

FIDIC and IBC Legal Present the Inaugural



FIDIC Africa Contract Users' Conference



The Essential Guide for
Engineering & Construction
Law Professionals to
Successfully Use the FIDIC
Suite of Contracts, Manage
Major Projects and Resolve
Disputes

Main Conference Days: 13th & 14th October 2015
Workshops: 12th & 15th October 2015
Venue: Zambezi Sun Resort, Livingstone, ZAMBIA

25+ Speakers, Including:



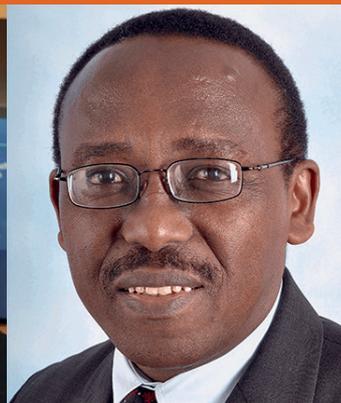
Siobhan Fahey
FIDIC CONTRACTS
COMMITTEE



Kofi Awanyo
WORLD BANK



Dr. Sebastian Hök
FIDIC ADJUDICATOR



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MAIN CONFERENCE, DAY 1 – 13th October 2015

08:15 Registration & Coffee

08:50 Opening Remarks from the Chair
Aisha Nadar, Consultant; Special Adviser, **FIDIC MDB CONTRACT**

09:00 **Keynote Speech**
Hon Eng. Yamfwa Mukanga MP *
Minister of Transport, Works, Supply and Communications
GOVERNMENT OF ZAMBIA

** Under invitation and subject to final confirmation*

09:25 **Overview of Current Developments in FIDIC Contracts by the Contracts Committee**
Members of the FIDIC Contracts' Committee will give delegates an insight into the latest developments with FIDIC contract for major works, why these are needed, what are the expected key features and the target timescale for publication.

- Global view by FIDIC Contracts Committee on procurement and contracts implementation
- What's the FIDIC Contracts' Committee working on at the moment?
- FIDIC Contract Committee's Task Groups in progress (Yellow Book update, Services Agreements, Dredgers, YB/SB Sub-contract form, ODB-Bronze Book)
- In the pipe line (Underground works, FIDIC Glossary of Terms, 'Golden clauses')
- The FIDIC Gold Book and the FIDIC Bronze Book
- Questions & answers

Dr. Ing. François Baillon, Director, **FIDIC**
Siobhan Fahey, Member, **FIDIC CONTRACTS COMMITTEE**



Dr. Ing. François Baillon



Siobhan Fahey

09:55 **The Engineer's Roles & Risks under FIDIC Contracts**
This presentation looks at the roles and risks of an Engineer under FIDIC contracts. The following are some of the issues that the Engineer needs to manage appropriately:

- Communication of risks to the Employer/Contractor
- The importance of aligning the Engineer's contractual obligations under his agreement with the Employer, with the provisions of the head contract: what are the Engineer's terms of reference under the White Book?
- The limits of the Engineer's authority
- Execution of the Engineer's work within the required parameters of time, cost and quality
- The required extent of inspections during construction to enable the appropriate certification to be provided on completion
- Particular Conditions and the on-going discussion of misuse and core clauses
- Who pays for the Engineer if the Engineer shall stay on site longer than expected
- Questions & answers

Sam Mambo, Director & Head of the Transportation Unit, **GIBB AFRICA LTD**
Eng. James N. Mwangi, CEO, **KURRENT TECHNOLOGIES LTD**



Sam Mambo



Eng. James N. Mwangi

10:25 Coffee Break

10:45 **Recent Experiences from Users of FIDIC Yellow Book – Case Studies**
This panel session will assemble experienced FIDIC Contract Users from different African jurisdictions and industry sectors to share their experiences in using the FIDIC Yellow Book as a key project administration tool in some of the most challenging environments. Delegates will benefit from listening to studies and will also have an opportunity to pose any questions to the panellists. All case studies will be specific to African continent. Cases under review include:

■ **CASE STUDY 1:**
Cable Project from Mainland Tanzania to Zanzibar (Tanzania)
Orla Burke, Engineer, **ESB INTERNATIONAL**



Orla Burke

■ **CASE STUDY 2:**
Two New Fossil Fueled Power Stations in South Africa - Problems Encountered with Different FIDIC Contract Interfaces (South Africa)
Kevin Spence, Registered Professional Engineer, Mediator, Adjudicator and Arbitrator, **FIDIC ACCREDITED TRAINER**



Kevin Spence



11:15 **The White Book in Practice – The Business of Consulting Engineering**

This session examines the use of the White Book in Projects in Africa and will explore the following topics:

- Using the White Book to appoint the lead design consultant
- Using the White Book to procure FIDIC Contracts
- Using the White Book to appoint the Engineer/Employer's Representative under a FIDIC Contract
- Standard of consultant's performance: Skill and care - what does fit for purpose mean?
- Who should take the risk of unforeseeable matters
- Variation to services and programme
- JV Agreement – split teams and integrated teams
- Areas of concern
- Key principles being considered in the update of the White Book

Dr. Sebastian Hök, Partner, **HÖK, STIEGLMEIER & KOLLEGEN**; Member, **FIDIC PRESIDENT'S LIST OF APPROVED DISPUTE ADJUDICATORS**

Michele Righi, Regional Infrastructure Lead; Africa Regional Office (AFO), **UNOPS**



Michele Righi



Dr. Sebastian Hök

11:55 **The Red Book in Practice – Recent Experiences & Case Studies**

This panel session will assemble experienced FIDIC Contract Users and Project Directors responsible for multi-million dollar projects in Africa to share their experiences in using the FIDIC Red Book as a key project administration tool in some of the most challenging environments. Delegates will benefit from listening to case studies and will also have an opportunity to pose any questions to the panellists. All Case studies will be specific to Africa and new to this conference. Cases under review include:

■ **CASE STUDY 1:**

Municipal Water Infrastructure Project (Lusaka, Zambia)

Marc G. Tkach, Director; Water and Sanitation Initiatives, **MILLENNIUM CHALLENGE CORPORATION (MCC)**

■ **CASE STUDY 2:**

Gauteng Freeway Improvement Project (South Africa)

Ismail Essa, Regional Manager, **SOUTH AFRICAN NATIONAL ROADS AGENCY LTD (SANRAL)**

■ **CASE STUDY 3:**

The Bukoba/Musoma Water Supply and Sanitation Projects (Tanzania)

Mr. Ngwisa Mpenbe, Managing Director, **LAHMEYER CONSULTING ENGINEERS TANZANIA**

■ **CASE STUDY 4:**

Development of Petroleum Facility in East Africa

Eng. James N. Mwangi, CEO, **KURRENT TECHNOLOGIES LTD**



Marc G. Tkach



Mr. Ngwisa Mpenbe



Eng. James N. Mwangi

12:55 Networking Lunch

14:00 **Understanding the EPC/Turnkey Contract and its Features**

Discuss latest developments and the special features of the Silver Book and benefit from listening to an Africa-specific case study of successful application of the Silver Book in a large construction project. How are the possibilities for the contractor to claim extensions of time and additional payment more limited than under traditional contracts? These and other key aspects of design-build contracting will be discussed, including:

- Managing cost, time and performance risks on EPC projects
- Employer's base design risk and Contractor design development risk
- Allocation of site condition risk to the Contractor
- Project finance requirements
- Employer's strategies for managing risk
- Contractor's responses to risk burden
- The impact of force majeure on international projects
- Case study: Maputo-Catembe Bridge Project (Mozambique)

Leo Grutters, Civil Engineer, Dispute Resolution Expert, Member, **FIDIC PRESIDENT'S LIST OF APPROVED DISPUTE ADJUDICATORS**



Leo Grutters

14:40 **Managing Claims Under FIDIC**

This session will discuss ways to try to avoid claims arising in the first place but then, if they do, how to present and pursue a claim under a FIDIC Contract with particular reference to the following topics:

- Claim and procurement
- After Contract award: How to minimise claims and, if the claims are disagreed, how to avoid contested claims from becoming disputes?



