission are attributable to the occurrence of the risk, conflict emerges as one party feels frustrated and prevented from achieving his or her objectives. To compensate on the lost or unachieved objectives, the aggrieved/frustrated party decides to make a claim.

Step 2- Clause 20.1 stipulates that the Contractor shall be required to issue a notice of intention to claim to the Engineer not later than 28 days commencing from date when the Contractor realizes or should have realized about the occurrence of events necessitating a claim.

After notice of intention to claim, the contractor shall be required to submit any other notices required by the contract and supporting particulars for the claim, all relevant to the event or circumstance causing the claim and keep records that will be used to substantiate the claim. The records shall be kept on the site or some other place acceptable by the Engineer. On the other hand, the Engineer may though without liability, monitor the record-keeping by the Contractor as well as instructing the Contractor to keep further records. The Engineer will have a right to inspect all contemporary records and even ask the Contractor to submit copies to him.

Step 3- Clause 20.1 requires the Contractor to make an actual submission of the claim with grounds and details of the claim within 42 days after the date when the He or She become or should have become aware of the event or circumstance causing the claim. The contractor will have the obligation of giving all supporting details, basis of the claim and quantum of extension of time, or amount claimed.

Step 4- Endeavor by Engineer to reach an agreement. The Engineer shall consult both parties and make assessment and issue approval or disapproval. The Engineer may request further supporting particulars but clause 20.1 states that the Engineer should issue an approval or disapproval on the claim with detailed comments. If the Engineer disapproves the claim, the matter will end. However, if the Contractor is dissatisfied by the Engineer's disapproval, the claim will be escalated to the Dispute Adjudication Board. If the Engineer approves the application, the next step will be a fair determination as per clause 3.5.

Step 5- Fair determination by Engineer under clause 3.5. The Engineer is required to calculate and fairly determine the quantum of compensation to be granted to the Contractor. Upon acceptance of the determination of the Engineer by parties, the claim will have been solved and the matter will be put to rest. If the determination of Engineer is disputed, the claim will be escalated to the DAB.

Step 6- Issuance of notice of dissatisfaction concerning the determination of the Engineer to the DAB as per clause 20.4. The notice will be to seek the decision of the DAB regarding the claim. This notice shall be copied to the Engineer and shall mark the declaration of dispute.

Step 7- Discussion and decision of the DAB. In not later than 84 days upon receipt of notice of dissatisfaction on the Engineer's determination, DAB is shall proceed to have sittings and to issue a reasoned decision. The decision of DAB is binding until or unless arbitration or amicable settlement revise the decision. Upon expiry of 28 from the date of issuance of DAB's decision, and if no party will have issued the notice of dissatisfaction with its decision, then decision by DAB will automatically be final and binding to the parties. The matter will have been solved by DAB.

Step 8 - However, if DAB will not have rendered a decision after elapse of 84 days, either party can issue a notice to refer the dispute to arbitration. Equally a dispute can proceed to arbitration if DAB's decision is contested in less than 28 days after its issuance.

Step 9- Resolution by amicable settlement as per clause 20.5. If DAB will fail to help parties reach an agreement/resolution, the parties will have 56 days within which they should solve the

dispute amicably. Upon expiry of 56 days and without amicable settlement, the arbitration proceedings on to resolve the dispute shall commence.

Step 10- Arbitration proceedings. The arbitration shall have 3 arbitrators. The proceedings shall adhere to the rule of arbitration as in accordance with the International Chamber of Commerce. Where requested by the arbitrators, the Engineer shall present any relevant evidences that may enable arbitrators make their decision. Nothing shall prevent the Engineer from being called to give such evidences to the arbitrators. Parties are allowed to give evidences and arguments presented before DAB and to the Engineer.

Step 11- Final settlement of the dispute. The decision of the arbitration is deemed to be the final and binding determination.

2.4.2 JBC (1999) Contract.

Step 1- The occurrence of a risk event that is compensable. Where one party's acts of omission and commission are attributable to the occurrence of the risk, conflict emerges as one party feels frustrated and prevented from achieving his or her objectives. To compensate on the lost or unachieved objectives, the aggrieved/frustrated party decides to make a claim.

Step 2- Contractor giving notification to the Architect of intention to submit a claim. As per Clause 37.4, the written notification should be issued in not more than 30 days after the date when the Contractor becomes aware or should have been aware of the occurrences that necessitate a claim.

Step 3- Submission of the claim. The claim should be submitted together with sufficient and particular details. The duration within which the claim should be submitted is given caveated at not later than 30 days after date of notification of intention to claim. Clause 37.4 provides that the Contractor should present an interim claim in situations where the circumstances that are necessitating the claim are likely to be recurring.

Step 4- Fair determination of the claim by the Quantity Surveyor. Upon the application, the claim will be assessed on two conditions. The first condition under Clause 37.1 is that the Architect should be convinced to give an opinion that the Contractor has suffered losses and or

expenses for which they would not be compensated by a valuation for payment made under any other provision of the contract. It should be noted that while giving His or Her opinion, the Architect is obligated to be discretionary and impartial. Towards this end, clause 5.4 states that:-

'Where the Architect is required under the contract to exercise his discretion by giving his decision, opinion, consent or approval or by taking any other action which may affect the rights and obligations of the Employer or the Contractor, he shall exercise such discretion impartially within the terms of the contract'

Secondly, Clause 37.2 states that the claim should be accompanied by detailed particulars claim. If the in the opinion of the Architect is that the contractor has not suffered any loss or expense, or losses suffered are reimbursable by payments made under other provisions of the contract and if the claim has not been accompanied by detailed particulars, the contractor's claim shall not proceed to assessment and determination by the Quantity Surveyor.

However, if the claim is admitted for assessment, clause 37.6 requires that the Quantity Surveyor shall make his determination as soon as practically possible. Clause 7 states that while discharging his duties, the Quantity Surveyor shall be:-

"...giving advice, opinion, assessment, measurements, computations or valuations, he shall carry out the task impartially within the terms of the contract'.

If the Quantity Surveyor arrives at an amount not agreeable to the contractor or the employer, this will amount to a rejection of the claim and subsequently, either party may opt to declare a dispute and apply for the commencement of arbitration.

Step 5- Notification to submit the dispute to arbitration and to seek concurrence towards appointment of an arbitrator. The arbitrator should be appointed within 30 days. If the parties fail to agree on which Arbitrator is to be appointed, the Arbitrator shall be appointed by the Chairman or Vice-Chairman of the Architectural Association of Kenya on the request of the applying party.

Step 6- Attempt for amicable settlement of the dispute. According to clause 45.4, arbitration of a dispute shall not begin until an attempt has been made by the parties to settle the matter

amicably. Amicable settlement can happen with or without involvement of third parties including Contract Administrators. There is no requirement that parties must show any proof that they attempted to settle the dispute through amicable settlement.

Step 7- Arbitration shall commence 90 days after issuance of notice to proceed to arbitration and after the failure of the amicable settlement.

Step 8 - Final settlement determination on the dispute. The determination by arbitration shall be final and binding.

2.4.3 PPRA (2007) Contract

Step 1- Actual occurrence of a risk event that is compensable. All possible compensable events are listed in Clause 24.1

Step 2- Clause 19 stipulates that at the earliest opportunity, the contractor is required to issue an early warning to the project manager of any particular probable forthcoming events or situations that may adversely affect among other things the cost of the project or delay the completion of the works. The challenge, in this case, could be the interpretation of the word 'earliest opportunity'.

Step 3- The Project Manager may require the contractor to provide an approximation of the estimated consequence of the forthcoming event or situation on the cost and the contract period of the project. Under Clause 24. 3, the contractor's forecasted estimate is what will be used by the Project Manager to determine the extent of compensation to be granted by the contractor. Again, the word 'may require' leaves uncertainty as to what is exactly expected of the contractor. The contractor is further expected to liaise with the Project Manager in coming up and implementing proposals that can mitigate or avoid the overall effect of such an event or circumstance.

Step 4 - Contractor give a written notification of intention to claim. This notice shall be given to the Project Manager not later than 30 days after the actual date of occurrence of a risk event that is compensable and relevant to the claim.

Step 5- Contractor's actual submission claim together with necessary and relevant information proving the effect of each compensation events as per the early warning.

Step 6- Assessment and determination by Project Manager. The assessment and determination on the contractor's claim is guided by the contractor's estimate of the expected effect of the anticipated event or situation on the cost and completion duration of the project. If the contractor's approximation is considered irrational and unjustifiable, the Project Manager will adjust the Contract Sum based on his own forecast. If the contractor is dissatisfied with the Project Manager's determination on the amount and time to be compensated, a dispute will be declared and either party is free to proceed to arbitration.

Step 7- Notification to the other to seek request to submit the dispute to arbitration and to seek concurrence in the appointment of an arbitrator within 30 days. If the parties fail to concur in the appointment of an Arbitrator, on the request of the applying party, the Arbitrator shall be appointed by the Chairman or Vice-Chairman either the Association of Kenya. Architectural Association of Kenya, Institute of Quantity Surveyors of Kenya, Association of Consulting Engineers of Kenya, Chartered Institute of Arbitrators (Kenya Branch) or Institution of Engineers of Kenya

Step 8- Attempt for amicable settlement of the dispute. According to clause 37.4, the arbitration of a dispute that has been notified shall not start unless an effort has in the first instance been made by the parties to resolve the matter amicably with or without the help of third parties. Proof of attempt of amicable settlement shall be required.

Step 9- Arbitration shall commence 90 days after issuance of notice to proceed to arbitration and after the failure of amicable settlement (Clause 37.4)

Step 10- Final settlement of the dispute. The determination of arbitration shall be final and binding on the parties.

