

# FACTS ABOUT

An Information Update from the IADC

## FIDIC BLUE BOOK (SECOND EDITION)

### WHAT IS THE FIDIC BLUE BOOK (SECOND EDITION)?

Released in 2016, the FIDIC *Form of Contract for Dredging and Reclamation Works* (Second edition) is a standard form of contract for projects involving dredging and reclamation work which also offers guidance for the contracting process. For brevity, the publication is referred to as the FIDIC Blue Book (Second edition) throughout the industry.

### WHAT IS FIDIC?

FIDIC is an acronym for the Fédération Internationale des Ingénieurs Conseils, which is French for the International Federation of Consulting Engineers. Based in Geneva, Switzerland, FIDIC is an umbrella organisation comprised of members which are national associations of consulting engineers originating from 104 countries. FIDIC represents the consulting engineering industry at an international level and promotes the business interest of firms supplying technology-based intellectual services for the built and natural environment.

FIDIC supports its members and the industry by publishing international standard forms of contracts for works. These forms are widely accepted internationally and the preferred contract for the World Bank, and tend to be balanced in the sense that risk is placed with the party that is best able to manage it.

### WERE THERE OTHER FIDIC CONTRACTS BEFORE THE RELEASE OF THE FIDIC BLUE BOOK (SECOND EDITION)?

Prior to 1999, FIDIC made a standard form civil engineering construction contract that required particular conditions for use with dredging and reclamation works, which FIDIC specifically provided. In 1999, FIDIC published new standard forms of contract, the so-called the rainbow suite but without any special provision for dredging and reclamation work.

*Above: The dredging industry executes dredging and reclamation works with specialised equipment and processes, making project contracting complex. FIDIC – in collaboration with IADC – set out to remedy this with a revised edition of its Form of Contract for Dredging and Reclamation Works.*

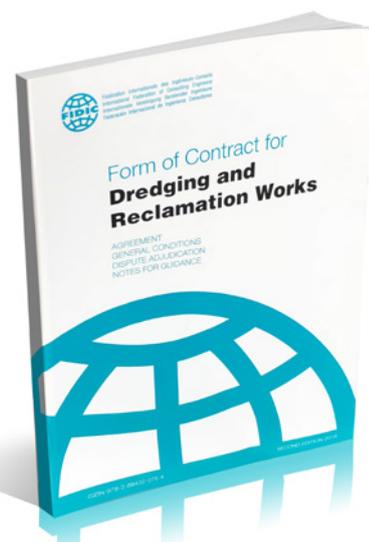
Instead in 2001, FIDIC released a test edition *Form of Contract for Dredging and Reclamation Works* and this became a first edition in 2006.

Traditionally, FIDIC publishes updates every 10 years and IADC wanted to see certain changes to better reflect the specialised nature of dredging works and to give more specific and detailed guidance notes to help users.

### WHO IMPROVED THE SECOND EDITION OF THE BLUE BOOK TO BETTER SUIT THE DREDGING INDUSTRY'S NEEDS?

In 2011, FIDIC established Task Group 7 (TG7) to consider the improvements that could be made to the first edition. With all members appointed by FIDIC, TG7 was chaired by John Greenhalgh and included Dr Roger Maddrell – a marine

*Released in September 2016, FIDIC's Form of Contract for Dredging and Reclamation Works (Second edition) is known industry-wide as the FIDIC Blue Book.*



engineer – and Edward Corbett – a lawyer and member of the contract’s original drafting team. IADC were represented on the task group by Tim Maddock and Marnix Vandenberghe.

The combination of backgrounds led to the Task Group’s balance of expertise to represent the interests and concerns of various stakeholders of employers, engineers and contractors. Changes were only made if the committee was unanimous and through this process, balance was achieved.

### **WHAT WAS THE APPROACH EMPLOYED TO PRODUCE THE BLUE BOOK (SECOND EDITION)?**

At the outset, FIDIC instructed the Task Group to not make changes for change’s sake but only when the group was convinced that an improvement was necessary. The result is that the strengths of the original contract have been maintained and the number of changes kept to a minimum. The process was a long one because every change was carefully considered. The proposals that IADC made were discussed at great length.

In 2013, the proposed draft changes were reviewed by selected industry specialists – both legal and engineering – and by the FIDIC Contracts Committee’s special advisors. Throughout 2014, a number of issues remained unresolved including the limitation of liability which was debated at the “FIDIC International Contract Users’ Conference” in December 2014. These issues were finally resolved by the FIDIC Contracts Committee which then undertook the task of completing and publishing the second edition.

### **WHAT WERE FIDIC’S GOALS IN MAKING THE BLUE BOOK (SECOND EDITION)?**

The FIDIC Blue Book has a simple and practical approach which provides an industry-specific Standard Form of Contract that is clear and balanced as well as promotes efficient procurement, management, and execution of dredging projects.

