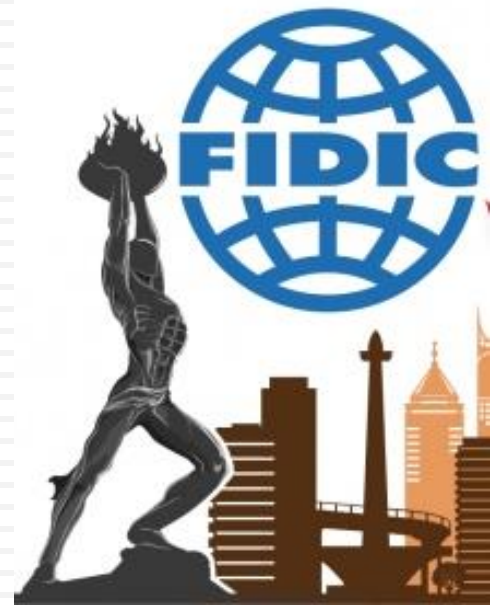


FÉDÉRATION INTERNATIONALE DES INGÉNIEURS-CONSEIL

PRACTICAL USE OF FIDIC CONTRACT

Presentation by Cakra Dharma

Why use FIDIC?



Why use FIDIC?

Range of Contract Forms :

- FIDIC covers wide range of activities and sectors relevant to international construction;
- FIDIC forms are easily amendable to wide range of sectors. Not tied to specific type of industry;
- FIDIC covers wide range of contracting options (Employer design, Contractor design and also Turnkey Projects).

Successful usage :

- Over the last 60 years, FIDIC forms has been continuously used for major international projects;
- Endorsed by Multilateral lending banks such World Bank, development banks;
- Interpreted into various languages like Spanish, French and Arabic.

Why use FIDIC?

International benchmark :

- FIDIC has become an international benchmark for forms of construction contract;
- FIDIC forms were the foundation for the public procurement and construction legislation in GCC countries.

Certainty of terms :

- Parties have relative confidence to predict the boundaries of their rights and obligations;
- FIDIC contracts have been gained judicial notoriety in several jurisdictions;
- Experience from previous usage, gives good understanding of the terms.

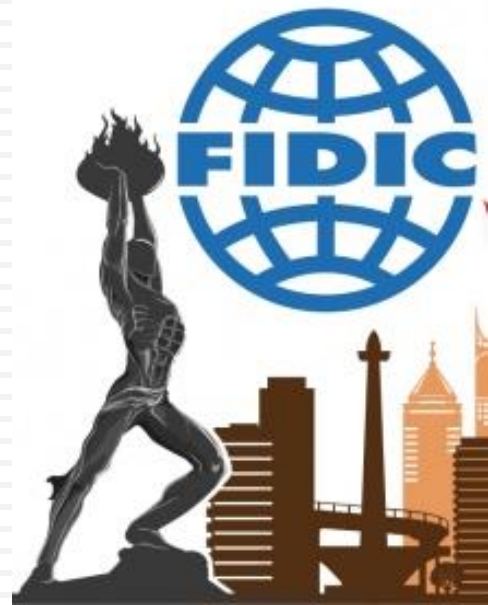
Why use FIDIC?

Perception of fairness :

- Extensive consultation with various stakeholders ensures wider acceptance;
- Reduces the incidence of protracted contract negotiations;
- The draft process goes through extensive negotiations with Consultants, Architects, Owners, Lawyers, Accountants and insurers to ensure consensus;
- Parties view FIDIC forms as fair and balanced so minimum resistance during implementation.

FIDIC types of Contract Form

Multiple type of FIDIC Contract Forms established based on the contract type in different “color cover”





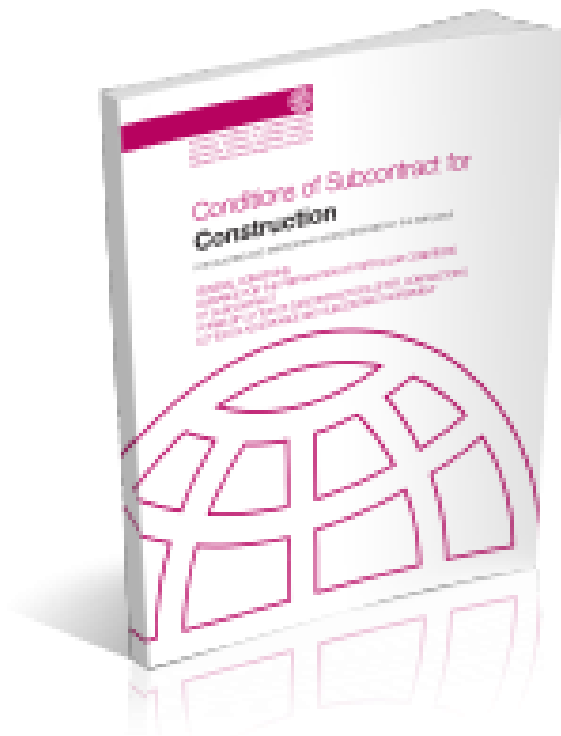
RED BOOK

Building and Engineering works, Designed by the Employer. The Red Book provides conditions of contract for construction works where the design is carried out by the Employer.



RED BOOK MDB HARMONISED EDITION

Building and Engineering works, designed by the Employer. The FIDIC MDB Harmonized edition of the Red Book simplifies the use of the FIDIC contract for projects which was funded with Multi-Lateral Bank, involved with project procurement, such as consulting engineers, contractors and contract lawyers.



RED BOOK SUBCONTRACT FOR CONSTRUCTION

Building and Engineering works, designed by the Employer. The FIDIC Conditions of Subcontract provides conditions of contract for subcontract, consultants, professional advisors for construction works, designed by the employer.



GREEN BOOK

Short Form of Contract. The Short Form of Contract is recommended for short-term and straightforward engineering and building work with relatively small capital value. The Guidance Notes for the Green Book recommended for projects with work value below US\$500,000.



YELLOW BOOK

Plant and Designed – Build. The Yellow Book provides conditions of contract for construction works where most of the design, electromechanical is carried out by the Contractor.



SILVER BOOK – EPC / Turnkey Projects

The Silver Book is suitable for use on process, power and private-infrastructure projects where the Contractor is to take on full responsibility for the design and execution of the project. Risks for time of completion, cost and quality are transferred to the Contractor therefore the Silver Book is only suitable for use to experienced Contractors which was familiar with sophisticated risk management techniques.

OVERVIEW OF FIDIC CONTRACTS GUIDE

- Structure of a FIDIC Contract;
- Stacking of FIDIC 1999 Red Book clauses;
- Employer's Obligation under FIDIC 1999 Red Book Suites;
- Engineer's Role under FIDIC 1999 Red Book Suites;



Structure of FIDIC 1999 Red Book Contracts

FIDIC is presented in two parts:

PART I :General Conditions of Contract

PART I of FIDIC Contract is common for all contracts, which stipulated:

- Rights and Obligations of each party;
- Procedure for payment;
- Variation;
- Certification;
- Dispute resolution.

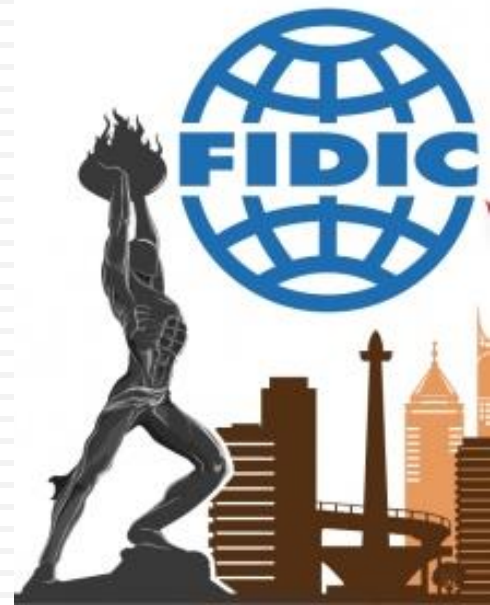
PART II :Conditions of Particular Application

Each parties may introduce any amendments to PART I in PART II by inserting terms that ate peculiar to the specific project, such as:

- Project specific amendments;
- Local laws, regulations;
- Specific damages related to performance;
- Taking over in sections;
- Amendment in dispute resolution procedures.
- The General Conditions are only a template and with every project's requirement the General Conditions shall be amended with the Particular Conditions.

Stacking of FIDIC 1999 Red Book Clauses

Clause and Sub Clause stipulated in the FIDIC
Contract



Stacking of FIDIC 1999 Red Book Clauses

- Clauses 1 – General Provisions (Definitions);
- Clauses 2 to 4 – Incorporate and deal with the rights, duties and obligations of the triangle of Employer, Engineer and Contractor;
- Clauses 5 to 7 – Incorporate and deal with resources, which include:
 - ▣ Nominated Sub-contractors;
 - ▣ Staff and Labour;
 - ▣ Plant, materials and workmanship;

Stacking of FIDIC 1999 Red Book Clauses

- Clauses 8 to 10 – deals with time aspects, such as:
 - ▣ Commencement, delays and suspension;
 - ▣ Tests on completion;
 - ▣ Employer's taking over;
- Clause 11 – deals with defects liability;
- Clauses 12 to 14 – deals with monetary terms, such:
 - ▣ Measurement and evaluation;
 - ▣ Variations and adjustments;
 - ▣ Contract price and payment;

Stacking of FIDIC 1999 Red Book Clauses

- Clauses 15 and 16 – deals with termination, which include:
 - ▣ Termination by Employer;
 - ▣ Termination by Contractor (with suspension);
- Clauses 17 to 19 – incorporate and deal with risk and responsibility, insurance and *force majeure*; and
- Clause 20 – incorporate and deals with claims, disputes and their settlement.

