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3 The FIDIC *Conditions of Contract*

3.1 Background

3.1.1 FIDIC

FIDIC (Fédération Internationale des Ingénieurs-Conseils) is an international federation of consulting engineers. It was founded in 1913 and now has over 100 member countries. FIDIC publishes various standard contracts to be used for construction works, infrastructure projects, consultancy services etc. The objects of FIDIC are:

- 1 Represent the consulting engineering industry globally.
- 2 Enhance the image of consulting engineers.
- 3 Be the authority on issues relating to business practice.
- 4 Promote the development of a global and viable consulting engineering industry.
- 5 Promote quality.
- 6 Actively promote conformance to a code of ethics and to business integrity.
- 7 Promote commitment to sustainable development.

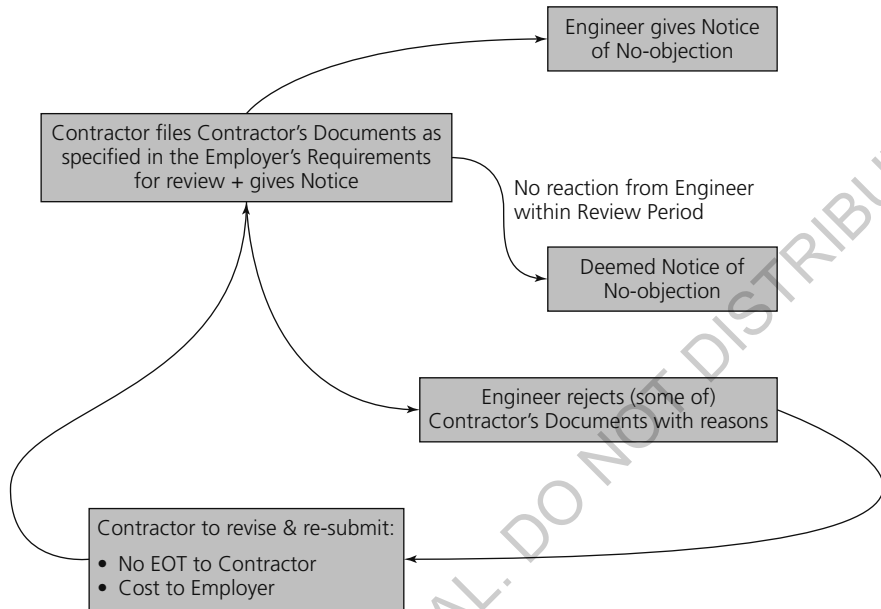
For decades, FIDIC has drafted and published standard contracts to accomplish these objectives, starting with the 1957 *Conditions of Contract for Construction* (the *Red Book*), based on a British standard contract. FIDIC's standard contracts are drafted with input from all relevant actors, including financing bodies (lending agencies and funding institutions), major employer and contractor organisations and advisors. Consequently, even though the FIDIC Contracts are not 'agreed documents' as such, they have over the years – rightfully – earned a reputation for reflecting best practice and procedures of the construction industries around the world.

FIDIC's standard contracts are based on three fundamental principles (as outlined in the FIDIC press release from the 2017 launch, available at fidic.org):

- 1 FIDIC contracts are drafted by engineers experienced in design and construction.
- 2 FIDIC contracts embody a balanced risk allocation between the Parties.
- 3 The role of the Engineer under FIDIC contracts is critical.

It is no secret that the FIDIC contracts are 'contracts **by** engineers **for** engineers' and this is apparent in some of the drafting. The aim was and remains that the contracts should use straightforward language immediately understandable to the users of various professions, thus reducing the need to employ contract lawyers to interpret the contracts. To a very large extent FIDIC has succeeded in this.

Figure 5.2.2 Review of Contractor's Documents



rejection with reasons and the Contractor must correct the error at the Contractor's risk and cost. See also Sub-Clause 5.8.

During construction, the Contractor shall submit the documents required and shall not commence construction until a Notice of No-objection is given (or is deemed given). Describing shorter – but still appropriate – review periods would then theoretically shorten the total time period required for executing the Works. Documents previously submitted for review may be adjusted but only after Notice (with reasons) is given to the Engineer. Work relating to the suggested adjustment is suspended pending clarification of the adjustment.