2.5 Review of Previous Research Studies.

2.5.1 Perspectives on Contract Administrators' Demonstration of Procedural Fairness.

The acceptance and satisfaction that justice has been served are to a large extent influenced by the perception that the conflict/dispute resolution process was fair in the eye of the disputants (Tyler, 2011). From the theoretical perspective, procedural fairness is a function of giving people an equal opportunity of voice to have a say in the resolution process, treating the disputants with respect both in terms of respecting their personal and contractual rights, issuance of decision that is guided by reason among others.

In the context of the administration of claims, procedural fairness involves a measure of whether or not the Contract Administrators can give enough and convincing reasons that justify his or her decision. This includes interpreting the contract to the parties and explaining to them relevant contractual provisions that guided the decision on the claim. For the consultant to be said to have succeeded, he or she should not use cohesive diplomatic styles that include prevailing on the aggrieved party to accept the decision even when they do not agree with it.

In a landmark study by Akulanka (2013), the researcher wanted to assess the contractors' level of satisfaction with the reasonableness and level of justification issued by the Engineers in their decisions on claims under the FIDIC 1999 Contract. One of the contractors commented that although the majority of their projects had claims, most of them (70%) were mainly solved amicably by the assessment and valuation done by the Engineer. Another respondent reported a 15% level of satisfaction with the determination of claims which he believed the Engineer had determined reasonably and justifiably.

One of the elements of procedural fairness is equal consultation and distribution of opportunity to parties to voice their concerns before making a decision (Lind & et al 1997). According to the findings in Akulanka's (2013) study, it was found out that in the opinion of some Contractors, Engineers make the final and the most important consultation with Employers before making their determination. This consultation comes when the Engineers are presenting their findings to the Employer for approval. This consultation does not give the Contractor an opportunity for the right of reply or representation and as such the fairness of the process was found to be seriously compromised and far from the appearance of fairness and justice.

A study conducted by Aibinu and others (2011) sought to find why contractors intensify conflicts. The study wanted to come up with a model that explains the relationship between conflict intensity and contractor's perception of the justice of the process. Using 41 contractors, the results suggested that the contractor's perceptions of lack of procedural justice influenced 46% of contractor's tendency to escalate and intensify the level of conflict.

Aibinu and others (2011) also discovered that the tendency for the claimant to accept consultant's determination on a claim was dependent on how the claimant is treated by the Contract Administrators as well as the quality of the decision made by the Contract Administrator.

2.5.2 Perspectives on the Impartiality of Contract Administrators

Once a claim has been submitted, the Contract Administrator is expected to evaluate it and decide on it. It is expected that the consultant will endeavor to, impartially and at his discretion, make a determination that is acceptable to the Employer and the Contractor. If all determinations would be acceptable, we could not be witnessing the escalation of claims and disputes to arbitration which generally is borne out of rejected claims.

Danuri and others (2007), sought to inquire whether Contractors were fully aware of the Contract Administrator's role to act fairly and impartially in performing his duties. About 95% of the contractors who participated in the study expressed that they were aware that the Contract administrators have a fiduciary responsibility to act fairly and impartially. In other words, these contractors were aware of their right for equal, fair, impartial hearing and treatment from the contract administrator. With this mentality, some contractors have legitimate expectations that their claim will receive a dispassionate, fair and impartial assessment from the Contract Administrators. This drives Contractors to fully give the best presentation of their claim to the contract administrator simply because they believe that the contract administrator will be objective in his determination.

Based on Contractor's account of past experiences, some Contractors reject claim evaluation and settlement proposals issued by Contract Administrators due to past experiences where such parties have been victims of impartial decisions. This argument is supported by a survey by Danuri and others (2007), who intended to enquire whether the contractors had experienced

past circumstances where the Contract Administrator had failed to act fairly and impartially. From the results, 80.5% strongly believed that they had experienced unfair decisions by the Superintendent (Contract Administrator) when performing his duties of assessing claims. Because of the past experiences, contractors are always skeptical about the fairness and impartiality of determinations made by the Contract Administrators.

Further, Danuri and others (2007), sought to find out why Contractors think that Contract Administrators are unable to act fairly and impartially. From the Contractors' perspective, the main reason why Contract Administrators fail to be fair and professional is due to undue influence from the Employers followed by collisions between the contract administrator and Employer.

In Akulenska's (2013) on the study on users' perception on the impartiality of the Engineer under FIDIC 1999 Contract, four out of five (80%) Contractors responded that the Engineer was never impartial or not impartial in most of the projects or was rarely impartial. On the other hand, Akulenska (2013), also went further to enquire about Employers' level of satisfaction with the Engineer's impartiality when making determinations on claims. Four out of five (Employers) (80%) responded that they had been mostly satisfied with over seventy-five percent of determinations that had been made by the Engineer.

Interference from clients and management or any parties that may have vested interests in the dispute thereof hurts the effectiveness a dispute resolver to resolve the dispute without escalation. Demonstration of independence from the part of dispute resolvers will build trust and confidence in the disputants and make them believe in the due process of resolving the dispute early enough without litigious escalations.

In Akulenska's (2013) study on users' perception on the impartiality of the Engineer under FIDIC 1999 Contract, one out of five contractors responded that the Engineer was generally impartial but the employer has the final say. The study attributed Engineers' lack of impartiality to excessive influence from the employer, the reality that the Engineer is being paid by employer and the possibility that the Engineer may want to seek future work from the same employer. Further, since some claims touch on the Engineer's defective design, the Engineer

may find it convenient to shift the responsibility to the Contractor by absolving himself rather than being impartial.

2.5.3 Perspectives on the Trustworthiness of Contract Administrators.

Little or lack of trust provides an environment that breeds adversarial relationships between contracting parties (Younis & et al, 2008; Malak, 2008). For the contract administrator to be able to effectively resolve claims and any issues that potentially could escalate into full-blown dispute, the parties to the dispute must have trust on him or her. It is out of cooperation that such parties will be willing to show cooperative behavior by giving any assistance including complying with any request for information that may be needed to resolve a claim. According to Cheung and others (2003), the main sources of mistrust in construction include incompetence, failure of integrity and issuance of unworthy information.

Young and others (2016) underlines the significance of trust and cooperation in a dispute situation by stating that where cooperation ends, noncompliance with requests for action in a dispute situation takes over. Consequently, noncooperation exerts a direct influence on whether individuals change their conflict styles over time in a given dispute situation. Without cooperation, McCready and others (1996) observe that parties to a dispute who initially would attempt a problem-solving strategy are more likely to shift from this to inaction and then to the escalation of a dispute.

Various studies have found out that parties to a construction contract are less willing to demonstrate cooperative behaviors due to little trust in the contract administrators. Chan and others (2004) in their study observed that there is little and trust between contractual parties in the construction industry, both of which leads to adversarial relationships especially when one party has lodged a claim which has faced open rejection.

On the other hand, the American Architectural Association (2009) carried out a survey whose findings showed that majority of the respondents were willing to be cooperative even in the face of a claim a sign of trust to the ability and fairness of Contract Administrators in evaluation and settlement of claims. From the study, the findings demonstrated that parties are willing to cooperate towards early resolution of claims and conflicts.

2.5.4 Comparisons of Outcomes of Arbitration and those of Contract Administrators.

Once a party has rejected or registered a notice of dissatisfaction with the determination of a claim that has been made by Contract Administrators, the disagreement ensues and any party can proceed to arbitration. It is expected that a determination on a given claim that has been made by an impartial and professionally competent Contract Administrators who have had enough time and all necessary information should be very close or similar to the award that is eventually rendered after the conclusion of arbitration proceedings. However, for a party to apply for arbitration, the party must be convinced that an award that will be rendered at arbitration will be different from the determination made by the Contract Administrators.

Akulenka's (2013) enquired Contractors about the number arbitrations they had been involved in and whether the decision obtained at the end was the same as the determination that had been initially given by the Engineer. One of the contractors noted the in one of their ongoing arbitration cases, the initial findings of the arbitration and the experts were very different from the earlier findings that had been made by the Engineer. The contractor was optimistic that the arbitration award will be substantially different from what the Engineer has determined.

In the same study, Akulenka (2013) asked some respondents who had won arbitration cases to give their opinion on the reason why the initial Engineers' determination was different from the arbitration award. One of the respondents believed that Engineer may not be culpable for the difference since in most cases, he is just a postman who rubberstamps and communicates what the employers' Quantity Surveying and Contract department decide on. Even where the Engineer is the one to evaluate a claim, he is never permitted to decide on the case properly but instead, he was generally instructed by the employer to make considerations in a certain way.

2.6 Conceptual Model

Based on the theories and empirical literature reviewed above, the research arrived at a conceptual model containing variables that were used in investigating the contribution of Contract Administrators towards prevention of escalation of contractors' claims into disputes.