TENDERING, PREPERATION OF TENDER DOCUMENTS AND TENDER ASSESMENT

TENDERING & PREPERATION OF TENDER DOCUMENTS

Tender documentation include:

- ❑ Instruction to Tenderers;
- ❑ Letter of Tender;
- ❑ Schedules;
- ❑ Conditions of Contract.

In the preparation of the conditions of Contract to be included in the tender documents for a contract, the following text can be used:

- The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for Construction” First Edition 1999 published by the *Federation Internationale des Ingenieurs-Conseils* (FIDIC), and the following “Particular Conditions”, which include amendments and additions to such General Conditions.
- The tender documents should be prepared by suitably-qualified engineers who are familiar with the technical aspects of the required works, and a review by suitably-qualified lawyers may be advisable.

The tender documents issued to tenderers will consist of:

- Conditions of Contract;
- Specifications;
- Drawings;
- Letter of Tender; and
- Schedules for completion by the Tenderer.



TENDER ASSESSMENT

In order to manage tendering procedures effectively, it may be advisable for one person to be as tendering co-ordinator, responsible for:

- ❑ Dispatching the tender documents to each prospective tenderer;
- ❑ Ensuring that each tenderer has formally acknowledged receipt of the tender documents;
- ❑ Managing the site inspection, having ensured that tenderers have received details to the arrangements;
- ❑ The tendering co-ordinator should prepare an agenda, appropriate supplementary briefing information for the visitors, and a record of the visit;



- If amendments need to be made to the Tender Documents, the tendering coordinator should issue to the tenderers an addendum to Tender Documents, and ensure that each tenderer has formally acknowledged receipt.
- Unsuccessful tenderers will retain the copyright of their designs. The Employer must return their designs, without copies being retained and without releasing details to the successful tenderer, the Contractor.

Tips regarding the Tendering Procedure:

- As far as practicable, the Contractor's obligations should be stated in clear unambiguous terms, and not in such a way that the application of opinion or judgment is necessary.
- Vague phrases which tenderers would find difficult to understand to the precision necessary for pricing (for example, specifying the use of "up-to-date technology"), should be avoided.
- If these subjective phrases are used, tenderers may include detailed clarifications, which tenderers will wish to ensure will be binding.



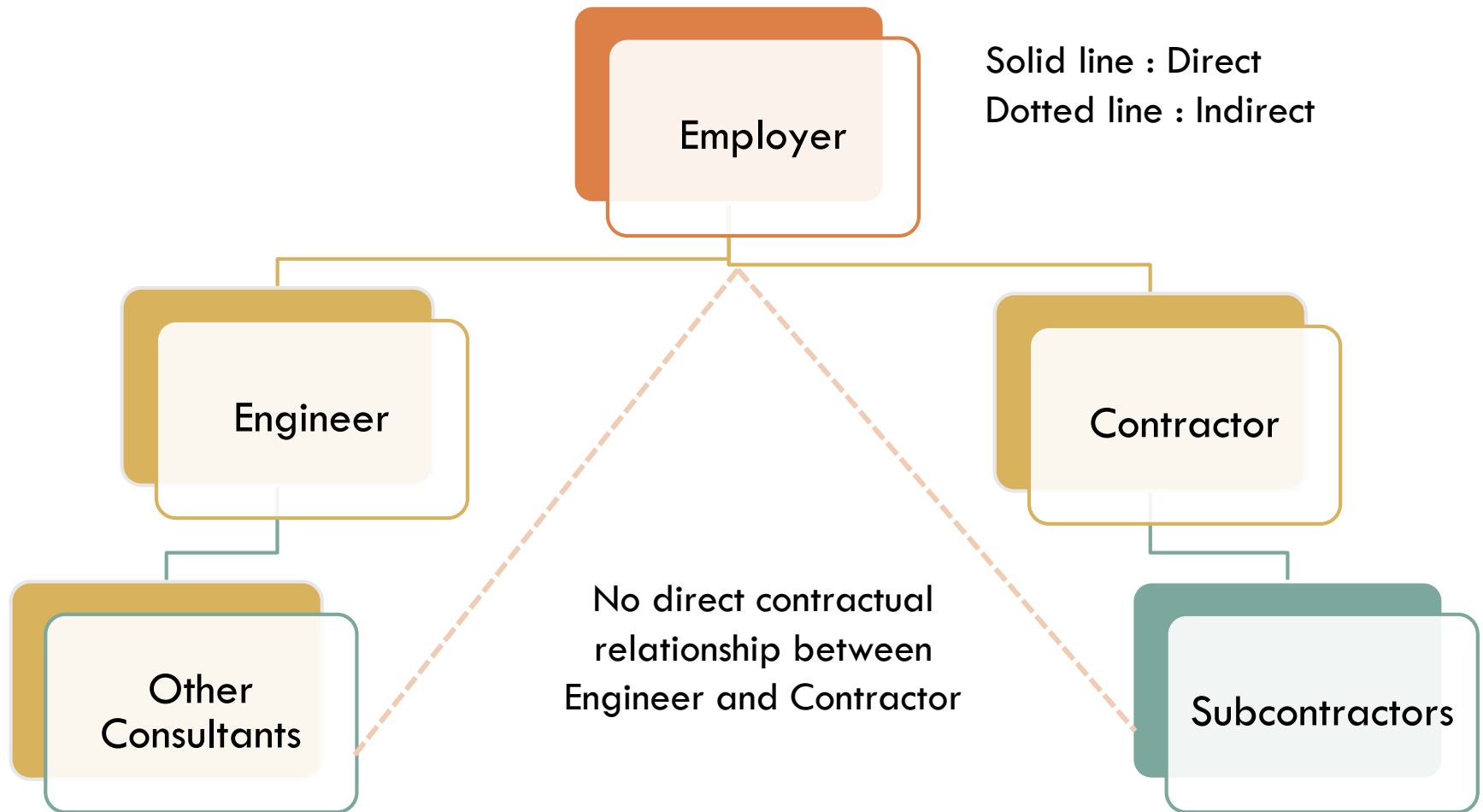
- For Contractor-design, the Employer may wish to encourage the tenderer to propose solutions complying with the requirements which the Employer can only describe in subjective terms.
- If the Employer wishes to include subjective requirements, they should only be stated in the Instructions to Tenderers. Each tenderer may propose solutions as part of his tender.
- These solutions in the Tender which (unlike the subjective requirement in the Instructions to Tenderers) will form part of the Contract.

CONTRACT PLAYERS AND OBLIGATIONS

Contract players and obligations, which include:

- ❑ The Contract Relationship introduced;
- ❑ Owner's obligations;
- ❑ Contractor's obligations;
- ❑ The Engineer's obligations, determination and oral instruction;
- ❑ Performance Security;
- ❑ Subcontracting (clause 5);
- ❑ Staff, Labour, requirements (clause 6);
- ❑ Plant Material and Workmanship (clause 7).

Relationship in a Construction contract





- FIDIC has introduced a clause in 1999 suite of Contracts Obligating the Employer to provide reasonable evidence of financial arrangement and to give notice to the Contractor if the Employer intends to make any material change to his financial arrangement (sub-clause 2.4).
- FIDIC also introduced a clause in 1999 suite of Contracts Obligating the Employer to give a proper notice to the Contractor if the Employer considers that he is entitled for any payment from the Contractor (sub-clause 2.5).

Employer's Obligations under FIDIC 1999 Red Book Suites

Key differences between FIDIC 1987 and 1999 concerning the Employer's Obligations:

- The Employer must inform about his financial arrangement to the Contractor;
- If there any change in the arrangement, the Contractor must be informed;
- The Employer must give a notice to the Contractor, if he considers that he is entitled for any payment from the Contractor.

The Employer

The term 'Employer' here denotes the client who may be a developer, public sector undertaking or a simple property owner.

Obligations of the Employer:

- Giving possession of the site;
- Not to interfere with the works of Contractor;
- Making timely payments to the Contractor;
- Appointment of the Engineer;
- Ensuring effective change management system;
- Disclosing any change in financial arrangement;
- Issuing notices for any claims against the Contractor.



- FIDIC has introduced a clause in 1999 suite of Contracts which stipulates that the Engineer shall be regarded as the Employer's agent, but still have to carry out obligation to act in a *fair and reasonable* manner (clause 3).
- And also, in FIDIC 1999 the role of the Engineer as impartial adjudicator has been erased.

Engineer's Role under FIDIC 1999 Red Book Suites

Key differences between FIDIC 1987 and 1999 concerning the Engineer's Role:

- The Engineer's impartial role has been scarpred in 1999 edition. The Engineer must act on behalf of the Employer, but still under a professional obligation to act in a *fair and reasonable* manner;
- Dispute Adjudication Board has been specified in 1999 suite.

The Engineer

The term 'Engineer' here denotes the person appointed by the Employer to act as an Engineer for the purposes of the Contract.

Obligations of the Engineer:

- ❑ Seek and obtain approval from the Employer (when required)
- ❑ Consult both parties before taking decisions;
- ❑ Duty to appoint assistants;
- ❑ Inspecting the Contractor's works for quality compliance;
- ❑ Issuing defect notices (where applicable);
- ❑ Duty to indicate the form of construction program;
- ❑ Consenting to the submitted program;
- ❑ Power to remove any incompetent person;
- ❑ Order variations, evaluate cost submissions and issue Variations orders;
- ❑ Settlement of disputes.

