RESOLVING FRUSTRATIONS IN ENGINEERING & INFRASTRUCTURE CONTRACTS- A REVIEW OF THE PUBLIC PROCUREMENT ACT AND THE CURRENT FIDIC FORM OF CONTRACT

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Introduction

In a rapidly developing economy like Nigeria, the role of a Professional Quantity Surveyor (PQS) is increasingly pivotal. Historically seen as the professional responsible for measuring and estimating construction costs, the PQS today is more of a procurement advisor, a contract administrator, a risk manager, and a disputes consultant among others.

The construction environment has become more dynamic, more complex, and more litigious. It is no longer enough for the PQS to master traditional measurement. Today's PQS must also understand contract administration using globally accepted forms of contract and modern techniques in dispute avoidance, management and resolution.

Building this expanded capacity is essential not only for professional growth but also for the mitigation and speedy development of Nigeria's infrastructure.

What are Frustrations in engineering and Infrastructure Contracts?

Frustration can be defined as the feeling of being upset or annoyed as a result of being unable to change or achieve something. It can also be defined as the prevention of the progress, success, or fulfillment of something. In the context of construction, Frustration refers to a legal situation where **an unexpected and uncontrollable event occurs** after a contract has been signed, making the execution of the contract Impossible, or fundamentally different from what was originally agreed, with or without any fault of either party involved.

Some of the **most common types of frustration** that occur in Nigeria's construction environment are;

1. Government Expropriation or Policy Shifts

- Sudden government acquisition of land or revocation of building approvals.
- Projects halted due to change in political leadership or administrative priorities.
- Unexpected re-zoning or land-use policy changes.

2. Security Issues

- Construction sites abandoned due to **insecurity**, terrorism (e.g., in parts of the North-East), or violent conflicts (e.g., communal land disputes).
- **Kidnapping threats** or attacks on contractors and workers leading to indefinite suspension of works.

3. Severe Economic Instability

- **Hyperinflation** or currency devaluation making project costs unaffordable.
- Foreign exchange scarcity affecting procurement of imported / offshore materials and equipment.
- Government funding collapses due to oil price shocks or budget shortfalls.

4. Legal and Regulatory Interference

- Suspension of projects due to **court injunctions**, land ownership disputes, or environmental compliance issues.
- Introduction of new laws mid-project (e.g., taxes, building code revisions) that alter project feasibility.

5. Pandemics and Health Crises

- COVID-19 lockdowns led to **site closures**, **supply chain disruptions**, and **restricted movement**, frustrating many contracts.
- Future health emergencies could similarly halt operations across multiple regions.

6. Prolonged Strikes or Industrial Actions

• National or sector-wide strikes (e.g., by NLC or construction unions) that completely halt site work for extended periods.

7. Natural Disasters

- Flooding during rainy seasons (especially in the South-South and South-East) damaging sites or making access impossible.
- Erosion and gully collapse threatening entire construction zones (e.g., in parts of Anambra and Imo).

8. Loss of Project Purpose

• Projects (e.g., rural roads, schools, housing schemes) become irrelevant due to **mass relocation**, conflict-induced migration, or economic collapse in the target area.

9. International Sanctions or Import Restrictions

• Sanctions or government trade restrictions making it impossible to procure specific critical materials or equipment.

To understand how best to deal with these frustrations, it is important to understand the popular forms of contract used in most parts of the world and the Nigerian Construction industry.

For the basis of this presentation, only FIDIC Red Book Form of Contract (Fédération Internationale des Ingénieurs-Conseils) and Nigerian Public Procurement Act (PPA) 2007 Standard Bidding Documents (SBD) for Works shall be discussed.

FIDIC Form of Contract

The **Fédération Internationale des Ingénieurs-Conseils (FIDIC)**, known as the **International Federation of Consulting Engineers**, was founded in 1913 and has grown to become a cornerstone in global construction and engineering contract management. Over the decades, FIDIC has developed internationally recognized standard forms of contract to guide the relationships between employers, contractors, and consultants.