- Pursuing claims (if you haven't managed to avoid them!)
- Civil v common law comparison: different approaches to claim quantification
- The requirements for notices of claim
- Can the conditions precedent for notices always be enforced?
- What constitutes detailed particulars of a claim?
- The Engineer's obligations

Nikita Lalla, Director, **ENS AFRICA**

Adriaan Hoeben, Dispute Resolution Director, **ENS AFRICA**



Nikita Lalla



Adriaan Hoeben

15:30 Networking Break & Refreshments

15:50 **The DBO/ODB Form of Contract**

The concept of Design Build and Operate projects is proving very popular for both the construction of new facilities (The Gold Book) and the upgrading of existing facilities (The new Bronze Book). The speakers will give an overview of both these documents, including:

- Introduction to the 2008 Gold Book (DBO)
- Key Issues in the Gold Book
- Development of the new Bronze Book (ODB)
- Features of the Bronze Book
- Operation Service: challenges and opportunities
- Questions & answers

Dr. Christoph Theune, Member, **FIDIC CONTRACTS COMMITTEE**



Dr. Christoph Theune

16:40 **Ask the FIDIC Experts Q&A Session**

- Questions and answers session from the day's sessions
- Questions that the contracts committee have for users
- Tell FIDIC how you think they could adapt going forward

Moderator:

Siobhan Fahey, Member, **FIDIC CONTRACTS COMMITTEE**

FIDIC experts:

Aisha Nadar, Consultant; Special Adviser, **FIDIC MDB CONTRACT**

Dr. Christoph Theune, Member, **FIDIC CONTRACTS COMMITTEE**



Siobhan Fahey



Dr. Christoph Theune



Aisha Nadar

17:40 Close of Day 1 and Drinks Reception

MAIN CONFERENCE, DAY 2 – 14th October 2015

08:00

Optional Breakfast Briefing

FIDIC Training: Explaining FIDIC Accredited Training & FIDIC Accredited Trainers

Led by: **Siobhan Fahey**, Member, **FIDIC CONTRACTS COMMITTEE**



Siobhan Fahey

08:30 Chair's Opening Remarks

Siobhan Fahey, Member, **FIDIC CONTRACTS COMMITTEE**

09:00 **Selecting the Most Appropriate FIDIC Conditions of Contract**

FIDIC has an established and well-tryed set of contract conditions for virtually every type of construction project and procurement route. Learn how to select the correct conditions for your project, having regard to procurement procedures, design responsibility, employer involvement, risk allocation and other relevant features.

- Types of projects and applicability
- Design responsibility and employer involvement
- Preparation of documentation and risk allocation
- Introduction of changes to on-going works
- Misconceptions about 'fixed price'

Leo Grutters, Civil Engineer, Dispute Resolution Expert, Member, **FIDIC PRESIDENT'S LIST OF APPROVED DISPUTE ADJUDICATORS**

Coenraad Snyman, Contract Administration Expert, Adjudicator, Arbitrator, **COENRAAD SNYMAN INTERNATIONAL**



Leo Grutters



Coenraad Snyman



09:45 **Key Issues for Successful Contract Preparation & Implementation**

Many issues can lead to either a project success or failure. An unsubstantiated brief upstream decision may lead to severe downstream consequences. Strategic choices at procurement level are consequently key, and the implication of those is not always fully appraised. This session will address how the selection of forms of contract, tender procedures and the preparation of tender documentation should fit the project objectives, budget, Employer's resources and risk allocation sought. The FIDIC Suite of Contracts provides answers for a wide range of needs. The FIDIC Procurement Procedures Guide assists users and provides users with helpful guidance.

