

A large, light gray watermark of the FIDIC logo is centered on the slide. The logo consists of a globe with latitude and longitude lines, and the letters 'FIDIC' are superimposed over the globe in a bold, sans-serif font.

# **FIDIC Conditions of Contract**

## **Overview of the FIDIC**

### **FORMS OF CONTRACT**

Philip Jenkinson

# 1. FIDIC – the Organisation

- FIDIC is the international federation of national associations of independent consulting engineers
- Founded in 1913 by the national associations of three European countries, now with membership from over 60 countries

- Most growth outside Europe has taken place since the Second World War, with developing countries particularly being encouraged to join
- FIDIC now represents most of the private practice consulting engineers in the world
- Members comply with a code of ethics guiding their professional standards

- FIDIC works to promote the common interests of consulting engineers through seminars, conferences and regular discussions with the national associations and international financial institutions (such as the World Bank)
- Preparation of standard forms of contract and other documents is a major activity

- All publications are available direct from the Secretariat in Geneva, Switzerland, or, for example, from Thomas Telford at the ICE in London

## **2. The Traditional FIDIC Forms of Contract**

- Conditions of Contract for Works of Civil Engineering Construction (Red Book) Fourth Edition 1987
- Conditions of Contract for Electrical and Mechanical Works including Erection on Site (Yellow Book) Third Edition 1987

- Between Employer and Contractor
- Red Book: payment monthly for work done
- Yellow Book: lump sum on milestones
  
- Every project is unique
- Guidelines of 'best practice'
- Part I – General Conditions
- Part II – Conditions of Particular Application

# fair and balanced to both parties

- Risk is allocated to the party that is best able to bear and control that risk
- Recompense and time extension allowed when uncalculated hindrances occur
- ‘Engineer’ whose job is principally to supervise and monitor the work
  - in strict accordance with the Contract to the satisfaction of the Engineer
  - with formal ‘Engineer’s Decision’

# 3. The Orange Book

- Conditions of Contract for Design-Build and Turnkey (Orange Book) First Edition 1995
- Employer's Representative
  - not required to be impartial
  - determine matters fairly, reasonably and in accordance with the Contract
- Independent dispute adjudication board
- 1996/7 Supplements for use of DAB (R/Y Books)

# 4. The 1999 Suite of Standard Conditions of Contract

- **Conditions of Contract for Construction - design by Employer: *The Construction Contract* (The New Red Book)**
- **Conditions of Contract for Plant and Design-Build - design by Contractor: *The Plant and Design/Build Contract* (The New Yellow Book)**
- **Conditions of Contract for EPC Turnkey Projects: *The EPC/Turnkey Contract* (The Silver Book)**
- **Short Form of Contract: *The Short Form* (The Green Book)**
- **The FIDIC Contracts Guide (2000)**

# 5. Principles behind the New Books

- More consistent wording, with improved clarity; user-friendly format and layout
- Balance between legal precision and practicability; compatible with both common and civil law concepts
- ‘Manuals of good engineering practice’
- Prepared by engineers for practical use

- Traditional role of ‘the Engineer’ to make impartial determinations modified to reflect current practice (Red and Yellow Books)
- ‘Employer’s Representative’ introduced: must be fair and reasonable (Silver and Green Books)

- Distinction between the Books is based on:
  - who does the design?
  - who bears risk for change in quantities?
- EPC (Silver Book) provides for the Contractor taking almost all risks (new for FIDIC)
- Short Form (Green Book) deals with the wide demand for a simpler form of contract

- Work must continue, regardless of differences: amicable settlement encouraged
- Strong financial management: detailed claims procedures must be followed

## **6. General Remarks on the New Books**

- Suitable for both ‘international’ and domestic use
- A framework adaptable to suit local law
- English is the official and authentic language
- More definitions: harmonised, except for the Short Form

- General Conditions not applicable can be disregarded
- Example Particular Conditions are given
- Adjudication precedes arbitration

