

## FIDIC Form of Contract: A Study Review

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**ABSTRACT:** FIDIC (*Fédération Internationale des Ingénieurs - Conseils*) is an International body whose membership consists of National Associations of Consulting Engineers. It has in publication different suites of contracts used for international engineering projects, viz; *FIDIC REDBOOK (Construction)*, *FIDIC YELLOW BOOK (Plant& DB)*, *SILVER BOOK (Turnkey/EPC)* and *FIDIC GREENBOOK (Short Form Contract)*. Generally, the FIDIC contract contains 20 Clauses but seventeen (17) of which have common clause names and the suitability of this FIDIC Suite is a measure of 'Risk distribution'. Whereas there is an obvious similarity with regards to the number of clauses contained in each of the FIDIC Suites, but this paper limits attention only to General Provisions, Force Majeure, Claims, Disputes and Arbitration.

**KEYWORDS:** FIDIC suites, general provisions, claims, disputes, arbitration.

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### INTRODUCTION

Popular Standard **FIDIC** Contract will always encompass an in-depth defined topics covering jobs and authority, work conditions, delays brought about by specialists, methodology for dispute settlement, liability and risk related issues. **FIDIC** is an acronym for *Fédération Internationale des Ingénieurs – Conseils* which translates to 'the International Federation of Consulting Engineers'; headquartered in Geneva, Switzerland. FIDIC membership consists of the National Associations of Consulting Engineers. The suite of contracts FIDIC publishes for international engineering projects is its most well-known product.

There are twenty (20) provisions in total; seventeen (17) of which have common clause names, are included in the major contracts of 1999. FIDIC contracts are widely relevant and used, as evidenced by the fact that they have been translated into fifteen languages (Hillig et al., 2010). The major classifications of FIDIC include the **FIDIC REDBOOK (Construction)**, **FIDIC YELLOW BOOK (Plant& DB)**, **SILVER BOOK (Turnkey/EPC)** and **FIDIC GREENBOOK (Short Form Contract)**

The FIDIC REDBOOK (Construction) is an agreement structure where the design is carried out by the employer and the contractor is paid on an estimation premise. Accordingly, the RedBook follows the conventional procurement route of Design, Bid and Build. The Acknowledged contract Sum depends on quantity of work; the contractor is paid for the extent of work achieved. The FIDIC YELLOW BOOK (Plant&

DB) is an agreement structure where the design is completed by the contractor who will be paid on lump sum basis. It is viewed as an even agreement structure holding a fair harmony between the interests of the two players to the agreement. On the other hand, SILVER BOOK (Turnkey/EPC) is a contract in which the design is performed by a contractor who receives a lump sum payment. This contract is intended for EPC / Turnkey projects. Most of the shared risk is assigned to the contractor in SILVER BOOK. It is not intended to be used when significant unidentified risks are planned or expected. The short form of FIDIC is FIDIC GREENBOOK. This type of contract is used for relatively small projects or works that are repetitive or of limited duration. Work must be carried out according to the plan developed by the employer. FIDIC guidelines state that the acceptable limits for the capital value and duration are \$500,000 and 6 months respectively (Jaeger & Hök, 2010).

This paper, therefore, focuses on these four major FIDIC Suites and as well as few Clauses in a bid to reviewing the most commonly used standard-form of construction contract in international projects.

### **FIDIC RED BOOK**

The Red Book is always utilized when the contractor has been given the design by the employer. Both general and specific conditions are included in the contract; the latter must be prepared by the parties prior to the agreement being signed. FIDIC's Conditions of Contract have stood unchallenged for many years as the preferred form of contract in the global construction market. Traditionally, in the FIDIC standard forms, the Engineer assumed a supervisory role, allowing them to make informed decisions about the performance and implementation of projects with considerable autonomy from the employer (Robinson, 2011).

