



Presentation 19 June 2014

Design Approval Challenges Under FIDIC

Safety Design in Buildings Conference Bahrain

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This session ...

- **Summary**

- Looking at how we put design safety into action from a contractual legal perspective and the key challenges to doing that effectively

- **Learning objectives**

- Understanding how design approval fits into the procurement and contract regime
- Overcoming the challenges and constraints

- **Paula Boast**

- I am a Partner in the international law firm of Trowers & Hamlins, based in Bahrain and working on projects, construction and engineering law issues across the MENA region

What is FIDIC?

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What is FIDIC?

Federation Internationale des Ingenieurs-Conseils

- Engineers who published standard forms of construction contracts used across the MENA region:
 - CONS – conditions of contract for construction (red)
 - P&BD – conditions of contract plant, design & build (yellow)
 - EPCT – PC/ turnkey projects
 - SF – short form

Red Book

- Conditions of Contract for Construction Works Designed by the Employer
 - Recommended for building and engineering works designed by an employer or its designer, whether in-house or externally hired
 - Works under Red Book can include some elements of contractor-designed civil, mechanical, electrical and construction works

Yellow Book

- Conditions of Contract for Plant and Design/ Build
 - Recommended for the provision of electrical and/ or mechanical plant
 - Or for building and engineering works designed by the contractor

Other forms are also based on them ...

- Oman Standard Form of Construction Contract
 - 1981 edition
 - 1999 edition
- Bahrain Ministry of Works Conditions of Contract
 - 2009 edition

Design Approval

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Key Contract Clauses

- The role of the ENGINEER is key to design approval of safety systems:
 - 3.1 Engineer's duties and authority
 - 3.2 delegation by the Engineer
 - 3.3 Instructions of the Engineer
- But we are seeing an erosion of the Engineer role under FIDIC:
 - Client interference
 - Project Manager
 - Costs Consultants

Key Contract Clauses

- Clause 5 DESIGN
 - Yellow Book not Red Book
 - 5.1 General design obligations
 - 5.2 Contractor's documents (technicals)
 - 5.3 Contractor's undertaking
 - 5.4 Technical standards and regulations
 - 5.5 Training
 - 5.6 As-Built documents
 - 5.7 Operation and Maintenance manuals
 - 5.8 Design errors fall to Contractor

Key Contract Clauses

- 17 Risks and Responsibility
 - Limitation of liability
 - Caps on liability
- 18 Insurances
 - Professional indemnity insurance
 - Negligence
 - Product liability insurance

Challenges to Design Approval

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Constraints?

- Clients controlling the Engineer
- Clients locked into budget constraints
- Market/ recession issues are still there - project teams looking to cut costs
- Value engineering is prolific
- Safety design is a key cost cutting area due to technology improvements - why?
 - Should be getting more cost effective
 - But it's not

Who's responsible for safety design?

- Key risk
 - Responsible parties will always look to dilute or reduce their liability and responsibility under the Contract
- Red Book
 - Client appointed designer/ architect?
 - Engineer?
 - Sometimes the Contractor to some extent?
 - Or a mix of all 3?
- Yellow Book
 - The Contractor
 - His design Subcontractors
 - Or sometimes both

Overcoming the constraints

- Sensible project team approaches to value engineering
 - Safety first right? 😊
- Control the client
 - Easier said than done ...
- Let people do their contractual job
 - Leave the Engineer alone!
- Get the FIDIC contracts right
 - Decide who is responsible for the design
 - Gear the Contract to ensuring that it works properly
 - Focus on the key clauses
 - Minimise delays and interference
 - It just lets people off the hook

Contract focuses

- International standards
 - Products, systems, technology
 - Trends and developments
- Market and Sector Best Practice
 - LEED
 - BREAM
- Infrastructure challenges
 - MENA is always interesting
- Protection at the highest possible levels
 - People
 - Assets

Thanks for listening

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