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FIDIC-SIDiR-EFCA Regional Infrastructure Conference

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Golden Principles of FIDIC Conditions of Contracts

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CEE Countries –» The "*Region of Experience*" for FIDIC Contracts

REASONS?

» acceptable by EU and most international financing institutions

» suitable for / covers most of the project types

» lack of local, suitable forms

» no need to find out individual contracts

» sufficiently flexible to amend & tailor

» application required by law

» and many more …

Is then this "*natural*" choice of contract always so easy and without challenges for CEE Public Employers?

How about project preparatory phase?

Do Employers have adequate/sufficient technical assistance?

Are Employers ready to accept basic risk sharing principles?

Shifting most of the risks to the contractor is "*protecting public money*"?

The previous "*bad experience*" leads to frustration, and "*heavy customizing*" of future contracts!

Conflicting local legislation «– ??? Lack of knowledge / experience

Managing claims / variations
- …complicated
- …requires additional resources
- …requires additional finance
- …frequently "*questionable*"

No trust laid in the Engineer

Heavy bureaucracy

…and many more…

The "*Real Life*" Story:

General Conditions of Contract » « Particular Conditions of Contract

HEAVY CUSTOMISATION !

EXAMPLE 1:

Delete Sub-clause 1.9 + Delete the 3rd and 4th paragraph in Sub-clause 5.1 (1999 YB)

CONSEQUENCE:

*"The project started off as a **Red Book** concept, but we decided to have Yellow, what it became at the end of the day…"*

EXAMPLE 2:

Delete Sub-clause 20.1

"We decided to maintain » Variations « – but we do not entertain claims"

CONSEQUENCE:

Claims? – WHAT CLAIMS???

↕

Are you serious DELETING THIS???

EXAMPLE 3:

Anywhere in these Conditions, where "profit" is mentioned to be payable to the Contractor, this profit should be 0% of the Cost.

CONSEQUENCE:

PROFIT? – On the account of PUBLIC MONEY???

↕

Have you EVER imagined being an entrepreneur???

EXAMPLE 4:

Delete All Sub-clauses in Clause 20 except 20.1

"…well DAB... We tried, BUT it was expensive, decided nearly always against us and the decision was not enforceable under the law!"

CONSEQUENCE:

Disputes? – WE WON'T HAVE ANY!!!

↕

Are you sure? IS THIS REALLY GOOD FOR YOU???

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EXAMPLE 5:

Delete the 2nd paragraph in Sub-clause 8.3 and replace: any Contractor's Programme shall be subject to the Engineer's approval…

CONSEQUENCE:

The Engineer SHALL HAVE STRONG CONTROL!!!

↕

Who's Programme? WHO IS LIABLE???

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EXAMPLE 6:

Delete the first paragraph in Sub-clause 8.1

CONSEQUENCE:
No need! – Just keep it "simple"!!!

↕

Do you mean: signing of Contract = COMMENCEMENT??

"How come, that the Engineer tells when to start? Anyway, the Contractor shall start immediately after signing the contract!"

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Risks: Should the Contractor bear them all?

- **If risks allocated to the Contractor become excessively high, any or more of the following may occur:**
  - Higher tender price,
  - Failure of the tender and disruption of project,
  - Non-participation in the tender of conscientious and capable contractors,
  - Contract award to a tenderer incapable of estimating risks,
  - Poor construction quality, delays,
  - Undermining the relationship of mutual trust,
  - A number of groundless claims from the Contractor,
  - Frequent disputes,
  - In an extreme case, termination of the contract.

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What is your experience / thought ?

1. What do you think, can these "***heavily customised***" contracts still be called ***"FIDIC contracts***"?
2. Have you experienced similarly **distorted FIDIC conditions** of contract?
3. What do you think, is it **possible** to identify "***not to touch***" conditions?
4. What do you think, **should FIDIC do something** against such misuses?
5. What do you think, **has FIDIC** any effective means, it could use for such preventive measures?

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Thank You for your Kind Attention!

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