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ASIAN DEVELOPMENT BANK BUSINESS OPPORTUNITIES FAIR 2026

21-24 SEPTEMBER 2026 | ADB HEADQUARTERS, MANILA

VALUE FOR MONEY: DRIVING QUALITY INFRASTRUCTURE

Raising Standards in Project Delivery Contracts

Workshop on Conditions of Contracts

Prasath Sanjeewa

Agenda

01 Introduction, Contract Structure and Key Parties, Risk Allocation

02 Payments, Variations and Price Adjustments

03 Claims Management, Dispute Avoidance and Resolution

ADB Standard Bidding Documents

https://www.adb.org/business/how-to/where-can-i-find-adbs-standard-bidding-documents

ADB SBDs

Goods

Off-the-shelf or custom-designed goods and related services.

Small Works

Non-FIDIC. General Conditions — simpler, shorter contracts.

Large Works — Red Book

FIDIC 2017 Conditions of Contract for Construction (Employer-designed).



Large Works — Yellow Book

FIDIC 2017 Conditions for Plant & Design-Build (Contractor-designed).



ADB SBDs

Plant, Supply, Design and Installation

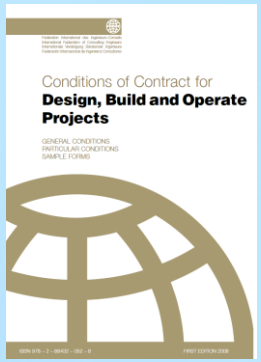
Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA)

IT Product and Services

For the use of information technology products and services (hardware, software etc)

Design Build Operate:

Water & Wastewater Greenfield Infrastructure project
FDIC Gold Book 2008



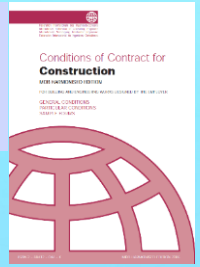
Collaborative OM

Built-in controls on the quality of O&M, with robust key performance indicators (KPIs) on the basis of the FIDIC Green Book, 2021



- Conditions of Contract for Construction, Building and Engineering works designed by the Employer (Red Book) - 1999, 2017, 2022
- Conditions of Contract for Plant and Design-Build (Yellow Book) - 1999, 2017, 2022
- Conditions of Contract for EPC/Turnkey Projects (Silver Book) - 1999, 2017, 2022

- Harmonized Construction Contract - Multilateral Development Bank (Pink Book) - 2005, 2010



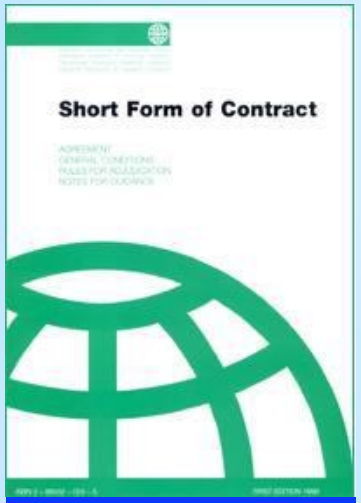
1999



2017 Reprinted 2022

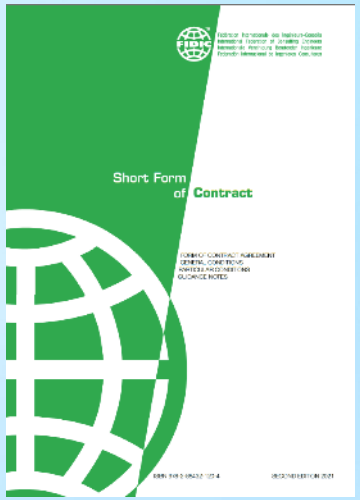


❖ Short Form of Contract (Green Book) – 1999, 2021



1999

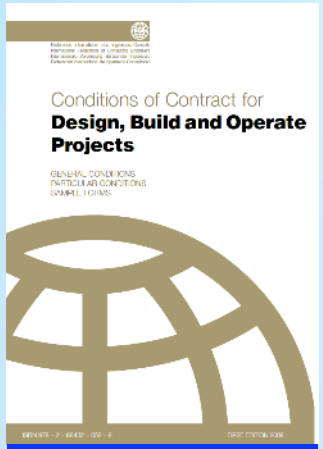
- Suitable for < $ 500,000 (higher values possible)
- Simple, Repetitive works, short duration
- Design and Build type
- No impartial Engineer…
- Rules of Adjudication



