

FIDIC Business Days

**Georgian Infrastructure
with FIDIC Knowledge**

**Tbilisi, Georgia
29 - 30 June 2017**

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Past President, ATCEA**





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EXPERIENCE of ATCEA

Experience of ATCEA – Association of Turkish Consulting Engineers and Architects, with the translation of FIDIC Conditions of Contracts in Turkey.



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FEATURES OF THE FIDIC CONTRACTS

- Balanced rights and obligations of the Client and the Contractor
- Highly important especially for the developing countries where the the contracts are usually in favour of the Clients
- Good results are obtained through fair contracts
- FIDIC contracts are fair contracts
- Translation of the FIDIC books is useful to have an overall idea of the rights and obligations of the Clients, Contractors and their representatives.



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UNDERSTANDING THE FIDIC CONTRACTS

- FIDIC contracts sometimes become difficult to comprehend or to interpret, or to have a good grasp on the issues especially when one deals with claims and disputes during the construction period and also afterwards .
- During the construction period, almost always there arise disputes between the parties. Therefore it is important that every effort must be made to minimize disputes, if not to prevent them. This requires a deep understanding of the FIDIC Contracts.



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THE FIDIC CONTRACTS GUIDE

- ‘The FIDIC Contracts Guide’ refers to the Red Book (traditional constr. works), Yellow Book (Plant & Design-Build) and the Silver Book (EPC/Turnkey), and intends to assist personnel involved in drafting and/or administrating the construction contracts. The comments in the Guide are intended to provide general guidance.
- Whenever one needs to make decisions on difficult-to-understand issues, the Guide most of the time provides the needed help. Translation of the FIDIC contracts is not always enough; a better practice would be translation of the FIDIC Contracts Guide as well.



EXAMPLE – Exceptionally Adverse Climatic Conditions (Sub-clause 8.4.c)

Time for Completion of the construction works is 2 years in the special contract. The Contractor claims that because of flood, caused by unexpected heavy rain, he is entitled to 14 days of time extension to complete the works. He refers to Red Book Sub-clause 8.4: Extension of Time for Completion – Sub-paragraph (c): Exceptionally Adverse Climatic Conditions, (which is different from Unforeseeable Physical Conditions, sub-clause 4.12) and which reads as:

“ The Contractor shall be entitled to an extension of the Time for Completion if taking over of the works (completion of the works), is or will be delayed by any of the following causes:

.....

(c) exceptionally adverse climatic conditions

..... “





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EXAMPLE - Exceptionally Adverse Climatic Conditions (continued)

- Who is to decide whether that heavy rain can be considered as ‘exceptionally adverse’ ? What are the criteria ?
- Red Book does not provide an explanation to ‘exceptionally adverse climatic conditions’. Therefore the responsible bodies (Client, Client’s engineer) try to find criteria to use for determination, examine similar cases in the local laws etc. but suggestions usually can hardly gain a foothold.



EXAMPLE - Exceptionally Adverse Climatic Conditions (continued)

Therefore we go to the Guide and read as follows:

“In order to establish whether such climatic conditions occurred, it may be appropriate to compare the adverse climatic conditions with the frequency with which events of similar adversity have previously occurred at or near the construction site. An exceptional degree of adversity might, for example, be regarded as one which has a probability of occurrence of 4 to 5 times the Time for Completion of the Works .”

Since the works are being done according to FIDIC Contracts, the above recommendation of the FIDIC Guide is a good one to accept as a valid criterion.



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EXAMPLE - Exceptionally Adverse Climatic Conditions (continued)

Then one can examine the weather recordings of the relevant Meteorological Institutions and find out if the measured rainfall of similarity occurred during the last 10 years (= 5 times the contract period). If not, the event can be considered as 'exceptionally adverse climatic condition' and the Contractor then is entitled to extension of Time for Completion.



RECOMMENDATION

- On behalf of the Turkish Association ATCEA, it is recommended that the translations of the FIDIC books and guides be made, or at least be edited by Consulting Engineers who are experienced in construction works carried out with FIDIC Contracts. Otherwise, normal translation processes might not be correct at all times.
- When working with translated versions, one must always double check the important issues with the original English version. Whatever the case may be, as also stated in the books, English versions of the FIDIC books always prevail when there are discrepancies between the original books and the translations.



INCORRECT TRANSLATIONS

STEEL SHEET PANEL translated as HAIR PANEL



CONSENT ≠ APPROVAL ≠ (one word in local language)





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RESULT

In summary, translations are useful to have an overall idea about the conditions of contracts provided that FIDIC Contracts Guide also be translated. In addition, persons dealing with FIDIC contracts must have good command of English and primarily follow the English version when drafting or administering construction contracts.



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THANK YOU...