



Audit Office



Republic of Cyprus

Dispute Resolution in the Public Contracts

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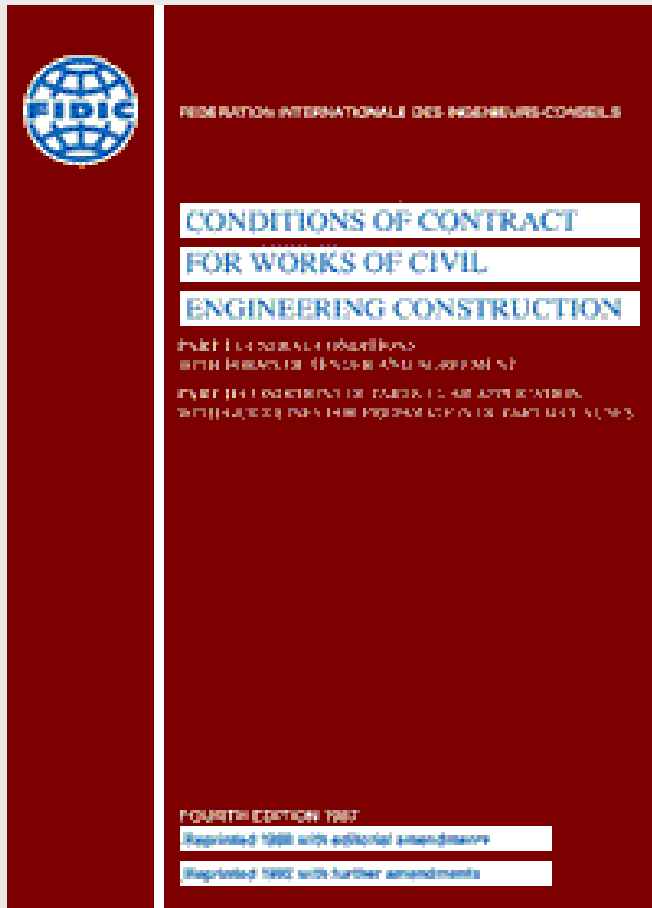
Auditor General of the Republic

24 April 2018

Standard form of contracts used in public works contracts in Cyprus



FIDIC 1992 Conditions of Contract (with some modifications to take into account the public nature of the contract)



Treasury: www.treasury.gov.cy



REPUBLIC OF CYPRUS

**CONDITIONS OF CONTRACT
FOR BUILDING WORKS
(with approximate quantities)**

PART I: GENERAL CONDITIONS

NICOSIA, 31 March 2007



REPUBLIC OF CYPRUS

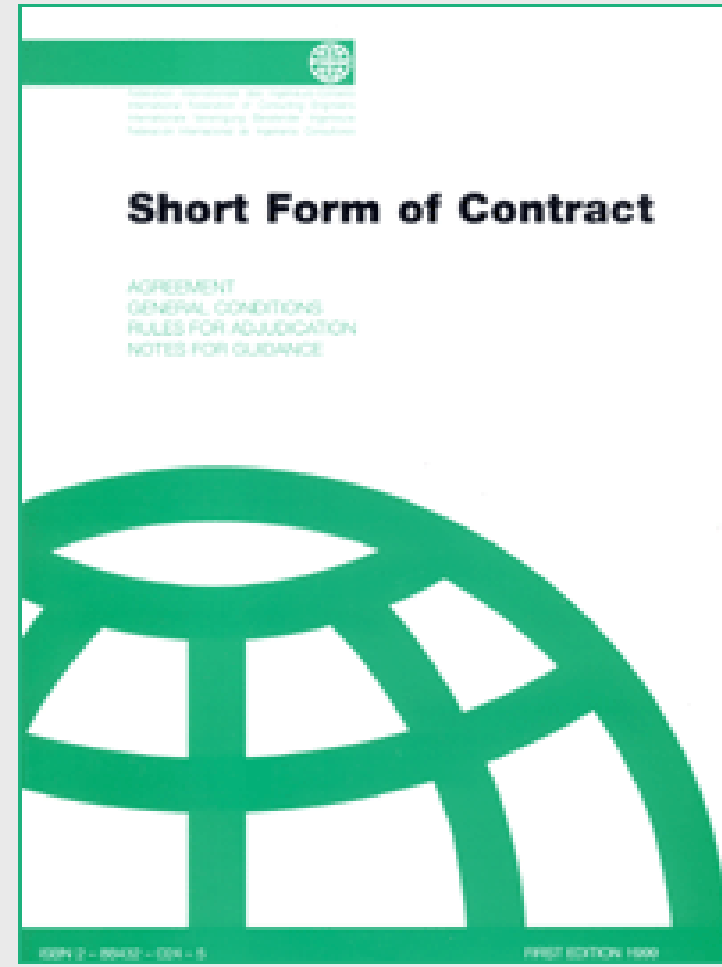
**CONDITIONS OF CONTRACT
FOR CIVIL ENGINEERING WORKS
(with approximate quantities)**

