



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Professional Risk and Responsibility

FIDIC Briefing Note

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Background

The international engineering federation FIDIC (the International Federation of Consulting Engineers) believes that its member associations and their members should strive to achieve the highest degree of quality and standards.

FIDIC has always had policy statements that it expects its members to follow to ensure high standards of service in the infrastructure industry. These standards are reflected in FIDICs contracts, policy work, events and committees.

Professional Risk and Responsibility

Responsibilities

Risk Management is an important part of any project. Responsibilities are borne by the various parties involved in every project. For example, the Client has the responsibility for his decisions, which may be construction activities and the Consulting Engineer is responsible for the professional service which he provides.

The allocation of these collective responsibilities should be directed towards reducing to an acceptable level the risks which are inherent in any project. In the event that any of these risks are realised by loss or damage, depending upon the particular circumstances remedy may be sought by the injured party from the party whose responsibility it was to safeguard against that risk.

Responsibilities of the consulting engineer

There are several areas of responsibility of the Consulting Engineer arising out of the professional service which he provides. These include:

- The scope of the service for which the Consulting Engineer is responsible is one of the matters which should be properly set out in the Agreement between the Client and the Consulting Engineer.
- The service which the Consulting Engineer provides shall be of a standard requiring him to exercise reasonable skill, care and diligence in the performance of his obligations.
- The conduct of the Consulting Engineer in performing professional services is governed by the ethics and codes of professional practice of the Consulting Engineers profession.

Risk management

In establishing the appropriate provisions in an Agreement between a Client and the Consulting Engineer, the risks involved should be identified and discussed. Decisions should be taken as to the appropriate levels of engineering to be employed and whether certain risk exposures should be limited through contractual provisions. Appropriate risk and quality management procedures should be utilised to reduce the probability of occurrence of an event, or the severity of the hazard or both.

Limitation of liability

If innovation is not to be stifled by too heavy an emphasis on the liability of the Consulting Engineer, a balance needs to be struck between the risks to be accepted by the Consulting Engineer and his liability. As the liability of the Consulting Engineer increases, the innovation which he introduces may be diminished to the disadvantage of the Client in terms of the project's life and/or life cycle costs. Limitation of liability of the Consulting Engineer should not reduce the Consulting Engineer's level of service or standard of care, as his reputation and professional standing are dependent upon satisfactory completion of the project.

Insurances

The maximum amount of any liability to the Client which the Consulting Engineer would incur for failure to discharge his responsibilities should be assessed in advance and recorded in the Agreement between the Client and the Consulting Engineer. The Agreement should also record the nature of Insurances necessary for the Consulting Engineer to be able to indemnify the Client and Third Parties against failure to discharge his responsibilities, together with Indemnification or Insurances which the Client is to provide to protect the Client's interest in the project and to protect the Consulting Engineer against any Third Party claims made against the Client which would arise out of the project.

Any alleged failure by the Consulting Engineer to discharge his responsibilities should be considered in terms of Points set out above, either in contract for failure to conform with the conditions of the Agreement with the Client, or in tort by the Client or a Third Party for negligence in delivery of service or for professional conduct which is less than the level of skill, care and diligence of the profession at large.

FIDIC recommends:

- Parties to document their Agreement for the provisions of services by the Consulting Engineer, modelled on the FIDIC Client/Consultant Model Services Agreement (the “White Book”), with reference to the accompanying Guide to the use of that document.
- That all parties within agreements ensure that they undertake best practice and clearly define, amongst other things:
 - The scope of service to be provided by the Consulting Engineer.
 - The responsibilities and risks to be borne respectively by both the Client and the Consulting Engineer.
 - The nature and maximum amount of the liability which could arise upon the failure of either party to the other in carrying out their respective responsibilities.
 - The period of time during which claims in respect of any such liability should be lodged.
- Ensure that liabilities arising under the Agreement are clearly defined.



International Federation of Consulting Engineers (FIDIC)

World Trade Center II, Geneva Airport P.O. Box 311 CH-1215 Geneva 15 - Switzerland

Tel. +41 22 799 4900 - Fax +41 22 799 4901

Arthur: Graham Pontin, Head of economic and strategic policy

Email: fidic@fidic.org www.fidic.org

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Endnotes