

MODULE 1

CONTRACT ADMINISTRATION AND MANAGEMENT UNDER THE FIDIC CONTRACTS



Disclaimer

This document provides a number of sample slides from *FIDIC Standards in Construction Contract Drafting* training.

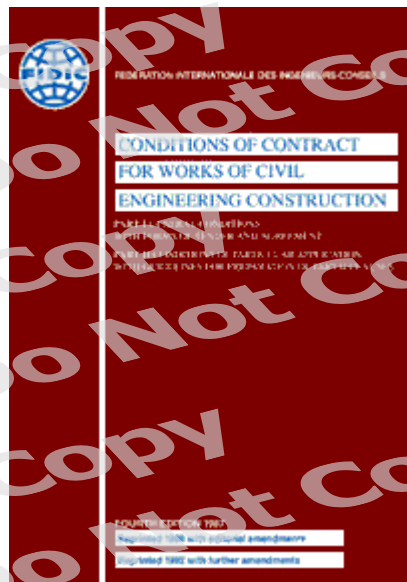
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Session 1 – Contract Award and Contract Documents under the FIDIC Contracts

- ▶ Various types of FIDIC contracts have been evolved to suit the various subject matters of contracts complying with the requirements of the construction sector.
- ▶ Types of FIDIC contracts and the specific purpose of their use were discussed during the first 2 days of the training, thus we are not going to spend too much time on the FIDIC standard form contracts.
- ▶ However, just to make a quick reminder of the standard forms which are mainly used in the Middle East;

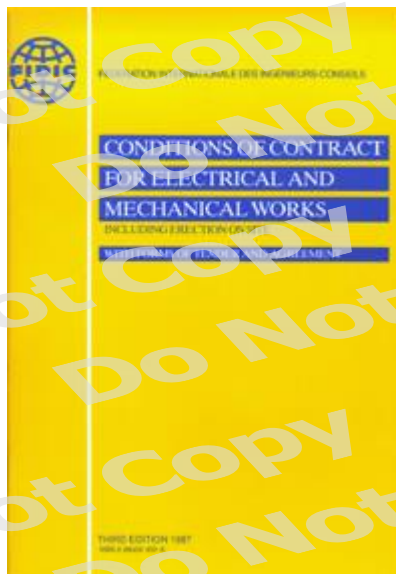
FIDIC PUBLICATIONS

FIDIC PUBLICATIONS UPTO 1999



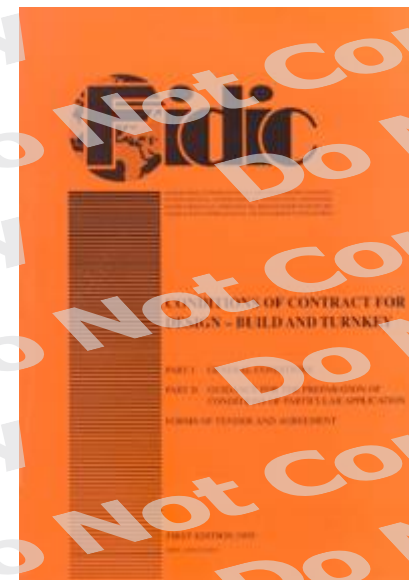
Red Book (Still in use!)

- **1987 4th. Edition**
Conditions of Contract
For Works of Civil
Engineering Construction
- **1988**
Reprinted with
Editorial Amendments
- **1992**
Reprinted with
further Amendments



Yellow Book

- **1987 3rd. Edition**
Conditions of Contract
For Electrical & Mechanical
Works inc. Erection on Site



Orange Book (Still in use!)

