



المؤتمر الهندسي
الإستشاري الأول
The First Engineering
Consultancy Conference

The First Engineering Consultancy Conference (ECC)

September 24 & 25, 2019
Amman- Jordan

Husni Madi, PMP, PMI-SP
Shura Construction Management – CEO, Jordan



International Federation of Consulting Engineers

www.fidic.org



Making the Most of the FIDIC Suite of Agreements in the Region

Husni Madi, PMP, PMI-SP
Chairman of FIDIC Task Group 15
FIDIC International Accredited Trainer
FIDIC Affiliate Member
Friendly Reviewer of FIDIC Updates
Adjudicator and Arbitrator
husni@shuracm.com




International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

www.fidic.org

Agenda

- 1- Introduction and Kick Off
- 2- Client/Consultant Model Services Agreement
- 3- Sub-Consultancy Agreement
- 4- Joint Venture Agreement
- 5- Q&A Session


 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

3

www.fidic.org

Chapter 1

• Introduction and Kick Off

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

4

www.fidic.org Introduction and Kick Off

Husni Madi, PMP, PMI-SP

- Civil Engineer
- Chairman of FIDIC TASK GROUP 15
- FIDIC International Accredited Trainer
- FIDIC Affiliate Member
- Friendly Reviewer of FIDIC 2017 Editions
- Adjudicator and Arbitrator
- Founder, Chief Executive Officer
- Shura Construction Management

شورا
shura Construction Management

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

5

www.fidic.org Introduction and Kick Off

Husni Madi, PMP, PMI-SP

- International Accredited Trainer, as well as Founder and CEO of Shura Construction Management, a consultancy firm providing contract solutions for the construction industry.
- Husni is a Civil Engineer with over 21 years of experience in large-scale construction projects in the Middle East; initially with major international contractors, then with international construction management firms.
- Experience also includes strong and diversified engineering background in planning, contract administration, estimation, office work, site work, and project management either through PMP and PMI-SP, or hands-on experience.
- Possesses a solid and profound knowledge of Husni Madi is a FIDIC ge in the FIDIC 1987 Contracts and the FIDIC 1999 Suite, either through delivering training on similar contracts or hands-on experience. Vast knowledge in FIDIC Contracts attained through practical experience in huge international projects, particularly in the FIDIC 1999 Red Book, Silver Book, Yellow Book, White Book, and the Conditions of Subcontract for Construction.
- Vast experience in Alternative Dispute Resolution techniques gained by acting as an arbitrator, adjudicator, or an advisor in multimillion dollar local and international arbitrations, providing procedural, delay analysis, and contractual consultancies during such proceedings.

شورا
shura Construction Management

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

6

Husni Madi, PMP, PMI-SP

- Experience covers various sectors: power plants, wastewater treatment plants, potable water reservoirs, infrastructure, marine ports, highways, and multi-use buildings including high-rise.
- Has operated in several countries including Jordan, KSA, UAE, Qatar, Lebanon, Tanzania, and Greece. Husni is an accredited Professional in Scheduling (PMI-SP) and Project Management (PMP) by the Project Management Institute (PMI), in addition to being a FIDIC Affiliate Member. Has been a speaker at several Arbitration and FIDIC international conferences.
- Chairman of FIDIC Task Group TG15 in charge of establishing "FIDIC's Golden Principles" as part of the FIDIC 1999 Suite update. A Friendly Reviewer of the FIDIC Red Book, and FIDIC Silver Book updates (2nd Editions). Member in the Project Management Certification Committee of the Civil Engineering Chapter of Jordan Engineers Association (JEA). Member in the Project Management Committee of the Engineering Offices Chapter of Jordan Engineers Association (JEA).
- Husni presently provides through Shura Construction Management the services of construction management, planning and scheduling, claim preparation and management, contract administration, delay analysis, risk management, and support in Alternative Dispute Resolution techniques.



