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FIDIC-SIDiR-EFCA Regional Infrastructure Conference

Krakow
7 & 8 March 2016

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International Federation of Consulting Engineers


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FIDIC Contract Conditions as a guarantee of appropriate implementation of public investments.



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FIDIC = no problem with UE funds

POLAND

FIDIC is used for road and railway contracts.

Data for road sector:

Perspective 2007 – 2014.

181 Contracts for value of 18,7 billions euro.

Perspective 2015 – 2022.

107 Tasks (may include more then one contract) for value of 24 billions euro.

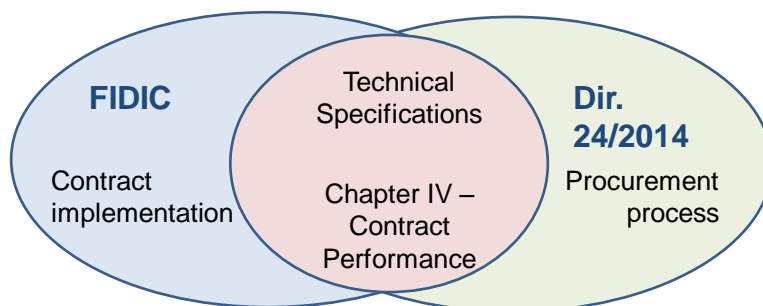


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FIDIC and Law for Public Procurement



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Problem (?) with Variations

Problem with Clause 13 [Variations] in some countries.

Caused by local legal regulations.



Clause 13 well matched to Article 72 of Directive 24/2014.



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FIDIC – Reasonable balance of power

Particular Conditions role:

- Adjust to local regulation,
- Adjust to local or european terminology,
- Adjust to project needs,
- **Change balance of power.**



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EIC/FIEC Position from 17th September 2012

„FIEC and EIC have observed a growing tendency for local Contracting Authorities in the Central and Eastern Europe region to alter the balance of the national versions of the FIDIC *“Red and Yellow Books”* in the context of public works tenders for infrastructure projects co-financed by Structural Funds to the detriment of the contractors”.



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EIC Position from September 2015

„Concerned about the widespread bad habit of public employers, and their advisors, to modify the balanced risk profile of the FIDIC standard forms by means of Particular Contract Conditions, EIC stresses that the very purpose of Particular Conditions is to complement the standard forms with specified data and contractual requirements linked to the special circumstances of the country, the employer, the engineer, the sector, the overall project, and the Works.”



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Effect of balance violation

- Terminations and problems with timely completion,
- Large value of Claims,
- Bankruptcy of hundreds companies,
- Loss of stock index of the sector,



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Giving a hope ...

REGULATION (EU) No 1316/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 December 2013

establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing
Regulations (EC) No 680/2007 and (EC) No 67/2010

- (65) In order to ensure broad and fair competition for projects benefitting from CEF funds, the form of the contract should be consistent with the objectives and circumstances of the project. Contract conditions should be drafted in such a way as to fairly allocate the risks associated with the contract, in order to maximise cost-effectiveness and enable the contract to be performed with the optimum efficiency. This principle should apply irrespective of whether a national or international contract model is used.



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Giving a hope ...

EIC Position from September 2015

„EIC has requested FIDIC to **oblige the employer of a Design-Build contract to describe the scope of the works as precisely as possible in the Employer's Requirements** and to prevent that the Employer benefits from his own negligence when omitting certain information.”



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Engineer's role for public contracts

- Limited power for deciding about:
 - Time and Cost (Claim and Variation).
- Limited importance of „Determinations”
 - Clause 3.5.
 - Necessity of redefinition?



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Suggestion for Particular Conditions

- Deadlines for replies,
- Procedure of documents verification for „Yellow” FIDIC,
- „Golden Clauses” for Contract balance,
- **Minimum scope of Employer’s Requirements under „Yellow” FIDIC.**



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Thank You for attention



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