

FIDIC Latin America Contract Users' Conference



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International Federation of Consulting Engineers
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DAAB's Role Under FIDIC Conditions – Current Practices and The New Rules

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What we have?

Complex projects

Cross-Border projects

Multinational Parties

Several phases of the projects

Multi-contracts

Long term relationship

Latin America reality

The Risk is inherent in each stage of the project

PROBLEMS - OPPORTUNITIES





Risk Handling Practice in FIDIC Contracts

FIDIC Guide, pp. 88-89

“... Major projects give rise to major risks, which have to be dealt if they occur...in these events, the claims procedures are specified so as to provide the degree of formality considered necessary for the proper administration of a ... project. Complying with these procedures and maintaining a cooperative approach to the determination of all adjustments should enhance the likelihood of achieving a successful project.”

Proper administration of the risks and claims = proper administration of the project

Main purpose = successful project

THE PROJECT - COOPERATION





Project administration

Any issue raised during the execution of the project should address and settle timely

Claims and disputes should be effectively handled

Parties need a good communication channel

Resolution of any issue raised should be fast

COMMUNICATION – “REAL TIME”



The Dispute Boards

DRB

Review = recommendation

DAB

Adjudication of disputes

DAAB

Dispute Avoidance & Adjudication of disputes

EVOLUTION





The Dispute Boards (What we look for?)

Dispute avoidance

Adjudicator = Third party / Benefit of the project

Trust in the DB

Dispute Management

In site resolution

Third party experts / Adjudicators as part of the project

Dispute containment

Resolution of disputes in “real time”

Avoid conflict escalation

The “size” of the issue

AVOID ESCALATION





The Dispute Boards

Recommendation = early constitution of the DB

Standing DB

Knowledge of the Project from the start

Site visits = fresh memories

STANDING - FRESH





FIDIC 2017 (updates)

Goal = greater contract administration

How?

Structured communication between the parties

Timed obligations

More detailed programme provisions

Obligations of the parties well defined

Effective dispute management

CONTRACT ADMINISTRATION





Claims vs. Disputes

Clause 20: Claims

Clause 21: Dispute and Arbitration

“Claim” = Engineer determine claims

“Dispute” = after claim is made and rejected / DAAB = decides dispute



DAAB

Dispute Avoidance and Adjudication Boards

The new A = Avoidance

Standing DAAB is recommended

Early constitution

Use of informal meetings to resolve disagreements

Parties may approach the DAAB for an opinion before dispute

Binding decision on parties and engineer



Avoidance of Disputes

Sub-Clause 21.3 Avoidance of Disputes

Informal assistance may take place during any meeting.

Site visit are perfect timing.

Parties should have an active role in the discussion of the matters.

Advice given during informal meetings is not binding



DAAB Rules

Rule 2:

Where Sub-Clause 21.3 [Avoidance of Disputes] of the Conditions of Contract applies, the DAAB (in the case of a three-member DAAB, all three DAAB Members acting together) may give Informal Assistance during discussions at any meeting with the Parties (whether face-to-face or by telephone or by video conference) or at any Site visit or by an informal written note to the Parties.



DAAB Rules

Rule 3:

The purpose of meetings with the Parties and Site visits by the DAAB is to enable the DAAB to:

- (a) become and remain knowledgeable about the contract and informed the Parties' performance of the Contract; the Site and its surroundings; the progress of the Works
- (b) become aware of, and remain informed about, any actual or potential issue or disagreement between the Parties; and [L]
[SEP]
- (c) give Informal Assistance if and when jointly requested by the Parties. [L]
[SEP]



Dispute Resolution

Sub-Clause 21.1:

“Disputes shall be decided by a DAAB in accordance with Sub-Clause 21.4...” [L SEP]



Dispute Resolution

Sub-Clause 21.4.3

The DAAB shall complete and give its decision within: 84 days ^[L]_[SEP]

The decision shall be reasoned and given in writing ^[L]_[SEP]

The decision shall be binding on both Parties, who shall promptly give effect to it
(whether or not it is subject to a Notice of Dissatisfaction)



Multi-tier ADR Clause

Sub-Clause 21.7

Enforcement by arbitration, in the event of party failure to comply



DBs in Latin America

Examples in Central America:

Cajun Honduras

Fomilenio Honduras, El Salvador

Panamá Canal, Panamá

Liberia-Cañas, Costa Rica

What we got?





What we need?

Continues training

The stake holders involved

- The government

- The construction companies

- The financial institutions (World Bank, IDB, etc.)

The others

- UNOPS

- The students – universities

- The professionals (architects, engineers and lawyers)

Local partners = getting involved, more access



The doubts?

What is a DB?

Who appoint the DB

Who pays the DB

Is the decision of the DB binding and enforceable?

What happen if I go to arbitration?

Do you we need legislation about DBs?



Conclusion

DAAB = The new A (Avoidance)

DB is an insurance:

- It focused on the project success

- “Real time” solutions

- Try to avoid project delays

- Prevent arbitration costs

Working together





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THANK YOU

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