Table 2.2: Summary of Literature Review Findings and Conceptual Model

	Variables and their manifestation during the evaluation of Contractors Claims.
	A. Procedural fairness
1.	Allowing all parties to present their views on the claim (Tyler, 2011, Robert, 1997; Lind & et al 1997)
2.	Gathering and assessing the information needed to make appropriate decisions. (Leventhal, 1980; Tyler 2011).
3.	Being open (transparent) on the procedure used in assessing and determination of the claim (Leventhal, 1980; Tyler 2011).
4.	Being consistent in the application of rules/criteria and procedures used in the determination of the claim at all times during the evaluation process (Leventhal, 1980; Tyler 2011).
5.	Evidence of having listened, considering and taking into account the views of the parties before making a determination (Leventhal, 1980; Tyler 2011).
6.	Treating disputing parties with respect for their human dignity and respect to their right of presenting their case and have their views are taken seriously (Tyler & et al, 1990, Bies and Moag, 1986; Aibinu & et al, 2011)
7.	Telling parties the summary of issues raised in the claim which are under consideration by the decision-maker (Creyke, 2019)
8.	Giving and explaining to the parties the criteria for making that decision and information on which any such decision would be based
9.	Making reasonable inquiries or investigations before making a decision (Creyke, 2019)
10.	Not closing out any submission or opinion especially those that appear to cast doubt on the impending determination (Robert, 1997; Lind & et al 1997)
11.	Striving to resolve a dispute without unnecessary delay (Creyke, 2019)
12.	Allowing some form of internal appeal procedures that can correct a bad decision (Creyke, 2019)

B.	A. Impartiality
1.	Absence of pre-judgment/predetermination of a claim before the presentation of all facts and arguments for and against the claim (Tyler, 1984)
2.	Evaluation of a claim and making of a determination decision based on objective criteria rather than bias and prejudice (Tan, 2016).
3.	Endeavor to rely on truthful and accurate information when making a determination (Tan, 2016).
4.	Strictly adherence to acceptable standards and procedure without compromise (Gadlin and Pino, 1997).
5.	Dealing with disputants even-handedly and equality without open favoritism (Tan, 2016; Tyler, 1984).
6.	Ability to allow to be persuaded and inclusion of alternative range of perspectives (Tan, 2016; Tyler, 1984).
7.	Abstinance from expressing personal views (Gadlin and Pino, 1997; Tyler, 1984).
8.	Abstinance from promoting particular views (Gadlin and Pino, 1997; Tyler, 1984).
9.	Balance and neutrality (Gadlin and Pino, 1997)
10.	Absence of observable conflict of interest (Gadlin and Pino, 1997)
B.	C. Trustworthiness
1.	Level of ability in terms of knowledge, skill, or competency exhibited by the trustee while performing the duties entrusted to them by the trustor (Lewick and Tomlinson, 2003; Six, 2005, Aibinu, 2004; Cheung & et al ,2003)
2.	Integrity - perceived degree to which the trusted party (decision maker) adheres to principles that are acceptable to the trustor (Lewick and Tomlinson,2003; Cheung & et al , 2003)
3.	Demonstrable genuine show of care and concern for the parties (Lewick and Tomlinson, 2003; Six, 2005)
4.	Demonstrating predictable consistency in applying principles and criteria of arriving at a decision (Six, 2005)

5.	Giving of feedback regardless of whether it is positive or negative.
6.	Communicating accurately, openly and transparently on the issues to the dispute (Six, 2005; Cheung & et al, 2003)
D.	C. Accuracy with limited chances of being overturned at arbitration
	Accurate determination with limited chances of being overturned at arbitration (Akulenska, 2013)

Source: Literature Review Research Findings, 2009

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Generally.

This chapter presents how the study was designed, the population that was used, procedure for sampling including determination of sample size, instruments that were used to collect and analyze data. Finally this chapter will highlight the methods that were used to present the research findings/results.

3.2 Research Study Design.

The research adopted a descriptive study research design. Koothari and Guarav (2014), state that the objective of descriptive research is to portray and describe the state of affairs of a particular situation. It is concerned with gathering of data on certain frequencies of variables which are associated with some specific situation for the aim of interpretation. The study adopted use of small samples but with deep probing data gathering devices to reach into causes of phenomena under investigation. The data collected was quantitative. This study therefore adopted a quantitative descriptive research design to establish the contribution of Contract Administrator towards prevention of escalation of claims by assessing whether they evaluate contractor's claims in a manner that can be said to be procedurally fair, impartial, trustworthy, and whose determinations are similar to the determinations made by arbitration or adjudication.

3.3 Study Population.

Wambui & Gichuho (2013) describe a population as the complete set of objects, or individuals with some evident characteristics. The study chose contractors as the target population. This was informed by the fact that contractors are the construction industry players who mostly interact with Contract Administrators during evaluation of claims.

Since there are various categories of contractors, the study settled on building works contractors registered by the National Construction Authority (NCA) as category 1 who had been operating in Kenya for at least 8 years. According to the NCA's construction industry's capacity survey report of July 2014, there were 176 NCA 1 registered building works contractors.

3.4 Sampling Technique.

The study adopted purposeful sampling. Based on the determined sample size, this method was used to select contractors who were eventually invited to respond to the questionnaires.

3.5 Sample Size Determination.

Koothari and Guarav (2014) defines sample size as the number of items to be selected from the population to be studied whose findings will be used to make conclusions about the population. Further, the authors argue that the sample size should not be too small or excessively large, but rather an optimum sample which is efficient representative and reliable.

The researcher chose a 95% confidence level that the response achieved were to be + or – 5% a true representation of the population. In determining the sample size, the following formula was used.

$$n = \frac{Z^2 * p * q * N}{e^2 * (N-1) + Z^2 * p * q}$$

Where;

n = required sample size.

Z^2 = critical normal at a given confidence level worked out from the tables showing the area under normal curve. For 95% confidence level the normal deviate is 1.96.

N = the population size is 176. As at 2014, there were 176 NCA 1 Building Works Contractors (NCA, 2014)

p = confidence level of the sample population (95%)

q = 1- p (5%)

e = the degree of accuracy or desired margin of error expressed (0.05).

$$n = (1.96^2 * 0.95 * 0.05 * 176) / (0.05^2 * (176-1) + 1.96^2 * 0.95 * 0.05) \\ = 52 \text{ respondents.}$$

For this study therefore: = 52 respondents were selected.

3.6 Research Instruments.

Kimberlin & Winetrstein's (2008) study concluded that the correctness of data is greatly reliant on the instruments that are used for gathering of data. This research study relied on

questionnaires which were designed using the variables that were highlighted in the summary of the literature review and conceptual model.

3.7 Validity of Research Instruments.

Validity of the instruments was achieved by ensuring that the questions included in the questionnaire were pre-validated, precise, clear and objective. To ensure the validity of the instrument, the questions which were included in the questionnaire were limited to what was reviewed in the literature. Secondly, a pilot study was done where 9 questionnaires were sent to test the clarity of the questions and whether it was possible for respondents to answer them. The feedback obtained from the field study was used to review the questionnaires before using them to collect data for the main study.

3.8 Data Analysis and Presentation.

The data analysis adopted descriptive analysis. Data from the questionnaire were analyzed with SPSS and excel to produce descriptive statistics so as to present collected data in the form of pie charts, and tables.

3.9 Ethical Consideration.

Respondents were assured that the information they were sharing was to be treated with confidentiality and that the information was for academic purposes only. Further, they were assured that the information collected was only going to be held in confidence and accessible to the supervisor and the researcher of the project only. Further, to allay any fear that respondents could have had, the respondents were not asked to reveal their specific identity in a bid to conceal their identity True to the promise, the data collected from respondents was handled with utmost confidentiality.

CHAPTER FOUR- DATA ANALYSIS, PRESENTATION AND INTERPRETATION.

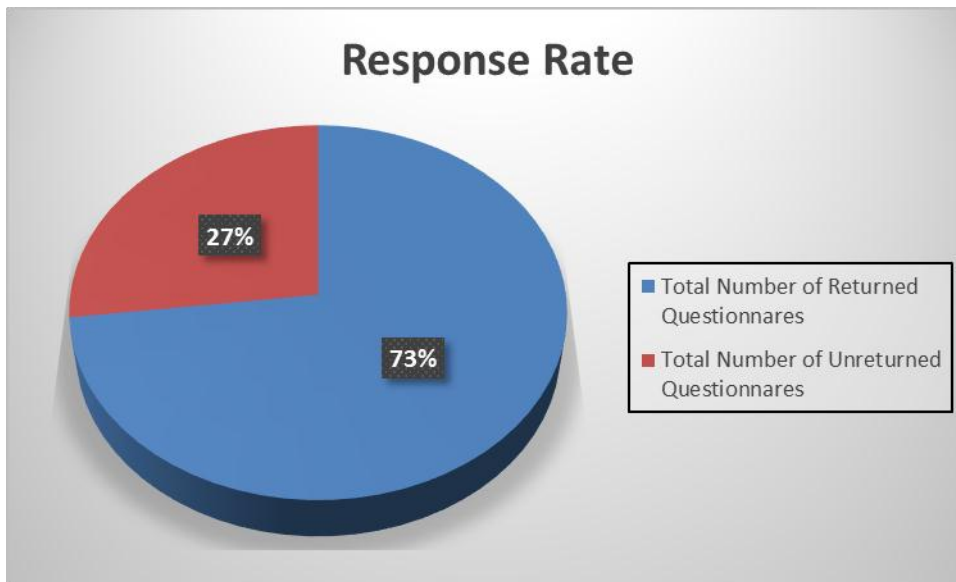
4.1 Generally

This chapter presents analysis of results, their presentation, and interpretation. It focuses on the response rate and the analysis of the contractor's perspective on Contract Administrators' contribution towards declaration and escalation of disputes out of contractor's claims.

4.2 Response Rate

A total of 52 Contractors were approached to participate in this study. Out of 52 questionnaires sent, (38) 73% responded by filling and returning the questionnaire.

Figure 4.1: Response Rate



Source: Author's field study, 2019

Babbie (2007) suggests that in research, a response rate of at least 50% is considered adequate for analysis and reporting; a response of 60% is good; a response of 70% is very good; a response of 80% and above is excellent. This research's response rate was 73% which is considered very good and therefore adequate.

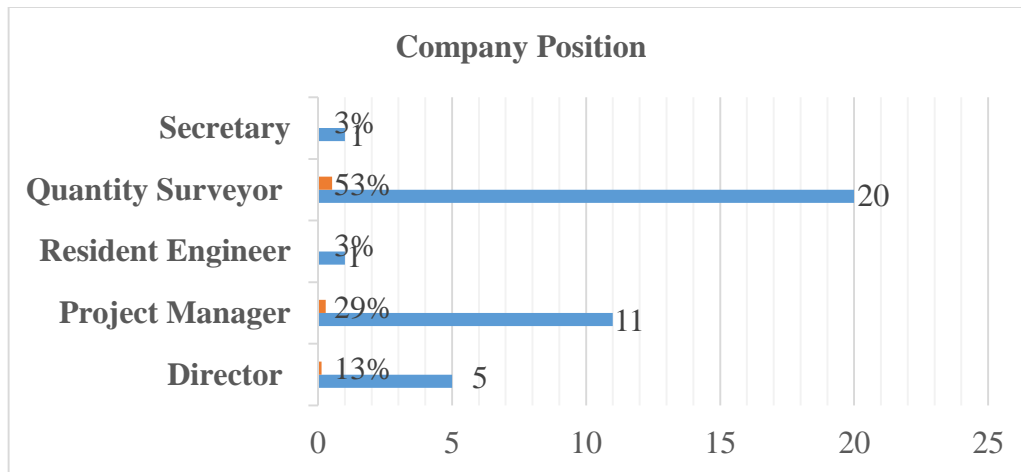
4.2 Demographic Information on Respondents

The research sought to collect general information of respondents who participated in the study.