One common element seen in the 1999 Red Book is the engineer's role. Depending on the situation, he may be required to act on behalf of the employer or to reach a just conclusion. The absence of any mention of an impartial Engineer in the contract may cause Contractors some anxiety. A member of the Employer's staff is designated in the contract as the authorized individual to shoulder the responsibility of the Engineer (Hillig et al., 2010). Albeit there is lack of express reference to an impartial Engineer in the contract, Clause 3.5 (Determination) provides that where agreement cannot be reached between the Employer and Contractor over the settlement of any claims; that the Engineer shall make a fair determination while relevant circumstances are taking into consideration. However, his role in fair determination and/or pre-arbitral decision-making has witness obvious amendments. According to Wade, (2005) for instance, while incorporation the FIDIC RED Book into its Standard Bidding Documents, the World Bank sanctioned notable modifications. The most notable of these was the addition of a mandatory Dispute Review Board to replace the Engineer's customary pre-arbitral "Decision", which was previously required for all large contracts. Due in part to this and in response to dynamic global perspectives on dispute settlement, FIDIC released a Red Book supplement in 1996 that allowed the use of a Dispute Adjudication Board in lieu of an "Engineer's Decision"

Regarding contractor claims, there are two notable deviations from the JCT SBC 2005 contract. First, the only Red Book with tight time limits is the 1999 edition. Secondly, the sections that include the events that support the claims are dispersed across the whole contract and are not included in thorough occurrence listings. Clauses 13.2 on value engineering and 20 on the impartial dispute adjudication board are new additions. According to Murdoch and Hughes (1999: p. 113, cited in the preamble to the 1999 Red Book), the most interesting thing about the 1999 Red Book is that it is divided into general conditions and specific conditions (Hillig et al., 2010). It is clear from the contract's preamble that these two parts together constitute the terms of the contract governing the parties' rights and obligations. FIDIC contracts witnessed a humongous reduction

in the number of clauses. The Red Book as well as Yellow and Silver Books contain 20 clauses; this is a far reduction from the original 72 clauses.

### **FIDIC YELLOW BOOK (Plant and DB Contracts)**

As was stated earlier, the FIDIC YELLOW BOOK (Plant and DB) is an agreement structure where the design is completed by the contractor who will be paid on lump sum basis. It is viewed as an even agreement structure holding a fair harmony between the interests of the two players to the agreement. The suitability of this FIDIC Suite is a measure of 'Risk distribution'; the Yellow Book is accordingly appropriate for a wide range of contracts where principal obligation regarding design and construction within the provisions of the contract lies with the Contractor (Wade, 2005). Organization of the project and other oversight of the works are undertaken by the Engineer who is the employee of the Employer. The Engineer is capable, in addition to other things, for giving instructions, sanctioning payment and determination of completion of the project. Interim payments are made as work progresses on site based on initial mode of payment as stipulated in the contract.

The Engineer must consult with the parties concerned in order to attempt to come to an agreement when he is called upon to decide a problem or settle a claim. If a compromise cannot be found, the engineer must fairly decide while taking into account all pertinent information. Dispute Adjudication Board (DAB) will hear any case and make a decision whenever the parties cannot agree on the Engineer's determination. A just and equitable division of risks and obligations between the two contract parties is evidenced in Yellow Book. The fundamental idea is that the contractor should only be expected to be bound by and price for conditions that he knows about or can reasonably predict and price in his bids. The risk is thus assigned to the party best prepared to handle and control that risk. Therefore, Yellow book has stipulations that provides compensation and a time extension in the event of unanticipated delays, such as late receipt of designs or unexpected physical obstacles or circumstances encountered during project execution (Wade, 2005)

### **THE SILVER BOOK (EPC/TURNKEY CONTRACT)**

According to (Smith, 1989), commentators and contractor associations, such as the European International Contractors ("EIC"), expressed disapproval with the first version of the Silver Book and recommended their member organizations not to execute or submit bids for work under the Silver Book. Risks relating to time, cost and quality are usually transferred to the contractor, which is why the Silver Book can only be used by experienced contractors who are familiar with advanced risk management techniques.

In the Turnkey projects supported by this FIDIC Suite, the Contractor is required to encompass a broader spectrum of risks pertaining to the ultimate cost and duration for such endeavors. These risks may encompass unfavorable ground conditions, an assured outcome, and other similar factors. Demanding contractors to assume such additional risks implies that the project's price will rise correspondingly in order to account for the supplementary risk-taking (Wade, 2005).

