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### Особливості Червоної книги FIDIC

«Conditions of Contract for construction», 1999  
Умови контракту на будівництво

- Інженер виступає у якості агента замовника, фінансового контролера-удостовірителя, адміністратора контракту, координатора взаємовідносин між замовником та підрядником, забезпечує виконання зобов'язань підрядника з контролю якості будівництва та контролює будівництво у відповідності до проєкту замовника
- Інженер має право ініціювати від імені замовника зміни до робіт
- Підрядник виконує будівельні роботи відповідно до проєкту замовника (може виконувати проєктування окремих елементів)
- При визначенні вартості робіт, за основу беруться одиничні розцінки, вказані у плані обсягів робіт
- Оплата робіт здійснюється замовником за фактично виконанні роботи щомісяця, за умови їх підтвердження інженером
- Договірна ціна може корегуватися на умовах, визначених



ТОВ ВІСТАПТО  
Юридична консалтингова компанія

#### Золоті правила FIDIC

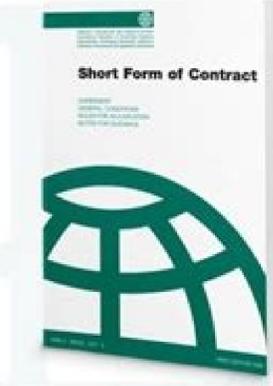
- Права, обов'язки, ролі і відповідальність усіх учасників контракту повинні бути в цілому такими, як це має бути на увазі в загальних умовах, і відповідати вимогам проєкту.
- Умови контракту повинні бути сформульовані чітко і неспіврозуміло.
- Особливі умови не повинні змінювати баланс ризику ризиків/вимогам, встановлений Загальними умовами.
- Всі терміни, зазначені в договорі для виконання учасниками Контракту своїх зобов'язань, повинні бути розумними.
- Всі офіційні спори повинні бути передані до органу запобігання/регулювання спорів в першу чергу, тільки після їх рішення спори передаються до арбітражу, у разі негоди однією із сторін з іншим рішенням.

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### Особливості Зеленої книги FIDIC

The Short Form of Contract», 1999.  
Умови контракту на спорудження об'єктів цивільного будівництва.  
Скорочена форма

- Коротка форма складена максимально просто
- Передбачає значну роботу замовника з підготовки специфікацій та креслень, а також з управління проєктом
- Інженер відсутній, його функції виконую співробітник або структурний підрозділ замовника
- Роботи в основному будівельні, але можуть включати механічні, електричні тощо
- Не має значення, хто розробив проєкт, підрядник лише буде
- Замовник може вносити зміни до проєкту і робіт



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### Питання 3: Різниця між інженером-консультантом FIDIC та інженером-консультантом (будівництво)

#### Інженер-консультант FIDIC

FIDIC – це Міжнародна федерація інженерів-консультантів, що розробляє глобальні типові контракти для реалізації будівельних проєктів

Консультант – професійна фірма (юридична особа) з певною кваліфікаційною спеціалізацією у галузях права, економіки, будівництва, зокрема цивільно-будівельного середовища, або фізична особа, яка надає консультантські послуги в якості комерційної діяльності, та найнятий Клієнтом для надання послуг згідно з Типовою угодою на надання послуг між Консультантом та Клієнтом (Біла книга FIDIC).

Інженер – професійна компанія, що має певні кваліфікаційні інженерні та інші кваліфікаційні спеціалізації у галузях права, економіки, будівництва, зокрема цивільно-будівельного середовища, що володіють достатньою компетенцією для виконання досліджень на місці, обов'язки з укладання умов, визначених у контракті з міжнародної федерації інженерів-консультантів. Найнятий як Консультант за Білою книгою FIDIC.