Engineer's role under FIDIC

Engineer's role under FIDIC 1987

Design

Supervision

Administration

Adjudication

Engineer's role under FIDIC 1999

Design

Supervision

Administration

Independent board
DAB

The services provided by the consulting Engineer may be one or a combination of any of the following :

Pre Contract

- Counseling
- Pre-investment studies
- Design and preparation of documents

Post Contract

- Supervision,
- Specialized design and development
- Services
- Project management and Contract
- Administration

Instructions of the Engineer must be in writing. If there is any instruction of the Engineers given by oral instruction, the Contractor may forward a written confirmation of the oral instruction within **TWO** working days.

If the Engineer does not reply by issuing a written instruction or rejection of the oral instruction within two working days of the receiving the contractor's confirmation, then the contractor's confirmation of the oral instruction shall be deemed to constitute the written instruction of the Engineer.



The Contractor

The Term 'Contractor' means the person whose tender has been accepted by the Employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.

Obligations of the Contractor:

- ❑ Providing performance guarantee;
- ❑ Submitting a Construction program;
- ❑ Obtaining all insurance policies;
- ❑ Due diligence for the quality of the materials;
- ❑ Design (where applicable);
- ❑ Safe working, HSE compliance.

Performance Security

Obligations of the Contractor concerning Performance Security:

Performance security which stipulated in clause 4.2, “The Contractor shall obtain (at his cost) a performance security for proper performance, in the amount and currencies stated in the Appendix to Tender.”

- The Contractor Shall deliver Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. And the Contractor shall ensure that the Performance Security is valid and Enforceable.



Employer's claim concerning Performance Security:

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- a) Failure by the Contractor to extend the validity of the Performance Security as the full amount of the Performance Security;
- b) Failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 (employer's claim) or Clause 20 (Claims, Disputes and Arbitration), within 42 days after this agreement or determination.

Nominated Subcontractors

In the Contract, “nominated Subcontractor” means a Subcontractor:

- Who is stated in the Contract as being a nominated Subcontractor, or
- Whom the Engineer, under Clause 13 (variations and Adjustments), instructs the Contractor to employ as a Subcontractor.

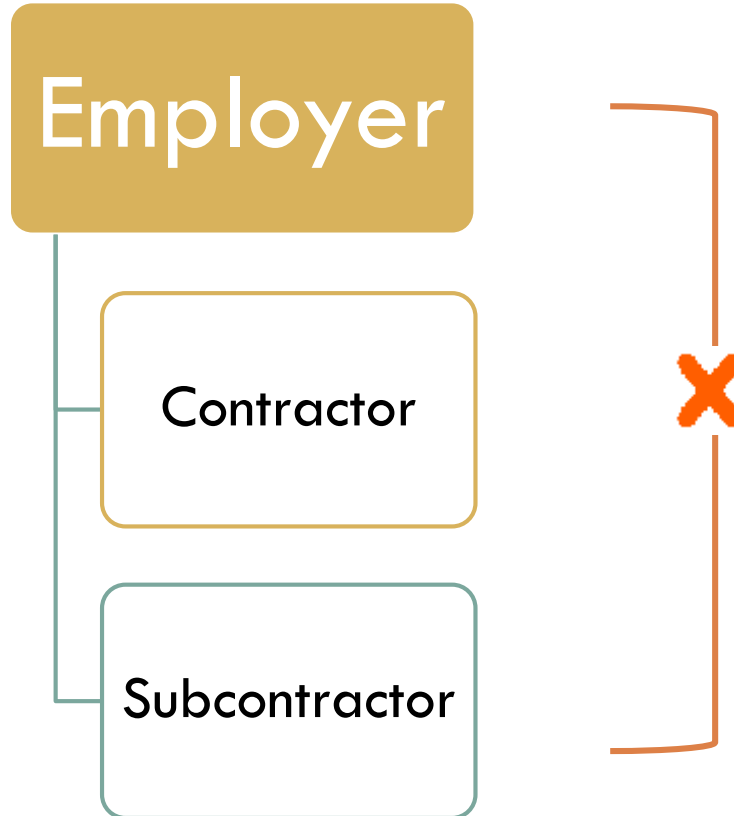
The Contractor shall not be under any obligation to employ a nominated Subcontractor.



- The Contractor shall pay to the nominated Subcontractor the amounts which the Engineer certifies to be due in accordance with the subcontract.
- Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise.

The Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable seductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Sub-contractor was directly paid by the Employer.

No direct contractual
relationship between
Employer and
Subcontractor



Relationship between Main Contractor & Subcontractor

A distinction is often made in the construction industry between those sub-contractors that are “domestic” and those that are “nominated”.

A domestic sub-contractor is one selected and employed by the main Contractor, for whom the main contractor is solely and entirely responsible.

A nominated sub-contractor is one selected by the Employer but employed by the main contractor.

If a sub-contractor is nominated then the Employer usually retains some liability.

Resource Elements and Cost Elements



Resource Elements



- Staff and Labour
- Plant, Material and Workmanships

Cost Elements



- Measurements and Evaluation:
 - Measure and Value
 - Method of Measurement
 - Defects in the Works
- Variations and Adjustments:
 - Reasons for Variations
 - Scope of Variations
 - Value Engineering

Staff and Labour (Clause 6)

- Contractor shall not attempt to recruit Employer's Personell;
- Compliance with labour laws;
- No work on locally recognized days of rest without Engineer's consent;
- Contractor responsible for HSE;
- Superintendence to manage the work;
- Obligation to submit records of personnel and Equipment to Engineer.

Plant, Material and Workmanship (Clause 7)

- Employer have full access to works for inspection;
- Obligations to test and retest and remove defective work if instructed by Engineer;
- Employer has the Ownership of delivered materials;
- Royalties to be paid by Contractor.

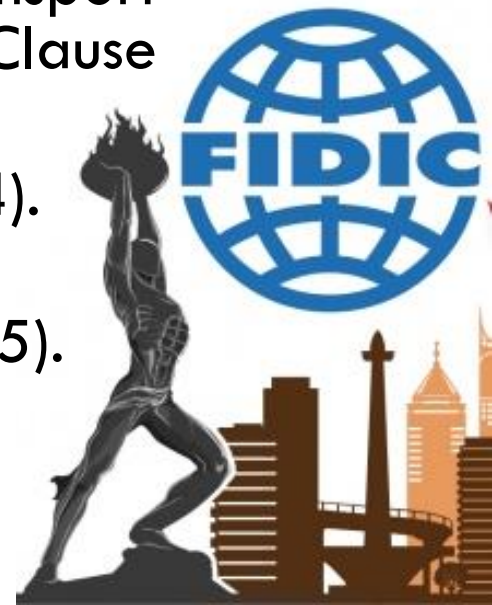
Measurement of Works and Valuations

In accordance with Clause 12 of Measurement and Evaluation, the Red Book reflected it as a so called measurement of contract, which requires a measurement procedure. The Engineer is in charge of taking and preparing measurements. The procedure to follow is:

- ❖ The Engineer decides whenever appropriate that he requires a part of the Works to be measured;
- ❖ The Contractor attends and assists the Engineer;

If The Contractor fails to attend, the Measurements are deemed to be accurate and to be accepted by the Contractor.

- The Employer's Personnel is entitled to examine, inspect, measure and test the materials and workmanship (Sub-Clause 7.3 lit. b).
- The Engineer is entitled to carry out examinations, inspections, measurement or testing (Sub-Clause 7.3).
- The Contractor shall uncover work, which is covered, put out of sight, or packaged for storage or transport before giving notice that work was ready (Sub-Clause 7.3).
- The Engineer may attend any tests (Sub-Clause 7.4).
- The Engineer may reject any Plant, Materials or workmanship found to be defective (Sub-Clause 7.5).
- The Engineer may require Plant, Materials or workmanship to be retested (Sub-Clause 7.5).



If the works are defective, Employer has the following remedies:

- The Employer may require the Engineer to agree or determine a reasonable deduction in the Contract Price (Sub-Clause 11.4 b).
- The Employer may terminate the Contract if a defect or damage deprives him of substantially the whole benefit of the Works or any major part of the Works (Sub-Clause 11.4 lit. c).

In case the works are defective, the Contractor shall:

- Correct any errors, omissions, ambiguities, inconsistencies, inadequacies or other defects found in the Contractor's Documents (Sub-Clause 5.8).
- It is intended to avoid defects as early as possible and to deal with defects without recourse to legal proceedings prior to the issue of the Performance Certificate the Works shall be free of any defects.

The Employer's Personnel is entitled to examine, inspect, measure and test the materials and workmanship (Sub-Clause 7.3 lit. b).

The Engineer has full power to reject defective works at any time during the course of the works.

The Contractor shall then promptly make good the defect. The Contractor fails to do so, the Engineer may give instructions according to Sub-Clause 7.6. He may instruct the Contractor to :

- a) Remove from the site and replace any plant or materials which are not in accordance with the Contract;
- b) Remove and re-execute any other work which is not in accordance with the contract;
- c) Execute any work which is urgently required for the safety of the Works.

If the Contractor fails to comply with the instructions of the Engineer, the Employer shall be entitled to employ other persons to carry out the work at the Contractor's cost.

In accordance with Clause 12 of Measurement and Evaluation, the Red Book is a so called measurement contract, which requires a measurement procedure. The Engineer is in charge in accordance with Sub-Clause 12.3, Engineer to proceed in accordance with determination to agree or determine the Contract Price in accordance with work to be measured and method of measurement.

This sub-clause stipulates that:

No appropriate rate for each item;

A rate is not appropriate due to changes in quantities;

Work is instructed as a Variation.

New rates to be derived from any relevant rates or prices in the Contract. If no rates are relevant the new rate derived from a reasonable Cost.

Variation

Variation means any change to the Works, which is instructed or approved as a Variation under clause 13 (Variation and Adjustments).

