

Bridging the green – is FIDIC moving forward *sustainably* in 2025?

This article considers sustainability within the construction industry, and more specifically, within FIDIC. What has FIDIC done to date, what is on the horizon for FIDIC contract users, and what is the driving force behind FIDIC's recent developments?

Introduction

There is an intensifying need (we say rightly) for the construction industry, globally, to address climate change in line with global climate objectives. According to the UN, the buildings and construction sector is the largest emitter of greenhouse gas, accounting for about 37% of global emissions¹. Focus was previously on decreasing *operational* carbon emissions² but is now also on mitigating *embodied* carbon emissions³. This requires collaboration of all stakeholders and innovative strategies to decarbonise building materials if the ambitious 2016 Paris Agreement's⁴ net zero target is to be achieved by 2050.

Most developed countries have taken a proactive and a legislative approach to sustainability but this is not always the case for some emerging and developing countries. Industry decision-makers are therefore looking to construction contracts to include climate change provisions and net-zero solutions.

The World Bank and other Multilateral Development Banks (MDBs) are at the forefront of this green revolution for global climate action. In November 2024⁵ the MBDs outlined their strategy to support countries to achieve ambitious climate outcomes by way of financial and other measures. The MDBs have the ability to drive transformative change to help countries meet their global goals and adapt to the effects of climate change.



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In recent years, FIDIC has been vocal about its growing partnership with MDBs. MDBs are concerned with reducing poverty and supporting development (as opposed to profit) and, therefore, play a significant role in the development of infrastructure globally⁶ – the latter part of its mission is where the interests of MDBs overlap with those of FIDIC. FIDIC has secured major agreements with most of the major MDBs to see FIDIC contracts adopted as part of the MDB's standard procurement bidding documents.

FIDIC has acknowledged the gap between countries across infrastructure, sustainability, quality of life and natural resources, which it has taken up in collaboration with MDBs⁷. What is FIDIC doing in terms of driving transformative change in the construction industry globally? Is this partnership with MDBs shaping (or driving) FIDIC's aim to bridge this gap?

¹ See 2023 report, *Building materials and the climate: constructing a new future* <https://www.unep.org/resources/report/building-materials-and-climate-constructing-new-future>

² Largely stemming from heating, cooling and lighting <https://www.unep.org/resources/report/building-materials-and-climate-constructing-new-future>

³ Originating from design, production and deployment of materials such as cement, steel and aluminium:

<https://www.unep.org/resources/report/building-materials-and-climate-constructing-new-future>

[climate-constructing-new-future](#)

⁴ Legally binding international treaty on climate change - <https://unfccc.int/process-and-meetings/the-paris-agreement>

⁵ <https://www.eib.org/en/press/all/2024-443-multilateral-development-banks-to-boost-climate-finance>

⁶ <https://fidic.org/sites/default/files/MDB - Briefing note 2019 - world bank.pdf>

⁷ <https://fidic.org/sites/default/files/MDB - Briefing note 2019 - main campaign.pdf>



FIDIC – status quo & developments

Existing clauses

The 1999 Suite (Red, Yellow and Silver) as well as the 2008 Gold Book, place environmental obligations on both the Contractor and Employer.

Contractor:

Pursuant to Sub-Clause 4.18, the Contractor shall take all reasonable steps to protect the environment (on and off Site), to limit damage and nuisance resulting from its operations, and to ensure that emissions shall not exceed those specified in the Specification and/or applicable Laws.

Sub-Clause 4.21 provides that the Progress Reports are to include environmental aspects.

Employer:

The Employer has a corresponding obligation under Sub-Clause 2.3 to take actions similar to those which the Contractor is required to take under Sub-Clause 4.18.

Engineer:

Pursuant to Sub-Clause 6.9, the Engineer has the power to require the Contractor to remove any person employed by it on the Site or Works who '*persists in any conduct which is prejudicial to safety, health, or the protection of the environment*' (paragraph (d)).