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The DAAB is to be constituted within 35 days of receipt of the employer's Letter of Acceptance by drawing from a list of six candidates named in the contract. If the contractor fails to comply with the Notice, the engineer must immediately notify the employer and the contractor. Annex 3 of the Framework addresses the management of contractors and states: The borrower will require that all contractors engaged on the project operate in a manner consistent with the requirements of the Environmental and Social Standards, including the specific requirements set out in the Environmental and Social Commitment Plan. Following this review, it may disqualify the contractor (as well as any subcontractor determined to be non-compliant), from being awarded a World Bank-financed contract for a two-year period. If Emergency Arbitration has been commenced, the World Bank will await the outcome and take due account of the Emergency Arbitrator's Order. If the DAAB finds such a failure, the World Bank may disqualify the contractor and any defaulting subcontractor, from bidding for further World Bank-financed projects for a two-year period. The MDB seek to avoid or minimise the potentially negative impact of construction on the local community which the infrastructure is intended to serve. This requirement applies not only to projects identified as being at high risk of SEA/SH but all World Bank-financed projects. Furthermore, the contractor will be subject to greater scrutiny on other World Bank-financed projects on which it is working at the time of disqualification. The DAAB must not address the underlying allegation, including the factual aspects of the alleged SEA/SH incident: The DAAB shall not assess the merits of an underlying allegation, including the factual aspects of the alleged SEA and/or SH incident. The DAAB must render its decision in writing within 42 days of receiving the SEA/SH referral. The type of allegation (sexual exploitation, abuse or harassment), gender and age of the person who experienced the alleged incident must be included in the

