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FIDIC 2017 (RED BOOK)

A BRIEF OVERVIEW AND COMPARISON WITH FIDIC 1999

PETER ATKINSON

Partner HKA

E: peteratkinson@hka.com

INTRODUCTION – HEADLINE CHANGES

(ACCORDING TO FIDIC)

“Greater detail and clarity on the requirements for notices and other communications

Provisions to address Employer’s and Contractor’s claims treated equally and separated from disputes

Mechanisms for dispute avoidance

Detailed provisions for quality management and verification of Contractor’s contractual compliance.”

In addition it recognises

“that many Employers, especially governmental agencies, may require special conditions of contract, or particular procedures, which differ from those included in the in the General Conditions.”

INTRODUCTION – PRACTICAL IMPLICATIONS

Looking at some areas of change from 1999 edition that have a potential implication on how the contract is administered and how risk is considered.

- Programme/Time
- Contract Price / Variations / Claims / Interim and Final Account
- Termination
- Contract Administration generally

PRACTICAL IMPLICATIONS

PROGRAMME / TIME

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Programme issues	8.3	Form not mentioned for preparation and submission, 4 requirements of programme, no deemed acceptance provision	8.3	To be prepared using programme software (in Spec or acceptable to Eng), to be submitted in paper and electronic format, 12 requirements of programme plus method statement, deemed accepted by Eng if no NONO, change does not relieve Contractor of obligation to give Notice.
Advance warning	8.3	Contractor to give notice	8.4	Both parties under obligation to give advance warning for future events/circumstances which may affect Contractor personnel, performance of Works when completed, increase in Contract Price, delay to the Works
Concurrent delay	-	Not stated	8.5	If Owner delay concurrent with Contractor delay, entitled to be assessed in accordance with SP (default – as appropriate)
<u>EoT</u>				
Adverse climatic conditions	8.4(c)	No detail	8.5(c)	Now referenced back to Site Data from Owner and/or published data
Unforeseeable shortages	8.4(d)	Not mentioned	8.5(d)	Employer supplied materials now included
Utility delays	8.5	Public authorities only	8.6	Private utility services now included
Access route	4.15	No mention of change	4.15	Changes in access route (non-suitability/non-availability) now grounds for EOT
Increase in quantities	12.3(a)	New rate only	8.5	Entitlement to EoT if +10%, although reduction to be taken into account.

PRACTICAL IMPLICATIONS

CONTRACT PRICE / VALUATION

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Cost plus profit	Various	Cost plus reasonable profit (Guidance notes example suggests 5%)	1.1.20	Cost plus Profit, default now 5% profit unless otherwise stated in Contract Data
Access route	4.15	No mention of change	4.15	Changes in access route (non-suitability/non-availability) now grounds for additional cost (but not profit)
Advance warning	8.3	Contractor to give notice	8.4	Both parties under obligation to give advance warning for future events/circumstances which may affect Contractors personnel, performance of Works when completed, increase in Contract Price , delay to the Works
Works to be measured	12.1	Site measure- reasonable notice only, no agreement. Record measure-signed agreement	12.1	Site measure and records - Eng to give Notice < 7 days with part, date and place. Endeavour to agree. Contractor non attendance – deemed. Now Notice of disagreement and goes to Eng Determination. Provisional for IPC
Evaluation/Valuation	12.3	Evaluation. New rate requirement “or” No mention of unpriced items New rates, cost + reasonable profit	12.3	Valuation. New rate requirement “and/or” Unpriced items deemed included in other rates/prices New rates, cost + 5% profit Notice of disagreement and goes to Eng Determination. No deemed acceptance.
Omissions	12.4	Omission with no agreed effect goes to Eng for determination	12.4	Omission with no agreed effect goes to Variation by Instruction procedure. Contractor entitled to loss of profit (Cl 13.3.1 (c))

