

How do FIDIC contracts work

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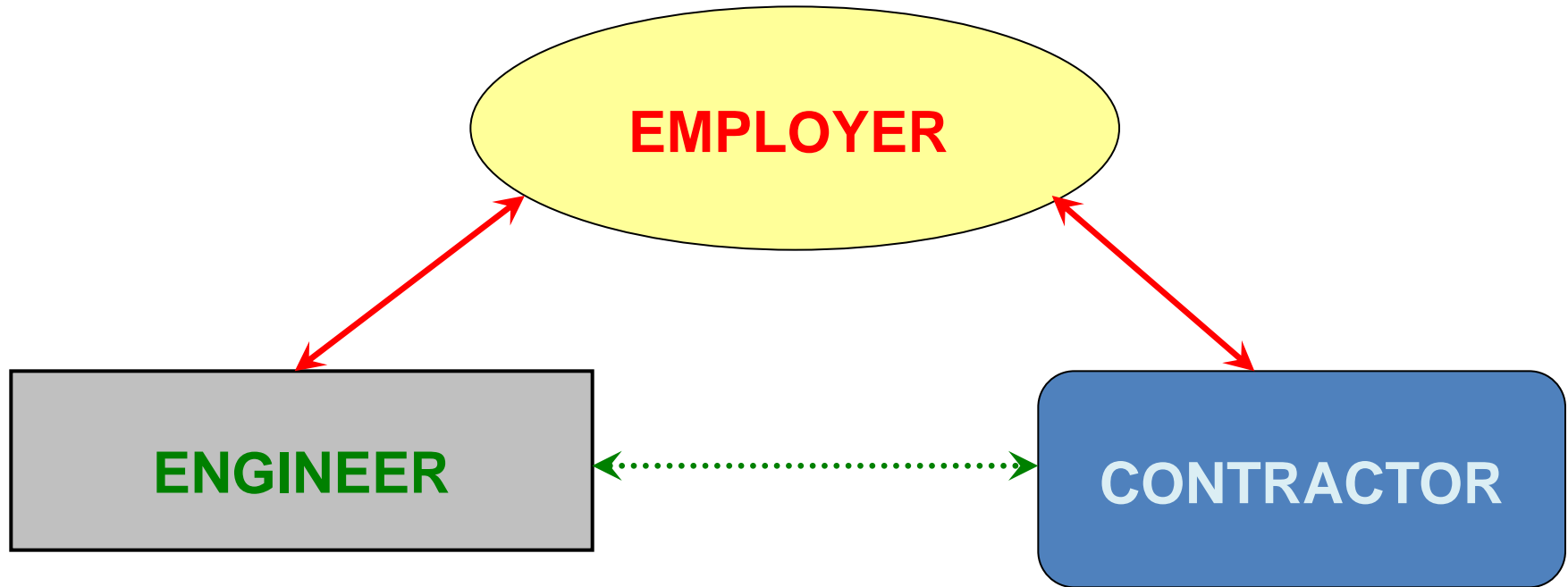
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The basic (typical) contract layout



Contractual relation



Administrative / communicative (management) relation

Features of the 1999 editions

- ▶ **Harmonisation** of terms and clauses.
- ▶ Wide application: **common law / civil law**.
- ▶ **Wide applicability** under various project delivery and contracting systems.
- ▶ **More specific provisions** regarding the **obligations** of the parties and their **rights**.
- ▶ Improved **management procedures**.
- ▶ Tackle the problem of **late payment**.
- ▶ **Role of the engineer** updated.
- ▶ **Dispute resolution** made more effective.



Structure of the 1999 FIDIC contracts

Each includes:

1. **General Conditions**
 2. **Guidance** for the Preparation of the **Particular Conditions**
 3. Letter of Tender, Contract Agreement and Dispute Adjudication Agreements
- » **General Conditions** used unchanged.
 - » **Changes** to suit an Employer's own requirements **are illegal** and in breach of copyright.
 - » Include the **Appendix to Tender**, which gives essential project information.
 - » All project- and country-specific changes in **Particular Conditions**.



Structure of the 1999 FIDIC contracts

The main clauses:

- ▶ General: CI 1
- ▶ The Parties & the Engineer: CI 2 – 4
- ▶ Subcontracting, staff, labour, materials, workmanship, quality (testing): CI 5 – 7
- ▶ Time: CI 8
- ▶ Testing, taking-over, defects liability: CI 9 - 11
- ▶ Measurements, variations and payment: CI 12 – 14
- ▶ Termination: CI 15 and 16
- ▶ Risks, Insurance and Force Majeure: CI 17 – 19
- ▶ Claims and disputes: CI 20



Structure of the 1999 FIDIC contracts

The General Conditions comprise **20 Clauses**, covering similar subject matter in all three contracts, except:

Construction:

Cl. 3 The Engineer; Cl. 5 Nominated Subcontractors;
Cl. 12 Measurement and Evaluation

Plant:

Cl. 3 The Engineer; Cl. 5 Design;
Cl.12 Tests after Completion

EPCT:

Cl. 3 The Employer's Administration, Cl. 5 Design;
Cl. 12 Tests after Completion



Structure of the 1999 FIDIC contracts

Essential Documents to form part of a FIDIC Contract

- ▶ **General Conditions (of Contract)**

(This is always the relevant part of the FIDIC book chosen)

- ▶ **Particular Conditions (of Contract)**

(Include modifications and supplements to the GC as necessary due to the legislation of the Country and as a result of the Project)

- ▶ **Appendix to Tender**

(A list of most important data in the Contract)

- ▶ **Technical Documents of the Contract**

(Designs, Bills of Quantities, Technical Specifications, Employer's Requirements etc.)