parties and the employer must promptly refer the allegation to the DAAB for a decision with respect to non-compliance. For this purpose, the bidding documents provide the base code of conduct, to which bidders may introduce additional requirements. In particular, training must be provided to supervisors. The role of the DAABs noted above, the DAAB is to participate in the SEA/SH orientation conference, immediately after being appointed and before any work commences on site. The additional clauses cover matters such as forced labour, child labour, workers' organisation, non-discrimination and equal opportunity but not SEA/SH. Copies of the code of conduct must also be visibly displayed in various locations on the site and any associated areas, as well as in areas outside the site which are accessible to the local community and project-affected people. In the event of a suspected non-compliance or an allegation, the employer must refer the matter to the DAAB for a decision on whether the contractor had failed to comply with any of its obligations. For the MDB, the design, execution and completion of the infrastructure jointly represent only one element in a larger project, aimed at the development and wellbeing of the local, regional or even larger community. However, the maximum period between these visits is less than is fixed in FIDIC 1999 and FIDIC 2017, having been reduced from 140 days to 90 days.12 The agenda for each site visit must include a review of the contractor's SEA/SH obligations and the engineer's actions in this respect.13 This review should normally include: management strategies and implementation plans (initial submission and review, updated submission and review);code of conduct (number of workers versus number of signed copies of the code of conduct, both for contractor and subcontractors; visibly displayed copies on-site and off-site);training (record of sessions held and number of participants);response mechanism (displayed visibly on-site and off-site; status of allegations);progress reports; andnotices to correct. The statement should include details of actions taken in response to an engineer's Notice to Correct any non-compliance with the SEA/SH contractual obligations and/or in response to an allegation of SEA/SH. However, the SPD issued in July 2019 did not impose a mechanism addressing non-compliance, the need for which had been identified under item (d) of Annex 3 of the Framework.After extensive discussions with borrowers, contractors' organisations, FIDIC and DAAB practitioners, the World Bank has now developed such a mechanism for use on projects for which the risk of SEA/SH is assessed by the Bank to be high. It is therefore understandable that the MDB attaches great importance to the environmental and social aspects of the overall development project and the works contracts that are intended to facilitate the development. Otherwise, the engineer is to issue the Notice to the contractor, copied to the employer and the DAAB. This is to be in the form of a 'demand guarantee', the text of which is provided in the contract. The Management Strategies and Implementation Plans will serve as the basis for further strategies and plans to be developed by the contractor (C-ESMP) during the execution of the works.Construction schedule (Outline Works Programme)The outline programme to be submitted with the bid, as part of the bidder's technical proposal, must include the following key milestones prior to mobilisation:engineer's non-objection to the contractor's Management Strategies and Implementation Plans;constitution of the DAAB; andthe holding of a so-called 'SEA/SH conference'. Key personnel scheduleThe bidder's schedule of key personnel must include an expert with relevant experience in addressing SEA/SH cases. If the circumstances do not merit termination, the contractor will be required to complete the works.On expiry of the disqualification, the contractor may bid for further World Bank-financed projects but must declare the previous disqualification and demonstrate what steps it has taken to ensure future compliance. The list is composed of three candidates proposed by the employer in the bidding documents and three candidates proposed by the contractor in its bid. This person must be based at site for the duration of the works.SC6.27 – Contractor's SEA/SH response mechanism: receipt of SEA/SH allegations; and contractor's non-complianceBefore the contractor's personnel are mobilised, the contractor must put a mechanism in place for handling SEA/SH allegations from the contractor's or employer's personnel or any other person including third parties (SEA/SH Response Mechanism). Geoffrey SmithFriday 25 June 2021 Geoffrey SmithP's Consulting, Paris In November 2020, the World Bank officially launched a new mechanism1 which will allocate a specific role to the Dispute Avoidance/Adjudication Board (DAAB) established under the FIDIC 2017 suite of contracts, with the aim of reducing the risk of Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH) (the 'SEA/SH mechanism'). If the Emergency Arbitrator confirms the non-compliance, the contractor (and any non-compliant subcontractor) may be disqualified.A contractor/subcontractor's disqualification expires two years after the date of disqualification unless an arbitration award is made in favour of the contractor within that period.The contractor's disqualification is without prejudice to the Parties' rights and obligations under the contract, notably, the right of the employer to terminate the contract if the contractor's breach of its SEA/SH Prevention and Response Obligations is substantial. Once finalised, the code of conduct becomes one of the documents forming part of the contract.Management Strategies and Implementation PlansThe bidder must submit Management Strategies and Implementation Plans to show how it intends to manage the key