



CONSTRUCTION  
LAW  
INSTITUTE

PROFESSIONAL TRAINING:

# Effective Construction Claims



**Date:** 25th-26th July 2024

**Venue:** Protea Hotel, Kampala

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# Day 1

25th July 2024



# OVERVIEW OF FIDIC CONTRACTS

Day 1  
Session 1



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## Common Construction Contracts

- Government of Uganda form of Contract (PPDA).
- East African Institute of Architects (EAIA Blue Book).
- FIDIC (International Federation of Consulting Engineers)
- FIDIC Red Book (Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer).
- FIDIC Yellow Book (Conditions of Contract for Plant and Design Build for Electrical and Mechanical Plant and Building and Engineering Works, Designed by the Contractor).
- FIDIC Silver Book (Conditions of Contract for EPC/Turnkey Projects).

## What is FIDIC?

FIDIC is the international umbrella body for consulting engineers.

FIDIC is a French language acronym that stands for *Fédération Internationale Des Ingénieurs-Conseils* which means International Federation of Consulting Engineers.

FIDIC is a standard form of Contract used for large value works.

FIDIC was started in 1913 by the trio of France, Belgium and Switzerland. The United Kingdom joined the federation in 1949.

FIDIC headquarters are in Switzerland. FIDIC is used in over 200 countries.

## PURPOSE OF FIDIC

FIDIC contracts are used in Public Infrastructure projects including:

- Roads
- Bridges
- Dams
- Plant & Machinery
- Oil and gas Projects
- FIDIC may be used for Private Contracts. (White book and Green book)

## WHO USES FIDIC CONTRACTS?

FIDIC contracts are used in Public Infrastructure projects including:

- Roads/Bridges
- Dams
- Plant & Machinery
- Oil and gas Projects

FIDIC may be used for Private Contracts. (White book and Green book)

FIDIC is used for Development projects funded by MDBs for use in aid-funded projects. Project Financiers in Uganda include:

- AfDB
- World Bank
- European Union
- China Exim Bank
- JICA-Japanese International Corp. Agency
- BADEA - Arab Bank for Economic Development in Africa

## BENEFITS OF USING FIDIC CONTRACTS?

- FIDIC contracts are standardized & hence preferred by International Contractors who deem them as fair.
- Clarity of contracts, consistent wording.
- Covers all kinds of issues that may arise during construction.
- Provides a Dispute Resolution Mechanism as works progress.
- Has best practices in the industry and addresses the common issues.
- Condition for Multilateral Development Banks (MDBs).

## FIDIC RAINBOW SUITE

- FIDIC Contracts are operated through the FIDIC General Conditions of Contract found in the FIDIC Books.
- Main difference in the books is the risk apportionment between Employer & Contractor.
- Who does the Design/Who bears risk for change in quantities?

## FIDIC BOOKS

- Red Book
- Pink Book
- Yellow Book
- Silver Book
- Golden Book
- White Book
- Green Book
- Blue Book

Colours relate to the type of works

## RED BOOK

The Red Book provides conditions of contract for construction works where the **Building & Engineering Works are designed by the Employer.**

**Projects:** Fortpotal Kyenjojo, Fortpotal Hima, Hima Katunguru, Tororo Busia, Koboko Yumbe Nebbi

Employer designs & hence bears the risk for changes in quantities.  
Contract is admeasurement based contract.



## PINK BOOK

Conditions of Contract for **Construction** for Building & Engineering works designed by the Employer. Contractor constructs the Works in accordance with design provided by the Employer.

Multilateral Development Banks (MDBs) require their borrowers or aid recipients to adopt the FIDIC Conditions of Contract.

MDBs that participated in the preparation of the Pink Book include:

- African Development Bank
- International Bank for Reconstruction and Development (The World Bank)
- Islamic Bank for Development Bank

Used for Development projects funded by Multilateral Development Banks (MDBs) for use in aid-funded projects



## Differences between Red Book 1999 and Pink Book(MDB) Harmonised Edition 2010

### Sub Clause

2.4 Employer's Financial Arrangements

### Amendment

1999 Red Book, the Employer is required to submit reasonable evidence that financial arrangements have been made and are being maintained to enable the Employer to pay the Contract Price, within 28 days of the Contractor's request to do so.

The Pink Book requires the Employer to submit the reasonable evidence "before the Commencement Date" as well as within 28 days of the Contractor's request. In addition, the evidence that the Employer provides must demonstrate that it is able to pay the Contract price "punctually".

### Sub Clause

3.1: The Engineer's duties and authority

### Amendment

- 1999 Red Book, the Employer is not obligated to impose "further constraints on the Engineer's Authority except as agreed with the Contractor."
- Under the Pink Book, the Employer is allowed to change the engineer's authority without the contractor's agreement.
- Under the Pink book, the Engineer is to obtain the Employer's approval before taking action under sub-clauses 4.12 (unforeseeable physical conditions), 13.1 (Right to Vary), 13.3 (Variations Procedure) and 13.4 (Payment in Applicable Currencies)

**Sub Clause** 4.1: Contractor's General Obligations

**Amendment** The Pink Book requires the contractor to source all equipment, material and services for use on the Works from an eligible source country (as defined by the Bank).

**Sub Clause** 4.2: Performance Security | 14.2 Advance Payment

**Amendment** The Pink Book requires the P.S and APG to be issued by "a reputable bank or financial institution" selected by the Contractor. Unlike the Red Book there is no requirement for the Employer to approve the entity and country from which it is issued.



## Differences between Red Book 1999 and Pink Book(MDB) Harmonised Edition 1999

<b>Sub Clause</b>	14.1: The Contract Price
<b>Amendment</b>	Under the Pink Book, Construction Equipment is exempt from import duties when imported.

<b>Sub Clause</b>	16.1: Contractor's Entitlement to Suspend Work
<b>Amendment</b>	If the Bank suspends payment of the funds from which the Contractor is paid, and no alternative funds are available, the Contractor can suspend or reduce the rate of work it performs at any time (having received a notice from the Bank).

### Yellow Book

Conditions of Contract for **Plant and Design Build** for Electrical & Mechanical plant, and for **Building & Engineering works designed by the Contractor**.

Contractor bears the risk for changes in quantities. Contract is a lumpsum based contract.

**Projects:** Kampala Flyover, New Jinja Nile Bridge, Rukungiri Kihhi, KEE, Kira – Matugga, Najanankimbi – Busabala, Oil roads



### Silver Book/Turnkey

Conditions of Contract for **EPC/Turnkey Projects.\*Engineer, Procure and Construct**. EPC contractor is responsible for the engineering design of the works, its procurement and subsequent construction.

Turnkey, in principle, means a contract whereby the contractor provides whatever is necessary for the project and on completion hands over a key to the Employer.

**Isimba Dam is an example of a turnkey project.**

#### Turnkey Projects are characterized by:

- Certainty of Final price
- Certainty of Completion date
- More expensive type of contracts
- Contractor has total responsibility for design and execution of project with minimal involvement of Employer.
- Wider range of risk is borne by the contractor
- Employers risk is war, terrorism, force majeure.



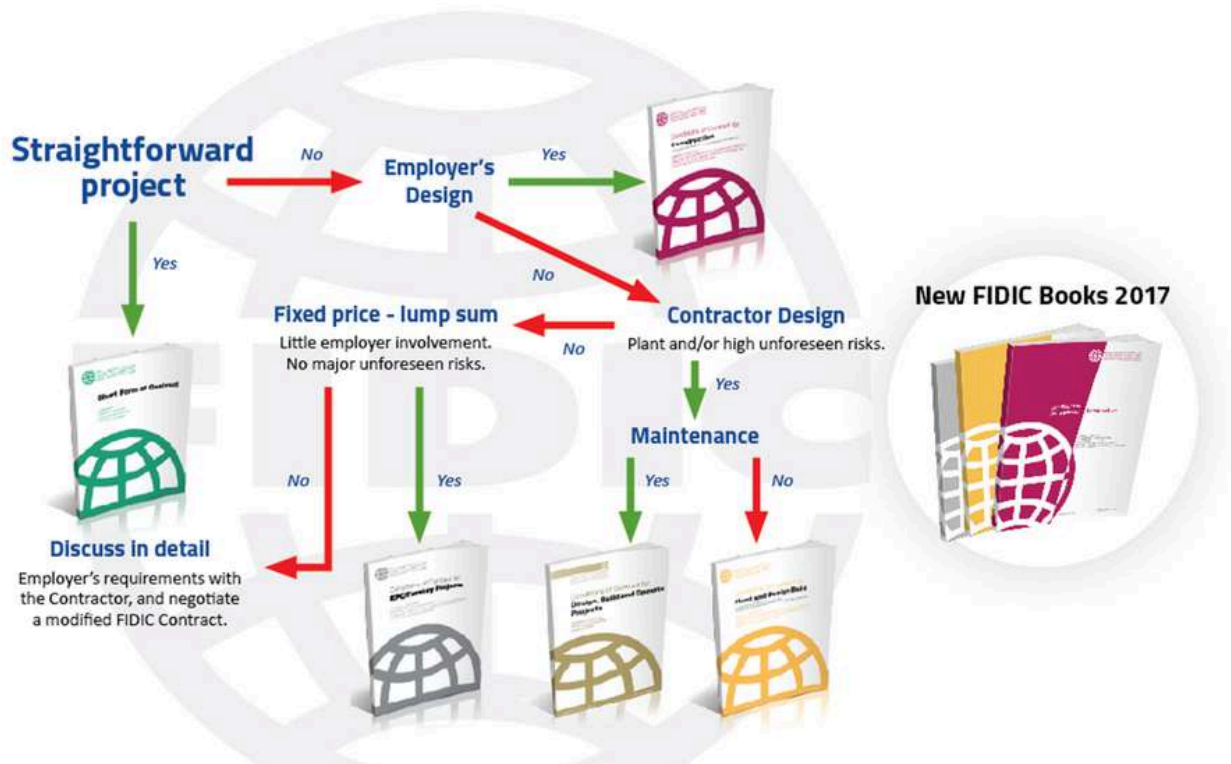
### Golden Book

Conditions of Contract for **Design, Build and Operate Projects (DBO)**

The Gold Book is used in projects where the **design-build work and the operation and Maintenance work are to be carried out by the same contractor**.

Usually used for projects with an operation phase of 20 years. Greater risk is borne by the Contractor.





## Facts on FIDIC

FIDIC contracts typically include:

- 1) General Conditions of Contract(GCC)
- 2) Particular Conditions of Contract(PCC) Access to site, Completion Time, Commencement date, % Liquidated damages, % Retention.

Liquidated damages are chargeable when a contractor delays to complete works within the duration for completion indicated in the contract.

[www.taxguru.in](http://www.taxguru.in)

## FIDIC Golden Principles

**GP - 1** The Duties, Rights, Obligations, Roles and Responsibilities of all the Contract Participants must be generally as implied in the General Conditions, and appropriate to the Requirements of the Project.

**GP - 2** The Particular Conditions must be drafted clearly and unambiguously

**GP - 3** The Particular Conditions must not change the balance of Risk / Reward allocation provided for in the General Conditions.

**GP - 4** All Time Periods Specified in the Contract for Contract Participants to perform their obligations must be of Reasonable Duration.

**GP - 5** Unless there is a conflict with the governing law of the Contract, all formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration.

**SN Panigrahi**

# OVERVIEW OF EAIA BLUE BOOK

Day 1  
Session 2



By:  
**VICTOR ODONGO**

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- Executive Committee Member AAQS.
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- B.A Build Econ(Hons), R.S.U, F.I.S.U, M.A.A.K(QS),C.I.Q.S.K, MCI Arb



The version of this contract include:

- The Agreement and Schedule of Conditions of **Building Contract (with Quantities)**
- The Agreement and Schedule of Conditions of **Building Contract (without Quantities)**
- Agreement and Schedule of Conditions of **Building Sub-Contract**

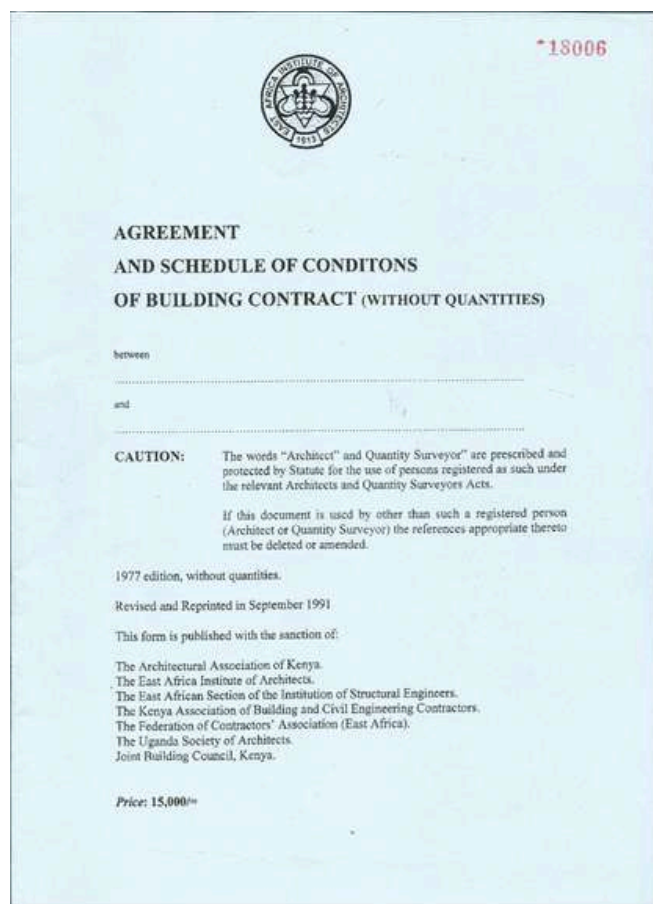
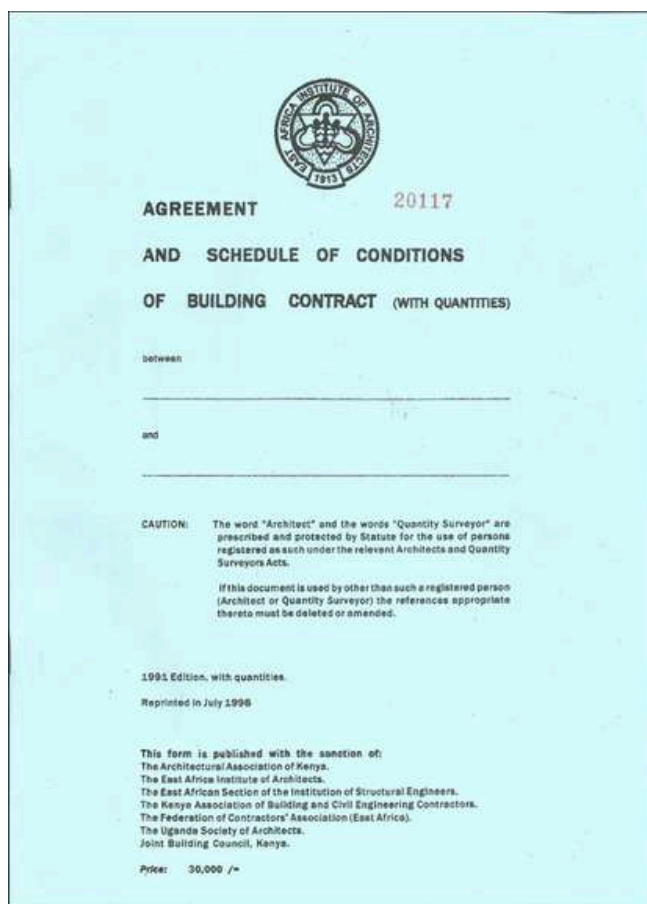
The latest edition is a 1977 edition and they were revised and reprinted in 1991. The sanctioning bodies are stated on the cover pages

Uganda, Tanzania and Rwanda continue to use these forms of Contract

Kenya abandoned the use of these Forms of Contract and published "Agreement and Conditions of Building Contract for Building Works" by the Joint Building Council, Kenya and is sanctioned by the Architectural Association of Kenya and the Kenya Association of Building and Civil Engineering Contractors and it is used exclusively in Kenya. This document has undergone several revisions since

In Uganda, it is usually sold by the Uganda Society of Architects at Ugx 30,000 per copy (with Quantities) and Ugx 15,000 (without quantities).