The FIDIC form of contract is highly valued for promoting fairness, clear allocation of risks, and standardization of procedures across different legal jurisdictions. Its adoption spans across more than 100 countries and is endorsed by major international development agencies such as the World Bank, African Development Bank, and Asian Development Bank. Governments, multinational corporations, and private developers frequently use FIDIC contracts for infrastructure, industrial, and engineering projects.

FIDIC contracts are designed to be flexible, comprehensive, and adaptable to the specific needs of complex projects. They provide structured guidance on issues such as payment, variations, extensions of time, claims, and dispute resolution. In Nigeria, especially for large government and donor-funded projects, FIDIC contracts—particularly the Red Book—have become a standard choice due to their clarity and robustness.

The collection of standard contract books published by FIDIC, each identified by a different color, representing different types of project delivery methods and risk allocations is referred to as a **"RAINBOW SUITE"**

The **Red, Yellow, and Silver Books** form the **core of the suite**, and are the most widely used globally. For the benefit of this presentation, the Red Book shall be considered.

The Red Book is intended for building or civil engineering works where the design is largely carried out by the Employer. It is typically used in traditional procurement settings where the contractor executes work based on detailed designs provided at tender stage. It suits projects like roadworks, water infrastructure, and public buildings.

So far, there are Four (4) editions of the FIDIC Red book;

The 1957 Edition: Foundations Built on Trust

- The first Red Book edition mirrored the UK's Institution of Civil Engineers contract.
- It gave the Engineer substantial authority overseeing construction, certifying payments, and making decisions on disputes.
- Trust was central, and formal mechanisms for challenge were minimal.

The 1987 Edition: Introducing Structured Dispute Procedures

Responding to increasing disputes, the 1987 Red Book introduced:

- Defined claims procedures for additional costs and time extensions.
- Structured arbitration processes following Engineer determinations.
- Emphasis on more equitable risk sharing.

While improvements were made, the Engineer still wielded significant influence.

The 1999 Edition: Toward Balance and Neutrality

The 1999 Red Book reflected a modernized understanding:

- **Dispute Adjudication Boards (DABs)** were introduced for interim decisions before arbitration.
- Strict notification procedures for claims were imposed (42-day rule).
- The Engineer's role was modified to balance Employer and Contractor interests better.

This edition remains widely used today in Nigeria's infrastructure projects.

The 2017 Edition: Proactive Risk and Dispute Management

The latest Red Book emphasizes:

• Standing Dispute Avoidance/Adjudication Boards (DAABs) monitoring projects from inception.

- **Early Warning Notices** (Clause 8.4) to address risks before they escalate.
- **Precise procedural discipline** on variations, payments, claims, and dispute referrals.
- Clearer definitions and consistency across contract terms.

For Nigerian Professional Quantity Surveyors, mastery of the FIDIC Red Book — particularly the latest edition — is essential to effectively manage contracts, mitigate risks, and prevent disputes on major projects which helps to resolve frustration in construction projects.

The Public Procurement Act (PPA) 2007: Establishing a Transparent Framework

While international contracts like FIDIC are crucial, a deep understanding of **Nigeria's local procurement laws** is equally vital. The **Public Procurement Act (PPA) 2007** was enacted to reform Nigeria's chaotic public procurement landscape, emphasizing:

- **Transparency:** Ensuring public funds are spent fairly and efficiently.
- **Competition:** Preventing favoritism and monopolies.
- Accountability: Holding procurement entities responsible for decisions.
- Value-for-Money: Balancing cost, quality, and timeliness in public projects.

Under the Act, the **Bureau of Public Procurement (BPP)** oversees compliance, ensuring that contracts are awarded through open competitive bidding based on predefined, objective criteria.

The PPA recognizes that a sound procurement system must be underpinned by standardized documents — hence, the development of the **Standard Bidding Documents (SBDs)**.