environmental and social risks, including SEA/SH. These strategies and plans must detail the actions, materials, equipment, management processes and so on, that will be implemented by the contractor and its subcontractors. On receipt of such a notification, the employer is to refer the non-compliance to the DAAB for its review and decision pursuant to Sub-Clause 21.9 [SEA/SH referral].Alternatively, if the engineer identifies that the contractor has not complied with the SEA/SH Prevention and Response Obligations, the engineer is to give a Notice to Correct, copied to the employer and the DAAB. The contractor's Environmental and Social Implementation Plan (C-ESMP), of which the Management Strategies and Implementation Plans are part, are to be updated not less than every six months and submitted to the engineer for review in accordance with the usual procedure for review of contractor's documents.SC 4.2 – ES performance securityThe contractor is to provide an environmental and social performance security along with the usual performance security, within 28 days of receipt of the Letter of Acceptance. Loading PreviewSorry, preview is currently unavailable. The concerns of the MDB with respect to social issues are immediately evident to anyone who compares the Conditions of Contract for Construction for Building and Engineering Works designed by the Employer, Multilateral Development Banks (MDB) (the 'Framework'), which often finance the design and construction of infrastructure entered under FIDIC contracts, take a much wider view. The posted code of conduct must be written in languages that can be understood by contractor's personnel, employer's personnel and the local community.SC 5.1 – SubcontractorsThe contractor must ensure that its subcontractors comply with the relevant environmental and social requirements and the SEA/SH Prevention and Response Obligations. The decision must state that it is issued pursuant to PC 21.9 and must be issued to the contractor and the employer and copied to the engineer.If the referral arose from an allegation of an SEA/SH incident, the DAAB decision must state whether the contractor (and any subcontractor) was compliant with its SEA/SH obligations at the time of the alleged incident.Recourse available to the contractorA dissatisfied party has the right to serve a Notice of Dissatisfaction in accordance with Sub-Clause 21.4.4 of the General Conditions in relation to a decision issued under PC 21.9. The Notice of Dissatisfaction must be issued within 28 days after receipt of the DAAB decision and must set out the grounds for the dissatisfaction. In October 2017, the Standard Procurement Documents (SPD) published by the World Bank were initially modified to include provisions on sexual exploitation and abuse and gender-based violence. However, it is unusual for either of these, or the social aspects covered by the Red Book 1999, to be raised as issues in front of the DAAB.3 Unfortunately, incidents of SEA/SH have been encountered on projects financed by the World Bank, one of which led to the Bank cancelling a large road project at the end of 2015.4 This led to the appointment of an independent Global Gender-Based Violence Task Force5 to advise the Bank with respect to the prevention, mitigation and management of SEA/SH risks. The objective of the SEA/SH orientation conference is to ensure a common understanding of all SEA/SH contractual requirements and remedies, including those available under PC 21.9 [SEA/SH Referrals], PC 21.10 [Dissatisfaction with DAAB's decision of SEA/SH Referrals] and PC 21.11 [Bank's disqualification of the Contractor and its Subcontractors]. The sum of the performance security(ies) and environmental and social performance security(ies) is normally not to exceed ten per cent of the accepted contract amount.SC 4.20 – Progress reportsWithin its monthly reports, the contractor must include an environmental and social section, which is to follow a structure set out in Part D of the particular conditions and provide, inter alia, information with respect to SEA/SH training, the code of conduct, allegations of SEA/SH incidents, a statement of compliance or a list of issues and actions to be taken to achieve compliance.In addition, the contractor must inform the engineer immediately of any allegation of SEA/SH. The borrower will manage all contractors in an effective manner, including:(a) Assessing the environmental and social risks and impacts associated with such contracts;(b) Ascertaining that contractors engaged in connection with the project are legitimate and reliable enterprises, and have knowledge and skills to perform their project tasks in accordance with their contractual commitments;(c) Incorporating all relevant aspects of the Environmental and Social Commitment Plan into tender documents;(d) Contractually requiring contractors to apply the relevant aspects of the Environmental and Social Commitment Plan and the relevant management tools, and including appropriate and effective non-compliance remedies;(e) Monitoring contractor compliance with their contractual commitments; and(f) In the case of subcontracting, requiring contractors to have equivalent arrangements with their subcontractors."