



FIDIC MDB Harmonised Construction Contract Conference



**Introduction
to the MDB
Harmonised
Major Works
Contract
Workshop,
Monday
25 June 2012.**

**Brussels
25-26 June
2012**

The FIDIC /Multilateral Development Bank (MDB) Harmonised Construction Contract Conference

Its Application and Operational Experience

Crowne Plaza Hotel, Brussels, Belgium 25-26 June 2012

The Conference

The General Conditions of the MDB Harmonised Major Works Contract PDF are available at www.fidic.org/mdb

The MDB Harmonised Major Works (Construction) Contract serves as one of the major vehicles for ensuring environmentally and socially responsible procurement and delivery of projects. Its growing importance is recognised not only by the major multi-lateral development banks, but also by an increasing number of bi-lateral funding agencies. This conference aims to broaden the understanding and experience of this contract form, and its wider use in the marketplace.

Special Half Day Workshop

An introduction to the MDB Harmonised Major Works Contract

Monday 25th June 2012

(08:30-11:15 - Registration & Coffee from 08:00)

Speaker: **Aisha Nadar**, FIDIC Contracts Committee 1999 Update Task Group

Attend this conference workshop to update your knowledge of the FIDIC MDB Harmonised Construction Contract. In addition to providing an in depth look at the MDB Harmonized Contract, the FIDIC contracts expert will take you through the FIDIC Conditions of Contract for major works and explain in detail the specificities and purposes of each form. You will also hear the overview of how FIDIC's Conditions of Contracts have shaped recent industry standards.

Workshop attendees are then invited to attend the MDB conference at a reduced rate.

Hotel Accommodation

The 2012 MDB Harmonised Major Works (Construction) Contract Conference takes place on 25/26 June 2012 at the Crowne Plaza Hotel, Place Rogier, Brussels, Belgium, close to the North Station (Gare de Nord).

Tel.: +32 2 203 62 00; Fax: +32 2 203 55 55

A limited number of rooms have been booked at the hotel. Participants should contact the hotel directly for a reservation.

Booking Code: **Ref 2386978**

FIDIC / EFCA - MDB Contracts Conference

In association with The World Bank and the other Participating Banks for MDB Harmonised Major Works (Construction) Contract:

African Development Bank
Asian Development Bank
Black Sea Trade and Development Bank
Caribbean Development Bank
Council of Europe Development Bank
European Bank for Reconstruction & Development
Inter-American Development Bank

Registration Fee

Conference registration fee: **Euro 500**, including refreshments and lunches.

A copy of the FIDIC MDB Harmonized Construction Contract is included.

Workshop registration fee: **Euro 300**.

Conference and workshop registration fee: **Euro 650**.

Organization

The programme and speakers for the MDB Harmonised Major Works (Construction) Contract Conference are coordinated by BWI, EIC and FIDIC, with FIDIC managing the administration and EFCA managing the local arrangements. Panel sessions will cover the contract clauses and user experience as well as cross-cutting issues including the anticorruption clause, labour and health and safety provisions, and dispute boards.

Registration

Online registration: www1.fidic.org/events/mdb2012

Offline registration: please complete and send the accompanying registration form to FIDIC.

Information

FIDIC

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Brussels, 25-26 June 2012





Background

The major Multilateral Development Banks (MDBs) had previously adopted the General Conditions of the FIDIC conditions of contract for building and engineering works designed by the Employer (the FIDIC Conditions of Contract for Construction), and its previous version, in their Standard Bidding Documents (SBDs) for major works. However, it was the regular practice to introduce Particular Conditions in order to amend the General Conditions. These additional clauses, specific to the MDBs, had standard wording which was repeated whenever procurement documents were prepared. Furthermore, the provisions in tender documents varied between the MDBs and called for additional special provisions. As a result, Particular Conditions tended not to focus solely on project and country specific items so there was uncertainty in the risk allocation between the parties, and the uniform comparison of bids was difficult. This led to inefficiency and increased the possibilities for disputes.