Reasons for Variations:

- ❑ The Employer has decided to change the work (Sub-Clause 13.1);
- ❑ There may be unforeseeable conditions which requires a variation (Sub-Clause 4.12);
- ❑ The Contractor may be required to remedy defects for which he is not responsible (Sub-Clause 11.2);
- ❑ Instruction of work covered by Provisional Sums (Sub-Clause 13.5).

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Variation means any change to the Works, which is instructed or approved as a Variation under clause 13 (Variation and Adjustments).

Reasons for Variations:

- a) The Employer has decided to change the work (Sub-Clause 13.1);
- b) There may be unforeseeable conditions which requires a variation (Sub-Clause 4.12);
- c) The Contractor may be required to remedy defects for which he is not responsible (Sub-Clause 11.2);
- d) Instruction of work covered by Provisional Sums (Sub-Clause 13.5).

Scope of Variations:

- a) May be initiated by the Engineer or a request from Contractor.
- b) To be issued prior to the issue of the Taking-Over Certificate.
- c) May not omit work to give to others.
- d) The Contractor must carry out the Variation unless the Contractor cannot readily obtain the necessary Goods (Sub-Clause 13.1).

Scope of Variations:

- a) Changes to the quantities of the work (such change do not necessarily constitute a variation);
- b) Changes to the quality and characteristics of the work;
- c) Changes to levels, positions or dimensions of any part of the work;
- d) Omission of work (save to give to others);
- e) Additional of work necessary for the Permanent Works;
- f) Changes to sequence or timing of the execution of the Works.

Value Engineering

The Contractor may at any time submit to the Engineer a written proposal which (in Contractor's opinion) if adopted:

- Accelerate completion;
- Reduce the cost to the Employer of executing,
maintaining or operating the Works;
- Improve the efficiency or value to the Employer of the Completed works; or
- Otherwise, be of benefit of the Employer.

The Contractor may at any time can make a proposal in the required form for Value engineering which will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the works, (iii) improve the efficiency or value to the Employer of the completed works, or (iv) otherwise be of benefit to the Employer. (Sub-Clause 13.2)

If the Engineer accepts the proposal and there is a saving, the parties share the saving (Sub-Clause 13.2)

The Engineer may request a proposal from the Contractor prior to instructing a variation. The Contractor is to respond with details of the work, effect on program and Time for Completion and a proposal for evaluation of the Variations or by giving reasons why he cannot respond with a proposal.

The Engineer shall as soon as practical, approve, disapprove or comment. It is the Engineer who instructs Variations.

If the Value Engineering results in reduction in Contract Value, the Engineer shall determine a fee which shall be added to the Contract Price. This fee shall be half of the difference between:

- 1) Such reduction in contract value resulting from the VE proposal
- 2) The reduction (if any) in the Value to the Employer of the varied Works, taking account of any reductions in quality, anticipated operational efficiencies.

If the amount of (1) is less than (2), there shall be no fee.

COMMENCEMENT, DELAYS AND SUSPENSION

Clause 8 is concerned with commencement, delays and suspension of the works. The clause follows previous FIDIC forms; **it provides that the works is to commence within 42 days after the Contractor receives the Letter of Acceptance except where otherwise agreed by the parties.**

8.1 Commencement of Works

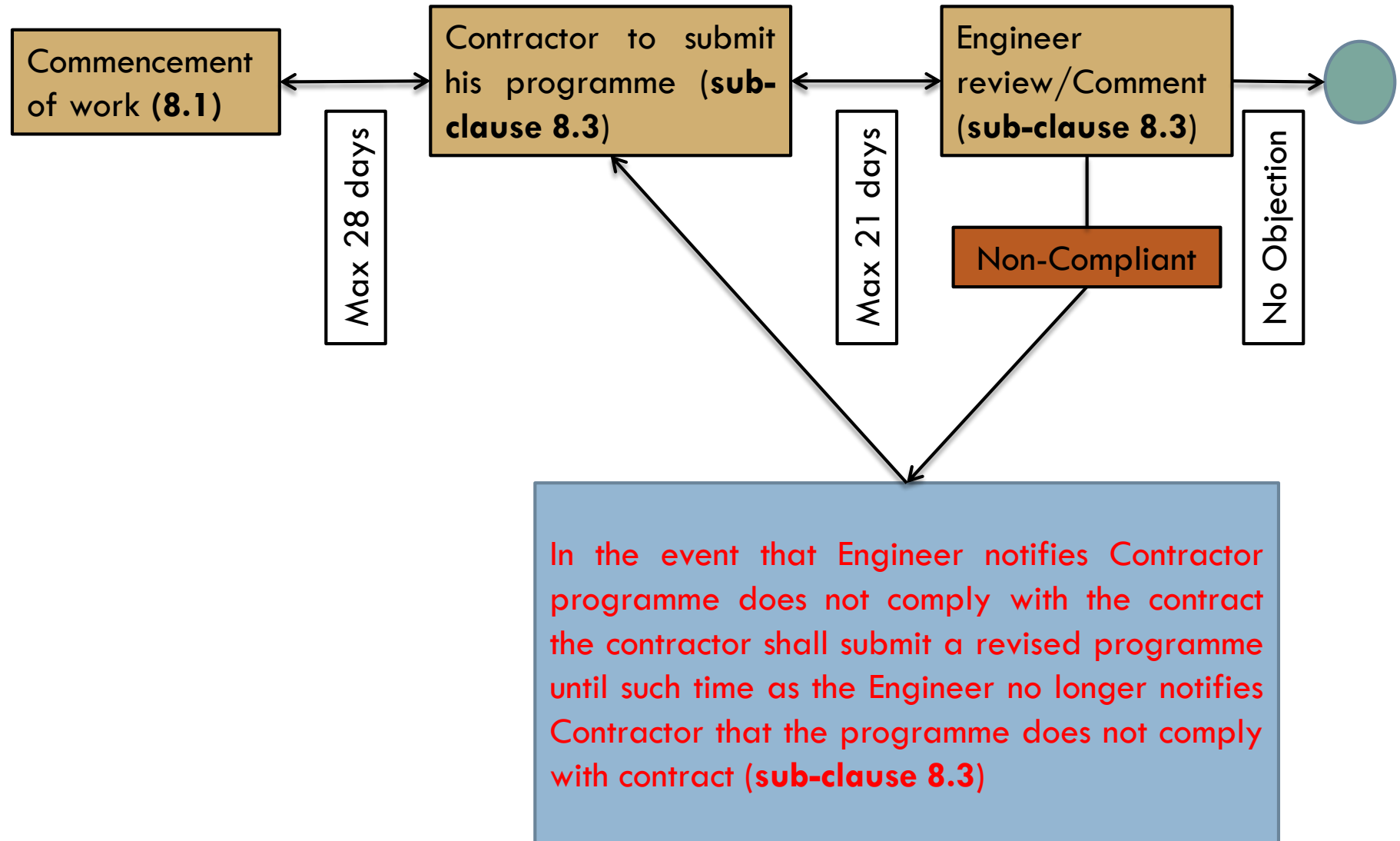
The Engineer shall give the Contractor not less than 7 days notice of commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance.

8.2 Time for Completion

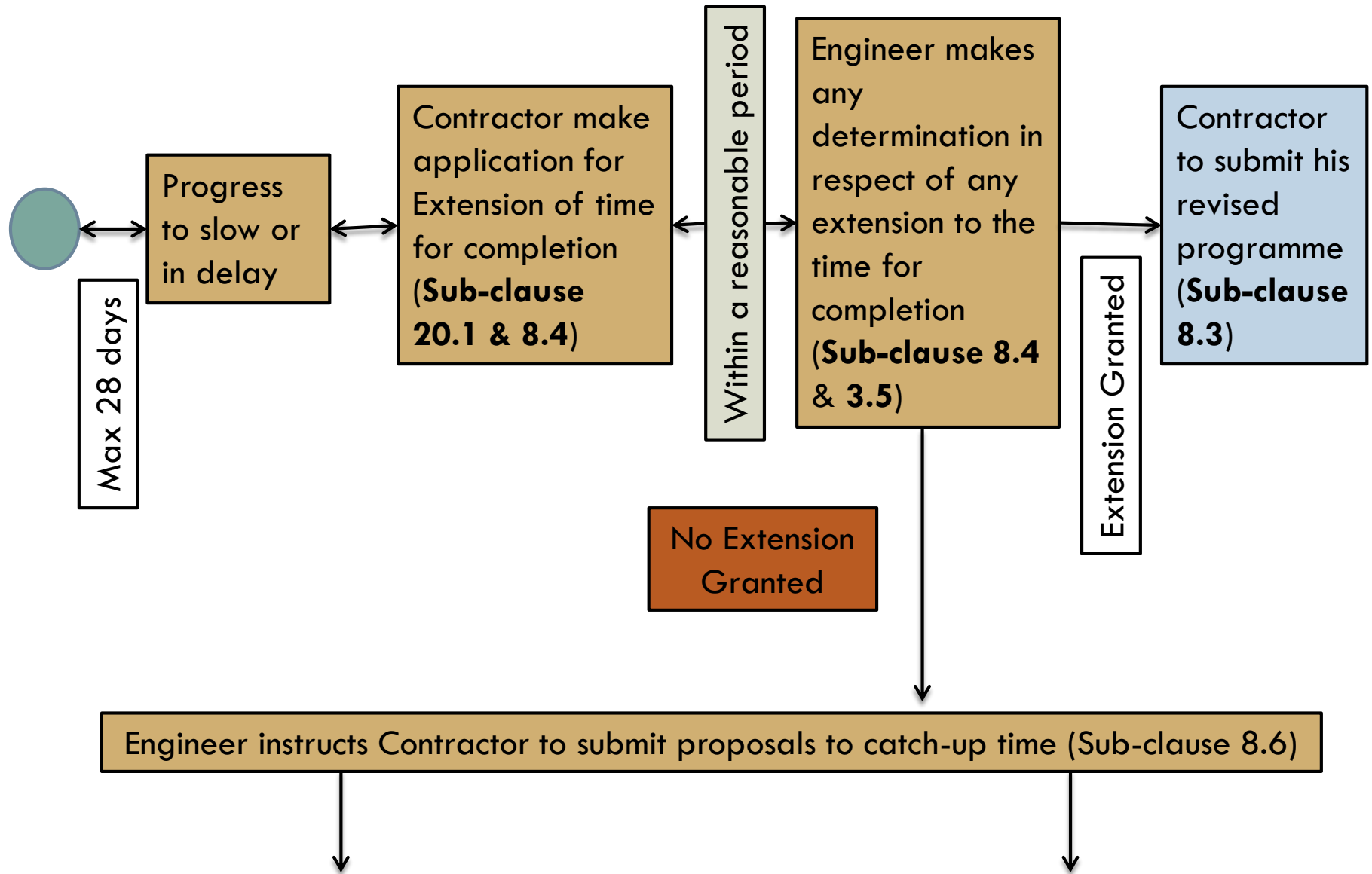
The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

