

## FIDIC Contract Administration

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## FIDIC Contract Administration

### **Section (A): FIDIC:**

#### **(A-1) Definition:**

Represent globally the consulting engineering industry to enhance the image of consulting engineers.

FIDIC governs (Quality, Ethics, Integrity and Sustainably)

#### **(A-2) Introduction to FIDIC:**

(French Term) in English it means International Federation of Consulting Engineers founded in 1913 Head quarter in Geneva, FIDIC membership cover 97 countries of the world.

FIDIC is a private organization having legislation throughout the whole world, FIDIC Contracts apply the law of the countries in which their tasks are implied.

FIDIC develop and promotes business practice by publishing documents as policy **Statement**, position papers, guidance's, training manuals, training resource kits in the areas of management (Risk Management, Quality Management, Business integrity Management, Environmental Management) and Business Processes.

#### **FIDIC governing principles as:**

- Promote quality.
- Actively promote conformance to code of ethics and integrity.
- Commitment to sustainability and development

#### **FIDIC publishes:**

- Business practices guidance.
- Professional Services agreements and guidance.
- Work Contracts and Guidance.

#### **(A-3) Historical back ground:**

FIDIC conditions of Contracts started with "Conditions of Contract (International) for Works of Civil Engineering Construction" first edition in 1957 it was published on behalf FIDIC by FIBTP (Federation Internationale du Batiment et des Travaux Pupliques), Based on the english ICE (Institute of Civil Engineers-UK) conditions of Contracts 4<sup>th</sup> Edition.

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### - **Red Book Evolution:**

Red Book 2<sup>nd</sup> edition was published in 1969 included section for dredging and reclamation work with FIBTP and International Federation of Asian and West Pacific Contractor Associations as a sponsor, reprinted in 1973 with modifications, Red Book 3<sup>rd</sup> Edition in 1977 consist of 71 General Conditions and Conditions of Particular Applications, Red Book 4<sup>th</sup> edition in 1987 had a very important expression brought up which is that the engineer should act impartially when taking decisions that may affect the obligation and the right of the two parties, a Modified Edition was reprinted in 1992, in 1996 Red Book Supplement was published to include Dispute Adjudication Board (DAB), Red Book 1999.

### - **Yellow Book Evolution:**

Yellow Book was created due to the unsatisfactory of the Red Book for Contracts which have most of work manufactured off Site, so the 1<sup>st</sup> edition of Yellow Book in 1963 for mechanical and electrical works, 2<sup>nd</sup> edition in 1980, 3<sup>rd</sup> edition in 1987.

### - **Orange Book Evolution:**

Orange Book was founded in 1995 due the huge interest of the market of Design-Build and Turnkey, first edition of short form, Construction, Plant and design-Build and turnkey Projects were published on 1999.

- In 2005 special edition was founded for the use of bank funded development projects to use 1999 construction Contract MDB (Multilateral Development Banks) harmonized edition.
- FIDIC Gold BOOK was found in 2008 for Design, Build and Operate Projects.

### **FIDIC Contracts aims to:**

- Standardize the terminology.
- Make the document user-friendly.
- Solve the problem of engineer not seen as acting impartially.

### **Section (B): Engineering Contracts and usage:**

#### **(B-1) Contract Definition:**

Agreement having lawful object entered voluntarily by two or more parties, each of whom intends to create one or more legal obligations among them.

Contracts needs a legal system to support and enforceable Contracts as:

- Recognize Contract.
- Enforce Contract as written subject to mandatory rules that may have not been observed.

Purpose of Contracts is to define relations between parties and reallocate the risk among them.

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### **(B-2) Contract Elements:**

- **Agreement:** this letter is made base on the result of offer and acceptance.
- **Capacity:** Competent having legal capacity (Power of Signature and terms of reference).
- **Consideration:** agreement contains an element of value known as consideration. Some benefit whether given or promised.
- **Mutuality of Obligation:** Parties to the Contract intend to create legal relations.

### **(B-3) Standards Contract and agreement:**

Standard Contracts are used for civil construction work in:

- Minor Work.
- Construction. (Design-Bid-Built)
- Plant and Design and Built.
- Engineering, Procure and construct (EPC) or turnkey
- Design Built and Operate

The highlighted is the most used Contracts but most of the Contract is Design-Bid-Built Contract.

### **(B-3-a) Advantage of Standard Form Contracts:**

- Define effectively Contractual relationship between the parties, setting out the responsibilities and allocating risks.
- Savings in time and cost on repetitive transaction.
- Frequent use gives common understanding so fewer dispute.
- Tenderers do not intend to go through unfamiliar Contracts.
- Fair to all parties = greater Contractor confidence and lower risk contingencies so lower cost.
- Parties should not be distracted by the need to interpret Contract conditions
- Drafted with care.
- Good practices principles can only be implemented widely if standards forms are widely used.
- When dispute arise about a bespoke Contract, difficult to work out where a particular clause in issue has come from.
- Drafted with care.
- Good practice principles can be implemented widely if standards forms are widely used.

### **(B-4) General Type of Contracts:**

- **Cost-Reimbursable Contract**

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A cost-reimbursement Contract is a Contract where a Contractor is paid for all its allowed expenses to a set limit, plus additional payment to allow for a profit. cost-reimbursement Contracts is in contrast with a fixed-price Contract, in which the Contractor is paid a negotiated amount regardless of incurred expenses. This type is used when a cost of items can be predicted and usually used for procurement of items.

- **Re-measurement Contracts:**

This Contract based on the unit prices and quantities in the BOQ, quantities may be changed during construction and variation can be applied to this type of Contracts.

- **Lump Sum Contracts:**

This type of Contract the final price is fixed to high certainty and the risk is burned into the Contractor behalf of 80% some variation can be done to this type if Employer changes Specifications or requirements, although **Contract Price** can be changed but the chances and variation is very small and can be neglected if the Employer will demand to pay more for certain reasons and employer is aware that he pay more due to the risk allocations.

**(B-5) Type of Contract determine the type of Book to be used:**

1. Construction Contract-Design-Bid-Built (**Red Book**)
2. Plant and Design-Build Contract (**Yellow Book**)
3. EPC/Turnkey Contract (**Silver Book**)
4. Design, Build Operate Contract (**Gold Book**)
5. MDB Harmonized Edition of the Construction Contracts (**Pink Book**)
6. Short Term (Minor Work) (**Green Book**)

**I- RED BOOK: (Conditions of Contract for Construction) Design-Bid-Built**

For this type of project Engineer or consultant is available and hired by owner from the beginning of the Contract to help in below:

- Prepare the Specifications for the project.
- Prepare a design for the project.
- Prepare tender documents for procurement.
- Procurement for the project, if the project is complicated then prequalification's may be necessary and lowest evaluated tender is awarded
- Selection of the Contactor.

So, design need to be done in the beginning of this Contract by a consultant hired by Employer or Contractor can carry out some part of the design as stated in the Contract.

This type of Contracts are traditional construction projects involves civil engineering and building works required by Employer.



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After awarding the Contract is carried out by Engineer, payment to Contractor is based on successfully complete quantity according to specification mentioned in BOQ, BOQ may has L.S Items for approved work done.

Re-measured Contract enables the Contractor to claim extra time and additional cost whenever Contract allows for adjustment for changing in legislations, Re-measured Contract reduces risks falls on Contractor when there is a huge change in quantities for the same item. The risk will be in the unit rate for the whole life time of the project.

Procurement may be straight forward, or Employer can ask for prequalification's of the work if it is complicated, lowest price evaluation is applied most of the time.

Most of the work executed at the Site with observation of Engineer and the percentage of procured items in BOQ to construction items is negligible.

Engineer can initiate Variations, payment according to BOQ, Employer seeks of sharing the risks and unit rates can be adjusted, Employer wishes to be fully informed about the project details.

Employer provides:

- Finance,
  - Appointed a consultant to carry out the pre-Contract phase,
  - Appointed an Engineer to administrates the Contract,
- In RED BOOK DAB is existed from the beginning of the Contract,

### **2- YELLOW BOOK: (Plant and Design-Build Contract)**

This type of Contracts contains two major components:

- Electrical and Mechanical Plant designed by the Contactor,
- Civil work designed by the Contractor to fit the purpose of the design and Employer requirements,

#### **A) Electrical and Mechanical Plant designed by the Contractor:**

- Large scale project and more complex,
- Traditional Plant projects involve design, manufacture, and delivery, erection, testing or according to the Employer requirements.

Procurement stage can be the same as construction projects but with difference is as below:

- Most of the Plant is manufactured off Site.
- Designed of the Plant carried out by Contractor,
- Contractor is usually associate with Plant manufacturer or supplier alone or associated with civil Contractor,

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- Payment based on milestones or as agreed in Contract or achievements,
- Testing are comprehensive and stringent.
- We have Employer requirements instead of specification in this section  
Employer may have conceptual design or basic design but not full detailed design.
- Procurement process may be in two procedures (two-stage tendering allows Contractors/suppliers more chance to offer their own solutions to Employer requirements.

For this type of Contacts arrangements is as below:

- Employer must provide:
  1. Finance for the project,
  2. Appointing Engineer to: Adminstrate Contract, monitor, design manufacturing, installation, construction, certify payment.
- Engineer may initiate Variations, so **Contract Price** is not fixed and can be changed,
- Employer wishes to be kept fully informed,
- Payment according to the achieved milestones generally **Lump Sum** project, Employer seeks to ensure an equitable sharing of construction risks,

### B) Build and Engineering Works designed by the Contractor

- Design should be carried out by Contractor,
- Employer provides requirements instead of specifications,
- Contract for Design-Built Contracts is same as Plants,
- Employer accepts that overruns may occur to Contract sum and possible completion date,
- BOQ for the contact is provide for Evaluation purposes of the Contract and determining the milestones,
- Engineer may initiate Variations can be done also adjustments
- Risk is divided on both sides,
- Contractor is responsible for design, Contractor may change the design, but it should be in compliance with Employer requirement and full fill the purpose,

In YELLOW BOOK DAB is appointed when dispute is alive

### **3- SILVER BOOK: (EPC/Turnkey Contract)**

#### NO CHANGE ON PRICE OR TIME ALL RISK ON BEHALF OF CONTRACTOR

Concept of this Contract is as below:

- Employer does not have technical capability to carry out design for facility or do not want to take responsibility for the design,
- Employer believe that total time can be shortened if the design is carried out by Contractor during early stages of Contract,

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- Employer provides funds,
- Contractor delivers facility ready to operate,
- Employer is able to pay more due to high risk on Contractor side,
- More certainty of price,
- No Engineer is available only owner representative,
- Employer can supply design for certain parts,
- Contractor is responsible for design,
- Unforeseeable Physical Condition is on Contractor risk,
- Contractor may subcontract part of the Contract,
- Employer requirements are more detailed and comprehensive and complicated more than the Plant and Design-Build Contracts,
- Employer does not want to be involved on day-to-day work,
- Owner representative does not have the authority to approve only rejection and give comments only,
- No claims in this type of Contract,
- In SILVER BOOK DAB is appointed when dispute is alive

### 4- **(GREEN BOOK) Short Form of Contract**

- This type of Contract is simple and straight forward,
- Re-measured Contract,
- Simple general conditions 10 pages,
- Suitable when the work is not complicated,
- Engineering work or building relatively small within 500,000 USD and Construction time 6 months and does not need specialized Contractor.
- For Contracts which have repetitive works,
- Can be used for 10,000,000 USD if the work is repetitive and simple,
- Can be used when there is limited duration of construction time, Contract sum will remain FIXED without allowance of escalation and other cost, these type of Contract remains constant for 12 or 18 months,

#### Under this type of Contracts:

- Employer provides finance and may appoint individual firm to carry out the Work, Employer can issue Variations,
- Work can include electrical and mechanical work,
- Employer may wish to order variations,
- Contractor can construct without having design by Employer and can be done by Contractor.

To unify the similar clauses FIDIC decided to make changes only when it is applicable for certain Contract due to the changes in application, so for Example below table show what is difference in clauses between RED, YELLOW and SILVER, only three clauses are different as mentioned below according to the last edition of 1999 as shown in Table (1)

## FIDIC Contract Administration

### **(B-6) Risks**

#### **(B-6-a) How to allocate the risk?**

So, choosing the right type of Contract is the first step to better manage of claims and disputes raised and to determine type of Contract we need to know how to allocate Risks, so we need to:

- Which party can best foresee the risk?
- Which party can best control it?
- Which party can best bear it?
- Which party most benefit from this risk or suffers if this risk eventuates?

Contracts should allocate risks to responsible party, determine the applicable law according to Country and spread some risks to other party by insurance policies which is applicable for that Country, if some of risks allocated to any of the Contracting parties unfairly when disputes existed then court and arbitration will determine to which party must be bearded,

#### **(B-6-b) Risks are categorized in two items under Construction**

##### **Projects:**

- Insurable risk:

Risk of loss, damage or injury occurring during the construction of Contract includes: (Act of god, fire, human error, defective material, accident due to defective design, defected workmanship, and failure to take adequate precaution).

- Uninsurable risk:

Risk leads to financial and time loss with their impact on the project like: (late possession of Site, change in design and variation in original Contract, delay of instructions).

#### **(B-6-c) Risks gives financial or time loss on the project:**

- Late possession of the Site,
- Delay in instruction and providing any information,
- Change in design,
- Variation in the original Contract,
- Unforeseeable physical conditions,

##### **Improper risk allocation in Contracts will lead to:**

- High tender price,
- Tender failure, Contractor may not be interested in this type of conditions under Contract you may have few participants,
- Poor construction quality,
- Frequent dispute will be raised and there is will be so many delay under this Contract,
- Contract may be awarded to tenderer who will not be able to bear this risk,
- Repetition of groundless claims from Contractor.