2021

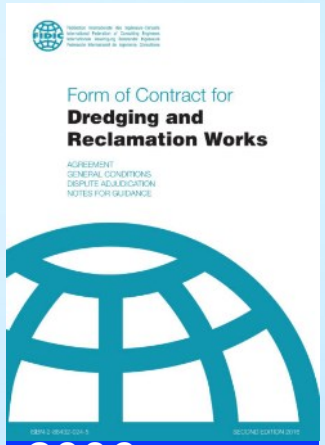
- Suitable for < $ 10 Million (higher values possible)
- Alternate to 2017 editions, where the perceived level of risk is low.
- Design and Build type
- does not require significant contract administration & management resources.
- Engineer added
- 6 payment options

- Design, Build and Operate (Gold Book) - 2008
- Dredgers and Reclamation Contract (Blue Book) - 2006, 2016
- Conditions of Contract for Underground Works (Emerald book) – 2019



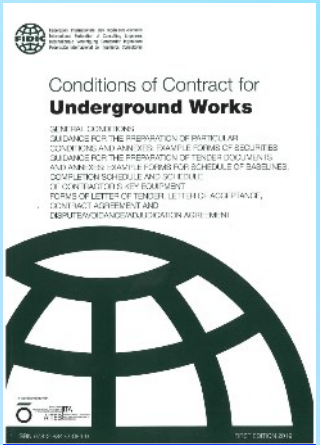
2008

- Design-build obligation with a long-term operation
- green-field Design-Build-Operate scenario, with a 20-year operation
- No contractor financing.
- Traditional DBO (not designed for brownfield, 20+ years)



2006
2016

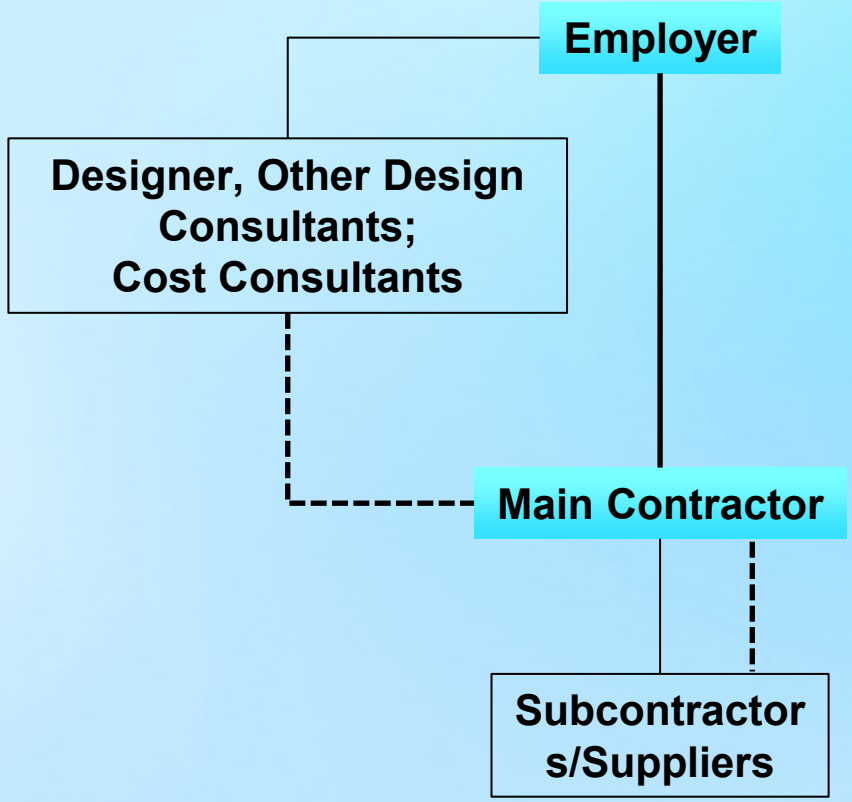
- All types of dredging and reclamation work and ancillary construction
- Designed by the Employer (but can also be used for D&B)
- Choice of valuation methods