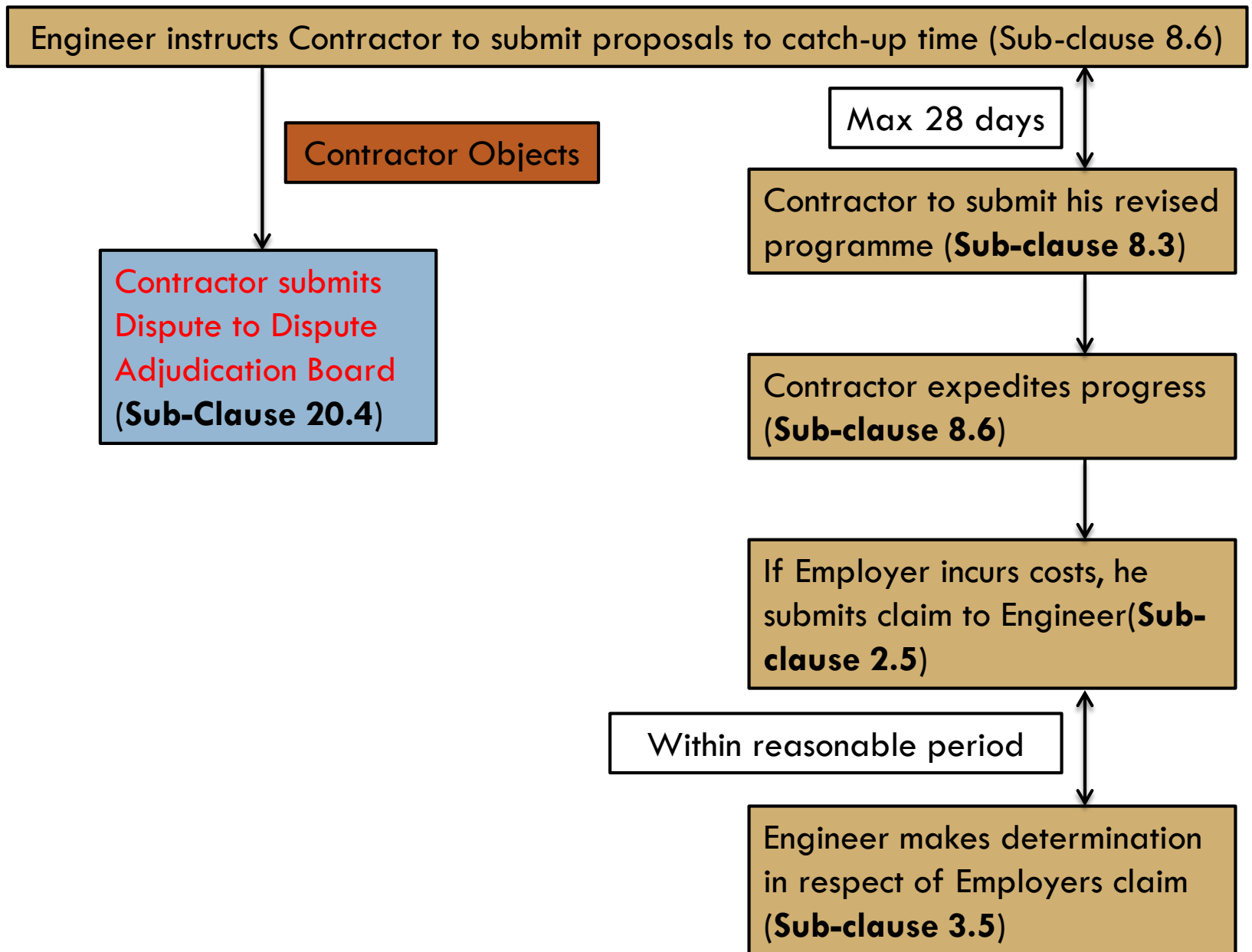
- a) achieving the passing of the Tests on Completion, and
- b) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*]

FIDIC RED BOOK 1999 – PROCEDURES FOR PROGRESS MANAGEMENT



FIDIC RED BOOK 1999 – PROCEDURES FOR PROGRESS MANAGEMENT





8.4 Extension of Time

- a) a **Variation** (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*]) or other substantial change in the quantity of an item of work included in the Contract.
- b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions.
- c) **exceptionally adverse climatic conditions.**
- d) **unforeseeable shortages in the availability of personnel or Goods** caused by epidemic or governmental actions, or
- e) **any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors** on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under **Sub-Clause 20.1**, **the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.**



8.5 Delay by Statutory Authorities

- a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country.
- b) these authorities delay or disrupt the Contractor's work, and
- c) the delay or disruption was Unforeseeable.

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-clause 8.4 [Extension of Time for Completion]

8.7 Delay damages

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claim*] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Appendix to Tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause **shall not exceed the maximum amount of delay** damages (if any) stated in the Appendix to Tender.

Local law has different provisions regarding Liquidated damages!

8.8 Suspension

Sub-clause 8.8 deals with suspension of works. Under this clause the Engineer may instruct the Contractor to suspend progress of part or all the works. Where due to such suspension the Contractor suffers delay/cost, the Contractor will be entitled to reimbursement and/or extension of time. Sub-Clause 8.11 sets out the Contractor's rights where such suspension remains in force for more than 84 days.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than **84 days**, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within **28 days** after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [*variations and Adjustments*] of the affected part of the Works. If the **suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].**

Tests on Completion

Contractor to give not less than 21 days notices.

Tests on Completion within 14 days after this (stipulated) date.

If passed, Contractor shall submit a certified report to Engineer.

If tests are delayed by Contractor, Engineer to give 21 days notice

If Contractor fails, Engineer to proceed with tests at Contractor's cost

If tests fail, retests (9.3).

Failing on Completion, Employer is entitled to carry out by others at Contractor's cost.

Alternatively, issue TOC and reduce Contract Price.

Employer Taking Over

Employer is obligated to take over the works, when:

- Works have been completed as per Contract
- TOC is issued or deemed to have been issued by Engineer

On Contractor's notice seeking TOC, the Engineer:

- Must inspect and issue TOC within 28 days if works are complete
- If rejected, Contractor to remedy the defects and re-apply

If Engineer fails to either issue TOC or reject Contractor's application within 28 days, TOC shall be deemed to have been issued on the last day of the notice period

Employer's interference on Tests on Completion (10.3)

- If Contractor is prevented for more than 14 days from carrying out tests by a cause for which Employer is responsible, the Works shall be deemed to have been taken over.
- Engineer to issue TOC
- Contractor to complete Tests on Completion before expiry of DLP

If Contractor is delayed in completing the above tests he is entitled for additional time and cost with PROFIT

Defects Liability (Clause 11)

- Contractor responsible to remedy the defects notified during DLP
- Employer is entitled to extend DNP if the defects are major and he could not use the facility
- However, DNP should not exceed 2 years.
- Failure by Contractor to remedy defects will give right to Employer to use others and in such case, Contract price will be reduced.
- Engineer to issue Performance Certificate within 28 days of expiry of DNP

Contract Price

In accordance with Sub-Clause 14.1, unless otherwise stated in the Particular Conditions:

- The Contract price shall be agreed or determined (Sub-Clause 12.3);
- The Contractor shall pay all taxes, duties and fees required;
- Estimated quantities are not to be taken as the actual and correct;
- The Contractor shall submit to the Engineer a proposed breakdown of each lump sum price in the Schedules.

Payment Procedure and Retention Money

Advance Payment (Sub-Clause 14.2)

- Employer shall make advance payment as an interest free loan for mobilization and cash-flow support.
- Re-payment installments set out in Contract Data.
- Engineer issue Interim Payment Certificates.
- The Contractor to issue Advance Payment Bond.

Within 56 days of receipt of the application Statement by the Engineer the Employer shall pay the amount certified.

Payment (Sub-Clause 14.7)

The Employer shall pay to the Contractor:

- The first installment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents, whichever is later;
- The amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents or at a time when the Bank's loan or credit is suspended, the amount shown on any statement submitted by the contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor;

Application for Interim Payment Certificate (Sub-Clause 14.3)

- Contractor submits on a monthly basis a Statement showing the amounts to which he considers himself entitled plus supporting documents, showing:
- Estimated contract value up to the end of the month, including Variations;
- Amounts added or deducted for changes in legislation and changes in cost;
- Amounts deducted for retention;
- Amounts added or deducted for advance payment;
- Amounts added or deducted for Plant and Materials;
- Any other additions/deductions which may have become due (including Claims);
- Deductions of amounts certified in previous payments.