- FIDIC best practice: Using appropriately FIDIC Conditions of Contract
- Facing reality vs. burying one's head in the sand – key drivers at procurement stage, and reflections in tender documentation & procedure
- Key issues for selection of the appropriate procurement method and form of contract – scope definition, time, cost and quality
- Particular Conditions development – the usual temptations of shifting risks to the other Party, and their consequences / From a “we vs. them” approach towards full project ownership with clear delineations
- The FIDIC Suite of Contracts – many answers... for the right questions

Victoria Peckett, Partner, Head of Construction, **CMS CAMERON MCKENNA**



Victoria Peckett

10:35 Morning Coffee Break

10:55 **Preparation of Tender Dossiers, Particular Conditions & Common Adjustments**

Once a project is decided, the first step is to determine the procurement procedure and prepare tender documents. These documents comprise Instructions to Tenderers, Conditions of Contract, Employer's Requirements and a Pricing Document. This session will address the principles of preparing these tender dossiers with a focus on Particular Conditions including the regional approach to adjustments, and the contract document titled “Employer's Requirements”. This session attempts to look deeper inside what are the focus areas for the parties regarding their risks and responsibilities affected by contract documents, while analyzing the following subjects:

- What should Instructions to Tenderers include? Should everything be included in Particular Conditions?
- Preparing the Particular Conditions under the FIDIC Conditions of Contract: Requirements and options
- What are the specific features/purposes of the different contract documents and why are requirements differing from similar nature documents in other types of contract (ea. “the Specification” in the Red Book)
- Accuracy and completeness of Employer's requirements (for design & build) vs. flexibility
- The “intended purpose” – how to define and what might be the pitfalls?
- Questions & answers and discussion of the audience's experience

Eng. Professor Ninatubu Lema, Chairman, **ENGINEERS REGISTRATION BOARD (ERB)**, Tanzania



Prof. Ninatubu Lema

11:35 **MDB Harmonized Contract – Recent Developments and Practice in the Region**

The major Multilateral Development Banks (MDBs) adopted the General Conditions of the FIDIC conditions of contract for building and engineering works designed by the Employer (the FIDIC Conditions of Contract for Construction), and its previous version, in their Standard Bidding Documents (SBDs) for major works. The inclusion of the Harmonized FIDIC form of Contract in their SDBs serves to ensure environmentally and socially responsible procurement and successful project delivery. This session aims to provide an overview of the Harmonized FIDIC form of contract, as compared to the FIDIC Red book, and highlight its comparative advantages by exploring cross-cutting issues such as:

- Procurement
- Sustainability
- Value for money
- Questions & answers

Moderator:

Aisha Nadar, Special Adviser, **FIDIC CONTRACTS COMMITTEE**

Panellists:

Vinay Sharma, Director, Procurement and Fiduciary Services Department (ORPF)
AFRICAN DEVELOPMENT BANK

Kofi Awanyo, Lead Procurement Specialist, **WORLD BANK**



Aisha Nadar



Vinay Sharma



Kofi Awanyo



12:25 **Risk Allocation Under FIDIC Forms of Contract**

- How is risk allocation across the FIDIC suite of contracts
- Allocation of specific risks
- Balanced risk sharing principles
- Benefits to stakeholders
- Imbalanced risk allocation?
- Abuse of particular conditions
- Allocating risk in the design phase under the Employer's Requirements

12:50 Networking Lunch

14:00 **Dispute Boards in Action**

The FIDIC Contracts are especially noteworthy in the requirement that all disputes go through the DAB process and that a DAB is mandatory. The speakers will give an overview of this critical area as it applies to the actual operation of a dispute board, their formation, the issues that can arise, the current legal update on DAB issues and appeals from DAB Decisions and their enforcement. To demonstrate the various issues that arise in an actual dispute board setting the DAB will hold a Hearing to listen to, deliberate and then decide issues raised by the hypothetical Parties:

- Can the DAB holds its decisions for 'ransom'
- Since the Employer has not agreed the DAB the unilateral appointment by FIDIC of the DAB is invalid
- The Contractor is not entitled to its current claim due to the Time-Barred clause.
- The Contractor wants to remove one of the DAB members but the Employer does not.
- The Contractor has brought one of the DAB's decisions to Arbitration for enforcement and wants the assistance of the DAB

Jeremy Glover, Partner, **FENWICK ELLIOTT**

Nicholas Gould, Partner, **FENWICK ELLIOTT**



Jeremy Glover



Nicholas Gould

15:20 Networking Break & Refreshments

15:40 **Arbitration & Alternative Dispute Resolution**

This session considers the opportunities for avoidance and early resolution of disputes under the FIDIC contract provisions. This is intended to equip the representatives and advisors of the Parties and the Engineer to make good choices in moving towards a cost effective resolution. Coverage includes:

- ICC vs. Domestic
- English style vs civil law style
- How disputes arise and when they arise
- Role of FIDIC contract provisions in avoidance/prevention of disputes
- The opportunities offered by the Amicable Settlement provisions and their effective operation
- A strategic approach to international arbitration

Henry Musonda, Civil Engineer, Arbitrator, Adjudicator & Mediator, **FIDIC PRESIDENT'S LIST OF APPROVED DISPUTE ADJUDICATORS**

Simon Lofthouse QC, Barrister, **ATKIN CHAMBERS**



Henry Musonda



Simon Lofthouse QC

16:40 **FIDIC Integrity Policies - Fight Against Corruption**

- FIDIC Policies and features
- From international corruption issues to contracting process
- Best practice and case studies using FIDIC contracts
- Tools to avoid corruption pitfalls, FIMS and the model representative agreement
- Questions & answers

Dr. Sebastian Hök, Partner, **HÖK, STIEGLMEIER & KOLLEGEN**; Member, **FIDIC PRESIDENT'S LIST OF APPROVED DISPUTE ADJUDICATORS**



Dr. Sebastian Hök

17:00 **Final Q&A Session**

17:30 Close of Conference



WORKSHOP A: Introduction to the FIDIC Rainbow Suite of Contracts

12th October 2015, Full Day (09:00 - 16:00 - Registration & Coffee from 08:30)

Ideal as a refresher course for experienced FIDIC users or as an introductory session for those just getting acquainted with the potential of the suite. Attend this workshop to acquire essential knowledge of the main forms of contract comprised in the "rainbow" suite of FIDIC contracts. FIDIC contract experts will take you through the entire rainbow book collection and explain in detail the specificities and purposes of each form. FIDIC experts will invite delegates to participate in practical exercises exploring key concepts embodied in the FIDIC contracts.

- Different contract strategies addressed by the FIDIC suite
- Detailed analysis of the FIDIC rainbow collection of forms of contract:

WORKSHOP LEADERS:

Siobhan Fahey, Member, **FIDIC CONTRACTS COMMITTEE**
Patrizia Palmitessa, Director and Head of Contracts & Dispute Resolution, **GRINDER PALMITESSA**

- **Green Book**
- **Yellow Book**
- **Red Book**
- **Silver Book**

- Risk allocation and business processes for the FIDIC suite
- The growing influence of FIDIC's suite of contracts in establishing world-class industry standards
- How FIDIC's major works contracts are being used worldwide
- Comparative advantages of FIDIC in relation to other forms of contract
- Emerging FIDIC users' regions and hot spots



Siobhan Fahey



Patrizia Palmitessa

Led by:



WORKSHOP B: Dispute Avoidance & Resolution in Practice

15th October 2015, Half Day (09:00 - 12:30 - Registration & Coffee from 08:30)

"Be quick to resolve conflicts before they mature to become wars. The energetic crocodile was once a delicate egg!" (Israelmore Ayivor)

Anticipating conflicts, establishing robust mechanisms for resolution and proper claims administration afford the best opportunity to avoid full blown disputes arising on major projects (or at least protect your position in any such dispute). With that in mind, this interactive workshop is designed to focus on the key issues commonly faced by owners and contractors who are involved in major development, infrastructure and other projects in Africa and who wish to employ sound strategies for avoiding, managing and resolving disputes in an effective manner.