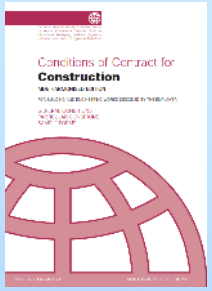


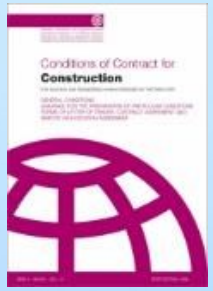
2019

- Tunnelling and underground works
- New concepts relevant to underground risks
- Geotechnical baseline report: single contractual source of risk allocation
- Excavation/lining works – Remeasurable, other works Lump Sum
- Guide - 2023 first edition

Design-Bid- Build









Design and Build

Concept Design Consultant, and Cost Consultants

Inhouse Design Team, Outsourced Designer Third Party Verifier

Employer

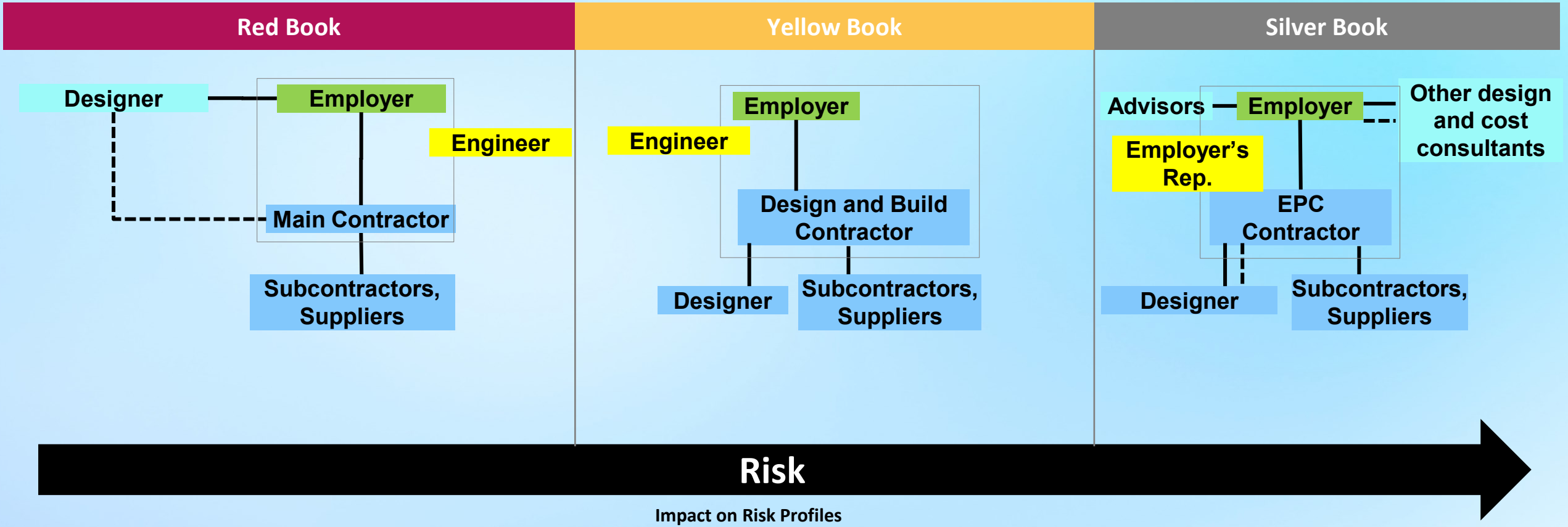
Design and Build Contractor

Subcontractors/ Suppliers

--------- Functional

———— Contractual





Impact on Risk Profiles

Yellow and Silver Books assign design duties to contractors, increasing their risk and role in project execution. Risk allocation varies depending on who holds design responsibility, influencing project risk management strategies.

Contract architecture: what governs first?