Issue of Interim Payment Certificate (Sub-Clause 14.6)

- No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, within 28 days of the application, the Engineer shall deliver Interim Payment Certificate to the Employer and Contractor, stating the amount to which the Engineer fairly determines to be due together with supporting particulars for any reduction or withholding made by the Engineer.
- The Engineer to make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

Late Payment

In case payment is delayed, the Contractor in these circumstances is allowed to rely upon any rights to suspend the works or terminate the contract (Sub-Clause 16.1 and 16.2).

According to Sub-Clause 16.1 the Contractor may suspend work or reduce the rate of work unless he has received payment. A further remedy is ruled by Sub-Clause 16.2 according to which the Contractor is entitled to terminate the Contract in the event of sustainable non payment.

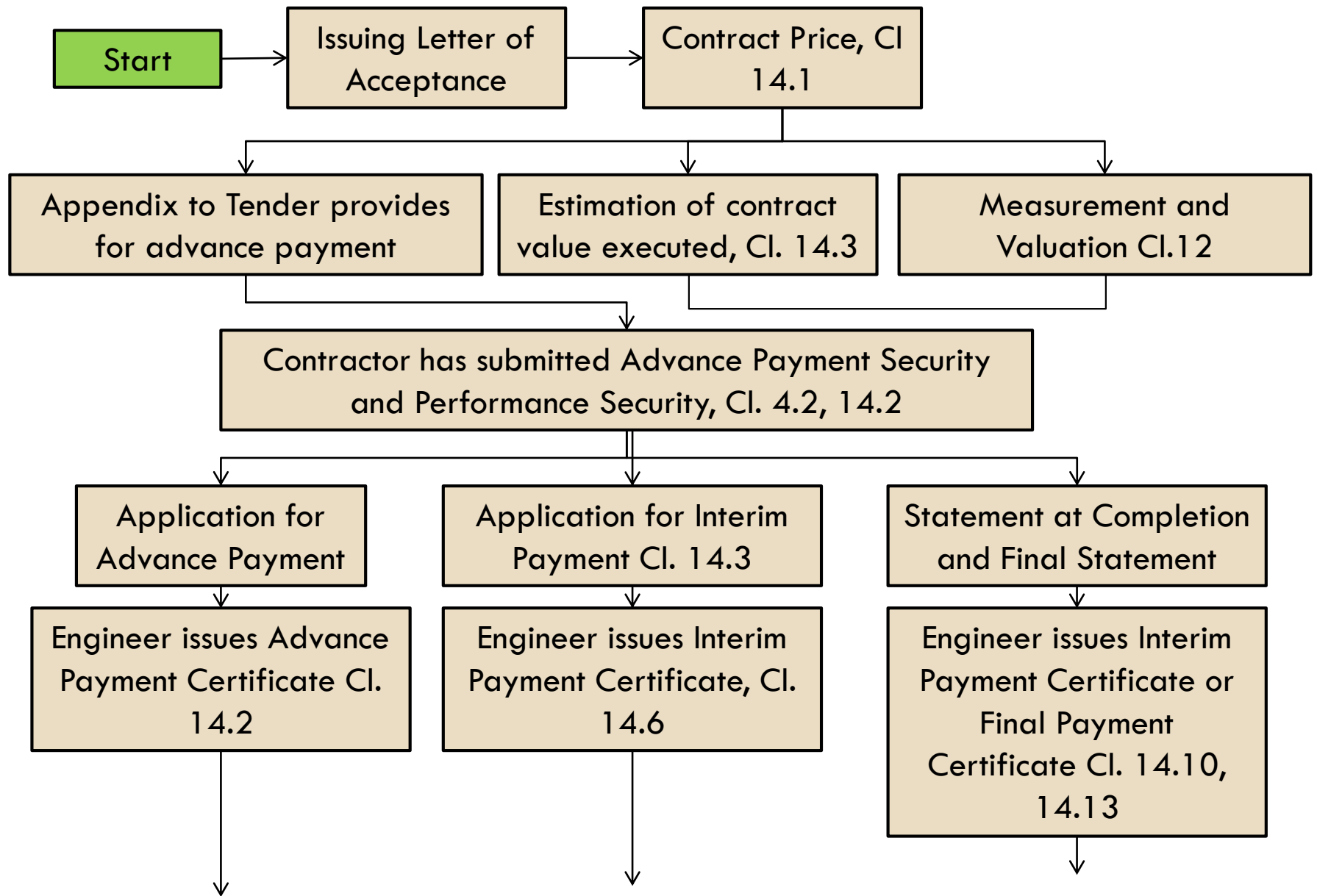
Additionally the Contractor may claim for financial charges (Sub-Clause 14.8), Time extension (Sub-Clause 16.1) and finally cost plus reasonable profit (Sub-Clause 16.1).

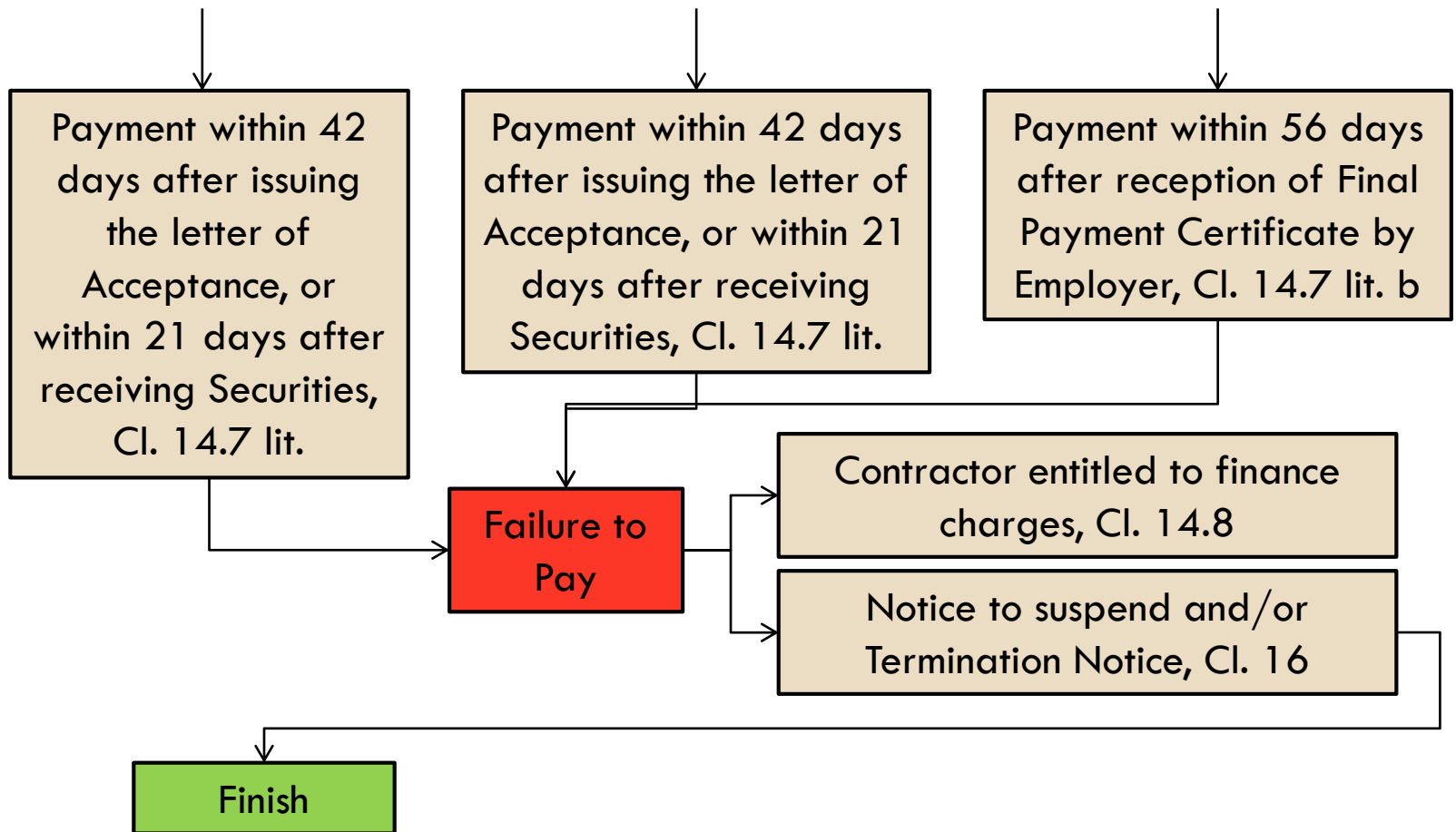
Payment of Retention Money (Sub-Clause 14.3 (C) and 14.9)

Sub-Clause 14.3 and 14.9 of the General Conditions provide for the Engineer to deduct retention monies at the rate stated in the Appendix to Tender from interim payments;

- One half of those retention monies to be released on taking-over; and
- The Balance to be promptly released following the expiry of the Defects Notification Period.

The Parties may wish to add a clause by which the Contractor elects the option to provide a retention bond in lieu of the retention monies.





TERMINATION



3 Critical Subject on Termination:

- Termination by Employer;
- Suspension and Termination by Contractor;
- Payment on Termination;



The most common way by which a contract is ended is by the performance by the parties of their respective obligations under the contract.

However there are circumstances in which a contract must be brought to an end before the respective obligations are discharged.