The Sub-contract document is not readily available on the Ugandan market



## 2.0 LIST OF CLAUSES

For both “with quantities” and “without quantities” are as follows

Clause	Title
1	Contractor’s Obligations
2	Architect’s Instructions
3	Contract Documents
4	Statutory Obligations, Notice, Fees and Charges
5	Levels and Setting out of the Works
6	Materials, Goods and Workmanship to Conform to Description, Testing and Inspections
7	Royalties and Patent rights
8	Foreman in Charge
9	Access for Architect to the Works
10	Clerk of Works
11	Variations, Provisional and Prime Cost Sums
12	Contract Bills
13	Contract Sum
14	Unfixed Goods and Materials
15	Practical Completion and Defects Liability
16	Sectional Completion
17	Assignment and Sub-letting
18	Injury to Persons and Property and Employer’s Indemnity
19	Insurance against Injury to Persons and Property
20	Insurance of the Works against Fire, etc
21	Possession, Completion and Postponement
22	Damages for Non-completion
23	Extension of Time
24	Loss and Expense caused by disturbance of regular progress of the Works
25	Determination by Employer
26	Determination by Contractor
27	Nominated Sub-contractors
28	Nominated Suppliers
29	Artists and Tradesmen
30	Certificates and Payments
31	Bond
32	Fluctuations
33	War Risks
34	War Damage
35	Antiquities
36	Arbitration

### Appendices (providing specific additions to selected clauses) to this form of contract

Item	Clause	Title
(i)	15, 16 & 30	Defects Liability
(ii)	20(A)	Percentage to Cover Professional Fees
(iii)	21	Date for Possession
(iv)	22	Date for Practical Completion
(v)	30(3)	Percentage of Certified Value Retained
(vi)	30(3)	Limit of Retention Fund
(vii)	30(5)	Period of Final Measurement and Valuation
(viii)	31	Name of Surety in Standard Form
(ix)	31	Amount of Surety

## For Building Sub-Contract Form of Contract are as follows

Clause	Title
1	Sub-Contract Sum
2	Notice of the Main Contract to the Sub-Contractor
3	Execution of the Sub-Contract Works
4	Sub-Contractor's liability under in-corporated provisions of the Main Contract
5	Insurance against injury to persons and property
6	Damage by Fire
7	Policies of Insurance
8	Variations, etc
9	Completion
10	Defects, Shrinkages, etc
11	Sub-Contract Sum - Valuation of Variations
12	Certificates and Payments
13	Interim Payments to the Sub-Contractor
14	Retention Money
15	Dispute as to Certificate
16	Right of Sub-Contractor to suspend execution of Sub-Contract Works.
17	Special Interim Payments
18	Final Payment to the Sub-Contractor
19	Sub-Contractor's claim to Rights and Benefits under the Main Contract
20	Contractor's right to Deduction or Set Off
21	Right of Access of Contractor and Architect
22	Sub-letting of Sub-Contract Works.
23	Provision of Water, etc for Sub-Contract Works
24	Temporary Workshops, etc
25	Sub-Contractor's Use of Scaffolding of Contractor
26	Contractor and Sub-Contractor not to make wrongful use of or interference with the property of the other
27	Plant, Tools, etc, of Sub-Contractor
28	Determination of this Sub-Contract by the Contractor
29	Determination of the Main Contract
30	Wages and Conditions
31	Bond
32	Fluctuations in Duties and Exchange rates
33	War Risks
34	War Damage
35	Arbitration

## Key players in the Contract

### THE ARCHITECT

- Is the Administrator of the Contract.
- The titles "Architect or Quantity Surveyor" are both protected by Statute for the use of persons registered under the relevant Architects and Quantity Surveyors Acts
- The Architect can be replaced upon death or "on ceasing to be the Architect".
- Contractor can object to the replacement Architect "for reasons considered to be sufficient by an Arbitrator appointed in accordance with Clause 36

### THE CONTRACTOR

- The party to the Contract that undertakes to;

***"...carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in the said Conditions of Contract".***

## NOMINATED PARTIES IN THE CONTRACT

### NOMINATED SUB-CONTRACTORS

- These are Specialist Sub-contractors or selected by the Employer with whom the Contractor is obliged to enter into a Sub-contract in accordance with clause 27.
- The Contractor earns Attendance and Profit on the works by Nominated Sub-contractors

### NOMINATED SUPPLIERS

- These are Specialist Suppliers selected by the Employer with whom the Contractor is obliged to place orders for the specified Materials and/or Goods in accordance with clause 28.
- The Contractor earns Attendance and Profit on the supplies by Nominated Suppliers.

## RISK ALLOCATION

### Employer's Risks

- Design & Contract Documents Defects (Clause 1 & 3)
- Statutory Requirements (Clause 4)
- Insurance of the Works (Clause 20B – New Works)
- Insurance of the Works (Clause 20C – Alteration or Extensions of an Existing Building)
- Loss and Expense caused by disturbance of regular progress of the works (Clause 24)
- Artists and Tradesmen (Clause 29)
- War Risks (Clause 33)
- War Damage (Clause 34)

### Contractor's Risks

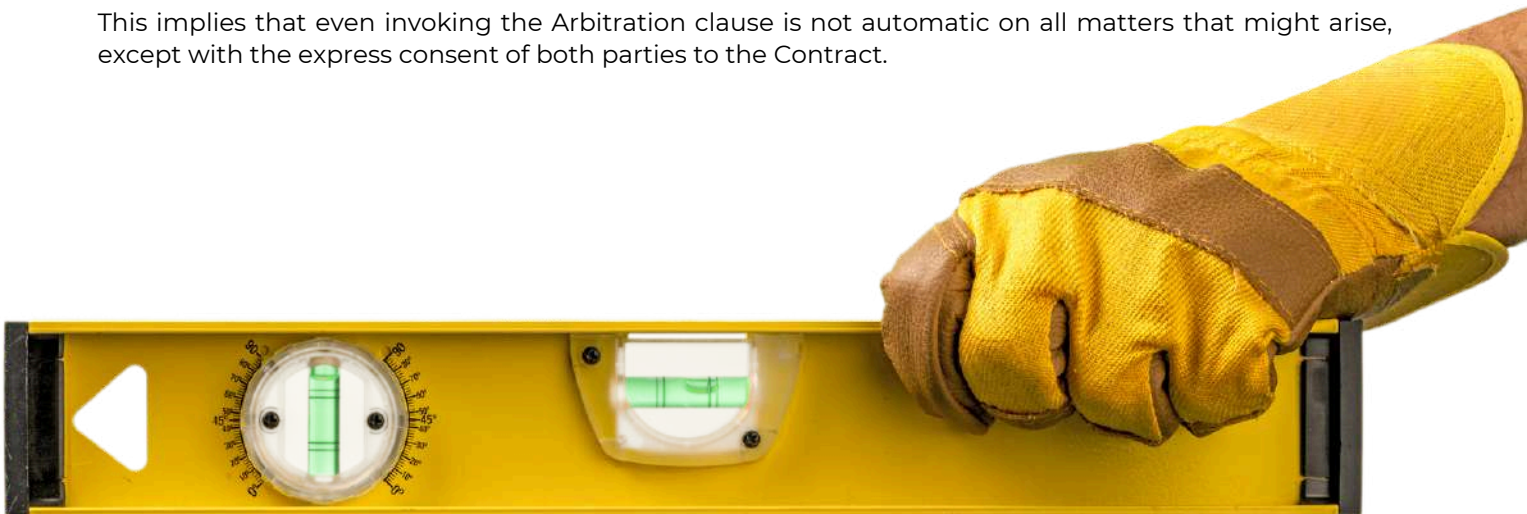
- Execution and Completion of Works (Clause 5, 6, 15, 21)
- Royalties and Patent Rights (Clause 7)
- Injury to Person and Property and Employer's Indemnity (Clause 18)
- Insurance against injury to Persons and Property (Clause 19)
- Insurance of the Works (Clause 20A – New Works)
- Nominated Sub-Contractors and Suppliers (Clauses 27 and 28)

## RISK ALLOCATION

- There is no Adjudication clause in the EIA (Blue Book)
- Arbitration is provided for (Clause 36) and the clause states in clause 32(2) as follows;

***“...Such reference, except on article 3 or article 4 of Articles of Agreement, or on the questions whether or not the issue of an instruction is empowered by these Conditions, whether or not a certificate had been improperly withheld or is not in accordance with these Conditions, or on any dispute or difference under Clauses 33 and 34 of these Conditions, shall not be opened until after Practical Completion or alleged Practical Completion of the Works or termination or alleged termination of the Contractor's employment under this Contract, or abandonment of the Works, unless with the written consent of the Employer or the Architect on his behalf and the Contractor”.***

This implies that even invoking the Arbitration clause is not automatic on all matters that might arise, except with the express consent of both parties to the Contract.





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## Construction Disputes in Africa

Construction disputes make up a significant portion of the ICC's global caseload, and a top 10 cause of claims or disputes in Africa's construction industry is "contract management and/or administration failures".

Disputes arising in the construction & engineering sector generate the **largest number** of ICC cases.

In 2022 construction & engineering disputes represented **24%** of newly registered ICC cases

Source: Industry Insights Issue 7  
Construction Arbitration Report  
June 2023  
A report prepared by Jus Connect

Table A - Claims & disputes in Africa & the Rest of the World

Top causes of claim or dispute*	Africa	RoW**	Africa	RoW
Access to site/workface was restricted and/or late	1	10	37.0%	17.4%
Change in scope	2	1	39.1%	38.8%
Cash flow and payment issues	3	11	30.4%	14.5%
Design was incomplete	4	5	30.4%	21.4%
Contract interpretation issues	5	4	26.1%	19.6%
Claims were spurious	6	14	23.9%	13.4%
<b>Contract management and/or administration failure</b>	<b>6</b>	<b>5</b>	<b>26.1%</b>	<b>19.4%</b>
Poor management of subcontractor/supplier and/or their interfaces	8	7	23.9%	19.3%
Level of skill and/or experience	8	13	23.9%	13.4%
Approvals were late	10	11	19.6%	15.2%

\*Rank is based on both primary and secondary causes of claims and disputes. The percentage represents the proportion of projects on which a cause featured (whether primary and/or secondary).  
\*\*Rest of the world.

Source: HKA's 6<sup>th</sup> Annual CRUX Insight Report – Forewarned is Forearmed

## Project Management – Key Risks

Where parties neglect to invest in proper project and contract management, they can be left vulnerable in a dispute. In a 'worst case scenario' this means losing the right to make a claim.

### Features of Construction Disputes

- ✓ High volume of documentation
- ✓ High project values
- ✓ Technical complexity
- ✓ Contractual & legal complexity
- ✓ Expert evidence
- ✓ Multiple stakeholders (e.g. main contract and subcontract relations)
- ✓ Multiple issues (e.g. delay, disruption, quantum, defects)

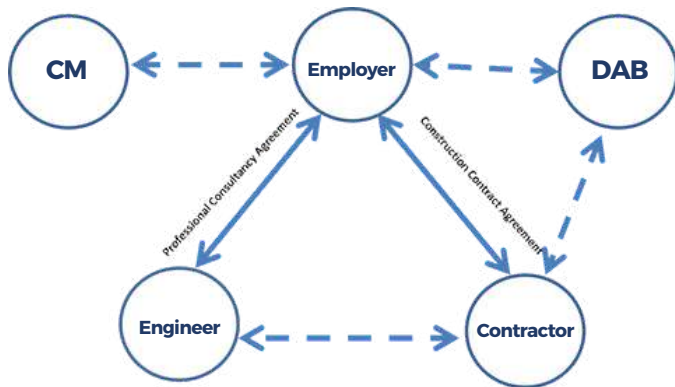
### Common mistakes / pitfalls



### High Risk Situations



## Parties to the Contract



### Clause 2 – The Employer

**Role of the Employer is dealt within Clause 2 of the 1999 editions:**

- Right to Access to the Site.
- Permits, Licenses or Approvals.
- Employer's Personnel.
- Employer's Financial Arrangements.
- In case of Employer's Claims, the Employer is required to give notice and particulars to the Contractor if the Employer considers him self entitled for payment.