5.3 Contractor's Undertaking

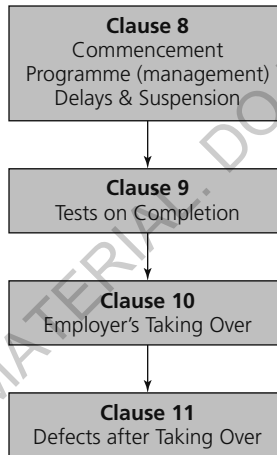
This Sub-Clause is another of the key obligations of the Contractor (together with, e.g., Sub-Clause 4.1 [*Contractor's General Obligations*]).

This Sub-Clause emphasises that the Contractor undertakes that the design, the Contractor's Documents, the execution of the Works and the completed Works comply with the Laws of the Country and (the documents forming) the Contract. It also emphasises that the Contractor's obligations not only refer to the end-result (the completed Works) but also the applied methodology in getting there, including the design and execution of the Works (and methods applied).

8 Commencement, Delays and Suspension

Clause 8 is about time; the time period for the performance of the Works (the beginning and the end), management of the Programme, the Contractor's right to Extension of Time and the Employer's right to suspend progress of the Works. Once the Works have been completed, Clause 9 [*Tests on Completion*] deals with the testing at completion and Clause 10 [*Employer's Taking Over*] deals with the mechanics for the Employer's Taking Over of the Works. Clause 11 [*Defects after Taking Over*] deals with defects after the Employer's Taking Over. See also Figure 8.

Figure 8 Sequence



8.1 Commencement of Works

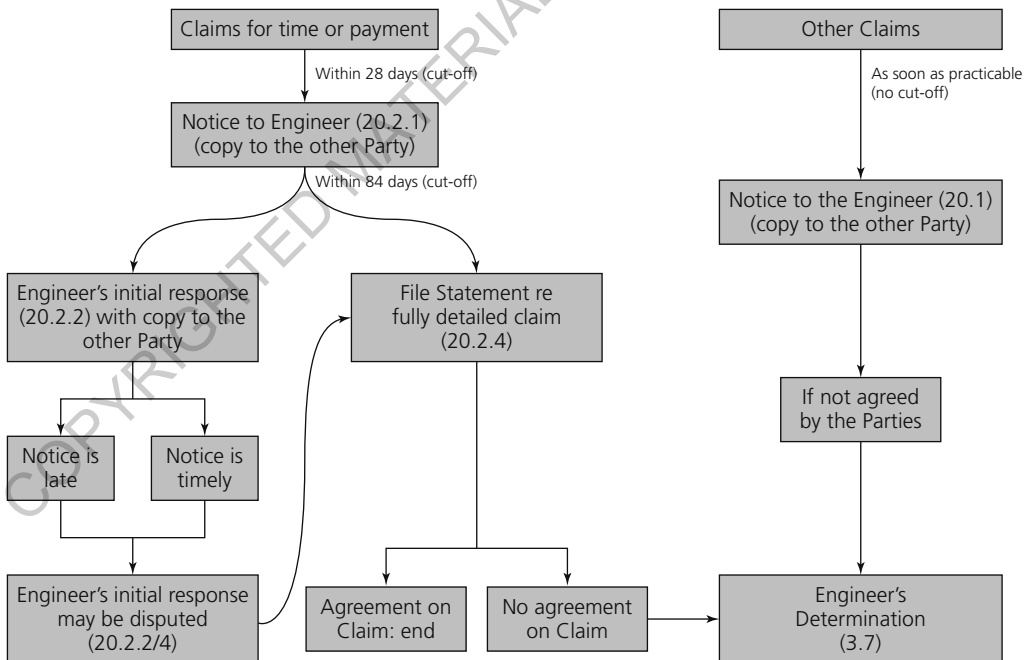
The Contractor shall begin executing the Works at the Commencement Date and shall have completed the Works in accordance with Clause 10 [*Employer's Taking Over*] on the Time for Completion as stated in the Contract Data. In theory, the Commencement Date forms the starting point for the calculation of the Time for Completion, see Sub-Clause 1.1.86. This means that the Time for Completion ends on a date not known to the Contractor at the conclusion of the Contract (it may not even be known to the Employer at that time) and that all the key dates, critical for achieving the Time for Completion, are not known either. However, in many projects the Time for Completion is stated as a specific date and that date is calculated based on an assumption as to the date of the conclusion of the Contract and the Commencement Date.

