

FIDIC Middle East Contract Users Conference 2016

FIDIC's Official Contracts Event for Middle Eastern Projects - from FIDIC for FIDIC Users

Hilton Dubai Jumeirah Resort

<http://www.ibclegal.com/fidicme/>



Pre-Conference Workshops - Monday 15 February 2016

08:30 - 09:00 Registration

09:00 - 17:00 Introduction to FIDIC Contracts

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:
 - Green Book
 - Red Book
 - Yellow 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,
Member,
FIDIC CONTRACTS COMMITTEE (Ireland)

17:00 Close of day

Conference Day 1 - Tuesday 16 February 2016

08:30 - 08:55

Registration

08:55 - 09:00

Opening Remarks from the Chairman



Zoltán Záhonyi,
Chair,
FIDIC CONTRACTS COMMITTEE (Hungary)

09:00 - 09:30

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



Zoltán Záhonyi,
Chair,
FIDIC CONTRACTS COMMITTEE (Hungary)

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
- In the pipeline (Underground works, FIDIC Glossary of Terms, 'Golden clauses')
- The FIDIC Gold Book and the FIDIC Bronze Book
- Questions & answers

09:30 - 10:10

FIDIC's Update of the 1999 Yellow Book: Proposed Changes Currently Under 'Friendly Review' and their Potential Impact

The FIDIC 1999 Suite of Contracts (Red Book, Yellow Book and Silver Book) are currently being updated by FIDIC. While all the updated contracts will be published together at the same time, FIDIC has been working first on updating the Yellow Book with the plan to continue then with harmonised update work on the Red Book and the Silver Book. Having been carefully considered by FIDIC's Contracts Committee and Special Advisors, in Autumn of 2015 the proposed update of the Yellow Book (marked up with proposed changes to the Yellow Book 1999) was distributed to selected distinguished construction and legal professionals for their review and constructive comments. While it may be the case that not all FIDIC's proposed changes will survive such rigorous scrutiny, this session will give an outline of the main proposed changes to the Yellow Book 1999 contract that may appear in the updated Yellow Book when it is published.



Siobhan Fahey,
Member,
FIDIC CONTRACTS COMMITTEE (Ireland)

10:10 - 10:30

Morning Coffee

10:30 - 11:15

The FIDIC White Book – All You Need to Know

This session examines the use of the White Book in Projects in Middle East 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



Mahmoud Abu Hussein,
Procurement & Contracts Manager,
DOLPHIN ENERGY (UAE)



Dr Sebastian Hök,
Adjudicator,
FIDIC PRESIDENT'S LIST (Germany)

11:15 - 12:00

Variations Under the FIDIC Forms of Contract

Variations instructed by the employer will give the contractor a right to additional money. But how does this entitlement to compensation interrelate with other FIDIC clauses giving a right to additional money for other reasons, such as unexpected site conditions? Can a contractor avoid the problems associated with the clause 20 "drop



Michael Sergeant,
Partner,
HOLMAN FENWICK WILLAN (United Kingdom)

dead" notice by claiming as a Variation instead?

- Variations compared to "Claims" under FIDIC
- Does a contractor have to give notice under clause 20 in order to get money or time for a Variation?
- Does a contractor have a choice as to whether it recovers as a Variation or a "Claim"?
- Different approaches to valuing variations and "Claims"
- Claiming for a Variation in the absence of an Engineer's instruction



Robert Blundell,
Partner,
HOLMAN FENWICK WILLAN (United Arab Emirates)

12:00 - 12:30

The Valuation of Variation - A Brief Look at the Rules for Valuing Variations and the Practical Application of the Rules

- The valuation rules compared
- Common valuation problems



Colin Byford,
Senior Partner,
GBsqd

12:30 - 13:00

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



Siobhan Fahey,
Member,
FIDIC CONTRACTS COMMITTEE (Ireland)



Dr Nael Bunni,
Chartered Engineer; Chartered Arbitrator;
Special Advisor,
**FIDIC CONTRACTS COMMITTEE; Leader,
FIDIC SUBCONTRACT TASK GROUP; FIDIC
Adjudicator (Ireland)**



Aisha Nadar,
Special Adviser,
FIDIC MDB Procurement (Sweden)