4.2.1 Position of Respondents in their Construction Companies.

The results on positions of participants who returned the questionnaire as follows:-

Figure 4.2: Position of Respondents in their Construction Companies.



Source: Author's field study, 2019

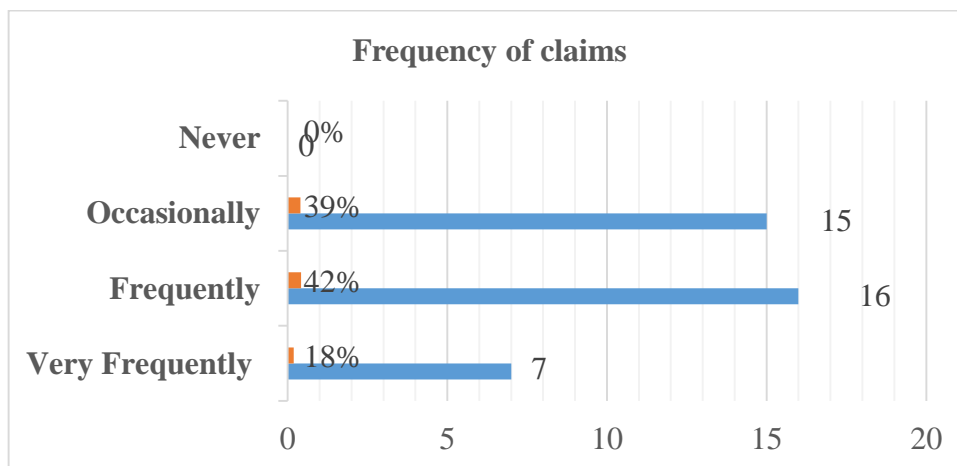
From the data analyzed, the majority of respondents in ascending order were Quantity Surveyors (53%), Project Managers (29%), Directors (13%), Resident Engineers and Secretary both at (3%) of the respondents.

The findings above imply that the majority of respondents under study were Contractor's technical personnel in charge of preparation, presentation and following up of Contractor's claim. As such, it is good to note these are the right respondents since they interact a lot with Contract Administrators during Evaluation of Contractors' claims.

4.2.2 Frequency of Encountering Claims

The results for nature of predominant works undertaken by respondents were as shown below:

Figure 4.3: Frequency of encountering claims



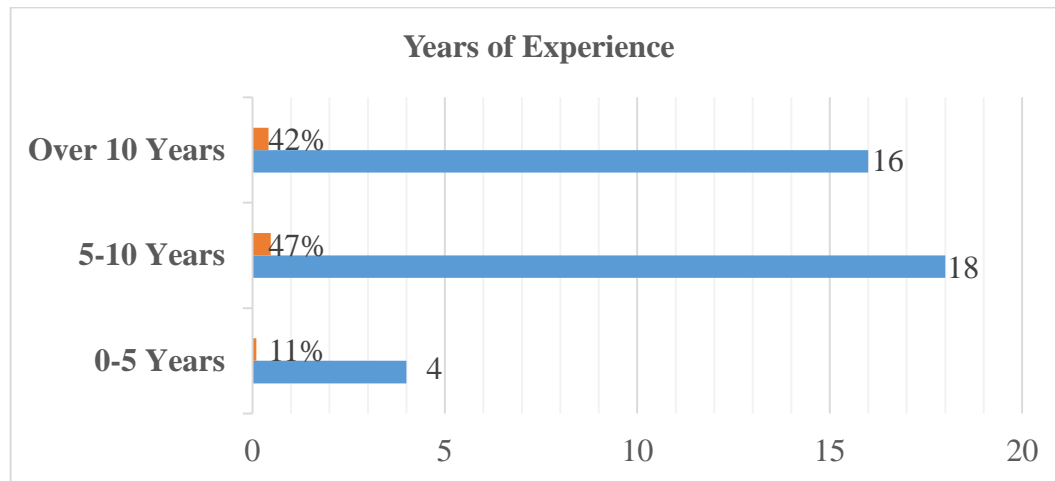
Source: Author's field study, 2019

From the above findings, the majority of respondents 42% experience claims frequently, 39% occasionally and 18% very frequently. None (0%) of the respondents have encountered claims in their practice. This implies that the respondents who participated in this survey have encountered and witnessed the administration of claims.

4.2.3 Years of Experience.

The results for year of experience of the respondents were as follows:-

Figure 4.4: Years of experience of respondents



Source: Author's field study, 2019

Majority of respondents (47%) have worked in the construction industry and accrued experience of 5-10 years followed by an experience of over 10 years (42%) and lastly 11% for respondents with 0-5 years. From this data, it should be positive to note that the composition of respondents with over 5 years adds up to 89%. This gives comfort that responses were given by considerably experienced people.

4.2 Contract Administrators' Demonstration of Procedural Fairness during Evaluation of Contractors' Claims.

To investigate whether Contract Administrators demonstrate procedural fairness during the evaluation of the Contractors' claims, the respondents were asked various questions and the results of their responses is as follows:

Table 4.1: Mean Scores for the Demonstration of Procedural Fairness during Evaluation of Contractors' Claims by Contract Administrators.

Statement	Mean	SD
<i>During evaluation of Contractors claims, Contract Administrators evaluating the claim do the following:-</i>		
Tell parties the summary of issues raised in the claim which are under consideration.	4.03	0.6
Make deliberate efforts to listen and consider the views of the parties	3.58	0.9
Treat both parties with respect for their human dignity and respect to their right of presenting their case and have their views taken seriously.	3.55	0.8
Gather and assess the information, correspondences and necessary documentation needed to make appropriate decisions before making decisions.	3.5	1.4
Make reasonable inquiries or investigations before making a decision.	3.47	0.9
Give both Contractor and Employer sufficient opportunity to present their views on the claim	3.42	1.5
Demonstrate deliberate attempts to take into account the view of all parties before making determinations.	3.34	1.1
Give feedback regardless of whether it is positive or negative.	3.34	1.2
Demonstrate a high level of ability in terms of knowledge, skill, or competency in analyzing the claim.	3.16	1.2
Give an explanation to the parties of the criteria to be used in making a decision and information on which any such decision would be based on	3.08	1.2
Do not close out any submissions or opinions especially those that appear to cast doubt on the impending determination	2.97	1.4
Act consistently when applying rules/criteria and procedures used in the determination of the claim at all times during the analysis and evaluation process.	2.87	1.3
Follow openly (transparently) the contractual procedure used in assessing and determination of the claim	2.87	1.4
Give parties an opportunity to make oral representations.	2.79	1.3
Demonstrate predictable consistency in applying principles and criteria of arriving at a decision.	2.76	0.9
Demonstrate genuine show of care and concern for the parties.	2.71	0.9
Allow some form of internal appeal procedures that can correct a bad decision	2.58	1.1
Strive to resolve a dispute without unnecessary delay and within the duration provided in the Contract.	2.18	1.4
Average Mean Score	3.12	1.15

Source: Author's field study, 2019

Contract Administrators' efforts in informing or telling parties the summary of issues raised in the claim under consideration had the highest mean of 4.03. The deliberate effort to take into account the views of parties when assessing Contractor's claims had the second highest mean score of 3.58 while treating of both parties with respect to their human dignity and their right of presenting their case came third with a mean of 3.55. The score for the above questions were relatively good and this can be interpreted as good performance. The high scores on these responses can be attributed to the fact that these are basics and therefore easily achievable.

Contract Administrators' tendency to gather and assess necessary documentation needed to make appropriate decisions before a making determination on a claim was ranked fourth with a mean of 3.50. This implies that the majority of responses were between neutral and in agreement; therefore, this performance can be said to be slightly above average. However, considering the provisions clause of 37.3 of JBC (1999) contract and, clause of 20.1 of FIDIC (1999) contract, this performance is underwhelming and contrary to the spirit of evaluation and analyzing claims as stipulated in these standard forms of contracts. The Contractor is supposed to submit his claim with ALL supporting details. Where more supporting details would be needed, the standard forms of contract provides that Contract Administrators can request the Contractor to submit such additional details to enable fair and informed evaluation of the claim.

Making reasonable inquiries or investigations before making a decision had a mean score of 3.47. This implies that the majority of respondents were in between neutral and in agreement with this statement. This performance is not satisfactory bearing in mind that clause 37.3 of JBC (1999), clause 20.1 of FIDIC (1999) standard forms of contracts requires that during the analysis of a contractor's claim, the person analyzing the contractor's claim should make inquiries and any other investigation necessary to arrive at a fair determination

Giving both the contractor and employer sufficient opportunity to present their views (voices) on the claim had a mean of 3.42 implying that majority of respondents were between neutral and in agreement. Agreement with this statement implies that contractors are given sufficient opportunity to present their claims since they are required to do so by way of submission of additional documents in conformity with clause 37.3 of JBC (1999), clause 20.1 of FIDIC

(1999). Neutrality on this statement could be attributed to the fact that, save for FIDIC (1999) under clause 20.1 where the Engineer is obligated to consult both parties in his endeavor to reach an agreement, the other forms of contracts (JBC 1999; and PPRA 2007) does not expressly require their Contract Administrators to consult with both parties more so the Employer. The same observation and interpretation can be made on whether Contract Administrators make attempt to take into account the view of all parties before determination which had a mean of 3.34.

