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FIDIC-SIDiR-EFCA Regional Infrastructure Conference

Krakow
7 & 8 March 2016

*FIDIC's Golden Principles
Reflections on the White Book*

 International Federation of Consulting Engineers



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FIDIC Golden Principle

Procurement

A procurement package that is properly
and fully prepared by experienced staff,
**and includes the correct standard form
of FIDIC's conditions of contract**

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When is the White Book The Correct Agreement?



- For pre-investment and feasibility studies,
- For designs
 - Both for Employer-led design teams, and for Contractor-led design teams under Design and Build procurement
- For administration of construction and project management
- International and domestic



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White Book Client/Consultant Model Services Agreement



- The basic form of a Contract of Appointment between a Client and his Consultant
- It is intended to cover the minimum requirements of a typical appointment contract.
- White book may need to be adapted to address particular project and commercial issues between the parties.



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Getting Familiar With the White Book

- The Structure
 - General Conditions
 - Particular Conditions
 - Appendix 1 [Scope of Services]
 - Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client]
 - Appendix 3 [Remuneration and Payment]
 - Appendix 4 [Time Schedule for Services]



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Adapting the White Book

- General Conditions are intended for incorporation as printed
- Particular Conditions must be specially drafted to suit each individual Agreement and type of Service
- General Conditions and Particular Conditions together comprise the conditions governing the rights and obligations of the parties



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Adapting the White Book

- The General Conditions
 - General Provisions
 - The Client
 - The Consultant
 - Commencement, Completion, Variation And Termination
 - Payment
 - Liabilities Insurance
 - Disputes And Arbitration



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Adapting the White Book

“Where other material is to be incorporated into a Contract of Appointment, care must be taken to **ensure consistency** both **in the use of terminology and the allocation of duties and obligations.**”



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FIDIC Golden Principle

ADAPT THE FIDIC WHITE BOOK CORRECTLY

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Allocation of Duties and Responsibilities

- The Consultant agrees to perform the Services in conformity with the provisions of the Agreement
- The Client agrees to pay in a timely manner

Mutual trust and confidence must be fostered and maintained between the Client and its Consultant

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Allocation of Duties and Responsibilities

- General Provisions
- The Client
- **The Consultant**
- Commencement, Completion, Variation And Termination
- Payment
- **Liabilities**
- Insurance
- **Disputes And Arbitration**

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The Consultant 3.7

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ENSURE THAT THE CONSULTANT IS REQUIRED TO PROVIDE CONSISTENT LEVEL OF QUALIFICATIONS

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Changes in Consultant Personnel 3.7

- If it is necessary to replace any of the personnel provided by the Consultant,
 - Replacement by a person of comparable competence as soon as reasonably possible
 - At Consultant's cost



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Allocation of Duties and Responsibilities