According to IADC’s research, the FIDIC Blue Book (First edition) had been steadily gaining popularity between 2006 to 2013 and showed a constant increase in usage since 2010. In addition, statistics suggest there has been repeated use by clients that reflects a degree of satisfaction with the FIDIC Blue Book. This indicates that the value of the FIDIC Blue Book is well recognised and a new version, with clarified details, would be well-received. By reducing the need for particular conditions, FIDIC set out to increase the Blue Book’s usage.

Another aim was to make it more specific to the dredging industry while reducing the preference of some employers to refer to other FIDIC Contracts that are in fact not suited to marine construction. This was done by reinforcing the specialist nature of the contract, particularly in terms of the “Notes for Guidance”.

In addition, since ten years had passed since the first edition had been published, new industry practice was required to be taken into account to reflect current practice.

### **WHAT ARE THE KEY CHANGES IN THE BLUE BOOK (SECOND EDITION)?**

The FIDIC Blue Book (Second edition) is more suited to the technical requirements of the dredging industry.

To update the first edition to better reflect actual practice, the second edition made the “General Conditions of Contract” more specific to the needs of the marine construction industry and provides more specialised “Notes for Guidance” to help employers.

Terms and style reflect current FIDIC practice therefore “Contract Data” is used as opposed to the previously used “Appendix to Tender”. The “General Risk” profile has been reviewed and has been aligned with the overall balance of risk presented by the FIDIC Rainbow Suite of Contracts.

The second edition retains the clarity of the first edition with “Defined Risks” in one designated place under Sub-Clause 6.1. The “Notes for Guidance” now comprises some 18 pages of detailed guidance to assist users and minimise the need for a lawyer or contract manager to administer the contract on both sides.

### **WHAT PROJECTS CAN THE BLUE BOOK (SECOND EDITION) BE USED FOR?**

The second edition of the FIDIC Blue Book can be utilised for all dredging and reclamation projects. It is less suitable for complicated marine construction or offshore projects as it lacks the elaborate testing and taking over procedures often required on complex construction jobs. However, it is very flexible and could be easily adapted by a knowledgeable practitioner.

### **IN WHICH COUNTRIES IS THE BLUE BOOK (SECOND EDITION) BEING USED?**

There is widespread use of the Blue Book in India, Indonesia, Nigeria and the Philippines. In addition, there is a growing market for Blue Book contracts in Central and South America such as the Caribbean, Chile, Costa Rica, Colombia, Panama and Uruguay. There has been some uptake of the FIDIC Blue Book in Australia, Europe (including the Baltic states and Scandinavia) and Russia.

### **WHAT LANGUAGES IS THE BLUE BOOK (SECOND EDITION) AVAILABLE IN?**

The official and authentic text of the Blue Book is the version in the English language.

IADC assisted FIDIC with translations of the Blue Book (Second edition) to promote international usage of the contract and to help promote it further in regions where the translated versions are necessary. The publication is available in five additional languages: French, German, Italian, Portuguese and Russian.

### **UNDER WHICH CIRCUMSTANCES CAN THIS FORM OF CONTRACT BE USED?**

Under the usual arrangements for this type of contract, the contractor constructs the works in accordance with design



provided by the employer or by the employer's engineer. However, this form may also be suitable for contracts that include, or wholly comprise, contractor-designed works. In addition, the employer has a choice of valuation methods.

### WHAT IS THE CONTRACT'S STRUCTURE?

The 53-page-long document includes the following sections: Agreement, General Conditions, Dispute Adjudication (which includes sub-sections for Rules for Dispute Adjudication and Dispute Adjudication Board Member's Agreement), Particular Conditions, Notes for Guidance and Annexes - Forms of Securities. Further, the General Conditions are only 14 pages long and are very straightforward to understand.

### HOW IS INFORMATION PRESENTED IN THE CONTRACT?

The intention is that all necessary project specific data should be provided in the "Contract Data" to the "Agreement", the latter incorporating the tenderer's offer and its acceptance in one simple document. The "General Conditions" are expected to cover the situation in the majority of contracts. To assist in the preparation of tender documents, "Notes for Guidance" are included. These "Notes for Guidance" are not however documents that are to form the "Contract". Finally, applicable "Rules for Dispute Adjudication" are also included.

### WHICH CONTRACT PARTY DOES THE FIDIC STANDARD FORM OF CONTRACT FAVOUR?

It is misconception to consider the Blue Book (Second edition) as a contract written in favour of one of the Parties. On the contrary, it should be viewed as a flexible contract that clearly allocates responsibility to the parties best able to control that risk.

The contract contains a role for an engineer to act as the independent certifier, scrutiniser and general supervisor or administrator. It allows the employer to decide who is responsible for design, clearly identify risks and put these risks where they can be properly dealt with. The employer has substantial control during the contract preparation timing to make this contract represent the risk balance that he requires.

This is important because the "Conditions of Contract" should promote efficient procurement and enable contractors to manage and execute these projects to in turn complete the



employer's project on time and within budget. The contract is also flexible on the manner of pricing the works.