#### Appointment of the Engineer.

Engineer's roles are:

- continuing design
- administrative role as the Employer's agent
- supervisory
- certifying
- adjudicating.
- Possession of Site
- Access to Site
- Employer responsible for providing access to the Site in the time stated in Appendix to Tender.
- Permits and Approvals
- Assist the Contractor for permits: Employer shall reasonably assist the Contractor in obtaining permits, licenses and approvals.
- Employer shall be responsible for the good co-operation of his personnel with the Contractor.
- Employer will take on similar safety measures and environment protection as required for the Contractor.
- Employer's instructions
- Supply of materials and carrying out works
- Nominate specialists contractors
- Payments
- Appointing a DAB
- Submitting his financial arrangements when required

- Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained enabling the Employer to pay the Contract Price.
- Employer's Claims If the Employer considers himself to be entitled to any payment under any clause of the Contract, the Employer or the Engineer shall give notice

#### 2.1: Right of Access to the Site

- Employer to give Contractor right of access to and possession of all parts of the Site as stated in the Contract.
- Right to access to and possession of the Site not exclusive.
- If Contractor suffers delay or incurs costs due to the failure by the Employer to give access, provided he gives notice he maybe entitled to an extension of time and payment of any costs(plus reasonable profit).

#### 2.: Permits, Licenses and Approvals

To the extent that the Employer can, the Employer shall assist the Contractor:

- to obtain copies of the relevant laws which are not readily available; and
- in the making of any applications for permits, licenses and approvals which the Contractor will need to make in accordance with those laws.

#### 2.3. Employer's Personnel - Key issues

- Employer shall be responsible for ensuring that the Employer's Personnel and his other contractors:
- co-operate with the Contractor to the limited extent provided for in Sub-Clause 4.6; (comply with the health & safety requirements setout in Sub-Clause 4.8);
- take all reasonable steps to protect the environment both on and off the Site as required by Sub-Clause 4.18.

#### 2.4: Employers Financial Arrangements-Key issues

- If the Contractor so requests, the Employer shall provide within 28 days reasonable evidence that financial arrangements are in place to pay the Contract Price in accordance with Clause 14.
- Employer must give notice to the Contractor if he intends to make any material change to his financial arrangements.
- If that evidence is not provided, Contractor may, subject to the provision of the necessary notices, suspend work or even terminate the Contract.



### 3.3 Clause 3 – The Engineer

#### Two contracts are traditionally formed:

- A Contract between the consulting engineer and the Employer: the Contractor is not a party.
- A Contract between the Employer and the Contractor: the Engineer is not a party.
- Construction Contract Sub-Clause 3.1 provides that the “Engineer shall carry out the duties assigned to him in the Contract”. Engineer is given certain authority either specified in, or implied from, the Contract.

#### Typical duties of the Engineer

- Design: implementing the design.
- Quality control:
- Cost accountancy and certification: the Contract is based on interim payments made mostly on a monthly basis by the Employer to the Contractor.
- Administration and management: Progress on-site depends on the availability of information required by the Contractor.

#### 3.5: Determinations- Key issues

- Where the Engineer is required by the Contract or to reach a determination, the Engineer is bound to consult with both Parties in order to reach agreement.
- If no agreement is reached, the Engineer’s duty is to provide a fair determination in accordance with the Contract and having regard to all the circumstances.
- Engineer must provide a reasoned notice of his determination.

### The Contractor

- Construction and completion of the Works with due diligence and within the time for completion.
- Use of Materials, Plant and Workmanship as described in the Contract and in accordance with the Engineer’s instructions.
- Provision of securities, indemnities and insurances in respect of such work.
- Supply of information and notices required for the execution of the Works and for alerting the Employer when an event occurs which may increase the cost or the completion time.
- Performance of administrative and other functions (including, if explicitly required, the design of certain elements).

#### 4.8: Safety Procedures-

##### Contractor must:

- Comply with the applicable safety regulations and take care for the safety of every one entitled to be on the Site;
- Keep the site clear of unnecessary rubbish;
- Provide site security until the issue of the Taking Over Certificate;
- Provide any Temporary Works which may be necessary as a consequence of the impact of the Works on the areas surrounding the Site.





## **CONSTRUCTION OF GULU HYDRO DAM**



In a project to construct the Gulu Hydroelectric power station complete with associated dam, tunnel, spillway, approach roads, staff quarters and related facilities in Northern Uganda. The client is the Government of Uganda through the Ministry of Energy and Mineral Development. The Consulting Engineers are Nile Engineering Limited. The dam is urgently required to provide irrigation free of charge to local farmers; and the power station is to sell electricity to neighbouring African states.

Funding is available from the World Bank provided they are satisfied that all ESG concerns are properly addressed.

The project will need to provide for the resettlement of Project Affected Persons into a new village. Employment of the local community on the project will be necessary to ensure that a threat of guerrilla action against the project does not materialise.

The engineers have expressed concerns about the proposed location of the dam following a geological survey. The survey also noticed some heaps of empty and rusted barrels marked only with something that looks like a skull and crossbones. The remote location of the site makes the construction of roads a priority task.

### **QUESTION:**

- 1. Advise the Government of Uganda on the most suitable contract and why?**
- 2. Discuss the obligations of the players based on the choice of contract.**







**Eng. Bakiza Ian Paul**

BCIV(MUK),R.ENG, M.U.I.P.E, FCCM, MICCP



### Key Principles of FIDIC Contracts

- Fair and balanced risk allocation
- Clarity and precision in contract terms
- Standardized procedures and documentation
- Emphasis on collaboration and dispute avoidance

### Parties in Construction Contracts

- Employer: Provides project requirements, funding, and approvals.
- Contractor: Executes the work as per the contract.
- Engineer: Acts as the Employer's representative, overseeing the project.

### Key Responsibilities:

- Employer: Ensures timely decision-making and payments.
- Contractor: Ensures quality and timely completion of work.
- Engineer: Monitors progress, manages variations, and assesses claims.

### STRATEGIES FOR EFFECTIVE CONTRACT MANAGEMENT

#### Proactive Planning and Problem Identification:

- Anticipate potential issues and plan mitigation strategies.
- Address problems early to prevent escalation.

#### Strong Communication and Collaboration:

- Foster open communication among all parties.
- Encourage a collaborative approach to problem-solving

#### Comprehensive Documentation and Record-Keeping:

- Keep detailed records of all project activities.
- Use document management systems to organize and retrieve documents.

#### Regular Training and Updates:

- Provide ongoing training on FIDIC procedures and best practices.
- Stay updated with the latest changes in FIDIC contracts and industry standards.

### EFFECTIVE CONTRACT MANAGEMENT PRACTICES

#### Contract Administration

Setting up contract administration systems

- Managing correspondence and communication
- Record-keeping and documentation
- Importance of a structured document filing system

#### Change & Variations Management

Managing Variations

- **Definition and types of variations:** Process for initiating and approving variations
- **Maintaining a variation register:** Document all variations with details of scope, cost, and time impact.
- **Impact of variations on project cost and schedule:** Assess how variations affect project cost and schedule and adjust plans and budgets accordingly.

#### Contract Claims & Schedule Management

##### Claims Management

- Identifying potential claims
- Notification and substantiation of claims
- Maintaining a claims register
- Role of the Engineer in assessing claims

##### Maintaining the Program of Works

- Importance of an updated program of works
- Regular updates to reflect changes
- Impact of program updates on claims and variations
- Communication of changes to all stakeholders

#### Financial & Risk Management

##### Financial Management

- Budgeting and cost control
- Monitoring cash flow
- Managing payments and certificates
- Handling financial disputes

##### Risk Management

- Identifying and assessing risks
- Implementing risk mitigation strategies
- Regular risk reviews and updates
- Communication of risk management plans

#### Dispute Resolution Mechanism

Mechanisms for dispute resolution in FIDIC contracts

- Role of the Dispute Adjudication Board (DAB)
- Arbitration and litigation as last resorts
- Strategies for avoiding disputes

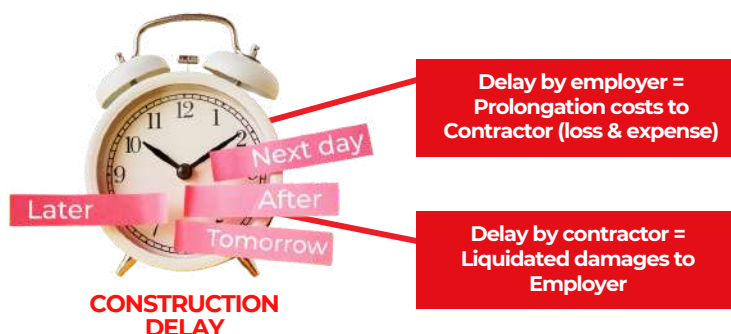
# CONTRACTOR'S CLAIMS AND COMPUTATION OF COSTS

Day 1  
Session 5



By:  
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## Definition: Prolongation costs

- Employer is responsible for the delays and therefore the Contractor to remedy.
- Time-related costs incurred by the Contractor as a result of critical delay to the Works where Contractor is not responsible.
- Are intended to compensate the Contractor for its time-related costs which it would not have incurred but for the Employer-risk delay event.
- “Costs and losses incurred as a result of delays to the activity in question or the works as a whole which have led to critical delay to the contract completion date” (*Keating on Construction Contracts*)
- “The objective is to put the Contractor in the same financial position it would have been if the Employer Risk Event had not occurred” (*The SCL Delay & Disruption Protocol*)

## Principles of Prolongation costs

### Facts

Financial element of a Contractor delay claim upon granting Extension of time  
Claims by contractors for delay or disruption related loss and expense must be proved.

- *Events leading to loss & expense*
- *The events caused delay/disruption*
- *The relationship between delays/disruption and loss & expense*

Claim submission must include:

- *Sufficient information to ascertain loss & expense*
- *Comprehensive supporting information.*

### Clarifications

- No automatic entitlement to loss and expense or damages even if a right to an extension of time is established
- **No requirement for the Contractor to provide “every conceivable detail”.** Architect & Quantity Surveyor are not strangers to the project in considering what needs to be provided to them  
**TCC’s judgment in *Walter Lilly & Company Limited v Giles Patrick Cyril Mackay* [2012] EWHC 1773 (TCC)**

## Heads of Prolongation Costs by Contractor

Contractor is entitled to Prolongation Costs under the following circumstances

- *Requisite notices and early warning were given in accordance with the contract*
- *Submission of Claim for Extension of time on time in accordance with the Contract.*
- *Extension of Time is granted by the Project Manager/Engineer/Architect.*

Key items that a Contractor submitting a Claim for Prolongation must observe

- *The rules of the contract must be followed*
- *Causation must be established.*
- *Evidence is key.*
- *The Contractor should seek to establish its actual costs and losses incurred.*

**Head 1 - On-site preliminaries / overheads**

- Labour Costs
- Plant and equipment
- Preliminaries

**Head 2 -Head office (off-site) overheads**

- Increased head office overheads
- Lost contribution to head office overheads
- Preliminaries

**Head 3 – Loss of profit**

- Reduced turnover for project delay (affecting upcoming tenders or other projects)
- Loss of turnover profitability at time of delay.

**HEADS OF PROLONGATION COSTS BY EMPLOYER**

Liquidated and ascertained damages ('LAD' or just 'LD', or even "Delay Damages")

- As agreed upon by both parties to deal with delays and specified contract breaches.
- Provide certainty to consequence of breaches.
- Are a time and cost efficient solution as parties avoid costly debates about how much the defaulter should pay for a breach.

*Supreme court (2021, Triple Point Technology and EWB v Dobler) guidance on LAD*

- *The accrual of LAD comes to an end upon termination of a contract*
- *After this, the aggrieved party must seek damages for breach of contract under the common law or tort law*
- *The Triple Point decision removes the need to draft express provisions for the termination of a contract prior to completion of the Works in LAD clauses and provides certainty to contracting parties regarding the enforceability of LAD clauses, specifically where completion of the Works has been delayed.*

**Prolongation costs reference clauses in contracts**

**PPDA FORM OF CONTRACT**

- General section (14No)  
*GCC 10,15,16,17,19,21-22,26-28,32-35*
- Time Control section (5No.Clauses)  
*GCC 36-41*
- Quality Control section (2No. Clauses)  
*GCC 42-43*
- Cost Control section (8No. Clauses)  
*GCC 48,51-53, 56,58-59,61*
- Finishing the contract section (5No. Clauses)  
*GCC 64-66,68,70*

**EAIA (BLUE BOOK)**

18No Clauses  
*Clauses 1-3,11,15-16,21-25,29-30,32-34,36*

**ACCELERATION COSTS**

Claims for payment made as a result of the costs associated with speeding up work consisting of:

- *Overtime payment*
- *Compensation for increased scope of work.*
- *Change orders.*
- *Supplementing the workforce.*
- *Expedited Procurement of Materials (local & imported)*

Occurs when the work must be done at a quicker pace than planned; when:

- Project delays have been encountered,
- The scope of work increases during the life of the project,
- The finish date is moved up for some reason

The instruction to accelerate work will come via a written Instruction/Variation/Change Order

### **Types of Acceleration cost.**

Voluntary Acceleration

- Contractor's self drive to accelerate their work
- The contractor is not entitled to acceleration claims

Directed acceleration

- Contractor is formally instructed by change order to accelerate the work
- Compensation is made for that acceleration

Constructive acceleration

- Occurs when the contractor faces an excusable delay and requests an extension of time
- Constructive acceleration arises in the event the extension request declined and the contractor must instead accelerate work to catch up with the project schedule
- To make a claim for this type depends on the process under which it was undertaken; that is
- Was the Employer aware, or a statement made or action made by the Employer to that could be interpreted as an order?
- Did the contractor provide notice of constructive change?

### **Acceleration costs reference clauses in contracts**

PPDA FORM OF CONTRACT

Time Control section (1No.Clause)

*§GCC 38 - Acceleration*

EAIA (BLUE BOOK)

4No Clauses

- *Cl.21 – Possession, Completion and Postponement*
- *Cl.22 – Damages for non-completion*
- *Cl.23 – Extension of Time*
- *Cl.24 – Loss and Expense caused by disturbance of regular progress of the works*

### **PRICE ESCALATIONS (FLUCTUATIONS)**

A Price Escalation clause (or 'cost escalation clause') is a pre-determined contractual mechanism that facilitates the contractor passing on changes in basic costs (both increases and decreases) to the employer

The contractor retains the ability to adjust the contract price in line with the fluctuating costs of raw materials in the market and other elements of the works at the time

This clause has the advantages:

- *Price change risks are transferred from the Contractor; more predictability in contractors' bids received*
- *More realistic and lower bids are received*
- *"Disagreement" between the parties due to unforeseeable fluctuations in the market is eliminated*
- *By including a "cap" on the amount of fluctuations, the Employers' Risk is eliminated by including a Provisional Sum to cover the Cost of fluctuations*

The frequency of calculating and notifying the Employer of the effects of the Price Adjustment should be clear

The following **MUST** be included in the Bidding Documents and the Contract Agreement:

- *Price Fluctuation formula*
- *Source of the Cost Fluctuation Data*
- *Base Date for Price Adjustment*
- *Upper and Lower Limits for the Price Adjustment to apply.*
- *A Provisional Sum to provide the Budget for Price Adjustment*

## PRICE ESCALATION UNDER PPDA FORM OF CONTRACT

This is provided for under GCC and SCC Clause 56 (Price Adjustments)

**The PDE has the option of eliminating GCC 56 through the Special Conditions of Contract.**

**The guideline on whether or not to include GCC 56 (Price Adjustment) is given under PPDA Reg. (Contracts) 40 (1) which clarifies that**

- **Applicable to contracts extending beyond eighteen months**
- **At PDE's discretion where it is more economical for the PDE to accept the inflation risk than to pay an additional cost for the supplier to accept the risk**

### Clause GCC 56 (Price Adjustment) explained

56.1 Prices payable (as stated in contract) are subject to adjustment to reflect changes in cost of labour and material components using the formula:

$$\Delta P = P_0 \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$\Delta P$  = adjustment amount payable to the Provider.