The 2017, 2022 reprinted suite

Contractor:

Sub-Clause 4.18 has expanded the Contractor's obligations from taking reasonable steps to '*taking all necessary measures*' to protect the environment, complying with the environmental impact study (if any, also a new inclusion), and (like before) limiting damage and nuisance caused by its obligations and complying with the requirements set out in the Specifications and applicable Laws.

The reporting requirements relating to environmental aspects under Sub-Clause 4.20 are similar to those set out under Sub-Clause 4.21 of the 1999 suite, save for the inclusion of the word '*health*'.

An additional requirement has been introduced with Sub-Clause 13.1 (c), requiring the Contractor to promptly give Notice (with detailed supporting particulars) if a Variation instruction will adversely

affect the Contractor's ability to comply with Sub-Clause 4.18.

Employer:

The Employer still has an obligation under Sub-Clause 2.3 to comply with the same obligations which the Contractor is required to comply with under Sub-Clause 4.18.

Engineer:

The Engineer still has the power to require the Contractor to remove non-compliant (Contractor's) personnel pursuant to Sub-Clause 6.9(d).

Green Book 2021

Pursuant to Sub-Clause 5.2: the '*Contractor shall comply with all applicable health, safety and environmental Laws, and the relevant obligations specified in the Contract.*'

Comments

The above provisions are useful, provided that:

- the Laws governing the contract make provision for environmental issues (i.e., it is legislated) – there is a significant gap between developed and developing countries in this respect; and
- environmental requirements are set out in the contract / specifications.

It will be interesting to see over time whether, and if so how, the Contractor's obligations under Sub-Clause 4.18 (e.g., to take '*reasonable steps*' or '*all necessary measures*') will be judged by reference to industry standards or globally recognised frameworks. Parties to FIDIC contracts should ensure that they identify and understand the environmental requirements under the Laws as early as possible, by taking comprehensive legal advice in the relevant jurisdiction(s).

Recent developments

Whilst historically focused on the technical, legal and financial aspects of construction projects, FIDIC in recent years has stated that it sees '*it as important to take a leadership position on climate action and carbon*



emission reduction¹⁸.

On the basis that not all countries are on the same trajectory when it comes to the implementation of green legislation, FIDIC's role in shaping the construction sector is yet again highlighted.

This commitment has led to the following campaign (a non-exhaustive list):

- FIDIC Climate Change Charter (November 2021)⁹;
- FIDIC Climate Change Charter, Actions for FIDIC¹⁰;
- FIDIC for Global Goals¹¹ (as part of which FIDIC will measure and report on its own carbon emissions);
- FIDIC Reduction Plan¹² (September 2022) which sets out certain environmental measures and initiatives;
- FIDIC 2020-2024 Strategic Plan, which includes ten key areas identified and the five goals that FIDIC has set in these areas (including ambition, targets and current performance)¹³;
- FIDIC's Decarbonisation of the infrastructure sector report (July 2023)¹⁴;
- New Playbook Chapter on Sustainable Procurement (September 2024)¹⁵; and
- The new and much anticipated Carbon Management Guide (due for publication in 2025).

Below we look at the last two developments, introduced by FIDIC within the last year.

Green procurement: New Playbook Chapter on Sustainable Procurement

FIDIC updated its Nature-Positive Infrastructure Playbook to include a new chapter on procurement, titled 'Developing an early project strategy and procurement strategy' ("Chapter").

The spotlight is on the procurement phase¹⁶ and therefore on developers, or Employers under FIDIC. This Chapter seeks to provide, at a high level, guidance on how to develop and adopt a more sustainable procurement strategy to support and incorporate

nature-positive solutions into the early stages of infrastructure development. It advocates for early implementation of nature-positive solutions for maximum benefits and opportunities to mitigate negative impacts, ecological restoration and sustainability, and longevity. There is a higher call – merely offsetting emissions (greenwashing) at the later stages of a project is no longer acceptable.

