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Organizational and Legal Barriers in Shaping the Final Value of Construction Contracts

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Abstract

The aim of the article is to identify barriers creating impediments to efficient project completion that result mainly from erroneous interpretation of the rules for calculating the final value of construction works performed. Taking the selected case study of a road construction contract as an example, some factors complicating the shape of relations between the investor and the contractor on equal basis were shown. The analysis carried out and developed proposals will contribute to defining organizational conditions of efficient and effective management of investment process and will be useful for improving the legal provisions regulating obligations of investment process participants.

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Keywords: investment process; investment project management; contract value; FIDIC procedures

1. Introduction

The efficiency foundation of any human activity is to provide the necessary resources, select rational methods of implementation and integrate them in the specified time. Selection of the form of organization and management of the entire investment process becomes particularly important as they define division of duties to individual participants and determine the level of contract costs and date of task completion. In theory, there are many organizational models shaping the structure of management of investment projects implementation. These models are implemented into

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economic practice along with their legal instrumentation, allowing for creation of conditions to establish market relations between the contracting authority and the contractor.

Establishing contractual relations in a sustainable market economy should be at the level of mutual benefit and equal relationships. It is important to maintain a reasonable balance between the interests of the customer and the contractor, determine justly the obligations of the parties and allocate incurred implementation risk. The presence of market imbalances often cause imbalance in equal relationships, which results in the dominant position of one party and a reduction in the social efficiency of the investment. This is also facilitated by the lack of effective regulation that would order the rules for investment process organization and conclusion of agreements for investment projects realization, giving them a unitary character. The gap in General Conditions of Investments (OWRI) that were binding until 1990 has not been fully filled throughout the whole period of Polish transformation. Effective forms of investment projects implementation management that have been working for decades in the European context, based for instance on FIDIC procedures, in Polish conditions show many gaps and ambiguities, hindering efficient completion of contracts. Particularly problematic is interpretation of the rules applicable to the financial settlement, that ensure inter alia indexation of remuneration or calculation of the value of alternative and additional works occurring during contract execution. In case of large and complex in technical terms investments the disputed amounts may reach significant values, which can result in exceeding the planned budget of the contract and extending the period of its execution. Therefore, it is necessary to identify barriers that create obstacles to the smooth implementation of investment and develop recommendations to shape the legal and organizational conditions for efficient and effective management of the investment process.

2. Models and methods of investment completion management

Investment management process is time consuming, burdened with high risk and it includes many diverse and complex operations. A wide variety of its classification, internal division and management models that exist in the theory confirm the complex nature of investment process.

Table 1. Phases of the investment project development cycle by different classifications.

Classification	Internal structure – phases and stages
Described by: J.R. Adams, S.E. Brandt; J.K. Pinto, D.P. Slevin; C. Burton, N. Michael	1. Conceptualization (initial planning) − preparing the outline of the project, setting goals and alternative project
	2. Planning (detailed planning) − preparing the detailed plan
	3. Implementation − transformation of the resources into the expected results of the project, monitoring and control – review/modification of the plan
	4. Completion (post-completion review) − completion of the project, returning assets to the parent organization
According to the European Commission	1. Programming
	2. Identification
	3. Appraisal, design, preparation, formulation, ex-ante evaluation
	4. Financing
	5. Implementation
	6. Evaluation
According to United Nations Industrial Development Organization (UNIDO) methodology	1. Pre-investment phase − opportunity study, (pre-feasibility study, final technical-economical version of the project (feasibility study), evaluation report (project appraisal – project evaluation)
	2. Investment phase – negotiations and concluding agreements, technical projects, construction, pre-production marketing, training, reception and commissioning
	3. Operation phase − restoration and restructuring, development and innovation

Source: own study based on [1–5].