Demonstration of a high level of knowledge, skill, and competency in analyzing the claim was ranked ninth with a mean of 3.16 and a standard deviation of 1.22. This implies that majority of the respondents were neutral. However, a standard deviation of 1.22 means that there were respondents who acknowledged that Contract Administrators have issues of incompetence; limitations in terms of knowledge and skills necessary to carry out claim evaluation. The issue of limitation in terms of knowledge, skills and competence can be attributed to the bounded theory of rationality which states that rationality in decision making is limited to the amount of information one is accessible to (Storms, 1973).

Giving of explanation to the parties of the criteria to be used in making a decision and information on which any such decision would be based on had a mean score of 3.08. This implies that the average responses were neutral on this statement. This can be caused by the fact that standard forms of contract do not require that parties be given such an explanation after a claim has been submitted. Secondly, this could be because Contract Administrators assume that their Employers have given them full responsibility to make decisions on claims without necessarily having to give them much explanation on the criteria to be used in making a decision and information on which any such decision would be based on. Another interpretation on this finding is that Contract Administrators may think that contractors who are the originators of these claims are already aware of the criteria and information to be used and as such, there is no need to give them any explanation on what they already know.

Avoiding not to close out any submission or opinion especially those that appear to cast doubt on the impending determination has a mean score of 2.97 with a standard deviation of 1.4. This implies that on average, the responses were between in agreement and neutral on this statement.

This can be attributed to the last-minute rush or submission of additional documents triggered by a sense of an impending unfavorable determination. Equally, the rush to close out any information especially those that appear to cast doubt on the impending determination can be attributed to the desirability effect (Windschitl and Stuart, 2015).

During the analysis of claims, the question on whether Contract Administrators demonstrate predictable consistency in applying principles and criteria had a mean of 2.76 with a standard deviation of 0.91. This implies that on average, respondents were of the opinion that Contract Administrators are unpredictable in the manner in which they apply the standard principles and criteria used in analyzing claims. The fact that responses to this question had a standard deviation of 0.91 implies that the responses were slightly varied between + or – 0.91 to and from the mean. Equally, the tendency to follow openly the contractual procedure used in assessing of claim had a mean of 2.87. It is worth to note that the mean scores for these two questions are underwhelming and contrary to the contractual provisions as spelled out in the standard forms of contract. The three standard forms of contracts provide a clear criterion and procedure and as such, this question ought to have had a better mean score.

Demonstration of a genuine show of care and concern for the parties had a mean of 2.71. This can be explained by the fact that there is no express provision in the standard forms of contracts that require Contract Administrators to show care and concern for the parties. Besides, by nature, some Contract Administrators professionals may not demonstrate care and concern by their demeanor even if they care.

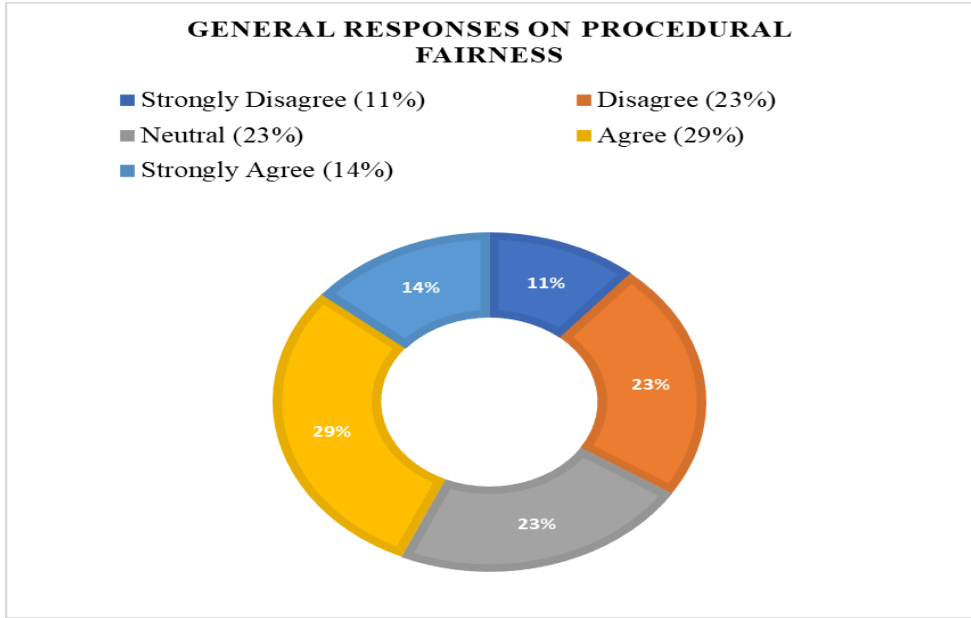
Allowing some form of internal appeal measures that can overturn/review a bad decision was ranked the second-lowest with a mean of 2.58 and a standard deviation of 1.13. This can be attributed to the fact that standard forms of contract do not expressly provide for an internal appeal mechanism through which Contractors can petition Contract Administrators to re-evaluate or review and earlier determination.

Contract administrators' commitment or strive to resolve a dispute without unnecessary delay and within the duration provided in the Contract was ranked the lowest with a mean of 2.18 and a standard deviation of 1.41. The standard deviation of 1.41 implies that there were respondents who even strongly disagreed with this question. This is contrary to expectations as set out in

the standard forms of contracts which sets out timelines within which a contractor's claim should be assessed and determined.

Overall, the average mean was 3.12 and the general responses on all questions was as follows:-

Figure 4.5: Frequency Distribution on Demonstration of Procedural Fairness



Source: Author's field study, 2019

From the figure above, 11% strongly disagreed, 23% disagreed, 23% were neutral, 29% agreed and 14% strongly disagreed with the questions under this section. A mean of 3.12 shows that on average, respondents were neutral on whether Contract Administrators observe procedural fairness during evaluation of Contractors' claims.

The findings are similar to Akulenska's (2013) study where it was found out that in the opinion of some contractors, Engineers (Contract Administrators under FIDIC Contract) were procedurally unfair since they make the final and the most important consultation with Employers alone before making their determination. This consultation comes when the Engineers are presenting their findings to the Employer for approval. This consultation does not give the contractor an opportunity for the right of reply or representation and as such the fairness of the process was found to be seriously compromised and far from the appearance of procedural fairness and justice.

The results also comparable to Danuri and others' (2007) study where 80.5% believed that they had experienced unfairness by the Superintendent (Contract Administrator) when performing his duties of assessing claims. Unlike on that study, in this study, 11% strongly disagreed and 34% disagreed cumulative adding up to 34 % (excluding 29% who were neutral). This difference can be attributed to the research instruments used where, in Danuri and others' (2007) study, the responses were limited to a 'yes' or 'no' responses on a single question whereas in this study, the respondents had 5 options and on 18 questions.

4.3 Contract Administrators' Demonstration of Impartiality during Evaluation of Contractors' Claims.

Results for Contract Administrators' manifestation of impartiality during assessment and evaluation of contractor's Claims were as follows in table 4.2 below.

Table 4.2: Mean Scores for Contract Administrators Manifestation of Impartiality during Evaluation of Contractors' Claims.

Statement	Mean	SD
<i>During evaluation of Contractors claims, Contract Administrators evaluating the claim do the following:-</i>		
Follow certain criteria as provided for in the contract to arrive at the justification of the claim	3.66	0.9
Avoid making premature pronouncements on contractors' claims before the Contractor has submitted all supporting details	3.61	1.1
Follow certain criteria as provided for in the contract to arrive at the quantum of compensation before making determinations on claims.	3.47	1.2
Allow inclusion of alternative views before making their determination.	3.08	1.0
Avoid expressing their personal views on the quantum of compensation without reference to the contractual provisions that guide quantification of claims.	3.08	1.2
Speak openly and truthfully about the contractual issues surrounding a claim.	3.00	1.2
Demonstrate accuracy in their findings and the eventual determination.	2.95	1.3
Act transparently by sharing findings and discoveries before making the final determination.	2.76	1.2
Avoid expressing their personal views on the justification or otherwise of the claim without reference to the contractual provisions that entitle such claims.	2.76	1.4
Address both parties with a balanced mind when giving preliminary updates on the claim.	2.61	1.3
Treat both the Contractor and the Employer equally by giving them the same time to present the claim and defend against the claim respectively.	2.55	1.3
Avoid promoting views that contractors exaggerate claims and that the actual amount is always less than the amount claimed.	2.53	1.4
Average Mean Score	3.01	

Source: Author's field study, 2019

Results showed that Contract Administrators' tendency to follow a criterion as provided for in the contract to arrive at the justification of the claim had a mean of 3.66 and a standard deviation of 0.88. This implies that on average, the responses were between neutral and in agreement with this statement. This score since is not satisfactory considering that it is contrary or below the expectations as set out in standard forms of contracts which provide the basis or ground upon which a claim can be justified even before a determination on the amount to be paid is made. The same interpretation can be made from the results obtained in respect to whether Contract Administrators follows certain criteria as provided for in the contract to arrive at the quantum of compensation which had a mean of 3.47 and a standard deviation of 1.2.

Avoiding making premature pronouncements on contractors' claims before the Contractor has submitted all supporting details had a mean of 3.61. Equally, avoiding expressing personal views on the quantum of compensation without reference to the contractual provisions had a mean of 3.61 and 3.08 respectively. In both of these questions, it implies that respondents were between neutral and in agreement with the statement. While the mean score rating is just above fair, the standard deviation of more than 1 shows that there were respondents who disagreed with the statement. This is contrary to tenets of the theory of impartiality and is the predominant source of dissatisfaction with third parties' determination on a dispute (Tyler, 1984). Similar to the above questions was whether Contract Administrators avoid promoting certain views like- contractors always exaggerate claims. This question scored the lowest mean of 2.53 and indication that Contractors sometimes face situations where their claims are dismissed offhand.

