

**SOUTH AFRICAN ROAD FEDERATION**  
**SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION**  
**AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS**  
**CHAPTER 12: COMPLETION OF THE CONTRACT**

**CONTENTS**

	<b>Page No.</b>
1. INTRODUCTION .....	2
2. COMPLETION OF THE CONTRACT .....	3
3. TIME FOR COMPLETION .....	3
4. CERTIFICATE OF PRACTICAL COMPLETION (GCC 2010).....	4
5. CERTIFICATE OF COMPLETION (GCC 2010).....	5
6. TAKING-OVER CERTIFICATE (FIDIC 1) .....	5
7. DEFECTS LIABILITY PERIOD (GCC 2010); DEFECTS NOTIFICATION PERIOD (FIDIC 1).....	6
8. CERTIFICATE OF FINAL APPROVAL (GCC 2010); PERFORMANCE CERTIFICATE (FIDIC 1) .....	6
9. FINAL PAYMENT CERTIFICATE .....	7

**SOUTH AFRICAN ROAD FEDERATION**  
**SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION**  
**AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS**  
**COMPLETION OF THE CONTRACT**

**1. INTRODUCTION**

This section deals with the stage where the construction of the project is approaching completion. There are several contractual requirements and mechanisms for completing the contract. It should be noted that GCC 2010 and 2015, and FIDIC 1 have significantly different procedures for the completion stages and it is essential for contract administrators to be aware of what these differences are.

In looking at this aspect it is necessary to look at what is meant by completion of the contract and when this status is achieved in time.

Among the many issues that arise are:-

- Completion date, extensions of time and penalties.
- First inspection to identify outstanding works.
- Inspection for Practical Completion (GCC 2010 or 2015) [note that FIDIC I does not use this concept].
- Issue of Certificate of Practical Completion (GCC 2010 or 2015).
- Completion of outstanding works.
- Issue of the Certificate of Completion (GCC 2010 or 2015).
- Tests on completion (FIDIC 1)
- Issue of the Taking-Over Certificate (FIDIC 1).
- Final measurement.
- Agreement of variations.
- Agreement or otherwise on claims.
- Release of the Surety.
- Return of the Site to the Employer.
- Insurance cover ceases.
- Final inspections.
- Remedy of Defects (fair wear and tear excluded).
- Issue of Final Approval Certificate (GCC 2010 or 2015).
- Issue of Performance Certificate (FIDIC 1).
- Contractor's written discharge (FIDIC 1).

- Issue of the Final Payment Certificate (GCC 2010 or 2015 and FIDIC 1) (excluding disputed items).
- Resolution of disputes – adjudication/arbitration/litigation.

The 'Management Guide to the General Conditions of Contract 2015' contains a very useful flow chart showing the various procedural requirements and timings for completion when administering contracts under GCC 2015 which is well worth studying.<sup>1</sup>

## **2. COMPLETION OF THE CONTRACT**

The Contract imposes various rights and obligations on the parties to the Contract. It can be said that completion is achieved in stages as the various obligations are fulfilled. From a contractual point of view there are certain key dates in the Contract which are marked by the issue of certificates which confirm that certain defined milestones have been reached.

The key dates are:

- The attainment of practical completion (GCC 2010).
- The successful conclusion of 'Tests on Completion' (FIDIC 1)
- The completion of the works or any minor outstanding works.
- The end of the Defects Liability Period (GCC 2010 terminology)
- The end of the Defects Notification Period (FIDIC 1 terminology)..

## **3. TIME FOR COMPLETION**

The Time for Completion is stated in the Contract Data. The Contract makes provision for extensions of this time on grounds which are clearly stated. The completion date is thus determined from the Commencement Date as defined in the Contract.

GCC 2010 and FIDIC 1 have different approaches to identifying the Commencement Date. GCC 2010 Clause 1.1.1.5 defines the Commencement Date as being *"...the date that the Agreement, made in terms of the Form of Offer and Acceptance, comes into effect."* FIDIC 1 in Clause 1.1.3.2 defines the Commencement Date as being *"...the date notified under Sub-Clause 8.1 [Commencement of Works]"*. Reference to Sub-Clause 8.1 then states that *"The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date. Unless otherwise stated in the Particular Conditions [note – these will be incorporated in the Contract Data] the Commencement Date shall be within 42 days after the Contractor receives the Letter [Form] of Acceptance."*

---

<sup>1</sup> SAICE – Management Guide to the General Conditions of Contract 2015 – 3<sup>rd</sup> Ed., 2015 – Fig 5, p81

When revising the completion date once an extension of time has been awarded to the Contractor GCC 2015 stipulates a procedure for time calculations in Clause 5.1 which must be applied:

*“Except where otherwise provided by the Contract, where a specific time-span is stipulated in the Contract for carrying out any task or for the termination of any right or the duration of any event or circumstance,*

- The special non-working days set out in the Contract Data that fall within the said time-span, as well as*
- The day on which the time-span commences*

*shall be excluded from the calculation of the time-span concerned.”*

FIDIC 1 does not contain any detail such as GCC 2015 above but has a definition for “Time for Completion” (which GCC 2015 does not) in Clause 1.1.3.3 as follows;

*“Time for Completion means the time for completing the works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the appendix to Tender [Contract Data] (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.”*

FIDIC 1 also provides a definition for ‘day’ in Clause 1.1.3.9:

*“‘day’ means a calendar day and ‘year’ means 365 days.”*

So it can be seen that the calculation of any time-span differs between GCC 2015 and FIDIC 1 and contract administrators must take that the correct procedure is applied, depending upon which Conditions of Contract apply to the contract in question. This is also an area where careful drafting is required when the tender documents are being prepared insofar as suitable amendments may be required if the FIDIC 1 form of contract is being used on a South African project.