Various grounds to give a termination notice may exist, such as:

Substantial Breach of Contract, such as:

- Refusal to perform.
- Prohibited activity is required.
- Poor performance.
- Delayed performance.
- Failure to comply with material contract term/condition.
- Abandonment of work.

Employer Termination (Clause 15)

Employer may terminate the contract on the grounds that the Contractor has defaulted in performing his obligations under the contract:

- Sub-contracting the whole of the Works;
- Insolvency of the Contractor;
- Failure of the Contractor to remedy a defect that he has been notified of among other ground

Usually under a termination for Contractor's default:

- The Employer is not liable for the Contractor's cost on undelivered work; and
- Is entitled to the repayment of advance and progress payments, if any, applicable to undelivered work.
- The Employer may elect to require the Contractor to transfer title and deliver to the Employer completed supplies and manufacturing materials, as directed by the Engineer.

it is common practice that the Employer shall pay the Contractor the contract price for any completed works.

Suspension by the Contractor (Clause 16)

Sub-Clause 16 deals with the situation whereby the Contractor becomes entitled to suspend the work if:

- The Engineer fails to issue interim payment certificates in accordance with Sub-Clause 14.6;
- If the Employer fails to comply with Sub-Clause 2.4 'Employer's Financial Arrangements'; or
- Sub-Clause 14.7 'payment'.

When terminating under this section the Contractor is entitled to payments for loss of profits and losses sustained as a result of the termination

Employer Termination

Clause 15 – Employer Termination

The Employer termination takes effect 14 days after the notice of intention to terminate has been issued to the Contractor but could be immediate were the Contractor has become bankrupt or was proofed by competent court for being involved in acts of bribery and corruption.

Suspension and Termination by the Contractor

Clause 16 – Suspension and Termination by the Contractor

The termination is to be operative after a 14 day notice of intention to terminate has been served on the Employer. It may however, be immediate in the case of bankruptcy or where a suspension of the works by the Employer has lasted for more than 84 days.

Payment on Termination

1) Payment on Employer Termination (Contractor's Default)

The Employer may:

- Withhold any further payments to the Contractor until the cost of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 (Valuation at Date of Termination).

After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor (if any).

1) Payment on Contractor Termination (Employer's default)

After a notice of termination under Sub-Clause 16.2 (Termination by Contractor) has taken effect, the Employer shall promptly:

- Return the Performance security to the Contractor;
- Pay the Contractor in accordance with Sub-Clause 19.6 (Optional Termination, Payment and Release), and
- **Pay the Contractor the amount of any loss of profit** or other loss or damage sustained by the Contractor as a result of this termination.

RISK AND RESPONSIBILITY



- Indemnities
- Contractor's Care of the Works
- Employer's Risks
- Consequences of Employer's Risks
- Limitation of Liability
- Contractor's All Risk Insurance

Indemnities (Sub-clause 17.1)

The Contractor shall indemnify and hold harmless the Employer against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and
- Damage to or loss of any property or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by the reason of the:
 - Contractor's design and execution;
 - Is attributable to any negligence, willful act or breach of the Contract.

Contractor's care of Works (Sub-Clause 17.2)

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking Over Certificate is issued.

On issuance of TOC, responsibility for the care of the Works shall pass to the Employer.

If Taking Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

Employer Indemnities

The Employer shall indemnify and hold harmless the Contractor, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of

- 1) Bodily Injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, and
- 2) the matters for which liability may be excluded from insurance cover.

Employer's Risk

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- d) munitions of war, explosive materials, ionising radiation or contamination by radio activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity.

- 
- e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
 - f) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

Consequences of Employer's Risk

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall be **promptly give notice to the Engineer** and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- a) **an extension of time for any such delay**, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]
- b) **payment of any such Cost**, which shall be included in the Contract Price, In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [*Employer's Risks*], reasonable profit on the Cost shall also be included.

Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 16.4 [*Payment on Termination*] and Sub-Clause 17.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*], Sub-Clause 17.1 [*Indemnities*] and Shall not exceed the sum stated in the Particular Conditions or (if a sum is not so stated) the Accepted Contract Amount. Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*],

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

Insurance

Insurance cover is only available for insurable risk, which is a risk depending on fortuity, which means that **the event or circumstance has to be sudden and accidental** and that comprehensive data for the purposes of premium calculation do exist.

Obviously some of the risk which is inherent to a construction contract does not depend on fortuity. It is then not insurable. Examples: Differing ground conditions (4.12) and unusual climate conditions (8.4)

Insurance Coverable by Contractor

- The Works under construction
- Materials for the project stored on-site and off-site
- Temporary structures (temporary Works)
- Hired plant and equipment
- Contractor's plant and equipment (although in some cases this is insured separately under Contractor's Constructional Plant insurance)
- Design by the Contractor to the extent specified in the Contract (see Sub-Clause 4.1)

Contractor's All Risk Insurance Policy

A “CAR” policy may be effected by the Employer or by the Contractor engaged for the work and can include all subcontractors.

A CAR policy typically covers loss or damage to property. Damage to the Works may include machinery and electrical plant.

Usually cover may be provided for the contract works (permanent and temporary works), construction plant, goods in transit and damage to employer's property.

Under FIDIC contracts the insurance cover shall be for not less than the full replacement value, including delivery to the Site.

A CAR Policy usually covers insurance interests for the loss or damage of a property while under construction and during the Defects notification period of the contract.

Cover can be extended to cover third party liability. It comprises an all-risk policy (subject to policy conditions). The insured items are those which are identified in the policy.



As a rule Works including material to be used in performing the contract, construction plant and equipment are covered against any unforeseen and sudden physical loss or damage from any cause not excluded.

The insured party is indemnified against all sums for which he is legally liable to pay as damages for accidental death or bodily injury to third parties or accidental damage to third party property arising out of performance of the contract.

Insurance General requirements:

- Either party can be an “Insuring Party”
- If Contractor is the Insuring Party, the terms of insurance must be approved by Employer
- If Employer is the Insuring Party, the terms shall be in accordance with Particular Conditions included in the Contract/ Tender

The Party responsible for Insurance shall provide:

- Evidence of insurance
- Copies of Policies
- Evidence of premium payments

CAR Policy standard exclusions

- ❑ War, hostilities, civil commotion, riot or strike
- ❑ Nuclear reaction, nuclear radiation or radioactive contamination
- ❑ Wilful, intentional, careless, fraudulent, criminal actions or omissions of the insured or their representatives
- ❑ Total or partial cessation of work
- ❑ Fault in design, materials, bad casting and bad workmanship

A typical CAR claim will be composed by three damage headings:

- ❑ Direct loss (the costs to repair)
- ❑ Prolongation costs to the employer; and
- ❑ The prolongation or extended general conditions costs to the contractor and subcontractors.

CLAIMS AND DISPUTE RESOLUTIONS UNDER FIDIC

Contractor's Claims (Sub-Clause 20.1)

- This clause is a 'procedural' clause not an 'entitlement' clause.
- Entitlement derives from a Sub-Clause such as Sub-Clause 2.1: "if the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to sub-clause 20.1 to:...."
- Thus, it seems clear that notice has to be given under Sub-Clause 2.1 (Right of Access to the Site) and the claim has to be submitted in accordance with the procedures set out in Sub-Clause 20.1.

Contractor's Actions:

- If Contractor consider himself to be entitled to any extension to the Time for Completion and/or any additional payment he shall give notice to the Engineer describing the event or circumstance giving rise to the claim.
- The notice shall be given as soon as practicable and not later than 28 days after the Contractor became aware or should have become aware of the event or circumstance.
- Failure to comply with the 28 days notice will discharge the Employer from any liability in connection with the claim.
- The Contractor shall also submit any other notices required by the Contract and supporting particulars for the claim which are relevant to the event.
- The Contractor is to keep such contemporary record necessary to substantiate any claim. Records to be kept on Site or at a location acceptable to the Engineer. He shall permit the Engineer to inspect records at any time.
- Within 42 days of the 'Aware Date' or such other period proposed by the Contractor and accepted by the Engineer, the Contractor shall send to the Engineer a fully detailed claim.
- This claim shall include full supporting particulars of the basis of the claim, of the extension of time and/or additional payment claimed.
- If the event has a continuing effect, the fully detailed claim shall be considered as interim; the Contractor shall send further interim claim monthly and particulars as the Engineer requires; send a final claim 28 days after the end of the effect of the event.

Engineer's Actions:

- After receipt of 'Notice' the Engineer may monitor record keeping and/or instruct Contractor to keep further contemporary records.
- Within 42 days after receipt of fully detailed claim or any further particulars supporting a previous claim the Engineer responds with approval or disapproval and detailed comments on the principles of the claim. He may also request any necessary further particulars on the claim.
- He shall include in any Payment Certificate amounts reasonably substantiated, but only that part.
- The Engineer then proceeds in accordance with determination to agree or determine. Under the Pink Book, Engineer acts under Sub-Clause 3.5 (Determination) during the 42 days to approve or disapprove the claim.
- The extension of the Time for Completion and/or the additional payment to which the Contractor is entitled.
- Note that the requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim.
- If the Contractor fails to comply with any Sub-Clause in relation to a claim the Engineer takes into account the extent to which the failure has prevented/prejudiced the proper investigation of the claim.

CONTRACTOR'S CLAIM FOR TIME

Reason :

to relieve Contractor of Delay Damages

- Entitlement: Extension of Time for a delay if completion for the purposes of Sub-Clause 10.1 (Taking Over of the Works and Sections) is or will be delayed for a cause listed in Sub-Clause 8.4 (Extension of Time for Completion).

Action:

- Contractor to give notice to the Engineer under Sub-Clause 20.1 (Claims, Disputes and Arbitration)
- Engineer to review previous determinations and may increase.