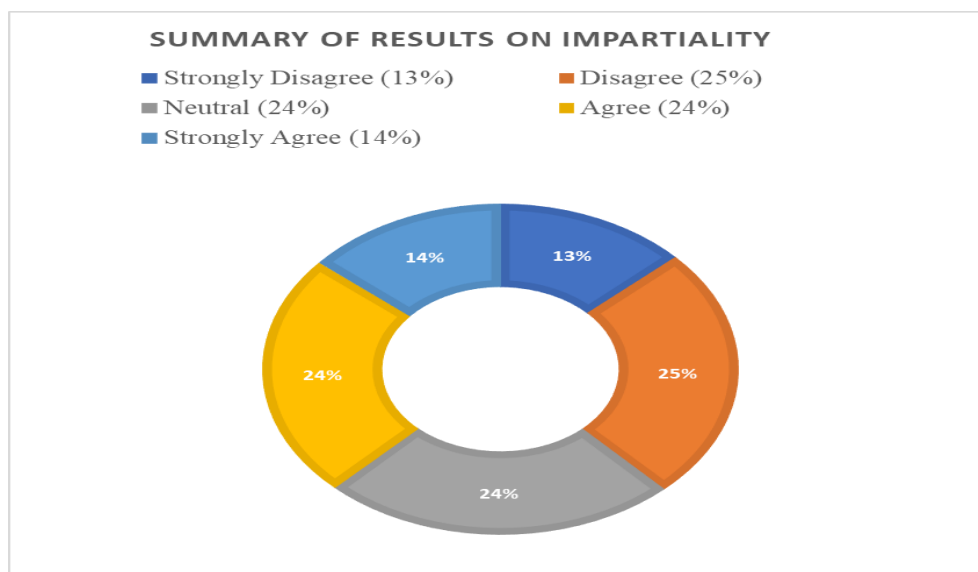
Allowing inclusion of alternative views and perspectives before making their determination scored a mean of 3.08 implying that respondents were tending towards neutral on this question. Speaking openly and truthfully about the contractual issues surrounding the claim had a mean of 3.00. This can be interpreted that averagely, respondents were neutral when asked whether Contract Administrators do openly and truthfully discuss the merits and demerits of a claim under consideration. This is a major issue especially to Employers who may not be technical but would want a layman's explanation on the contractual issues that are anchoring a submitted claim.

Results on Contract Administrators' demonstration of accuracy in their findings and the eventual determination had a mean score of 2.95 and a standard deviation of 1.25. This implies that on average, respondents were between disagreeing and neutral. The standard deviation of 1.25 shows that responses were varied to as low as 1 (strong disagreement) and as high as 3 (agreeing). Acting very transparently by sharing findings and discoveries before making final determination had a mean of 2.76. The low score can be attributed to the fact that the standard forms of contracts do not require the contract administrator to share finding and any discoveries before making the final determination.

Avoid expressing their personal views on the justification or otherwise of the claims outside contractual provisions on a claim had a mean of 2.76 and a standard deviation of 1.36. This implies that that substantial number of respondents feel like contract administrators express predisposition towards their claims without necessarily remaining within the contractual provisions that guide analysis of claims. Attempts to address both parties with a balanced mind when giving preliminary updates on the claims scored a mean of 2.61. This is against the expectations of impartial proceedings as provided for in the theory of impartiality.

In terms of absolute responses, generalized results is summarized as figure 4.6 below:-

Figure 4.6: Frequency Distribution on Demonstration of Impartiality.



Source: Author's field study, 2019

The average mean score of whether contract administrators' acts impartially when analyzing contractors' claims is 3.01 implying that on average, respondents were neutral. However, the generalized results in terms of percentages showed that 13% strongly agreed, 25% disagreed, 24% were neutral, 24% agreed and 14% strongly agreed with the 12 questions under this section. This is comparable to the findings by Akulenska's (2013) study on users' perception on the impartiality of the Engineer under FIDIC 1999 contract where 80% of contractors felt that the Engineer is never impartial whereas 20% felt that the Engineer was impartial but the employer had a final say.

4.4 Contract Administrators' Demonstration of Trustworthiness during Evaluation of Contractors' Claims.

Results for Contract Administrators' manifestation of trustworthiness during assessment and evaluation of contractor's claims were as follows in table 4.3 below.

Table 4.3: Mean Scores for Contract Administrators Demonstration of Trustworthiness during Evaluation of Contractors' Claims.

Statement of question	Mean	SD
<i>At the time of evaluation of claims, Contract Administrators exhibit the following when evaluating a claim:-</i>		
Have high mastery of the provisions of the contract.	3.29	1.45
Possession of high level of analytical skills to evaluate the claim.	3.16	1.15
Demonstrate logic in his arguments in support of his finding and determinations.	3.08	1.17
Demonstrate high level of preparedness to evaluate a claim.	3.00	1.23
Possession of enough personnel available to analyze the entire claim document and its backup information.	2.97	1.4
Seek and accept the counsel of the parties.	2.95	1.18
Recognize the legitimacy of each party's interests.	2.92	1.05
Communicate accurately, openly and transparently.	2.92	1.15
Show concerns for the welfare of both parties.	2.89	1.16
Demonstrate consistent acts of integrity, and proven commitment to standards of fairness.	2.82	1.23
Openly and truthfully clarify general expectations early on and during the evaluation of the claim.	2.76	1.02
Possession of necessary means especially technological software and tools e.g. Microsoft Project for Critical Path analysis for proper evaluation of the claim at hand.	2.76	1.57
Give consistent and predictable updates and preliminary findings on a claim.	2.66	1.15
Average Mean Score	2.94	

Source: Author's field study, 2019

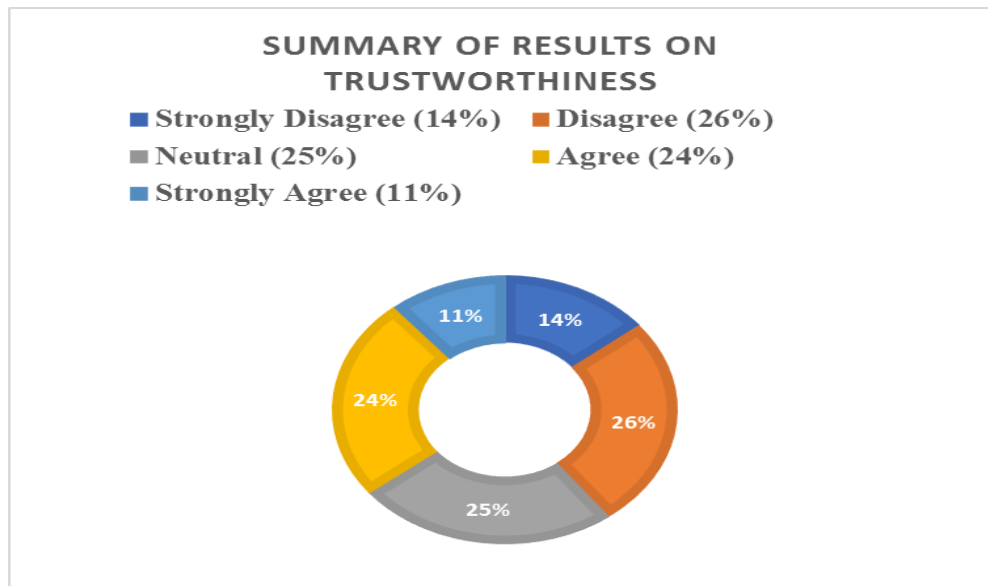
Possession of high mastery of the provisions of the contract had the highest mean score of 3.29. The score is somewhat satisfactory but with a standard deviation of 1.45, it implies that there were respondents who disagreed with this question. Generally, to command trust, the expectation is that Contract Administrators should have been rated higher on this question. The same observations and interpretation can be made from the results on contract administrators' ability to demonstrate logic in their arguments in support of their finding and determination and possession of a high level of analytical skills to evaluate the claim which had a mean of 3.08 and 3.16 respectively.

In terms of whether Contract Administrators appear prepared for the analysis of claims, demonstration of a high level of preparedness to carry out the analysis of a claim especially by having all good and relevant records had a mean of 3 implying that majority of responses were neutral about this question. When specifically asked whether Contract Administrators have all the records and do not start asking for records and letters from other parties to enable them to carry out the valuation of the claim at hand, the mean dropped to 2.53. This implies that Contract Administrators are to some large extent not in possession of all facts, records of materials and correspondences that are to be used in analyzing contractors' claims. Without preparedness and possession of records, this situation is likely to create distrust in the mind of Contractors and thereby casting doubt on the reliability and truthfulness of their determination.

Possession of necessary means especially technological software and tools e.g. Microsoft Project for Critical Path analysis for proper evaluation of contractors' claims had a mean of 2.76. This shows that the majority of responses were between disagreeing and neutral on the question. Equally possession of enough personnel available to analyze the entire claim document and its backup information had a mean of 2.97. Both of these scores are not very impressive considering that some analysis on time-related claims are better analyzed through the aid of technological software tools and that claim analysis requires enough personnel to go through supporting documents.

Overall, the average mean score was 2.94 implying that respondents were between disagreeing and neutral on whether that Contract Administrators show trustworthy behaviors during the analysis of claims. The general responses on all questions were as follows in figure 4.7 below:-

Figure 4.7: Frequency Distribution on Demonstration of Trustworthiness



Source: Author's field study, 2019

From the figure above, 14% strongly disagreed, 26% disagreed, 25% were neutral, 24% agreed and 11% disagreed with the 13 questions that were probing manifestation of trustworthiness of Contract Administrators when evaluating Contract Administrators. Compared with impartiality, procedural fairness, Contract Administration have scored the lowest average mean score of 2.94 in manifestation of trust has scored. Even in percentages, cumulatively, 40% of responses disagreed and strongly disagreed with the questions that were probing trustworthiness.