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer

© Husni Madi, PMP, PMI-SP

7



International Federation of Consulting Engineers


Chair of FIDIC TG15, FIDIC Accredited Trainer

© Husni Madi, PMP, PMI-SP

8

www.fidic.org
Introduction and Kick Off






International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

9

www.fidic.org
Introduction and Kick Off

ACKNOWLEDGEMENTS

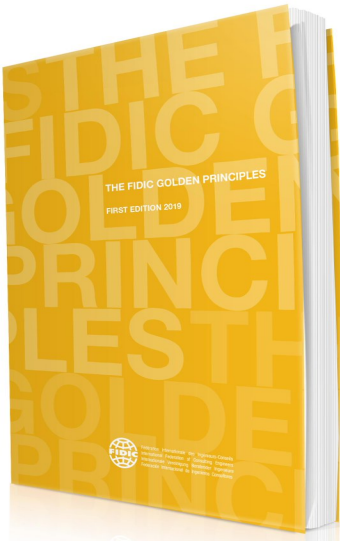
Ulrick Bang-Olsen, Bang-Olsen & Partners Law Firm P/S, Denmark; Rusli Bin Idrus, RBI Consultants, Malaysia; Hartmut Bruehl, Engineer, Germany; Gerlando Butera, Solicitor/lawyer, Singapore; Donald Charrett, MTECC, Australia; Edward Corbett, Corbett & Co International Construction Lawyers Ltd, UK; Jorge Diaz-Padilla, Systec, Mexico; Mark Etheridge, UWP Consulting Pty (Ltd), UK; European International Contractors, Berlin, Germany; Nicholas Gardner, UNOPS, Denmark; Jeremy Glover, Fenwick Elliott LLP, UK; Nicholas Gould, Fenwick Elliott LLP, UK; Sarwono Hardjomuljadi, Special Adviser to the Minister of Public Works, Indonesia; David Heslett, ECV Consultancy LTD, UK; Sebastian Hoek, Kanzlei Dr. Hök Stieglmeier & Kollegen Berlin, Germany; Reza Ikani, Tehran Berkeley Group of Companies, Iran; Levent Irmak, MC2 Modern, Turkey; Gordon Jaynes, Lawyer, UK; Nabeel Khokar, Driver Trett, UK; Patrick Lane, The Maisels Group, South Africa; Pablo Laorden, Lambal Formacion, Spain; **Husni Madi, Shura Construction Management, Jordan**; Benjamin Mellors, Holman Fenwick Willan LLP, UK; Christopher Miers, Probyn Miers, UK; Smore Mushtaq Ahmad, Pakistan; Henry Musonda, Kiran & Musonda Associates, Zambia; Kjeld B Nielsen, Sweco, Denmark; Orgalime, Belgium; Patrizia Palmitessa-Savric, Ginder Palmitessa



International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

10

www.fidic.org Introduction and Kick Off



THE FIDIC GOLDEN PRINCIPLES
FIRST EDITION 2019

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

11

www.fidic.org Introduction and Kick Off

FIDIC TASK GROUP TG15

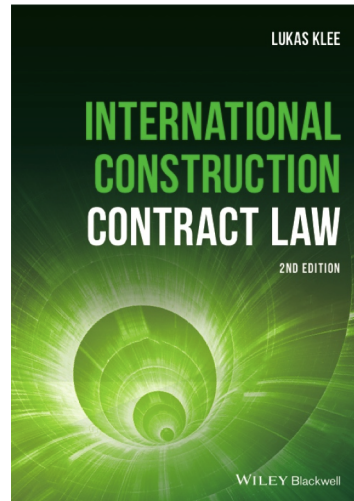
Mr Husni Madi (Jordan) – Team Leader
Dr Donald Charrett (Australia) – Principal Drafter
Mr Axel Jaeger (Germany) - Member
Dr Rafal Morek (Poland) - Member
Mr Kaj Möller (Sweden) – Contracts Committee liaison
June 2019

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

12

www.fidic.org

Introduction and Kick Off



By Lukas Klee

Including a vignette by
Husni Madi



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

13

www.fidic.org

Making the most of the FIDIC 2017 Suite of Agreements



Released in April
2017




International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

14


www.fidic.org

Main changes



2017

VS



2006

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

15

www.fidic.org

General provisions

- Clarification of the order of precedence of Agreement documents (Cl. 1.15 and Form of Agreement)
- Formal notification imposed for a wide range of events, under a specified format (SC 1.1.19, 1.1.26 and Cl. 1.3)
- Change in Legislation – reference date is now the one of the Consultant's offer/proposal (Cl. 1.5)
- Concept of Exceptional Costs introduced (SC 1.1.12) i.e. those incurred by the Consultant and flowing from an event giving rise to a Consultant's entitlement. This contrasts with the payment for regular Services (SC 7.1.1 and Appendix 3)
- Intellectual Property – difference in between Background IP and Foreground IP (Cl. 1.7)
- Additional anti-corruption representations and warranties (Cl. 1.10)
- Joint & several liability of Consultant's JV Members towards Client (Cl. 1.11)
- Amendment to Agreement only in written form (Cl. 1.12)
- Parties to act in good faith and in a spirit of mutual trust (Cl. 1.16)

