

# FIDIC's New Suite of Standard Forms of Contract

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FIDIC has long been renowned for its Standard forms of contract for use between employers and contractors on international construction projects, in particular:

- Conditions of Contract for Works of Civil Engineering Construction  
*The Red Book* (1984)
- Conditions of Contract for Electrical and Mechanical Works including Erection on Site  
*The Yellow Book* (1987)
- Conditions of Contract for Design-Build and Turnkey  
*The Orange Book* (1995)

During its current work in updating the Red and Yellow Books, FIDIC has noted that certain projects have fallen outside the scope of the existing Books. Accordingly FIDIC has not only updated the Standard forms but has expanded the range, and has" in September 1999 - published a suite of four new Standard Forms of Contract which are suitable for the great majority of construction and plant Installation projects around the world.

## Which FIDIC contract should I use?

Answer the following questions:

1. Is the Project of relatively small value, short construction time or involving simple or repetitive work?

If the price for the contract is relatively small, say under US\$ 500,000. or the construction time is short, say less than 6 months, or the work involved is relatively simple or repetitive - dredging work might be a good example:

then consider using the Short Form of Contract, which is a completely new FIDIC Book specially prepared for such projects.

- it doesn't matter whether the design is provided by the Employer (or his Engineer/Architect if he has one) or by the Contractor,
- and it doesn't matter whether the project involves construction, electrical, mechanical, or other engineering work.

For larger or more complex projects:

2. Is the Employer (or the Engineer) going to do most of the design?

As in traditional projects, e.g. infrastructure, buildings, hydropower, etc., the Employer did nearly all the design (per-

This new suite comprises:

- Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer  
*The Construction Contract*
- Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor  
*The Plant Contract*
- Conditions of Contract for EPC/Turnkey Projects  
*The EPC Contract*
- Short Form of Contract  
*The Short Form*

The Books in the new suite are all marked "First Edition 1999" and are not to be regarded as direct Updates of the existing Books. The existing Books will still be available as long as there is a demand, but it is expected that the new suite will supercede and expand the range of the existing Books.

haps not construction details, reinforcement, etc.) - *The Red Book*,

- and the Engineer administered the Contract, monitored the construction work and certified payment
- and the Employer was kept fully informed, could make variations, etc
- and with payment according to bills of quantities or lump sums for approved work done.

(If this is what you want - choose the Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (*The Construction Contract*), which effectively updates and supercedes the existing Red Book from 1987.

3. Is the Contractor going to do most of the design?

As in traditional projects, e.g. electrical and mechanical works, including erection on site (*The Yellow Book*) the Contractor (or Supplier) did the majority of the design, e.g. the detail design of the plant or equipment, so that the plant met the outline or performance specification prepared by the Employer,

- and in the relatively more recent design-build and turnkey type projects the Contractor also did the majority of the design, not only of plant projects but also of various infrastructure and other types of proj-

ects, and the project was required to fulfil the "Employer's Requirements", i.e., an outline or performance specification prepared by the Employer (*The Orange Book*),

- and the Engineer (Employer's Representative in the Orange Book) administered the Contract, monitored the manufacture and erection on site or construction work and certified payment.
- and with payment according to achieved milestones generally on a lump sum basis.

If this is what you want, choose the Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor (*The Plant Contract*) which effectively Updates and supercedes both the existing Yellow Book from 1987 as well as the the Orange Book from 1995.

4. Is it a Privately Financed (or Public/Private Financed) Project of BOT or similar type where the Concessionaire takes total responsibility for the financing, construction and operation of the Project?

Then the Concessionaire (the "Employer") probably requires to have a contract with the construction Contractor, i.e., an EPC (Engineer, Procure, Construct) Contract, where the Contractor takes total responsibility for the design and construction of the infrastructure or other facility, and where there is a higher degree of certainty that the agreed contract price and time will not be exceeded

- and the Employer does not wish to be involved in the day-to-day progress of the work, provided the end result meets the performance criteria he has specified
- and the parties concerned (o.g., Sponsors, lenders and the Employer) are willing to see the Contractor, paid more for the construction of the Project in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (*The EPC Contract*) - a completely new FIDIC Book suitable for this purpose.

4. Is it a Process Plant or a Power Plant (or a factory or similar) where the Employer - who provides the finance - wishes to implement the Project on a Fixed-Price Turnkey Basis?

Then the Employer wishes the Contractor to take total responsibility for the design and construction of the process or power facility and hand it over ready to operate "at the turn of a key",

- and the Employer wishes a higher degree of certainty that the agreed contract price and time will not be exceeded
- and the Employer wishes - or is used to - the Project being organised on a strictly two party approach, i.e. without an "Engineer" being involved
- and the Employer does not wish to be involved in the day-to-day progress of the construction work, provided the end result meets the performance criteria he has specified
- and the Employer is willing to pay more for the con

struction of his Project (than would be the case if the Conditions of Contract for Plant and Design-Build were used) in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (*The EPC Contract*).

6. Is it an Infrastructure Project (e.g., road, rail link, bridge, water or sewage treatment plant, transmission line, even dam or hydropower plant) or similar where the Employer - who provides the finance - wishes to implement the Project on a Fixed-Price Turnkey Basis?

Then the Employer wishes the Contractor to take total responsibility for the design and construction of the infrastructure facility,

- and the Employer wishes a higher degree of certainty that the agreed contract price and time will not be exceeded, except that if underground works in uncertain or difficult ground conditions are likely then the risk of unforeseen ground conditions should be borne by the Employer (*and the provisions of the Plant and Design-Build Conditions in this respect - Sub'Clause 4.12 - would be appropriate*),
- and the Employer wishes - or is used to - the Project being organised on a strictly two party approach, i.e. without an "Engineer" being involved
- and the Employer does not wish to be involved in the day-to-day progress of the construction work, provided the end result meets the performance criteria he has specified,
- and the Employer is willing to pay more for the construction of his Project (than would be the case if the Conditions of Contract for Plant and Design-Build were used) in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

If this is what is wanted - choose the Conditions of Contract for EPC/Turnkey Projects (*The EPC Contract*).

7. Is it a Building Project where the Employer wishes to have his building(s) constructed on a Fixed-Price Turnkey Basis generally complete with all furniture, fittings and equipment?

As for 6 above

In the case of a building or building development Project, the Employer or his Architect may have done some or most of the design, but - with suitable modification regarding design responsibility - the Conditions of Contract for EPC/Turnkey Projects (*The EPC Contract*) may be chosen.

Is it a Reconstruction or Refurbishment or another type of Project?

Check Questions 1,2 and 3 above or Questions 4 - 7 if applicable, and make your choice accordingly.