

FIDIC 2017: Clause 5 - Design

Contractor a process for revising and re-submitting the Contractor's Documents.

The main changes to Clause 5 are as follows:

- Sub-Clause 5.1 [*General Design Obligations*] has been slightly enhanced by specifying with more particularity the qualifications required of designers and stating in terms that designers need to be qualified and entitled under the applicable law. The key change is structural in that part of the clause has been extracted and moved into Sub-Clause 1.9 [*Errors in the Employer's Requirements*].
- Sub-Clause 5.2 [*Contractor's Documents*] in the 1999 Edition was one of the longest clauses taking up just over one page (at pages 20 and 21) with the last sentence of the clause (appearing in isolation on the top of page 22) stating "*Any such approval or consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility*".

Under the 1999 Edition, in relation to documents submitted to it for approval, the Engineer essentially had 3 options:

- 1) rejecting the document for approval;
- 2) approving the document with comments; or
- 3) approving the document without comments.

In the 2017 Edition, the meaning of the clause remains the same, with enhanced definitions and sub-headings, the key change being a change in emphasis of terminology: there is now an absence of the use of the word "*approval*" and a move to "*No-objection*".

Within the review period, the Engineer has been given two options:

- 1) finding that the Contractor's Document fails to comply with the Employer's Requirements; or
 - 2) giving No-objection (although he may include comments concerning minor matters which will not substantially affect the Works).
- In Sub-Clause 5.8 [*Design Error*], a new procedure has been put in place that provides that if errors, omissions, ambiguities, inconsistencies, inadequacies, or other defects are found which were previously the subject of a No-objection, then the process set out for a failure under Sub-Clause 5.2.2 should be engaged, hence giving the

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thoughts or to discuss any concerns.

