

## Comparison of Dispute Resolution Provisions between the Joint Contract Tribunal and the Iraqi Standard Bidding Document

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### ABSTRACT

Due to a party's violation of his obligations or responsibilities indicated in the contract, many engineering projects confront extensive contractual disputes, which in turn need arbitration or other forms of dispute resolution, which negatively impact the project's outcome. Each contract has its terms for dispute resolution. Therefore, this paper aims to study the provisions for dispute resolution according to Iraqi (SBDW) and the JCT (SBC/Q2016) and also to show the extent of the difference between the two contracts in the application of these provisions. The methodology includes a detailed study of the dispute settlement provisions for both contracts with a comparative analysis to identify the differences in the application of these provisions between the two contracts. The research results revealed several differences, the most important of which is that the engineer has a dual role in Iraq (SBDW).

On the one hand, he is appointed by the employer to carry out specific duties under the contract. On the other hand, the engineer also has powers related to the settlement of claims and this first level of conflict avoidance between the two parties, Unlike the SBC/Q2016 contract, which appoints a neutral third party to mediate the problem. In addition, resolving disputes between the two parties, according to the Iraqi (SBDW), needs a long time compared with JCT-SBC/Q2016.

**Keywords:** JCT (SBC/Q2016), Iraqi Standard Bidding Documents, Dispute resolution.

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## مقارنة أحكام تسوية المنازعات بين محكمة العقود المشتركة ووثيقة العطاءات العراقية الموحدة

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### الخلاصة

بسبب انتهاك أحد الطرفين لالتزاماته أو مسؤولياته المنصوص عليها في العقد ، تواجه العديد من المشاريع الهندسية نزاعات تعاقدية واسعة النطاق ، والتي بدورها تحتاج إلى التحكيم أو أشكال أخرى من تسوية المنازعات ، وكلها لها تأثير سلبي على نتيجة المشروع. كل عقد له شروطه الخاصة بتسوية المنازعات. لذلك ، فإن الهدف من هذه الورقة هو دراسة أحكام تسوية المنازعات وفقاً ( لوثيقة العطاء القياسية لعقود تنفيذ الأشغال العامة ) و(عقد البناء القياسي مع الكميات 2016) أيضاً لإظهار مدى الاختلاف بين العقدين في تطبيق هذه الأحكام. تتضمن المنهجية دراسة تفصيلية لأحكام تسوية المنازعات لكلا العقدين مع تحليل مقارن لتحديد الاختلافات في تطبيق هذه الأحكام بين العقدين. كشفت نتائج البحث عن عدة اختلافات أهمها الدراسة أن للمهندس دور مزدوج في ( وثيقة العطاء القياسية لعقود تنفيذ الأشغال العامة). من ناحية ، يتم تعيينه من قبل صاحب العمل للقيام بواجبات محددة بموجب العقد. من ناحية أخرى ، يتمتع المهندس أيضاً بصلاحيات تتعلق بتسوية المطالبات وهذا المستوى الأول من تجنب النزاع بين الطرفين ، على عكس عقد البناء القياسي مع الكميات 2016 ، الذي يعين طرفاً ثالثاً محايداً للتوسط في المشكلة. إضافة إلى ان عملية حل الخلافات بين الطرفين وفقاً (وثيقة العطاء القياسية لعقود تنفيذ الأشغال العامة) تحتاج الى فترة زمنية طويلة مقارنة مع (عقد البناء القياسي مع الكميات 2016)

**الكلمات الرئيسية:** عقد البناء القياسي مع الكميات 2016, لوثيقة العطاء القياسية لعقود تنفيذ الأشغال العامة , تسوية المنازعات

### 1. INTRODUCTION

The building business is a complex process that is multifaceted and reliant on a wide range of players. Disputes are inevitable in any relationship and may occur apart from the involved parties' efforts to prevent them because each party is inclined to defend its interests and standing. The interest of an employer, for example, is to avoid budget deficits or cost overruns, while a contractor's interests are to increase revenue as much as possible, minimizing loss and maximizing profits. This creates a fertile ground for arguments and disputes (Cheung, 2013). Conflicts are annoying because they take up time and money (Cheung, 2014). Several mechanisms for dealing with such conflicts have emerged. The best way for businesses to avoid legal conflicts is to work toward better intergroup understanding and open dialogue (Verster, et al., 2013). Finally, it's crucial to realize that dispute-related issues can frequently threaten any project's success and hinder the success of all parties involved. A dispute's definition may be grasped by examining its context and underlying motivation. A wide variety of situations and factors can lead to a dispute (Safinia, 2014).



### 1.1 Standard Bidding Documents

After the Ministry of Planning, represented by the Government Contracts Department, and the World Bank worked together to make standard Iraqi and international documents, these documents became the most important part of making government contracts in Iraq.

The Iraqi Standard Bidding Documents are a new way for the Iraqi construction industry to do industry. They are among the most advanced legal procedures for contracts. Its goal is to make sure that projects are carried out clearly and efficiently.

One of the documents used in this study is the Standard Bid Document for Public Competitive Bidding for Public Works Execution Contracts (SBDW).

### 1.2 Joint Contract Tribunal (JCT)

Joint Contract Tribunal, Referred to as JCT, was first created by RIBA and is widely used in the British construction industry and includes many documents such as master contracts, sub-contracts, ....etc. (**Julian Bailey, 2016**). JCT contracts contain many versions that have undergone many modifications and changes. All of these contracts are listed on the main JCT website. The last issue was in 2016.

## 2. METHODOLOGY OF COMPARISON

This is an exploratory study to determine the Method for Resolving Disputes in the standard bidding document used in Iraq and JCT used in the UK. In this study, the researchers relied on :

(1) examining and reviewing the Resolving Disputes provisions for the two contracts mentioned above.