- **1995 1st. Edition**
Conditions of Contract
for Design-Build
and Turnkey

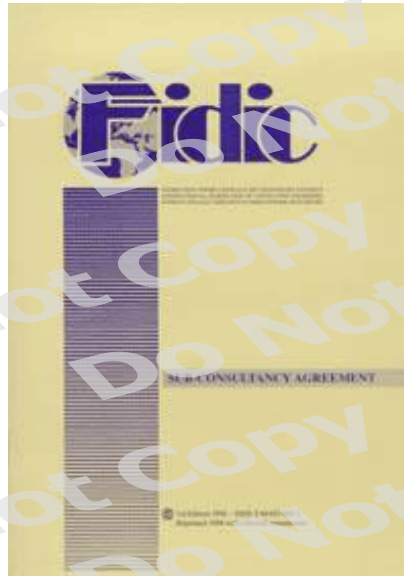
FIDIC PUBLICATIONS (Continued)

FIDIC PUBLICATIONS UPTO 1999



White Book

- **1991 2nd. Edition**
Model Services
Agreement between
Client and Consultant



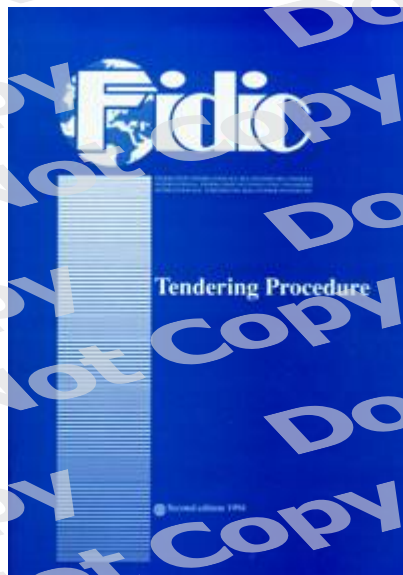
- **1982 1st. Edition**
Sub-consultancy
Agreement



- **1992 1st. Edition**
Joint Venture
Agreement

FIDIC PUBLICATIONS (Continued)

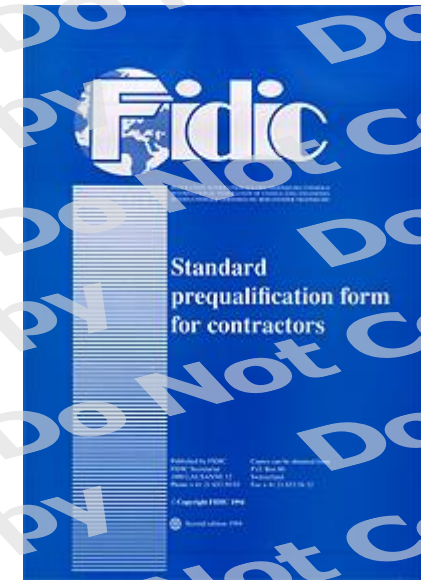
FIDIC PUBLICATIONS UPTO 1999



- **1994 2nd. Edition**
FIDIC
Tendering Procedure



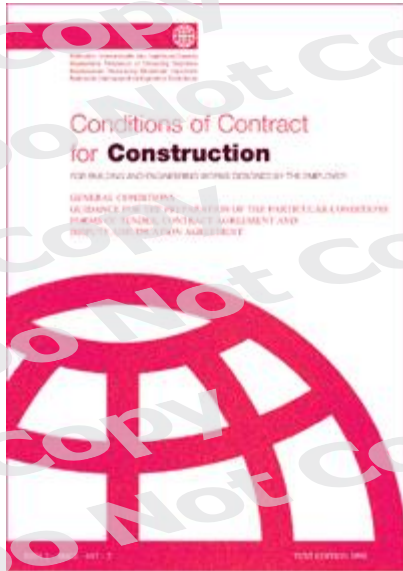
- **1994 1st. Edition**
Works of Civil
Engineering (Red Book)
Subcontract



- **1994 2nd. Edition**
Standard
Prequalification forms
for Contractors

FIDIC PUBLICATIONS (Continued)

