



ANSWERS TO QUESTIONS RECEIVED AT THE FIDIC CONTRACTS USERS' CONFERENCE ON 5th and 6th DECEMBER 2017

FIDIC is grateful for the high level of interest and participation in the 2017 FIDIC Users Conference held in London 5-6 December 2017. Time did not permit all the many questions to be responded to during the conference. Brief responses to some remaining questions are provided below. These should not be construed as legal advice, but merely reflect the opinions of those involved in the preparation of the new suite of FIDIC contracts:

1. Should the updated suite of Red, Yellow and Silver conditions of contract replace the 1999 editions immediately?
No. FIDIC recommends that the 2017 editions be used but, if use of the 1999 edition of a contract is desired, users are able to do so. Prior editions of FIDIC Conditions of Contract are not "withdrawn" from the market.
2. Is there a schedule for translating the documents into other languages?
While a definitive schedule has not been established, actions are being taken to get translations underway.
3. Will FIDIC be publishing a Contracts Guide for the 2017 suite?
Yes, probably in 2018 or 2019.
4. Why is it still necessary for the Engineer to actually be an engineer, under the 2017 Red Book?
The responsibilities of the Engineer which are delineated in the Red Book can only be properly provided by an engineer who is qualified by education and suitable experience.
5. Can we get copies of all presentations?
Yes. Presentations are normally made available through the FIDIC website.
6. Can we have an ad hoc DAAB under the new FIDIC Contract?
For clarification, please read pages 47 to 49 of the guidance published at the back of the Red and Silver Books 2017 (pages 50-52 in the Yellow Book 2017).
7. Is a claim notice that is not signed by the Engineer or Employer Representative valid?
The Engineer under the Red and Yellow Books 2017 does not give the claim notice - it is the claiming party that does so under Sub-Clause 20.2.1. The requirements for signature of any Notice, including a Claim Notice, are stated under Sub-Clause 1.3(a)(i).
8. When does the 28 days start – from awareness, or from the date the event is on the critical path?
As stated in **clause 20.2.1** "*after the claiming Party became aware, or should have become aware, of the event or circumstance*".
9. Why are other procurement routes like Project Management, where there is a PM role besides the engineer, not considered in FIDIC Contracts?
FIDIC believes that the Engineer is the best entity to perform all of the duties delineated in the Conditions of Contract. If an Employer decides to use a Project or Program Manager, the Employer must delineate clearly the roles and responsibilities



of the Project or Program Manager. These would be project specific and would likely include roles and responsibilities which would normally be assigned to the Employer or perhaps the Engineer, although FIDIC advises against the latter case.

10. What is FIDIC doing to stop Employers who don't require public funding (e.g. World Bank funding) from modifying standard FIDIC conditions beyond all recognition?

The Golden Principles are FIDIC's best tool at the moment for advising on which core principle should not be modified. Additional strategies are also under consideration. Please see page 8 of the guidance notes published in all three books.

11. Do you think the Banks will be less likely to approve heavily massacred GCCs and PCCs with the new FIDIC 2017 documents?

We at FIDIC certainly hope so. The MDBs tend to frown on modifications to GCCs.

12. How do you look at FIDIC Contracts in back to back situations in light of GP4? Should the lowest in the chain get the minimum amount of days?

It is FIDIC's intention to publish forms of subcontract for 2017 Red and Yellow books in due course – but, in the meantime, any timescale should be realistic and reasonable in the context of the subcontractor's 'deal' in entering into a back-to-back subcontract or sub-subcontract.

13. When is FIDIC due to publish its guidance notes on the Golden Principles?

FIDIC does not intend to publish guidance on the Golden Principles as it is believed these are sufficiently clear.

14. Is a FIDIC “wet book” for off shore work being considered?

The FIDIC CC currently has a TG preparing a “Plug In” (standardized set of PCs) for the 2017 Yellow Book GCs, specifically for offshore wind projects.

15. If I, as a government employee, know that it will take more than 56 days to process a claim, is it not better if I modify this in the PC?

Yes, by all means, modify the time period to a more realistic one consistent with what can be expected from the specific government agency. Please refer also to **the 2nd paragraph on page 9 of the guidance notes published at the back of the Red Book 2017.**

16. Will FIDIC persist in using paper in this digital age or will a nice app follow?

FIDIC recognizes the need to adjust to the expectations of the electronic age, and already provides for documents in different e-formats.

17. Is there a markup available showing the differences in the 1999 and 2017 forms?

There is no markup but there will be a paper delineating the major changes.

18. How do you incorporate tax (VAT) issues?

Taxes such as VAT are payable under the applicable law for the works or services that are being provided / being paid for, and so they vary greatly around the world. For this reason FIDIC does not make express provision for VAT in the General Conditions of Contract - this is a matter for the Employer to address in the invitation to tender so that all tenderers know when, where and at what rate VAT is payable.



19. What is the reason that the Contracts Committee does not ask contractor associations e.g. EIC, Orgalime, for their input on new FIDIC Contracts before publication?

The contracts committee did indeed receive feedback from construction contractor organizations prior to publication of the updates. Their **input was carefully considered by the FIDIC drafters and, where considered appropriate, suitable amendments were made to the drafts in the context of the comments received by all other reviewers.**

20. Contractors should give more early warnings and Engineers should act more positively in response. What is your experience?

FIDIC agrees that early warnings are a very effective tool in minimizing and mitigating claims and disputes. **Perhaps also: and it is for this reason that FIDIC added the new Sub-Clause 8.4 [Advance Warning] to all three 2017 contracts.**

21. Where is value engineering provided under the FIDIC suite, if introduced under agreement is it considered a variation?

Value engineering is covered in Sub-Clause 13.2 and yes, value engineering would be considered a variation.

22. Can the Engineer withdraw his earlier instruction issued to the Contractor in error?

Yes, there is nothing in the General Conditions of Contract to prevent the revocation of an Engineer's instruction issued in error.