International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

16


www.fidic.org

The Client

- Information that Client is able to obtain and which pertains to the Services = to be provided by Client with due regard to the Programme (SC 2.1.1)
- Responsibility for errors, omission and ambiguity in Client's information = rests with Client, and to be corrected by Client – possible Variation (SC 2.1.3)
- Duty of care of the Consultant in reviewing Client's information (SC 2.1.2)

The Consultant

- Performs Services as per scope in Appendix 1 / No more Additional and Exceptional Services => only Services which are subject to Variations (Cl. 5), and possibly Exceptional Costs incurred
- Function and purpose of Services to be taken into account by Consultant (SC 3.3.2) but that does not amount to a fitness-for-purpose obligation
- Construction administration provisions (Cl. 3.9) – typically when the Consultant acts as engineer, employer's representative or project manager under a Works Contract

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

17


www.fidic.org

Time management

- Consultant to provide a Programme for the performance of Services, in accordance with Appendix 4, and to proceed accordingly (Cl. 4.3)
- Express grounds for extension of the Time for Completion, with possible corresponding compensation for Exceptional Costs (Cl. 4.4)
- Client empowered to instruct acceleration of rate of progress of the Services when delayed for Consultant's culpable reasons (Cl. 4.5)
- Concept of Exceptional Event introduced, which replaces « changed circumstances »: similar approach as FIDIC Gold Book, superseding the Force Majeure concept under the 1999 FIDIC Contracts

Variations to Services

- A dedicated full new Clause (Cl. 5)
- Variations initiated following the issue of a Variation Notice (SC 5.1.1) / Consultant bound by Variation unless it notifies that it does not possess the relevant skills/resources to perform it, or it substantially changes the extent of nature of the Services (SC 5.1.4)
- Value of Variation to be agreed before Variation proceeds, but if not possible/practicable to do so Client can instruct commencement => Consultant compensated on a time-spent basis as per Appendix 3 (Cl. 5.2)


 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

18

www.fidic.org

Suspension / Termination

- A dedicated full new Clause (Cl. 6) / a process now much further detailed and stream lined
- Additional cause for suspension of Services by Consultant – failure by Client to satisfy the requirements of Clause 2.4 on Employer's financial arrangements (SC 6.1.2 (c))
- Services to resume once cause for suspension ceases (Cl. 6.2)
- Effects of suspension detailed, with possible entitlements to extension of Time for Completion and compensation for Exceptional Costs incurred (SC 6.3.3)
- 5 grounds for Client's termination are expressly laid down, with different effects prescribed depending on termination event (SC 6.4.1 and Cl. 6.5)
- 5 grounds for Consultant's termination are expressly laid down, with different effects prescribed depending on termination event (SC 6.4.2 and Cl. 6.5)