To a certain degree, according to (Smith, 1989) FIDIC acknowledged in its initial remarks to the Silver Book the challenge posed by this provision for projects encompassing significant underground tasks or cases where the Contractor lacks sufficient time during the tender period to evaluate the conditions. It states that the Silver Book is unsuitable for deployment in such circumstances:

- i. “If there is insufficient time or information for tenderers to scrutinize and check the Employer’s Requirements or for them to carry out their designs, risk assessment studies and estimating (taking account of Sub-Sub-Clauses 4.12 and 5.1).”
- ii. “If construction will involve substantial work underground or work in other areas which tenderers cannot inspect.”

Unlike the Red and Yellow books, The Silver Book does not make reference to the Engineer, as the Employer has less control over Engineering. The focus in Engineering now is on verifying the final performance and ensuring easy operation, maintenance, etc.

### **THE GREEN BOOK (SHORT FORM CONTRACT)**

This FIDIC Suite had in its original intention to suit project of value not above US\$ 500,000 and with a completion period not exceeding Six months. However, it was later realized that contract sum should not necessarily be a major determining factor, but rather the project complexity. This is owing to the fact that there are less-complex projects with high contract sum which ordinarily would not involve any complicated form of contract. This form of contract was carefully drafted to reveal its simplicity in its usage. Based on this, it finds application more on contracts of a simple nature (Wade, 2005). That is to say that it allows for use for projects when the construction parties want to use a form that is easy to use and doesn't need a lot of contract administration and management resources, or where the perceived degree of risk is minimal. Just like SILVER BOOK 1999, the Green Book made no reference to Engineer. However, Engineer is envisioned in the FIDIC Green Book 2021.

### **LIFE-WIRE OF FIDIC SUITES**

There is obvious similarity with regards to the number of clauses contained in each of the FIDIC Suite. The FIDIC contract contains 20 Clauses; albeit, this paper limits attention only to General Provisions, Force Majeure, Claims, Disputes and Arbitration.

### **GENERAL PROVISIONS**

The understanding of the general provisions of the FIDIC Suites is key to its holistic implementation in any contract. The fundamental elements encompassed in Clause 1 of FIDIC include but not limited to: Definitions, interpretation, communications, Law and Language, Priority of Documents, Contract Agreement, Assignment, Compliance with Laws. The listed provisions are always stated and defined in the Conditions of Contract as they form structural components of every other clause; hence the “General Provisions” of FIDIC Suites is far from just being an introductory section. Guidance on contract Interpretation is one of the key mandates of the general provision; demonstrating in clear terms the roles and obligations of parties and ensuring an effective communication all through the contract duration.

### **FORCE MAJEURE**

A Force majeure Condition is an inexorably key element of contract that has secured an all-round global application. Regularly, under such a Provision, where a party has been kept from playing out an agreement by an occasion outside of its reach, it will be pardoned for its postponement in carrying out its agreed obligations, or, in an outrageous case, it could be pardoned from being required to eventually carrying out the agreement by any stretch of the imagination.(International construction law n.d.)

According to (Samerezeldin & Helw, 2017), “the concept of force majeure, basically, is a civil law concept that is found, in a way or another, in the civil codes of most civil law jurisdictions, while common law does

not recognize such concept with the same wide definition and application; thus, without drafting an adequate and proper force majeure clause, the parties of the contract, especially that is govern by the common law, will be at the mercy of the rigid provisions of the law”.

Based on the assertion of (Hillig et al., 2010) this Clause, “Force Majeure” means an extraordinary occurrence or condition:

- (a) which the party cannot subject under control,
- (b) which no provision(s) to either mitigate or manage it was made prior to signing of the contract,
- (c) which upon materializing the party lacks the practically idea to have avoided or overcome, and
- (d) which is not the fault of the Party.

It is expected of the party who is or will be kept from discharging its enshrined obligation under the contract arrangement by Force Majeure to initiate a prompt notice to the other party of the condition surrounding the Force Majeure without failing to indicate the obligations which is or will be prevented. Having given the Force majeure notice, such affected party shall be excused for performing the obligations to the extent the force majeure precludes. However, most times the invocation of this clause is always detrimental to the other party as this is evidenced in the determination of extension of time and the payment of its associated incurred cost. Albeit, not all extension of time results in payment of any form of cost.

