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REPUBLIC OF SERBIA
MINISTRY OF EUROPEAN INTEGRATION

MINISTRY OF FINANCE
Department for Contracting and Financing
of EU Funded Projects

This Project is funded
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Infrastructure projects – Contract Management – how to

How to prepare TD based on FIDIC contract

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How to prepare FIDIC Contract

FIDIC Construction Contract

- Contract Agreement
- Letter of Acceptance
- Letter of Tender
- **Appendix to Tender**
- **Condition of Contract**
- Technical documents

Basic structure of FIDIC Contracts

The FIDIC Conditions of Contract include

General Conditions

Particular Conditions

General Condition – **unchanged** for every project.

Particular Condition – prepared for the particular project, include changes or additional clauses to suit the project particular needs (PRAG, applicable law, sectoral base, location etc.)

Content of FIDIC publication

a) Foreword
b) General Conditions
c) Guidance for the preparation of Particular Conditions
d) Forms

Content of FIDIC publication

a) Foreword

- Brief review of different 1999 Contracts
- Introductory comments
- Three charts with the typical sequence of events (simplified)
    - Principal events during Contracts
    - Sequence of payment events
    - Sequence of dispute events

Content of FIDIC publication

b) General Conditions

- Clauses 1 to 20
- Approx. 160 sub-clauses
- Appendix and annex for the Dispute Adjudication Agreement
- To be included unchanged in contract

Content of FIDIC publication

b) General Conditions

- Brief comments on preparation of Tender Documents
- Detailed guidance and proposals for changes and additional sub-clauses which may be required
- Examples of Forms for securities and guarantees which are referred to in the General and Particular Conditions

Typical sequence of Principal Events during Contracts for Construction

Content of FIDIC publication

d) Forms

Examples of the letters and agreements reffered to in the General Conditions

Preparation of the Contract documents

The General Conditions include numerous references to information given in other documents referring to:

- The Appendix to Tender
- Particular Condition
- Specification (RB) or Employer’s requirements (YB)
- The Schedule
- The Contract

Example

1.1.2.3 **„Employer“**

„Employer“ means the person named as employer in the **Appendix to Tender** and the legal successors in title to this person.

1.13 **„Compliance with Laws“**

The Contractor shall, in performing the Contract, comply with applicable Laws. **Unless otherwise stated in the Particular Condition:...**

5.4 **„Technical Standards and Regulations“**

The design, the Contractor's Documents, the execution and the completed Work shall comply with the Country’s technical standards,….and other standards **specified in the Employer’s Requirements,** applicable to the Works, or defined by the applicable Laws

Example – cont.

GC Sub-Clause

1.1.2.2 **„Employer“**

„Employer“ means the person named as employer in the **Appendix to Tender** and the legal successors in title to this person.

1.1.3.3 **„Time for Completion“**

„Time for Completion“ means the time for completing the Works or Section (as the case may be) under Sub-Clause 8.2, as stated in **the Appendix to Tender** (with any extension under Sub-clause 8.4, calculated from the Commencement day“

General Conditions

Included in Contract by reference

Example:

„The General Conditions which are the Conditions of Contract for Plant and Design-Build for Building and Engineering Works Designed by the Contractor - the FIDIC Yellow Book, First Edition 1999, published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), Appendix to Tender and the Particular Conditions, which include amendments and additions to the General Conditons of Contract. The General Conditions are not included in this document and can be obtained from International Federation of Consulting Engineers (FIDIC)“. The Tenderer shall submit with his tender a copy of this page as well as the complete Section 3, Particular Conditions, duly initialled by the person authorised to sign on behalf of the Tenderer“

Main Clauses

Clause 1: General Provisions

Clause 2 to 4: The Employer, The Engineer, The Contractor - parties

Clause 5: nominated sub-con (RB), Design (YB)

Clause 6-7: Staff and labour, plant, material and workmanship

Clause 8 to 11: Commencement, delay and suspension, test on completion, employer's taking over, Defect liability – sequence of event during construction period

Clause 12: Test after Completion

Clause 13-14: Variation and Adjustments, Contract price and Payment

Clause 15-16: Termination by Employer

Clause 17: Risk and responsibility

Clause 18: Insurance

Clause 19: Force Majeure

Clause 20: Claims, disputes and arbitration

Appendix to Tender

- Forms included in Tender filled by Employer (mostly)
- Each item in the Appendix to Tender relates to a Sub-Clause in a General Conditions or Particular Conditions

Example

Item	Sub-Clause of GC	Data
Employer's name and address	1.1.2.2 & 1.3	Ministry of Finance
Time for Completion of the Works	1.1.3.3	1015 days
Electronic Transmission Systems	1.3	facsimile
Governing Law	1.4	Serbian Law
Ruling Language	1.4	English
Amount of Performance Security	4.2	10% of the Accepted Contract Amount, in Euro
Delay Damages for the Works	8.7	0.1% of the Accepted Contract Amount, in Euro
Maximum amount of delay damages	8.7	10% of the Accepted Contract Amount
Currencies and proportions	14.2	100% in Euro
Minimum amount of Interim Payment Certificates	14.6	150.000 EUR
Currency/currencies of payment	14.15	Euro (EUR)