PART I: GENERAL CONDITIONS

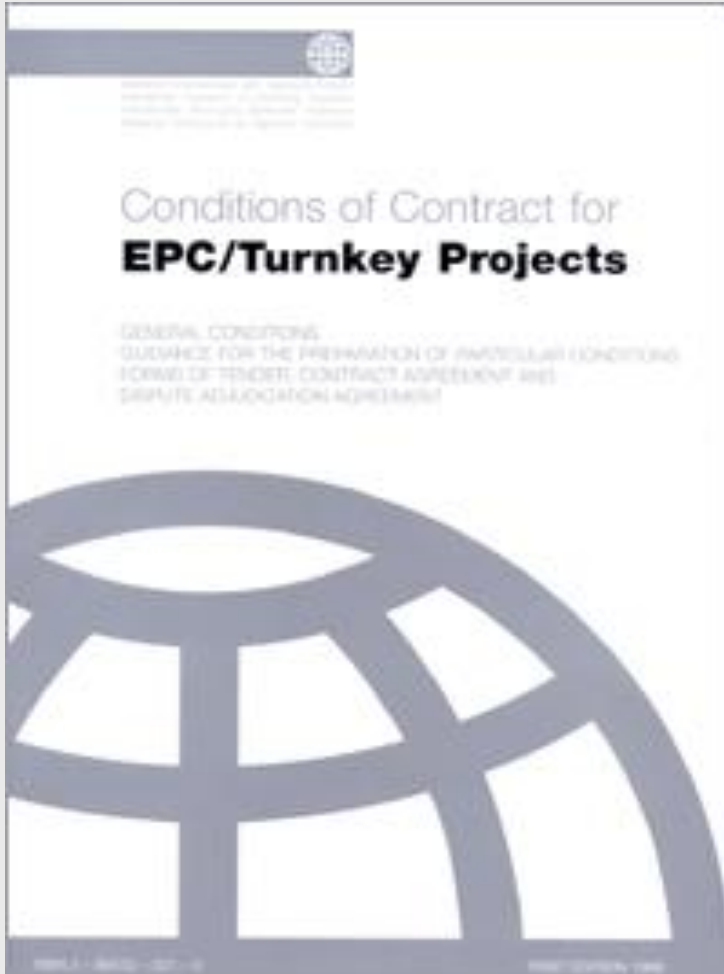
NICOSIA, 31 March 2007



FIDIC 1999 Conditions of Contract



FIDIC 1999 Conditions of Contract



Concession agreements



REPUBLIC OF CYPRUS

**Concession Agreement
for the Development and Operation
of International Airports at
Larnaka and Pafos**

Concession Agreement

NICOSIA, 11 May 2006



REPUBLIC OF CYPRUS

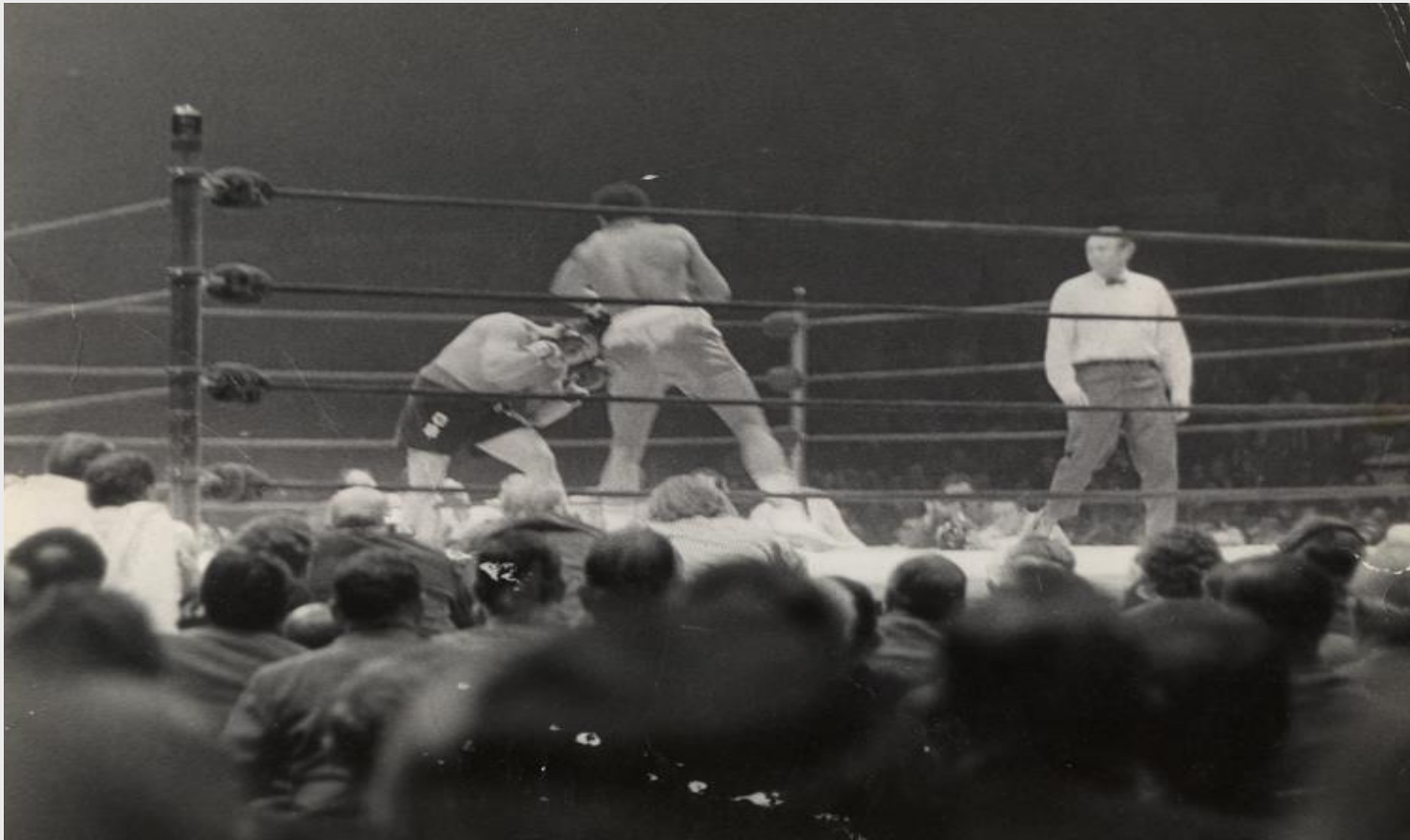
**Concession Agreement
for the services concession for the
operation of a Container Terminal at
Limassol Port**

Concession Agreement

NICOSIA, April 2016



Dispute resolution



Dispute Resolution

Stages of Dispute Resolution

- Stage 1 Negotiations (amicable settlement)
- Stage 2 Interim arrangement (binding / not binding
- usually not final)
- Stage 3 Conclusive decision (final)



Dispute Resolution

STAGE 1: Negotiations

Mediation

STAGE 2: Conciliation

Neutral evaluation

Dispute Resolution Adviser ("DRA")