FIDIC PUBLICATIONS POST 1999



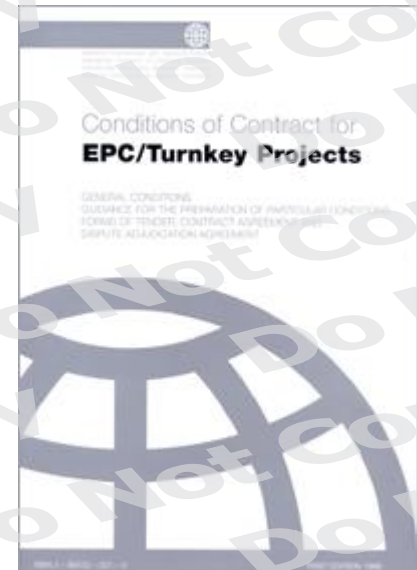
Red Book

- **1999 1st. Edition**
Conditions of Contract
for Construction
For Building and Engineering Works
designed by the Employer.
General conditions;
Guidance for Preparation of
Particular Conditions;
Forms of Tender.



Yellow Book

- **1999 1st. Edition**
Conditions of Contract
for Plant & Design-Build.
For Electrical & Mech. Plant &
For Building & Engineering Works
Designed by the Contractor.
Gen. Conds; Guidance for the Prepn.
of Conds of Particular Application;
Forms of Tender.



Silver Book

- **1999 1st. Edition**
Conditions of Contract for
EPC Turnkey Projects.
General Conditions;
Guidance for the Preparation
of Conditions Particular
Application;
Forms of Tender and
Agreement.

FIDIC PUBLICATIONS (Continued)

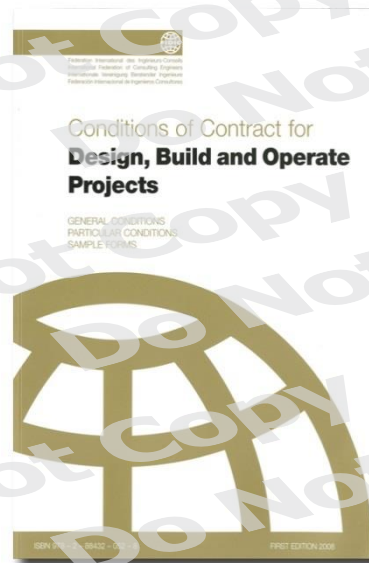
FIDIC PUBLICATIONS POST 1999



Green Book

- **1999 1st. Edition**

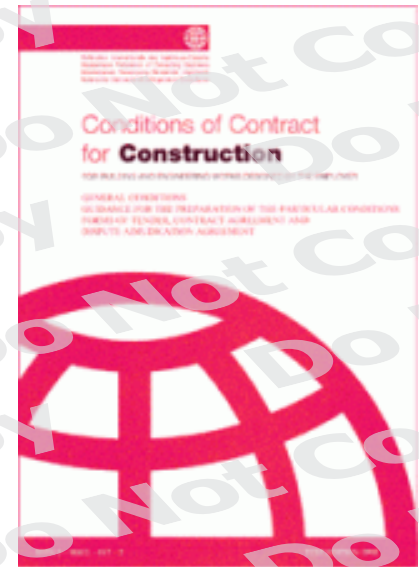
The Short Form of Contract.
Agreement, General Conditions,
Rules for Adjudication and Notes
For Guidance



Gold Book

- **2008 1st. Edition**

Conditions of Contract for
Design Build and Operate Projects



Pink Book

- **2005 1st. Edition**

The Multilateral
Development Banks
(MDBs)
Harmonised Edition of the
1999 Red Book

FIDIC Rainbow Overview

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Contract Documents

- ▶ Construction contracts also have many other variants and these vary from country to country.
- ▶ When a contract is awarded, such a contract is described in a set of documents which are called “contract documents”.

A construction contract comprises essentially the following documents:

- ▶ The agreement;
- ▶ The general conditions of contract;
- ▶ The particular conditions of contract;
- ▶ The contract drawings;
- ▶ The specifications;
- ▶ The bill of quantities (BOQ) if applicable.

The turnkey tender documents may have only the preliminary system drawings and may not have the bill of quantities.

