

FIDIC Latin America Users' Conference

Lima, Peru
12 & 13 September 2017

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International Federation of Consulting Engineers



Executing a Project

**Contract Administration and
Balancing of Risks**

Risks Management

Key factors for a successful Project



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Risk Sharing in the Construction Industry

Risk-sharing is a predominant feature in the Construction Industry
Contractor's livelihood is dependent upon a balanced sharing of risks.

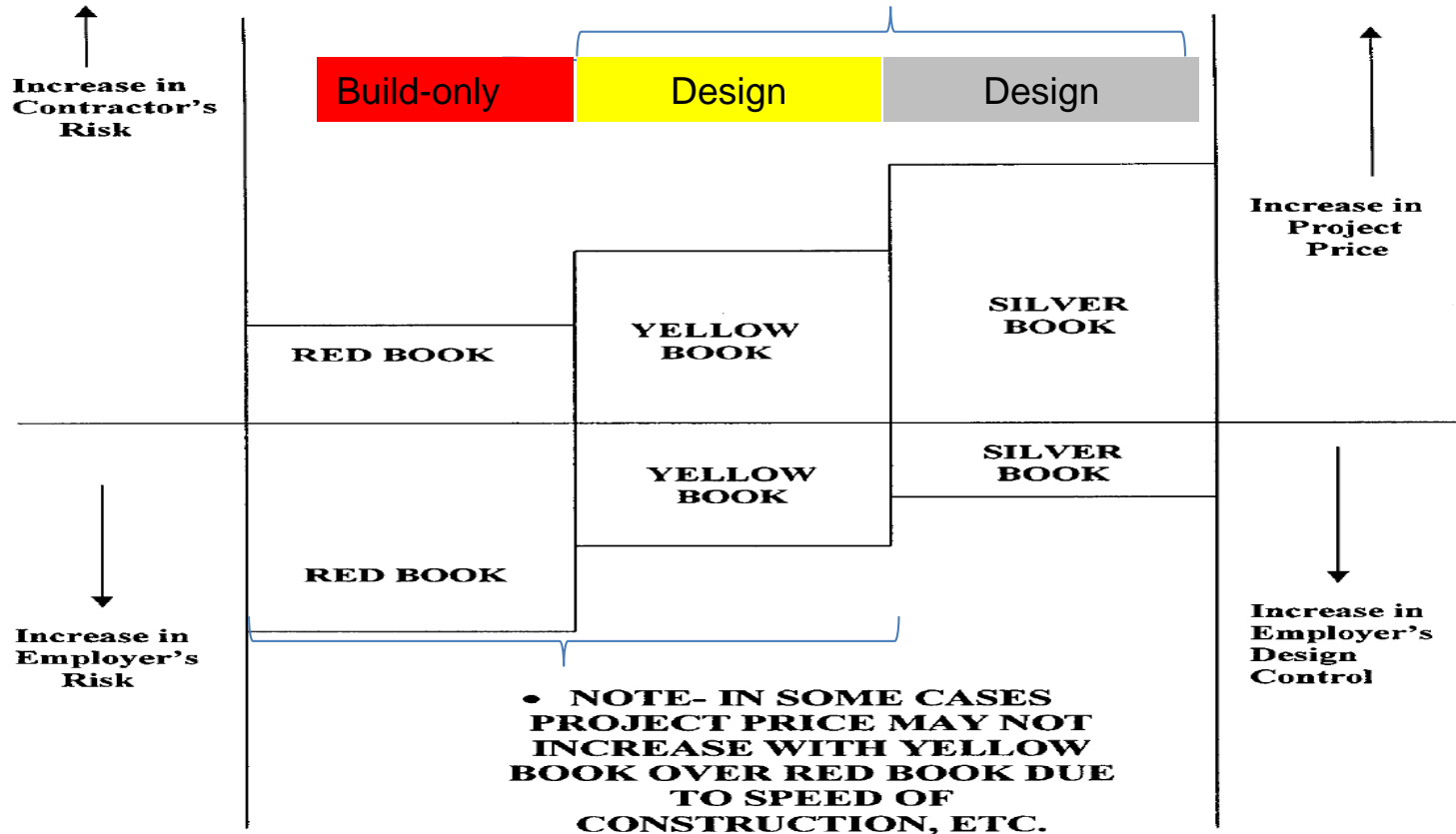
Events/Risk Allocation might:

- Increase the Cost
- Delay Completion / Delay Meeting Key Dates
 - => Exposure to Delay Damages
 - => Additional Cost (time-related)
- Impair the Performance of the Works when put in use
 - => Exposure to 'fit-for-purpose' claims



