

FIDIC Latin America Users' Conference

Overview of Current Developments
in FIDIC Contracts

Lima, Peru

12 & 13 September 2017

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Z & Partners Consulting Engineers

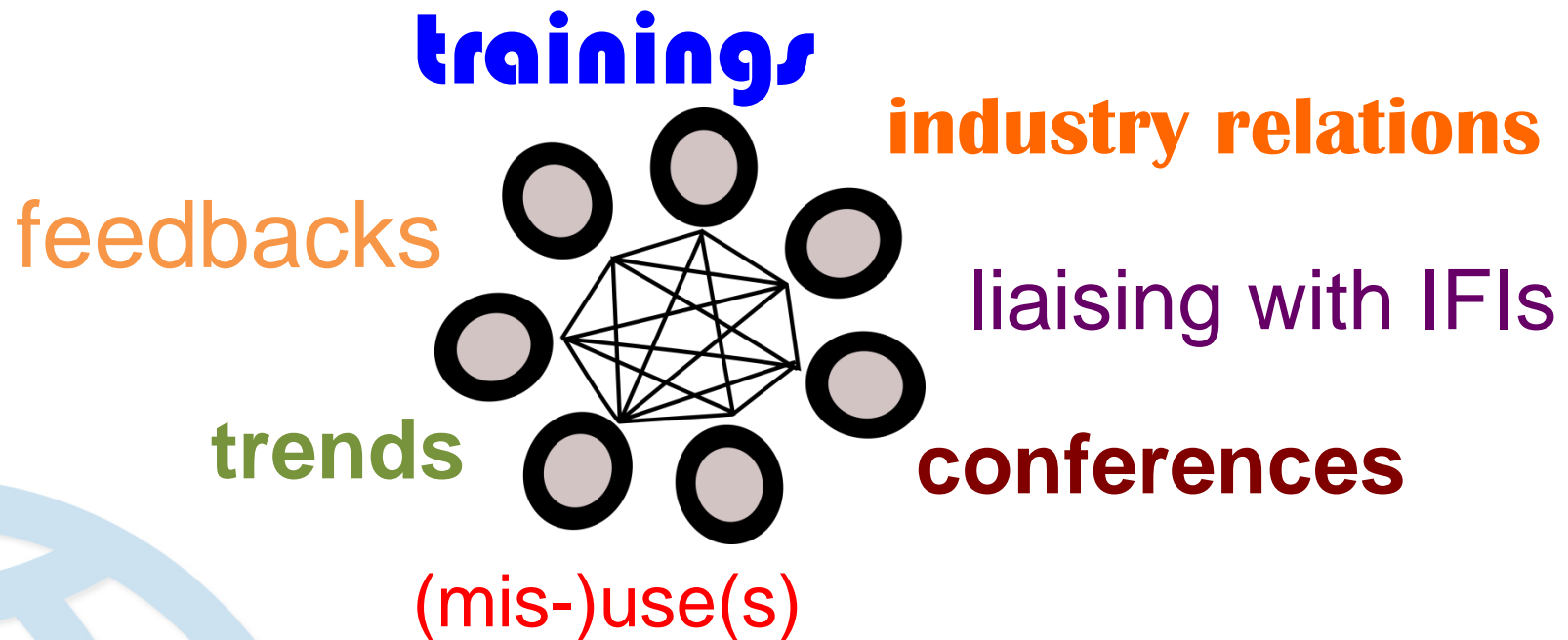


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FIDIC's Contracts Committee's main responsibility is to recommend to the Executive Committee which Conditions of Contract and related documents should be prepared or updated by FIDIC.

What else is the CC traditionally involved in?



Global view by FIDIC Contracts Committee on procurement and contracts implementation

*The success of an engineering project highly depend upon the stakeholders' professionalism – especially, on the **quality of engineering services**.*

*One of FIDIC's primary missions is to provide the consulting engineering industry with the **best practice guidelines and tools**, including*

Model Contract Forms

Model Agreements

Trainings

www.fidic.org

Conferences

Manuals

Guides



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FIDIC Contracts Committee Task Groups

TG4: Consultancy Agreement 'White Book' + Sub-consultancy Agreement + Consultants' JV Agreement (update) ✓

TG6: Update of 1999 Contracts

TG7: Dredging & Reclamation contract (update) ✓

TG9: Design-Build Subcontract 'Yellow Book Subcontract' (new)

TG10: Tunnelling & Underground Works Contract (new)

TG11: Operate-Design-Build-Operate ODBO contract (new)