Liability

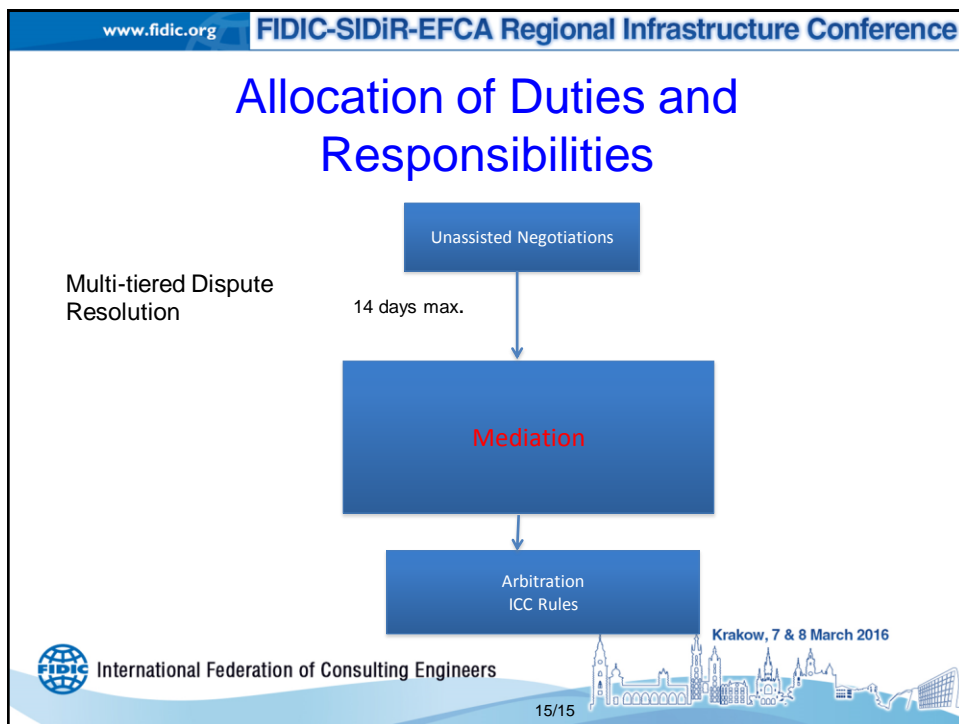


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FIDIC Golden Principle

**CONSIDER THE CONSEQUENCES OF
EACH CHANGE
AND
BEWARE OF UNINTENDED
CONSEQUENCES**

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Intra-Contract Considerations

- The White book does not stand alone
 - Main contracts
 - Financing contracts
 - Insurance contracts
- Mandatory provisions of local law



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The Consultant 3.3.2

FIDIC Golden Principle

**ENSURE THAT WHITE BOOK
AGREEMENT IS BACK-TO-BACK WITH
OTHER FIDIC CONDITIONS**



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Exercise of Authority 3.3.2

Where the Services include the exercise of powers or performance of duties authorised or required by the terms of a contract between the Client and any third party, the Consultant may:

- (a) have due regard to the third party contract provided that the details of such powers and duties are acceptable to him and agreed in writing where they are not described in Appendix 1 [Scope of Services];
- (b) if authorised to certify, determine or exercise discretion to do so fairly between the Client and third party not as an arbitrator but as an independent professional exercising his judgement with reasonable skill, care and diligence; and
- (c) if so authorised vary the obligations of any third party, subject to obtaining the prior approval of the Client to any variation which can have an important effect on costs or quality or time (except in any emergency when the Consultant shall inform the Client as soon as practicable)



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UNDERTAKE YOUR DUE DILIGENCE
APPLICABLE LAW AND CULTURE

Before Entering Into Contract



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Public Procurement Law

- Determine the appropriate awarding procedure
 - EU law
 - National law



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Changes and Consequences wanted and unwanted

- Observe the imperative provisions
 - Give attention to the application of the law
 - Keep an eye on the interpretation given by the audit bodies



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Restrictions Mandatory Provisions of Law?

- Change of the Consultant
- Limitation of the Consultant's authority
- Consents and approvals of the Client necessary prior to certification, determine etc
- Modification of the Contract
- Termination of the Contract
- Mediation – limits & characteristics according to the national law



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Client's Obligations

- Be sure the Consultant fully aware of its obligations born from Client's contract with the third party
- Be sure the third party knows Consultant's obligation
- Do not limit Consultant's authority without third party's knowledge
- Not to ask the Consultant be on its side when the Consultant should act fairly



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תודה
Dankie
Gracias
شكراً
Спасибо
Merci
Takk
Köszönjük
Terima kasih
Deko jame
Grazie
Dziękujemy
Vielen Dank
Paldies
Dakujeme
Kiitos
Täname teid
谢谢
Tak
Thank You
感謝您
Obrigado
Teşekkür ederiz
Σας Ευχαριστούμ
감사합니다
ບອບຄຸນ
Bedankt
Děkujeme vám
ありがとうございます
Tack


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