Risk Allocation under the Red, Yellow, and Silver Book

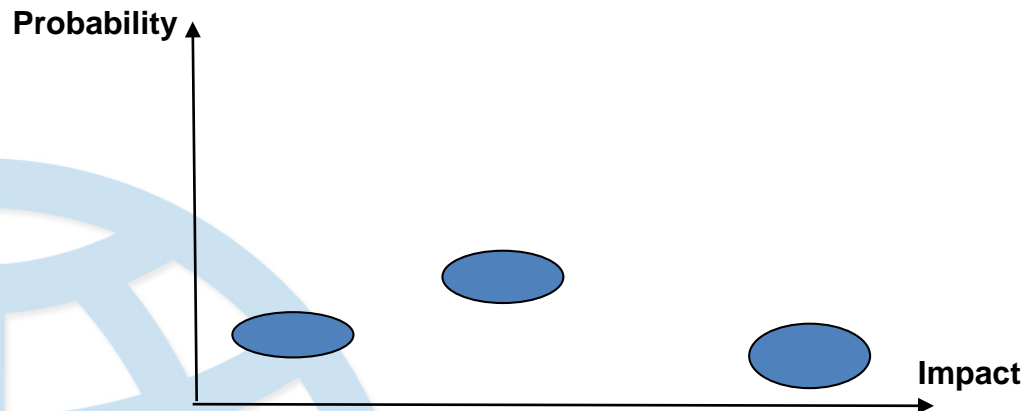
RISK DIAGRAM FOR 3 NEW FIDIC BOOKS



Contract Review + Risk Assessment: When?

- At the early Phase i .e. during Preparation of Tender in order to:
⇒ properly assess all risks (technical, commercial, contractual/legal, financial)

Spectrum of Risks: Range from low probability/low impact to
low probability/catastrophic impact



Contract Review + Risk Assessment: Action at Contract Stage

Countermeasures against Risks

- Price for
 - build-in contingencies for or
 - insure against
-those risks as appropriate.

Those risks not insurable or not quantifiable/commercially feasible should not rest with the Contractor.

(=> or Murphy's Law will haunt you!)

see HOCHTIEF Inhouse Form of Contract Review *[insert link to 2016 05 04]*



Risk Register (to be placed next to Contract Program)

Risks from contractual Risk Allocation ↔

All Events which might lead to

- Cost increases
- Slippage in the Program

= Tool to pursue Entitlements

=> FIDIC Clause 20.1 together with specific clauses provides mechanisms for compensation/relief

=> Include following columns in Risk Register:

(Own) Performance Risks

- Late Ordering of Long Lead Items
- Suppliers' delays
- Late provision of Contractor's permits (construction/explosives, etc.)
- Health and Safety Requirements
- Fulfilment of Specifications/Standards

= Tool to administer the Project



Columns of Risk Register

- Notification Ref
- Date notified and by whom?
- Description of the matter
- Risk Assessment
- Develop Risk Category
 - (Client/Contractor; Design; External; Operational)
 - Categories I to VI
- Probability
- Action Plan
 - Completed Mitigation Action
 - Date action last updated
 - Action to be taken to avoid or reduce the risk / Action by when? By whom?
- Risk live?
- Indicate Impact on Cost/Time
- Indicate possible other knock-on effects
- *[insert link to Kopie von]*



Red Book Pathological Sub-Clause 4.11 FIDIC (4.12 being deleted)

Notwithstanding anything contrary in the Sub-Contract, no failure on the part of the Sub-Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, or to acquaint himself with the Sub-Contract -with the exception of the nature of the sub-surface, the sub-soil, sub-sea, sea-bed and tidal conditions, - shall entitle the Sub-Contractor to an addition to the Accepted Sub-Contract Amount or to an extension of the Time for Completion.



Pathological VO + 20.1 Clause

=> Notice must remain within Contract Scope

FIDIC Red Book: Construction only, no Design!

If an Employer then under a VO

“...increases the loads for a gantry crane and requests the Contractor to elaborate the adequate Design...”

⇒ No notice for cost and EoT must be given!

⇒ “VO” must be rejected in its entirety.

⇒ Contractor to insist on being provided with proper dimensions and drawings.

⇒ Contractor must not develop the design for the Employer!

⇒ Only develop drawings up to the level of RfC.

RISK: Design Responsibility without PI-Insurance



Pathological Approach

Cover comes with Yellow Book but:

Clauses on

- Correctness of Employer's Requirements
- Correctness of Design Criteria
- Correctness of Data supplied by the Employer
- Risk of Unforeseeable Subsoil Conditions

copied-in from the Silver Book!

=> Cannot be reconciled with "Integrity" of anybody!