TG12: Web-based Glossary of FIDIC Terms and terminology (new) ✓

TG13: Dispute Avoidance and Adjudication Board Rules (update/new) ✓

TG14: New "Plug-in" for the Renewables Industry (wind)

TG15: "Golden Principles" of FIDIC (new)

TG16: Under consideration: Statistics on the Use of FIDIC Contracts (new)

TG 4, 7 and 12 'products' have already been published! ✓



Update of FIDIC 'White Book': Consultancy Services Agreement

- ✓ For clients who are **Employers** or **Contractors**.
- ✓ A new section: **Variation to Services** -» more detailed provisions.
- ✓ Commercially up-to-date **payment** provisions.
- ✓ '**Reasonable care and diligence**' vs. '**fitness for purpose**'
– has been carefully considered and debated!
- ✓ Changed **insurance provisions** to reflect current professional indemnity insurance market.
- ✓ Consultant's duty to provide a **programme** for the Client's agreement.
- ✓ More effective **dispute resolution provisions** – change from mediation to adjudication.



Published in Abu Dhabi, February 2017
(FIDIC Middle-East Users' Conference)



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Update of FIDIC Sub-Consultancy and Consultants' JV Agreement agreement

- ✓ To suit clients who may be a **large international consultant** or smaller **domestic consultant** looking to engage a specialist engineering sub-consultant.
- ✓ Update required to **suit current industry practice** where lead consultant is a larger global consultancy firm looking to engage a smaller local consultant.
- ✓ Re-drafted for **use with the updated FIDIC White Book**.
- ✓ To be considered: **technology/know-how transfer** balanced risk allocation.

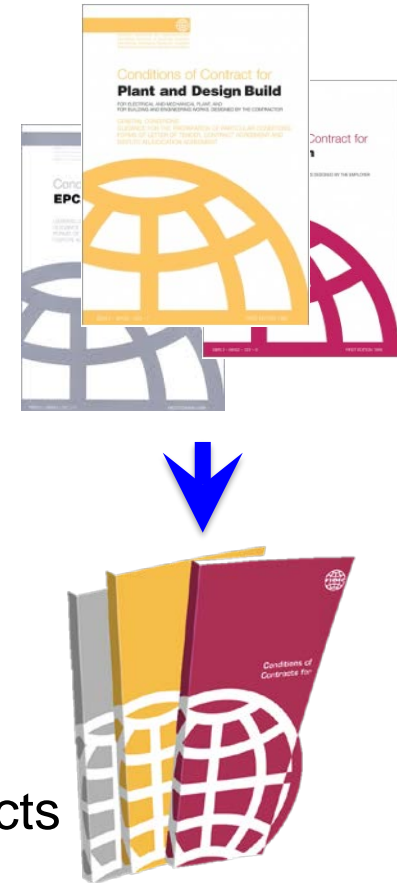
Published in Abu Dhabi, February 2017
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Update of the FIDIC 'Rainbow Suite' 1999

Underlying philosophies of the update:

- **by engineers for engineers**
but ...a legal document —» also used by **lawyers!**
- enhance **project management** 'tools'/mechanisms
- reinforce the role of **the Engineer**
- **balanced** risk allocation —» more equality between the Parties
- reflect current international **best practice**
- address **issues/comments raised by Users**
- incorporate **most recent developments** in FIDIC contracts



MORE DETAILS —» next session!



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Update of FIDIC Dredging & Reclamation Contract

Underlying philosophies of the update:

- reflects current international **best practice**
- incorporates (some of) **most recent developments** in FIDIC contracts
 - definitions in alphabetical order
 - 'Contract Data' instead of 'Appendix to Tender'
 - 'Exceptional Risks' instead of 'Force Majeure'
 - Employer's obligation to provide evidence of financial arrangements
 - express provisions for 'normal working hours'
 - revised limitation of liability provisions.

Published in Marrakesh, September 2016
(FIDIC Annual Infrastructure Conference)



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New FIDIC Subcontract for 1999 Plant, D-B Contract

DRAFTING PRINCIPLES:

- **back-to-back** with FIDIC Yellow Book **1999**
 - strictly **follow** the **FIDIC policy** of balanced risk allocation
 - provisions, format and terminology similar to the FIDIC Construction Subcontract 2011 - **no change unless necessary**
- » **differs from FIDIC Construction Subcontract (2011) in similar ways that FIDIC Yellow Book 1999 differs from FIDIC Red Book 1999**

For example:

- Employer's Requirements ... and the obligation to scrutinise
- provide as-built documents & operation/maintenance manuals
- Engineer's review/approval process for the Contractor's design
- tests **after** completion
- training of Employer's Personnel

