

HOW TO CHOOSE THE RIGHT FIDIC CONTRACT

FIDIC (*Fédération Internationale Des Ingénieurs-Conseils*) is an international professional organization consisting of consulting engineers' chambers. The standard contracts constituted by FIDIC based on the organization's years of experience are frequently used in international projects, as they bring uniformity to technical, operational and legal matters. Two of the most known FIDIC contracts are the Red Book, where the employer carries out the design, and the Yellow Book, where the contractor carries out the design. After FIDIC introduced new model contracts providing more flexibility to the parties for different needs and published updated versions to allocate the risks to the parties in a more balanced manner, FIDIC contracts' use became considerably widespread. Today, FIDIC contracts are used both in international projects and local projects.

Parties intending to use FIDIC contracts should first determine the most suitable contract type for their needs and the project's specifications. Accordingly, the parties should consider (i) the project's scale and complexity; (ii) the responsible party for carrying out the design; (iii) allocation of the potential risks; (iv) how the contractor will be paid and (v) the project's delivery method. The most commonly used FIDIC model agreements will be summarized below, with a specific focus on these criteria.

1. Red Book

The Red Book is the Conditions of Contract for Construction – for Building and Engineering Works Designed by the Employer. Early on, FIDIC had been advising the use of the Red Book for civil engineering projects such as the construction of pipelines, bridges and buildings. Then the "civil engineering" wording was removed from the contract's title. Today, the focus is on the

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procurement method rather than the nature of the work when it comes to choosing a contract model. Although the Red Book allows the contractor to carry out the design of some elements, it is more suitable for projects where the employer carries out the project design. Under the Red Book, contractors are generally paid on a measurement basis. The Red Book has a Multilateral Development Bank edition, which is also referred to as the Pink Book. This edition is generally used in tender documents of projects financed by credit institutions. In this edition, banks are entitled to inspect the project. Accordingly, the engineer's responsibilities are restricted.

2. Yellow Book

The Yellow Book is the Conditions of Contract for Plant and Design-Build for Electrical & Mechanical Plant, and for Building and Engineering Works by the Contractor. It has been used primarily in building projects for the provision of electrical and mechanical plants as well as equipment works. However, after the focus was shifted to the procurement method and the "electrical and mechanical works" wording was removed from the contract's title, the Yellow Book became applicable to all types of construction works, where the design is carried out by the contractor. The Yellow Book is now often used for the provision of electrical and mechanical plants as well as for the design and execution of building and engineering works. Under the Yellow Book, the contractor is paid on a lump-sum basis.

3. Silver Book

The Silver Book is the Conditions of Contract for EPC/Turnkey Projects. It is predominantly used in turnkey projects for process and power plants and private infrastructure works. Under the Silver Book, the contractor carries out the project's design and bears all risks with respect to the project's completion time, costs and work quality. As the Silver Book allocates all the risks relating to the project, except for war, terrorism and force majeure, to the contractor, it is more suitable for experienced contractors who are capable of managing complex risks. The Silver Book provides more flexibility to the contractor for carrying out the project at its discretion. However, the contractor is still obliged to meet the performance criteria set out by the employer. Under the Silver Book, the contractor is usually paid on a lump sum basis.

4. Green Book

The Green Book is the Short Form of Contract – General Conditions. It is suitable for projects that require a relatively small capital (less than USD 500,000) and advised for use in repetitive or short-term and simple construction works. The Green Book is a flexible book with administrative and commercial provisions and can be revised easily as per the parties' needs.

5. Gold Book

The Gold Book is the Conditions of Contract for Design, Build and Operate Projects. It is used in projects where the contractor assumes the design and construction works as well as the operation

KOLCUOĐLU DEMİRKAN KOĐAKLI

obligations. The Gold Book is recommended for international projects with high capital needs and long operation periods such as 20 years.

When it comes to choosing the right FIDIC contract model, the parties should carefully evaluate all aspects of the project, including the responsible party for carrying out the design, risk allocation, project's duration and capital amount.

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