Causes:

- A variation (unless Extension of Time granted under Sub-Clause 13.3 Variation Procedure)
- A cause under any Sub-Clause giving an entitlement eg. Sub-Clause 2.1 (Right of Access to the Site)
- Exceptionally climatic conditions
- Unforeseeable shortages in availability of personnel or Goods caused by epidemic or governmental actions
- Any delay, impediment or prevention caused by or attributable to the Employer, Employer's personnel or Employers other contractors on the Site

Prolongation

- Definition:
 - a. Lengthen; carry on; continue; delay; drag out; draw out; extend; make longer; perpetuate; protract; spin out; and stretch.
 - b. The extended duration of the works during which costs are incurred as a result of a delay.
- Responsibility: from 'Definition' – could be either Party.
- Entitlement: Derives from the Contract Terms but this time relates to 'Cost'
- Analysis: Delay analysis using Program eg “impacted as planned”; “as-planned vs as-built”; “collapsed as-built”; “windows analysis”; “time impact”; or “time slice”.
- Proof: burden of proof on the party who alleges.

Disruption

- Definition:
 - a. Disturbance, confusion, disarray, disorder, interference, interruption; and stoppage
 - b. Disturbance, hindrance or interruption of a Contractor's normal works progress, resulting in lower efficiency or productivity than would otherwise be achieved.
Disruption does not necessarily result in a delay to progress or delay to completion
- Entitlement: Derives from the Contract Terms but relates to 'Cost'

Procedure for Contractor's Claim for Time

- Contractor required to give notice under Sub-Clause 20.1 (Claims, Disputes and Arbitration) – but suggest reference is made to Extension of Time for Completion is or will be delayed.
- Any extension must be calculated by reference to the delay in completion.
- Notice must be given within 28 days of becoming aware (or should have become aware) describing the event giving rise to the claim. Any other required must be given as a notice.
- Contractor to keep contemporary records; to submit detailed interim claims for events having a continuing effect; submit a final detailed claim; and deal with responses from the Engineer such as further and better particulars.
- Failure by the Contractor to adhere to requirements may have dire consequences eg the Time Bar.

CONTRACTOR CLAIM FOR MONEY

Additional Payment

- Payment is only made for the Cost of delay. The delay is due to a cause.
- Cause giving rise to payment are found in a Sub-Clause eg Sub-Clause 2.1
- Time and Money are separate issues, to be dealt with separately, as:
 - a. “if the Contractor suffers delay”, and/or
 - b. “Incurs Cost as a result of a failure of...”
 - c. “...the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1, to an extension of time for any such delay if completion is or will be delayed, and payment of any such cost (plus profit where stated)”

Cost is defined (Sub-Clause 1.1.4.3) as all expenditure reasonably incurred (or to be incurred), whether on or off the Site, including overhead and similar charges, but does not include profit.

DISPUTES BOARDS

What is Dispute Boards?

- In FIDIC, Dispute Resolution is found in Sub-Clause 20.2 to 20.8 (Red, Yellow, Silver & Pink Book) and in Sub-Clause 20.3 to 20.11 (Gold Book).
- 'Dispute Board' is a generic term describing a variety of different arrangements whereby Parties contract jointly to appoint one or more independent and impartial persons to act in some form of dispute resolution capacity.
- A dispute board is a tribunal established to endeavour to avoid or resolve any disputes which may arise between the Parties.
- Dispute Boards are not arbitral tribunals and their determinations are not enforceable like arbitral awards.
- A dispute board becomes a part of the project administration and can therefore influence, during the contract period, the performance of the contracting parties.

Types of Board:

Types of Board:

- DAB – Standing Board (Red and Gold Book)
- DAB – Ad Hoc Board (Yellow and Silver Book)
- DB – Standing Board (Pink Book)
- DRB – Bespok
- CDB – ICC Rules

Dispute Adjudication Agreement

- Tri-partite Agreement
- Language
- Member Warranties
- General Obligations of the Member, Employer and Contractor.

What Governs a Dispute Board?

Procedural Rules:

- Act fairly and impartially
- Adopt procedural rules suitable to the dispute avoiding unnecessary delay or expense
- Monitor progress report against project documents
- Site Visits

Advisory Opinions:

- a. Requested by both parties by agreement
- b. Only obtainable from a 'standing board'
- c. Not binding on either party
- d. Useful when given prior to a determination

Recommendations:

- Request unilaterally
- Not binding
- Dispute Board gives a recommendation only in the form of a decision – non-binding
- Dispute Board can give a recommendation in the first instance but may give a decision if asked to do so by one party – ICC Rules

Decisions

- a) Parties empower the Dispute Board
- b) The Dispute Board to proceed in accordance with Sub-Clause 20.4 and shall:
- c) Act fairly and impartially between the Parties giving each a reasonable opportunity to put his case and respond to the other party
- d) Adopt procedures suitable to the dispute, avoiding unnecessary delay and expense
- e) The Dispute Board may conduct hearing on the dispute and adopt an inquisitorial procedure; refuse admission; and to proceed 'ex-parte'
- f) Parties empower the Dispute Board to establish the procedure to be applied; decide on the Dispute Board's jurisdiction and as to the scope of any dispute referred to it; conduct any hearing as it thinks fit; take the initiative in ascertaining the facts and matters required for a decision; make use of its own specialist knowledge; decide upon the payment of any finance charges in accordance with the Contract; decide upon any provisional relief; open up, review, and revise any certificate, decision, determination, instruction, opinion or valuation of the CA, relevant to the dispute.

Dispute Adjudication Boards vs Arbitration

Arbitration

- The Arbitrators first have to be selected and appointed.
- The panel has to be available and become familiar with both the project and the matters in dispute
- Arbitrators are appointed to deal with existing disputes when they cannot be resolved at project level
- The arbitration process tends to be a drawn out and lengthy procedure.

Dispute Adjudication Boards

- Standing DABs are appointed at the beginning of the project.
- The DAB is familiar with the project and the parties.
- Part of the DABs obligation is to advise the parties and facilitate agreement and consequently to avoid disputes occurring in the first place
- If a dispute does occur, the DAB is obliged to provide a decision within 84 days
- The whole concept of DABs is that disputes are settled quickly by industry experts.

Dispute & Claim Avoidance

- a. During contract drafting/negotiations avoid where possible or minimize changes to standard conditions and specifications.
- b. Ensure that at commencement of a project that a proper handover meeting is convened between the tender/procurement function and the operations functions to fully describe the contract details and tendering philosophy
- c. Ensure that all staff and the parties to a contract are fully briefed on the requirements and obligations of each participant in the contract documentation.
- d. Provide training where required to ensure compliance with the contract conditions and where appropriate, the policies and procedures of the employer
- e. Ensure that the authority to carry out actions under the contract are properly delegated in writing and that all parties are made aware of such delegations.
- f. Ensure that each party carries out its obligations and duties in accordance with any required timescales. Prepare matrix of time related matters to act as check list.

- g. Ensure that peer review, senior advice facilities and external resources, if appropriate, are available to provide guidance and advice.
- h. Ensure that any programs or schedules required to be submitted are reviewed or approved as required by the contract and fully understood by the parties. Any uncertainty or doubts as to the feasibility should be raised and addressed as early as possible without directing or instructing change to the program
- i. Ensure that the project risk register is established at commencement, risks are identified and monitored on a regular basis with a view of eliminating or reducing the impact of as many as possible at the earliest date.
- j. Carry out constructability reviews to try to eliminate the need of change.
- k. Ensure that progress monitoring is adequate, properly maintains and that efficient tracking systems are in place from commencement of the project.
- l. Minimize wherever possible changes to the works and ensure that all changes are properly recorded and tracked. When changes or variations do arise they should be dealt with promptly and in a fair manner to avoid disputes and claims arising.

- m. Maintain good working relationship. Ensure that all members of the team have regular meetings to review and discuss potential claims in order to determine if alternatives strategies are available to be implemented.
- n. Maintain a professional approach to all communications with the other parties. At no time should issues become personal and personal references must not be made in any communications.
- o. Maintain open and transparent communications with the other parties while understanding the potential risks from the use of loose language.
- p. Establish a clear understanding with the parties as to what records are required to be kept to substantiate and potential claim.
- q. Do not try to interpret contract language – it says what it says – and always deal with the facts and not assumptions.
- r. Whenever any notice of claim is received action should be taken, where appropriate, to determine if such an event or issue has occurred, the merit of the issue and if it is possible for an alternative course of action to be taken to avoid or minimize the impact of the subject of the claim.

On receipt of a notice of claim issue which cannot be avoided create a claim file and establish who is responsible for tracking the issue through to finalization.

Dispute Resolution

First, Engineer makes a determination. The determination is to be complied with. Second, Either party may submit a dispute to DAB; resolution within 84 days; notice of dissatisfaction (NoD) to be given within 28 days; attempt to settle by Amicable Settlement; Binding and final if no NoD.

Amicable Settlement

- Parties choose procedure, such as direct negotiation; conciliation; mediation; or any other form of alternative dispute resolution.
- DAB should not become involved with amicable settlement at any time.

Arbitration

Should amicable settlement fail and a NoD has been given, and where a DAB decision has not become final and binding then either party may refer the dispute to Arbitration.

CONCLUSION

Tips while using FIDIC contract forms (for Contractors):

- Do a thorough 'risk assessment' before entering into the contract;
- Review all contract clauses carefully, even if the Contractor have worked with the same client before;
- Ensure the ambiguities in the Specification and drawings are queried during the Tender process;
- Involve specialists of the Contractors as early as possible in order to understand their concerns and get them resolved;