Contract Documents (Cont'd)

General Principles

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Contract Documents (Cont'd)

General Principles (Cont'd)

- ▶ If a contract is unclear, it will be very difficult to make rational decisions about avoiding or mitigating risks. Therefore it is recommended to respect the following general principles:
 - Determine the applicable law and check the meaning of any terms and expressions under the applicable law (*How does the Iraqi Law give effect to the contract?*)
 - Avoid using any terms which have been translated into Arabic without having cross checked their legal meaning (*Would you use the official English or the Arabic version of FIDIC? Why?*).

Contract Documents (Cont'd)

General Principles (Cont'd)

- Beware that FIDIC has adopted a number of Anglo-Saxon concepts, such as the principles of *time at large*, *delay or liquidated damages*, *substantial performance*, *Engineer*, etc. (*What does Iraqi law say about these principles?*)
- Remember that FIDIC defines many terms, which are capitalised and that a correct and careful application of defined terms is critical in order to avoid misunderstandings, ambiguities and discrepancies (*How can you find a term in the Contract? Check the Index!*)
- Beware that FIDIC documents incorporate many cross references! Thus the deletion of a Sub-Clause may lead to complicated and time consuming disputes.
- For example, in the Middle East contractors encounter the problem that quite often Sub-Clause 20.2 to Sub-Clause 20.4 has been deleted, without having amended Sub-Clause 20.6. However Sub-Clause 20.6 presupposes that a DAB has decided upon the dispute before the dispute can be referred to arbitration.

Contract Documents (Cont'd)

General Principles (Cont'd)

- ▶ In addition FIDIC forms of contract are viewed as manuals that provide details of contract management tools.
- ▶ The Books contain mechanisms for prescribing and controlling the behaviour of the parties, in particular they require compliance with the reporting (see Sub-Clause 4.21) and communication rules (see Sub-Clause 1.3), the programming requirements (see Sub-Clause 8.3) and the claim procedures (see Sub-Clauses 3.5, 2.5 and 20.1).
- ▶ Reviewing and altering a FIDIC based contract means therefore not only to have a look on risk allocation rules and the obligations of the parties, but also on the management tools. Beware that the alteration of management rules may change the whole contractual system and can lead to unreasonable results.

Contract Documents (Cont'd)

Red Book

FIDIC Red Book 1999 edition (Traditional Procurement)

- ▶ The Contract Agreement (if any)
- ▶ The Letter of Acceptance
- ▶ The Letter of Tender
- ▶ The Particular Conditions
- ▶ These General Conditions
- ▶ The Specification
- ▶ The Drawings
- ▶ The Schedules and any other documents forming part of the Contractt.

Contract Documents (Cont'd)

Red Book (Cont'd)

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Contract Documents (Cont'd)

Yellow Book

FIDIC Yellow Book 1999 edition (Design + Build Procurement)

- ▶ The Contract Agreement (if any)
- ▶ The Letter of Acceptance
- ▶ The Letter of Tender
- ▶ The Particular Conditions
- ▶ These General Conditions
- ▶ The Employer Requirement's
- ▶ The Schedules
- ▶ The Contractor's proposal and any other documents forming part of the Contractt.

Contract Documents (Cont'd)

Yellow Book (Cont'd)

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Contract Agreement

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Particular Conditions

- ▶ The Particular Conditions shall cover all project details and particularities including any modifications of the General Conditions, except those to be specified in the Appendix to Tender.
- ▶ Please take a look at the clauses referred to as in the Appendix to Tender (*Attachment 1*).
- ▶ Some of the above-mentioned items are optional, such as changes to Sub-Clause 3.5 or Sub-Clause 20.1.
- ▶ Some of them require data, because otherwise the related Sub-Clause will not apply (see Sub-Clause 4.2, 13.6, 14.2, 18.2(d), 18.3).
- ▶ Under a Red or Yellow Book contract, where specific project details are specified in the Appendix to Tender, Particular Conditions may be used for the adjustment of the General Conditions, if appropriate or necessary.
- ▶ A Guidance for the Preparation of Particular Conditions being included in each FIDIC Book provides for additional model clauses and/or recommendations as to the adjustment of the General Conditions. If any civil law is the governing law, adjustments may be essential !