Dr Nabil Abbas,
Member,
FIDIC ARABIC TRANSLATION COMMITTEE



Aseel ElHousan,
Commercial Manager,
DRAKE & SCULL ENGINEERING LLC

13:00 - 14:10

Lunch

14:10 - 14:50

The Golden Principles of FIDIC Conditions of Contracts – Myth & Reality

FIDIC's 1999 suite of contracts have generally been used with great success in many projects. They are perceived as International Best Practice. Obviously, "using FIDIC conditions of contracts" has never been a guarantee for ultimate success - especially, if the actual conditions depart significantly from FIDIC's basic principles! In more extreme cases, projects which have failed show substantial misuse of FIDIC contracts. This interactive session aims to analyse what would be the most appropriate ways (if any) to avoid misuse of FIDIC contracts and what limits there might be for FIDIC to prevent such



Zoltán Záhonyi,
Chair,
FIDIC CONTRACTS COMMITTEE (Hungary)



Aisha Nadar,
Special Adviser,
FIDIC MDB Procurement (Sweden)

misuse to its standardised contracts. Examples will be provided of FIDIC being modified because of Public Law and how this impacts negatively on projects. How can the industry deal with this? Insights will be offered from personal experience, as well as an outline of specific initiatives aimed at dealing with this problem.

- What are the so called “golden principles” embedded in the 1999 Forms?
- Which clauses are immutable (once altered/deleted, the contract should never be referred to later as a “FIDIC Contract”)?
- Are there any means, that would enable FIDIC to have closer control on the use of its standardised contract forms?
- Could FIDIC provide a new generation of services, through which it would become possible to avoid misuse of FIDIC Conditions of Contracts?

14:50 - 15:40

Regional & International Case Studies Review – Experiences from Users

This panel session will assemble experienced FIDIC Contract Users from different regions and industry sectors to share their experiences in using the FIDIC Contracts as key project administration tools in some of the most challenging environments. Delegates will benefit from listening to case studies on the FIDIC Red and Yellow Book, as well as other books in the FIDIC Rainbow suite, and will also have an opportunity to pose any questions to the panellists. All case studies will be new to this conference:

- **Case Study 1: Dubai Hotel Project (FIDIC 1987 Red Book)**
Eng. Dr. Kamal Adnan Malas, Accredited International Arbitrator, KAMAL MALAS & ASSOCIATES (United Arab Emirates)
- **Case Study 2: Dam Project (FIDIC 1999 Red and Yellow books)**
Khalil Hasan, Commercial Manager, DOHA METRO (Qatar)



Kamal Adnan Malas,
Accredited International Arbitrator,
KAMAL MALAS & ASSOCIATES (UAE)



Khalil Hasan,
Commercial Manager,
DOHA METRO (Qatar)

15:40 - 16:00

Afternoon Coffee

Afternoon Streams

Stream A

16:00 - 16:45

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
- Features of the Bronze Book
- Operation Service: challenges and opportunities
- Questions & answers

Dr Sebastian Hök,
Adjudicator,
FIDIC PRESIDENT’S LIST (Germany)

Stream B

16:00 - 16:45

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

16:45 - 17:20

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 SBDs 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

Aisha Nadar,
Special Adviser,
FIDIC MDB Procurement (Sweden)

Jean-Jacques Verdeaux,
Lead Procurement Specialist,
WORLD BANK

Dr. Imad Al Jamal,
Contracts and Development Consultant,
UAE CONTRACTORS' ASSOCIATION

longer than expected

- Questions & answers

Dr Nael Bunni,

Chartered Engineer; Chartered Arbitrator; Special Advisor,
FIDIC CONTRACTS COMMITTEE; Leader, FIDIC SUBCONTRACT TASK GROUP; FIDIC Adjudicator (Ireland)

16:45 - 17:20

Using the EPC/Turnkey Contract and Making the Most of its Features

Discuss latest developments and the special features of the Silver Book and benefit from listening to case studies of successful application of the Silver Book. 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
- Silver Book case study

Husni Madi,
FIDIC Accredited Trainer; CEO,
SHURA CONSTRUCTION MANAGEMENT

17:20 - 17:20

Close of Day 1 and Drinks Reception

Conference Day 2 - Wednesday 17 February 2016

Breakfast Briefing

Breakfast Briefing A - BIM

Christopher Miers, Founder and Managing Director PROBYN MIERS

08:00 - 08:40

Contractual Relevance of BIM Protocols & Their Application

The construction industry has been going through major changes over the recent years, not least the so called "BIM boom". This session will analyse the contractual relevance of BIM Protocols and their incorporation as well as explore the role of FIDIC in the context of this technological and contractual revolution.