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

19

www.fidic.org


Liabilities

WB Main changes – 2017 vs 2006

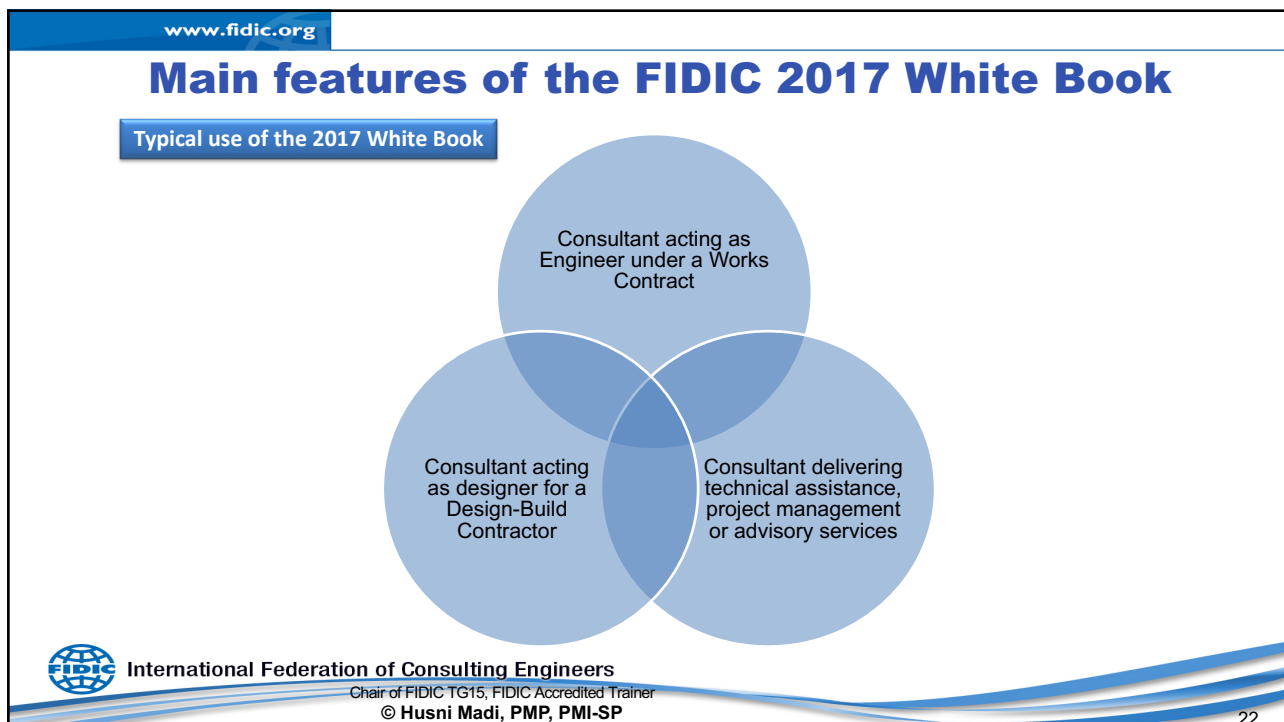
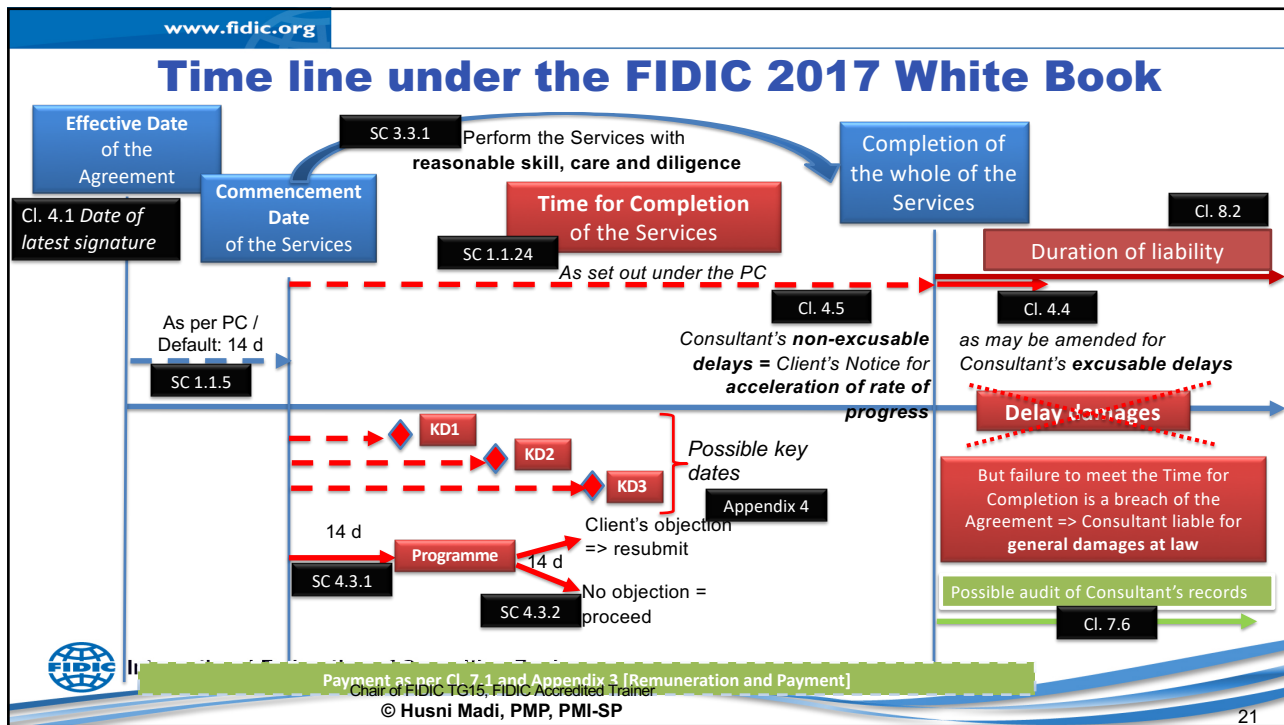
Parties are liable for their breaches of the Agreement (SC 8.1.1) – that is stating the obvious, but is expressly stated so as to stress the difference with the 2006 WB which introduced a difficulty in this respect (Consultant only liable if in breach of his duty of care)