(Emphasis added) Soon after the Framework came into effect, the World Bank signed a licence agreement with FIDIC to replace the Pink Book with the FIDIC 2017 suite of contracts. All subcontracts must state that the subcontractor accepts that it may be disqualified by the World Bank from being awarded a World Bank-financed contract for a two-year period if the subcontractor is found to have failed to comply with its SEA/SH Prevention and Response Obligations. In addition, when seeking a Notice of No-Objection from the engineer with respect to the proposed appointment of a subcontractor, the contractor must include a declaration from the subcontractor, in accordance with the form set out under Part E of the Particular Conditions, by which the subcontractor provides information with respect to its record related to SEA/SH.SC 6.9 – Contractor's personnelUnder Sub-Clause 6.9, the contractor is to take immediate action to remove (or cause to be removed) any person who undertakes behaviour which breaches the code of conduct.SC 6.12 – Key personnelThe contractor must appoint natural persons named in the bid to the positions of key personnel, which include the expert with relevant experience in addressing SEA/SH cases. They must also notify the World Bank of the commencement of any Emergency Arbitration and the Emergency Arbitrator Order.If the DAAB's decision is that the contractor failed to correct identified non-compliance with its SEA/SH obligations or was non-compliant with such obligations at the time of an alleged incident, and if no Notice of Dissatisfaction was served by either of the Parties, the World Bank will review the DAAB decision for procedural regularity. In parallel, the World Bank had been developing an Environmental and Social Framework (the 'Framework'), which came into effect on 1 October 2018.6 Under the Framework, borrowers are required to commit7 to achieving ten Environmental and Social Standards through the identification of environmental and social risks and the establishment of Environmental and Social Management Plans to manage and mitigate the impact of such risks. Details of the mechanism, including how to submit an allegation or concern, and also measures protecting against reprisal, are to be displayed in locations easily accessible to the contractor's personnel, employer's personnel, and the affected communities, in languages they can comprehend.The contractor must have a dedicated person in place with the necessary skills, experience and training to receive and review allegations or concerns which may be submitted in writing, in person or by phone, with appropriate provision for confidential treatment, or may be made anonymously.The contractor must implement ethical and safe processes for investigating and addressing allegations and apply appropriate disciplinary measures in the case of the contractor's personnel, which may include removal from site in accordance with Sub-Clause 6.9.Following receipt by the contractor of an allegation, the employer and the engineer must be immediately informed and provided with details of the alleged incident, but without the names of the persons involved. The DAAB must record the outcome of the review in its site visit report.14 As a potential non-compliance identified in a site visit report might eventually lead to a referral on which the DAAB must issue a decision, its comments must be as neutral as possible. If a Notice of Dissatisfaction is served within the 28 day-period, the usual requirement to attempt amicable settlement following such a Notice of Dissatisfaction does not apply.16 Either party may refer the matter to arbitration in accordance with Sub-Clause 21.6 of the General Conditions. The Management Strategies and Implementation Plans must include processes to verify compliance of the contractor's (and subcontractor's) obligations with respect to the code of conduct under Sub-Clause 4.25. If no Notice of Dissatisfaction is issued within such period, the DAAB becomes final and binding. After contract award, the contractor will be bound by this schedule.SEA/SH declarationBidders are required to submit a declaration (using the form included in the bidding documents) accepting that, if awarded the contract, the World Bank may disqualify them (including any non-complaint subcontractor) from being awarded a World Bank-financed contract for a period of two years, following a DAAB decision confirming non-compliance with the SEA/SH Prevention and Response Obligations.The SEA/SH Prevention and Response Obligations to be applied after award of the contract, are set out under the following sub-clauses of the Special Provisions:2.7 SEA/SH Conference4.1 Contractor's general obligations4.2 Environmental and social performance security4.20 Progress reports4.25 Code of conduct5.1 Subcontractors6.9 Contractor's personnel6.12 Key personnel6.27 Contractor's SEA/SH response mechanism: receipt of SEA/SH allegations; and contractor's non-compliance6.28 Training of contractor's personnel SC 2.7 – SEA/SH conferenceThe contractor is required to participate in a 'SEA/SH conference' to be organised by the employer as soon as possible after the constitution of the DAAB and before mobilisation. The contractor's personnel are to be informed of the mechanism at the time of engagement. In the event of a negative finding, the contractor may be disqualified from further projects financed by the World Bank for a two-year period. However, several of the obligations relate to documents submitted by the successful bidder during the bid phase.The relevant documents that the bidder must submit include the following:Code of conduct for contractor's personnelThe bidder is required to submit its code of conduct that will apply to contractor's personnel (subcontractors as well as directly employed workers and supervisors). Thereafter the procedure is the same as for a potential non-compliance identified by the DAAB during a site visit.A third trigger for a referral to the DAAB is receipt by the contractor, employer or the engineer of an allegation of SEA/SH. The contractor must also put in place its 'SEA/SH response mechanism' required by Sub-Clause 6.27.1 (see below) so that any allegations of SEA/SH can be properly recorded and promptly addressed.When appropriate, the contractor is to submit for review by the engineer any additional Management Strategies and Implementation Plans that become necessary to manage the environmental and social risks associated with major activities and elements of the works.

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