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**Table (I)**

Type of Contract	Chapter-3	Chapter-5	Chapter-12
<b>Red</b>	Engineer	Nominated Subcontractor	Measurements
<b>Yellow</b>	Engineer	Design	Test after Completion
<b>Silver</b>	Employer Representative	Design	Test after Completion

**Below tables (A, B&C) is to show the difference between silver, red and yellow books regarding Contract Documents and administration part as below:**

**Table (A)**

Type of Contract	Engineer	Employer Representative	Design by Contractor	Variation	Contract Price
<b>Red Book</b>	<b>X</b>	<b>NA</b>	<b>NA</b>	<b>X</b>	<b>Variable</b>
<b>Yellow Book</b>	<b>X</b>	<b>NA</b>	<b>X</b>	<b>X</b>	<b>Variable</b>
<b>Silver Book</b>	<b>NA</b>	<b>X</b>	<b>X</b>	<b>NA</b>	<b>Fixed</b>

**Table (B)**

Contract Documents	Red Book	Yellow Book	Gold Book	Silver Book
<b>Contract Agreement</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Memoranda Annexed</b>			<b>X</b>	<b>X</b>
<b>Letter of Acceptance</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Letter of Tender</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Addenda</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Conditions of Contracts</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Specifications</b>	<b>X</b>			
<b>Employer Requirements</b>		<b>X</b>	<b>X</b>	<b>X</b>
<b>Drawings</b>	<b>X</b>	<b>X</b>		
<b>Schedules</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Contract Proposal</b>		<b>X</b>	<b>X</b>	<b>X</b>
<b>Operation License</b>			<b>X</b>	

Schedules may include: BOQ, time frame, method of measurements, questions and answers during procurement.

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**Table (C)**

Contract Type	Quantity Variation	More Certainty	High Cost	Claims (Time, Cost)	Design	Fair Risk Allocation
Re-Measured Contract	X	NA	NA	X	NA	X
Lump-Sum Contract	NA	X	X	NA	X	NA

**Table (D) Risk allocation**

Sub-clause	Description	Construction-Red Book	Plant-Yellow Book	EPCT-Silver Book
<b>1.9</b> Plant	<b>Errors in Employers requirements</b>	NA	E	S
2.1	Right of Access to the Site	E	E	E
4.7	Setting out of original points	E	E	C
4.12	Unforeseeable Physical Conditions	E	E	C
4.24	Fossils	E	E	E
7.4	Testing delayed by Employer	E	E	E
7.5	Rejection of materials	C	C	C
7.6	Remedial of Work	C	C	C
8.4	Extension of time for completion	E	E	C
8.4	Exceptional adverse climate conditions	E	E	C
8.5	Delays caused by authorities	E	E	E
8.6	Rate of Progress delay consequence	V	V	C
8.9	Consequence of Suspension	E	E	E
9.4	Failure to pass Tests on Completion	C	C	C
11.4	Failure to Remedy Defects	C	C	C
<b>12.1</b> Cons	<b>Increase in quantity during construction</b>	E	C	C
12.4	Failure to Pass Test After Completion-Yellow Book	NA	C	C
13.3	Variations Procedure	E	E	E
13.7	Adjustments for Changes in Legislation	S	S	S
13.8	Adjustment for Changes in Cost	C-E	C-E	C
14.8	Delay payment	E	E	E
15.4	Payment after Termination	C	C	C
17.1	Indemnities	S	S	S
17.4	Consequence of Employer`s Risk	E	E	E
19.4	Consequence of Force Majeure	E	E	E
20.1	Contractor`s Claims	E	E	E

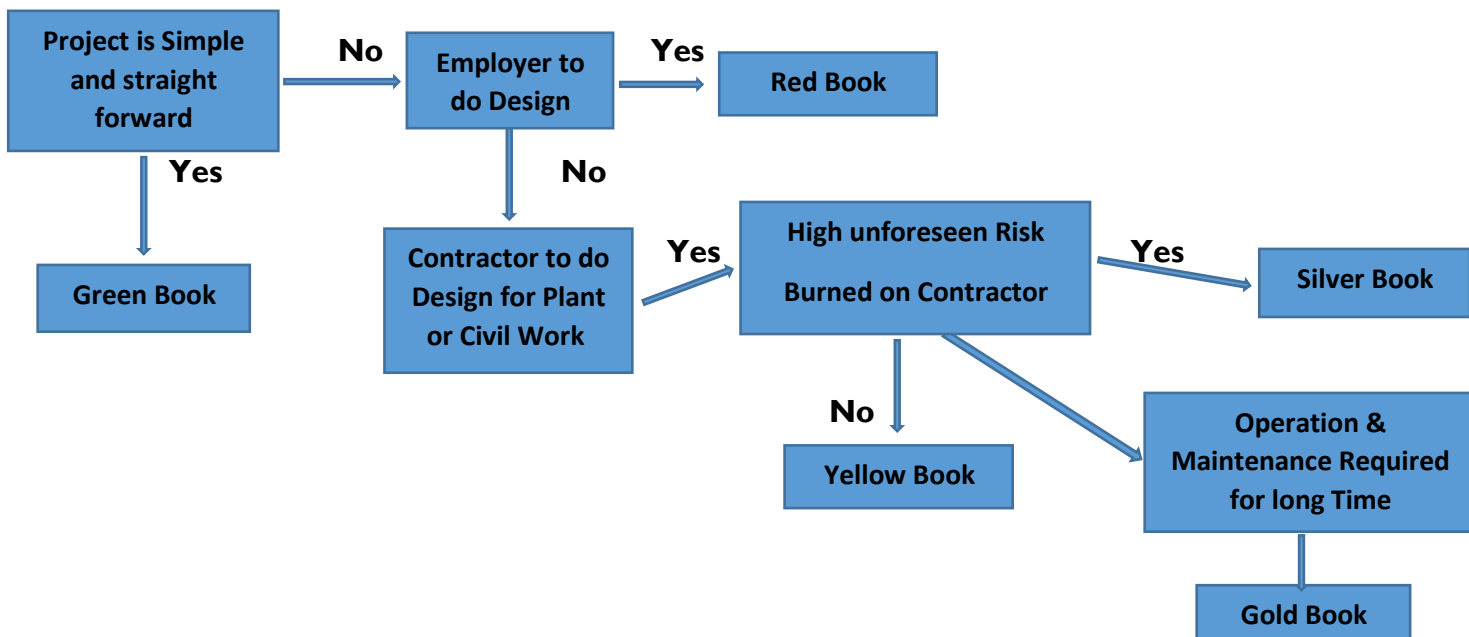
**E: Employer Risk, C: Contractor Risk, S: Shared Risk**

## FIDIC Contract Administration

### **(B-6-d) Checklist of how to choose FIDIC Contracts:**

- Type of project to be procured.
- Type of design.
- How payment is made.
- Certainty of final cost.
- Method of tendering.
- Control during construction.
- Possibility or portability of having Variation or change in the work after entering into the Contract.

### **Simple chart can give you better understanding:**



### **Section (C): Structure of 1999 FIDIC Contracts:**

- 1- General Conditions-First Part,
- 2- Guidance for the preparation of the particular condition-Second Part,
- 3- Forms-Third Part (letter of Tender, Contract Agreement and Dispute Adjudication Board Agreement)

The use of standards form of FIDIC does not mean that the parties are escaping for the national law, although most of the parties intend to escape from the law by implementing FIDIC Contracts which enable to full fill all the gaps existed in the law.

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Whenever the national law of the Country has a connection to the general or particular conditions this law has to be implemented it should be taken into consideration unless otherwise stated in the Contract.

FIDIC recognized the following Parties:

- Employer
- Contractor
- Engineer
- DAB (Dispute Adjudication Board)

***First Part:*** General Conditions includes:

1. Definitions
2. Clause from 1-20

These General Conditions and clauses are **untouched Copyright intellectual property cannot be modified**, modifications can be made by including amendment to the Contracts but not to the general Conditions it will be included in the second Part:

1. These amendments must be prepared by expert consultant or specialized firm.
2. Any amendment can lead to contradiction creep in,
3. All clauses are carefully connected and related to each other.

***Second Part:*** Guidance for the Preparation of Particular Conditions which includes:

1. Example and Guidance of how changes to General Conditions is done professionally, which includes any changes or additional clauses to suit the local and project requirement and to suit Employer requirement, this section need to be prepared by a specialist since all clause of FIDIC are strongly related and connected so any change can lead to a disaster end.
2. Example of Security Forms and Guarantee (Parent Guarantee, Tender security and **Performance Security**)

These particular condition is for one particular project and sometimes can be used widely.

***Third Part:*** Forms (Letter of Tender, Contract Agreement, Dispute Adjudication Agreement) and **Appendix to Tender**.

**Appendix to Tender** or (Contract Data) which gives essential information about the project, part of this information is filled by Employer to complete the general conditions, and other part is filled by Contractor, this section is being prepared by specialist or experience Engineer who is familiar with technical aspects and Contract requirements.

Whenever you see CAPITALS that mean this word is important and have Contractual meaning in FIDIC. It is important that we use capitals in the BOQ and Specifications.



## FIDIC Contract Administration

### Section (D): Civil Code VS Common Law:

FIDIC Contracts had demonstrated:

- More flexibility than any other standards forms of Contracts,
- Good adaptation to the different legal system,
- FIDIC is aware of the difficulties of using common law comparing standards forms of Contracts in civil code jurisdictions and has carefully analyses it by stating that governing civil code articles override the FIDIC Conditions.

Below are examples of where concepts in FIDIC Contracts are only understandable against the back ground of common law (customary law) or civil law:

1. Terms and Expressions. (may, shall, reasonable, **Force Majeure**, CAPITALISED WORDS) and other are well known under FIDIC Contract but it is unknown under civil law, like the meaning of **Force Majeure** it depends on legal jurisdiction law and it may varies from one Country to another,
2. Substantial Completion Vs acceptance of Work, the concept of Taking Over Certificate and substantial completion is unknown in civil jurisdiction code and they use acceptance of work,

When this term (Taking Over) appears so under FIDIC:

- Employer is required to accept the work once they have substantially completed.
  - Employer is required to declare that the work have been carried out in compliance with the Contract.
  - Defects declaration are ruled by law: Contractor is entitlement for payment and defect period start to run.
3. Defect Notification Period VS legal defect liability the definition of FIDIC to DNP is different than civil Law defines legal defect liability as period for post-Contract defects liability.
  4. Delay Damages VS penalties (penalties are governed by law and determined by court, do not relay on delay of time) in FIDIC there is liquidated damages represent a true estimate of the damaged owing to delay which often constitutes a cap for this type of liability.
  5. Time for Completion VS Fixed Completion Date.  
In Common law there is no clear system for time extension or claims, a delay which is attributed by Employer is defense against penalties, there is no time in large, in civil code jurisdiction the parties and agreed on programme not sure about the time, in civil code penalties attributed to the Employer for any delay are not connected to time, extension of time is not defined in civil code. No claims are well defined in law and the procedures are not clear and mostly are not defined.

## FIDIC Contract Administration

6. Role of Engineer under civil law is understood as Employer agent and deepens on Employer instruction and this is contrary of Engineer role in FIDIC, in FIDIC Engineer is independent and acts fairly to all parties and his duties is depending upon the used Contract, Engineer needs to act as the Contract which is the only law,
7. Claims VS Amendment (Civil code do not recognize claims), Engineer has to be independent and fair decision maker, Engineer power are strictly limited by Contract he has to act according to Contract, under civil code a determination of claim from an engineer can lead to amendment of Contract and determination will be covered by parties but in FIDIC Engineer has to set his determination which will be reviewed by DAB (Dispute Adjudication Board).
8. Notification of Defects (Contractor must notify for any defect or mistake in design during tender process or when carrying on works which is not existed in civil code) this process in FIDIC call the "GOOD Faith "and this concept is unknown by civil jurisdiction law,

FIDIC Contracts is a legally binding agreement (Contract is the law of the parties), thus it is limit arbitrariness and makes rational and foreseeable decision, so these Contracts do not intend to have arbitrary decision and provide rational reasonable ones, Contractor have to comply with applicable law, DAB shall give reasonable decision, payment have to be done on time to Contractor.

"FIDIC stated that the governing law must be stated"

### **IMPORTANT NOTES:**

- Governing civil code articles overrides the FIDIC conditions.
- Parties need to reconcile FIDIC conditions with civil code provisions when negotiating FIDIC Contracts.
- Parties must be aware of FIDIC conditions that appear to be originate from the requirement of civil code jurisdiction.

### **Under Civil Code Jurisdiction:**

- Parties usually agree on program.
- Delay attributed to Employer defense against penalties.
- Extension of time is not clear and will be discussed after the end time of the Contract.
- No clear system of claims.

### **Relationship between FIDIC Conditions of Contacts and Legal System:**

- Limit arbitrariness and make decisions rational and foreseeable.
- Stipulate default rules and interpretation guidelines and legal concepts that should be respected.

## FIDIC Contract Administration

### **Section (E): Guarantees:**

There are two types of financial securities or guarantees:

1. Grantee is issued from Bank.
2. Security is issued from Bank or certified agent in that Country.
- Guarantees can be: Parent Grantee, Advance Payment Grantee, Payment Guarantee for Employer, retention money Guarantee (this guarantee is from Contractor for the benefit of the Employer to release part or all retention money if Employer agrees on it).
- Securities can be: Tender Security, **Performance Security**.

### **Tender Security:**

This security is provided to the benefit of the Employer by Contractor during procurement phase that entitles Employer for compensation if:

1. Contractor withdraws from the tender.
2. Refuses to accept any correction of error in his tender due to his mistake in application.
3. Fails to sign the Contract with time specified in tender.
4. Fails to submit **Performance Security** within the period specified in the tender.

Engineer has to monitor the time expiry for this security and inform the Employer with the need to extend the duration.

When Engineer confirm to Employer that the copy he had received for **Performance Security** of the selected Contractor is according to tender documents then Employer can inform all the unsuccessful tenders and return their tender securities. **Performance Security** must be valid until issuing of **Performance Certificate**.

### **Section (F): Terms, Expressions and clauses in Red Book 1999 Edition:**

## FIDIC Contract Administration

### (F-1) Issuing of Contract Drawings:

Drawings included in the tender document are only for tendering and before **Commencement Date** Engineer should issue Drawings to the benefit of the Contractor in a list as below:

- Identifying the number of Drawings.
- Name of each Drawings with reference numbers.
- Last revision made on the Drawings.
- Stamped as "Approved for Construction".

### (F-2) Ground Conditions:

Claims for this type may be alive but also counter favorable ground conditions should be taken into consideration, this definition entitles the Contractor and Employer to claims when this event arisen equally for both, for condition have not been able to be considered seeable before submitting the tender for both parties,

### (F-3) Communication:

Should be done as determine in the **Appendix to Tender**, proper communication safes Contractor from losing his right or entitlement in some cases.

### (F-4) Notice:

It is a letter send from Contactor to Engineer or the opposite and it should have the following:

- It has to mention the event,
- It has to mention the effect,
- It has to be clear,
- You have to rely on the clause relating to this letter,
- Date must be on the header,
- Corrective action if needed,

Sometimes minutes of meetings can be considered a notice.

