

Introduction to FIDIC contracts

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What does FIDIC mean? What do they do?

FIDIC stands for '*Fédération Internationale des Ingénieurs - Conseils*', which is best translated from French as The International Federation of Consulting Engineers. FIDIC represents the consulting engineering industry both globally and domestically.

What are the FIDIC forms of contract?

FIDIC's Contracts Committee produces standard forms of contract for civil engineering projects, which are used globally. The purpose of these standard forms is to define the contractual relationship between the parties and to apportion risks between the contractor and the employer. FIDIC states that their contracts allocate risks fairly to the party that is best able to bear and control that risk.

It is important to remember that the FIDIC forms represent a starting point for the preparation of a construction contract. However, they are routinely amended to reflect the particular characteristics of each project and the requirements of the parties.

Choice of FIDIC form of contract

The forms of contract are drafted for use on a wide range of project types. The main forms are differentiated by the colour of their covers. The choice of form depends on the type of project being contemplated. In summary:

- straight forward, quick or cheap project - Green Book
- employer design (traditional project) - Red Book
- employer design (Multilateral Development Banks providing finance) - Pink Book
- contractor design (traditional project) - Yellow Book
- EPC/Turnkey project - Silver Book
- design, build, operate project - Gold Book

The Green Book - 'Short Form of Contract'

This is FIDIC's recommended form of contract for use on engineering and building works of relatively small capital value or where the construction time is short. FIDIC has provided guidance that this would probably apply to contracts with a value of less than US \$500,000 or a construction time of less than six months. However, the Green Book may also be suitable for simple or repetitive work.

Although typically in these types of arrangements the contractor is to construct the works according to the employer's design, it does not matter whether the design is provided by the employer or by the contractor.

There is no engineer and payments are made in monthly intervals.

The Red Book - 'Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer' (the construction contract)

In 1956 the first edition of the original form of Red Book was published. This was updated and amended over four editions. Then in 1999 FIDIC released a totally new set of standard forms of contract, including a brand new version of the Red Book, which superseded the original version of the Red Book. The Red Book is the FIDIC recommended form of contract for building or engineering works where the employer has been responsible for nearly all the design. In fact FIDIC claim that the Red Book is the most widely used international construction contract where most of the works have been designed by the employer.

A key feature of the Red Book is that payment is made according to bills of quantities (ie a document in which materials, plant, and labour (and their costs) are itemised), although payment can also be made on the basis of agreed lump sums for items of work.

The Red Book is administered by the engineer (a third party) rather than the contractor or the employer. The engineer will also be responsible for monitoring the construction work (but still keeping the employer fully informed so that he may make variations) and certifying payments.

The Pink Book - 'MDB Harmonised Edition'

This is a variant of the Red Book. It is drafted for use on projects that are funded by certain Multilateral Development Banks ('MDBs'), which are supranational institutions such as the World Bank, where the Red Book would otherwise have been applicable. Where the project is funded by an MDB but the employer is not responsible for the design, the parties should not use the Pink Book, but use and amend one of the other FIDIC forms of contract.

Prior to the publication of the Red Book, where the MDBs had originally adopted the Red Book for the projects they were funding, they amended the FIDIC General Conditions. As a result of negotiations between FIDIC and the MDBs, the Pink Book was drafted which incorporated the amendments that were commonly inserted by the MDBs.

The Yellow Book - 'Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, Designed by the Contractor' (the plant and design/build contract)

This form of contract is drafted for use on projects where the contractor carries out the majority of the design (ie the contractor carries out the detailed design of the project so that it meets the outline or performance specification prepared by the employer). The Yellow Book is therefore traditionally used for the provision of plant and for building or engineering works on a design/build basis.

The Yellow Book is a lump sum price contract with payments made according to achieved milestones on the basis of certification by the engineer (like the Red Book, the engineer administers the contract). The contractor is also subject to a fitness-for-purpose obligation in respect of the completed project.

The Silver Book - Conditions of Contract for EPC/Turnkey Projects (the EPC turnkey contract)

The Silver Book is drafted for use on EPC (Engineer, Procure, Construct) projects. These are projects that require the contractor to provide a completed facility to the employer that is ready to be operated at 'the turn of a key'. These contracts therefore place the overall responsibility for the design and construction of the project on the contractor.

The Silver Book is used where the certainty of price and completion date is important. The Silver Book allows the employer to have greater certainty as to a project's cost as the contractor assumes greater time and cost risks than under the Yellow Book.

The Silver Book may also be used for privately financed BOT (Build, Operate, Transfer) projects. These are projects where the employer takes total responsibility for the design, construction, maintenance and operation of a project and wishes to pass the responsibility in respect of construction to the contractor.

There is no engineer under the Silver Book as his responsibilities are assumed by the employer. Similar to the Yellow Book, the contractor is also subject to a fitness-for-purpose obligation in respect of the completed project.

The Gold Book - 'Conditions of Contract for Design, Build and Operate Projects' (the design build operate contract)

FIDIC state that the Gold Book is drafted to minimise the risk of rapid deterioration after the handover of a project due to poor design, workmanship or materials. The Gold Book is therefore suitable where a long-term operation and maintenance commitment is required along with design and build obligations. The contractor must operate and maintain the completed project on behalf of the employer for a period of typically 20 years from the date of the Commissioning Certificate, which is issued at completion of construction of the project. During this 20 year period the contractor must meet certain targets and at the end of this period the project must be returned to the employer in an agreed condition.

Throughout the 20 year period the employer owns the plant but the contractor operates it at the contractor's own risk. However, the contractor has no responsibility for financing the project or ensuring its long-term success.

The Blue Book - 'Form of Contract for Dredging and Reclamation Works'

FIDIC state that the Blue Book is suitable for all types of reclamation and dredging works as well as ancillary construction works.

Typically, under such form of contract the contractor constructs the works in accordance with the employer's design.

However, this form of contract can also be adapted for contracts that include or consist entirely of contractor-designed works.

The White Book - 'FIDIC Client/Consultant Model Services Agreement'

This form of contract is not for the provision of construction and engineering works despite it also being re-referred to by the colour of its cover. This form of contract is used to appoint consultants to provide services to the employer such as feasibility studies, design, contract administration and project management. The White Book typically forms the basis of the agreement between the consultant and the employer where the construction and engineering works are being undertaken pursuant to a FIDIC contract.

The Conditions of Subcontract for Construction - Conditions of Subcontract for Construction for Building and Engineering Works Designed by the Employer

Unlike the above forms of FIDIC contract, no colour is given to this form of contract. This is the FIDIC recommended form of subcontract for use with the Red, Yellow, Silver and Gold books referred to above.

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