Understanding the Standard Bidding Documents (SBDs)

The SBDs are structured templates that public procurement entities or MDAs must use to ensure consistency, transparency, and fairness. Each component serves a specific purpose:

- Instructions to Bidders (ITB)
- Bid Data Sheet (BDS)
- Evaluation and Qualification Criteria
- Conditions of Contract (GCC and PCC)
 - The **General Conditions of Contract (GCC)** sets out standard rights, duties, and procedures.

- The **Particular Conditions of Contract (PCC)** allow for project-specific modifications.
- Specifications and Drawings
- Bill of Quantities (BOQ)
- Contract Forms and Performance Securities

Comparison Between Fidic Red Book And PPA Standard Bidding Documents in dealing with frustrations in Engineering & Infrastructure projects.

Source of	FIDIC Red Book 2017 Clause	PPA SBD for Works Clause
Frustration		
Government	Clause 19 (Exceptional Events).	General Conditions (Force
Expropriation or	FIDIC treats this as an	Majeure).
Policy Shifts /	Exceptional Event, allowing for	PPA SBD allows for suspension or
Political Contract	time/cost claims or	termination but lacks detailed
Abandonment	termination;	entitlement procedures.
	Clause 15.5 (Termination by	GCC Clause 37 (Termination for
	Employer), Clause 16.2	Convenience)
	(Termination by Contractor)	PPA allows Employer to terminate
	FIDIC protects both parties with	but provides limited Contractor
	rights to terminate;	protection.
Delay in Payments	Clause 14.7, 16.1, 16.2	Clause 43.1, 45.1, 58.1
	Provides suspension and	Provides suspension and
	termination remedies, also	termination remedies
	gives more defined timelines	
	and structured responses.	
Contractors /	Clause 4.4, 8.6, 15.1, 15.2	Clause 36.1, 38.1, 39.1, 59.1(a-c)
Subcontractors	uses a structured Notice to	offers more direct powers to the
Delay or	Correct approach before	Engineer and Employer to
incompetence	moving to termination.	suspend or terminate works
		based on performance
		assessment
Security Issues	Clause 8.4 (Early Warning),	GCC Clause 35 (Delays in
	Clause 19.	Performance), Force Majeure.
	FIDIC allows for notice, time	PPA permits extensions or
	extension, and DAAB	contract suspension with
	involvement;	approval.
Economic	Clause 13.7 (Adjustments for	GCC Clause 39 (Price
Instability	Changes in Cost).	Adjustment)
	FIDIC provides structured	PPA SBD allows price variation
	revaluation mechanisms;	only under specific thresholds
		and timelines.
Legal and	Clause 13.6 (Adjustments for	GCC Clause 41 (Applicable Law)
Regulatory	Changes in Laws).	and Force Majeure.
Interference	FIDIC permits cost/time claims	
	for legal changes;	

		PPA does not clearly define rights
		to compensation but allows
		suspension.
Pandemics/Health	Clause 19 (Exceptional Events).	Force Majeure Clause.
Crises	FIDIC treats pandemics as	Treats pandemics as Force
	Force Majeure. It also includes	Majeure.
	structured notices and	
	timelines for DAAB or	
	termination.	
Prolonged	Clause 8.5 (Delays Caused by	GCC Clause 35.
Strikes/Industrial	Authorities), Clause 19.	PPA allows delay justification but
Actions	FIDIC allows for extensions and	lacks cost recovery framework.
	possible cost claims;	
Natural Disasters	Clause 19 (Exceptional Events)	Force Majeure
	Permits suspension and	Permits suspension and
	extensions; outlines step-by-	extensions; leaves Employer to
	step recovery,	interpret remedies.
Loss of Project	Clause 18.6 (Optional	Not explicitly covered
Purpose	Termination)	PPA SBD does not account for
	Allows for optional termination	project futility or redundancy.
	with cost reimbursement;	
International	Clause 19.1 (Exceptional	Force Majeure
Sanctions/Trade	Events).	Recognizes delay but lacks cost
Restrictions	Allows time and cost relief;	recovery clauses unless
		negotiated.