Christopher Miers,
Founder and Managing Director,
PROBYN MIERS

08:40 - 09:00

Chair's Opening Remarks



Aisha Nadar,
Special Adviser,
FIDIC MDB Procurement (Sweden)

09:00 - 09:45

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



Heba Osman,
Partner,
FENWICK ELLIOTT



Ahmed Ibrahim,
Partner,
FENWICK ELLIOTT



Tim Haynes,
Senior Managing Director,
FTI CONSULTING

09:45 - 10:25

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



Terry Fleet,
Head of Construction & Engineering, Managing Partner,
NABARRO



Ravinder Bhullar,
Partner,
NABARRO

10:25 - 10:45

Morning Coffee

10:45 - 11:35

Time Bars and their Enforceability in Arab Middle East Civil Code Jurisdictions

The time bars for both Contractor and Employer claims are essential elements of the FIDIC Conditions of Contract. Their project management purpose is however not always fully understood by the Parties, and their effect on the Contractor in particular is regularly felt



Adrian Bell,
Partner,
CMS CAMERON MCKENNA (United Kingdom)

as being excessively harsh. This session will provide practical insights as to the reasons behind the application of time bars, their operation under common and civil laws (including recent legal developments), and ways around them.



Jeremie Witt,
Legal Director,
CMS CAMERON MCKENNA (United Arab Emirates)

- Purpose of the mechanisms for administering and processing claims
- How civil law jurisdictions treat the requirements on contractors to notify claims under clause 20.1
- Whether clause 2.5 provides a more relaxed regime for employers under the common law and civil law systems
- Whether the approach to time bars in common law jurisdictions is any different
- Potential escape routes

11:35 - 12:20

World Café Discussion – Identifying & Addressing FIDIC Challenges in the GCC

Led by our expert panel of facilitators, this session allows delegates to come together in a relaxed ‘café’ style environment to discuss region-specific challenges with reference to the application of particular FIDIC principles and Clauses. This entirely interactive session will allow you to deliberate with your peers on some of the key challenges facing the construction & engineering industry in the Middle East whilst making connections and gaining new perspectives that you can utilise on your way back to the office. Some of the topics under discussion will include: recovery of interest on late payments, what alternatives to DABs might be considered so as to present genuine dispute escalation alternatives to users in the GCC, and much more besides.

12:20 - 13:00

Understanding Dispute Boards

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, dispute avoidance the issues that can arise, the current legal update on DAB issues and appeals from DAB Decisions and their enforcement.



Dr Cyril Chern,
Barrister,
Crown Office Chambers



Christopher Miers,
Founder and Managing Director,
PROBYN MIERS

- Has the FIDIC Sub-clause 20 been properly implemented
- Proactive dispute avoidance
- Can the DAB hold its decisions for ‘ransom’
- Appointment of the DAB and removal
- The Contractor is not entitled to its current claim due to the time-barred clause
- The Contractor has brought one of the DAB’s decisions to arbitration for enforcement and wants the assistance of the DAB

13:00 - 14:10

Lunch

Streamed Sessions

Stream A

14:10 - 14:50

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

Stream B

14:10 - 14:40

Limitation of Liability Under FIDIC Contracts

- Clause 17.6
- Use of liability clause through the FIDIC collection of contracts
- Differences between the FIDIC contracts
- Limitation of liability to delay damages
- Other issues

Ahmed Fathi Waly,

Assistant Professor - The American University in Cairo; Managing Director,

WALY ARBITRATION AND CONTRACT ADMINISTRATION

14:50 - 15:10

Afternoon Coffee

Streamed Sessions

Stream C

15:10 - 15:40

FIDIC Integrity Management System (FIMS): New Guidelines

As a companion document to the FIDIC Integrity Management System (or FIMS) Guidelines Part I – Policies and Principles, 1st Ed 2011, a Part II - Procedures document has been recently published. FIMS Part II is a document designed to assist consulting firms, regardless of size or home country, in the development of a framework to manage and mitigate bribery and corruption risks that may be encountered in the business environments that many companies face today. This session will provide:

- A brief review of FIMS I, Policies and Principles
- Key concepts in the FIMS II document
- A scalable and risk-based approach for implementing FIMS
- Identification of critical projects
- Identification of potential wrongdoing
- Examples of sample forms on how companies are addressing integrity risks
- An understanding of FIMS as a basis for a compliance programme

Ahmed Stifi,

Member,

FIDIC INTEGRITY COMMITTEE (Germany)

Stream D

15:10 - 15:40

How to Fix, Strengthen and Correct FIDIC Sub-Clauses So They Work

This Session will give the participant the tools necessary to amend/review the particular FIDIC Sub-Clauses so that they work and clearly reflect the needs of the parties. These particular Sub-Clauses cause 90% of the problems in the management of projects and in the submission to Dispute Boards and the programme. In particular it will show how to correctly change certain aspects, or at a minimum be aware of difficulties which can arise both in operation as well as before a DAB in the enforcement of these Sub-Clauses.