Current status: draft being finalised for 'Friendly Review'



New FIDIC Operate-Design-Build-Operate contract: The 'Bronze Book'

- for the Contractor to:
 - operate** an *existing* facility
 - design and build** a new facility or part-new facility
 - operate** the new/renovated facility (for ~ 20 years)
- heavily based on **FIDIC Gold Book** (design-build-operate) 2008
- **two** main periods:
 - A)** initial operation period + design-build
(during design & build of new works + defects notification period)
 - » assets and condition of the existing facility, insurances
 - » production of existing facility during initial operation period
 - B)** main operation service period (of new works for ~ 20 years)

Current status: draft being finalised for 'Friendly Review'



New 'FIDIC Terms' – online glossary of terms in FIDIC publications

- for terms used in all FIDIC publications, *including FIDIC contracts*
- to **assist readers** in easily finding definitions of FIDIC recognised terms
- for readers to review how similar terms are used in different FIDIC documents (and, perhaps, different versions/editions of the same document)
- for assigned users to **propose new definitions** to FIDIC for future use

- FIDICTerms is *a semi-open sourced glossary*
- FIDIC users and experts across the world can **propose new definitions**
- any new such definition can then be added after it has been reviewed and approved by FIDIC.



Launched at the FIDIC International Users' Conference in London, December 2016.



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New FIDIC* Conditions of Contract for Tunnelling and Underground Works

Definition of Underground Works: “All works located beneath the natural or man-made surface of the Earth, including ancillary surface works.”

Issues in focus: Allocation of risk; Inclusion of contractual geotechnical baseline; Importance of “Unforeseeable Physical Conditions”; Ground Classification System to be included; Ground conditions' impact on Time for Completion; Flexible mechanism to cover for adjustments related to ground conditions (time-, and value related costs) – and many more!

TG's current activity in progress: Finalising the draft for 'Friendly Review'.

Expected publication of the new Document: 2018 (estimated)

* In co-operation with ITA



Dispute Adjudication Board Rules (update/new)

The **FIDIC DAB documents** (“*Procedural Rules for Dispute Adjudication Board Members*”, the “*Dispute Adjudication Agreement*”, and the “*General Conditions of Dispute Adjudication Agreement*”) published in the FIDIC works contracts **has been refreshed** for the Updated and new FIDIC Contracts.

—» The update

= be based on the latest published FIDIC form of works contract (**FIDIC Gold Book**, 2008), and

= to align with the updated Dispute Avoidance/Adjudication Board [**DAAB**] provisions being developed for the Updated FIDIC Contracts.

The updated FIDIC DAAB documents are envisaged to be incorporated in the Updated FIDIC Contracts as well as for any new forms of FIDIC works contracts.

Current status: finalised -» incorporation in relevant FIDIC Contract Documents



“Golden Principles” of FIDIC (new)

Certain recent applications of FIDIC contracts and agreement forms in the market place involve significant changes to the General Conditions [GC] of the forms, by means of replacing or changing wording of the GC through the Particular Conditions [PC] —» **the final contract or agreement no longer represents the FIDIC principles.**

The Task Group's **major objectives**:

- » **identification** of contractual principles (for each form of FIDIC contract/agreement) FIDIC considers to be inviolable,
- » **providing reason(s)** why such principles are considered to be a FIDIC's “*Golden Principles*”,
- » providing **guidance** how users should draft Particular Conditions and the other documents of a contract,
- » suggesting what **consequences** may apply, where a particular user is found to violate or deviate from “FIDIC's Golden Principles”.
- » suggesting the **format of publication** for the ***FIDIC Golden Principles***

Current status: The document is being finalised for starting ‘Friendly Review’



The FIDIC Contracts Committee 2017

Siobhan Fahey, Ireland (member)

Mike Roberts, UK (member)

Des Barry, Ireland (member)

Vincent Leloup, France (member)

Kaj Möller, Sweden (member)

Zoltán Záhonyi, Hungary (chairman)

William Howard, USA (EC primary responsibility)

Aisha Nadar, Sweden (EC secondary responsibility)

Pawel Zejer, Poland (EFCA liaison)

Christopher R. Seppälä, France (legal adviser)

Nael G. Bunni, Ireland (risk and insurance adviser)

Axel V. Jäger, Germany (special adviser)

Christopher Wade, UK (special adviser)



The next FIDIC Annual Conference



SAVE THE DATES !



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***Thank you for your
kind attention!***

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