(2) Shedding light on the essential differences in the general conditions related to Resolving Disputes between these two contracts by making a comparison table between them.

JCT contains a family of contracts, and the Iraqi Ministry of Planning issues more than one standard document, so this research is limited to selecting JCT- SBC/Q2016 from the JCT family of contracts and the (SBDW) from the Iraqi documents group to be compared between them.

## 3. RESULTS AND DISCUSSION

Both (SBC/Q2016) and Iraqi (SBDW) contain provisions for dispute resolution. SBC/Q2016 deals with the dispute in section (9), "Settlement of Disputes", and Iraqi (SBDW) deals with the dispute in Article (20), "Claims, Disputes and Arbitration". The comparison of this provision between (SBC/Q2016) and Iraqi (SBDW) is shown in **Table 1**.



**Table 1.** The difference in the (dispute resolution) provisions between Iraqi Standard Document and JCT( SBC/Q) 2016

Sub-clause Description The first method for resolving the dispute is	
SBDW	SBC/Q2016
The general conditions do not provide for referring disputes to mediation. Any request or objection is first referred to the engineer for the agreement after consulting with both parties or preparing estimates in the event of not reaching an agreement. The engineer shall notify the two parties of any agreement or estimates within (28) days of receiving the objection or agreement.	The general conditions stipulate that disputes should be resolved first through negotiation as stated in Table (8) "supplemental provisions" Paragraph (6) "Notification and negotiation of disputes" to avoid and resolve disputes or disputes Early as each party shall notify the other party immediately of any matter which appears likely to give rise to a dispute or disagreement, the senior executives appointed in the contract details shall meet as soon as practicable to conduct direct negotiations in good faith. to solve this issue In the event of the failure of the negotiations, the parties may submit the dispute to (mediation), where a mediator is appointed jointly by the parties (the mediator does not make decisions or judgments and will seek to consult between the parties to reach an agreement satisfactory to both parties
Sub-clause Description Timeline for nominating an adjudicator	
SBDW	SBC/Q2016
The general conditions stipulated the appointment of DAB at the beginning of the project (21) days before the date specified in the contract data. (Unless otherwise specified in the Special Conditions)	The Scheme for Construction Contracts (England and Wales) Regulations 1998 will apply under s.114 of the HGCRA. " In the event of disagreement, it shall be (28) days from the date of concluding the contract
Sub-clause Description Timeline for the decision of an adjudicator	
SBDW	SBC/Q2016
As stated in General conditions, when the case is referred, it must be resolved within 84 days.	Approximately 28 calendar days after the referral date. If the recommending party agrees, this period might be extended by an additional 14 days.



Sub-clause Description Period before Adjudication decision becomes binding	
SBDW	SBC/Q2016
28 days after the decision is issued by the DAB, in the absence of any notice of dissatisfaction by the two parties, the decision of the DAB shall be binding and final for both parties	The decision is final (Except if the contract particulars are available for the application of Article (8), and if they are not applied, the arbitrator's decision becomes binding)
Sub-clause Description Amicable Settlement	
SBDW	SBC/Q2016
Amicable settlement takes place if a notice of dissatisfaction is issued against the decision issued by the Dispute Resolution Board	Amicable settlement takes place through negotiations between the two parties at the beginning of the dispute or dispute before referring it to the Dispute Resolution Board.
Sub-clause Description Applicable Arbitration Law/Rule	
SBDW	SBC/Q2016
For contracts with foreign contractors, the arbitration shall take place following the procedures of the international arbitration rules followed by the international arbitral tribunal specified in the contract data, such as those issued by the International Chamber of Commerce, Winstrol, or the Arab Arbitration Chamber for Contractors. Arbitration in Iraq.	(CIMAR) or its updated version
Sub-clause Description Refer the dispute to arbitration	
SBDW	SBC/Q2016
It passes through multiple levels, including the engineer and the Dispute Resolution Council, and this takes a long time, approximately (124) days in terms of referring the dog and issuing decisions	The party wishing to refer the dispute to arbitration shall send a notice at any time to the other party and proceed with the appointment of an adjudicator.
Sub-clause Description Refer the dispute directly to arbitration	
SBDW	SBC/Q2016



<p>A party fails to comply with the decision of the adjudicator after it becomes binding (20.7) and when there is no DAB in place (Clause 20.8)</p>	<p>Referral of the dispute to arbitration is an optional condition (applicable, not applicable) specified in the contract details by agreement between the parties, which means that the dispute cannot be referred to arbitration unless the contract details provided for the application of clause (8), where the disputes must first be referred to ( judge) and if the disputes cannot be settled through adjudication and Article (8) is deleted, this means that the disputes will be referred to legal procedures.</p>
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#### 4. CONCLUSIONS

The engineer has a dual role in Iraq (SBDW). On the one hand, he is appointed by the employer to carry out specific duties under the contract. On the other hand, the engineer also has powers related to the settlement of claims and this first level of dispute avoidance between the two parties. Unlike the SBC/Q2016 contract, which appoints a neutral third party to mediate the problem, its judgments are unbiased since they are issued from outside the contractual circle. This is a beneficial attribute because it leads to the conflict being resolved more quickly.

Resolving disputes, according to the standard documents, takes a long time, as the dispute request is referred to more than one party (the engineer, the dispute resolution board, or the arbitration). This affects the contractual relationship between the two parties in addition to its impact on the time and cost of the project. While in SBC/Q2016, resolving the dispute does not take a long time because the decisions issued by the Dispute Resolution Board are considered final and binding on the parties, and the dispute is not referred to arbitration unless the two parties agree on this before signing the contract and upon agreement on that. The two parties are allowed to refer the dispute directly to arbitration. Once a notice is sent by the party who wishes to do so to the second party.



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