

SOUTH AFRICAN ROAD FEDERATION
SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION
AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS
CHAPTER 13: FUNCTION OF THE ENGINEER

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FUNCTION OF THE ENGINEER

In terms of GCC 2010 Clause 3.1 *“The function of the Engineer is to administer the Contract as agent of the Employer ...”*. In FIDIC 1 Clause 3.1(a) states that *“...whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer...”*

Further to the above clauses GCC 2010 Clause 3.1.2 requires that *“Whenever the Engineer intends, in terms of the Contract, to exercise any discretion or make any issue or ruling, contract interpretation or price determination, he shall first consult with the Contractor and the Employer in an attempt to reach agreement. Failing agreement, the Engineer shall act impartially and make a decision in accordance with the Contract, taking into account all relevant facts and circumstances.”*

FIDIC 1 Clause 3.5 requires that *“Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.”*

The provisions above place the Engineer in a position where, on the one hand he is clearly required to act as the agent of the Employer and on the other hand, when adjudicating, say, a contractor's claims he is required to act in a manner that is fair between the Parties. This is a role that is sometimes very difficult to adequately fulfill due to the pressures applied upon the Engineer by the Employer (who 'pays the piper') and by the Contractor (who sees the Engineer as favouring the Employer). The Engineer is well advised therefore to strictly adhere to the procedural requirements of the Conditions of Contract and the authority afforded to him therein.

Set out below are the various principal actions to be carried out by the Engineer in fulfilling that function. Each action is referenced to the appropriate GCC 2010 clause. The corresponding appropriate FIDIC 1 clause reference is provided in parenthesis with comment where necessary.

1. ON ACCEPTANCE OF TENDER

Cl. 6.2 Take delivery from Contractor of Surety. [FIDIC 4.2 – Surety delivered to Employer but should be checked by Engineer for compliance with pro-forma in tender document]

Cl. 5.12 Receive from Contractor his proposed programme and details of methods and resources, and consider suitability. [FIDIC 8.3]

Cl. 4.12 Obtain nomination of Contractor's agent and consider approval. [FIDIC 4.3]

Cl. 8.6 Obtain copies of Contractor's insurance policies for the Works, Special Risks Insurance (if required) and Public Liability Insurance and proof of payment of all premiums and proof of payment of all contributions in terms of the Compensation for Occupational Injuries and Diseases Act (COID); obtain Employer's approval. [FIDIC 18]

2. AT COMMENCEMENT OF WORKS

Cl. 3.2 Appoint Engineer's Representative and delegate his authority. [FIDIC 3.2]

Cl. 4.4 Obtain details of any proposed sub-contractor and confirm any formalities. [FIDIC 4.4]

Cl.5.3 Obtain Employer's authority for and issue to Contractor the written notice requiring him to commence the executions of the Works. [FIDIC 8.1 – Employer's authority not specifically required, but advisable to have this confirmed before Engineer issues notice]

Cl.5.4 Obtain authority from Employer and give Contractor right of access to and possession of the Site (if the Employer is not himself doing this directly). [FIDIC 2.1]

Cl.5.9 Provide Contractor with copies of drawings and instructions required for commencement of the Works. [FIDIC 3.3]

Cl.6.7 Instruct Contractor as to form and date of monthly statement. [FIDIC 14.3]

3. DURING COURSE OF CONSTRUCTION

Cl.8.6 Ensure that insurance policies are maintained in force in full until issue of Certificate of Completion and with reduced liability until issue of Final Approval Certificate. [FIDIC 18]

Cl.8.5 Obtain from Contractor reports of any accidents. [FIDIC 6.7]

Cl.6.3 Consider whether any variations are required and, if so, obtain the Employer's approval as necessary and instruct the Contractor in writing. (Ensure that all additional work required is ordered before issue of Certificate of Practical Completion). [FIDIC 13]

Cl.6.4 Consider whether any change in tendered rates is warranted by virtue of changes in nature of quantity of individual items or of the whole of the work. [FIDIC 12.3]

Cl.6.4 Negotiate with Contractor regarding rates for variations. [FIDIC 13]

Cl.6.5 Instruct Contractor regarding Daywork items, obtain rates for Daywork materials and instruct Contractor regarding verification of Daywork charges. [FIDIC 13.6]

Cl.5.7 If the Contractor does not adhere to his programme, call on him to take steps to correct this situation and if necessary warn him of the application of the penalty. [FIDIC 8.3]

- CI.6.6 Order work covered by Provisional Sums and Prime Cost items in the Schedule of Quantities and instruct Contractor regarding obtaining quotations. [FIDIC 13.5]
- CI.5.13 If the Certificate of Practical Completion is not issued by the Due Completion Date, take action accordingly in regard to the penalty that may be applied by the Employer. [FIDIC 8.7 – delay damages to be identified in an Employer’s claim in terms of Clause 2.5, which claim is to be determined by the Engineer]
- CI.10.1 Ensure that Contractor provides monthly details of any claims; ensure that claims are not time-barred. [FIDIC 20.1]
- CI.6.10 Determine monthly the amount due to the Contractor and certify to Employer. [FIDIC 14.6]

4. ON COMPLETION OF WORKS

- CI.5.14 Ascertain whether all additional work has been ordered and whether Works have reached the stage which allows for their “intended purpose without danger or undue convenience” and whether the retention which will remain will be sufficient security to ensure that any remaining work is satisfactorily completed. [FIDIC 10]
- CI.5.14 Advise Employer of proposed issue of a certificate of Practical Completion and that when this has been done the penalty will no longer apply and that he will be entitled to take occupation of the Works. [FIDIC 10 – procedures dealing with the Taking-Over Certificate]
- CI.5.14 Issue Certificate of Practical Completion with copy to Employer. [FIDIC 10 – issue Taking-Over Certificate]
- CI.5.14 Advise Employer of proposed issue of a Certificate of Completion, and that when this has been done the Works will no longer be insured in terms of the Contractor’s policy. [FIDIC 10]
- CI.5.14 Issue Certificate of Completion to Contractor, with copy to Employer, certifying that the work has been completed. [FIDIC 10 – Taking-Over Certificate]
- CI.5.14 Arrange for (certify) release of first half of retention money. [FIDIC 14.9]
- CI.6.11 Ascertain whether the final contract amount differs by more than 15% from the tendered amount and if so consider whether any adjustment is warranted. [FIDIC - 15% variation clause does not exist in FIDIC but Clause 12.3 is applied to determining new rates where appropriate]

5. BEFORE AND FOLLOWING EXPIRY OF DEFECTS LIABILITY PERIOD

- CI.7.8 Arrange for the inspection of the Works at intervals during the Defects Liability Period and, immediately prior to its expiration, inspect the Works jointly with the Employer. Notify the Contractor of any defects to be rectified. [FIDIC 11]
- CI.7.7 If necessary, instruct Contractor, prior to expiration of the Defects Liability Period, to search for defects. [FIDIC 11.3]

CI.6.10 Arrange for (certify) release of the remaining portion of the retention money. [FIDIC 14.9]

CI.5.16 Issue Final Approval Certificate to Employer with copy to Contractor within 14 days of completion of any outstanding work and expiry of the Defects Liability Period. [FIDIC 11.9 – issue Performance Certificate]