Contractor shall not receive any instruction other than that from Engineer but if Employer issue direct instruction to Contractor, he must follow the instruction.

Contractor needs to copy Employer for each notice and certificate, Contractor can directly contact Employer by if it has tp do with the below item and then copy Engineer:

- 1- Performance Security,
- 2- Advance payment guarantee,
- 3- Termination of Contract,
- 4- Suspension of Contract,

### (F-5) 1.5 Priority of Documents as for Red Book:

- **Contract Agreement** (if any),

## FIDIC Contract Administration

- **Letter of Acceptance,**
- Letter of Tender, (it is a form to be filled by Contractor not the tender documents in procurement phase)
- The particular conditions,
- General conditions,
- Specifications,
- Drawings,
- Schedule and any other documents forming the Contract like BOQ, time frame (Project Program), Method of measurements, Questions and Answers during procurement or any other document that Engineers feel it is important for Contract.

### **(F-6) 1.6 Contract Agreement:**

The parties shall enter into Contract Agreement within 28day after the Contractor receives LOA, Contract will be based on the particular condition or otherwise stated, Contractor have to pay any cost of stamps and duties or any other cost as stated in the Country law before signing Contract.

If Contractor has letter of tender and LOA so he has an undefective Contract if he does not sign Contract Agreement,

### **(F-7) 1.1.1.3 Letter of Acceptance(LOA):**

Binds parties to the Contract, it is a letter of formal acceptance signed by Employer and send to Contractor regarding the letter of tender that have been sent to the Employer regarding this project from Contractor, LOA should include any annexes memorandum comprising the agreement and signed by both parties.

42days after LOA needs to have Commencement Date, in which Engineer shall notify Contract 7 days in advance of the agreed date,

28days after LOA Contractor needs to submit:

- Performance Security,
- Project Program,
- Pays all taxes and fees based on Country law,

If Contractor prepared all the above item Employer can sign Contract Agreement and retain back the tender security,

### **(F-8) 1.1.1.9 Appendix to Tender:**

This is part of the third section of red book, This form is inserted in the Particular Condition in tendering phase and must be submitted with the letter of tender document of the Contractor for the benefit of the Employer, this table has essential information about the tender like: (Time for Completion of Works, Performance Bond, defect Notification Period, Delay Damages, Maximum Delay Damages, time to access of Site, working days, advance payment, Contract language, communication, Engineer name, Contractor name and Address, Payment and Currency and **Profit**).

## FIDIC Contract Administration

### (F-9) 4.2 Performance Security:

Contractor have to submit PS with an amount mentioned in the **Appendix to Tender** under particular conditions, it should be issued within 28days from LOA on the cost of the Contractor to the benefit of the Employer.

Employer can make a claim to this security when:

- Contractor failure to extend original PS beyond the expiry date.
- Contractor failure to pay the Employer under sub-clause 2.5(Employer Claims) within 42days after agreement and determination.
- Contractor failure to remedy any default within 42 days of being notified.
- Employer termination of Contract under 15.2 (Termination by Employer)

All first three item entitle the Employer to terminate the Contract under sub-clause 15.2 (Terminating by Employer).

PS will be returned after 21 days after issuing a **Performance Certificate**, Engineer needs to have a copy of the **Performance Security**, Engineer has to notify Employer whether or not the PS is in compliance with Contract and keeps track of the end date.

### (F-10) 1.1.4.1 Accepted Contract Amount:

This is the agreed amount stated in the LOA if not it should be mentioned in the Contract Agreement if not it is the sum of Contractor tender.

### (F-11) 14.1 Contract Price:

**Contract Price** is the **Accepted Contract Amount** plus the adjustments for changes in legislations under sub-clause 13.7 and under sub-clause 13.1 (Right to Vary),

Contractor has to:

- Contractor has to pay all taxes, duties and fees or any other expenses from his own cost as determined by the Country law and the **Contract Price** is not affected by this unless any change can be considered under sub-clause 13.7 (Adjustments for Changes in Legislations),
- All quantities which may set out in BOQ or any schedule is not considered accurate and need to be determined according to the actual amount executed in Site.
- The Engineer Shall determine and value each item of the Contract alone and make his determination according to item sub-clause 3.5 (Determinations) and if there is a Lump-Sum item the Contract, Contractor has to submit break down for it within 28days from **Commencement Date** and **Contract Price** is determined at the end of the project

### (F-12) Defect Notification Period:

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As FIDIC defines it is time for notifying the Contractor with defects either by Engineer or Employer after issuing TOC, time for remedying defects appeared in TOC must be agreed on, duration of DNP is determined in (**Appendix to Tender**), when Contractor finishes remedying defects mentioned in TOC Engineer is to issue **Performance Certificate (P.C)**. if remedying defects will be at the end of DNP other than that P.C will be issued at the end of DNP.

Engineer cannot request during DNP Variation or additional work will be requested from Contractor. If the defect appears during DNP which was not a responsibility of the Contractor due to misuse, Employer can ask Contractor to fix these defect on the cost of the Employer with reasonable profit

### (F-13) 11.2 Cost of Remedying Defects

All defect appears during executing of Contract and till the end of TOC is a Contractor responsibility and shall be remedying on his own cost if defect does not include:

- Any design for which the Contractor is responsible.
- Any Materials, Plants, workmanship was not according to the Contract.
- Failure of the Contractor to fulfill other obligation in the Contract.

After TOC is issued the Contractor is obliged to:

- Complete the work in reasonable time stated in TOC.
- Execute all work that required to remedy defects or damages before the end date on DNP.

### (F-14) 11.3 Extension of Defect Notification Period

Employer can extend DNP for the Works or for a Section that cannot be used to the purpose that have been designed for due to a defect or damages caused by Contractor, the Contractor is subjected to Employer claim under sub-clause 2.5.

If delivery of Material or Plant was suspended under sub-clause 8.8 (Suspension of Works) or under sub-clause 16.1 (Contractor's Entitlement to Suspend Work), any defect for more than two years after DFN shall not be applied for the Material and Plant suspended or would expired.

### (F-15) 11.4 Failure to Remedy Defects

Contractor fails to remedy defects within reasonable time, Engineer shall notify the Contractor of his action and set new reasonable date to remedy all defective work and if Contractor fails to meet this date:

- Employer can carry out the remedying of the work by other Contractor and cost will be burn into original Contractor as mentioned in sub-clause 11.2 (Cost of Remedying Defects), but Contractor will not be responsible for this part and will be subjected to Employer claims under sub-clause 2.5.

## FIDIC Contract Administration

- Engineer should make his determination about Employer claim as mentioned in sub-clause 3.5 (Determinations) as this will cause a reduction of **Contract Price**.
- If the defects deprive the Employer or substantially benefit of the Works or any major part or any Section of it, termination of the Contract as whole or in respect of this part which cannot be used is valid. If Employer partially canceled the defective part from Contractor obligation under Contract Employer can:
  - ✓ All sums paid to this part under Contract,
  - ✓ Financing cost,
  - ✓ Dismantling, clearing and retaining cost of material to Contractor

### (F-16) 11.5 Removal of Defects

If the defected part cannot be fix on Site and the remedying required to be carried out of Site, Contractor shall obtain consent from Employer and also increase the **Performance Security** with an amount of the defected part by providing all needed securities for Employer.

### (F-17) 11.6 Future Test

When the defect is fixed Engineer have the right to repeat any test to make sure that everything is done according to the Contract, if the remedy of defects affects performance of other parts Engineer may also request certain tests to be redone as mentioned in the Contract, Engineer have to give notice to Contractor to carry out tests within 28days after the defects and damages is being remedy. Test to be carried as stated in the specification and requirement. The cost of the test will be upon liable party.

### (F-18) 11.7 Right of Access

This clause deals with the defects during DNP, Employer has to grant Contractor right of access in order to comply with his obligation until the performance certification is issued.

### (F-19) 11.8 Contractor to Search

After the Employer has notified Contractor about the defects, he or Engineer can also request from Contractor to search about the reason of the defect, the cost of remedying the defects will be burn into Contractor as under sub-clause 11.2 (Cost of Remedying Defects) but any cost incurred by Contractor during searching for the defect plus reasonable profit shall be paid to Contractor and determination be Engineer as in sub-clause 3.5 (Determinations).

### (F-20) 11.9 Performance Certificate

It is a certificate issued from Engineer to Contractor stating the date Contractor finished all his Contractual obligations under Contract, this certificate issued after 28days of latest expire date of DNP, after 21 days of issuing this certificate the P.S



## FIDIC Contract Administration

must be returned to Contractor and within 56 days from P.C draft of **Final Statement**

After P.C is issued Contractor has to:

- Submit draft fir **Final Statement** within 56days,
- Demobilization,
- Responsible for the hidden defect,(

After P.C Employer has to:

- Return P.S,
- Pay **Final Statement** within 56 days of receiving **Final Payment Certificate** from Engineer

### (F-21) 11.11 Clearance of the Site

Upon receiving the P.C Contractor is obliged to clear the Site, if any Plant, Materials, rubbish or wreckage remains after 28days Employer can sold these items or disposed them on Contractor cost any balance from selling these equipment materials shall be paid to Contractor.

### (F-22) 8.7 Delay Damages:

In civil code jurisdiction, penalties are common.

In FIDIC the amount of this D.D is mentioned in the **Appendix to Tender**, it has daily rate and also has a upper limit to the Contract, D.D is applied when the Contractor fails to meet the time for completion mentioned in the **Appendix to Tender** and all the granted extension of time given under sub-clause 8.4 (Extension of Time for Completion), these D.D do not relieve the Contractor from his obligation, duties and responsibilities mentioned in the Contract. D.D is usually daily rate deduction up to 5%-15% of the **Contract Price**.

These delay damages or penalties cannot be alive until the **Contract price** is ascertained or in another way after the final payment is agreed on and submitted.

### (F-23) 1.9 Delay Drawings or Instruction:

If Contractor realized that there is a missing drawing, details or instruction must be made by the Engineer, before a activities are likely to be done according to the approved schedule, a notice to the Engineer shall be made in details mentioning all the missing documents, Drawings or instructions and when it should be submitted within reasonable time for the Engineer to prepare it and why it will affect the project execution, if the Engineer fails to submit within the reasonable time mentioned in the notice, Contractor shall be entitled for compensation as mentioned under sub-clause 20.1 (Contractor's Claims) in respect of:

- Time extension under subclause 8.4 (Extension of Time for Completion),
- Cost with reasonable profit,

### (F-24) 2.1 Right of Access to the Site

## FIDIC Contract Administration

Means the permission to enter Site, Employer must give the right of access and possession of the Site to Contractor as a whole or part as the schedule proposed by the Contractor program to enable him to proceed with his obligation in the Contract if time is not mentioned in the **Appendix to Tender**.

The date must be given in the **Appendix to Tender** if not according to the program submitted, if not it will be 42day from LOA, no such date will be given before Contactor issue the **Performance Security**.

Employer has to determine in the **Appendix to Tender** if partial hand over or restrictions alive, Contractor have to check the Site and determine his sequence accordingly. If no such mentioned Employer have to make access to the Site as mentioned in the program submitted by Contractor under Sub-clause 8.3 (Programme) so no disrupt of the Work.

Right of access may not be to the benefit of the Contractor only there might be other Contractors working in the same Site,

If the Contractor suffers from delay and that delay incur a cost then Contractor shall notify the Engineer and make a claim under sub-clause 20.1 (Contractor`s claims) as to the procedure mentioned, the Contractor may be entitled for:

- Time extension under sub-clause 8.4 (Extension of Time for Completion),
- Cost plus reasonable profit,

After the Engineer receive the notice from the Contractor he has to make his determination as under sub-clause 3.5 (Determinations). Drop the delayed part if the project is partially handed to Contractor,

If Employer fails to give right of access to Contractor for more than 42day from LOA, Contractor have the right to adjust his unit rates and also EoT.

If the passion of the Site is shared with third party Contractor and it was not mentioned under the Contract, Contractor:

- Cannot bar third party from entering the Site,
- Can submit a notice of calim if the third party interfere with his work and he may be entitled to extension of time and cost,

Engineer should make his determination under subclause 3.5 (Determinations) and issue a variation if delays happened and original contarctor incurred an additional cost due to the available of the third party Contractor.

### **(F-25) 8.2 Time for Completion**

The time in which all Works will be completed as mentioned in the **Appendix to Tender** (Contract Data) and as below:

## FIDIC Contract Administration

- Achieving and passing **Test on Completion**.
- Completing all work as stated in the Contract.
- TOC is Issued,
- Defect Notification Period is completed,
- Defects are remedy,
- Contractor Documents and As-built are submitted
- PS is returned after 21 days from PC.

Time for Completion starts on **Commencement Date** which has been stated by Notice from Engineer not when the parties sign the Contract.

### (F-26) 4.1 Contractor General Obligation:

- Obligation which are construed from the agreement between the Parties and according to Contract requirement.
- Obligation which apply under the applicable law of the Contract.
- Primary obligation is to construct the Work and remedy any defects.
- Stability and safety of the Site.
- Comply with the Country labor law.
- Site operation and construction method.
- Responsible for all Contract documents and records for Plants Material to be submitted to Engineer when finishing and completing the work and ready to be taken over.
- Make the best use of Material as described in the Contract and per Engineer instruction.
- Performance of administration and notice required.
- Provide security of the Site until TOC.
- Pay to his personal and sub-contractors.
- Provide and maintains accommodation and welfare facility of all personnel.
- Ensure maintenance of all health facility.
- Contractor shall not recruit or attempt to recruit staff from Employers personnel.
- Contractor has to design any part of the permanent Work if mentioned in the Contract and the contractor will be responsible for that part and shall provide all the supporting particulars for the design and the safety of the design for approval,
- Execute and complete the Works as in Contract and with Engineer instructions,
- Remedy the defects,
- Responsible for the safety of the project,
- Responsible for the Contractor documents,
- Contractor shall maintain the temporary work during the life time of the project,
- Contractor shall submit to the Engineer before **Test on Completion** the following items:
  - a) As-built Drawings

## FIDIC Contract Administration

- b) Operation & maintenance manuals,

### (F-27) 4.3 Contractor Representatives:

- If the Contract includes persons or parties who are not named in FIDIC General Conditions such project manager, supervisor or any other party so their titles, roles and duties have to be defined in the particular Conditions,
- Prior the **Commencement Date** Contractor shall submit to Engineer for consent the names and particulars of the persons that the Contractor is willing to appoint,
- These persons are appointed by Contractor and being given all the Contractor authority in the Site to perform the Contract,
- Their absence of the Site should be minor, and a suitable replacement should be available with a consent from Engineer,
- Must have Engineer consent for them and any changes of the Contractor team must have again Engineer consent.
- Delegation of authority and responsibilities must be clear between Contractor construction team and sent in writing to the Employer.