Whilst this Chapter is of great value for developers/Employers in terms of highlighting the importance of incorporating sustainability at the early stages of a project, very little is clarified as to how it should be implemented (practically).

Task Group 23 & New Carbon Management Guide

FIDIC's Task Group 23 ("TG23") is tasked with developing and publishing net zero clauses.

During the 2024 FIDIC International Contract Users' Conference in London, members of TG23 highlighted what users can expect from the TG23's new Carbon Management Guide ("Guide") which (we understand) is due for publication in 2025.

The objective of the Guide is active and ongoing management of emissions throughout the entire lifespan of the project. What was initially planned to be a net zero guidance has been developed into something more flexible to benefit different projects and broader future issues.

It was said that integrating sustainability into the project is a key part of FIDIC's manifesto and priorities and the aim of the Guide is to help parties achieve that. Whilst we have yet to see a draft of the Guide, we understand that it includes (*inter alia*) an introduction, Carbon Management Principles, new definitions, a Schedule of Carbon Emissions, a new stand-alone clause with guidance on how to incorporate this into existing FIDIC contracts (particularly the 2017 suite), and sections dedicated to each of the seven FIDIC books. Particularly interesting was TG23's planned introduction of a proposed carbon price (set by the Employer), carbon emissions budget (proposed by the

⁸ <https://fidic.org/node/40539>

⁹ https://issuu.com/fidic/docs/climate_charter_with_foreword

¹⁰ <https://climatechangecharter.world/charter/>

¹¹ <https://climatechangecharter.world/resources/roadtonetzero/>

¹² <https://climatechangecharter.world/wp-content/uploads/2023/04/FIDIC-Carbon-Reduction-Plan-Final.pdf>

¹³ <https://fidic.org/node/30292>

¹⁴ https://issuu.com/fidic/docs/fidic_glf_2023_decarbonisation_of_the_infrastructure?fr=xKAE9_zU1NQ

¹⁵ https://issuu.com/fidic/docs/wwf_fidic_aecom_playbook_202409_final

¹⁶ Before the design and before the contract.



Contractor which will become part of the evaluative criteria at tender stages), carbon balance sheet (a tracking tool) and carbon emissions damages and incentives. The evaluative criteria element is something TG23 said FIDIC has been developing with the World Bank.

It was also said that FIDIC is adopting a light touch to the drafting as the objective is not to add clauses unnecessarily, but rather for *greening* of the contracts. Notice requirements, for example such as early warning if the carbon emissions budget is about to change, will still sit within the existing notice provisions within FIDIC. Interestingly, and perhaps not controversially, carbon emissions of Dispute Boards will be excluded from both the carbon balance sheet and the carbon emissions budget on the basis that the Contractor should not be held liable for a budget it has no control over.

The Guide should help with the practicalities of implementing greener procurement, but it is unclear whether this will place a higher administrative burden on parties and what the costs implications would be.

Whilst it remains to be seen what the final form of the Guide will say and how it will be implemented in practice, it is encouraging to see FIDIC seeking to introduce a balanced approach to sustainability, compared with existing clauses such as the green plug-in Chancery Lane Project¹⁷ clauses (which appear to only provide for Contractor liability with no incentives).

Conclusion

For these green goals to be achieved outcome-led laws and policies, contracts and specifications (and procurement), and construction and management of the contract and project are required (from the onset of the project and by all stakeholders).

Our team would be delighted to address any green questions you may have in relation to FIDIC contracts. Please do not hesitate to get in touch with any of us [here](#).

¹⁷ The Chancery Lane Project is a charity registered in the United Kingdom, working in over 110 countries. This charity has produced a toolkit of clauses and legal resources created by legal professionals

for use in support of the climate change and net zero goals. See: <https://chancerylaneproject.org/>.

