How do FIDIC contracts work

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The basic (typical) contract layout

- **Employer**
- **Engineer**
- **Contractor**

**Contractual relation**

**Administrative / communicative (management) relation**

Introducing FIDIC Contracts Webinar, 2. How FIDIC contracts works – general principles
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: Cl 1
► The Parties & the Engineer: Cl 2 – 4
► Subcontracting, staff, labour, materials, workmanship, quality (testing): Cl 5 – 7
► Time: Cl 8
► Testing, taking-over, defects liability: Cl 9 - 11
► Measurements, variations and payment: Cl 12 – 14
► Termination: Cl 15 and 16
► Risks, Insurance and Force Majeure: Cl 17 – 19
► Claims and disputes: Cl 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 → EMPLOYER DESIGN
 Fixed price - lump sum
 Little employer involvement
 No major unforeseen risks

DISCUSS IN DETAIL
Employer’s Requirements with the Contractor, and negotiate a modified FIDIC contract

CONTRACTOR DESIGN → yes
 Plant and/or high unforeseen risks

Yes → yes
No → no

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

Conceptual Designs → Designs for Approval → Detailed Design → As-build Drawings

Optimum entry point for a "design-build" contractor → Optimum entry point for a "construction only" contractor

Introducing FIDIC Contracts Webinar, 2. How FIDIC contracts works – general principles
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…