Engineer can remove any sub-contractor or any of the Contractor personnel from Site if:

- a) Persist in any misconduct of care and carries out duties incomplete or negligently
- b) Fails to confirm with any Contract provision
- c) Persist in conducting prejudicial to safety, health, protection and environment

### (F-28) 2.4 Employer`s Financial Arrangements

Employer shall submit within 28days after receiving a notice from Contractor, a reasonable evidence for his financial arrangement to ensure Employer to pay Contractor all his completed obligation under Contract. And if he wants to change his financial plan he should notify Contractor.

If the Employer fails to submit such an evidence the Contractor may suspend the work or even terminate the Contract.

### (F-29) 2.5 Employer Claims

If Employer consider himself is entitled for any payment he should send a notice to the Contractor with all the supporting particulars, claims can be due to:

- 1- Extend Defect and Notification Period.
- 2- Extra payment due to Contractor faults that forbids Employer from using part or all the works after completion date of Works.
- 3- Contractor using Employer equipment,
- 4- Contractor fails to pay operational cost to the Employer personnel as mentioned in the Contract.

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Engineer has to set his determination about the claim as mentioned in sub-clause 3.5 (Determinations), Employer cannot withhold any payments for Contractor if there is no notice has been given to Contractor and his Engineer has not set his determination.

### (F-30) Employer Representative:

- **Engineer and his staff:**
  - ✓ Appointed by Employer.
  - ✓ Part of the Employer personal.
  - ✓ Must act as stated in the Contract between him and the Employer.
  - ✓ Employer cannot change the Engineer without notifying the Contractor, Contractor has the right to object the new selection if he has reasonable reason.
  - ✓ Must be named in the (Appendix to Contract).
  - ✓ Must protect Employer best interest but also, he should act with fairness and integrity when making his own determination.
  - ✓ Must comply with all environmental mitigation plan to protect environment and make all safety measurements

#### Identification of Engineer in Contract:

Engineer and his role should be clearly identified in the Contract in the Particular Conditions (PCs) with an expression as below:

- An Entity (e.g "The Company .....")
- A representative of that entity (e.g" The Company ... as a represented by the person holding position of president of the Company .....) or
- "The Company as represented by the person appointed from time to time to act as an Engineer for the purpose of this Contract"

#### Engineer Role and Duties:

When Engineer is appointed by Employer he needs to:

1. Review the Contract work's in respect with Engineers responsibilities and obligations to identify any contradiction with his agreement with Employer.
2. Report to the Employer if there is any contradiction in his Contract with Employer and give suggestion to solve this by adding amendment to the Contract.
3. Inform the Employer if there are any other Contractual errors in his Contract with Contractor and make amendment to solve it.
4. Fully familiar with documents of the Contract.
5. Assist/advise the Employer at the Contract awarding stage, assisting is after procurement and advising is before procurement.
6. Check funding agreement if available and compare it with Contractor cash flow.

## FIDIC Contract Administration

Once a Contract is placed with Contractor, the promotor or developer of the Contract is called Employer, and the consulting Engineer is called Engineer (this might be individual and organization) and if the consultant acts as a supervisor he is called Employer agent. Engineer is appointed by Employer to carry out obligation he has no power to it.

Engineer Role can be categorized and divided based on Contract phases, type of assignment or project phases as below:

1. Contact Phase (Pre-Contract, Post Contract or during construction)
  - Pre-Contract
    - a) Ensure that the Employer is aware that he carries the financial risk for the unforeseeable events, variations and adjustments regarding the Contract,
    - b) Warn the Employer of the decision and actions required from him like giving program dates, finalizing the design, providing right of Access and taking over the Works when Completed,
    - c) Review and approve the Drawings, Specifications and BOQ based on Employer vision and requirements.

- Post Contract,

Review all contract documents and inform Employer if an error is existed,

- a) Signed Agreement,
  - b) Letter of Acceptance,
  - c) Contractor letter of tender,
  - d) General conditions,
  - e) Particular conditions,
  - f) Contract Schedules (any clarifications or modifications made to the tender during procurement or after procurement before signing of the Contract)
2. Type of assigned duties (design, quality, cost accountancy, certification, administration and management)
  3. Project Phase (before construction, during construction)
    - Before Construction:
      - a) Designer, advisor and consultant: complete a skillful design of the project includes:
        - Prepare Drawings,
        - Prepare Specification,
        - Prepare BOQ,
        - Method of measurements,
        - Prepare tender Documents,
    - During construction or post Contract
      - Continuing the design.
      - Quality control officer and quantity officer,
      - Ensure that the project is performed within time stated and according to the budget and with compliance of Specification.
      - Administrative role as an Employer agent.

## FIDIC Contract Administration

- Ensure that the Contractor have all the needed information, instruction, approvals, licensed needed from the Employer and all Employers personnel is cooperating with the Contractor to complete the Work,
- Supervisory,
- Certifying (Date of Completion, payment for the nominated sub-contractor, Contractor payments) and Issue (Taking Over Certificate, **Final Payment Certificate**)
- Adjudication fair Decision making.

if the Engineer is required to take approval for any kind of action as mentioned in his Contract with Employer as approving Variation which is in the contrary to FIDIC structure of Engineer role, and if the Engineer has given such approval, Contractor shall follow Engineer instruction as if Employer approval is achieved and the Employer has to approve the action then go back to for a Claim to the Engineer, finally Engineer have no right to extend the Contract.

Engineer role can be summarized as below:

- 1- Inform the Employer of his finical duties and other related issues like permits, delay payments, Site right of Access
- 2- Design
  - a) Tender documents,
  - b) Drawings,
  - c) Specification,
  - d) BOQ,
  - e) Estimation cost,
- 3- Quality control,
- 4- Cost accountancy,
- 5- Administration,

Rules of Origin:

Engineer needs to check Contract documents regarding:

- Origin of material and Plant if Contract stated that,
- Equipment and vehicles to be provided under the Works Contract that becomes Employer property,
- Nationality of Contractor`s personnel,

Engineer CAN NOT CHANGE ANY OF THE BELOW CONTRACTUAL DOCUMENTS:

1. Contract Agreement,
2. Conditions of Contracts,
3. Specifications,
4. Employer requirements,
5. Unit rate,

Any restriction on Engineer authority should be stated in the Contract as mentioned in sub-clause 3.1(Engineer Duties and Authority),

## FIDIC Contract Administration

### Delegation of the authority of Engineer:

Engineer main duties determination, certification and Variation and it is divided into two parts of process decision then determination, Engineer cannot perform all his duties and responsibilities as a one person, he needs to assign some of his duties to assistants and representatives in the Site by:

- Delegating some of his duties to his assistant to each one of them as a supervising staff,
- Official letter should be made to Contractor and Employer clearly stating the roles of each one of them,
- NO DETERMINATION, CETIFICATION or VARIATION should be delegated to his staff,

### Engineer has to Remind Employer of his Role and Duties:

- 2.1 Right of Access to the Site,
- 2.2 Permits and licenses or Approval,
- 2.3 Employers appointing Engineer and other Employer personnel,
- 2.4 Employer Financial Arrangements,
- 2.5 Employers claims, if the Employer feel that he is entitled for payments notice shall be giving to the Contractor with supporting particulars, Employer cannot deduct from Contractor payment unless Engineer makes his determination about that claim as in sub-clause 3.5(Determinations),

It is preferably that Employer with Contactor and Engineer had a Pre-commencement meeting or kick off meeting to discuss:

- Roles and authorities,
- Appointment of Contractor representative, sub-contractor or nominated sub-contractors,
- Securities and grantees,
- **Commencement Date**,
- Quality assurance control,
- Security, safety and protection,
- Material submitted and approvals,
- Requirement of Interim payments, monthly Reports, tests and Variations

### **(F-31) 3.4 Replacement of the Engineer**

Employer has to notify the Contractor with 42 days before the date to replace the Engineer and also, he should mention the new nominated Engineer, qualification and address, if Contactor has a reasonable justification for objection he should send back to the Employer with supporting particular.

### **(F-32) 4.4 Subcontractors**

- Contractor can have one or more sub-contractors working with him but there are some strict regulations have to be obtained like:



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1. Contractor cannot sub-contract the whole project to another Contractor and if this happens Employer can terminate Contract, Contractor can only sub Contract as mentioned in the Contract and if the Contractor wants to sub Contract any part of the work above the mentioned amount in the Contract he needs to get consent from Employer and Engineer.
2. Contractor must obtain consent for his sub-Contractors from Engineer.
  - Contractor shall notify Engineer 28 days before the **Commencement Date** for each sub-contractor work.
  - Each sub-contractor shall include provisions which entitle the Employer require sub-contractor to be assigned to the Employer.
  - Contractor shall hold responsible for any acts or defaults by the sub-Contractor, his agents or his employee,

Material suppliers and nominated Contractors does not need any consent from Engineer.

### **(F-33) 4.5 Assigned or Benefit of Sub-contractors**

If the obligation of the sub-contractor extended beyond DNP and Engineer instructed to assign the benefit of this obligation to the Employer, the Contractor have no liability for the work carried out by the sub-contractor.

### **(F-34) (5, 5.1, 5.2, 5.3) Nominated Sub-contractor**

Nominated subcontractors means subcontractors defined in Contract or instructed by Employer contract with them as sub-contractor, usually they are hired for their specialty in certain activities which is not done by the main Contractor employee

This sub-contractor is being nominated in the Contract and the Contractor is obliged to cooperate with him.

- Employer wishes to use particular sub-contractor "nominated sub-contractor" by naming him in the Contract and usually this nominated sub-contractor is nominated in the RFP.
- Contractor have the right to object hiring nominated sub-contractor by sending a notice as soon as practical showing reasonable justifications, Contractor must give notice of such objection and if the Employer insists and indemnify Contractor for such matters:
  - a) The nominated sub-contractor is lack of competences or sufficient finance or resources.
  - b) If the sub-contract does not specify that sub-contractor shall provide the Contractor with an appropriate indemnify in the relation of negligence or misuse of Goods.
  - c) The sub-contract does not state that sub-contractor will undertake the work in a manner that the Contractor will be released from his obligations,

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- d) The sub-contract does not state that the sub-contractor will indemnify Contractor from any damages or failure in respect of his performing of contractual his obligations.
- Engineer shall certify to nominated sub-contractor his payment due to work done under Contract.
  - Contractor shall pay the amount certified unless he disagrees with the amount. Engineer before releasing Contractor **Payment Certificate** ask for payment evidence in the respect of the nominated sub-contractor, if the Contractor failed to prove payment Engineer have the right to hold his payment and ask the Employer to pay directly for the sub-contractor then deduct it from Contractor payment.
  - Any sum certified will be part of the **Contract Price**.
  - Engineer can use the provisional sum to perform activities for the nominated subcontractor, main Contractor may have a percentage of profit for the nominated subcontractor works.

### (F-35) 5.4 Evidence of Payments

Before issuing a **Payment Certificate** to the Employer for an entitlement of the Contractor in which it has an amount for nominated sub-contractor, Engineer may request evidence from the Contractor showing that he have paid all the sub-contractors working in the Site, if Contractor failed to provide such an evidence the Engineer may entitled to withhold his payment.

### (F-36) 1.1.3.1 Base Date:

This date is 28 days before tender submission date, this is a very important date to be considered, if an event occurs after the Base Date and have an effect on the **Contract Price** then the Contractor is allowed to have claim for time and/or Cost plus reasonable profit according to the event.

### (F-37) 1.1.4.3 Cost:

Defines as all expenditure reasonably incurred or intended to be incurred by Contractor whether on Site or off Site, it includes overhead and similar charges but does not include profit. Contractor have to prove Cost for any entitlement in his respect and any entitlement for Cost does not include profit.

Cost can be divided into Direct Cost and Indirect Cost;

1. Direct Cost: includes (Material, equipment, labor and sub-contractors)
2. Indirect Cost:
  - General (Operational Cost), water, electricity, insurances, installing offices, etc...
  - Administrative Cost: Contractor staff plus head office cost

**Table (D)**



## FIDIC Contract Administration

Sub-clause		Cost	Profit	Time
1.9	Delay Drawings or Instructions	Yes	Yes	Yes
2.1	Right of Access to the Site	Yes	Yes	Yes
4.7	Setting out	Yes	Yes	Yes
4.12	Unforeseeable Physical Conditions	Yes	No	Yes
4.24	Fossils	Yes	No	Yes
7.4	Testing	Yes	Yes	Yes
8.4	Extension of Time for Completion	No	No	Yes
8.5	Delay caused by Authorities	Silent	Silent	Yes
8.9	Consequences of Suspension	Yes	No	Yes
10.2	Taking Over Part of the Works	Yes	Yes	Yes
10.3	Testing on Completion	Yes	Yes	Yes
11.8	Contract or to search (Cause of the Defect)	Yes	Yes	No
12.4	Omissions-Red Book	Yes	No	No
13.7	Adjustments for Changes in Legislation	Yes	No	Yes
16.1	Contractor`s Entitlement to Suspend Work	Yes	Yes	Yes
17.4	Consequences of Employer`s Risks	Yes	No	Yes
19.4	Consequences of Forces Majeure	Sometime	No	Yes

Profit for any case can be allowed if the action was the Employer fault and this action causes Contractor additional cost. And it is important to determine the percentage of the profit in the **Appendix to Tender** so that both of Contractor and Engineer can agree on certain percentage and avoid dispute.

### (F-38) 3.3 Instruction of the Engineer

Engineer may issue instructions and additional or modification on Drawings which may needed for execution, Contractor has to comply with Engineer instruction and if instruction was oral Contractor has to submit in writing within Two working day to confirm such instruction and if Engineer did not replay within Two working days this instruction will be considered active. If Engineer delayed any instruction which may affect the Work progress Contractor has the right to Claim under sub-clause 20.1 (Contractor`s Claims) for:

- Extension of time under sub-clause 8.4 (extension of Time for Completion),
- Cost plus reasonable profit.

