

Specified Authority before taking actions vs. Specific Approval of the Employer

I . Works Contract (MDB2010)

I.1 General Conditions of Contract

SC03.1 – Engineer’s Duties and Authority

SC03.1para3: The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily be implied from the Contract. If the Engineer is required to obtain the approval of the Employer **before exercising a specified authority**, the requirements shall be as stated in the **Particular Conditions**. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

SC03.1para4: However, whenever the Engineer **exercises a specified authority** for which the Employer’s approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

SC03.1para. The Engineer shall **obtain the specific approval of the Employer before taking action** under the following Sub-Clauses of these Conditions >>> MDB2010 only / Red Book not defined.

(A) **Sub-Clause 4.12**: agreeing or determining an extension of time and/or additional cost.

(B) **Sub-Clause 13.1**: instructing a Variation, except (C) **SC13.3** approve a VP (D) SC13.4 applicable currency

SC03.5 Determinations

“ ... The Engineer shall consult with each Party in an endeavour to reach an agreement. If agreement is not achieved, the Engineer **shall make a fair determination** in accordance with the Contract, taking due regard of all relevant circumstances. ... “

I.2 Particular Conditions of Contract

Reference is made to SC03.1(B)(ii) only: Variations resulting in an increase of the ACA in excess of 0,1% **shall require approval** of the Employer. Better to split up (i) a **single amount** max, 0,1%, (ii) **accumulative** value up to 2,0% ACA > Sample:100 Mill Euro ACA (i) single = 100 000 Euro (ii) accumulative = 2 Million Euro.

II . Service Contract (ADB) - Employer's approval

IV Appendices / Appendix A Terms of References / TOR ... C. Contract Management Framework

11. The Consultant will act as the “Engineer” under FIDIC for the contract. The Consultant will make the necessary measurement and ensure the quality of works.

The Consultant shall **make all engineering decisions** required during the implementation of the contract.

However, the **Consultant shall seek prior approval of the Employer** with regard to the following:

- (i) Approving subletting/subcontracting of any part of the works;
- (ii) **Determining an extension of time;**
- (iii) Major changes of road design; and
- (iv) Fixing new rates or prices.

III . Conclusion and Recommendation:

A _ Works Contract

Engineer shall **obtain the specific approval of the Employer before taking action** under the following Sub-Clauses of these Condition SC04.12, SC13.1, SC13.3, and SC13.4.

The Engineer is required to obtain the approval of the Employer **before exercising a specified authority**; the requirements shall be as stated in the **Particular Conditions**.

B _ Service Contract IV A TOR C CM FW 11:

The Consultant shall **seek prior approval for Determining** an Extension of Time from the Employer.

C _ Discrepancy: The procedural rules between Works and Service Contract differs The FIDIC Works Contract provide the decision competence for the Engineer, however the Service Contract curtails the Duties and Authorities of the Engineer.

D _ Recommendation: The author recommends to clarify the specific issue with the Employer, how to apply the **specific approval before taking action**. The **Engineer’s competence is inevitable required** to comply with the FIDIC CoC, in order to make a fair, free and independent determination - pursuant to SC03.5 MDB2010 -.