

The Design-Build-Operate Form of Contract (DBO)

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Introduction

Shortly after the 1999 major contracts were published, FIDIC started receiving feedback on the need for another form of contract to cover the developing introduction of projects where the Contractor was not only responsible for the design and construction of a facility, but also had a long term responsibility for the operation of plant (perhaps up to 20 years or more), before the facility was handed over to the Owner - what the industry refers to as Design, Build and Operate, or DBO contracts.

Typical examples of where the DBO approach to procurement is becoming more popular are major service plants such as water and sewage treatment, and other infrastructure projects, where the contractor is not only responsible for the design and construction of the facility, but has a further responsibility to operate the same for say 20 - 25 years before handing it over to the employer. The DBO approach is also favoured for PPP (public/private/partnership) projects. At the present time, due to non-availability of suitable forms of Contract, DBO contracts are tending to be based on an amended version of the Yellow or Orange Book.

However, whilst the Yellow Book (and indeed the Silver Book) covers the design and build elements of a DBO contract, FIDIC does not have a document which addresses the risks and responsibilities associated with the long term 'operation' phase of such a contract, and this is what the Contracts Committee has asked the DBO task group to look into.

Due to the similarity of a DBO project and the design-build obligations found in the Yellow Book, it is planned that the new document will use the Yellow Book as a base document, but the task group will need to identify:

- Basic procurement procedures which will differ from the YB procedures and the extent to which any new procedures could affect the provisions in the Conditions
- Those definitions and provisions in the YB which can be used unaltered
- Those definitions and provisions which need to be changed
- Any provisions in the Yellow Book which need to be deleted as being no longer appropriate
- New provisions which need to be added to cover the 'Operation' element of DBO, especially in respect of the risks and responsibilities of the parties

The aim will be for the new document to follow the same basic format and fundamental principles used in the other FIDIC contracts. However due note will be taken into account of

- any changes which have resulted from the harmonization work between FIDIC and the multi-lateral development Banks
- relevant on-going work by others - for example, the use of the Yellow Book by ISPA (Instrument for Structural Policies for Pre-Accession) - the organization within the EU which helps fund projects in pre-accession countries - and harmonization with the PRAG guidelines. (Practical guide to contract procedures within the EU.).

ISPA is requiring (or at least recommending) that their borrowers in the preaccession countries base their infrastructure contracts on the FIDIC Yellow Book.

- The Green Paper prepared by EU on the financing of PPP Projects and Community Law where EFCA and other international bodies are contributing to this work.
- and documents prepared by the World Bank and the Irish Association and others.

The Task Group

At this time it is foreseen that the task group will consist of about four persons and the group members are:

- Mr. D. Barry (Ireland)
- Mr. A. Bauer (Germany)
- Dr. Theune (Germany)
- And MMH (UK) as chairman.

We are looking for as much input and feedback as we can get as to what the industry needs, and as a first step, we are holding one of the workshops after coffee today to enable you to tell us what you, as persons interested and experienced in DBO work, would be looking for in a DBO form of Contract. This information will be invaluable to the Task Group.

The next Task Group meeting is planned for October in London.

Bearing in mind that the members of the Task Group are also very busy professional engineers, we would anticipate that the first draft, ready for review and comment, will be available in about 1 year's time.

The new Document

At the present time, the new document is being referred to as the "DBO Contract" in the expectation that its final title will be:

"Conditions of Contract for Design, Build and Operate Projects" (or something similar).

That is all I can tell you at the moment - but the DBO workshop after coffee will be an excellent opportunity to make your views known - so do come along and contribute your knowledge and experience.

Thank you.

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