Particular Conditions

- **Take priority over the General Conditions**
- **Employer’s instrument for introducing the particular aspects of the project.**

- Major matter which make Clauses in PC essential:
    - Alignment with applicable law
    - Requirements of the financing authority
    - Regulations and Employer’s procedures

Particular Conditions

- Particular conditions amplify and supplement, if necessary, the General Conditions governing the contract.
- **In case of any discrepancy** between the General Conditions of Contract and the Particular Conditions of Contract, the provisions of the **Particular Conditions of Contract shall prevail.**
- Provisions of clauses unchanged in the Particular Conditions of Contract shall be valid in the form given in the General Conditions of Contract.
- The numbering of the Articles of the Particular Conditions is not consecutive but follows the numbering of the Articles of the General Conditions.

Particular Conditions

- **Changes must be kept to minimum**
- Must not disturb the balance between contracting parties
- Major exercise in **cross referencing** PC with:
  - GC
  - Technical Specifications / Employer’s requirements
  - Schedule/ Annexes (e.g. delivery schedule)

Particular Conditions

- There is no specific Clause in the GC requiring additional data to be included in the PC
- PC will only contain modified Clauses, without repeating the ones from GC that are not modified
- **Any modification of existing Clauses, or insertion of a new Clause, must be made for a clear reason and only in conjunction with the other Clauses**

Particular Conditions preparation

FIDIC in the Gudiance for preparartion of PC give suggested wording - Example:

Sub-Clause 1.2 – **Interpretation**

After sub-paragraph (d), **insert:**

In these Conditions, provisions including the expression *"Cost plus reasonable profit" require this profit to be one-twentieth (5%) of this Cost.“*

Sub-Clause 14.7 – **Payment**

In Sub-paragraph (b) of sub-clause 14.7 **delete** „56“ and **substitute** „42“

Alignment with the law and regulation

- Delete the Sub-Clause 1.1.1.1 and substitute with the following: “Contract” means, the Contract Agreement including all documents listed therein.

- “Addendum to Contract” means the agreement between the parties to the Contract introducing changes to the contract provisions in accordance with the procedure described in the PRAG.

- “Eligible Country” means a Member State of the European Union or an eligible country or territory as defined under the Regulation (EU) No. 236/2014

Limitation of the Engineer authority

The Engineer shall obtain the specific approval of the Employer before taking action

- Sub-Clause 3.2: Delegation of authority
- Sub-Clause 3.5: Agreeing or determining any matter, which will change the Contract Price;
- Sub-Clause 4.4: Giving consent to a Subcontractor for a subcontract for which a different subcontractor is named in the Contract;
- Sub-Clause 5.2: Approving the Contractor's Documents (the design).
- Sub-Clause 8.4: Agreeing or determining an extension of the Time for Completion;

Limitation of the Engineer authority

The Engineer shall obtain the specific approval of the Employer before taking action

- Sub-Clause 8.8: Instructing the Contractor to suspend progress of all of the Works;
- Sub-Clause 10.1 Issuing the Taking Over Certificate
- Sub-Clause 11.9 Issuing the Performance Certificate
- Clause 13: Instructing a Variation which is expected to increase the Contract Price or in any substantial way change the scope, character or quality of the Works.
- Sub-Clause 13.5: Giving instructions for the use of the provisional sums

Additional staff to be Employed by Contractor

Example:

- The Contractor shall, before the Commencement Date, submit to the Engineer for consent the names and particulars of the Key Experts the Contractor proposes to appoint
- The Contractors personnel, according to their functions and responsibilities must have the required Serbian licenses prior to commencing their functions, fully in accordance with the Law on Planning and Construction

Taking over of the works

“The Contractor shall apply by notice to the Engineer for a Taking-Over Certificate at the latest 28 days before the works will, in the Contractor’s opinion, be complete and ready for taking over.

The Engineer shall, within 28 days after receiving the Contractor’s application:

(a) notify the Employer who will report to the relevant authority that the Works are complete and ready for technical acceptance; or

(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the application for technical acceptance. The Contractor shall then complete this work before issuing a further notice under this sub-clause.

Technical acceptance of Works and Sections shall comply with applicable Law and legislation and upon establishment of the technical acceptance committee by the relevant authority.

Relationship between PC and TS/ER

TS / ER Supplement Conditions of Contract with additional infromation required to conduct the work

1.13 Compliance with the law - the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the **Specification**

2.21 Right to access the site - The Employer shall do so in the time and manner stated in the **Specification.**

4.1 Contractors general obligation - Contractor's Documents shall be in accordance with the **Specification**

4.18 Protection of the Environment - The Contractor shall ensure that emissions, surface discharges ...shall not exceed the values indicated in the **Specification**.

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All documents, information, materials and pictures from this
EU PPF training are available for download in the download section of our site
www.ppf.rs

Questions and assistance

Robert Kartelo

Trainer, EU PPF | PPF6/EuropeAid/135637/IH/SER/RSr

+381 11 4040721

info@ppf.rs

www.ppf.rs

Thank you for your attention!