$P_0$  = Contract Price (base price).

$a$  = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.

$b$  = estimated percentage of labour component in the Contract Price.

$c$  = estimated percentage of material component in the Contract Price.

$L_0, L_1$  = labour indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.

$M_0, M_1$  = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients  $a$ ,  $b$ , and  $c$  shall be specified by the procuring and disposing entity in the bidding documents. The sum of the three coefficients should be one (1) in every application of the formula.



### The key requirements of GCC 56 are as follows:

a) Source of indices

b) Base date = thirty (30) days prior to the deadline for submission of the bids

c) Date of [commencement of] adjustment

d) Limitations set for the application of price adjustment such as;

- Result increase or decrease upon adjustment is more than a specified %age of contract price
- Not applicable for periods of delay for which the caused by the contractor
- There must a cap/ceiling expressed as a %age of the contract price for the total price adjustment
- Application of a correction factor for work items differing from the currency of contract
- Not applicable to advance payment (GCC 56.2)

e) Changes in indices used after calculation are updated in subsequent payments (GCC 56.3)

f) Under the PPDA form of Contract

- The source of Indices is usually the Uganda Bureau of Statistics (UBOS) – Construction Sector Indices.
- The source of the Rates of Exchange is usually the Bank of Uganda
- All the factors related to the price adjustment formula must be stated in the Contract

## Price adjustment computation sample

### a) Computation of Price adjustment factor;

**ANNEX 1 TO SCC: TABLE OF PRICE ADJUSTMENT DATA**

Determination of price adjustment factor (f) for prices of work items/groups Source of Indices: **UBOS**  
 Price adjustment factor  $f = [a_1+a_2(A_1/A_0)+b(L_1/L_0)+c(M_1/M_0)+d(D_1/D_0)]$  Source of Exchanges Rate: **BOU**

Bid Date: **5 March 2014**  
 Base Date: as provided/signed in contract & 28 days before bid submission **5 February 2014**  
 (exchange rate N<sub>0</sub>)  
 Cert. 01 Date: **11 February 2020**

Item	UBOS Indices Available or Not	Description	Agreed component percentage (Coefficient)					UBOs Indices					USD - UGX Exchange Rate (Material)		PAF component, f			
			Profit	Over-heads	Labour	Material	Plant	Overheads (Non-Residential Buildings)		Labour		Materials		Plant		N <sub>1</sub>	N <sub>0</sub>	
			a <sub>1</sub>	a <sub>2</sub>	b	c	d	A <sub>1</sub>	A <sub>0</sub>	L <sub>1</sub>	L <sub>0</sub>	M <sub>1</sub>	M <sub>0</sub>	D <sub>1</sub>		D <sub>0</sub>	N <sub>1</sub>	N <sub>0</sub>
<b>PRELIMINARIES</b>																		
1	Y	Project/Site administration	2.5	2.5	95	0	0	249.24	236	343.16	298	343.16	298	276.20	271			1.145
2	N	Insurance, Gurantees	2.5	2.5	0	95	0	249.24	236	343.16	298	0.00	1	276.20	271	3,666	2,515	1.436
3	Y	Tools, Plant, Scaffolding	2.5	2.5	0	0	95	249.24	236	343.16	298	276.20	271	276.20	271			1.020

### b) Application of computed price adjustment factor;

Item	Description	Unit	Contract Amount			Executed Work Amount	Adjustment Factor(f)	Price Adjustment (P <sub>1</sub> )	Net Adjustment Amount (P <sub>1</sub> - Net Amount)
			Qty	Rate (USHS)	Amount (USHS)				
<b>BILL NO.3</b>									
<b>PRELIMINARIES</b>									
1/5C(9)	Personnel	ITEM	1	400,000,000	400,000,000	50,000,000	1.145	57,250,000	7,250,000
1/5C(13)	Insurance	ITEM	1	135,000,000	135,000,000	135,000,000	1.436	193,872,770	58,872,770

ITEM	DESCRIPTION	NET PRICE ADJUSTED AMOUNT (UGX)										LESS: PORTION OF CONTRACT PRICE PAID AS ADVANCE PAYMENT (-10% AS CLAUSE GCC 47.2		SAGE OF CONTRACT PRICE		SAGE OF CONTRACT PRICE		
		PRELIMS	OFFICE BUILDING	MECH INSTALLATION	ELEC INSTALLATION	EXTERNAL WORKS	SUB-TOTAL I UGX	VARIATIONS UGX	SUB-TOTAL II UGX	SUB-TOTAL III UGX	SUB-TOTAL IV UGX	VALUE ADDED TAX @ 18%	EVALUATED AMOUNT TOTAL UGX	NET	CUMMULATIVE	RECOMMENDED AMOUNT UGX	NET	CUMMULATIVE
1	INTERIM CERT NO. 1	66,122,770	118,777,390	0	0	4,575,000	189,475,159	951,097	190,426,256	-19,042,626	171,383,630	30,849,053	202,232,684	0.56%		202,232,684	0.56%	
2	INTERIM CERT NO. 2	-4,450,000	129,221,828	0	0	0	124,771,828	0	124,771,828	-12,477,183	112,294,645	20,213,036	132,507,682	0.37%	0.93%	132,507,682	0.37%	0.93%
3	INTERIM CERT NO. 3	178,000	44,330,810	0	0	0	44,508,810	0	44,508,810	-4,450,881	40,057,929	7,210,427	47,268,356	0.13%	1.07%	47,268,356	0.13%	1.07%
4	INTERIM CERT NO. 4	0	54,615,753	0	0	0	54,615,753	0	54,615,753	-5,461,575	49,154,178	8,847,752	58,001,930	0.16%	1.23%	58,001,930	0.16%	1.23%
5	INTERIM CERT NO. 5	0	37,899,232	0	0	0	37,899,232	0	37,899,232	-3,789,923	34,109,309	6,139,676	40,248,984	0.11%	1.34%	40,248,984	0.11%	1.34%
6	INTERIM CERT NO. 6	0	22,927,101	0	0	0	22,927,101	0	22,927,101	-2,292,710	20,634,391	3,714,190	24,348,581	0.07%	1.41%	24,348,581	0.07%	1.41%
7	INTERIM CERT NO. 7	12,750,000	57,712,938	0	0	0	70,462,938	0	70,462,938	-7,046,294	63,416,645	11,414,996	74,831,641	0.21%	1.62%	74,831,641	0.21%	1.62%
8	INTERIM CERT NO. 8	1,061,538	64,039,957	0	0	0	65,101,496	0	65,101,496	-6,510,150	58,591,346	10,546,442	69,137,789	0.19%	1.81%	69,137,789	0.19%	1.81%
9	INTERIM CERT NO. 9	707,492	33,758,066	0	0	0	34,465,759	0	34,465,759	-3,446,576	31,019,183	5,583,453	36,602,636	0.10%	1.91%	36,602,636	0.10%	1.91%
10	INTERIM CERT NO. 10	653,846	63,921,305	0	0	0	64,575,151	0	64,575,151	-6,457,515	58,117,636	10,461,174	68,578,810	0.19%	2.10%	68,578,810	0.19%	2.10%
11	INTERIM CERT NO. 11	980,769	75,603,573	0	0	0	76,584,342	0	76,584,342	-7,658,434	68,925,908	12,406,663	81,332,572	0.23%	2.33%	81,332,572	0.23%	2.33%
12	INTERIM CERT NO. 12	2,184,615	38,934,994	0	0	0	41,119,610	0	41,119,610	-4,111,961	37,007,649	6,661,377	43,669,025	0.12%	2.45%	43,669,025	0.12%	2.45%
13	INTERIM CERT NO. 13	1,092,308	64,256,966	0	0	0	65,349,273	0	65,349,273	-6,534,927	58,814,346	10,586,582	69,400,928	0.19%	2.64%	69,400,928	0.19%	2.64%
14	INTERIM CERT NO. 14	1,092,308	67,622,611	0	0	0	68,714,919	0	68,714,919	-6,871,492	61,843,427	11,131,817	72,975,244	0.20%	2.85%	72,975,244	0.20%	2.85%
15	INTERIM CERT NO. 15	1,092,308	29,563,786	0	0	0	30,656,094	0	30,656,094	-3,065,609	27,590,485	4,966,287	32,556,772	0.09%	2.94%	32,556,772	0.09%	2.94%
16	INTERIM CERT NO. 16	2,788,462	54,771,839	0	0	0	57,560,301	0	57,560,301	-5,756,030	51,804,271	9,324,769	61,129,040	0.17%	3.11%	61,129,040	0.17%	3.11%
17	INTERIM CERT NO. 17	1,115,385	33,899,070	0	0	0	35,014,455	0	35,014,455	-3,501,445	31,513,009	5,672,342	37,185,351	0.10%	3.21%	37,185,351	0.10%	3.21%
18	INTERIM CERT NO. 18	1,195,055	50,965,230	0	0	0	52,160,285	0	52,160,285	-5,216,029	46,944,257	8,449,966	55,394,223	0.15%	3.37%	55,394,223	0.15%	3.37%
19	INTERIM CERT NO. 19	2,310,440	65,391,153	67,536	0	0	67,769,129	0	67,769,129	-6,776,913	60,992,216	10,978,599	71,970,815	0.20%	3.57%	71,970,815	0.20%	3.57%
20	INTERIM CERT NO. 20	1,195,055	58,562,051	0	0	0	59,757,106	0	59,757,106	-5,975,711	53,781,395	9,680,651	63,462,046	0.18%	3.75%	63,462,046	0.18%	3.75%
21	INTERIM CERT NO. 21	3,082,967	32,135,939	852,032	0	0	36,070,938	0	36,070,938	-3,607,093	32,463,844	5,843,492	38,307,336	0.11%	3.85%	38,307,336	0.11%	3.85%
22	INTERIM CERT NO. 22	1,491,758	39,292,081	0	0	0	40,783,839	0	40,783,839	-4,078,384	36,705,455	6,606,982	43,312,437	0.12%	3.97%	43,312,437	0.12%	3.97%
23	INTERIM CERT NO. 23	2,983,516	60,481,272	13,988,641	0	0	77,463,430	0	77,463,430	-7,745,343	69,708,087	12,547,456	82,255,542	0.23%	4.20%	82,255,542	0.23%	4.20%
24	INTERIM CERT NO. 24	1,591,209	101,104,920	4,963,675	0	823,663	108,483,467	0	108,483,467	-10,848,347	97,635,120	17,574,322	115,209,442	0.32%	4.52%	115,209,442	0.32%	4.52%
25	INTERIM CERT NO. 25	2,983,516	68,753,228	573,917	0	0	72,310,661	0	72,310,661	-7,231,066	65,079,595	11,714,327	76,793,922	0.21%	4.74%	76,793,922	0.21%	4.74%
26	INTERIM CERT NO. 26	3,082,967	61,795,452	3,670,689	0	0	68,549,108	0	68,549,108	-6,854,911	61,694,198	11,104,956	72,799,153	0.20%	4.94%	72,799,153	0.20%	4.94%
27	INTERIM CERT NO. 27	1,591,209	233,738,106	14,825,505	10,622,327	4,515,908	265,293,055	0	265,293,055	-26,529,305	238,763,749	42,977,475	281,741,224	0.79%	5.73%	281,741,224	0.79%	5.73%
28	INTERIM CERT NO. 28	3,779,121	326,237,432	12,802,556	0	0	342,819,109	486,559	343,305,668	-34,330,567	308,975,101	55,615,518	364,590,619	1.02%	6.74%	364,590,619	1.02%	6.74%
29	INTERIM CERT NO. 29	0	132,601,285	299,129,969	200,921,273	822,968	633,475,495	5,435,090	638,910,585	-63,891,058	575,019,526	103,503,515	678,523,041	1.89%	8.64%	678,523,041	1.89%	8.64%
30	INTERIM CERT NO. 30	0	397,193,887	144,588,813	42,681,546	0	584,464,245	2,602,638	587,066,883	-58,706,688	528,360,195	95,104,835	623,465,030	1.74%	10.38%	623,465,030	1.74%	10.38%
31	INTERIM CERT NO. 31	0	529,657,480	20,485,980	218,331,201	227,442	768,702,103	11,195,820	779,897,922	-77,989,792	701,908,130	126,343,463	828,251,594	2.31%	12.69%	828,251,594	2.31%	12.69%
32	INTERIM CERT NO. 32	0	759,245,516	178,948,529	120,978,548	1,729,410	1,060,902,002	4,992,092	1,065,894,093	-106,589,409	959,304,684	172,674,843	1,131,979,527	3.16%	15.84%	1,131,979,527	3.16%	15.84%
33	INTERIM CERT NO. 33	0	787,400,079	135,705,846	523,306,211	4,187,421	1,450,599,557	9,965,125	1,460,564,682	-146,056,468	1,314,508,214	236,611,479	1,551,119,693	4.33%	20.17%	1,551,119,693	4.33%	20.17%
<b>TOTAL</b>		<b>112,656,814</b>	<b>4,696,412,332</b>	<b>830,603,687</b>	<b>1,116,841,106</b>	<b>16,881,811</b>	<b>6,773,395,749</b>	<b>35,628,420</b>	<b>6,809,024,169</b>	<b>-680,902,417</b>	<b>6,128,121,752</b>	<b>1,103,061,915</b>	<b>7,231,183,667</b>	<b>20.17%</b>		<b>7,231,183,667</b>	<b>20.17%</b>	

## Price Escalation under EAIA Contract (Blue Book)

This is provided for under Clause 32 (Fluctuations)

The clause notes that this is applicable where the Contract is not a Fixed Price Contract. In the event of a Fixed price Contract, this clause is struck out.