### IS PARTY RESPONSIBILITY FOR WORKING METHODS DEFINED IN THE BLUE BOOK (SECOND EDITION)?

The Blue Book (First edition) took into account that the Employer may require dredging and reclamation projects to be carried out on a Design & Build basis. In practice, however, it has to be recognised that most employers wish to follow the traditional working method whereby the employers provide the design themselves or through their design engineers. In the second edition, the "General Conditions" still allow for a Design & Build arrangement, but the heading for Sub-Clauses 5.1 and 5.2 now states "Design" instead of "Contractor's Design". This aligns with the fact that in most cases, the design is provided by the employer through the specification and drawings for which the employer is responsible.

In the situation where the contractor is to be responsible for the design, the "Notes for Guidance" set out relevant boundary conditions that the employer needs to define in a proper set of employer's requirements. In this way, non-specialist employers will gain a much better understanding of what they need to provide.

### WHICH PARTY IS RESPONSIBLE FOR PERMITS AND LICENSES?

Clarity about permits is always important in dredging and reclamation. Although the contractor remains responsible for the operation and use of its vessels, the employer should almost always be responsible for the overriding permits required to carry out the specific work. This includes permits related to construction and zonal planning, environmental permits, dredging or disposal licenses.

The IADC consulted users and a list of typical statutory fees and charges are now included in the second edition. A tick box contained in the "Contract Data" presents the items for which the employer will be responsible. The "Notes for Guidance" on Sub-Clause 2.2 contains a further list of permits and licenses that may be required for the project and can be incorporated in the contract as well. This list was produced after consultation with various dredging companies. The list is extensive with a suggested indication of responsibility allocation which reflects common practice in the industry.

## DOES THE BLUE BOOK (SECOND EDITION) ADDRESS THE SPECIALISATION OF DREDGING CONTRACTORS?

Dredgers are very expensive vessels and typically operate around the clock and in order to achieve best utilisation and value, they should be allowed to work 24/7. This is now dealt with properly in the new Sub-Clause 7.5: “The Contractor is entitled to carry out his operations continuously by day and by night, regardless of weekends, days of rest, local holidays, religious festivals or other customs, unless otherwise stated in the Contract Data and subject to compliance with the Laws where the operations are carried out.”

Amendments to the “Defined Risks” section Sub-Clause 6.1 “Defined Risks” include the following revisions:

- “interruptions due to ship movements in excess of those specified in the Contract Data”. The “Contract Data” is the place that allows the employer to tailor the contract to suit the project. Employers determine where the works are to be executed so the risk of interruptions due to third party ship movements in excess of the number stated in the “Contract Data” is now also contemplated as a “Defined Risk”.
- “climatic or hydrological conditions more adverse than those specified in the Contract Data”. The parties now also have the opportunity to clearly define the boundaries applicable to allocate the risks of climatic and hydrological conditions in the “Contract Data”.
- “rebellion, terrorism, revolution, insurrection, military or usurped power, piracy, or civil war, affecting the Works”. Piracy is a common maritime risk, especially when vessels are mobilised through a risk zone. The risks of piracy are now expressly recognised as a “Defined Risk” in Sub-Clause 6.1(b). With reference to “Defined Risks” 6.1(a) and 6.1(b), the “Notes for Guidance” clarify that a premium increase for the war risks cover (which includes piracy) implemented by underwriters following advice from the Joint War Committee in London, falls within the scope of additional costs envisaged by Sub-Clause 10.4 “Contractor’s Right to Claim”.

Dredging contracts often include standby rates because the contractor continues to incur cost while his equipment is standing idle. To avoid disputes over what sums are recoverable for a “Defined Risk”, Sub-Clause 10.4 now expressly refers to “the application of rates stated in the Contract for this purpose” when it comes to determining the cost of idle time as a result of a “Defined Risk”.

## WHAT IS CONSIDERED A FORESEEABLE CONDITION?

One of the hardest things as a client and contractor is to resolve whether something was foreseeable or not. Despite it being an objective test, it is quite often the case that

two experts will say completely the opposite. Through the preparation of a geotechnical base report, a baseline for what is considered foreseeable by the contractor is set out, giving clarity to the position on the project. It is very helpful to have this kind of baseline report since dependable soil information gives greater certainty in respect of the price and time for completion. Currently, this approach isn’t commonly utilised in the industry. It was a recommendation from the tunnelling industry as its approach to resolving as well as avoiding unforeseeable claims.

## FOR FURTHER READING AND INFORMATION:

Standard Form of Contract for Dredging and Reclamation Webinar by IADC. (<https://www.onlineseminar.nl/iadc/webinar/7eba4d70-b440-4286-b2df-f65643384346/iadc-webinar-on-the-fidic-blue-book-second-edition/#watch>)

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Facts About is presented by the International Association of Dredging Companies whose members offer the highest quality and professionalism in dredging and maritime construction. The information presented here is part of an on-going effort to support clients and others in understanding the fundamental principles of dredging and maritime construction.

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