

FIDIC Latin America Contract Users' Conference



Panama City, 2-3 October 2018

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The Global Voice of Consulting Engineers





Standard Contracts in the International Arena - A Critical Comparison of FIDIC, AIA, and DBIA Documents

Background:

- Lawyer and Notary Public
- Masters degree in Economics
- Competition Law
- Design of public policies
- Experience in civil and commercial contracting



Standard Contracts in Latin America

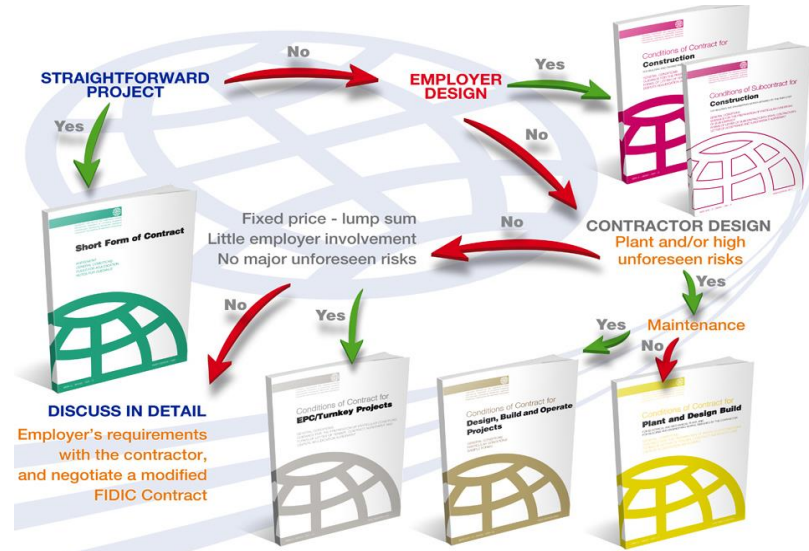
- There is no widespread recognition of Construction Law Practice
 - Among engineers and construction professionals
 - Most of them don't even use any contract
 - No academic courses in Universities
- Corruption, lack of legal certainty, archaic laws and lack of willingness of the public and private sectors to advance



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- **FIDIC.** Founded in 1913, has among its functions to collect through general conditions and contracts-type the most common uses and practices in international construction.

- Continuous reviews
- From engineers to engineers
- Better distribution of risks



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- **FIDIC.** “The common sense in engineering”
- The most important model, are the General Contracting Conditions for construction works and civil engineering works, or also called by the doctrine "Red Book".
- Based on the model developed by the English since the 19th century, so their roots are firmly rooted in Common Law



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The American Institute of Architects

- Founded in 1857
- Headquarters in Washington D.C.
- Projects in Medellin, Colombia
- Rigid and complex
- Separated contracts



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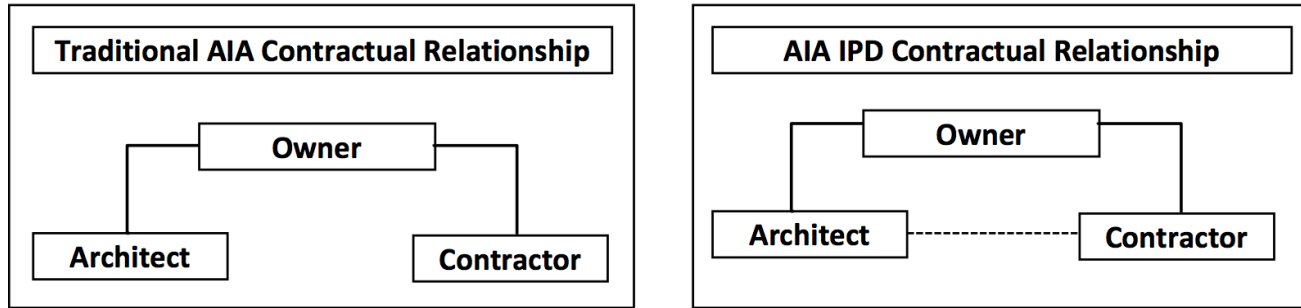


Figure 1: American Institute of Architects' Traditional vs. Integrated Project Delivery Contractual Relationships

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The Owner, Architect and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery and to utilize Building Information Modeling to maximize the use of their knowledge, skills, and services for the benefit of the Project. The Architect and Contractor will deliver the Project in the following phases, which may overlap: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Construction and Closeout (American Institute of Architects, 2008, p. 11).



