

3.2.4. Signing the contract with the construction company

FIDIC contract conditions

Nowadays the FIDIC acts as an international forum for the exchange of views and information, and actively encourages the discussion of matters of mutual concern about member associations. Regular meetings and personal communications are organised by different international agencies of the FIDIC. It is obvious that the future will bring further integration between engineering, scientific, management and construction groups of building companies. Engineering help can therefore develop further into management services, and software services as well as environmental studies.

The new standard form of construction contract produced by the FIDIC aims to provide a fair risk allocation between the Contractor and the Project Company specifically for turn-key projects. Such a solution can save time and money for everybody. It is likely to be seized upon by participants in international projects, which are privately financed. FIDIC engineers have prepared the most important documents (books), necessary during the organisation of tenders, contracting and execution of works. There are four basic books now, covering the FIDIC 1999 New Standard Forms of Contract:

- Conditions of Contract for Construction (an update of the FIDIC's conditions of Contract for Works of Civil Engineering Construction, known as the "Red Book"),
- Conditions of Contract for EPC Turnkey Projects (known as the "Silver Book"),
- Conditions of Contract for Plant and Design-Build Projects (known as the "Orange Book"),
- Short Form of Contract (known as the "Green Book"),
- Contract between Client and Consultant (known as the "White Book")

The purpose of the new standard forms of contract is:

- to cover a wide variety of contracts, which may be run under the standard forms of FIDIC documents,
- be user friendly for preparing, amending, reading and administering of the contract,
- be flexible and allow its users to modify provisions easily, depending on the situation.

Conditions of Contract for Construction (contents shown in Appendix 1)

As in the old FIDIC Red Book, the Conditions of Contract for Construction cover works designed by (or on behalf of) the client (Employer) who then pays the Contractor on basis of a quantity of executed works. However, the Contract standard is quite universal and can apply to a wide variety of situations including those when the Contractor himself designs some elements of the works. It is the most popular FIDIC Book, widely used for tender invitations and later during execution of construction contracts.

Conditions of Contract for EPC Turnkey Projects

The conditions for EPC Turnkey Projects are recommended by FIDIC for use in the case when one party takes the entire responsibility for design and execution of a project. Clearly, when the Contractor assumes a greater degree of risk, the price may contain a higher degree of profit. A client (Employer) must consider whether the advantage of certainty of price outweighs the potential disadvantage of Contractors, who submit higher tender prices.

An important feature of the Silver Book is that the Contractor is, for the first time, to take responsibility for accuracy of the design criteria and calculations used. Unless specifically stated in the contract, the employer does not accept any responsibility for the accuracy or sufficiency of site data or other information provided to the contractor, either in the Employer's requirements or otherwise.

Similarly, the Silver Book does not (unlike previous FIDIC models) allow for any cost or schedule relief to the Contractor for the discovery of adverse sub-soil conditions on site, even of conditions which could not have been foreseen. (However, the contract does make an exception for the discovery of fossils and elements of archaeological interest). In the notes for guidance, the authors of the Silver Book suggest that if the works include tunnelling or substantial sub-surface construction, it may not be appropriate to place this risk on the contractor. Certainly, contractors will always be reluctant to accept this risk. Moreover, if the Employer has been able to negotiate with the lender the right to an adjustment in the tariff in the event of discovery of adverse site conditions, then the Employer can pass the benefit down to the Contractor.

Conditions of Contract for Plant and Design-Build Projects

The conditions of Contract for Plant and Design-Build Projects assume that the Contractor is going to design and provide plant together with other works in accordance with the client's (Employer's) requirements. These works can include any combination of civil, electrical, mechanical and construction works. The level of risk in these contracts is significant, and the

client (Employer) using this form usually hopes that the tender figures will be lower than for EPC Contracts.

The Short Form of Contract

The Short Form of Contract is intended for engineering and building work of relatively small capital value, and works that are fairly simple or repetitive, or for works of short duration.

The Contract Between the Client and Consultant

The form of contract between the Client and Consultant is intended for the Consultants and Clients to enter the agreement on consultancy services.