Dispute resolution

- Mediation is now replaced by adjudication as second-tier of dispute resolution under Cl. 10.2 / Arbitration remains the third and final tier of dispute resolution under Cl. 10.4
- Rules for Adjudication have been inserted under Appendix 5 – they follow the FIDIC Green Book (1999) approach – ad'hoc adjudication, 56 days from a dispute referral for the adjudicator to issue his/her decision
- Each Party bears its own cost in adjudication, but adjudicator empowered to decide on the payment apportionment of his/her own fees (SC 10.2.2. and Rule 17 for Adjudication)
- Reflection of FIDIC's view on adjudication decisions – they are binding even if challenged by either Party, unless and until revised in arbitration / Failure to comply with a decision can be referred to arbitration (SC 10.5.1)

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

20



www.fidic.org

FIDIC 2017 Sub-Consultancy Agreement



STRUCTURE & MAIN FEATURES



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

www.fidic.org

23

www.fidic.org

Structure of the FIDIC 2017 SCA

Copyright, acknowledgements, foreword

Form of Sub-Consultancy Agreement

Particular Conditions

- Part A – References from Clauses in the General Conditions
- Part B – Additional or Amended Clauses

Appendices to the Agreement - 1 to 5

Annex A – Client / Consultant Agreement

General Conditions of the Sub-Consultancy Agreement



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

24

www.fidic.org

Main features of the FIDIC 2017 SCA

- **Back-to-back philosophy** for obligations of the Consultant (towards the Client under the White Book) which are subcontracted to the Sub-Consultant
- **Similar structure** as the FIDIC White Book, and, to a very large extent, similar (sometimes identical) wording
- **2 drafting options were available**
 1. **Using a « mutatis mutandis » approach** with the FIDIC White Book 2017, whereby obligations are stated to be the same as in WB, with WB Client being replaced by SCA Consultant, and WB Consultant by SCA Sub-Consultant
 - **Pro:** General Conditions are then short and limited to the specificities of the Sub-Consultancy Agreement
 - **Con:** The Sub-Consultancy Agreement can only be used if the Client / Consultant Agreement is drafted based on the FIDIC White Book 2017



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

25

www.fidic.org

Main features of the FIDIC 2017 SCA

- **2 drafting options were available**
 2. **Or using a « repeat » approach** whereby the FIDIC WB 2017 obligations would be replicated to a large extent in the SCA (with WB Client being replaced by SCA Consultant, and WB Consultant by SCA Sub-Consultant), with specific Sub-Consultancy provisions to be added
 - **Pro:** The Sub-Consultancy Agreement becomes autonomous from the White Book, and can be used even if the White Book is not used as in between the Client and the Consultant
 - **Con:** General Conditions become more extensive in text

The repeat approach was finally selected, for the sake of a wider use of the SCA even in context where the WB is not used