Adjudication

Expert determination

STAGE 3: Arbitration

Litigation



Dispute Resolution

Method	Speed	Cost	Confidentiality	Binding	Hostility
Negotiation	Varies	Small	Yes	-	No
Mediation	Fast	Small	Yes	No (unless agreed)	No
Conciliation	Fast	Small	Yes	No (unless agreed)	No
Neutral evaluation	Fast	Small	Yes	No (unless agreed)	No
Dispute Resolution Adviser ("DRA")	Fast	Small	Yes	No (unless agreed)	No
Adjudication	Fast	Small	Yes	Usually Yes	Yes
Expert Determination	Fast	Depends	Yes	Yes/No	Depends
Arbitration	Unpredictable	Unpredictable	Yes	Yes	Yes
Litigation	Slow	Small	No	Yes	Yes

Dispute Resolution in Public Contracts

Method	Used	Binding
Negotiation	Always	-
Adjudication	Rarely (in D&B or EPC)	Usually Yes
Arbitration	Often (in D&B or EPC and through litigation)	Yes
Litigation	Usually	Yes



Dispute Resolution – Typical provisions

Claims, Disputes, Settlement of Disputes

1. Claims procedure

If the Contractor intends to claim any additional payment pursuant to any provision of these Conditions or otherwise, he/she shall give notice to the Employer's Representative as soon as possible and in any event within 28 days after the first presentation of the reasons leading to such claim.

The Contractor shall keep contemporary data as necessary in order to substantiate any claim, either at the Worksite or in another location acceptable by the Employer's Representative. Without this indicating the acceptance of any responsibility of the Employer, the Employer's Representative shall, upon receipt of such notice, audit those records and shall have the right to request from the Contractor to keep more records. The Contractor shall allow the Employer's Representative to audit each such data, and shall provide copies upon request.



Dispute Resolution – Typical provisions

1. Claims procedure

Within 28 days of this notice, or at such time as may be acceptable by the Representative of the Employer, the Contractor shall send to the Employer's Representative a statement, which includes details of the amount and the basis on which the claim rests. In case the event causing the claim is of continuous nature, the said statement shall be considered interim. The Contractor shall then, at intervals as may reasonably be requested by the Employer's Representative, send further interim

statements demonstrating the current accumulated amount of the claim and any other data. If such interim statements are sent to the Representative of the Employer, the Contractor shall send a final statement within 28 days of the end of the effects caused by the event.

If the Contractor fails to comply with this paragraph, he/she shall not be entitled to additional payment



Dispute Resolution – Typical provisions

2. Claims payment

The Contractor shall be entitled to include in any Interim Payment Certificate the amount of any claim that the Representative of the Employer has considered as due.

If the data presented do not suffice to substantiate the whole claim, the Contractor shall be entitled to payment for that part of the claim documented.



Dispute Resolution – Typical provisions

3. Dispute notification

In the event of any dispute between the Employer and the Contractor concerning the Contract or arising from the Contract or the performance of the Project, including any difference related to an opinion, instruction, definition, certification or assessment of the Representative of the Employer, then, either the Employer or the Contractor have the right to notify the other party for such dispute.

The notice should state that it was prepared in accordance with this paragraph.

Unless there was a withdrawal from the Contract or it has already been resolved, the Contractor must, in any case, continue the execution of the Contract with all necessary diligence.



Dispute Resolution – Typical provisions

4. Amicable settlement

If notice is given for the existence of a dispute in accordance with paragraph 3, the parties shall attempt to resolve the dispute amicably before the initiation of judicial proceedings. It is understood that, unless the parties agree otherwise, the judicial process may be initiated on or after the fifty-sixth day after the day on which notice was given for a dispute, even if no attempt of amicable settlement of the dispute was made.



Dispute Resolution – Typical provisions

5. Legal process

Any dispute for which no amicable settlement is reached within 56 days from the date of service of the above notice, shall be brought before the competent District Court of the Republic of Cyprus.

No party shall be restricted during this judicial process with regard to the evidence or arguments previously put before the Representatives of the Employer.