4.7 Comparison of Outcomes of Arbitration or Adjudication and those of Contract Administrators.

The study sought to find out if there are differences between Contract Administrators' determination and those made by arbitration. 27(38%) of the respondents agreed that they have been involved in a project where a contractor's claim has been escalated into arbitration or adjudication even after the analysis/evaluation and an attempt by contract administrators to solve that claim. Considering the fact that most of the respondents (42%) agreed that they encounter claims frequently, 38% can be interpreted to mean that the majority of claims are resolved at the contract administration level. This is satisfactory performance on Contract Administrators' ability to prevent escalation of claims into arbitration.

In total, there were 71 contractor's claims that were reported to have been escalated to arbitration after unsuccessful attempts to resolve them at the contract administration level. Out of 71 claims, in 52 (73%) of the claims escalated to arbitration, the findings in arbitration were significantly different and favorable compared to the findings made by the Contract Administrators.

In 55(77%) of claims, the amount awarded by arbitration were significantly different and higher from the amount of compensation determined by the Contract Administrator. In 26(37%) of the claims, the findings by the Contract Administrator were reported to be similar to those of arbitration but the amount of compensation was significantly higher from the amount of compensation determined by the Contract Administrator.

The above findings are in congruency with Akulenska's (2013) findings where in some cases, the contractors who had won arbitration reported that the findings from arbitration experts were different and the quantum of compensation was significantly higher than what the Engineer had determined before arbitration.

CHAPTER FIVE – SUMMARY OF RESULTS, CONCLUSION AND RECOMMENDATIONS

5.1 Generally

This study sought to investigate the contribution of Contract Administrators towards prevention of escalation of Contractors' claims into disputes. Towards this end, the study investigated whether Contract Administrators handle Contractors' claims in a manner that can be said to be procedurally fair, impartial and capable of inspiring trust in their ability, competence, and integrity. Besides, the study sought to make a comparison between the findings and determinations made by Contract Administrators on contractors' claims and those made by arbitration or adjudication process. The responses were based on the objectives of the study. This chapter therefore presents the summary, conclusion, recommendations based on the findings of the study and the suggestion for further studies.

5.2 Summary of results

5.2.1 Contract Administrators' Demonstration of Procedural Fairness.

Concerning whether contract administrators demonstrate genuine show of care and concern for the parties had a mean of 2.71. Majority of respondents disagreed that contract administrators strive to resolve claims without unnecessary delay and within the duration provided in the contract. Contract Administrators' effort to resolve claims without unnecessary delay and within the duration provided in the Contract had the lowest mean score of 2.18. Allowing some form of internal appeal procedures that can correct a bad decision had a mean score of 2.58. Contract Administrators tendency to gather and assess necessary documentation needed to make appropriate decisions before actually deciding on a claim was ranked fourth with a mean of 3.50.

On average, majority of respondents were neutral and in agreement that Contract Administrators make reasonable inquiries or investigations before determination. On average, respondents were between neutral and in agreement in regard to the question on whether Contract Administrators give both contractors and employers sufficient opportunity to present their views on the claim. The same findings were obtained from the responses on whether

Contract Administrators attempt to take into account the view of all parties before making a determination.

Demonstrating a high level of knowledge, skill, and competency in analyzing the claim was ranked ninth with a mean of 3.16. Giving of explanation to the parties of the criteria to be used in making a decision and information on which any such decision would be based on had a mean score of 3.08 Avoiding not to close out any submission or opinion especially those that appear to cast doubt on the impending determination has a mean score of 2.97. Demonstration of predictable consistency in applying principles and criteria had a mean of 2.76.

Generally, the combined average mean score on whether Contractors deem Contract Administrators as impartial had a mean score of 3.12. This implies that, averagely, responses were between neutral and in disagreement.

Contract Administrators need to improve the following areas so as to enhance procedural fairness and to be more effective in prevention of escalation of contractors' claims into disputes. The critical areas of weakness in the descending order of severity starts from striving to resolve submitted claims without unnecessary delay and within the duration provided in the Contract. Allowing some form of internal appeal procedures that can correct a bad decision. Demonstrating of genuine show of care and concern for the parties. Acting consistently when applying rules/criteria and procedures used in the determination of the claim at all times during the analysis and evaluation process. Giving parties an opportunity to make oral representations. Following openly (transparently) the contractual procedure used in assessing and determination of the claim.

5.2.2 Contract Administrators' Demonstration of Impartiality.

Contract Administrators' tendency to follow certain criteria as provided for in the contract to arrive at the justification of the claim had a mean of 3.66 and a standard deviation of 0.88. This implies that the majority of responses were falling between neutral and agreeing with this statement. The same interpretation can be made from the results obtained in respect to whether Contract Administrators following certain criteria as provided for in the contract to arrive at the quantum of compensation which had a mean of 3.47. Desisting from making premature

pronouncements on contractors' claims before Contractors have submitted all supporting details had a mean of 3.61 whereas restraining from expressing personal views on the quantum of compensation without reference to the contractual provisions had a mean of 3.08 respectively.

On whether Contract Administrators avoid promoting views that contractors always exaggerate claims, the results had a mean of the lowest mean of 2.53. Allowing the inclusion of alternative views and perspectives before making their determination scored a mean of 3.08. Speaking openly and truthfully about the contractual issues surrounding the claim had a mean of 3.00. Results on Contract Administrators' demonstration of accuracy in their findings and the eventual determination had a mean score of 2.95 whereas acting very transparently by sharing findings and discoveries before making final determination had a mean of 2.76.

Avoid expressing their personal views on the justification or otherwise of the claims outside contractual provisions on a claim had a mean of 2.76 whereas attempts to address both parties with a balanced mind when giving preliminary updates on the claim achieved a mean of 2.61.

Generally, the average mean score of whether contract administrators' acts impartially when analyzing contractors' claims is 3.01 implying that average responses were neutral on this statement.

Contract Administrators need to improve the following aspects of impartiality so as to be more effective in prevention of escalation of contractors' claims into disputes. The critical areas of weakness in the descending order of severity starts from avoiding promotion of views that contractors exaggerate claims and that the actual amount is always less than the amount claimed. Treating both the Contractor and the Employer equally by giving them the same time to present the claim and defend against the claim respectively. Addressing both parties with a balanced mind when giving preliminary updates on the claim. Avoiding expressing of personal views on the justification or otherwise of the claim without reference to the contractual provisions that entitle such claims. Acting transparently by sharing findings and discoveries before making the final determination. Demonstrate accuracy in findings and the eventual determination.

5.2.3 Contract Administrators' Demonstration of Trustworthiness.

Contract Administrators possession of high mastery of knowledge of the provision of the contract had the highest mean score of 3.29 whereas their ability to demonstrate a lot of logic in their arguments in support of their finding and determination had a mean of 3.08. Possession of a high level of analytical skills to evaluate the claim had a mean of 3.16 respectively. In terms of whether Contract Administrators appear prepared for the analysis of claims especially by having all good and relevant records, the results posted a mean of 3 implying that on average responses were neutral about this question.

When specifically asked whether Contract Administrators have all the records and do not start asking for records and letters from other parties to enable them to carry out the valuation of the claim at hand, the mean dropped to 2.53. Possession of necessary means especially technological software and tools e.g. Microsoft Project for Critical Path analysis for proper evaluation of contractors' claims had a mean of 2.76. Equally possession of enough personnel available to analyze the entire claim document and its backup information had a mean of 2.97.

Overall, the average mean score was 2.9 implying that respondents were between in disagreement and neutral on whether that Contract administrators show trustworthy behaviors during the analysis of claims.

Contract Administrators need to improve the following aspects of trustworthiness so as to be more effective in prevention of escalation of contractors' claims into disputes. The critical areas of weakness in the descending order of severity starts with failure to give consistent and predictable updates and preliminary findings on a claim. Failure to be in possession of necessary means especially technological software and tools e.g. Microsoft Project for Critical Path analysis for proper evaluation of the claim at hand. Failure to openly and truthfully clarify general expectations early on and during the evaluation of the claim. Failure to demonstrate consistent acts of integrity, and proven commitment to standards of fairness.

5.2.4 Comparisons of Outcomes of Arbitration or Adjudication and those of Contract Administrators.

7(38%) of the respondents agreed that they have been involved in a project where a contractor's claim has been escalated into arbitration or adjudication even after the analysis/evaluation and an attempt by contract administrators to solve that claim. In total, there were 71 contractor's claims that were reported to have been escalated to arbitration after unsuccessful attempts to resolve them at the contract administration level. Out of 71 claims, findings in arbitration or adjudication were significantly different and favorable compared to the findings made by the Contract Administrators in 52 (73%) of them.

In 55(77%) of claims, the amount awarded by arbitration were significantly different and higher from the amount of compensation determined by the Contract Administrator. In 26(37%) of the claims, the findings by the Contract Administrator were reported to be similar to those of arbitration but the amount of compensation was significantly higher from the amount of compensation determined by the Contract Administrator.

5.3 Conclusion.

How Contract Administrators conduct assessment and evaluation of contractors' claims is not convincingly procedurally fair. While the results varied among respondents, the fact that the average mean score on the questions under this category was pointing towards neutrality is an indication that claimants feels that Contract Administrators do not satisfactorily observe or practice procedural fairness during evaluation of claims. This perceived lack of procedural fairness creates room for doubt that Contract Administrators' determinations are fair, just, satisfactory and sufficient to discourage claimants from escalating into arbitration or adjudication. This works against Contractor Administrators' efforts towards prevention of escalation of contractors' claims into disputes.

Regarding impartiality, the average mean score from the findings was neutral meaning that Contractors neither agree nor disagree with the proposition that Contract Administrators acts impartially when analyzing Contractors' claims. In a situation like this, if a claim is rejected, Contractors are more likely to opt to proceed to seek justice elsewhere and therefore escalating

the claim into a dispute. This ultimately reduces Contract Administrators' effectiveness towards prevention of escalation of Contractor's claims into disputes.