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

26

www.fidic.org

FIDIC 2017 Joint Venture Agreement



STRUCTURE & MAIN FEATURES



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer

© Husni Madi, PMP, PMI-SP

27

www.fidic.org

Structure of the FIDIC 2017 JVA

Copyright, acknowledgements, foreword

Form of JV Agreement

General Conditions – 24 Clauses

Appendix 1 – Particular Conditions – Part A and Part B

Appendices 2 to 9



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer

© Husni Madi, PMP, PMI-SP

28

www.fidic.org

Main features of the FIDIC 2017 JVA

- **Suitable for unincorporated JV (Consortium)** i.e. where the JV Members are forming an association for the implementation of a Services Agreement with a Client, but **are not willing to establish a legal entity** for doing so.
- All JV Members are meant to be **jointly and severally liable** towards the Client (see SC 14.1, and FIDIC White Book SC 1.11.2)
- JV Agreement promotes an **integrated team approach** to achieve **satisfactory completion of Services** to a Client



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

29

www.fidic.org

Main features of the FIDIC 2017 JVA

- JV Agreement is meant to be established **as early as before the preparation of a Proposal to Client** – contractual exit route is provided in case the Proposal is not successful (see SC 13.1)
- JV Agreement sets out:
 - the allocation of responsibilities in between the JV Parties (Cl. 4 and 9 + Appendix 3),
 - The JV Members respective Shares, and the financial management within the JV (Cl. 16 to 19 + Appendices 2 and 4)
 - The management framework in between the Members, through a Steering Committee (Cl. 7 + Appendices 5 to 9)
 - Detailed contractual machinery for handling a defaulting Member (Cl. 12 and 14)
 - Dispute resolution provisions (1 – Amicable settlement 2- Mediation, 3 – ICC Arbitration)



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

30

www.fidic.org

The New Suite of Agreements - Top Tips

Potential New Fields of Application

Design Review (Peer Review)

Pre-Tender Cost Estimation or Review

Value Engineering

Construction Management



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

31

www.fidic.org

The New Suite of Agreements - Top Tips

Heads-up!

Design Review

Agree on how many design reviews are included within the scope.

The scope, contents, and types of deliverables of each design review must be clearly stipulated.

Agree on the number of reviews of resubmissions.

How to tackle resubmissions with regards to time and money must be clearly stated.



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

32

www.fidic.org

The New Suite of Agreements - Top Tips

Heads-up! Design Review

Will there be a need to differentiate between resubmissions made as a consequence of a rejection by the reviewer, or a need by the designer to make changes.

Number of travels, destinations, and personnel travelling to attend meetings and design review workshops must be clearly determined.

A general outline of the prices or formulae to be adopted during the valuation of Variations.



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

33

www.fidic.org

The New Suite of Agreements - Top Tips

Heads-up! Cost Estimation Review

Agree on a certain reference or source for prices of materials, equipment, and manpower.

Agree on whether the cost estimation reviewer is required to perform a quantity takeoff exercise independent of the prepared by the designer.

Set acceptable threshold variances between cost estimates which do not require a design change to bring the cost estimate within the envisaged budget.



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

34

www.fidic.org

The New Suite of Agreements - Top Tips

Heads-up! White Book for Supervision

- Always review the duties required of the Engineer/Employer's Representative in the works contracts and make sure that your scope under the White Book covers all of these duties.
- Make sure that there are no constraints and restrictions under the White Book which will restrict your ability to perform your duties under the works contract.



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

35

www.fidic.org

The New Suite of Agreements - Top Tips

Heads-Up! JV or SCA



- Make sure that the total of the several scopes of the JV partners is equal to the scope required by the Client i.e. no gaps or unassigned scope.
- Agree on how to deal with Variations not affecting all of the JV members.
- Clearly determine the risk allocation among the partners, the limit of liability of each, and reflect the same on the insurance policy (Professional indemnity)



International Federation of Consulting Engineers

Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

36

www.fidic.org

Q&A Session

• Thank You

➔

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

37

www.fidic.org

End of Presentation

**Making the Most of the
FIDIC Suite of Agreements
in the Region**




 shura Construction Management

Shura Construction Management

Husni Madi, PMP, PMI-SP

husni@ShuraCM.com



Thank You

 International Federation of Consulting Engineers
Chair of FIDIC TG15, FIDIC Accredited Trainer
© Husni Madi, PMP, PMI-SP

38