If the job is to be completed in stages then there will be times for completion allocated to each stage.

#### **4. CERTIFICATE OF PRACTICAL COMPLETION (GCC 2015)**

This is issued when, in accordance with the definition in Clause 1.1.1.24 *“...the whole or portion of the Works has reached a state of readiness, fit for the intended purpose, and occupation without danger or undue inconvenience to the Employer, although some work may be outstanding”*. This is somewhat subjective and some authorities therefore stipulate the items of work that have to be 100% complete in order to warrant the issue of this

certificate. Several Certificates of Practical Completion can be issued if completion is to be achieved in stages. The certificates must be dated before the completion dates determined in 3) above if penalties are to be avoided.

The clock stops running for purposes of penalties when the Certificate of Practical completion is issued. All other contract provisions remain in force.

## **5. CERTIFICATE OF COMPLETION (GCC 2015)**

This certificate is issued once outstanding work listed at the time of issue of the Practical Completion Certificate has been completed. Again several Certificates of Completion can be issued for defined stages.

The Certificate of Completion marks the point when the following matters are dealt with

- The Employer takes over the Site or the part of the works completed.
- The Defects Liability Period begins for the part covered by the certificate.
- The Surety is returned to the Contractor or reduced in respect of the part completed.
- The insurances are no longer in force or cover is reduced.
- The first 50% of Retention Money is released. For stages only the retention relative to the stage is unsolved.

## **6. TAKING-OVER CERTIFICATE (FIDIC 1)**

The requirement in FIDIC 1 is for the Employer to take over the Works (or a Section, if any) when they are completed in accordance with the Contract including:

*“...achieving the passing of Tests on Completion”* [Sub-Clause 8.2 (a)], and

*“...completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purpose of taking-over under Sub-clause 10 [Taking Over of the Works and Sections].”* [Sub-Clause 8.2(b)]

but excluding:

*“...any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied.”* [Sub-Clause 10.1(a)].

Once again it can be seen that the FIDIC 1 procedure is somewhat different to that in GCC 2015 and contract administrators must be aware of these differences when dealing with contract completion.

**7. DEFECTS LIABILITY PERIOD (GCC 2015); DEFECTS NOTIFICATION PERIOD (FIDIC 1)**

This was formerly referred to as the 'Maintenance Period'. However, this expression gave rise to the incorrect interpretation that the Contractor was responsible for the routine maintenance of the Works and not just for the remedying of defects and was thus modified to become the Defects Liability Period. Although placing the same obligations upon the Contractor FIDIC 1 has adopted the term 'Defects Notification Period'.

The Defects Liability Period is that period stated in the Contract Data during which the Contractor shall "perform all such work of repair, reconstruction, rectification and making good of defects, shrinkage, settlements or other faults as may be ordered by the Engineer. The intent here is that "the Permanent works shall at, or as soon as is practical after the expiration of the Defects Liability Period, be in the condition required by the Contract. It should be noted that "fair wear and tear" are excluded which means basically that the Contractor is only responsible for the repair or rectification of work that can be ascribed to substandard workmanship or materials. He must in terms of the contract repair "other faults ordered by the Engineer" and the implication is that he will be compensated for the repair of "such other faults".

**8. CERTIFICATE OF FINAL APPROVAL (GCC 2015); PERFORMANCE CERTIFICATE (FIDIC 1)**

This is issued after any defects that have occurred or become apparent during the Defects Liability Period or Periods have been rectified. This certificate is the only certificate that constitutes approval of the Works and is taken as being an admission of the due performance of the Contract. It is important to note that only one Certificate of Final Approval is issued and is only due when the latest of the Defects Liability Periods has expired.

The importance of the Final Approval Certificate cannot be over emphasized. To all intents and purposes, it brings the Contract to a close except for outstanding disputes. It is the only time that the Engineer formally approves the work done.

Now although the Final Approval Certificate has been issued and the Works have been accepted and the Contract has been duly performed, the Contractor, under clause 5.16.3 in GCC 2010 has a liability for any latent defect that manifests itself within a specified period after the issue of the Final Approval Certificate. This period is to be stated in the Contract Data and is, in South Africa, commonly set at 10 years. The provisions (whatever they might be) of the Prescription Act (Act No. 68 of 1969, as amended) shall apply in respect of any latent effect manifesting itself within the 10 year period.

No such similar clause exists in FIDIC 1 and it is thus essential to introduce an amendment in the Contract Data to make limitation provisions in the manner provided in GCC 2015.

## **9. FINAL PAYMENT CERTIFICATE**

The Final Payment Certificate for the Contract cannot be prepared until the Works have been finally approved and all outstanding financial matters have been settled (save in respect of matters in dispute and not yet resolved). It is usual, if there are no on-going disputes, to issue the final account for signature by the Contractor at the same time that the final retention is released. The Contractor signs a release confirming that on payment of any money stated in the final account, he has no further claims on the Employer (again subject to any unresolved matters in dispute).