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## **The Ground Conditions and the Tension in the laws of Oman and MENA.**

Standard forms of contracts like Fidic place a major portion of the risk of unforeseeable ground conditions on the contractor. The employer does not warrant that the site is fit for building the project unless specified clearly in the contract.

The employer only has the responsibility of providing the data to the contractor, but it is the contractor's **responsibility to interpret the data** and provide for any risks in the ground conditions. Further, the contractor has the responsibility **to inspect and examine** the site and the surroundings and to examine any other available information.

The question is, even if the above clause is interpreted in favor of the contractor contesting the **practicability** of the clause itself, what is the position of the laws in the MENA region for unforeseeable ground conditions.

Reference to ground conditions can be found in article 634 of the civil code of Oman (article 880 Of UAE and article 711 of the Qatar civil code). Where the **contractor is held responsible, even if the ground conditions are defective.**

If the contract does not contain an express provision for ground conditions, the contractor must examine the existing ground condition before building, as the **mandatory structural guarantee** of the contractor can be called even if the ground conditions at the site provided by the employer were defective. Although the engineer will also be held responsible for any breach of his duty for not **identifying the defects earlier.**

On the other hand, where the quantities of works have suddenly increased because of unforeseen ground conditions, for example like the requirement of an increase in foundation depth or extra protection measures for the foundation.

In all such cases, the contractor has to notify the employer according to article 640 (1) of the civil code of Oman and after the approval of the employer can the contractor start work on any of the extras required. Again, the **employer will have the right either to agree to the increased costs or terminate the contract.** (Similar provisions are found in the Civil Code of UAE Article 886 (1), article 657 of the Egyptian Civil Code, and article 711 of the Qatar civil code).

The question is rather tricky, as on one hand the contractor will be held responsible for the **stability of the structure even when the ground conditions are defective.** Whereas, on the other hand, the contractor will have to take approval from the employer of any extra costs where the works required to **stabilize the soil are substantial.** The employer is given the choice of withdrawing from the contract if he wishes so, but only when the increase in cost is **substantial.**

Readers are requested to give their views and comments on the above scenario.

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