WORKSHOP LEADERS:

Erin Miller Rankin, Head of Construction, Middle East & Asia, **FRESHFIELDS**
Kim Rosenberg, Senior Associate, Africa Specialist, **FRESHFIELDS**

Particular areas of focus include:

- Structuring participation in major projects to protect your investment
- Dealing with sanctions and other political risk issues
- Key issues for inclusion in your dispute resolution clauses
- The pros and cons of each stage of FIDIC's dispute escalation process
- Arbitration: stages in a typical arbitration
- Claims administration under FIDIC contracts
- Handling force majeure claims



Erin Miller Rankin



Kim Rosenberg



Freshfields

WORKSHOP C: Construction Claims & Defence

15th October 2015, Half Day (14:00 - 17:30 - Registration & Coffee from 13:30)

Attend this practical workshop for an introduction to different claims procedures, a deeper understanding of concurrent delay principles and how they are applied, relevant elements within the FIDIC contract suite, when and how to claim under the contract and when to claim for breach, and much more.

- Establishing schedule and cost controls
- Implied terms regarding prevention

- When and how to claim under the contract and when to claim for breach
- Bringing a global claim
- Considerations in EoT assessments: Critical path & cause and effect
- How delay and disruption claims are assessed
- Overhead & additional payment claims
- Prolongation, disruption and acceleration cost claims

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FIDIC Africa Contract Users' Conference

Main Conference Days: 13th & 14th October 2015
 Workshops: 12th & 15th October 2015
 Venue: Zambezi Sun Resort, Livingstone, ZAMBIA

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Workshops:
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HOW MUCH?

	Book by 24th July 2015	Book by 4th September 2015	Standard Price
Full Event: 2-day main conference + full-day "Intro to FIDIC Contracts" workshop + both half-day workshops	SAVE US \$500 <input type="checkbox"/> US \$2796	SAVE US \$400 <input type="checkbox"/> US \$2896	SAVE US \$300 <input type="checkbox"/> US \$2996
3.5 Day Package : 2-day main conference + full-day "Intro to FIDIC Contracts" workshop + 1 half-day workshop (specify 1 workshop below)	SAVE US \$400 <input type="checkbox"/> US \$2447	SAVE US \$300 <input type="checkbox"/> US \$2547	SAVE US \$200 <input type="checkbox"/> US \$2647
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Half-day Workshop(s) Only: (specify workshop(s) below)	<input type="checkbox"/> US \$449 each	<input type="checkbox"/> US \$449 each	<input type="checkbox"/> US \$449 each

Specify your workshop(s):

- Workshop A, 12 October, full-day: **Introduction to the FIDIC Suite of Contracts**
- Workshop B, 15 October, half-day, morning: **Dispute Avoidance & Resolution in Practice**
- Workshop C, 15 October, half-day, afternoon: **Construction Claims & Defence**

Will you be attending the breakfast briefing at 08:00 on 14 October (included in the price of main conference packages):
 Yes No

\$300 saving for 3rd and subsequent delegates. The VAT rate is subject to change and may differ from the advertised rate. The amount you are charged will be determined when your invoice is raised. Please note the conference fee does not include accommodation or travel costs. All discounts can only be claimed at the time of registration and multi-booking discounts cannot be combined with other discounts that may be available (apart from early booking discounts which are available to everyone). The \$300 saving for 3rd delegates is not available for people only attending a half-day workshop. All discounts are subject to approval. We are happy to accept a replacement delegate for the whole event; however delegate passes cannot be split or shared between delegates under any circumstances.

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