



Budapest 2006



Design – Build – Operate

The New FIDIC Form of Contract

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Contracts Committee

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FIDIC DBO Format

Design - Construction - Long-term Operation

One Contract and One Contractor

One Performance Security, reducing (pro rata) at the end of the Retention Period

“green field” scenario :

a sequence of **Design – Build – Operate**

20 year Operation period



Advantages of DBO

Time: Minimizing delays and optimizing construction activities

Financial: Single point responsibility and long-term commitments

Quality: Fitness for purpose and long-term reliability

Optimization of life-cycle costs



DBO Format of Document - 1

20 clause layout

Same terminology and definitions

(where appropriate)

General Conditions

Particular Conditions

Flow Charts

Sample Forms

Guide



DBO Format of Document - 2

Principal Parties:

Employer

Contractor

Employer's Representative

Principal Stages:

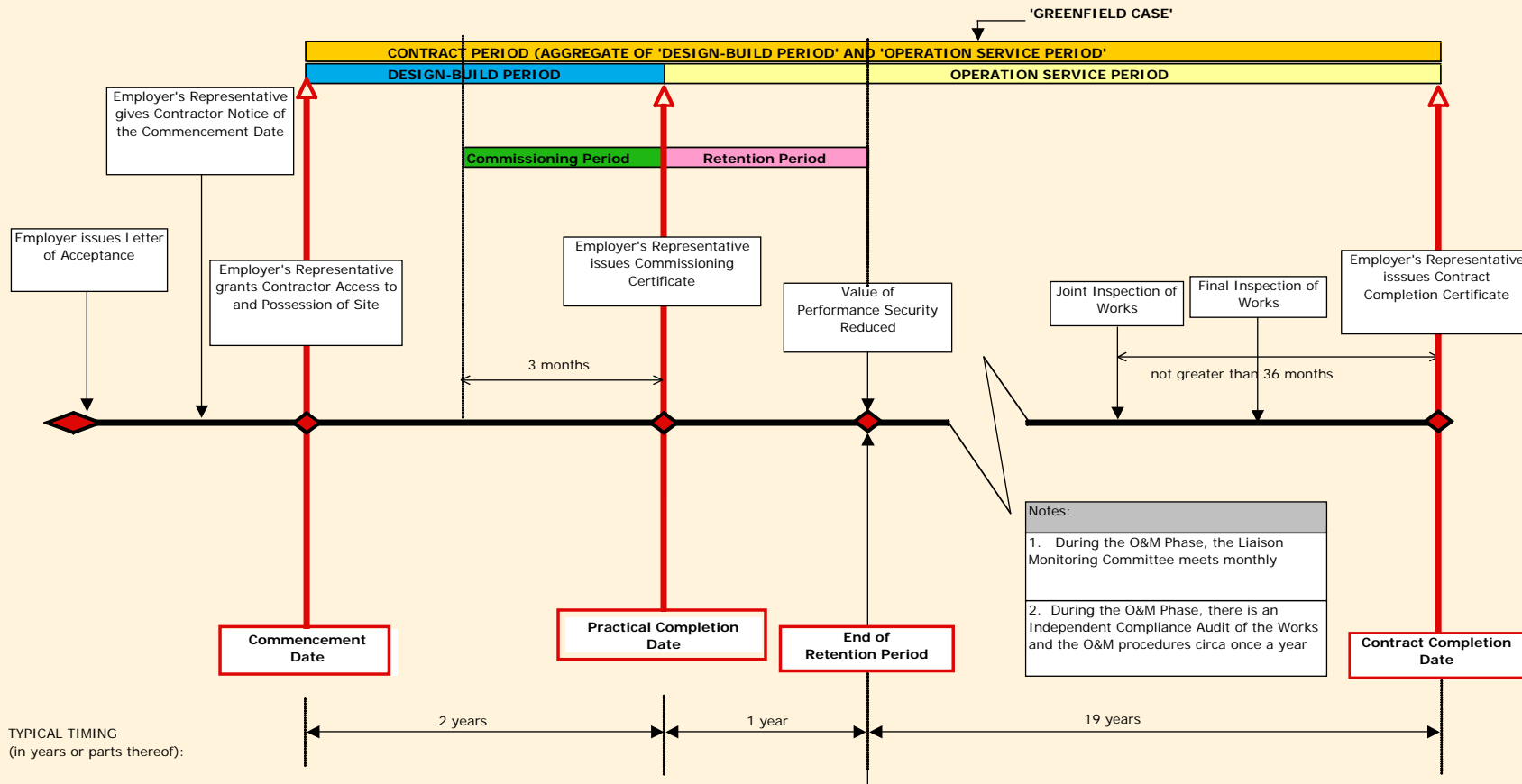
Design and Planning

Build and Construction

Operate and Maintain



DBO FLOW CHART (Principal Events)





DBO Principal Provisions - 1

Clause 1 - New Definitions

“Design-Build” and “Operation Service”

“Cut-Off Date”

“Cost plus Profit”

