

THE STRUCTURE OF THE FIDIC CONDITIONS AND THEIR APPLICATION IN PRACTICE

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Abstract. *The article explores the history of the International Federation of Consulting Engineers (FIDIC), detailing the standard contracts it has developed and their global application in constructing production facilities and social infrastructure, FIDIC Golden Principles.*

Keywords: *FIDIC, Project Management, Golden Principles*

Introduction

The contractual terms and conditions formulated by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), known as the International Federation of Consulting Engineers, are widely esteemed as the prevailing commercial contract templates in contemporary construction practices. These templates have garnered international recognition as exemplary documents that represent best practices in the field. Their prevalence continues to grow steadily, primarily propelled by significant international investors who seek reliable and established frameworks for their construction endeavors.

The widespread adoption of these templates is spurred by the requirements of major international financial institutions, including the World Bank for Reconstruction and Development, the International Finance Corporation (based in Washington, DC, USA), and the European Bank for Reconstruction and Development. These institutions often mandate structuring project documentation based on FIDIC model rules as a condition for their financial participation. At the FIDIC International Contract Users Conference in 2010, it was highlighted that over half of all significant investment projects worldwide are currently executed under the FIDIC framework. It is noteworthy to examine the positive influence of these instruments on practices in Eastern European nations and to analyze the challenges stemming from their implementation

Method

FIDIC, an acronym derived from the French name of the organization responsible for developing and issuing standard clauses for international construction contracts, the International Federation of Consulting Engineers, holds exclusive rights to the texts of standard conditions. It is globally recognized for its regulations, widely utilized in planning and executing major projects such as roads, airports, ports, bridges, and power stations. Established in France in 1913, the Federation, now headquartered in Lausanne, Switzerland, has gradually expanded its membership and earned recognition from prominent entities like the United Nations and leading international banks. Initially formed to safeguard and advance the collective interests of its member professional associations of builders and designers, FIDIC evolved significantly after World War II, experiencing rapid growth and assuming its current stature. Today, FIDIC represents national associations from over 70 countries across all continents. The current objectives of the Federation include global representation of the consulting engineering industry, enhancement of the consulting engineers' image, expertise in establishing business practices, support for global development and advancement of consulting engineers' role, maintenance of quality standards,

advocacy for adherence to ethical codes and best practices among contractors, and commitment to principles of sustainable development.

In 1957, the first edition of the Conditions of Contract for Civil Engineering Construction was released, marking the inception of the FIDIC Red Book. However, with the construction industry rapidly adopting various technological advancements, particularly in the 20th century, it became evident that the original contract needed updating. Subsequent revisions occurred in 1978, 1987, and 1999 (often abbreviated as "CONS"), resulting in the most widely used edition to date, comprising four books, or model forms.

Numerous intergovernmental financial organizations, private banks, investment funds, and investors now mandate the use of FIDIC books when funding substantial construction projects. This requirement led to the development of the CONS MDB terms and conditions in 2005, which underwent revisions in 2006 and 2010. The CONS MDB terms refer to the Multilateral Development Bank Harmonized Edition, essentially an updated version of the CONS (Red Book), often referred to as the Pink Book.

The FIDIC standard conditions of contract are widely recognized for their thoughtfully created provisions that incorporate industry best practices, certainty ensuring that parties can reasonably expect predictable and sensible handling of most circumstances, balanced and equitable allocation of risks fostering greater contractor confidence, reduced risk contingencies, and ultimately lower costs, time and cost savings in negotiation and redrafting, as tenderers do not need to budget for unfamiliar contract conditions, dispute prevention through accumulated experience and shared understanding, and enhanced training opportunities and project management facilitation.

The Conditions of Contract for Civil Engineering Construction (CONS, Red Book) serve as a model of contractual terms and conditions designed for projects characterized by a relatively balanced distribution of risks, where the client primarily bears the risks associated with project documentation. CONS exemplify the traditional form of construction contract, known as "Design - Bid - Build," involving the use of client-provided technical specifications and drawings in tendering and project execution. Additionally, CONS entail the measurement of the actual volume of work performed and the estimation of their costs based on fixed rates for individual items and categories.

The Conditions of Contract for Plant and Design-Build (P&DB, "Yellow Book") are tailored for complex projects where the contractor also serves as the designer, adopting the "design-build" approach. As a result, the risks associated with the design documentation are primarily shouldered by the contractor.