## **CLAIM, DISPUTES AND ARBITRATION**

Every contractual formation or arrangement has a claim/dispute potential. Claim has some many tentacles such that it can manifest owing to different reasoning emanating within the confines of the contractual and legal frameworks. Construction Claim can be characterized as a solicitation by one or the other party to the agreement, generally the Project worker, for remuneration for harms brought about by disappointment of the other party to satisfy his piece of commitments as determined in the agreement (Shah et al., 2017).

FIDIC condition of contract provides that at any material time when the Contractor holds himself to be entitled to extension of time for completion and/or any added payment that such contractor must put up a notice in written to the Employer through the Engineer or Employer’s Representative (in the case of Silver Book); stating such circumstances triggering the claims and with supporting particulars. However, this must be achieved within the material time (28 days) within which the contractor becomes aware or expected to have become aware of such claim triggers. Upon receipt of such notice, the Engineer will swing into its determination (Clause 3.5) and will eventually reply with approval or disapproval with supporting comments. Where there is no consensus ad idem then such will eventually give rise to dispute. In this case FIDIC provides that any dispute be adjudicated by the Dispute Adjudication Board which the parties must unanimously agree on DAB appointment by the date fixed in the Appendix to Tender.

The contract provisions suggest that DAB’s decision in the matter involving the parties to the contract remains sacrosanct unless and until objected and rejected by either party. Following the dissatisfaction with DAB’s resolution by either party, such aggrieved party shall notify the other party of his dissatisfaction stating his reasoning(s) for his dissatisfaction.

According to Hillig et al. (2010) , “except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board’s Decision] and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board’s Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been

given in accordance with this Sub-Clause”. However, Arbitration shall only be resorted to in the event that the parties still could not settle amicably following the dissatisfaction of either party.

## CONCLUSION

The FIDIC Suites as discussed above cover all aspects of contract ranging from RED Book through YELLOW Book, SILVER Book and to GREEN Book. It is important to emphasize on the humongous need for Project analysis and Evaluation in order to decipher the specific Suite that can be applied to any particular contract. Some of the elements of FIDIC are distinct from those of the standard-form contracts that are frequently utilized in the English legal system, although many of the concepts of the contract are comparable. This is particularly true with regard to the DAB's frequent site visits starting at the outset of a project and the stringent notification deadlines for the contractor's claims. The FIDIC Suites have a positive impact throughout the project duration; ensuring a smooth understanding of parties' responsibilities which eventually results in a smooth project delivery.

## REFERENCES

- Hillig, J. B., Dan-Asabe, D., Donyavi, S., Dursun, O., &Thampuratty, A. (2010). Fidic's red book 1999 edition: A study review. In *Proceedings of Institution of Civil Engineers: Management, Procurement and Law* (Vol. 163, Issue 3, pp. 129–133). <https://doi.org/10.1680/mpal.2010.163.3.129>
- Jaeger, A. V., &Hök, G. S. (2010). FIDIC - A guide for practitioners. In *FIDIC - A Guide for Practitioners*. Springer Berlin Heidelberg. <https://doi.org/10.1007/978-3-642-02100-8>
- Robinson, M. D. (Consulting engineer). (2011). *A contractor's guide to the FIDIC conditions of contract*. Wiley-Blackwell.
- Samerezeldin, A., &Helw, A. A. (2017). *Force Majeure Concept in Construction Contracts under Civil and Common Laws*.
- Shah, A., Scholar, P., Bhatt, R., Bhavsar, J. J., & Co-Ordinator, P. (n.d.). *Types and Causes of Construction Claims*. [www.ijert.org](http://www.ijert.org)
- Smith, G. (1989). *Chartered Arbitrator*.
- Wade, C. (n.d.). *International Construction Contracts and Dispute Resolution ICC-FIDIC Conference Cairo-International Construction Contracts and Dispute Resolution ICC-FIDIC Conference Cairo 2005 An Overview of FIDIC Contracts*.