Additional circumstances that can lead to Frustrations in Engineering & Infrastructure projects

Frustration Scenario	FIDIC Red Book (2017)	PPA SBD for Works (2023)
Unforeseen Site	Clause 4.12 –	Clause 40.1 – Site
Conditions	Unforeseeable Physical	Conditions
	Conditions	Contractor may notify
	Contractor may claim	Engineer if unforeseen
	additional cost/time for	
	additional cost/time for	conditions arise, possible
	foregoable	costrume adjustment.
	Toreseeable.	
Force Majeure /	Clause 18.1 – Exceptional	Clause 69.1 – Force
Exceptional Events	Events	Majeure
	Covers war pandemics	Similar scope: allows
	natural disasters, etc.; may	contract extension or
	excuse delays or non-	termination due to events
	performance.	beyond control.
	P	
Delay in Possession of	Clause 2.1 – Right of Access	Clause 28.1 – Possession of
Site	to Site	Site
	Employer must provide timely	Employer must give access
	site access; delay entitles	on time; contractor can
	contractor to time/cost claim.	claim for delay.
Erroro in Employor'o	Clause 1.9 Errore in	Clauss 11.1 Employer's
	Employor's Poquiromonts	Drawings and Documents
Designs	Employer's requirements	Drawings and Documents
	Contractor must notify if	Contractor must report
	errors exist; entitled to claim	defects in Employer's
	for corrections.	drawings and seek
		clarification.
Excessive Variation	Clause 13.1 – Right to Vary	Clause 47.1 – Variations
Orders	Engineer may yary works	Engineer may issue variation
	contractor entitled to	orders: contractor
	extension/cost adjustment	compensated for changes
Late Issuance of	Clause 3.5 – Delays in	Clause 12.1 – Drawings and
Drawings/Instructions	Instructions	Instructions

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	Engineer must issue timely	Employer to provide timely
	instructions; delay can trigger	drawings; delays can impact
	claims.	performance.
Engineer's Delay in	Clause 3.7 – Agreement or	Clause 44.1 – Engineer's
Decisions	Determination	Decisions
	Engineer must act fairly and	Engineer expected to decide
	in reasonable time to prevent	promptly on issues affecting
	delays.	progress.
Unrealistic Completion	Clause 8.2 – Time for	Clause 35.1 – Completion
Period	Completion	Period
	Completion period must be	Contract sets reasonable
	realistic; extensions granted	time; extension allowed for
	for justified delays.	just causes.
Delayed Advance	Clause 14.2 – Advance	Clause 63.1 – Advance
Payment	Payment	Payment
	Employer must pay advance	Contractor entitled to
	to facilitate mobilization;	advance payment at start;
	delay can hinder progress.	delays affect mobilization.
Corrupt Practices	Clause 20.6 – Corrupt	Clause 67.1 – Corrupt and
-	Practices	Fraudulent Practices
	Employer may terminate	Contract may be terminated
	Employer may terminate contract for bribery or fraud	Contract may be terminated for fraud, collusion,
	Employer may terminate contract for bribery or fraud by Contractor.	Contract may be terminated for fraud, collusion, coercion, or corruption.

Conclusion

Frustrations in engineering and infrastructure contracts often arise from unforeseen risks and inadequate contract administration. Quantity Surveyors, as custodians of cost, value, and compliance, are uniquely positioned to detect and resolve such issues early. While FIDIC offers structured tools for proactive management, the PPA framework requires sharper QS interpretation and professional judgment. Bridging both systems demands better training, clearer authority, and ethical courage. To move Nigeria's infrastructure sector forward, the Quantity Surveyor must not only advise—but lead. Their role is central to turning frustrated contracts into fulfilled outcomes.