Contract Documents – the differences

Construction Contract: contract documents to include:

- Technical Specifications
- Drawings
- Priced Bills of Quantities
- Method of Measurement

Plant & D-B Contract: contract documents to include:

- Employer's Requirements
- Schedule of Lump Sum Prices and their breakdown
- Contractor's Proposal



Identifying Sufficiency and Discrepancies

It is always important to check:

- conditions state the **priority of documents**;
- **consistency** between the various documents (preferably during their preparation and/or review prior to finalisation);
- **consistency** of clauses of the **Particular Conditions** (PC) against the clauses of the General Conditions (GC);
- for need to include the **Funding Agreement** (if any) in the Contract.



Contract Preparation – How to choose the most suitable conditions of contract?

Questions to analyse and answer:

- ▶ **Subject / type of the contract** (construction only, design-manufacture-installation, design only etc.)?
- ▶ **Type of risk sharing** (Contractor to construct only OR he is involved also in the design)?
- ▶ **How** the contract / project is intended **to be managed**?
- ▶ What will be the **type / method of payment**?

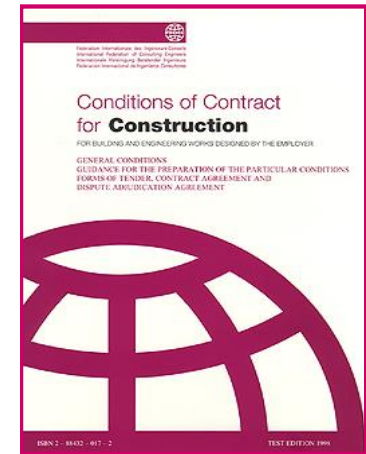


Contract Preparation: Choice of appropriate form

STRAIGHTFORWARD PROJECT
yes



EMPLOYER DESIGN
yes



no

CONTRACTOR DESIGN

Fixed price - lump sum
Little employer involvement
No major unforeseen risks

no

Plant and/or high unforeseen risks

yes

yes

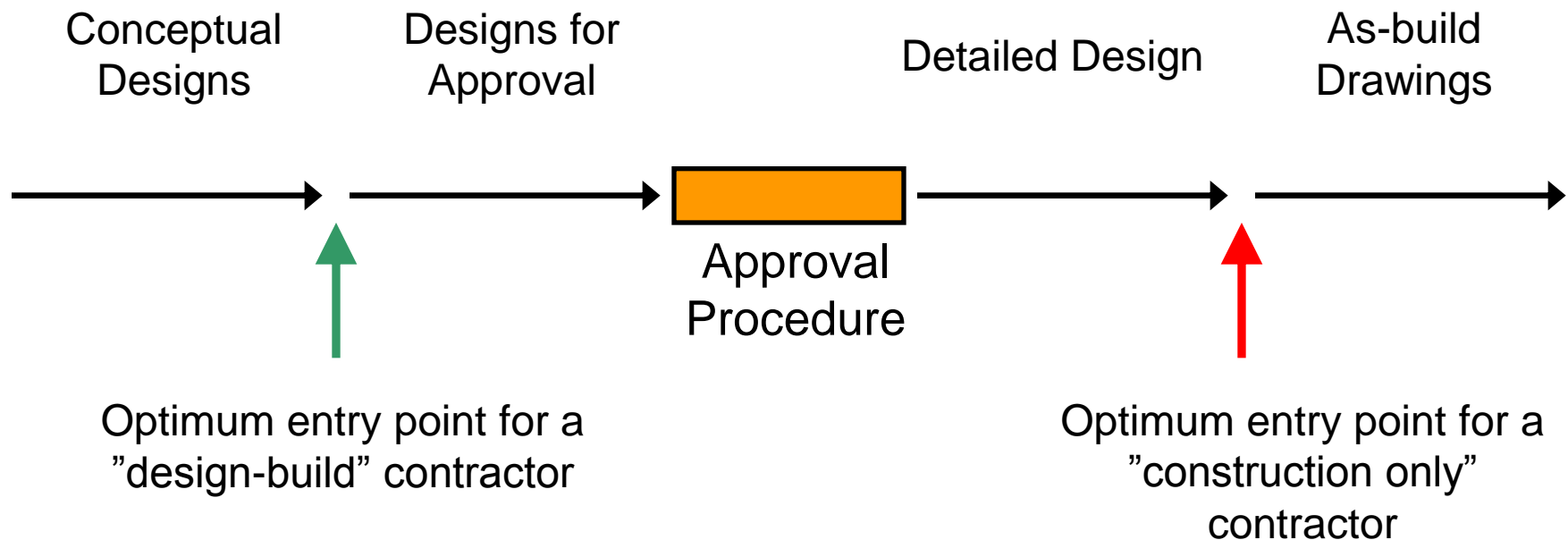


DISCUSS IN DETAIL

Employer's Requirements with the Contractor, and negotiate a modified FIDIC contract



Construction contract vs. Design-build contract – the Contractor's role regarding the designs



FIDIC contracts include detailed procedures for typical situations appearing in construction/engineering contracts – such as:

- ▶ Commencement of Works
- ▶ Management of time, programming
- ▶ Payment procedures
- ▶ Measurement of Works (or otherwise), testing and commissioning
- ▶ Management of variations, adjustments
- ▶ Procedures for claims
- ▶ Handling and resolution of disputes
- ▶ and many more...