Mandatory General Conditions included in SBDs and contract documents upstream of project-related measures were also recognised by construction industry stakeholders as an important mechanism for implementing on site international labour and health and safety standards. These included the International Finance Corporation Performance Standards, The World Bank Group's Environmental, Health and Safety general guidelines, The Equator Principles, the ILO Labour Clauses in Public Contracts convention, and the UNCITRAL Model Law on Procurement of Goods, Construction and Services. The mandatory provisions would help mitigate against reducing project cost by passing responsibilities to subcontractors and by avoiding responsibilities for labour legislation, wages, hours, health, safety and welfare regulations, and social costs.

The MDB Heads of Procurement (HoPs) were also making significant progress towards agreeing harmonised definitions for fraud and corruption that needed to be reflected in their contract provisions for major works. Moreover, in adopting the FIDIC Construction Contract, the MDBs had recognised the difficulty for the Engineer under the contract to be impartial in decision making. With subsequent dispute resolution mechanisms (based mainly on arbitration or litigation) becoming lengthy and expensive and the need for a dispute avoidance mechanism, the MDBs saw the value of Dispute Adjudication Boards that were introduced in the FIDIC contract and had become the construction industry's preferred dispute resolution mechanism.

The challenges and opportunities were recognised by the MDBs as significant, as were the benefits of standardisation. In response, the MDB HoPs, as part of structured programme for the harmonisation of master procurement documents, procurement policies, procedures and other procurement related issues, resolved that there should be amended General Conditions in their major works SBDs, which incorporated and extended the standard wording which previously had been incorporated in Particular Conditions to the FIDIC contract.

In May 2005, FIDIC agreed special MDB Harmonised Major Works Contract General Conditions comprising the General Conditions of a MDB Harmonized Edition of the FIDIC Construction Contract. They were licensed by FIDIC for by the MDBs for MDB-financed projects; updated versions of the MDB Harmonized General Conditions were released by FIDIC in March 2006 and May 2010.

There are currently eight Participating Banks for the MDB Harmonized General Conditions, and the Islamic Development Bank has agreed in principle to enter into a licence agreement. To further disseminate standardisation and best practice, the banks agreed in 2007 that other funding agencies such as bilateral development agencies and the Multilateral Financial Institutions should also be able to use the MDB Harmonized General Conditions under licence for their projects. To date, development agencies for Australia, France, Korea, Japan and the USA have entered into licence agreements with FIDIC.

The MDB Harmonized Major Works General Conditions are made available in the MDBs' Master Document for Procurement of Works, which forms the basis for the MDBs' SBDs for major works; electronic versions can be downloaded from www.fidic.org/mdb. Where Participating Banks are responsible for releasing translations, FIDIC aims to encourage harmonisation with its translations of the FIDIC Construction Contract. For other translations, FIDIC organises translation and publishing agreements with the Participating Banks.

Challenges

Interpreting and implementing the MDB Harmonized General Conditions remain a challenge for construction industry stakeholders. Their present wording raises issues that need clarification so that users are not inclined to make their own interpretations, which would lead to uncertainty reappearing. For instance, contractors have pointed out possible difficulties in implementing the extended fraud and corruption provisions as they appear to apply to the execution of the contract at the project level.

Regarding implementing the conditions of contract, while FIDIC develops and disseminates a considerable amount of best practice related to the management and administration of the standard edition (currently the 1st Edition, 1999) of the FIDIC Construction Contract, there are provisions in the MDB Harmonized General Conditions that need specific guidance, notably measures relating to labour, employment, health and safety standards, collective bargaining, and the technical and managerial capacity to implement and monitor provisions. There are also some general issues common to the sector where the MDBs' guidance and best practice could bring about important changes. For instance, while Dispute Boards became mandatory in the MDB Harmonized General Conditions, modified procedures and incentives for Employers to put Dispute Boards in place may need to be introduced.