Under the EAIA (Blue Book) Form of Contract

- *The source of Price Fluctuation Data is stated as the Joint Building Council (JBC) of Kenya.*
- *The Base JBC Cost Data must be included in the Contract Agreement.*

The calculation of Price Fluctuations in this form of Contract is similar to the one under the PPDA Form of Contract.

## Clause 32(Fluctuations) explained

32(1) This Clause caters for changes in duties affecting the cost of materials that may arise during construction. It defines duties as all customs and exercise charges, tariffs, taxes and other duties imposed in the country where work is being executed.

32(2) This Clause caters for changes in exchange rates affecting the cost of materials that may arise during construction. The base date for exchange of rates is the exchange rate at the date of Tender.

32(3) This Clause defines the framework for computation of changes in labour rates and material prices as construction progresses. It requires that Contract comprises a schedule of Basic rates as published by the JBC at date of tender. These rates are then varied (as a %age) reflecting the change in basic rates as indicated in subsequent publications in the JBC as construction progresses.

Limitations set for the application of fluctuations include:-

- **The provisions of Sub clauses (1) [changes in duties] and (2)[changes in exchange rates] do not apply to any materials listed in the schedule of basic rates**
- **All computations are limited up to the date of practical completion/extended time as defined in the contract**
- **They do not apply to Nominated Subcontractors unless specified in the sub-contract agreement**
- **Do not apply to Nominated Suppliers**

## EFFECTS OF FORCE MAJEURE

A clause that is included in contracts to remove liability for unforeseeable and unavoidable catastrophes that interrupt the expected course of events and prevent participants from fulfilling obligations

Force Majeure events are commonly referred to as "... an act of God".

Three main pre-requisites are that the events that cause 'Force Majeure' must be:

- Unforeseeable
- External to both parties of the contract
- Unavoidable

### Contractual Requirements

It should include an illustrative list of events such as:-

- Flood, fire, earthquake, explosion, or other potential disasters.
- War, invasion, hostilities, terrorist threats or acts, riot or other civil unrest.

- Government order, law, or actions.
- **Embargoes or blockades.**
- **National or regional emergencies**
- **New human threats, such as cyber, nuclear, and biological warfare capabilities**

It is accompanied by general, sweeper wording such as "and any other event beyond the affected party's control"

Contracts will often include express mitigation wording requiring a party to, "take all reasonable steps" or "use best endeavors" to avoid the force majeure event or mitigate its effects

## SOME POINTS OF LAW ON FORCE MAJEURE

### The Principle of “Pacta Sunt Servanda”

- **Latin reference for “agreements must be kept” and not wiggled out of.**
- **This Principle is a key concept in civil and international law and it is also mentioned in common law.**
- **It is not supposed to be easy to escape contractual liability, and proving that events were unforeseeable, for example, is difficult by design.**

### Common Law

- **In common law systems, (United Kingdom), the clauses are acceptable but must be more explicit about the events that would trigger the clause.**
- **The concept of force majeure originated in French civil law and is an accepted standard in many jurisdictions that derive their legal systems from the Napoleonic Code.**

### International Chamber of Commerce

- The International Chamber of Commerce has attempted to clarify the meaning of force majeure (although it is not included in the organization’s Incoterms)
- It applies a standard of “impracticability,” meaning that it would be unreasonably burdensome and expensive, if not impossible, to carry out the terms of the contract.

### Procedure

- Check governing law
- Check the definition of force majeure events in the Contract
- Establish causation
- Check notice provisions
- Submit the “Force Majeure” Claim
- Demonstrate that the party has, “taken all reasonable steps” or “used best endeavors” to avoid the force majeure event or mitigate its effects

### Consequences

- Suspension
- Termination
- Compensation
- Negotiation

## FORCE MAJEURE AND COVID-19

- If COVID-19 made it impossible for a party to perform its contractual obligations, then, yes, it could qualify as force majeure. Emphasis should be put on the word “impossible” here.
- If the party is able to perform its obligation, it would not constitute force majeure, regardless of how much more difficult or expensive honoring this commitment became in a COVID-19 environment.
- COVID-19 is not necessarily an unforeseeable event any longer. Several years have passed since the outbreak was first reported, and measures have been put in place to prevent the virus from spreading.
- Contracting parties will be expected to do everything in their power to mitigate the effects of COVID-19.
- Contracts signed after the beginning of 2020 with force majeure clauses will stress that the COVID-19 pandemic does not apply



## PPDA FORM OF CONTRACT

It is not specifically mentioned in the PPDA form of Contract.

The Clause under which a Contractor might seek relief for “Force Majeure” events are

- §GCC 37 – Extension of the intended Completion Date
- §GCC 39 – Delays ordered by the Project Manager
- §GCC 41 – Early Warning
- §GCC 53 – Compensation Events

## EAIA (BLUE BOOK)

It is mentioned in Clause 23(a), Extension of Time, and the wording is;

*“Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architect, and if in the opinion of the Architect the completion of the Works is likely to be or has been delayed beyond the Date for Practical Completion stated in the appendix to these Conditions or beyond any extended time previously fixed under this clause, (a) by force majeure, or...”*



## SCARCITY OF GOODS AND MATERIALS

The risk of Supplying Good and Materials is a Contractor's Risk unless otherwise explicitly stated that they shall be supplied by the Employer.

This Scarcity first started with the COVID-19 pandemic that led to factory closures and supply chain disruptions

It has been further worsened by the Russia -Ukraine conflict as it;

- *has driven fuel, copper, and aluminum prices higher.*
- *delayed or halted the movement of Cargo ships in the area.*
- *denied to certain commodities as a direct result of the conflict and/or sanctions imposed on Russia*

### Management of Scarcity of Goods and Materials

#### Causes

- Factory Closures
- Price Inflation
- Higher Energy Prices
- Supply Chain Disruptions

#### Mitigation

- Pre-order the Materials
- **Pre-purchasing and stockpiling materials at the outset of a project**
- **Pay a Premium to jump the manufacturing queue for bespoke orders**
- **Deal directly with manufacturers instead of supplier (middle-men)**
- **Expedite delivery of delayed procurement by use of Air-freight.**
- **Map Out the Purchasing Process.**



## THE HUDSON & EMDEN FORMULA FOR COMPUTATIONS OF OVERHEAD COSTS

### Use of the Formula

There are two opinions on how Head Office Overheads should be evaluated in a claim for Loss and Expense which involves delay (Prolongation);

- **Only those Costs identifiable as a result of the delay are reimbursable**
- **The Contractor should receive a contribution to the total Head Office Overheads**

Where it is established that the Contractor should receive reimbursement for Head Office Overheads, the use of Formulae is an accepted method



### The Two Formulas

#### Hudson Formula

Uses the percentage in the Contractor's tender for overheads (and profit if applicable) as a basis for the Contractor's loss of contribution to overhead (and profit) as a result of delay

The formula:

$$\frac{\text{H.O Overheads (profit) \%}}{100} \times \frac{\text{Contract Sum}}{\text{Contract Period}} \times \text{Period of delay}$$

Refer to *Ellis-Don v. Parking Authority of Toronto (1978) 28 BLR 98*

#### Emden's Formula

It is similar to Hudson's Formula but the Head Office Overhead (and profit) used in the formula must be the actual percentage based on the Contractor's accounts

The formula:

$$\text{H.O (profit) percentage} = \frac{\text{Total Overhead Cost (Profit)}}{\text{Total turnover}} \times 100$$

Refer to *Whitthall Builders Company Ltd v. Chester-le-Street District Council (1985)* – unreported



## CASE STUDY 2



Following the advice of experts, the Government of Uganda has decided to execute the GULU HYDRO DAM project in three parts as follows: -

1. Dam, roads, and staff quarters: RED BOOK.
2. Head-race tunnel and control building: YELLOW BOOK.
3. Power station: SILVER BOOK.

Dolphin Construction Limited (DCL), an experienced contractor, was the successful bidder for the three lots and was awarded the respective contracts. The three contracts were separate.

Nile Engineering Limited was appointed as Engineer for the Red and Yellow contracts and the Employer's representative for the Silver Book contract.

- Two months after work had commenced on the dam, roads and staff quarters, the Employer requested a proposal for the construction of a basic airstrip alongside the road near the site for the power plant. DCL objected that such a variation was outside the scope of the contract. Under protest, DCL submitted a proposal indicating that this would add 5% to the overall contract price and 4 months extension from the Time for Completion. A site meeting was held and NEL insisted that the variations would add 3% to the contract price and no time consequence since the extra work could be executed alongside the planned activities. Subsequently, NEL issued the Variation Instruction to DCL.
- DCL objected to the instruction and instead issued a Notice to the Employer to avail them proof of funds to pay the cost of the variation. The Under Secretary in the Ministry of Energy and Mineral Development wrote a letter to DCL informing them that even if the World Bank funds were insufficient, the Government of Uganda was interested in the project and would fund it.
- The Employer indicated its intention to omit the permanent staff quarters from the present contract with a plan to execute the work at a future time using a simpler design and by engaging a local and cheap contractor. DCL has threatened to suspend the works.

### Questions:

1. Advise the Contractor about his contractual rights.
2. Advise the Employer about his contractual rights.





# Day 2

26th July 2024





**Eng. Bakiza Ian Paul**

BCIV(MUK),R.ENG, M.U.I.P.E, FCCM, MICCP



### A Construction Claim.

"A claim is an assertion of a right to property, money or a remedy"

### OBJECTIVE

This presentation aims to provide construction practitioners with an intermediate understanding of employer's claims under FIDIC contracts, ensuring they are well-equipped to manage and resolve such claims effectively.

### BASIS OF EMPLOYER'S CLAIMS

#### Contractual Obligations

- **Definition:** Employer's claims often arise when the contractor fails to meet specific contractual obligations.
- **Examples:** Delays in project completion, defective work, non-compliance with specifications, and failure to meet performance standards.
- **FIDIC Reference:** Various clauses, such as Clause 8.7 (Delay Damages), Clause 11.1 (Defects Liability), and Clause 4.2 (Performance Security).

#### Breach of Contract

- **Definition:** Any action or inaction by the contractor that constitutes a breach of the agreed terms and conditions of the contract.
- **Examples:** Unauthorized variations, failure to adhere to safety standards, and not providing required insurances.
- **FIDIC Reference:** Clause 15 (Termination by Employer) outlines remedies for breaches.

#### Delay and Disruption

- **Definition:** Claims due to delays and disruptions caused by the contractor affecting the project timeline and leading to additional costs.
- **Examples:** Late start of works, slow progress, and delays in material procurement.
- **FIDIC Reference:** Clause 8.7 (Delay Damages) allows for claims related to delays.

#### Defective Work

- **Definition:** Claims for the costs and damages arising from defective or non-conforming work performed by the contractor.
- **Examples:** Structural defects, poor workmanship, and use of substandard materials.
- **FIDIC Reference:** Clause 11.1 (Defects Liability) covers the contractor's obligations to rectify defects.

#### Failure to Comply with Specifications

- **Definition:** Claims based on the contractor's failure to meet the technical and performance specifications outlined in the contract.
- **Examples:** Non-compliance with design requirements, failing to meet quality standards, and deviation from approved drawings.
- **FIDIC Reference:** Clause 7.5 (Rejection) allows the employer to reject non-compliant work.

#### Additional Costs Due to Variations

- **Definition:** Claims arising from additional costs incurred by the employer due to variations in the work scope initiated by the contractor without prior approval.
- **Examples:** Unapproved design changes, scope creep, and additional work not covered by the original contract.
- **FIDIC Reference:** Clauses 13.1 (Right to Vary) and 13.3 (Variation Procedure) outline the procedures and entitlements related to variations.

#### Non-Performance of Obligations

- **Definition:** Claims arising from the contractor's failure to perform specific contractual duties and obligations.
- **Examples:** Not mobilizing resources on time, inadequate staffing, and failure to provide required documentation.
- **FIDIC Reference:** Clause 4.2 (Performance Security) emphasizes the importance of performance guarantees and securities.

## Financial Claims

- **Definition:** Claims related to financial aspects, including unpaid amounts, cost overruns, and compensation for financial losses.
- **Examples:** Failure to release retention money, unpaid certified amounts, and additional costs incurred due to contractor's actions.
- **FIDIC Reference:** Clauses 14 (Contract Price and Payment) and 15 (Termination by Employer) provide mechanisms for addressing financial claims.

## Non-Compliance with Health and Safety Requirements

- **Definition:** Claims arising from the contractor's failure to comply with health and safety regulations and requirements.
- **Examples:** Unsafe working conditions, accidents, and non-adherence to safety protocols.
- **FIDIC Reference:** Clause 6.7 (Health and Safety) outlines the contractor's obligations regarding safety.

## Failure to Provide Insurance

- **Definition:** Claims based on the contractor's failure to provide the necessary insurance coverage as required by the contract.
- **Examples:** Lack of liability insurance, inadequate coverage for works, and failure to renew insurance policies.
- **FIDIC Reference:** Clause 18.1 (Insurance) details the insurance requirements and contractor's responsibilities.

## CLAIMS PROCEDURE - EMPLOYER'S CLAIMS

### Procedure for Employer's Claims

#### Step 1: Identification

**Action:** Continuously monitor the project for potential claim events.

**Documentation:** Keep detailed records of project progress, issues, and any deviations from the plan.

#### Step 2: Notification (Clause 2.5)

**Action:** Notify the contractor promptly.

**Documentation:** Provide a clear and concise description of the claim event, including dates, relevant activities, and initial assessment of the impact.

#### Step 3: Submission of Detailed Particulars

**Action:** Prepare a comprehensive claim submission.

**Documentation:** Include all relevant details, calculations, and evidence. Maintain a log of all correspondence and documents related to the claim.

#### Step 4: Engineer's Assessment

**Action:** Cooperate with the Engineer's review process.

**Documentation:** Respond to any requests for additional information promptly.

#### Step 5: Notification of Determination

**Action:** Review the Engineer's determination carefully.

**Documentation:** Compare the determination against the claim submission and assess any discrepancies.

#### Step 6: Response and Agreement

**Action:** Engage with the contractor to discuss the Engineer's determination.

**Documentation:** Record all negotiation discussions and agreements.

#### Step 7: Dispute Resolution

- **Action:** If necessary, prepare for adjudication or arbitration.