In contrast to CONS, the Conditions of Contract for Plant and Design-Build (P&DB, "Yellow Book") do not entail the use of detailed specifications and drawings provided by the client during the tendering and project execution phases. Instead, P&DB contracts utilize customer specifications, which primarily outline the project's purpose, scope, technical standards, and other conceptual design and technical solutions according to the client's requirements. Consequently, clients are not obligated to supply comprehensive technical documentation during the tendering process. Upon receiving the client's specifications, the contractor prepares a proposal, which subsequently forms an integral part of the contract. Although the total price of such contracts is fixed and does not involve measurements of actual work performed, unlike CONS, contract price adjustments may occur due to changes in technical specifications or the submission of substantiated claims for additional work and/or extensions to project timelines.

The Conditions of Contract for EPC / Turnkey Projects (EPC or EPCT - Engineer, Procure and Construct, "Silver Book") are commonly used for Design - Build projects, where the contractor bears most of the risks. These contracts are recommended for investment programs, such as nuclear power plant construction, where ensuring contract price and timeline adherence is crucial. In EPC contracts, the price is fixed, and measurements of actual work performed are not taken. However, the contract price may be revised due to changes in technical specifications, and contractors can submit justified claims for payment for additional work or extensions to project deadlines.

FIDIC acknowledges that the inclusion of Project Management (PM) procedures and mechanisms within the General Conditions (GCs) of Contract has played a significant role in the success of the FIDIC 1999 forms of contract. In the 21st century, FIDIC expanded its suite for major works by introducing the following contracts: Form of Contract for Dredging and Reclamation Works (Blue-Green Book), Conditions of Contract for Design, Build and Operate Projects (Gold Book), and Conditions of Contract for Underground Works (Emerald Book).

Results and Discussion

The three main pro forma contract terms and conditions issued since 1999 and 2017 are most commonly used in new projects today.

To illustrate the distinctions between P&DB and EPC contracts, FIDIC offers examples of scenarios where it recommends the application of P&DB terms and conditions. These include situations where:

(a) Bidders have insufficient time and information to fully understand and address the requirements outlined in the tender documents.

(b) Some portions of the facility or the entire project are constructed underground or in challenging conditions unsuitable for conventional survey work.

(c) The client demands close supervision of the works or approval of the contractor's design documents.

(d) The client anticipates regular monitoring of work progress and prompt payment remittance. Ultimately, the decision regarding which contractual terms and conditions will govern a specific project lies with the organization funding the project.

In addition to the aforementioned documents, FIDIC offers various other resources such as recommendations, methodologies, and guidelines. One notable inclusion among FIDIC's standard terms and conditions of construction contracts is the "Short Form of Contract" (Green Book), specifically tailored for low-value projects. Another significant offering is the DBO (Design, Build, and Operate) form, introduced in 2008, which is suitable for projects where the contractor is expected to operate the facility. Additionally, FIDIC released a form for subcontracts, titled "Conditions of Subcontract for Construction: for Building and Engineering Works Designed by the Employer," in 2011, intended for use alongside CONS contracts.

According to the FIDIC forms, the agreement between the parties will consist of several documents. Each FIDIC book includes General Conditions (GCs) along with Guidance for the Preparation of Particular Conditions (GPPC), annexed forms of securities, Contract Agreement, Dispute Avoidance/Adjudication Board (DAAB) Agreement, and more. FIDIC strongly advises that the drafters of the Particular Conditions adhere to the five FIDIC Golden Principles (GPs):

GP1: Ensure that the duties, rights, obligations, roles, and responsibilities of all Contract Participants align with the GCs and meet the project requirements. GP2: Draft the Particular Conditions clearly and without ambiguity. GP3: Do not alter the risk/reward allocation provided for in the GCs when drafting the Particular Conditions. GP4: Set reasonable timeframes for

Contract Participants to fulfill their obligations as specified in the Contract. GP5: Unless conflicting with the governing law of the Contract, all formal disputes should be resolved by a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision before arbitration.

Conclusion

FIDIC contracts are not isolated within the industry; they are supported by numerous other documents and methodologies, forming an integrated ecosystem designed to assist users. The FIDIC Body of Knowledge (FBOK) encompasses all FIDIC contracts, management systems, manuals, guidance documents, and training materials. To keep the FBOK current, FIDIC Committees, appointed by the FIDIC Board, collaborate with the Secretariat to establish Task Groups. These Task Groups focus on updating the FBOK with the latest advancements in risk management, quality management, and sustainable development in construction. Additionally, the Contracts Committee is responsible for developing and revising the FIDIC suite of contracts and associated documents

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