# 7. The New Red and Yellow Books

- Emphasis changed to party responsible for design
- New Red Book is update of Old Red Book
- New Yellow Book replaces both Old Yellow Book and Orange Book
- Traditional competitive tendering procedures
- Risk sharing is balanced
- All claims, from either Party, have to follow a strict procedure
- Engineer is no longer stated to be ‘impartial’: he ‘shall be deemed to act for the Employer’, except when fair determinations are required

# 8. The New Red Book

- For building and engineering works designed by the Employer
- Needs of modern multi-discipline contracts recognised for first time
- Partial Contractor design possible
- Valuation and payment based on remeasurement of quantities, but lump sum or cost plus could be used

- No 'Clause 67' Engineer's decision
- If a dispute arises, reference to DAB
- Dispute resolution procedure is:  
adjudication (DAB)>>>amicable settlement  
>>>arbitration

# 9. The New Yellow Book

- For E&M plant, and for building and engineering works, designed by the Contractor
- Needs of modern multi-discipline contracts recognised
- Partial Employer design: include in Employer's Requirements

- Valuation and payment based on lump sum with payment plan, but remeasurement possible
- No 'Clause 67' Engineer's decision
- If a dispute arises, reference to DAB
- Dispute resolution procedure is:  
adjudication (DAB)>>>amicable settlement  
>>>arbitration

# 10. The Silver Book (EPCT Contract)

- More certain final price and time required
  - balance of risk being changed
  - privately financed BOT type
- Contractor asked to cover extra risks
- Employer will have to pay more
- Completely new Book - 'unbalanced' risk
- BUT full open acceptance of risk picture
- Starting point for BOT type projects

- The EPCT Contract is suitable for:
  - particularly E&M and process plant projects
  - all types of Employers
  - civil law jurisdictions
  - where government employer or private developer wants a fixed price turnkey basis and two-party approach
- There is an ‘Introductory Note’ of explanation

# 11. Special Features of the Silver Book

- Responsibility for design lies with Contractor
- Employer's Requirements usually a 'performance specification' (functional basis)
- Contractor carries out all engineering, procurement, construction, ready for operation at the 'turn of a key'
- No Engineer - instead the Employer
- Lump Sum Contract Price (but adjustments in limited specified cases)

- Testing procedures to demonstrate achievement of specified end result
- Contractor carries majority of risks, so Employer pays more
- Final price and time should be more certain
- Small number of tenderers with negotiation
- Contractor given freedom to use own methods
- Has to prove reliability and performance

- These Conditions are *not suitable* in the following circumstances:
  - if time or information is insufficient before Contract signature
  - if considerable work underground or difficult to inspect
  - if Employer intends to supervise closely or control or review
  - if an intermediary certifies interim payments
  - where part of the Works is designed by Employer
  - for public bidding without negotiations
  - for such circumstances P&DB should be used instead
  
- Published in response to market demand

# 12. The Green Book (Short Form of Contract)

- US\$ 500,000 and six months' duration
- Simple and repetitive works
- All provisions necessary in 15 clauses
- Language uncomplicated and simple
- Incorporated in World Bank Standard Bidding Documents for Simple Works.
- Balanced risk sharing - no Engineer
- Design by either party - all types of construction
- Payment on lump sum or any other basis.

# Protection of the Environment

- The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations

- The Contractor shall ensure that emissions, surface discharge and effluent from the Contractor's activities shall not exceed the values indicated in the Specification, and shall not exceed the values prescribed by applicable Laws

# Project Phases

- Initiation
- Study and Evaluation
- Design Development
- Detailed Design
- Contracts
- Construction, Manufacture, Installation and Commissioning
- Operations and Maintenance

# Initiation

- The Concept
- The Big Decisions
- Policy
- Major Choices

# Study and Evaluation

- Feasibility
- Alternatives
- Strategy
- Statutory Requirements

# Design Development/ Detailed Design

- Specifications
- Special Requirements
- Approvals
- Inclusion of results/outcomes from earlier Project Phases