PRACTICAL IMPLICATIONS

VARIATIONS / INTERIM ACCOUNTS

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Variation Procedure	13.3	1. Eng requests proposed variation If can comply, contractor provides info as soon as practicable. Eng responds, contractor continues to work. 2. Eng issues instruction for variation and evaluates under Clause 12	13.3.1	Variation by Instruction Eng issues Notice and Eng Instruction under Clause 3.5 Contractor to respond in 28 days, provides info on resource and methodology plus proposal for evaluation and supporting particulars, continues to work. Eng then proceeds to determine time and value
			13.3.2	Variation by Request for Proposal Before instruction request by Notice. Contractor responds as soon as practicable with proposal as 13.3.1 or why cannot comply Eng responds as soon as practicable by Notice, Contractor continues to work. If Eng consents then instruct variation and proceeds to determine time and value. If no consent, Contractor entitled to additional cost.
Interim Payment	14.3	Form approved by Eng plus supporting docs. 7 items to be included	14.3	Form acceptable to Eng and with sufficient detail for Eng to investigate 10 items to be included incl (new) provisional sums, retention release, utilities
Issue of Interim Payment Certs	14.6	CP just Performance Security No requirement for reasons to reduce application Specific reasons for correctio/ modification	14.6	Appointed Contractors Rep is also a CP Eng to issue IPC with detailed supporting particulars, including differences with application and reasons Corrections/modifications can be made if proper investigation of submission prevented by significant error or e discrepancy in submission or supporting docs. Details of correction/modification and reasons to be given

PRACTICAL IMPLICATIONS

FINAL ACCOUNTS

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Final Payment Cert/ Final Statement	14.11	Final Payment Certificate 6 copies of Final Statement with supporting docs, further info to be submitted as reasonably required, agreed Final statement. If dispute - referred to DAB	14.11	Final Statement Paper and electronic as required in CD, plus estimate of other amounts due on issue of Performance Certificate. Eng to issue Notice for further information, Final Statement and Partially Agreed Final Statement
Discharge	14.12	Effective on receipt of Performance Security and the outstanding balance	14.12	Also subject to payment due in respect of a dispute and/or Performance Security and outstanding balance. Deemed discharge if none submitted.
Issue of Final Statement /IFC	14.13		14.13	If Contractor has issued a Partially Agreed Final Statement or a draft Final Statement deemed by Eng to be a Partially Agreed Final Statement, Eng it issue an IPC

PRACTICAL IMPLICATIONS

TERMINATION

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Notice to Correct	15.2		15.2	Defines contents of the Notice incl Contractor's failure, contract provision and time to remedy. Contractor to respond with Notice describing measures to remedy
Termination by Employer (Contractor's Default)	15.2	May terminate on 14 days notice , immediate for insolvency or corruption. On termination Contractor to use best efforts to comply with reasonable Eng instructions	15.2.1	Notice of intention to terminate. Notice of Termination for insolvency, corruption or assignment Termination Notice triggers as before plus, fails to comply with Notice to Correct, Engineer's Determination, decision of DAAB, breach of delay damage cap
			15.2.2	If failure to remedy by Contractor, within 14 days of 15.2.1 Notice , Employer may issue Notice of Termination.
			15.2.3	Contractor to comply immediately with reasonable Eng instructions
Termination for Employer's convenience	15.5		15.5	Immediately after Notice , <ul style="list-style-type: none"> • Employer has no right to use Contractor's documents, unless paid for • No continued use of Contractor's equipment, temp works, etc • Employer to return Payment Security Contractor entitled loss of profit and other losses and damages
Termination by Contractor	16.2		16.2.1 and 16.2.2	Notice arrangement as 15.2. Reciprocal triggers Termination Notice triggers as before plus, fails to comply with Engineer's Determination, decision of DAAB, corruption, Contractor fails to receive Notice of Commencement Date within 84 days of LoA.

PRACTICAL IMPLICATIONS

CONTRACT ADMINISTRATION GENERALLY

DESCRIPTION	GC	FIDIC 1999	GC	FIDIC 2017
Notices	1.3	Many instances where notice required	1.1.56, 1.3	Significantly more Notices
Instruction	3.3	Oral instruction can be confirmed in writing	1.3, 3.5	No oral instructions and later confirmations
Progress Report	4.21	Not clearly stated	4.20	Progress report not a Notice
Key Personnel	-	Not included	6.12	Key personnel
Programme change	8.3	Not clearly stated	8.3	Programme change not a Notice