- **Documentation:** Compile all relevant documents, evidence, and correspondence to support the employer's position in the dispute resolution process.

## OUTLINE OF EMPLOYER CLAIM

- Cover Letter
- Executive Summary
- Background Information
- Event or Circumstance Leading to the Claim
- Contractual and Legal Basis
- Impact Analysis
  - - Time Impact
  - - Cost Impact
- Supporting Documentation
- Mitigation Efforts
- Conclusion
- Certification

## Cover Letter

- **Introduction:** Briefly introduce the claim.
- **Summary:** Summarize the nature of the claim, including key points such as the event/circumstance, contractual basis, and claimed amount/time extension.
- **Request:** State the request for determination or payment/extension of time.

## Executive Summary

- **Overview:** Provide a high-level overview of the claim, including the cause, impact, and sought relief.
- **Key Facts:** Summarize key facts and figures.
- **Claim Summary Table:** Include a table summarizing the claim items, amounts, and time extensions.

## Background Information

### Contract Details:

- Project name and description.
- Contract number and date.
- Parties involved (Employer, Contractor, Engineer).

**Scope of Work:** Brief description of the scope of work.

**Relevant Contractual Provisions:** List relevant FIDIC clauses and any specific contract provisions applicable to the claim.

## Event or Circumstance Leading to the Claim

- **Description:** Detailed description of the event or circumstance that triggered the claim.
- **Date and Timeline:** Provide specific dates and a timeline of events.
- **Cause:** Explain the cause of the event or circumstance.

## Contractual and Legal Basis

- **Contract Clauses:** Reference specific FIDIC clauses that support the claim (e.g., Clauses 2.5, 8.7, 11.1).
- **Legal Principles:** Briefly outline any relevant legal principles or case law supporting the claim.
- **Entitlement:** Clearly state the employer's entitlement under the contract.

## Impact Analysis

### Time Impact:

- **Delay Analysis:** Provide a detailed delay analysis, including critical path impact and any schedule disruptions.
- **Extension of Time (EOT):** Specify the requested EOT, with justification.

### Cost Impact:

- **Direct Costs:** List and quantify direct costs incurred due to the event or circumstance.
- **Indirect Costs:** Include any indirect costs or consequential damages.
- **Total Claimed Amount:** Provide a summary of the total amount claimed.

## Supporting Documentation

Include relevant supporting documents organized in appendices such as:

- Correspondence (emails, letters).
- Site reports and diaries.
- Photographs and videos.
- Contract documents (drawings, specifications).
- Delay analysis reports.
- Cost breakdowns and invoices.

## Mitigation Efforts

**Actions Taken:** Describe any actions taken by the employer to mitigate the impact of the event or circumstance.

**Results:** Outline the results of these mitigation efforts.

## Conclusion

- **Summary of Claim:** Recap the key points of the claim.
- **Requested Relief:** Clearly state the relief sought (e.g., payment, extension of time).
- **Contact Information:** Provide contact details for followup.



## **BEST PRACTICES FOR MANAGING EMPLOYER'S CLAIMS**

- **Timely Action:** Ensure all claims are made and responded to promptly to avoid disputes.
- **Detailed Records:** Maintain thorough and organized records of all project activities, communications, and decisions.
- **Clear Communication:** Ensure all notices and submissions are clear, detailed, and supported by evidence.
- **Collaborative Approach:** Foster a collaborative relationship with the contractor to resolve issues amicably.
- **Professional Advice:** Seek professional advice or engage experts when necessary to support the claim process.

## **CONCLUSION**

- Employer's claims are an integral part of FIDIC contracts, requiring timely and detailed submissions, and effective management.
- A structured claims preparation ensures that the employer's claim is comprehensive, well-documented, and clearly justified, increasing the likelihood of a successful resolution





# A PRACTICAL GUIDE TO PRESENTATION OF CLAIMS AND RESPONSES



Ronald Tusingwire  
MCI Arb



David Kaggwa  
LLM (Construction Law & Arbitration) RGU Arberdeen

A claim is defined under GCC 1.1.5 (Yellow Book), GCC 1.1.6 (Red Book) and GCC 1.1.3 (Silver Book) to mean a request or assertion by one Party to the other Party for an entitlement or relief under any Clause of these Conditions or otherwise in connection with, or arising out of, the Contract or the execution of the works.

It has also been defined as a demand for something due. i.e. an assertion of a Party's right under the terms of the Contract or under the Law.

The Claim must arise from the Contract or under the law. The law in this case is the law that the Parties agreed will govern the execution and interpretation of the contract. The 2017 FIDIC Conditions of Contract (GCC 1.4 Law and Language – Yellow Book- -- Red Book and Silver Book) provide that:

“the Contract shall be governed by the law of the country (or other jurisdiction) stated in the Contract data (if not stated, the law of the Country), excluding any conflict of law rules”

GCC 1.1.18 (Silver Book) and GCC 1.1.21 (Red Book and Yellow Book), define “Country” to mean the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

Contract data on the other hand is defined under GCC 1.1.11 (Yellow Book), GCC 1.1.9 (Silver Book), and GCC 1.1.12 (Red Book) to mean “the pages, entitled contract data which constitutes Part A of the Particular Conditions”.

## What precedes a Claim?

When an event or events have occurred that a contractor considers give rise to the need to submit a claim, it is important to consider certain matters before proceeding with submission of the claim. Some of the matters to consider include the following:

### 1) Have you given notice before the Claim?

A Notice is defined under GCC 1.1.56 (Red Book and Yellow Book), GCC 1.1.48 (Silver Book) to mean “written communication identified as a Notice and Issued in accordance with Sub-Clause 1.3 [Notices and Other Communications]

GCC 1.3 (Red, Yellow and Silver Books) provide for what constitutes a Notice i.e. it shall be;

- Notice must be in writing
- It must be delivered by hand (against recipient), or sent by email or courier (against receipt) or transmitted using any of the systems of electronic transmission under the contract;
- It must be identified as a Notice
- When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.
- It must make reference to the clauses that requires the notice and/or provides entitlement
- It must describe the event or circumstances with dates

### Note:

- The Notice is effective when it is received (or deemed to have been received) at the recipient's current address
- An electronically transmitted Notice is deemed to have been received on the day after transmission, provided no non-delivery notification was received by the sender;
- All Notices must not be unreasonably withheld or delayed
- Deliver or transmit the notice to the place and or by the means stated in the contract
- Avoid accusatory language
- Do not include too much information in the notice – the details of entitlement will be included in the subsequent claim
- Use the language of the contract in the notice
- In in doubt, always submit a notice

2. Establish the Value of the claim – i.e. how much are you claiming, this will assist in determining whether to pursue the claim or not.
3. Establish who to address the Claim. The person/entity to address the claim is usually the same as the one to whom the Notice is addressed and submitted. Most importantly under this head is the person likely to make the determination. Will the person be persuaded by the claim submission?
4. What is the relationship between the Contractor and the Employer as at the time of submitting the claim, is there animosity between the Employer and the Contractor?
5. Review the contract, contract documents and all information relevant to the project out of which the entitlement or relief is established
6. Establish the heads of claim, the cause of the claims, the effect of the claim, the entitlement and the substantiation of the claim, for example are you claiming time, or both time and money?
7. What is the strength of the claim that you are submitting and its chances of success? Is it worth the effort and expense?

### **Contents of the Construction Claim**

The Construction Claim should be fully detailed and professionally presented and should contain the following:

**Cover Page** is the starting point showing the viewer that a Party to the Contract has submitted a contractual claim arising from the Contract. The Cover page should invite the viewer to look inside the document to find out more about what is inside. The Cover page should be neatly drawn and show following:

That the submission is a Claim;

- The Claimant's name
- The Project Title including the project number which is stated in most of the projects undertaken by Government for example **CONTRACT NO. MEAC/WRKS/17-18/0002465**,
- The Parties to the Construction Project
- The Claim title or brief description of the claim, for example "Contractor's Claim for Extension of Time and Additional Cost due to Disruption"
- The entity submitting the Claim. This can be the Contractor directly, the Contractor's Project Manager, Contractor's Claims Consultants, a Law firm, the Employer or the Employer's Consultant.
- Claim Number, this is important in case the project has had several claims submitted for determination during its cycle.

**A Table of content**, index which guides the reader of the Claim where to find the various heads of claim or the arguments in support of the claim. The importance of the index or table of content is that most of the Claim documents are voluminous with lots of project documents submitted as evidence of the entitlement or substantiation of the various heads of claims.

**Interpretation or definition page** to define the various terms and acronyms used in the industry in as far as they relate to the claim.

### **The Claim should have an Executive Summary**

The purpose of the executive summary is that it provides an overview of what the larger document and is usually the first thing the reader will see. Often times, executive summaries are the only place decision makers will go to determine if a quick action is warranted on a particular claim.

In any construction project, there are various key decision makers or players that are affected/impacted by the project who are not necessarily technical persons like Engineers, Architects, Quantity Surveyors name it, but include the owners of the project, financiers, auditors, accounting officers etc. The executive summary is intended to give all these actors a concise statement of what the Claims are and for them to understand what the Contractor is claiming to be entitled and be able to make a decision or seek guidance quickly.

### **The introduction**

This part introduces all the relevant Parties to the Contract and to the Claim giving all their details for example, the Employer, the Employer's Representative (in the case of the Silver Book) or the Engineer (in the case of the Red and Yellow Books), the Contractor, the Contractor's Representative in the Claim

### **The Contract Particulars**

Under this head, you state the key contract particular about the project from which the claim arises i.e. when was the contract signed, the obligations of the Contractor under the contract, the obligations of the employer under the contract, commencement of the works, site hand over, the law of the contract, contract price and payment terms, time for completion, contract amendments if any, contract provisions relevant to the claims, the specific clause under which the Contractor is submitting its claims what that the clause states in summary.

**Details of the Contractor's Claims.** – under this headline, you dig deeper into the claims upon which you want a determination to be made and why it should be made in your favor. Particularly, the Details of the Contractor's claims must illustrate the following:

- Background to the claim, this is snapshot of how the particular claim arises. The background should give a chronology of events starting as soon as an event (s) occurred which resulted into the claim (s). This will help to demonstrate and tell the story in a chronological way that leads the reviewer to a logical conclusion.
- The cause of the Claim. This is the event that has given rise to the Claim. It could be for example late or restricted access to the site, instructions to carry out additional works, late issue of instructions etc. the cause is a statement of fact and is usually fairly and easily established from project records.
- The effect of the cause: This is a demonstration of the impact of the event causing the Claim. For a claim to succeed, it is important to demonstrate that the effect on which the claimed compensation is based was in fact caused by the event, by linking the cause with the effect. For example, did the delay to issue the instructions cause the contractor to incur additional cost?
- The entitlement: Under this head, we must demonstrate that the event on which the claim is based is something for which the contract, or the law to which the contract is subject, provides entitlement to the claimant. The claim will flow either from a remedy contained in the contract conditions, or from a breach of the contract giving rise to common law damages and could possibly fall under both categories. You must set out the contractual basis that gives rise to your entitlement and the first place to check for this, is the contract itself.
- The substantiation: This evidence is being relied on to prove the entitlement. This evidence is usually contained in the project record which must be kept by the Contractor at all times

**Conclusion.** This is a summation of the claims showing justification why you are entitled to a determination in your favor

**Attach the Appendices/Annexures** which contain the documents relied on such as programs, calculations and project records that have been prepared to support, illustrate or substantiate the claims.

**The Claim document must be paginated** and the various annexures clearly numbered and differentiated by separators

**Neatly bind the Claim submission document** to avoid some papers falling out or being removed to your detriment.

### **KEY POINTS FOR CLAIM PRESENTATION**

There are four key points to bear in mind when preparing a claim document. These four points have been tested and proven to go a long way towards helping a just claim succeed seamlessly and they include:

- Make the reader's job as easy and as pleasant as possible
- Ensure that the submission is a stand-alone document
- Assume the reviewer has no prior knowledge of the project or the circumstances
- Do not include irrelevant information in the document



NOTICE OF CONTRACTOR'S CLAIMS

(UNDER CLAUSE 20.1 REB BOOK)

Our Ref: DCL/GHD/11092023

11th September, 2023

Project: GULU HYDRO DAM

Contract Identification: MEMD/GHD/002345

Addressed to:

M/S Nile Engineering Limited  
(The Project Engineer GCC 1.1.35 & PCC 1.1.35)  
Plot 57A Naguru Drive  
P. O. Box, 23335, Kampala.

Dear Sir;

RE:

NOTICE OF CONTRACTOR'S CLAIMS  
IN ACCORDANCE WITH SUB-CLAUSE GCC 8.4 & 20.1

---

We give you notice of claim for:

1. An Extension of Time of four (4) months for Completion in accordance with Sub-Clauses GCC 8.4 & 20.1 of the Conditions of Contract;
2. Additional Payment of USD.150,000 (United States Dollars One Hundred Fifty Thousand Only) withheld on Interim Payment Certificate of USD.250,000 (United States Dollars Two Hundred and Fifty Thousand Only) in accordance with Sub-Clause GCC 20.1 of the Conditions of Contract.

The Contractor gives notice of the following events and or circumstances as reasons/basis for the Claim:

- (a) The variation in the contract to construct a basic airstrip alongside the road is outside the scop of works and will require;
  - i) additional four months extension to the delivery period, and
  - ii) 5% increment to the overall contract price.
  
- (b) Payment of USD.150,000 (United States Dollars One Hundred Fifty Thousand Only) withheld/deducted by the employer in respect to;

- i) USD.50,000 (United States Dollars Fifty Thousand Only) for electricity and water,
- ii) USD.75,000 (United States Dollars Seventy-Five Thousand Only) for customs clearance advanced by the employer to the Contractor for the tunneling machinery,
- iii) USD.25,000 (United States Dollars Twenty Five Thousand Only) for delay damages charged by the employer after an notice of application for extension of time had been brought to the attention of the engineer.

The Contractor submits in support of the Claims as follows:

1. On 10th day of June, 2023, the Contractor signed a contract with the Employer for the construction of Gulu Hydro Dam, roads and staff quarters;
2. The site was handed over on the 8th day of August 2023 and the works commenced on the 10th day of August, 2023.
3. Two (2) months into the contract execution, on the 25th of August, 2023, the Contractor received a request from the Engineer for a proposal to construct a basic airstrip alongside the road near the site for the power plant.
4. The “basic airstrip” for which a request for a proposal was made requires modifications to the program of works earlier submitted and approved;
5. The construction of the basic airstrip will require an additional four (4) months’ time for the works to be completed;
6. The additional works to be carried out during construction of the basic airstrip will increase the contract price/cost by 5% of the total contract sum awarded in the contract which is amount is substantial and has to be factored by way of price variation.