- Sub-Clause 2.1 - Right of Access
- Sub-Clause 3.5 - Determinations
- Sub-Clause 8.4 - Extensions of Time
- Sub-Clause 8.7 - Delay Damages
- Sub-Clause 13 - Variations
- Sub-Clause 19 - Force Majeure
- Sub-Clause 20.3 - Failure to Agree DAB
- Sub-Clause 20.4 - Obtaining DAB Decision

Dr Cyril Chern,

Barrister,

Crown Office Chambers

15:40 - 16:40

The Big DABs Debate – What Future for Revised DAB Rules in the GCC?

Along with the review and update of the FIDIC Yellow Book, Red Book and Silver Book, FIDIC is reviewing the Dispute Adjudication Rules with a view to updating them to reflect current best practice for Dispute Boards. Some changes and improvements that are being contemplated will be outlined during this session. This will include, among others, the suggestion of an additional Clause to existing rules (Clause 21). This panel session will reflect on whether this extensive revision of the DAB rules will address existing reluctance to employ DABs in the region and point the way forward. Delegates will also have the opportunity to give their vote for or against using electronic voting technology.



Siobhan Fahey,

Member,

FIDIC CONTRACTS COMMITTEE (Ireland)



Kamal Adnan Malas,

Accredit International Arbitrator,

KAMAL MALAS & ASSOCIATES (UAE)



Dr Nael Bunni,

Chartered Engineer; Chartered Arbitrator;

Special Advisor,

FIDIC CONTRACTS COMMITTEE; Leader,

FIDIC SUBCONTRACT TASK GROUP; FIDIC

Adjudicator (Ireland)

16:40 - 17:30

Arbitration & Alternative Dispute Resolution

This session considers the nature of disputes and how they can be managed and resolved under the provisions of the FIDIC Contracts. The aim is 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:



Ellis Baker,

Head of Construction & Engineering Practice

Group,

WHITE & CASE (United Kingdom); Lead Author

of FIDIC Contracts in Law and Practice

(Informa, 2009), (United Kingdom)

- The nature of construction disputes – how and when they occur
- The opportunities offered by the FIDIC Amicable Settlement provisions and their effective operation
- The role of mediation in resolving construction disputes
- A strategic approach to international arbitration.



Michael Turrini,
Head of Middle East Construction Group,
WHITE & CASE (United Arab Emirates)



James Howells QC,
Barrister,
ATKIN CHAMBERS



Aisha Nadar,
Special Adviser,
FIDIC MDB Procurement (Sweden)

17:30 - 17:30

Close of Conference

Post-Conference Workshops - Thursday 18 February 2016

09:00 - 09:30 Registration

09:30 - 12:50 WORKSHOP B: Practical Techniques for Dealing with Modified Contracts

FIDIC contracts require the parties to add important details, such as the amount of delay damages, but also permit them to agree project-specific changes to the general conditions. This breakfast briefing will be an opportunity to consider some of the key issues arising when negotiating and agreeing such matters, identifying problem areas and pitfalls to look out for. The session will be interactive with practical examples used to facilitate discussion and exchange of experiences. Topics covered will include:

- How do you modify a FIDIC contract? - Some dos and don'ts
- Does the project location require a modification?
- Choosing the governing law and other key terms
- Dealing with changes to risk allocation and the dispute resolution clauses
- Overview



Cathy Joshi,
Chartered Civil Engineer,
PROBYN MIERS

12:50 - 13:50 Lunch

13:50 - 17:10 WORKSHOP C: Construction Disputes - Claims & Dispute Resolution

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. Coverage includes:

- Claims v Disputes, including when and how to claim under the contract and when to claim for breach
- Establishing schedule and cost controls
- Alternative Dispute Resolution, including mediation
- Arbitration in the Middle East – what to think about before, during and after
- Prolongation, disruption and acceleration cost claims, including how they are assessed
- Overhead & additional payment claims



Charles Gurnham,
Senior Partner,
GBsqd



Charles Lilley,
Partner,
BERWIN LEIGHTON PAISNER (Abu Dhabi)

