

# Construction Documents for International Projects

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Although most engineers in the U.S. have at least a passing acquaintance with American Institute of Architects (AIA) documents, few seem familiar with FIDIC documents. Because FIDIC documents are often used on construction projects where the participants are from different countries, engineers pursuing international projects would do well to learn about them.

FIDIC is an acronym for the Fédération Internationale des Ingénieurs-Conseils (the International Federation of Consulting Engineers), a worldwide association of consulting engineers. The members of FIDIC are the consulting engineer associations in member countries; the United States is represented by the American Council of Engineering Companies (ACEC).

FIDIC is best known for its contract forms, which are almost universally referred to by the color of the book cover. The most widely used form is the “Red Book” – *Conditions of Contract for Works of Civil Engineering Construction*. The Red Book is part of the three-book “Rainbow Suite”; the other two books are the “Yellow Book” – *Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor*, and the “Silver Book” – *Conditions of Contract for EPC/Turnkey Projects*. The Rainbow Suite thus covers owner-designed projects (the Red Book), design-build projects (the Yellow Book), and engineer-procure-construct/turnkey projects (the Silver Book).

The first edition of the Rainbow Suite was released in 1999, the second in 2017. The numbering is somewhat confusing since there had been several editions of the Red and Yellow books before the first edition of the Rainbow Suite in 1999. However, both the Red and Yellow books were reformatted so that the three documents in the Rainbow Suite would have a standard format. In addition, there were significant changes to the wording; to the extent possible, the wording of the documents was standardized. Thus, the 1999 editions are referred to as the first edition Red, Yellow and Silver books; the 2017 release is referred to as the second edition.

## The FIDIC Books

While commonly referred to as the “FIDIC contracts,” most of the FIDIC documents are actually General Conditions, similar to

AIA A201, *General Conditions of the Contract for Construction*. This is reflected in the book titles. However, each book also contains a lengthy section with guidance for the preparation of “Particular Conditions,” including Part A (Contract Data) and Part B (Special Conditions). Contract drafters can use the Special Conditions to change, add to, or delete provisions in the General Conditions. In addition, the books include notes on the preparation of the Tender (Bid) documents, as well as Advisory Notes for projects that are using Building Information Modelling (BIM). There are also sample forms for securities such as performance bonds, Letters of Tender, Contract Agreements, and Dispute Resolution Agreements.

It is worth noting that the FIDIC publications are referred to as “books,” and, given the length of the publications, this is not unreasonable. For example, the 2017 edition of the Red Book is 228 pages; while this includes the guidance notes and sample forms, the General Conditions themselves are 106 pages long. The length of the General Conditions reflects the fact that project participants from different countries may have different understandings of what is customary or reasonable in terms of contract terms and what particular wording means. Thus, the documents are much more detailed than what might be expected when all of the project participants are from the same country.

Other FIDIC construction forms include the “Green Book,” a *Short Form of Contract* for smaller projects; the “Gold Book,” *Conditions of Contract for Design, Build, and Operate Projects*; the “Turquoise Book,” *Form of Contract for Dredging and Reclamation Work*; the “Emerald Book,” *Conditions of Contract for Underground Works*; and subcontract forms for use with the Red and Yellow Books. The “Orange Book,” *Conditions of Contract for Design-Build and Turnkey*, has generally been replaced by the Silver Book but is still used by those who prefer its terms to those of the Silver Book.

As is common in international construction contracts, the FIDIC construction forms refer to the party contracting for the project as “the Employer.” This can confuse those accustomed to U.S. contract forms where the party contracting for the project is generally referred to as “the Owner,” even when it is a tenant rather than the owner of the property in question.

## The White Book

While the documents in the Rainbow Suite are the best known FIDIC forms, the form that engineers are most likely to work under is the “White Book,” the *Client/Consultant Model Service Agreement*, which was first published in 1990. The 5<sup>th</sup> edition (2017) addresses, at least in part, criticisms of the 4<sup>th</sup> edition and is generally seen as a significant improvement. One such criticism was the vagueness of the standard of care; the 4<sup>th</sup> edition simply required the Consultant to use “reasonable skill and care.” The 5<sup>th</sup> edition defines the standard of care as the “reasonable skill, care, and diligence to be expected from a Consultant experienced in the provision of such services for projects of similar size, nature, and complexity.”

Contracts created using the White Book are between the purchaser of the services, referred to as the ‘Client’ (rather than the Employer, as with the FIDIC construction contracts), and the supplier of the services, referred to as the ‘Consultant.’ FIDIC also publishes a sub-consultancy agreement for use when the Consultant engages a sub-consultant to provide part of the services.

## Conclusion

While not common in North America, FIDIC forms are standard on international projects, particularly those funded by multilateral development banks. In the last few years, FIDIC has signed agreements with several such banks; under these agreements, FIDIC has granted the banks a license to refer to specified FIDIC contract forms and use them as part of the standard bidding documents for projects financed by the banks. It can thus be expected that the use of FIDIC documents will continue to increase. ■

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