If any the Contractor feels that the given instruction contains Variation, then he should response to sub-clause 13.3 (Variation Procedure)

### (F-39) 1.1.4.10 Provisional Sums-Sub clause 13.5

Any amount in the Contract specified as Provisional Sum that is needed to Execute some or part of the Works as Engineer instructs in whole or part, this part is determined by the Employer,

## FIDIC Contract Administration

The **Contract Price** has to be changed accordingly, total sum paid shall include any amount of work done, material procured or supplied, and any services done under Provisional Sum and so the Engineer may instruct:

- The actual amount paid by the Contractor,
- The overheads and any other cost incurred by the Contractor with addition of the profit as determined in the Contract or **Appendix to Tender**

In Construction projects BOQ may contain the following items:

- Re-measured Items,
- Procured items, (the weight of these items comparing to the construction item is very small)
- Lump sum items,
- Provisional Sum items,

For the last item, this item is done usually when the Employer wants:

- To assign certain nominated sub-contractor to do specialized part of the work in his Contract, in this part the main Contractor is entitled to profit and over heads for scope of work done by the NC.
- Dose not has the time to design certain part of the Work, so he merges it in this item inside the BOQ,
- To accommodate so claims regarding ground conditions in the Site when it appears,

Provisional Sum can be used as total or partial or not to use it at all, Contactor does not have the right to claim any losses of profit or any amount of **Contract Price**. When Employer wants to use the Provisional Sum, it is preferable to be mention in detail what it will be used for inside the Contract.

### **(F-40) 4.12 Unforeseeable Physical Conditions**

Unforeseeable Physical Conditions means natural conditions and man-made obstruction, pollutant or any subsurface conditions excluding weather which encountered by Contractor when execution of Works in the Site, which an experience Contractor cannot observe before submitting his offer.

If the Contractor encounters any physical condition enable him to claim it as unforeseeable physical condition, then he should send a notice to the Engineer explaining the situation and why he thinks it is considered as unforeseeable, so the Engineer can set his determination as under sub-clause 3.5(Determinations) after receiving such notice.

If agreed the Contractor may be entitled to:

- Extension of time under sub-clause 8.4 (Extension of Tine for Completion)
- Cost **without profit**.

If the unforeseeable in the benefit of the Contractor, the Engineer can determine to deduct from his payments according to the maximum amount claimed by the Contractor for the same situation.

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If the Unforeseeable Physical Condition is continuously happening and that may lead to change design in order to overcome this Physical Condition, Contractor is entitled for:

- Extension of time under sub-clause 8.4(extension of Time for Completion)
- Cost with profit,

Physical condition must happen in the Site of the project. Contractor shall continue working under Contract and try with Engineer to reduce the effect of the physical conditions and update the construction program so the the work follow will not be affect as much as possible

### **(F-41) 4.7 Setting Out**

Employer is responsible of giving the original points, references, levels as instructed by Contract.

Contractor has to set out his work according to the initial information given by Employer or instructed by Engineer if an error incurs for these original point Contractor have to correct it as needed,

If Contractor suffers a delay due to Setting Out of the original points which appears that he could not have the ability to discover as an experience Contractor and this will have determined by the Engineer according to sub-clause 3.5(Determinations), then he should notify Engineer under sub-clause 20.1 (Contractor`s Claims), and he will be entitled for

- Time extension under sub-clause 8.4(extension of Time for Completion),
- Cost plus reasonable profit.

Engineer has to determine under sub-clauses 3.5(Determinations) after receiving the above notice whether this fault could be reasonably discovered by an experience Contractor or not.

### **(F-42) 4.10 Site Data**

Employer to make available " all relevant data" to the Contractor in his possession, these data should be available before the Base Date (which is 28days before submitting his offer) and similarly all the data that come to the Employer after the Base Date.

Sit Data means (sub-surface information, hydrological conditions, security issues)

Contractor responsible for:

- Interpreting the Site Data
- Obtaining other information

Any failure to provide Site data will affect determination of the whether Physical Condition was foreseeable or not.

Contractor has deemed to investigate all the Site data and Site condition and surrounding on his own cost and the above data of the surface.

### **(F-43) 4.13 Right of Way and Facilities**

Contractor on his own cost to provide:

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- Site access,
- Special or temporary right of way include: any side access he has to make in order to perform his obligations,
- Obtaining facilities outside of the Site which is needed to execute his Work,
- Include all the environmental aspects needed to the Right of Way,

### (F-44) 4.15 Access Route

Contractor has to be deemed to be satisfied with all Site route and the stability of using these route

- Contractor has to prevent any damage in Roads and Bridges due to his traffic while executing the Works,
- Contractor shall have deemed to be responsible to any damage happens to the Site route,
- Contractor has to provide necessary signs or directions along with Site Route and shall obtain all needed permissions from the relevant authorities.
- No financial claims will be applied if the Contractor suffers from any cost due to the Site Access,
- Employer do not grantee the suitability and availability of the Site Routs

### (F-45) 4.2 Performance Security:

PS is submitted as required and mentioned in the **Appendix to Tender** within 28days after the LOA to the benefit of the Employer and on the cost of the Contractor. PS has to be valid during construction and until remedy all the defect during DNP.

Employer can call PS when:

- Contractor fails to extend the PS beyond the expiry date,
- Contractor fails to pay any amount to the Employer under sub-clause 2.5 (Employer claims),
- Failure of the Contractor to remedy any default in 42 days of being notified,
- When Employer terminate the Contract,

### (F-46) 4.21 Progress Reports

- Progress Report is a condition of payments,
- Should be prepared monthly and regularly,
- Format to be approved by Engineer,
- Six copies to be submitted,
- First Report will be at the end of the calendar month after the

#### **Commencement Date,**

If there is a delay happened, Contractor shall work in making decision on how to minimize the effect of this action and included it in the progress report.

If there is Unforeseeable Physical Condition happened Contractor must include this in his monthly report.

These reports should include:

## FIDIC Contract Administration

- a) Charts and details describing progress and all activities carried out by sub-contractor with completion dates,
- b) Photos,
- c) If these is a Plant to be procured or material to be shipped so:
  - **Commencement Date** of manufacturing,
  - Contractor`s inspection,
  - Test,
  - Shipment and arrival as Site,
- d) Records (Contractor personal and equipment)
- e) Copy of quality assurance documents, test, data sheets or certificates,
- f) List of notices (Employer claims and Contractor claims)
- g) Safety statistics, including any hazardous incidents or activity relating the environment
- h) Comparing of actual progress and planned progress

### (F-47) 12 Measurement and Evaluation

In the case of Lump-sum or cost-plus Contract this clause should be omitted in the Particular Conditions.

### (F-48) 12.1 Work to be Measured

Whenever the Engineer want to measure a certain Work a notice must be given to the Contractor with reasonable time to attend, Contractor have to attend or send representative to attend and assist the Engineer on measuring and providing all needed equipment, electricity, water source or whatever is needed to complete measurement as required and mentioned by specification in Contract.

If the Contractor did not show, the Engineer may proceed, and the measurement will be recorded accurate, the same for the permanent Work whenever any work to be measured the Engineer should prepare the record and send a notice to the Contractor and if he fail to attend the records will be considered accurate.

The Contractor have the right to disagree with the Engineer determination after the Engineer send these records to Contractor to review, he should give a notice within 14 days to the Engineer informing him about his opinion of the records and if he fails the records will consider accurate.

### (F-49) 12.2 Method of Measurement

Measurement shall be made on the executed quantities and net actual quantity and as mentioned in the bill of quantity unless otherwise stated in the Contract regarding the method of measurement.

### (F-50) 12.3 Evaluation

Unless otherwise stated in the Contract Engineer have to evaluate and determine **Contract Price** by evaluating each item of work.



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Contractor have to submit break down for any Lump Sum Items in the BOQ within 28days of **Commencement Date**.

For adjusting the unit rates for the exiting item under FIDIC for RED BOOK it should have the below items all happened:

- If the quantity measured changed with more than 10%,
- If this change in the quantity exceeds 0.01% of **Accepted Contract Amount**,
- This change in quantity affect the Cost per unit of more than 1%, this is not applicable in contact carried out by Jordanian Government.
- If this item is not mentioned in the Contract as fixed price item,

When there are new items of work is request by the Engineer, Contractor must:

- Evaluate the requested work if it can be can be considered under sub-clause 13 (Variations and Adjustments),
- Check if there are no unit price rates in the Contract for similar items with same specifications can be relate to,
- And there are no similar unit price rates can be based on it to build new prices.

So new unit price rates need to be build up by having a break down for this item includes (Cost plus reasonable profit).

If the Contractor and Engineer did not agree on the new unit price rates, Engineer should make a provisional rate so that he can include this Variation in the coming **Payment Certificate** and he should inform the Employer about this case.

Contractor has the right to claim of any diminished quantities, he may claim for higher unit price for that item that prevent him from full recovery of his overheads, but Engineer has to:

- Consider other quantities over-runs and under-runs,
- Another price adjustment mad pursuant to Contract

### (F-51) 12.4 Omissions

When any omission forms part of the Variation and the value is not being agreed if:

- Contactor will incur a cost due to this omission or will incur, if the work has not to be omitted, would have been deemed to be covered by sum forming part of the Acceptable Contract Amount,
- The Omission will result or resulted in the sum not forming part of **Contract Price**,
- This cost is not deemed to be included in the evaluation of any substituted wok.

Contractor has to notice Engineer to set his determination about the cost incurred by the Contractor as in sub-clause 3.5(Determinations) which shall be included in the **Contract Price**.

### (F-52) 13 Variations and Adjustments



## FIDIC Contract Administration

### (F-52-a) 13.1 Right to Vary

Variation under **Contract** can be initiated at any time during construction and until the Engineer Issue TOC by instructing or requesting for proposal from Contractor. Engineer has to review his Contract with Employer to release his authorization of Variations. These Variation must be essential for the permanent Works and Engineer has the authority to issue them.

There are two types of Variations:

1. Variation under Contract, this type is controlled by Engineer or Employer through his Engineer can issue and set his determination.
  - a) Change in quantities increase or decrease,
  - b) Change of quality or specifications,
  - c) Change of levels, positions or dimensions,
  - d) Omit any Works but do not sub Contract it to another Contractor,
  - e) Change initial information given to Contractor or correct any information or instruction given to Contractor,
  - f) Additional work necessary for permanent Work,
  - g) Change the sequence of the execution of Works,
2. Variation of Contract- (Contractual variation)-this type is controlled by signing Parties in the Contract or who is representing them by their obligations and duties. Like changing **Time for Completion**, changing minimum payment amount, changing **Performance Security** or any other securities mentioned in the Contract which also includes Variation initiated during DNP and any request issued after TOC.

If the Employer issue a direct instruction to Contractor of any Variation not through his Engineer, Contractor is deemed to has approval from Engineer on that instruction.

Employer could disown from any Variation instructed by Engineer if it was:

- Unnecessary or inappropriate,
- Not mandatory for work completion,
- Instruction breaches Contract agreement between Employer and Engineer,

In this case Contractor has the right to recover any cost incurred from Engineer due to his instructions.

### (F-52-b) 13.2 Value Engineering

The Contractor may at any time to submit a proposal (in Contractor opinion) to Engineer to:

- Accelerate completion,
- Deuce cost on employer behalf,
- Improve efficiency or value of the completed Work,
- Any other benefit of the Employer,

If this request is approved so this may lead to:

## FIDIC Contract Administration

1. Increase in **Contract Price** and so Engineer need to set his determination about the value according to sub-clause 3.5(Determinations) and the procedure of the proposal need to follow sub-clause 13.3 (Variation Procedure),
2. Reduce in the **Contract Price**, so Engineer need to set his determination about the fee to be included in the **Contract Price** as in sub-clause 3.5(Determinations), fee shall be 50% of the difference between the following amount:
  - a) The reduction is not due to adjustments for changes in legislation as under sub-clause 13.7 or due to or adjustment for changes in cost as under sub-clause 13.8,
  - b) The reduction of the benefit of the Employer takes into the account the reduction in quality, operational efficiency and life time.

### **(F-52-c)13.3 Variation Procedure**

*(Variations should not be made to overcome Contractor loss)*

Variation can be initiated by Engineer before issuing Taking Over Certificate for the Works TOC, by two methods:

- Instruction verbally or written? (any verbal or oral instruction need to be followed within two working days with written notice to confirm, Engineer has to replay within two working day except that Variation is deemed to be approved).
- Asking Contractor to submit proposal (after approving Engineer have to give instructions to proceed). If no approval giving Contractor has to proceed as if no changes happened.

Engineer may approve a Variation in woks after TOC if he requested this change before TOC is issued.

If the Variation is necessitated by some defaults made by Contractor for which he is responsible the cost for this Variation is burned upon Contractor.

The Contractor shall proceed with the instruction given by the Engineer unless the below things happened:

- The Contractor cannot obtain the required material for the Variation and that may affect the Time for Completion of the Works.
- The requested work is not related to the permanent work.
- The requested work may affect the safety of the project.
- The requested work may affect other items of permanent work.

Unless stated above any Variation may include:

- Changing the quantity of the work,
- Change the quality for the item,
- Change levels, dimensions or positions of any part of the permeant Works,
- Omission any part unless it is carried out by others.

## FIDIC Contract Administration

- Any additional work, Plant, Material or services necessary for the Permanent Works including any **Test on Completion**.
- Changing the sequence of timing for execution of the Work.

If the Engineer request a proposal, before instruction of Variation, the Contractor he shall reply in writing whether he can or cannot do the work with reasonable justification, if so:

- Description of the proposed work to be performed with programme for it.
  - Contractor shall propose any necessary modification to the programme and to the time of completion.
  - Contractor proposal for evaluation of the Variation.
- Engineer have to make his determination for this proposal by approving or not then give an instruction to the Contractor.

Unless and until Engineer approves Variation submitted by Contractor or instruct Variation Contractor has to work according to the original design.

### (F-52-d) 13.7 Adjustments for Changes in Legislation

**Contract Price** will be adjusted without a notice to be send to the Engineer

Any Adjustment due to Legislations can involve:

- Change in the Law of the Country,
- Introduce new Laws,
- Repeal or modification of the existing law,
- Change of interpretation of the existing law,

If these changes happened within 28days (Base Date) before Contractor submits his offer changes may include time and cost.

This changing can be (+ or -), If the Contractor will suffer from any delay due to these changes in Legislation Contractor shall send a notice under sub-clause 20.1(Contractor's Claims).