“Financial Memorandum”

“Licence Agreement”

“Auditing Body”

“Commissioning Certificate”



DBO Principal Provisions - 2

Clause 8 - Time-Related provisions for the whole project

- Commencement Date
- Time for Completion
- Programme
- Delay Damages
- Contract Completion



DBO Principal Provisions - 3

Clause 9 - Provisions relating to Design-Build

Very similar to provisions in the Yellow Book

Plus:

9.12 Completion of Design-Build

9.13 Failure to Complete



DBO Principal Provisions - 4

Clause 10 - Provisions relating to Operation Service

- **General Requirements**
- **Commencement**
- **Licence Agreement**
- **Independent Compliance Audit**
- **Delivery**
- **Training**
- **Delays and Interruptions**
- **Failure to reach Production Outputs**
- **Completion of Operation Service**



Licence Agreement

- The licence given to the Contractor to allow him to operate the Plant.
- Signed within 28 days of LoA
- Effective upon issue of Commissioning Certificate
- Remains in force until Contract Completion Certificate

Auditing Body

- Appointed by Employer
- Active during Operation Service
- Totally independent
- Monitor performance of both parties
- No power to 'instruct' or make 'decisions'



DBO Principal Provisions - 5

Clause 14 Payment

Payment during Design-Build:

Similar to the Yellow Book provisions

10% Retention

**5% repaid on issue of
Commissioning Certificate**

**5% repaid 12 months later (at end of
Retention Period)**

Payment during Operation Service:

Based on fee installments given in the Schedule of Payments



“Asset Replacement Fund”

To provide funds for essential replacements during the Operation Service.

Based on an agreed schedule prepared by Contractor

Does not include items which are the responsibility of the Contractor:

- Regular maintenance and correction of defects
- Replacement of spares
- Other items identified in the Contract



“Maintenance Retention Fund”

The “Maintenance Retention Fund” is required to provide an incentive to the Contractor to ensure that the Works are in proper condition at the end of the Operation Service Period.

Any money not used is returned to the Contractor at the end of the Contract.



Termination by the Employer - Clause 15

During Design-Build

- **For Contractor's Default**
- **For Employer's Convenience**

During Operation Service

- **For Contractor's Default**
- **For Employer's Convenience**

Employer cannot continue with Operation after termination for convenience.

Contractor receives full compensation



Suspension and Termination by the Contractor

Clause 16

Suspension during Design-Build

- If Employer's Rep. fails to issue payment certificate
- If the Employer fails to pay

Termination during Design-Build

- Listed defaults of the Employer

During Operation Service

- The same rights as during Design-Build



Risks and Insurance - 1

The flow from Risk to Insurance is:

- » Risk
- » Responsibility
- » Liability
- » Indemnity
- » Insurance



Risks and Insurance - 2

New Approach in DBO Document

- Different Risks during Design-Build and Operation Service
- Risks of Physical Loss or Damage
- Risks of Financial or Time Loss
- Unidentified Risks
- Both Employer's Risks and Contractor's Risks are addressed



Risks and Insurance - 3

New Simplified Terminology

Clause 17	General Risks
Clause 18	Exceptional Risks
then comes	
Clause 19	Insurance



Risks and Insurance - 4

Clause 17 General Risks

- 17.1 Risk Allocation
- 17.2 Employer's Risks of Loss or Damage during the Design-Build Period
- 17.3 Contractor's Risks of Loss or Damage during the Design-Build Period
- 17.4 Employer's Risks of Loss or Damage during the Op. Service Period
- 17.5 Contractor's Risks of Loss or Damage during the Op. Service Period
- 17.6 Unidentified Risks
- 17.7 Consequences of Employer's Risks
- 17.8 Consequences of Contractor's Risks
- 17.9 Risk of Infringement of Intellectual and Industrial Property Rights
- 17.10 Limitation of Liability
- 17.11 Indemnities by the Contractor
- 17.12 Indemnities by the Employer



Risks and Insurance - 5

Clause 18 Exceptional Risks

- 18.1 Definition of Exceptional Risks
- 18.2 Notice of an Exceptional Risk
- 18.3 Duty to Minimise Delay
- 18.4 Consequences of an Exceptional Risk
- 18.5 An Exceptional Risk Affecting a Sub-Contractor
- 18.6 Optional Termination, Payment and Release
- 18.7 Release from Performance under the Law



Risks and Insurance - 6

Clause 19 Insurance

- 19.1 General Provisions
- 19.2 Insurances to be Provided by the Contractor during the Design-Build Period
- 19.3 Insurances to be Provided by the Contractor during the Operation Service Period



Claims, Disputes and Arbitration - Clause 20

During the Design-Build Period:

Similar to other FIDIC Documents, but based on Standing DAB with appointment from Commencement to issue of Commissioning Certificate

During the Operation Service Period:

Appointment of an 'ad-hoc' DAB as each dispute arises

Role of Auditing Body:

To monitor performance of both parties, but with no 'decision making' role



DBO FLOW CHART (Principal Events)