20 Employer's and Contractor's Claims

Unlike the 1999 edition, both the Contractor's and the Employer's Claims are now managed through the same procedures. Claims for payment or time (EOT or extension of the DNP) are firstly managed by the procedure provided in Sub-Clause 20.2 [Claims For Payment and/or EOT] in respect of Notice requirement, record keeping and the Engineer's initial response to the Claim. When the Claim is fully detailed, it is then managed by the process provided in Sub-Clause 3.7 [Agreement or Determination]. Claims for something other than payment or time (e.g. if the Engineer has rejected the issue of a certificate and the Contractor does not agree) are referred directly to the Sub-Clause 3.7 procedure. Under Sub-Clause 3.7, the Claim is either agreed by the Contractor and the Employer or determined by the Engineer. Any Party not satisfied with the Engineer's determination may refer the matter to the DAAB in accordance with Sub-Clause 21.4 [Obtaining DAAB's Decision]. Again, if a Party is not satisfied with the DAAB's decision, the matter may be referred to amicable settlement under Sub-Clause 21.5 [Amicable Settlement] or arbitration under Sub-Clause 21.6 [Arbitration] for final settlement. For an overview, see Figure 20A.

The escalation of the Engineer's determination under Sub-Clause 3.7 through DAAB and mediation ending in arbitration is illustrated in Figure 20B.

Figure 20A Claims procedure



Appendix A: Mini Guide

This mini guide does not constitute or replace legal advice and is offered only for inspiration. The reader is encouraged to seek relevant expert assistance in drafting any contract, FIDIC-based or otherwise and to start by studying the Guidance in the official, published version from FIDIC (*Guidance for the Preparation of Particular Conditions*).

The typical structure of a FIDIC-based contract is:

- 1 **Contract Agreement.** This document briefly outlines the purpose of the Contract and lists the documents forming the Contract. It should be left very short. FIDIC provides a specimen for the Contract Agreement; in most jurisdictions this specimen will – when completed – suffice. The list of documents forming the Contract must be fully aligned with Sub-Clause 1.5 [*Priority of Documents*]. The Special Provisions should either outline the same list or simply delete the list in the standard wording of the Sub-Clause and refer to the list in the Contract Agreement to avoid redundancy. All documents should be stated with a unique reference, such as file name, version, date or similar unique reference to avoid any uncertainty about what versions are included in the Contract.
- 2 **Letter of Acceptance.** This is the Employer’s confirmation and acceptance of the Contractor’s Tender. FIDIC provides a specimen for the Letter of Acceptance. If you have a correctly drafted Contract Agreement, the Letter of Acceptance can be left out.
- 3 **Letter of Tender.** This is the cover letter of the Contractor’s tender (offer). Do not confuse the ‘Letter of Tender’ (which is only the Letter of Tender itself) with ‘Tender’ (which is the Letter of Tender **and** all the documents attached thereto, including the Contractor’s Proposal, see Figure 1.1.17). FIDIC provides a specimen for the Letter of Tender, which in most cases will suffice.
- 4 **Particular Conditions Part A – Contract Data.** This document sets out all the project-specific data usually required for the proper functioning of the Conditions, such as the name and addresses of the Employer. Again, FIDIC has provided a template for the Contract Data; for ease of use, it may be beneficial to maintain the style applied by FIDIC when finalising the Contract Data. The Contract Data document is usually issued by the Employer, with certain portions filled in, as part of the tender bundle. The Contractor then completes the document and includes the completed document in their Tender.
- 5 **Particular Conditions Part B – Special Provisions.** This is where any amendments or additions to the General Conditions should be stated. FIDIC has included a comprehensive guide for the preparation of Special Provisions in the official versions of the Conditions. FIDIC recommends keeping the Special Provisions to a minimum; as a general drafting rule, include only Special Provisions where they are specifically required by the project. If the number of amendments is small, the Special Provisions could be drafted as a simple stand-alone document in which the specific changes are stated. Of course, if you plan a full redraft of the Conditions, the Special Provisions and the General Conditions may be merged, although this approach is rarely recommendable.