Change in the unit rate:

- Change in quantities as described in the Variation,
- Change in Legislation,
- Change in Cost,
- Delay of giving Contractor right of access more than 42days after LOA,

### (F-53) 19.1 Definition of Force Majeure

It is defined as an exceptional event or circumstances that prevents any party from performing its obligations and duties:

It should be as below:

- beyond a party`s control,
- such party could not reasonable have been provided against before entering the Contract,

## FIDIC Contract Administration

- if arisen, no party can avoid or overcome it,
- Which is not attributable by any other party.

**Force Majeure** can be as Employer risk as act of war (rebellion, riot, invasion, insurrection, terrorism, revolution, hostilities action of foreign, munition of war or explosive materials),

Any party suffers from **Force Majeure** shall give a notice within 14days of the event explaining why this is a **Force Majeure** and what obligation was not being able to be performed due to this event as mentioned under sub-clause 19.2 (Notice of **Force Majeure**),

### (F-53-a) 19.4 Consequence of Force Majeure

If the Contractor is prevented from doing any from his obligation in the Contract due to a **Force Majeure** as defined under sub-clause 19.1 and a notice is being done under sub-clause 19.2 (Notice of **Force Majeure**), the Contractor is entitled for claim under sub-clause 20.1 (Contractor`s Claims), he is entitled for:

- Extension of time under sub-clause 8.4 (Extension of Time for Completion),
- Payment for any Costs incurred during the effect of the **Force Majeure**

### (F-54) 8.1 Commencement of Works- (Commencement Date)

It is not the date of the Contract Agreement or **Letter of Acceptance**, this date may be mentioned in the **Appendix to Tender** if not, Engineer have to give the Contractor notice not less than 7days before 42 days after the **Letter of Acceptance** to notify him to start, Contractor has to start on construction Site as required in the Contract without any delay with suitable manner as Engineer approves. From this date **Time for Completion** starts to count and this time should be in consultation between Contractor and Employer and this date should be in writing, Contractor can start mobilization before the **Commencement Date** by sending notice to Engineer for that and Engineer needs to keep and good record of Contractor mobilization.

Before issue a Commencement Date Engineer need to check with Employer that there is no obstruction prevent Employer from giving a right of access to the site to Contractor on that data as stated in the **Appendix to Tender**.

If the right of access to the site delayed more that 42days after LOA Contractor has the right to claim to adjust his prices, and if the delay continued he would have the right to claim for time and extra cost.

Completion date: is the date on which:

- Taking Over Certificate is issued,
- Defect Notification Period is done,
- Performance Certificated is issued,

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- And return of **Performance Security** within 21 day after the PC,
- All Contractor documents (as-built, catalogs, approvals, test reports, manuals, licensed, or any other document) required under the Contract must be delivered and submitted to the Engineer

### (F-55) 8.3 Programme

Contractor after 28 days of the notice for **Commencement Date** has to submit a detailed Program showing the below:

- Sequence of the Works carried out by the Contractor and date to complete it.
- In each stage he has to mention sub-contractors working in this activity.
- Timing should comply with Contract.
- Supporting reports:
  1. General description of the method the Contractor intend to follow
  2. Details showing the Contractor estimation for his personnel at each stage.

Unless the Contractor receive any notice about the program from Engineer within 21 days he should consider it approved, Engineer should give comments to the program showing where it is not with comply with the Contract.

Contractor has to notify Engineer of any coming activities which may

- affects Works,
- delay **Time for Completion**,
- Increase **Contract Price**,

Upon such notice Engineer may require from Contractor to submit:

- Estimated Proposed cost for such action or event,
- Modified program,
- Actions needed to reduce the effect of this event,

Engineer may have the below actions:

- Can instruct the Contractor to change the sequence of the activity and this will consider as a Variation of changing the sequence of the work,
- Cannot ask the Contractor to finish earlier, if done this can be understood as acceleration and Contractor have to Claim for extra time and additional Cost,
- Can ask the Contactor of revised program to overcome the delays, if the delay is on the behalf of the Contractor so acceleration will be done on the cost of the Contractor.

Engineer may request for a Contractor cash flow within 42days of **Commencement Date** this cash flow is submitted for:

- I- Engineer information only,

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- 2- Very helpful and useful for Employers to ensure a steady funding for the project.

### (F-55-a) 8.6 Rate of Progress

If at any time:

- Actual progress is too slow to complete the Works as planned,
- Progress has fallen behind current program under sub-clause 8.3 (Programme),

Progress may be calculated based on:

- Time,
- Money,
- Effort,
- Accomplishment of milestones.

Engineer has to instruct Contractor to revise the program and accelerate the progress to catch up any delays happened due to the Contractor responsibilities at his own cost need to:

- Revise the program,
- Increase the labor,
- Increase Contractor personnel,
- Increase working hours,

If the Employer suffers from any cost due to this delay, claim have to be submitted to the Contractor.

But if the delay is due to Employer faults Engineer may ask Contractor to accelerate based on Employer request but this cost will be upon Employer cost, Contractor may ask for extra Cost plus reasonable profit for that action.

### (F-56) 7.4 Testing

This clause deals with tests specified in Contract and not for **Test on Completion** and Test after Completion for Red Book must be mentioned in the Contract or Specification.

Contractor have to assist Engineer in performing the required test by providing all needed assist like fuel, equipment, electricity, instruments laborers and material,

If Employer instructed to change location, details of specific tests or request additional test not mentioned in Contract or Specification to ensure quality of Work, Engineer shall request in writing from Contractor to perform such test or changes in the specification of the test as requested from Employer and if such test fails the cost of test will be borne by Contractor. And if test passes so this will be considered a Variation as mentioned in clause 13 (Variations and Adjustments) so the Contractor is entitled for time and Cost plus reasonable profit. As determined

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by Engineer under sub-clause 3.5 (Determinations). Contractor shall notice the Engineer of this action and Engineer have to set determination of the action.

Engineer should agree with Contractor about timing of tests to be performed, Engineer shall notify Contractor his intention to attend any test not less than 24 hours, if Engineer fails to attend or send any representative from his side, test will be proceeded, and the result shall be considered accurate.

If the Contractor suffers any delay to conduct test he shall notify Engineer who shall make his determination on whether to grant time and/or cost (Cost+profit)

Types of Tests:

- Test during construction these are covered in sub-clause 7.4 (Testing),
- **Test on Completion** these are covered in clause 9,
- Test after Completion are defined under sub-clause 1.1.3.6, but in Red Book these types of tests must be mentioned in Particular Conditions.

If the Contractor cover up any works without giving an adequate notice for inspection, Engineer may ask on the cost of Contractor to un cover any part to make needed tests and inspection, if Contractor uncover any requested Section of Work and it seems to be aligned with the Contract, Contractor is entitled for uncovering cost and reinstalling the material as were before and if not Engineer to give defect notice and instruction for Contractor to bring work in compliance with Contact as his own expenses.

### **(F-56-a) 7.5 Rejection**

If test fails to meet the required quality and Specifications mentioned in Contract, Engineer may reject the work by giving notice to the Contractor specifying reasons of rejection, then the Contactor shall proceed in remedying the defects and the test will be repeated in the same condition and the cost will be on behalf of Contactor.

If Employer incurs a cost due to retesting or defect remedy the Contractor may be subjected to Employer claims under sub-clause 2.5,

If the Contractor fails to rectify the defects as instructed Employer has the right to terminate the Contract under sub-clause 15.2 (Termination by Employer),

### **(F-56-b) 7.6 Remedial of Work**

Engineer may instruct Contractor to:

- Remove from Site all Materials or Plants which is not in compliance with Contract.



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- Re-execute the works.
- Execute any work that will ensure the safety of the Works.

Engineer shall specify a reasonable time to remedy the works and Contractor shall comply with Engineer instruction as mentioned unless he have a reasonable justification.

If Contractor fails to comply with given instructions within 28days, so Employer will be entitled to employ and pay another party to remedy the work on the Cost of the Contractor, Contractor will be subjected to Employer claims as in sub-clause 2.5 and Employer have the right to terminate the Contract under sub-clause 15.2 (Termination by Employer).

If retesting causes the Employer extra cost so Contractor will be subject due to his action to Employer claims as in sub-clause 2.5 (Employer claims).

### **(F-57) 9 Test on Completion**

#### **(F-57-a) 9.1 Contractor Obligations**

**Test on Completion** is required as one of the Contactor obligation to Contract as in sub-clause 4.1 (Contractor`s General Obligations), Contractor has to submit as-built and all supporting documents for Engineer.

Contractor to give not less than 21 day notice for the Engineer on the date he will be ready to conduct **Test on Completion**, tests will be carried within 14days after this date, after each test passes **Test on Completion** report will be send to Engineer with results. And this will allow Employer to use this Section of Work.

If the Employer delay **Test on Completion** for more than 14 days, the Employer is deemed to have taken over the Work. If this delay causes extra cost on Contractor a claim under sub-clause 20.1 (Contractor`s Claims) will be raised.

#### **(F-57-b) 9.2 Delay Test**

If test were unduly delayed by Contactor Engineer shall notice Contractor to perform test within 21 days and Contactor shall proceed when receiving notice to perform all needed tests.

If Contractor fail to perform test after 21 days, Employer has the right to carry out these test on the cost of the Contractor and the result will be deemed to be accurate as if Contractor was observing the procedure.

If Employer unduly delay such test, Contractor may be entitled for Extension of time and cost, Contactor will give notice for Engineer regarding the delay under sub-clause 20.1 (Contractor`s Claims) and sub-clause 7.4 (Testing), if the delay lasted for 14 days then Employer will have deemed to have taken over this Section of Work on the date of **Test on Completion**



## FIDIC Contract Administration

### (F-57-c) 9.4 Failure to Pass Test on Completion

If the Work or Section of the work fails to pass **Test on Completion**:

- Engineer request to retest,
- If the failure deprives the Employer of substantially the whole benefit of the Works or Section of it, rejection the Works or Section of it as in sub-clause 11.4 (Failure to Remedy Defects) and this may lead to termination of **Contract**
- Or issue TOC if the Employer request but the **Contract price** should be reduced by the defected part of the Work,

Contractor has to proceed with his obligations in Contract if Employer activated the last item, Employer has the right to reduce the **Contract Price** with an amount of the failure happened with any extra cost incurred to Employer, Engineer has to make his determination of such reduction on the **Contract price**, no TOC will be issued if **Test on Completion** did not pass.

### (F-58) 8.4 Extension of Time for Completion

Any delay must be encountered if it delays the completion of the project so that we need to check the project program of the project when we have time extension request.

If Contractor feels that he is entitled for time extension he should notify Engineer according to sub-clause 20.1 (Contractor`s Claims) to extend Time for Completion, any extension should be subjected to the following:

- Variation or any substantially changed in the quantity included in the Contract,
- Any caused of delay giving an entitlement for the Contractor to extension under any sub-clause,
- Exceptional adverse climate conditions,
- Unforeseeable storage in availability of personnel or goods caused by epidemic or governmental action.
- Any delay caused by the Employer or authorizes,

Below events entitle Contractor for extension of time:

- Delay Drawings or instructions.
- Adverse climate conditions
- Right of access to the Site.
- Unforeseeable Physical Conditions
- Fossils
- Testing
- Interference with **Test on Completion**
- Adjustments for Changing in Legislations.
- Contractor entitlement of suspended Works
- Consequences of Employers risks and consequences of **Force Majeure**

## FIDIC Contract Administration

### **(F-59) (8.8, 8.9, 8.10, 8.11, 8.12) Suspension of Works**

If the Engineer instructed Contractor to suspend progress of part of the Works, during the suspension Contractor has to protect, store and secure the Site from any deterioration. If the suspension is due to Contractor fault so applying clauses (8.9, 8.10, 8.11) is canceled other than that Engineer will continue as below:

Engineer may or may not

- Inform the Contractor about the reason.
- Must give an advance notice of suspension

If Contractor suffers a delay for this suspension and incurs Cost from complying with Engineer instruction, Contractor may activate sub-clause 20.1 (Contractor's Claims) and shall be entitled for time and Cost but he have to check the **program of the project**. But if the reason of suspension is due to the Contractor poor design, workmanship or Material no claims will be charged on Employer all the cost will be burn by Contractor.

Contractor is entitled for a payment of a values due to the suspension for the Material and Plant which have not been delivered to the Site if:

- The work on Plant or delivery of material has been suspended more than 28days,
- Contractor has marked the Plant and Material as Employer property in accordance to the instruction of the Engineer,

If suspension continue for more than 84 days, Contractor may request to proceed for Engineer, if Engineer did not give permission to proceed and suspension continue for more than 28 days, Contractor by giving notice to Engineer can consider this as omission this omission is treated as Variations and Adjustments under sub-clause 13, if omission affects the whole project Contractor may give notice to Engineer to terminate the Contract. This is considered Pronolong Suspension

If Engineer gives permission to proceed the Engineer shall determine the amount of loss and Cost incurred by Contactor to be compensated with the following payment.

### **(F-60) 16.1 Contractor's Entitlement to Suspend Work**

If Engineer fails to:

- Certify payments,
- If the Employers fail to comply with Clause 2.4 (Employer's Financial Arrangements), Employer within 28days after receiving a request from

## FIDIC Contract Administration

Contractor submit his financial status to the Contactor showing his ability to pay **Contract Price**,

- Employer fails to comply with sub-clause 14.7 (Payment), fails to pay after 56days,

Contractor shall give Employer a 21-day notice to suspense the work or reduce the completion rate, unless Contractor receives payment or certificate, or evidence needed, Contractor has to continue Works as soon as practical.

If the Contractor suffers delay and incurred a cost in accordance to this clause, Contractor is entitled to:

- Extension of time under 8.4 (Extension for Time for Completion),
- Cost pulse reasonable profit,

After Engineer receives such notice a determination is made as in sub-clause 3.5 (Determinations).

### **(F-61) 10.1 Taking Over of the Works and Sections**

The works will be ready for handing over to the Employer if:

- Passes test during constructions and **Test on Completion**,
- All Works is executed as Contract Specifications,
- All Works have been competed,
- All work is ready to be occupied as fit to the purpose of construction,
- All needed Document is being delivered to Engineer as requested by Contract,

Employer can take over of the Works when the Engineer issue **Taking Over Certificate**

Contractor can apply Engineer for Taking Over Certificate before 14days of date anticipated for completion mentioned in the **Appendix to Tender**, Engineer when receiving the notice from Contractor may:

- Issue Taking Over Certificate,
- Or reject,

If the Engineer fails to replay on the Contractor notice for taking over within 28days and Works is in compliance with Contract, then TOC is deemed to be done when the last day of 28-day period.