In accordance with Sub-Clause GCC 8.4 of the Conditions of Contract, it is provided the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to an extension of the Time for Completion if and to the extent that the completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure] or other substantial change in the quantity of an item of work included in the Contract,*
- (b) A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions*

The Contractor contends that instruction to construct a basic airstrip will delay the completion of the works by four months as well as increase the cost by 5% for which it is entitled to;

- a) Extension of Time for Completion by 4 (Four) months,

b) A 5% addition to the total contract price.

c) Payment of USD.150,000 (United Stated One Hundred Fifty Thousand Only) being the amount withheld by the employer on the interim payment certificate issued by the Engineer.

We hereby give you notice of the claim in accordance with the Conditions of Contract highlighted above.

Acknowledge receipt of this Notice by signing and returning a copy hereof.

Yours faithfully,

---

Engineer Kamyufu John --- Project Manager

*For Dolphin Construction Limited*

*Copies to:*

- 1. Permanent Secretary Ministry of Energy and Mineral Development*
- 2. Permanent Secretary Ministry of Finance and Economic Development*
- 3. Country Representative World Bank Group*

*Attachments:*

- 1. Proposal for Construction of the Basic Airstrip*
- 2. Contract for execution works*

## **CONTRACTOR'S CLAIM**

**THE REPUBLIC OF UGANDA**

**PROJECT FOR CONSTRUCTION OF GULU HYDROELECTRIC POWER STATION WITH ASSOCIATED DAM,  
TUNNEL, SPILLWAY, ROADS, STAFF QUARTERS AND RELATED FACILITIES IN NORTHERN UGANDA**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF UGANDA REPRESENTED BY THE MINISTRY OF ENERGY AND  
MINERAL DEVELOPMENT**

**(HEREINAFTER THE EMPLOYER)**

**AND**

**DOLPHIN CONSTRUCTION LIMITED**

**(HEREINAFTER THE CONTRACTOR)**

---

**CONTRACTOR'S CLAIMS AGAINST THE EMPLOYER**

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**DRAWN, PREPARED AND FILED BY:**

**M/S CONSTRUCTION LAW INSTITUTE**

**PLOT 2, LOWER KOLOLO**

**P. O. BOX, 24665,**

**KAMPALA.**

**[www.constructionlawinstitute.com](http://www.constructionlawinstitute.com)**

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## CONTRACTOR'S STATEMENT OF CLAIMS

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### SECTION ONE: EXECUTIVE SUMMARY

#### 1.0. EXECUTIVE SUMMARY:

#### 2.0. INTRODUCTION:

##### 2.1. The Parties

2.1.1. The Employer is the Uganda Government represented by the Ministry of Energy and Mineral Development. Amber House Plot 29/33, Kampala Road.

2.1.2. The Engineer is M/S Nile Engineering Limited of 4th Floor, Kololo Courts, Plot 5 Prince Charles Drive and is charged with carrying out duties and or exercising authority on behalf of the Employer

2.1.3. The Contractor is M/S Dolphin Construction Limited a company incorporated in accordance with the Laws of Uganda and of P. O. Box, 233333, Kampala and of Dolphin Plaza, Plot 33 Kampala Road.

2.1.4. The Funding Agency is the World Bank

##### 2.2. The Contract Particulars:

2.2.1. On 10th day of June, 2023, the Employer and the Contractor signed a Contract for the construction of the Gulu Hydro Dam under three lots and which is hereinafter referred to as "Gulu Hydro Dam Project" or "the Project".

2.2.2. The execution of the Project was to be done in three lots: (1) Lot one comprising of construction of the Dam, roads and staff quarters; (2) Lot 2 comprising of construction of the Head-race tunnel and control building while Lot 3 comprised of construction of the Power Station.

2.2.3. The Three Lots were each governed by different Conditions of Contract as follows:

- (i) Lot one to which these claims relate was governed by the 1999 Conditions of Contract for Construction of for Building and Engineering Works Designed by the Employer (and which is hereinafter referred to as the “Red Book”)
- (ii) Lot two was governed by the Conditions of Contract for Plant and Design Build for Electrical and Mechanical Plant and For Building and Engineering Works, designed by the Contractor (and which is hereinafter referred to as the “Yellow Book”); and
- (iii) Lot three was governed by the Conditions of Contract for EPC/Turnkey Project for Building and Engineering Works Designed by the Employer (hereinafter referred to as the “Silver Book”)

2.2.4. The Contractor executed three different contracts for the three lots. In this Claim, the Contract relied on is the Red Book, a copy of which is attached herein and is marked as “**Annexure DOLPHIN 01**”.

2.2.5. Pursuant to the terms of contract executed by the Employer and the Contractor, the Contractor’s main obligations was to carry out building and engineering works comprising of construction of the dam, roads and staff quarters based on designs made by the Employer.

2.2.6. The law to which the contract is governed is the Laws of the Republic of Uganda pursuant to GCC Sub-Clause 1.4 of the Conditions of Contract.

### 2.3. The Contract Price and Terms of Payment:

2.3.1. The contract price for the execution of the works under Lot 1 is USD 6,000,000 (United States Dollars Six Million)

2.3.2. The Terms of Payment are provided for in the Contract and are through by measurements of works made by the Engineer guided by the rates or price for the items specified in the contract.

### 2.4. Commencement Date:

2.4.1. The Site was handed over on the 8th August, 2023.

2.4.2. The execution of the works commenced on the 10th day of August, 2023

### 2.5. Time for Completion:

2.5.1. Pursuant to the Conditions of Contract modified by the Particular Conditions of Contract, the time for completion of Lot 1 was 12 months from the date of commencement of the works.

2.6. Contract Provisions relevant to the Claims:

- 2.6.1. GCC Sub-Clause 2.4 relating to Employer's Financial Arrangements
- 2.6.2. GCC Sub-Clause 3.3 relating to Instructions of the Engineer
- 2.6.3. GCC Sub-Clause 3.5 relating to Determinations
- 2.6.4. GCC Sub-Clause 4.19 relating to Electricity, Water and Gas
- 2.6.5. GCC Sub-Clause 8 relating to Commencement, Delays and Suspension
- 2.6.6. GCC Sub-Clause 13 relating to Variations and Adjustments
- 2.6.7. GCC Sub-Clause 16.1 relating to Contractor's right to Suspend Work
- 2.6.8. GCC Sub-Clause 20.1 relating to Contractor's Claims

[An Extract of the relevant Clauses is attached and is marked "**Annexure DOLPHIN-02**"]

2.7. The Contractor submits its claims pursuant to GCC Sub-Clause 20.1 of the Conditions of Contract. The extract of GCC Sub-Clause 20.1 is attached and forms part of Annexure marked "Dolphin-02". The Contractor contends as follows; that:

2.7.1. two months after the commencement of the Project under Lot 1, the Employer requested for a proposal for the Construction of a basic airstrip alongside the road near the site for the power plant;

[Copy of the Request is attached and is marked "**Annexure DOLPHIN-03**"]

2.7.2. the Contractor objected to the request for proposal on grounds that the request for a proposal for construction of a basic airstrip amounted to a variation which was outside the scope of the contract;

[Copy of the Objection is attached and is marked as "**Annexure DOLPHIN-04**"]

2.7.3. notwithstanding the objection, the Contractor submitted a proposal under protest indicating that the request for proposal would add 5% to the overall contract price and would also require four (4) months extension of time for completion;

[Copy of the Proposal is attached and is marked as "**Annexure DOLPHIN-05**"]

2.7.4. during a site meeting held on the 16th day of August, 2023, the Engineer insisted that the variations would add 3% to the contract price and no time consequence since the extra work would be executed alongside the planned activities;

2.7.5. the engineer subsequently issued a Variation Instruction to the Contractor without taking into account the proposal submitted by the Contractor and the reasons for the supporting the 5% increase in the contract price as well as the four (4) months extension of time;

[Copy of the Instruction is attached and is marked as “**Annexure DOLPHIN-06**”]

2.7.6. pursuant to GCC 2.4 of the Conditions of Contract, the Contractor issued a Notice to the Employer to avail them with proof of funds to pay the cost of the variation;

[Copy of the Notice is attached and is marked as “**Annexure DOLPHIN-07**”]

2.7.7. the Under Secretary Ministry of Energy and Mineral Development simply wrote a letter to the Contractor informing it that the “Government of Uganda was interested in the project and would fund it”

[Copy of the Letter from the Permanent Secretary Ministry of Energy and Mineral Development is attached and is marked as “**Annexure DOLPHIN-08**”]

2.7.8. the time for Completion of the Project has since passed with no extension of time issued by the Engineer, nor has the Employer furnished proof of funds to pay the cost of Variation.

2.7.9. The Contractor is entitled to Extension of Time of four (4) months within which to complete the project together with the construction of the basic airstrip instructed by the Employer.

2.7.10. The effect of the construction of the basic airstrip is that the total contract price increased by 5% to which the Contractor is entitled to an additional payment.

2.7.11. The Contractor gave Notice of the Claims these claims to the Engineer within the time specified by GCC 20.1 of the Conditions of Contract.

2.7.12. The Contractor seeks determination of the above claims the details of which are stated in the section below, which demonstrates the cause, effect, entitlement as well as the substantiation.

### 3.0. SECTION 3: DETAILS OF THE CONTRACTOR’S CLAIMS

3.1. CLAIM NO. 1: CLAIM FOR EXTENSION OF TIME FOR COMPLETION OF THE PROJECT.

3.1.1. CAUSE.

- i) Additional works following the Request of the Employer for a Proposal to construct a basic airstrip along the road near the site for the power plant;

3.1.2. EFFECT:

- i) The Contractor submitted a program of works before commencement of the project;
- ii) The program of works was approved by the Engineer;
- iii) The program does not have the activities relating to construction of the basic airstrip;
- iv) In order to execute the works, it requires more time to excavate the site, carry out soil investigations, purchase the materials

3.1.3. ENTITLEMENT:

- i) Four (4) additional months over and above the time fixed in the contract;
- ii) The four months will take into account additional mobilization in accordance with the additional design for the basic airstrip, mobilization of materials for the airstrip, which require about two to three months to procure.

[Copy of the Revised Program showing the planned activities as well as the time for executing those activities is attached and is marked as **“Annexure DOLPHIN-09”**]

3.1.4. SUBSTANTIATION:

- i) The Contractor relies GCC 8.4 and GCC 20.1 and states that it is entitled to the Extension of Time for Completion as claimed on account of a variation by the Employer requiring construction of a basic airstrip;
- ii) An adjustment to the time for completion has not been agreed yet there is a substantial change in the quantities of several items of work included in the proposal for the construction of the basic airstrip.

3.2. CLAIM NO. 2: CLAIM FOR ADDITIONAL COST AMOUNTING TO 5% OF THE TOTAL CONTRACT PRICE.

3.2.1. CAUSE :

- i) Additional works following the Request of the Employer for a Proposal to construct a basic airstrip along the road near the site for the power plant;

3.2.2. EFFECT:

- i) Changes in the quantities of several items of work required for the construction of the basic airstrip
- ii) Cost of additional labour both technical and casual
- iii) Hire of additional plant and equipment

3.2.3. ENTITLEMENT:

- i) 5% of the original contract price in the Contract;
- ii) The calculation of the 5% including all the components and their prices is attached and is marked as **“Annexure DOLPHIN-10”**.

3.2.4. SUBSTANTIATION:

- i) The Contractor relies on GCC Sub-Clause 13.1 of the Conditions of Contract and states that the proposal for the construction of the basic airstrip caused a substantial change in the quantities of items included in the contract and the characteristics of the of the items of work;
- ii) The basic airstrip was not part and parcel of the original design hence the justification for the additional cost
- iii) GCC 20.1 of the Conditions entitles the contractor to additional payment

3.3. CLAIM NO. 3: CLAIM FOR COSTS FOR PREPARATION OF THE CONTRACTOR’S CLAIMS.

3.3.1. CAUSE:

- i) The Contractor notified the Engineer that the proposal for construction of the basic airstrip will increase the total cost by 5% of the contract price and will require an extension of time for completion by 4 months
- ii) The Engineer did not approved an additional cost by 3% instead of 5% and did not award any time extension
- iii) The Contractor hired M/S Construction Law Institute as its claims consultant

3.3.2. EFFECT:

- i) Contractor incurred an a cost of claim preparation paid to CLI

3.3.3. ENTITLEMENT:

- i) Contractor is entitled to reimbursement of the cost incurred amounting to USD 40,000.

3.3.4. SUBSTANTIATION:

- i) In support on this Claim, the Contractor relies on the decision in ***James Lougley & Co. Ltd Vs. South West Regional Health Authority (1985) 25 BLR 56***, in which it was held that, where certain works are done in preparation of an arbitration, the fees of a claims consultant for the works related in preparation of the claimant's case are recoverable.

Dated at Kampala this ....., day of ....., 2023

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**Construction Law Institute Ltd**

## ENGINEER'S RESPONSE:

NILE ENGINEERING LIMITED

Our Ref: GHD/WRKS/2023-03 13th September, 2023  
Project: GULU HYDRO DAM  
Contract Identification: MEMD/GHD/002345  
CONTRACTOR DOLPHIN CONSTRUCTION LTD  
EMPLOYER: GOVERNMENT OF UGANDA REPRESENTED  
BY THE MINISTRY OF ENERGY AND MINERAL DEVELOPMENT

### **ENGINEER'S RESPONSE:**

The Project Manager  
M/S Dolphin Construction Limited  
Plot 23, Lumumba Avenue  
P. O. Box, 24567 – Kampala  
Attn. Engineer Kamyufu John

Dear Sir;

#### **RE: ENGINEER'S RESPONSE TO NOTICE OF CLAIMS – GULU HYDOR DAM PROJECT**

We acknowledge receipt on 11th September, 2023 of your Letter Ref:DCL/GHD/11092023 in which you give Notice of Claims in respect of claims for:

1. An Extension of Time of four (4) months for Completion in accordance with Sub-Clauses GCC 8.4 & 20.1 of the Conditions of Contract;

1. Additional Payment of USD.150,000 (United States Dollars One Hundred Fifty Thousand Only) withheld on Interim Payment Certificate of USD.250,000 (United States Dollars Two Hundred and Fifty Thousand Only) in accordance with Sub-Clause GCC 20.1 of the Conditions of Contract.