The proceedings may be initiated before or after the completion of the Project. The obligations of the parties shall not change because of the conduct of judicial proceedings during the progress of the Project.



Dispute Resolution – Concessions

1. Any Dispute between the Parties is to be resolved pursuant to the terms of this Schedule (Dispute Resolution Procedure).
- 2 The Parties must in the first instance, each use their reasonable endeavours to resolve any Dispute by means of prompt, good faith discussion at a managerial level appropriate to the Dispute in question. Each of the Parties must designate in writing to the other Party from time to time a representative who is authorised to resolve by agreement any Dispute.
- 3 Subject to paragraph 4, if any Dispute is not resolved between the Parties pursuant to paragraph 2 within ten (10) Working Days from the date on which one Party received written notification from the other Party that a Dispute exists then such Dispute is to be finally resolved by Arbitration.
- 4 Where this Agreement expressly provides that a Dispute shall be subject to the Fast Track Dispute Resolution Procedure and that Dispute is not resolved between the Parties pursuant to paragraph 2 within five (5) Working Days from the date on which one Party received written notification from the other Party that a Dispute exists, then such Dispute is to be resolved in accordance with the provisions of paragraph 5.



Dispute Resolution – Concessions

5. Fast Track Dispute Resolution Procedure

Within three (3) Working Days after receiving the notice, the Panel will fix a date for hearing the representations of the Parties and inspection, if necessary, which date shall not be earlier than ten (10) Working Days and not later than fifteen (15) Working Days from the date of the later of the notices served pursuant to paragraph 3.1.

Each Party must submit written representations to the Panel, with copies to the other Party, no later than five (5) Working Days prior to the date fixed for the hearing.

The hearing, or the inspection and hearing combined, shall not last more than five (5) days.

Within five (5) Working Days after the hearing, the Panel shall deliver to both Parties its determination on the Dispute. The Panel shall also give written reasons for its determination (including making findings as to liability, quantum and costs in relation to the Dispute), but these may be delivered up to ten (10) Working Days after the hearing. The Panel's determination shall be final and binding on both Parties who shall forthwith give effect to the determination.



Dispute Resolution – Concessions

6. Arbitration

Any Dispute which is either: (i) being conducted under paragraphs 2 or 3 above and has not been resolved; or (ii) any Dispute which has been referred to the Fast Track Dispute Resolution Procedure under paragraph 5 above and no determination has been reached under the Fast Track Dispute Resolution Procedure, shall be finally resolved by international arbitration, in accordance with the UNCITRAL Arbitration Rules and the provisions set out in this paragraph 4 ("Arbitration").

The number of arbitrators shall be three.

Where three arbitrators have been appointed, any award (including an interim award) shall be given by way of majority decision. Where no majority decision is reached, the award shall be that of the Chairman alone.

The seat of any Arbitration shall be London, England.

The award of the Arbitral Tribunal is final and binding on the Parties and an Arbitration award may be entered in any court of competent jurisdiction. By agreeing to Arbitration pursuant to this paragraph 6 the Parties waive irrevocably their right to any form of appeal, review, or recourse to any state court or other judicial authority.



Dispute Resolution Procedures used in public sector

Circular issued at 27.9.2011 by Central Committee for Changes & Claims (known as KEAA)

Stage 1: Claim examined in accordance to the relevant Regulations

Stage 2: If a dispute occurs, KEAA should be informed within 2 weeks.

Stage 3: KEAA sets the framework for possible amicable settlement and who will try to achieve it (Project Coordinator or an ad-hoc committee).

Stage 4: Amicable settlement attempt based on evaluation of the grey areas and on a forecast of the possible outcome of an arbitration.

Stage 5: KEAA informed for the results of amicable settlement.

Stage 6: KEAA decides accordingly (approve the amicable settlement, call the Contractor for a new round of negotiations etc.)

Stages 7 - 10: If an arbitration starts, KEAA appoints the arbitrator on behalf of the employer after due consultation with the Legal Services, based on certain selection criteria safeguarding his impartiality,



Thank you

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