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DBIA. Design-Build Institute of America

- Founded in 1993
- Design-Build Project Delivery (one single contract)
- More than half of the major projects in the United States
- More flexible and general
- A single contract between two parties
 - Contractor and subcontractors-



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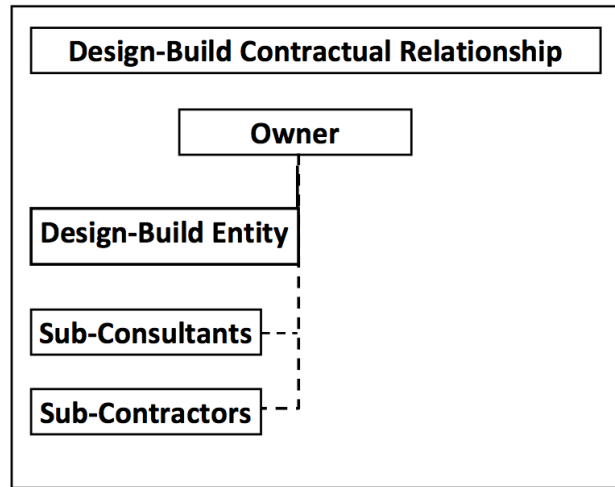


Figure 2: Design-Build Institute of America's Design-Build Contractual Relationship

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Purpose of This Document: The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed (DBIA, 2010, p. 2).



Other important references

- ENAA (Engineering Advancement Association of Japan) 1978
 - Transfer of technology and guarantees of good execution
 - Detailed regulation on turnkey contracts
 - Promoted by World Bank
- Joint Contracts Tribunal (United Kingdom)
 - Standard forms for construction
 - Guidance notes
 - NEC Contracts –simplicity and flexibility-



Comparative Frame

Característica	AIA Doc. 295	DBIA Do. 535	FIDIC
Propósito	<u>Rígido.</u> Lineamientos determinados desde el inicio.	<u>Flexible.</u> Objetivo preciso pero determinación amplia y amigable.	<u>Mixto.</u> Condiciones generales indispensables y condiciones particulares adaptables.
Estructura	Contratos separados	Contrato colaborativo	<u>Contrato opcionalmente colaborativo.</u> Permite la inclusión de auxiliares del Cliente (ingeniero)



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Característica	AIA Doc. 295	DBIA Do. 535	FIDIC
Riesgos	Contratista. La Indemnización favorece al Cliente y al Arquitecto.	Riesgo equitativo pues el contrato beneficia a todas las partes participantes. La Indemnización protege el proyecto y su objetivo y no los intereses de los individuos.	Riesgo repartido. Alta responsabilidad por el proyecto para el Contratista. Cada parte participante puede tener seguro y por lo tanto todas ser indemnizadas según los términos de este.
Resolución de conflictos	Decisión inicial Arquitecto. Mediación, Arbitraje	Resolución amistosa. Representantes <i>Senior</i> . Mediación. Foro final elegido por las partes (normalmente arbitraje)	Mesa de Resolución de Conflictos = Decisión Vinculante. Acuerdo Amistoso (mediación). Arbitraje.

Location of risks

- Contracts must allocate and distribute the risk between the parties in a reasonable manner. Good contract models assign contract risks to the party that can best manage it.
- FIDIC tries to be as fair and equitable as possible, assigning the risks to the party most capable of controlling, facing and managing them.



Location of risks

- Cases or situations of Force Majeure have been extended.
- In some situations of Force Majeure, the contractor has the right to recover
- the associated costs and extend the term of the contract.
- Increase the contractor's rights in relation to the client's obligations, in terms of demonstrating financial capacity to undertake all payments in volume and term.



Final Comments

- Latin America represents great opportunities for FIDIC
- It must make greater efforts to gain ground between the sector and governments
- Public-private partnerships are a window for the implementation of FIDIC models



THANK YOU!