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DAY 1



Morning chairman: **Geoff French**, FIDIC President

09.00 – 09.15

Session 1: Welcome

Bernard Becq, Head of Procurement, World Bank,
Roger Fiszelson, Director General, CICA,
Ambet Yuson, General Secretary, BWI
Jan Bosschem, President EFCA,

09.15 - 09.45

Session 2: Overview of key issues from 2011

A summary of the key findings and conclusions from the 2011 MDB Conference

Bernard Becq, World Bank
Fiona Murie, Global Director Health and Safety and Construction, BWI
Michel Démarre, EIC Past President
Philip Jenkinson, Chair, FIDIC Contracts Committee

09.45 - 10.45

Session 3: Sector specific issues

A review of the Harmonised contract and its provisions in terms of how it enables all parties to Development funded projects to fulfil their obligations effectively. Borrowers are invited to comment on the terms and conditions as they affect their ability to exercise adequate control over projects. Should lenders have more influence over the management process of contracts, and/or offer more support?

Pakistan agency (invited)
JICA client (invited)
Frank Kehlenbach, EIC

10.45 – 11.15 - Coffee Break

11.15 - 12.30

Session 4: Regional issues

The pros and cons of using the Harmonised contract or the FIDIC Red Book on certain aid-funded projects will be explored. Varying experiences will be shared.

Evgeny Smirnov, EBRD, experience in the Bank's countries of operations.
Sarwono Hardjomuljadi on Indonesia and Aceh;
Vinay Sharma, Head of Procurement, AfDB
Ian Nightingale, WB

12.30-13.45 - Lunch Break

Afternoon Chairman: **Bernard Becq**, World Bank

13.45 – 15.00

Session 5: Bilateral experience with MDB Contract

Ausaid re Indonesia (invited);
Jonathan Saiger, MCC (Haiti and Africa) – invited), SIDA, Sweden, (invited)
Albrecht Wald, KfW, Germany (invited)
Sebastian Hök, FIDIC trainer and adjudicator (JICA experience)
Kenneth Baum, USAID (invited)

15.00-15.30 - Coffee Break

15.30 – 16.30

Session 6: Use of DABs and FIDIC adjudicators

The MDB perspective, including comments on the role of DABs and adjudicators in project management, and their eligibility for financial support as part of the project. Experience also on In Situ DABs, as opposed to Ad Hoc.

Murray Armes, FIDIC adjudicator.
Hamid Sharif, Head of Procurement, ADB
Vinay Sharma, AfDB
Mathias Fabich, PORR, EIC Working Group «Contract Conditions»
Sarwono Hardjomuljadi, Indonesia

16.30 – 17.15

Session 7: Other forms of Contract

Experiences will be shared on the interest in other forms of contract eg design build, and other options such as alliancing, and smaller project contracts.

Graeme Clark, EBRD, reflections from the MDB Working Group on design-build/turnkey STDs
Hamid Sharif, ADB
Ian Nightingale, WB
Richard Kell, Australia
Aisha Nadar, FIDIC Contracts Committee

17.15 - 17.30

Day Summary: **Geoff French**, **Bernard Becq**

18.00 – 19.00

FIDIC Cocktail function – sponsored by BST

DAY 2

Morning Chairperson: Fiona Murie (BWI)

09.00 – 10.30

Session 8: Social issues in contracts – labour and health

The Harmonised Contract as a document setting out the relationship between client and contractor (and engineer), as opposed to a guideline on institutional issues and social reform in Borrowing countries, reflecting objectives of MDBs or borrowers. How does this reflect current international practice and norms?

Ian Nightingale, WB
Norman Cameron, CDB (invited)
Edmundo Werner – ILO; (invited)
Richard Kell – FIDIC Past President

10.30 – 11.00 - Coffee break

11.00 – 12.30

Session 9: Integrity/corruption

Procurement criteria versus business management tool. Should anti-corruption policies (GAC) be reflected in procurement and how, and hence in contracts? What role for integrity systems, and accounting for them at bidding stage and, thereafter, in contract execution and management? How important could/should the Reps Agreement (agent contract) be in development funded projects?