Employer have the right to ask Engineer to issue TOC for Section or whole Works as requested.

If Employer dose use as part of the Works prior issue of TOC then:

- The used Section is deemed to be taken over,
- Employer will be responsible for that part.

## FIDIC Contract Administration

- If Contractor incurs any cost as a result, Contractor must give notice to the Engineer for his entitlement for this cost plus reasonable profit under sub-clause 20.1 (Contractor's Claims).

### (F-62) 10.3 Interference with Test on Completion

If the Employer delayed Contractor from carrying out **Test on Completion** for more than 14days, then the Works will be taken over and Engineer have to issue TOC and proceed with the **Test on Completion**.

If Contractor suffers from extra cost as result, he should notice Engineer as sub-clause 20.1 (Contractor's Claims).

### (F-63) 14.2 Advance Payment

Employer shall make a loan-free of interest for mobilization of the Contractor, Contractor has to submit a bank grantee with the amount stated for the advance payment in the **Appendix to Tender**, the bank grantee should be valid until the amount of the advance payment is repaid, if the advance payment is not repaid before 28day of expiry date Employer will ask to renew the grantee for his benefit. Unless the deduction is stated in the **Appendix to Tender**, it will be as follows:

- Deduction for each interim payment which exceeds 10% of Acceptable Contract Amount after excluding the retention and the advance payment,
- And the deduction will be 25% of the total **Payment Certificate** amount before applying deduction of the retention,

Advance payment shall be done after 42days of LOA or 21days after receiving the PS and Advance guarantee whichever is later, if the advance payment is not repaid within 28days before the end date Contractor shall extend the Grantee to the date agreed by Engineer.

Engineer review the format of copy of the Advance Payment Security submitted by Contractor and advise Employer in writing about any mistake that need to be rectified according to the Contract also Engineer shall receive in writing from Employer that he accepted the Advance Payment Security submitted by Contractor before issuing the advance payment certificate.

### (F-64) Insurance:

FIDIC requires the following insurances against:

- Works & Contractor's equipment.
- Injury to persons & damages to property.
- Contractor's personnel.
- Professional indemnity insurance, this type is required when the Contractor designs part of the Works.

Evidence for the liability of the insurance policy and that it is active (payment receipt), the first two type need to be stated in the Contractor with the needed amount and time of submission in the **Appendix to Tender**. Engineer cannot suspend any part of the works if the evidence is not provided

## FIDIC Contract Administration

Contract needs to have additional clauses about the insurance of the Employer personal and Engineer staff. And insurance must include Employer equipment if existed on Site.

Professional indemnity insurance can be provided if the contractor is to design major part of the Works under the Contract.

Employer need to inform Engineer about the insurance policies if or not it is being in compliance with client requirements and Contract.

Insurance has to be active from signing of the Contract till **Performance certificate** is issued.

### **(F-65) 14.6 Issue Interim Payment Certificate:**

No amount will be paid until the Employer receive the **Performance Security**, within 28days from receiving payment or **Statement**, Engineer will issue to Employer interim **Payment Certificate** to the amount he believes fair to Contractor,

Engineer is not bounded to certify any payment prior time of issuing TOC which is less than the minimum amount (after applying the retention and deduction) mentioned in the **Appendix to Tender** and he should send a notification to the Contractor accordingly.

If a Plant or Material has been sent to the Site Engineer may certify 80% of the Material cost as per his determination of the cost if it was stated in the **Appendix to Tender**.

No Payment should be withheld unless:

- Any part form the Contractor work is not done as in Contract, the cost of rectification or replacement must be withheld until it has been done correctly,
- If the Contractor failed to comply with any of his obligations and Engineer has notify him about it and the amount of work according to his obligation is withhold.

### **(F-65-a) 14.7 Payment**

Employer shall pay Contractor:

- Shall pay Contractor Advance payment if stated in **Appendix to Tender** as stated in the sub-clause 14.2 (Advance Payment),
- Employer shall pay Contractor any IPC by Engineer within 56day after Engineer receives the interim payment with all supporting particulars.
- Employer shall pay Final Payment within 56days after the Employer receives Contractor **Payment Certificate** from Engineer,
- Employer does not have the right to withhold any Payment for Contractor for a reason that the Contractor was not notified with particulars substantiating Employer claims, and if done Contractor is entitled for claim and financial payment.

## FIDIC Contract Administration

- Employer shall not pay the Contractor any interim payments until Contractor submitted **Performance Security** and Employer approves it,
- No IPC is Issued until TOC if it is less than the amount stated in the **Appendix to Tender**,
- No IPC will be issued without the supporting particulars submitted by Contactor like monthly report.

### (F-65-b) 14.8 Delay Payment

When Engineer received **Statement** from Contractor, payment shall be done with 56days (28 day for Engineer to issue **Payment Certificate** and 28 days for the Employer to pay) these days includes the revisions made on the **Statement**, if Employer fails to pay Contactor his **Statement**, Contractor is entitled finances charges for the unpaid amount of +3% above the approved base rate of central bank. In Jordan it is 9%. If the Contractor did not receive his payment within 42day after a given notice under sub-clause 16.1 (Contractor Entitlement to Suspend the Works) Contractor has the right to terminate the Contract, but it wisely advised to do the below if:

- Engineer fails to issue any IPC under sub-clause 14.6 (Issue Interim Payment Certificates) or Employer fails to pay under sub-clause 14.7 (Payment) or fails to full fill sub-clause 2.4 (Employer`s Financial Arrangements) Contractor to:
  - a) Give notice to Employer under sub-clause 16.1 (Contractor Entitlement to Suspend the Works) to suspend work or reduce the rate of completion within 21 day and state his intension to continue Work as soon as he receives payments,

Contractor is entitled for extension of time and Cost plus reasonable profit, if Employer did not pay Contractor his due Contractor can terminate Contract under 16.2 (Contractor entitlement to Terminate Contract)

### (F-65-c) 14.9 Payment of Retention Money

Retention money will be deducted as mentioned in **Appendix to Tender**, in FIDIC it is 10% of the Work done until it reaches 5% of **Acceptable Contract Amount**. First 50% of retention money shall be released after TOC is issued.

If the Works need to be taken over in parts this need to be addressed in **Appendix to Tender** or in the Contract, and if so:

- If TOC is done for Section of the Work, 40% of weight of Section is entitled for released (S/W X retention money X 40%), no account for the Adjustments for Change in Legislation sub-clause 13.7 or Adjustments for Change in Cost under sub-clause 13.8 will be considered.
- Remaining retention money will be repaid after DNP is completed but if some works need to be extended after the DNP this amount of money will be withhold until the rectifying of the defects.

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Works is divided into:

- 1- Sections,
- 2- Parts,

All Sections of works need to be mentioned in the Contract under Particular Condition in Appendix to Tender and must have separate DNP and retention money related but parts of Work they are small than section and are not mentioned in Contract and do not have special DNP, Sometime Employer identify special parts of the Contract to be equipped before issuing TOC base on his requirements which was not mentioned early in Contract.

### **(F-65-d) 14.10 Statement at Completion**

Contractor shall submit 6 Copies within 84 days from receiving TOC from Engineer for the Works. **Statement** at completion must show with all supporting documents as in sub-clause 14.3 (Application of Interim Payment Certificates):

- Value of work done in accordance to the Contract until issuing of TOC,
- any further sums due to Contractor,
- Any estimated sum that Contractor consider himself entitled to, these estimations will be shown in different sheets.

If Contractor fails to enter any amount of the Work in this **Statement** he will lose his entitlement to claim for this part, Engineer will issue interim **Payment Certificate** as mentioned in sub-clause 14.6 (Issue of Interim Payment Certificates)

### **(F-65-e) 14.11 Application for Final Payment Certificate**

Contractor has to submit draft of **Final Statement** within 56days of receiving the **Performance Certificate**, Employer needs 56days to pay as in sub-clause 14.7 (Payment)

This Payment shows:

- all the Work done and accepted by Engineer,
- all the sum due to the Contractor under this Contract,

Contractor must submit a discharge admitting and confirming that everything mentioned in the **Final Statement** is the net required balance from Employer.

If Engineer disagree with Contractor on some parts of the **Final Statement**, Contractor has to submit a supporting particulars or any other evidence to Engineer if the dispute still exists, Engineer has to submit to the Employer a draft of the final payment showing all the agreed point to be paid, and when the dispute is resolves by DBA decision sub-clause 20.4 (Obtaining Dispute Adjudication Board`s Decision) or amicable settlement sub-clause 20.5, Contractor will submit his **Final Statement**.



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If Contractor did not submit or fails to submit his **Final Statement** within 28days, Engineer should issue **Final Payment Certificate** based upon his determination as under sub-clause 14.13 (Issue of Final Payment Certificate),

As in sub-clause 14.14 (Cessation of Employer`s Liability) Employer is not entitled to pay Contractor any amount not included in:

- **Final Statement**,
- Unless work was executed after TOC and Statement at completion,

### (F-66) 15.2 Termination by Employer

Engineer shall give Contractor (Notice to Correct) as mentioned under sub-clause 15.1, to inform him that he fails to carry out his Contractual obligation under this Contract, by this notice Engineer shall specify the defect and remedy action and reasonable timing to rectify failure.

### Table to summarize termination based on the party

Termination of Contract	By Employer	By Contractor
	Contractor sub-contracted the whole Contact	Does not receive reasonable evidence of the Employer ability to pay within 42day from such notice,
	Contractor fail to remedy the defects, within 28 days as in sub-clause 7.6 (Remedial of Works), 7.5 (Rejection)	Delay payments more than 42days after 56days mentioned in the Contract
	Contractor fail to remedy the defects due <b>Test on Completion</b>	Prolonged suspension of the Work or part of it
	Fails to comply with PS as mentioned in sub-clause 4.2 ( <b>Performance Security</b> )	Employer do not fulfill his obligation under Contract
	Termination for Convenience, notice for 28days to the Contractor	Engineer fails to issue <b>Payment Certificate</b> for interim payments within 56days
	Contractor refuses to comply with his obligations and abandon the work	Contractor does not receive any payment after 42days after 56days mentioned for payment,
	Contractor becomes bankrupt, direct termination	<b>Employer becomes bankrupted</b>
Gives Bribe, gift or commissions, direct termination	Employer do not fulfill his obligation under Contract	

Employer can terminate the Contract if the Contractor:

- fails to submit **Performance Security** under sub-clause 4.2 or any other notice Under 15.1 (Notice to Correct),
- if abandon the Works or have intension not to continue performing his obligation,
- without reasonable cause he fails to:



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1. Proceed with Works according to chapter 8 Commencement, Delays and Suspensions,
  2. Comply with notice under sub-clause 7.5 (Rejection) and under sub-clause 7.6 (Remedial Work), within 28days after receiving it.
- Sub-contracting the whole Works,
  - Become bankrupt or insolvent,
  - Gives direct or indirect bribes, gifts, gratuity, commission
    1. Forbearing to do any action in relation to the Contract.
    2. For showing forbearing to show favor or disfavor to any person in relation of the Contract.

If any of the above cause happened, Employer shall notify Contractor 14 days but in the case of the last two points the Employer may immediately terminate the Contract without notice.

Contractor shall leave the Site and handed to Engineer all:

- Any submitted Materials,
- Contractor Documents,
- Designs made to him or made by him,

Employer shall notice Contractor to release his equipment and any other temporary work from Site, cost will be burn by Contractor and if the Contractor fails to pay Employer any due payment for any claims under sub-clause 2.5(Employer Claims), Employer has the right to sell this equipment and any temporary work.

After termination Employer:

- May Complete the works itself or arrange for other entities to do so,
- Employer or any other entities may use Contractor documents and any Goods to complete the Works,

Employer then can give a notice for Contractor to remove his Temporary Works and Equipment, Contractor shall proceed on his own risk and cost to do so, if the Contractor fails to make any payment to Employer due to the termination Employer can sell any Contractor equipment to recover his payment,

### **(F-66-a) 15.3 Valuation at Date of Termination:**

After notice under sub-clause 15.1 (Notice to Correct) and termination under sub-clause 15.2 (Termination by Employer), Engineer shall proceed to set his determination as sub-clause 3.5 (Determinations) for the amount of Works completed and Materials delivered as under the Contract or any other amounts due to the Contractor from Variations, adjustments and claims.

### **(F-66-b) 15.4 Payment after Termination:**

If termination under sub-clause 15.2 (Termination by Employer) taken effect, Employer may:

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- Proceed in accordance with sub-clause 2.5 (Employer Claims),
- Withhold any payment for the Contractor until Cost of execution for Work, remedy defects and damages are completed,
- Recover from Contractor any losses and damages incurred by Employer or any extra cost of completion the Works, call up on PS if Contractor is not being able to pay Employer within 42 days as mentioned in the sub-clause 4.2 (Performance Security).
- After recovering all cost incurred to Employer and cost of execution of Works and remedying defects, Engineer has to set his determination according to sub-clause 15.3 (Valuation at Date of Termination), Employer shall pay Contractor the net balance he is entitled to.

### **(F-66-c) 15.5 Employer Entitlement of Termination (Termination for Convenience)**

Employer has the right to terminate Contract at any time by giving notice to the Contractor within 28 days for his convenience, Employer have to return **Performance Security**, this sub-clause does not give Employer the right to terminate contract in order to execute the Works by himself or hiring a new Contractor. Contractor shall proceed with sub-clause 16.3 (Cessation of Work and Removal of Contractor's Equipment) and 19.6 (Optional Termination, Payment and Release).

### **(F-66-d) 16.3 Cessation of Work and Removal of Contractor's Equipment**

Contractor after a notice of termination under sub-clause 15.5 (Employer's Entitlement to Termination) or 16.2 (Termination by Contractor) or 19.6 (Optional Termination, Payment and Release) the Contractor shall promptly:

- Cease any future Work,
- Hand over all Contractor's documents, designs, Plants, Material for which he has received payment for,
- Remove all other Goods from Site, except the necessary ones for safety.