In accordance with the provisions of Sub-Clause 20.1, you are required to submit full and detailed particulars of the amount claimed and the extension of time due. These particulars shall identify the clauses of the contract on which you rely on to substantiate your right to claim. We have titled this Claim

DOLPHIN EOT & AP and given it a unique Number DOLPHIN-GHD No.2 which we request that you use in all correspondence.

Yours faithfully

---

**M/S NILE ENGINEERING**

**Copy:**

1. Permanent Secretary Ministry of Energy and Mineral Development
2. Permanent Secretary Ministry of Finance, Planning and Economic Development
3. Country Representative – World Bank

## NOTICE OF AGREEMENT

NILE ENGINEERING LIMITED

Our Ref: GHD/WRKS/2023-04 15th September, 2023

WORKS/PROJECT: GULU HYDRO DAM COMPLETE WITH RELATED FACILITIES LOT 1  
EMPLOYER: GOVERNMENT OF UGANDA REPRESENTED BY  
MINISTRY OF ENERGY AND MINERAL DEVELOPMENT

CONTRACTOR: DOLPHIN CONSTRUCTION LIMITED  
CONTRACT NO. MEMD/GHD/002345  
ISSUE DATE: 15TH SEPTEMBER, 2023

### NOTICE OF AGREEMENT/DETERMINATION DOLPHIN EOT & AP Number DOLPHIN-GHD No.2

Pursuant to Sub-Clause GCC 3.5 of the Conditions of Contract and with reference to your Notice No. DOLPHIN-GHD NO. 2, dated the 11th day of September, 2023 issued pursuant to Sub-Clause GCC Sub-Clause 20.1,

We give notice of our agreement on/determination of the matters as follows:

1. Extension of Time of four (4) months claimed and request that you immediately submit a Revised Program of Works including the activities for the construction of the Basic Airstrip for our comments.
2. The EOT granted is at no cost.
3. The additional payment of 5% of the Contract price is approved. You are hereby instructed to provide a revised Advance Payment Guarantee and Performance Guarantee from a reputable financial institution in Uganda reflecting the additional 5% increase in the contract price for our approval.

An addendum to the Contract is being prepared to reflect the EOT and Additional Payment granted in this determination and will be sent to you for execution.

Signed

---

NILE ENGINEERING COMPANY LIMITED



**Eng. Bakiza Ian Paul**

BCIV(MUK),R.ENG, M.U.I.P.E, FCCM, MICCP



## Introduction to Construction Adjudication

**Definition:** Adjudication is a quick, interim dispute resolution process primarily used in construction contracts to resolve disputes on an ongoing project.

**Objective:** Provide a binding decision within a short timeframe, allowing project progress to continue without lengthy delays.

### Why Adjudication?

- **Speed:** Typically concluded within 28 days (PPDA), 84 days (FIDIC) offering a rapid resolution compared to arbitration or litigation.
- **Cost-Effective:** Generally less expensive than court proceedings/Litigation.
- **Flexibility:** Adjudicator has discretion in procedures, making the process adaptable to the specifics of the dispute.
- **Interim Binding:** The decision is binding until the dispute is finally resolved by arbitration or litigation, if necessary.

### Legal Framework

- **Statutory Basis:** Many jurisdictions have specific statutes (e.g., the UK's Housing Grants, Construction and Regeneration Act 1996) that govern adjudication.
- **Contractual Basis:** FIDIC, PPDA, NEC, JCT, and other standard form contracts typically include adjudication clauses.
- **Case Law:** Courts often support the enforcement of adjudicator's decisions, reinforcing the efficacy of the process.

### Forms of Adjudication

#### Statutory Adjudication

Definition: Mandated by law in some jurisdictions (e.g., UK's Housing Grants, Construction and Regeneration Act 1996).

Note: Uganda doesn't have an Adjudication Act

Characteristics:

- **Compulsory:** Parties are required to refer disputes to adjudication.
- **Procedural Framework:** Governed by statutory rules and timelines.
- **Speed:** Typically requires a decision within 28 days.

Application: Common in construction contracts to resolve payment disputes and other issues.

#### Contractual Adjudication

- Definition: Based on specific clauses within the construction contract.

Characteristics:

- **Voluntary:** Parties agree to adjudication through the contract terms.
- **Customization:** Parties can tailor procedural rules and timelines.
- **Binding:** Decisions are interim binding, subject to final resolution by arbitration or litigation.

Application: Incorporated in standard form contracts like FIDIC, NEC, JCT.

#### Ad-Hoc Adjudication

Definition: Arranged independently by parties without pre-existing contractual or statutory obligation.

Characteristics:

- **Flexibility:** Parties define the process, rules, and timelines.
- **Temporary Nature:** Often used for specific disputes without long-term commitments.
- **Decision:** Interim binding, with the possibility of further dispute resolution.

Application: Suitable for resolving unique or one-off disputes.

### Expert Adjudication

Definition: Utilizes subject matter experts as adjudicators to resolve highly technical disputes.

#### Characteristics:

- Expertise: Adjudicators possess specialized knowledge relevant to the dispute (e.g., engineering, contract law).
- Efficiency: Expert understanding leads to quicker, more informed decisions.
- Relevance: Ideal for disputes involving technical complexities.

Application: Common in disputes over technical specifications, design issues, and performance standards.

### Institutional Adjudication

Definition: Conducted under the auspices of an adjudication body or institution.

#### Characteristics:

- Structured Process: Follows established rules and procedures set by the institution (e.g., CI Arb, RICS).
- Neutrality: Institutions appoint impartial adjudicators.
- Support: Administrative and procedural support provided by the institution.

Application: Preferred for complex disputes requiring institutional oversight.

### Document-Only Adjudication

Definition: Adjudication based solely on written submissions and documentary evidence.

#### Characteristics:

- Speed: Faster process without oral hearings.
- Cost-Effective: Lower costs due to the absence of hearings.
- Appropriate Cases: Suitable for straightforward disputes where documentary evidence suffices.

Application: Common in smaller claims or clear-cut contractual disputes.

### Hybrid Adjudication

Definition: Combines elements of different adjudication forms to suit specific dispute requirements.

#### Characteristics:

- Adaptability: Tailored approach combining, for example, document-only review with limited hearings.
- Efficiency: Balances speed and thoroughness by leveraging various adjudication techniques.
- Customization: Parties agree on the hybrid process to fit the nature of the dispute.

Application: Used in complex disputes needing both expert review and detailed procedural attention



### Adjudication Selection Considerations

- **Nature of Dispute:** Complexity, technicality, and value of the dispute.
- **Time Constraints:** Urgency of resolution.
- **Cost Implications:** Budget considerations for dispute resolution.
- **Contractual Provisions:** Pre-agreed dispute resolution mechanisms.
- **Jurisdictional Requirements:** Legal obligations and frameworks.

## THE ADJUDICATION PROCESS

### Step 1. Notice of Adjudication:

- Initiation: One party issues a Notice of Adjudication to the other party.
- Contents: Outline the dispute, details of the contract, and desired remedy.

### Step 2. Appointment of Adjudicator:

- Selection: Adjudicator can be appointed by agreement or by a nominating body if not pre-agreed.
- Acceptance: Adjudicator confirms acceptance and availability.

### Step 3. Referral Notice:

- Submission: Within 7 days of the Notice of Adjudication, the claimant must submit the Referral Notice, detailing the dispute and supporting evidence.

### Step 4. Response:

- Submission: The responding party provides a written response within the adjudicator's set timeframe.

### Step 5. Adjudicator's Decision:

- Review: The adjudicator reviews all submissions, may request further information, and potentially hold meetings.
- Decision: Issued within 28 days from the Referral Notice, unless extended by agreement.

## ROLES AND RESPONSIBILITIES OF PARTIES

### PARTIES:

- Claimant: Initiates the process and submits the Referral Notice.
- Respondent: Responds to the claim and provides counter-evidence.

### ADJUDICATOR:

- Neutral: Acts impartially to resolve the dispute.
- Authority: Has discretion over procedures and can request additional evidence or conduct hearings.
- Take Initiative: To investigate the facts and apply them to the law and contract.

## POWERS OF ADJUDICATOR

### Conduct of Adjudication

- Discretionary Power: The adjudicator has broad discretion to set the procedure for the adjudication.
- Flexibility: Can determine how the adjudication will be conducted, including timelines, meetings, and evidence submission.

### Information Gathering

- Request for Information: The adjudicator can request additional information or documents from the parties.
- Interviews and Hearings: May conduct interviews, hearings, and site visits as deemed necessary.

### Decision Making

- Interim Binding Decisions: The adjudicator's decision is binding on an interim basis until finally determined by arbitration, litigation, or agreement.
- Scope of Decision: Can decide any matter referred to adjudication, including extensions of time, payment disputes, and contract interpretations.

### Directions and Orders

- Procedural Directions: The adjudicator can issue procedural directions to manage the adjudication process efficiently.
- Orders for Compliance: Can order parties to comply with procedural requirements, such as submitting documents or attending hearings.

### Jurisdictional Powers

- Self-Determination: The adjudicator can rule on their own jurisdiction, including the validity of the adjudication notice and their appointment.
- Expansion of Scope: May consider issues beyond those initially referred if connected to the dispute.

### Awarding Costs

- Cost Allocation: The adjudicator can decide on the allocation of adjudication costs between the parties, including their own fees and expenses.
- Limitation: Generally, cannot award legal costs unless expressly allowed by the contract or agreed by the parties.

## ENFORCEMENT OF DECISIONS

- Immediate Effect: The adjudicator's decision is immediately enforceable, ensuring swift compliance.
- Court Support: Courts generally support the enforcement of adjudicator's decisions, reinforcing the adjudication process.

## POWER TO CORRECT DECISIONS

- Corrections: The adjudicator can correct clerical or typographical errors in their decision within a limited timeframe (typically 5 days).

## LIMITATIONS ON POWERS

- Scope: The adjudicator's powers are limited to the matters referred to adjudication and those connected to the dispute.
- Final Resolution: The decision is not final and can be challenged in arbitration or litigation

## CONTEXT OF ADJUDICATION (PPDA V FIDIC)

### FIDIC CONDITIONS OF CONTRACT

- Adjudicator may be standing DAB (Red Book) or Adhoc (Yellow Book)
- Dispute referred to the DAB pursuant to clause 20.4 of the conditions of contract
- Disputes may arise at anytime during project implementation after a dispute has crystallized
- DAB to act fairly and impartially
- DAB give its decision within 84days from referral which shall be reasoned
- Adjudication decision is binding on the parties and final if no notice of dissatisfaction(NOD) is issued within 28days
- Procedural rules included as part of contract

### PPDA CONDITIONS OF CONTRACT

- Adjudicator is "standing" i.e. present throughout contract period
- Dispute referred to the Adjudicator pursuant to clause 34 of the conditions of contract
- Dispute on commence within 14 days of Project Managers disputed decision
- No specific reference to "fairness and impartiality"
- Adjudicator gives decision within 28days from referral (no requirement for it be reasoned)
- Adjudication decision is immediately binding on the parties unless referred to Arbitration within 28days of decision
- No procedural rules provided in contract

## POST-ADJUDICATION STEPS

- **Compliance:** Parties are required to comply with the adjudicator's decision immediately.
- **Enforcement:** If one party does not comply, the other can seek enforcement through the courts.
- **Further Dispute Resolution:** The decision is interim binding; unresolved disputes can be escalated to arbitration or litigation.

## COMMON PITFALLS IN ADJUDICATION

- **Jurisdictional Challenges:** Threshold and Internal Jurisdictional challenges concerning the scope of appointment and powers of adjudicator
- **Incomplete Submissions:** Failing to provide all necessary documents and evidence.
- **Missed Deadlines:** Not adhering to the adjudication timetable.
- **Poorly Structured Arguments:** Lack of clear, logical presentation of the case.
- **Non-Compliance:** Ignoring the adjudicator's directions or requests for information.

## KEY CONSIDERATIONS FOR SUCCESS

- Timeliness: Adhere strictly to deadlines for submissions and responses.
- Clarity: Present clear and concise arguments and evidence.
- Cooperation: Engage with the adjudicator's requests promptly.
- Professionalism: Maintain a professional tone and avoid unnecessary antagonism.

## BEST PRACTICES

- Early Involvement: Engage in adjudication early to avoid project delays.
- Record Keeping: Maintain thorough records throughout the project.
- Legal / Specialist Advice: Seek legal or specialist advice when preparing claims.
- Training: Regularly train staff on adjudication procedures and contract management.

## CONCLUSION

**Summary:** Adjudication provides a fast, cost-effective, and flexible means to resolve construction disputes.

**Key Takeaways:** Understand the process, prepare thoroughly, adhere to timelines, and present clear arguments.

# TRAINING EVALUATION FORM

Please answer the following questions to provide feedback on the training you received.  
Overall, how would you rate the training?

- Excellent
- Good
- Average
- Below average
- Poor

Did the training meet your expectations?

- Yes, it met my expectations
- No, it did not meet my expectations

Was the training relevant to your job?

- Yes, it was very relevant
- Yes, it was somewhat relevant
- No, it was not relevant

Was the material presented clearly and effectively?

- Yes, the material was presented clearly and effectively
- Somewhat, the material was presented adequately
- No, the material was not presented clearly and effectively

Did the training provide you with new knowledge and skills?

- Yes, I learned a lot of new knowledge and skills
- Somewhat, I learned some new knowledge and skills
- No, I did not learn any new knowledge and skills

Was the pace of the training appropriate?

- Yes, the pace was appropriate
- No, the pace was too slow
- No, the pace was too fast

Were the trainers knowledgeable and experienced?

- Yes, the trainer was very knowledgeable and experienced
- Somewhat, the trainer was adequately knowledgeable and experienced
- No, the trainer was not knowledgeable and experienced

Was the training environment conducive to learning?

- Yes, the environment was conducive to learning
- Somewhat, the environment was adequate
- No, the environment was not conducive to learning

Was the training material relevant and helpful?

- Yes, the material was very relevant and helpful
- Somewhat, the material was somewhat relevant and helpful
- No, the material was not relevant and helpful





Would you recommend this training to others?

- Yes, I would highly recommend this training
- Somewhat, I would recommend this training
- No, I would not recommend this training



**CONSTRUCTION  
LAW  
INSTITUTE**

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