Jorge Diaz Padilla, FIDIC Past President, and chair of FIDIC Integrity Committee
Maria Vannari, WB
Janos Bertok, OECD (invited)
Neill Stansbury, GIAC, UK

12.30-13.45 - Lunch Break



Afternoon Chairman: Philip Jenkinson

14.00 – 15.00

Session 10: Client perspective: borrowers, private clients, finance issues

Is such a Harmonised contract document helpful in facilitating local objectives in infrastructure investment? Does it help or hinder building capacity? What about sustainability and MDGs?

Ausaid re Indonesia (invited);

Jacques Bouillon, White & Case, France
Thierry Senechal, ICC Banking Commission
WB, ADB clients (invited)

15.00-15.30 - Coffee Break

15.30 – 16.30

Session 11: Europe – the revised Financial Regulation and the new 2014 – 2020 Financial Framework

Structural and Cohesion funds, EU External Action, EIB and EBRD assistance.

Laurent Sarazin, Head of Unit, DG DEVCO R3, Legal Affairs; (invited)
Jan Jackholt, Procurement Director EBRD - procurement considerations when co-financing with the EU Cohesion Funds
José Luis Alfaro – EIB Head of Procurement (invited);
Ines Ferguson, Spain – Chair, EFCA European External Aid Committee.

16.30 – 17.00

Session 12: Wrap Up – key issues emerging:

Geoff French,
Bernard Becq,
Philip Jenkinson,
Fiona Murie,
Roger Fiszelson



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Registration Form

Please complete the registration and payment details. Receipt of registration will be acknowledged immediately.

First name _____
Family name _____
Title (Dr, Mr, Ms, etc) _____
Position in organization _____
Organization name _____
Organization address _____

City _____
Post Code/ZIP _____ Country _____
Telephone _____
Fax _____
E-mail: _____

Payment

☐ By bank transfer

Details of the FIDIC bank account will be included on the invoice that confirms registration.

☐ By credit card

I authorise FIDIC to debit the following credit card _____ Euro

☐ AmEx ☐ Visa ☐ Mastercard/Eurocard

Card number _____

Expiry date _____

Cardholder name _____

Cardholder address _____

I have read and accept the Terms and Conditions

Name _____

Position _____

Signature _____

Offline Registration

Registrations will be accepted up until the conference opens on **25 June 2012**.

Please return this form to:

FIDIC, Box 311, CH-1215 Geneva 15, Switzerland
Tel: +41 (0)22 799 49 00 - Fax: +41 (0)22 799 49 01
Email: echollet@fidic.org - www.fidic.org

Online registration

Register and pay (by credit card) or arrange payment (by bank transfer or credit card on receipt of a proforma invoice) at:
www1.fidic.org/events/mdb2012

Registration includes lunches, refreshments and a copy of the MDB Harmonized Edition of the FIDIC Construction Contract.

Terms and Conditions

Registration: participants may register offline using this registration form returned by fax or mail to FIDIC, with payment by bank transfer or credit card, or online with payment by credit card. Payment receipts: all registered participants will receive an acknowledgement of registration, an invoice and confirmation of payment.

Refunds: cancellations must be received and confirmed seven days before the closing date for registrations. Refunds will normally not be made after this date.

Cancellation: the organizers reserve the right to cancel the conference if it is undersubscribed or for any other reason. In the event of cancellation, FIDIC will endeavour to give participants two weeks' notice and the registration fee will be refunded in full.

Substitutions: substitutions may be accepted provided they are announced seven days before the conference starts.

FIDIC, the International Federation of Consulting Engineers, based in Geneva, promotes globally the business interests of suppliers of technology based intellectual services for the built and natural environment on behalf of some 89 Member Associations representing 60,000 firms worldwide.

BWI, Building and Woodworkers International, based in Geneva, groups together some 328 trade unions representing around 12 million members in 130 countries. It aims to promote trade union development in the building, building materials, wood, forestry, and allied sectors.

EIC, European International Contractors, based in Berlin, represents the interests of the European construction industry in all questions related to its international construction activities, notably the political, economic and legal framework.



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