The General Conditions

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The General Conditions (Cont'd)

- ▶ It spells out the scope and performance of the contract, valuation and payment terms, arbitration and laws, labour regulations, safety code, various forms used for the tender and required deeds under the general conditions of contract.
- ▶ It is advisable to use a form of FIDIC general conditions of contract since most of these conditions have been tested in court over a period of time.
- ▶ In Turkey and the Middle East there is a growing trend in the use of FIDIC contract conditions in large infrastructure projects, especially those funded by the European Union and the World Bank.

Employer's Requirements (Yellow Book and Silver Book)

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Employer's Requirements (Cont'd)

(Yellow Book and Silver Book)

- ▶ The Silver Book Guidance for the Preparation of Particular Conditions as well as the Yellow Book Guidance clearly indicate that the Employer's Requirements should specify the particular specifications for the completed Works on a functional basis, including detailed requirements on quality and scope.
- ▶ It is critical to understand that under a FIDIC Yellow Book or Silver Book the Employer's Requirements shall define the full range of works and design to be carried out by the Contractor against the agreed Contract Price, which is a lump sum price.
- ▶ It is known that FIDIC design and build forms work best when the Employer's Requirements are kept to the bare minimum of detail commensurate with achieving the Employer's aims, thereby affording the maximum degree of flexibility to the Contractor in complying with the contract.
- ▶ Excessive design work carried out by the Employer at pre-contract stage and too detailed Employer's Requirements can cause difficulties in determining the responsibilities of each of the parties once the contract has been awarded.
- ▶ Detailed Employer's Requirements give the Employer full control over design. Under this approach the design is completed to a high level of detail by or on behalf of the Employer before tender.
- ▶ In this event the Contractor's design contribution is generally limited to working drawings and completion of the design of some specialist packages. By this the design responsibility becomes re-shifted to the Employer.
- ▶ On the other hand it is critical that the Employer's Requirements document clearly communicates material standards, workmanship standards, performance standards, aesthetic intent and functional requirements.

Employer's Requirements (Cont'd)

(Yellow Book and Silver Book)

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Contract Drawings

- ▶ The contract drawings are the means through which the physical, quantitative and visual descriptions of the project are conveyed to the contractor.
- ▶ The drawings are classified into:
 - Site (working/application) drawings;
 - Architectural drawings;
 - Structural drawings;
 - HVAC—heating, venting and air conditioning, and other services drawings
 - Electrical drawings; and
 - Special details: depending on the nature of work, there could be fire-fighting details, public-announcement system details, building automation details, etc.

Contract Drawings (Red Book)

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Contract Drawings (Red Book)(Cont'd)

- ▶ *Sub-Clause 1.8 – Care and Supply of Documents*

«The Specification and Drawings shall be in the custody and care of the Employer.»

- ▶ *What do other sub-clauses say about drawings?*

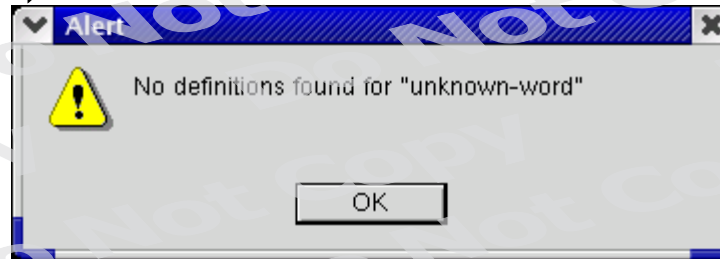
Please check sub-clauses 1.8, 1.11, 1.9, 3.3.

Contract Drawings (**Red Book**)(Cont'd)

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Contract Drawings (Yellow Book)

- ▶ Does Yellow Book provide a definition of the «drawing(s)»?



- ▶ No! Yellow Book does not provide a definition of drawings. In fact, it hardly refers to drawings!
- ▶ Yellow Book does not provide an entitlement to the Contractor for extension of time for and/or additional payment in case of delayed drawings!
- ▶ What other clauses of FIDIC Yellow Book refer to «Drawing(s)» ?