The third objective of the study was to establish whether Contract Administrators acts in a manner that inspires trustworthiness when assessing and analyzing Contractors' claims. Based on the average mean score, the respondents were neutral on this question. This implies that in some instances, Contract Administrators acts in a manner that creates distrust in the mind of claimants. Distrust erodes contractors' confidence on Contract Administrators' ability, competence and benevolence when evaluating contractors' claims. This consequently promotes escalation of claims into disputes.

The outcomes of arbitrated or adjudicated claims when compared with earlier determination by Contract Administrators, a greater majority (73%) of the findings in arbitration or adjudication were significantly different and favorable compared to the findings made by the Contract Administrators. Equally, in 77% of claims, the amount awarded by arbitration were significantly different and higher from the amount of compensation determined by the Contract Administrator.

In 37% of the claims, the findings by the Contract Administrator were reported to be similar to those of arbitration but the amount of compensation was significantly higher from the amount of compensation determined by the Contract Administrator. These results can lead to a conclusion that Contractors are more likely to get a favorable outcome in arbitration as compared to Contract Administrators' determination. This can be a motivating factor thereby contributing to the declaration of disputes and subsequent escalation of resolution of contractors' disputed claims in arbitration.

In a nutshell, the performance of Contract Administrators towards prevention of escalation of Contractors' claim is not satisfactory. They therefore need to improve how they handle contractors' claims by acting in a manner that enhance appearance and perception of procedural fairness, impartiality, trust and accuracy of determinations as to be more effective in prevention of escalation of claims into disputes.

5.4 Recommendations for Policy and Practice.

To enable prevention of escalation of disputes, Contract Administrators should strive to make the claim evaluation process fair, impartial, trustworthy and ultimately a process that yield accurate determinations. Regarding the question on observance of procedural fairness, Contract Administrators should strive to analyze contractors' claim as soon as practically possible and within the contractually provided period. To mitigate against this, Contract Administrator should increase their human and technical capacity before when commissioned to administer a construction contract. Contract Administrators should avoid situations where they are overstretched with workload but understaffed.

While the existing contractual framework as provided for in the standard forms of contract provides clear claim evaluation procedures that to a large extent enhance procedural fairness and impartiality, there is room for improvement. Therefore, there should be a review of standard forms of contracts to incorporate processes in evaluation of claims that promotes procedural fairness and impartiality. For instance, in JBC (1999) contract, instead of the provision of "as soon as possible", future revision should give a specific date within which an Architect should give an opinion on whether the contractor has suffered loss and expenses. In FIDIC(1999), JBC (1999) and PPRA (2007) contracts, future revision should consider incorporating a provision that allow some form of internal appeal procedures that can correct a bad decision, giving of parties an opportunity to make oral representations

Nowadays, contractors, especially large contractors have technical departments on claims and contracts. Therefore, Contract Administrators should attempt to involve contractors' technical departments as opposed to making a unilateral decision based on their opinion just because the standard forms of contracts do not necessarily require consultations with the contractors' technical department.

Contractor Administrators should continually be trained on quasi-judicial skills to enable them to not only be, but also appear to be impartial, procedurally fair and trustworthy. This training can be achieved through continuous professional development training during seminars organized by relevant professional registration bodies. Equally, universities and training

colleges should adjust their syllabus to accommodate enough training on conflicts and claims management skills.

5.5 Recommendation for Areas of Further Research.

The study would recommend further study on what could be the exact reasons as to why in majority of arbitrated or adjudicated claims, the findings and awarded amount in arbitration are significantly different and favorable to the contractor when compared to the determination made by Contract Administrators.

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APPENDICES

Appendix A: Letter of Introduction to Respondents.

Kausi Obutu Ronald

Department of Real Estate & Construction Management.

College of Architecture and Engineering,

University of Nairobi,

P. O. Box 30197,

NAIROBI.

Dear Respondent,

REF: REQUEST FOR FILLING OF RESEARCH QUESTIONNAIRE.

I am a student in the College of Architecture and Engineering, of University of Nairobi. In partial fulfillment of the requirements of the Master of Arts in Construction Management. I am conducting a research study entitled “**The contribution of Contract Administrators towards prevention of escalation of contractors’ claims into disputes**”

You have been approached to be one of the respondents to this study. I therefore humbly appeal for your assistance in responding to this questionnaire.

The data collected shall be used for scholarly works only and shall be handled in strict confidence.

You are highly appreciated in advance.

Yours,

Kausi Obutu Ronald

Appendix B: Questionnaire

Section A: General Information

Please state the appropriate response that describes your background information.

1. What is your position in your Company?
 Director () Project Manager () Resident Engineer () Quantity Surveyor ()
 Other (Specify).....
2. Have you encountered claims in any construction project you have been involved in?
 Very frequently () Frequently () Occasionally () Never ()
3. How long have you worked in the construction Industry?
 0-5 Years () 5-10years () Over 10 Years.

Section B: Contract administrators’ adherence to procedural fairness during evaluation of Contractors’ claims.

In a scale of 1 – 5 please indicate the level to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

4. During evaluation of contractors’ claims, Contract Administrators evaluating the claim do the following:-	1	2	3	4	5
Give both Contractor and Employer sufficient opportunity to present their views on the claim.					
Gather and assess the information, correspondences and necessary documentation needed to make appropriate decisions before making decisions.					
Follow openly (transparently) the contractual procedure used in assessing and determination of the claim					
Act consistently when applying rules/criteria and procedures used in the determination of the claim at all times during the analysis and evaluation process.					
Make deliberate efforts to listen and consider the opinion of the parties					
Demonstrate deliberate attempts to take into account the view of all parties before making determinations.					

Treat both parties with respect for their human dignity and respect to their right of presenting their case and have their views taken seriously.					
Tell parties the summary of issues raised in the claim which are under consideration.					
Give an explanation to the parties of the criteria to be used in making a decision and information on which any such decision would be based on					
Give parties an opportunity to make oral representations.					
Make reasonable inquiries or investigations before making a decision.					
Do not close out any submissions or opinions especially those that appear to cast doubt on the impending determination					
Demonstrate deliberate attempts to take into account the view of all parties before making determinations.					
Allow some form of internal appeal procedures that can correct a bad decision					
Demonstrate a high level of ability in terms of knowledge, skill, or competency in analyzing the claim.					
Demonstrate genuine show of care and concern for the parties.					
Demonstrate predictable consistency in applying principles and criteria of arriving at a decision.					
Give feedback regardless of whether it is positive or negative.					

Section C: Contract Administrators’ manifestation of impartiality during evaluation of claims.

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.** Please tick (√) or (X) which best describes your opinion of the statement.

5. When presented with contractors' claims, Contract Administrators do the following:-	1	2	3	4	5
Avoid making premature pronouncements on contractors' claims before the Contractor has submitted all supporting details.					
Avoid expressing their personal views on the justification or otherwise of the claim without reference to the contractual provisions that entitle such claims.					
Avoid expressing their personal views on the quantum of compensation without reference to the contractual provisions that guide quantification of claims.					
Avoid promoting views that contractors exaggerate claims and that the actual amount is always less than the amount claimed.					
Allow inclusion of alternative views before making their determination.					
Follow certain criteria as provided for in the contract to arrive at the justification of the claim					
Follow certain criteria as provided for in the contract to arrive at the quantum of compensation before making determinations on claims.					
Treat both the Contractor and the Employer equally by giving them the same time to present the claim and defend against the claim respectively.					
Act transparently by sharing findings and discoveries before making the final determination.					
Address both parties with a balanced mind when giving preliminary updates on the claim.					
Speak openly and truthfully about the contractual issues surrounding a claim.					
Demonstrate accuracy in their findings and the eventual determination.					

Section D: Contract administrators' manifestation of trustworthiness during evaluation of claims.

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.** Please tick (√) which best describes your opinion of the statement.

6. At the time of evaluation of claims, Contract Administrators exhibit the following when evaluating a claim:-	1	2	3	4	5
Possession of necessary means especially technological software and tools e.g. Microsoft Project for Critical Path analysis for proper evaluation of the claim at hand.					
Possession of enough personnel available to analyze the entire claim document and its backup information.					
Possession of high level of analytical skills to evaluate the claim.					
Demonstrate high level of preparedness to evaluate a claim.					
Have high mastery of the provisions of the contract.					
Demonstrate logic in his arguments in support of his finding and determinations.					
Demonstrate consistent acts of integrity, and proven commitment to standards of fairness.					
Show concerns for the welfare of both parties.					
Communicate accurately, openly and transparently.					
Give consistent and predictable updates and preliminary findings on a claim.					
Openly and truthfully clarify general expectations early on and during the evaluation of the claim.					
Seek and accept the counsel of the parties.					
Recognize the legitimacy of each party's interests.					

Section E: Comparisons between Contract Administrators' determination on a particular claim and the arbitration award on the same claims.

Please answer this section with real numbers.

7. Questions on comparisons between Contract Administrators' determination and those of arbitration on claims.	Response
a) How many times have you been involved in a project where a contractor's claim has been escalated into arbitration or adjudication	

<p>even after the analysis/evaluation and an attempt by contract administrators to solve that claim?</p>	
<p>b) Out of the number of claims given in (a) above, how many times have the findings in arbitration or adjudication been significantly different and favorable compared to the findings made by the Contract Administrators?</p>	
<p>c) Out of the number of claims given in (a) above, how many times the amount of compensation awarded by arbitration has been significantly higher than the amount of compensation determined by the Contract Administrator?</p>	
<p>d) Out of the number of claims given in (a) above, how many times have the findings by the Contract Administrator been similar to those of arbitration but the amount of compensation been significantly higher from the amount of compensation determined by the Contract Administrator?</p>	