### **(F-66-e) 16.4 Payment on Termination**

When termination done by Contractor under sub-clause 16.2 (Termination by Contractor), Employer has to:

- Return PS,
- Pay the Contractor according to sub-clause 19.6 (Optional Termination, Payments and Release)
- Pay the Contractor amount of any loss of profit or other loss damages sustained by the Contractor,

### **(F-66-f) 19.6 Optional Termination, Payment and Release:**

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If the **Force Majeure** prevented any Party from doing its obligation as mentioned in the Contract for more than 84 days continuously of which a notice under sub-clause 19.2 (Notice of **Force Majeure**) have been given within 14 day of being aware of **Force Majeure** or for multiple periods more than 140 days, therefore both Party may have the right to call termination and this will be active after 7 days. Contractor shall continue of sub-clause 16.3 (Cessation of Work and Removal of Contractor`s Equipment)

Under this termination due to **Force Majeure** Engineer shall determine:

- All the executed Work by the Contractor at the date of termination as they are in compliance with the Contact,
- Any Cost for Material, Plant ordered to Site or in its way to Site shall be paid to the Contractor and be as Employer property,
- Any other Cost or liability have been incurred on behalf of Contractor due to this termination was reasonable,
- The Cost of removal any temporary works from the Site, equipment,
- Cost of the repatriation of the Contractor staff, equipment and Labor,
- No profit is counted for the Contractor unless stated in the law of the Country.

### (F-66-g) 16.2 Termination by Contractor

Contractor have the right to terminate the Contact if:

- Contractor dose not receive reasonable evidence withing 42 days from a notice under sub-clause 16.1 (Contractor Entitlement to Suspend Works) and in respect of failure to comply with financial arrangements under sub-clause 2.4 (Employer`s Financial Arrangements),
- Engineer fails within 56 days to issue **Payment Certificate**,
- Contractor dose not receive any amount due in the interim payment within 42 days after the expiry date of time stated in sub-clause 14.7 (Payment), any payment showed be subjected to Employer claims,
- Employers fails to perform his obligation under Contract,
- Employer fails to comply with sub-clause 1.6 (Contract Agreement) and sub-clause 1.7 (Assignment),
- Prolonged Suspension affect the whole Works under sub-clause 8.11,
- Employer become bankrupt or insolvent

First five Contractor have to give 14 days' notice but the last two immediate termination.

### (F-67) 17.2 Contractor`s Care of the Works

Contractor is responsible and liable for taking care of Goods, Materials, Plants, Works and Contractor documents from the date of CD till issuing TOC.

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Contractor is responsible for all outstanding work mentioned in the TOC, any loss or damages for the time Contractor is being liable and responsible he shall take care of it and maintain it until the responsibility is transfer to Employer,  
Contractor is not responsible for Employer risks other than that he is liable to all risks

### (F-68) 17.3 Employer`s Risks

- a) Act of war (rebellion, riot, invasion, insurrection, terrorism, revolution, hostilities action of foreign, munition of war or explosive materials)
- b) Pressure waves caused by air craft,
- c) Use or occupation by Employer to any part of permanent Work unless it is specified in the Contract,
- d) Design of any part by Employer personnel or by any other party,
- e) **Force Majeure** action

### (F-69) 17.4 Consequences of Employer`s Risks

If any loss to Contractor documents, Goods or Works due to the listed risks in 17.3 (Employer`s Risks), Contractor have to notice the Engineer of the loss and shall be rectified as determined by Engineer,

If the Contractor suffers a delay or Cost due to these risks, then he should claim under sub-clause 20.1 (Contractor's Claims) and so he will be entitled for:

- Cost, without profit unless the risk is due to design or occupation by Employer t part of the Works,
- Extension of time under sub-clause 8.4 (Extension of Time for Completion)

### Section: (G) Claims:

#### Dispute can be but not limited to the below items:

- Claims,
- Others,
  1. Understanding of Contract,
  2. Specifications,
  3. Type of measurement,

Proper risk allocation reduces disputes and claims, risks is divided into insurable and uninsurable risks, insurable risk is covered by insurance policy but uninsurable risks that has liability to any party gives to claim on the other party.

Claims must be based on Contract clause, clear and reasonable, claims have two components:

1. Principal:
  - Contractual basis upon which the claim is found
  - Facts behind problem.
2. Quantum

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- Effects evaluation of problem in respect of time and Cost has to be reasonable.
- Determine the link between fact and effect.

Claims asks for EoT, Cost or Cost plus reasonable profit, profit is allowed for the Contractor when the effect is caused by the Employer (Delay Drawings or instructions. Right of accesses to the Site, Delay Payments). Or any other risks that is not the responsibility of the Contractor.

So claims should start with contractual clause, claimant should provide all the supporting particulars to proof his case "burden of proof"

In legal jurisdiction the victim should work effectively in minimizing the damaged happened by the other party who is wrong.

If an adjustment for unit prices for any claim is alive, it has to be actual and reasonable and based on actual market calculations, adjustment for some new items introduced by claim must be:

- Based on Contract unit prices if applicable (the specifications for the new item matching is matching with the old item),
- Related with similar items in the BOQ if applicable (the new item is the same item with the existing item),
- If not build new prices or may refer to other bidder's prices to decide the reasonability

### **(G-1) 20.1 Contractor`s Claims**

If Contractor feels that he is entitled for extension on Time for Completion or additional payment regarding any clause or other related item for the Contract, then Contractor should send a notice to Engineer within 28 days from event occurrence.

*This notice need to have:*

- Mentioning the timing of the event,
- describe the event or the circumstances giving the right to claim,
- Refer to contractual clause that entitles him for claim,
- Mentioning the reason and sequence of the effect that cause damage and Contractor incurred cost due this,
- Has to be sent as specified in **Appendix to Tender**
- Send copy to Employer,

Contractor can send a notice directly to Employer with a copy to Engineer under sub-clause 16.1 (Contractor`s Entitlement to Suspend Work), sub-clause 16.2 (Termination by Contractor), insurance policies and guarantees like (Performance Security)

Why Contractor need to give notice within 28days from event occurrence?

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- 1- Give Engineer or Employer time to mitigate the circumstances for example Engineer might issue new instruction or cancel old instructions, adjust some details or make new Variation to adjust situation.
- 2- Investigate all records and instruct all the needed records to support his **Statement** and avoid other claims in future.

If Contractor fails to notify Engineer within 28 days, he loses his right of payment and time extension or additional payment.

Contractor have to submit all evidence supporting his claim or any other particulars according to the Contract, Contractor have to keep contemporary records (daily reports, monthly report, letters) to sustain his claim and these records must be achievable by Engineer.

Within 42 days from event causing the claim Contractor must submit full detailed claim if the event is done with all supporting particulars needed, if the event is in progress:

- The claim is considered as an interim payment,
- Contractor must submit monthly interim payments until the effect of this claim is done, these interim payments or claims have to be cumulative based calculations,
- After the end of the effect within 28days the Contractor shall send full detailed claim as a cumulative for all previous claims,

Engineer within 42days after receiving a full detailed claim with all the supporting particulars or any other date suggested by Engineer and approved by Contractor, Engineer must replay with approval or disapproving the claim by showing in detail his determination and justification or he may request extra supporting particular to make his determination,

Each monthly **Statement** must have interim payment as a portion of a claim as determine by the Engineer even if it is approved by the Contractor, and till the end of the period these amounts of money have to be included in statements until s full detailed claim is submitted to the Engineer.

Most of Contractor`s claims are based on below (Employer risks):

- Delay Drawings or Instructions sub-clause 1.9
- Right of Access to the Site sub-clause 2.1
- Unforeseeable Physical Conditions sub-clause 4.12
- Extension of Time for Completion sub-clause 8.4
- Delay Caused by Authority sub-clause 8.5

## FIDIC Contract Administration

### **(G-2) 20.2 Appointing of the Dispute Adjudication Board (DAB)**

DAB shall be appointed within 28 days from commencement letter or as mention in the **Appendix to Tender** and dispute have to be adjudicated by DAB, DAB is responsible to reduce the disputes between Parties.

DAB is consist as stated in the **Appendix of Tender**, either one or three members and if the number is not stated and not agreed by Parties, DAB is three members.

Each Parties shall nominate person for DAB member for approval from the other party and these selected members shall nominate a third member who will become a chairman,

Sometime there is a list included in the **Appendix to Tender** for selecting DAB members, there is an Agreement between the parties and the DAB members included in the forms.

Any Party have the right to consult the DAB for any dispute but with agreement from both.

### **(G-3) 20.4 Obtaining Dispute Adjudication Board`s Decision**

If a dispute is raised between any two Parties due to certification, determination, evaluation, measurement, extension of Time for Completion or any other issue relation Contract, any Party have the right to contact the DAB and ask for opinion and send copy for the other party,

DAB should receive any kind of request through the DAB Chairman with the needed supporting particulars from each Party, all Party shall provide any needed information for the DAB and ensure easy access for the Site if needed by DAB.

Within 84day from receiving the request DAB shall give its opinion and it should be given under this clause, who shall promptly be effective and binding for both Parties, unless any Party show dissatisfaction with the decision made by DAB.

Within 28days of DAB decision any Party who is dissatisfied with DAB decision should give a notice, expect that the DAB decision will be affirmative and final.

After this dissatisfaction notice is issued FIDIC gives **56days** after this notice is being given to both parties in order to have amicable settlement under sub-clause 20.5

### **(G-4) 20.5 Amicable Settlement**

If there is a dissatisfaction of one of the Parties and it gave proceeded with the needed sequence FIDIC gives 56days for settlement, this settlement can be done by

1. Direct negotiations, the two parties set together to have deal on the dispute point, if not we go to
2. Mediation should be in one or two days maximum, this person or party is appointed by the two, have is requested from both of them to have settled

## FIDIC Contract Administration

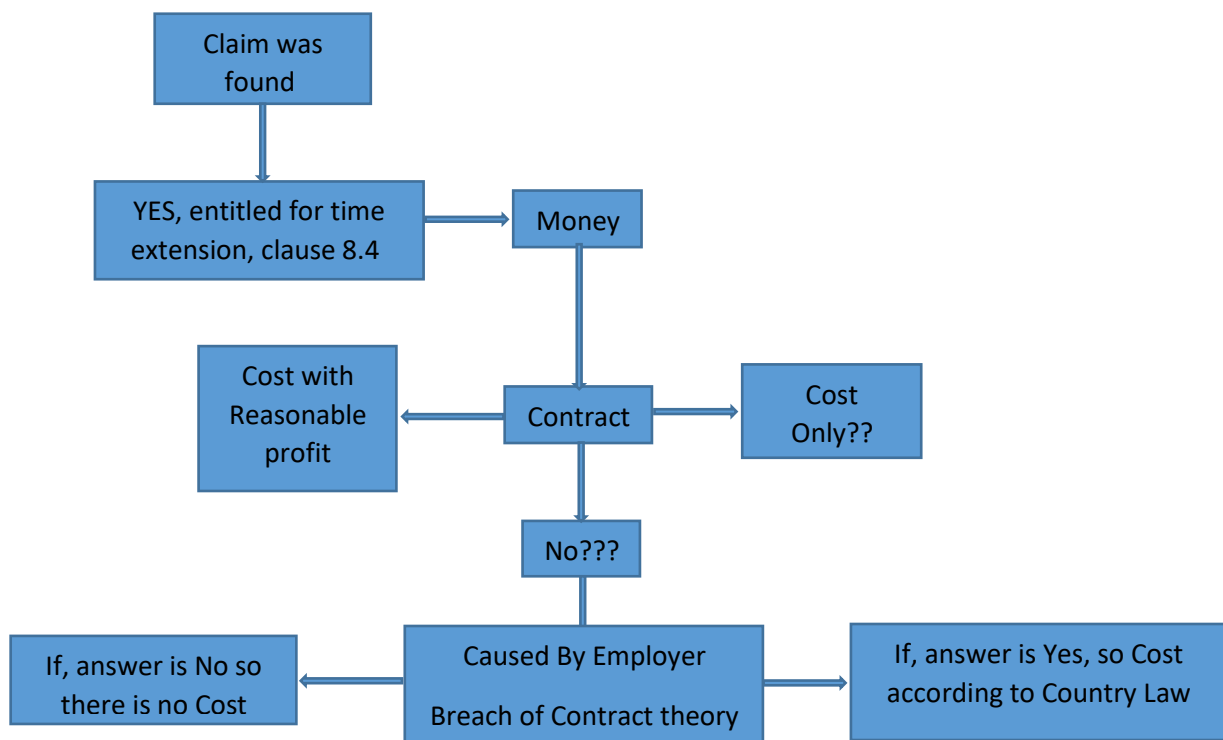
down the problem by negotiation with the two at the same location but in different rooms, he will issue an opinion only,

3. Consultation can take a month; this process is large process with end result of report of his decision about the dispute.

### (G-5) 20.6 Arbitration

If any decision of DAB does not come as final or unless settled using amicable action dispute is solved through international arbitration unless otherwise stated in the Contract or agreed by both Parties:

- Dispute shall be final settled under the Rules of Arbitration of the international chamber of commerce.
- Dispute shall be settled by three arbitrators appointed according to the rules,
- Arbitration shall be conducted by the language of the Contract,
- Arbitrator have the right to witness any of the Parties,
- Have the right to investigate and the power to open, review any certificate, determination, Evaluation, Instruction, BAD decision.



Claim body is Consist of:

- Based on Contract clause. **(Principle) MUST**
- Timely notice is required under sub-clause 20.1 (Contractor Claims). **(Principle) MUST**



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- Proof of entitlement. (**Quantum**) MUST
- Proof of damage. (**Quantum**) MUST
- Cause effect relationship. (**Quantum**)
- Burden proof upon claimant.
- Mitigation requirement, to observe how the victim tries to minimize the effect of the even and not make a use of it to make more money. This is obtained by daily report, monthly report, Site data, project program. (**Quantum**)

### Type of cost included in claims

1. Direct Cost: includes (Material, equipment, labor and sub-contractors)
2. Indirect Cost:
  - General (Operational Cost), water, electricity, insurances, installing offices, etc...
  - Administrative Cost: Contractor staff plus head office cost.
3. Financial Costs due to the need for injection more funds into the project while settlement of claim, this is one of the Contactor obligation that he should not delay any section of the Works or waiting for Engineer determination to continue, his progress must be as mentioned in the programme.

All costs impeded in claims should be reasonable and actual as if it was to be in the bidding stage, contactor has to make his best to get the best offer for the same specifications.

### **Employer claims:**

These are two kinds:

- Reimbursement of additional Cost or losses
  - a) Using utilities sub-clause 4.19,
  - b) Using Employer equipment sub-clause 4.20,
  - c) Cost of defective work,
  - d) Cost due termination of Contract,
  - e) Or any other event causing Employer of any damage or loss,
- Extension of DNP (Maximum two Years) any extension must be made before ending date of DNP