1. Contract Agreement
2. Letter of Acceptance
3. Letter of Tender
4. Particular Conditions A: Contract Data
5. Particular Conditions B: Special Provisions
6. General Conditions
7. Specification / Employer's Requirements
8. Drawings and Schedules

Key discipline: precedence resolves inconsistency but notice and clarification protect delivery.

Key discipline: precedence resolves inconsistency, but notice and clarification protect delivery.

Duties, Delegated Powers

Employer

- Site access, permits and evidence of financial arrangements
- Appoints the Engineer
- Acts through the Engineer - no direct instructions to the Contractor
- Cannot unilaterally vary the Contract terms

Engineer

- Acts for the Employer, but has no authority to amend the Contract
- Issues instructions, approvals, tests and Variations
- Must consult, then fairly determine Claims and disputes
- Cannot relieve either Party of any obligation or liability

Contractor

- Executes the Works with due care, skill and proper resources
- Delivers programme, quality management, security and any design
- Must comply with instructions, giving notice if one is a Variation
- Contractor's Representative may delegate but stays responsible

Notices and Communications

Form and delivery

- Notices must be in writing, identified as a Notice and cite the clause
- Sent to the address stated in the Contract Data or as notified
- Electronic transmission permitted where the Contract allows it
- Copy the Engineer on Party-to-Party communications

Timing and effect

- Deemed received when delivered, or at the agreed address
- Time bars run from receipt - late Notices can lose entitlement
- Approvals, consents and certificates must not be unreasonably delayed
- Silence is not consent unless the Contract says so

Language and records

- Ruling language governs where versions differ
- Day-to-day communications in the language for communications
- Keep a Notice register with dates, references and responses
- Site instructions and minutes are not a substitute for a Notice

Questions for Discussion

02 Can the Engineer instruct work that increases cost without Employer approval?

EXAMPLE

Engineer orders extra piling after soft ground is found.

Questions for Discussion

03 What happens if the Employer's representative gives verbal instructions on site?

EXAMPLE

A verbal order to move a manhole, later denied in writing.

Allocate each risk to the party best able to manage it



FORESEE

Was the event reasonably foreseeable at the Base Date?

CONTROL

Who can prevent, mitigate or insure it most efficiently?

PRICE

Will transfer produce realistic pricing or hidden contingency?

Exceptional events and related relief

Physical conditions	Experienced-contractor foreseeability test	Notice + contemporaneous site evidence
Exceptional event	Beyond control and not reasonably avoidable	Time; cost only where the Contract provides
Change in law	Change after the Base Date affecting performance	Adjustment under the applicable clause
Authority delay	Compliance with procedures and unforeseeable delay	Test clause conditions and causation
Supply disruption	Not automatically an exceptional event	Trace cause, foreseeability and mitigation

Ask every time: entitlement to time, entitlement to money, and the evidence required are separate questions.

Questions for Discussion

01 Who should bear the risk of inaccurate geotechnical or site investigation data?

EXAMPLE

Boreholes show rock at 5m; the Contractor hits it at 10m.

Sub-Clause 4.10 – Site Data
While the Employer supplies available sub-surface and hydrological data, the Contractor is deemed to have inspected the Site. Contractor to interpret

Sub-Clause 4.12 – Unforeseeable Physical Conditions
If the Contractor encounters physical conditions that:

- were not reasonably foreseeable by an experienced contractor at the Base Date, and
- cause delay and/or Cost,

Questions for Discussion

02 Is a sudden change in law, sanctions or import restrictions a Contractor or Employer risk?

EXAMPLE

New import duty on steel raises the material cost overnight.

13.6 Adjustments for Changes in Laws

Subject to the following provisions of this Sub-Clause, the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in:

(a) the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws);

(b) the judicial or official governmental interpretation or implementation of the Laws referred to in sub-paragraph (a) above;

(c) any permit, permission, licence or approval obtained by the Employer or the Contractor under sub-paragraph (a) or (b), respectively, of Sub-Clause 1.13 **[Compliance with Laws]**; or

(d) the requirements for any permit, permission, licence and/or approval to be obtained by the Contractor under sub-paragraph (b) of Sub-Clause 1.13 **[Compliance with Laws]**,

made and/or officially published after the Base Date,

Thank you

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