

The RED-YELLOW-SILVER BOOK has introduced. **Overall observation**

A _ Legal Issue

Legal FIDIC Claim / Dispute procedures - to “avoid” and “proceed” with Disputes - has been blow up and has strengthened the **DAAB / lawyer input**, to shift solution within the Dispute phase of a project.

B _ Donor political approach

The Donor’s policy obviously looks for **political influence** in the respective monies. How the monies are being spent in the beneficiaries’ countries is not important. It is not of essence, if **15-20% get syphoned** to other purposes as planned.

C _ Donor’s financial management

The **Financial management** with political influence are more important, otherwise the Procurement Procedures would not allow 49% quantity increase without any Addenda. Hence the selection of excellent engineers with suitable “design” and supervision” capabilities are not required. Thumb sucking design with minimum quantities keep the bids on the low side, to fit to the Donor’s requirements at Award Stage. But **Variation of works will increase the Costs by 50% and Extension of Time up to 75%** due to exaggerative earthworks, pavement thickness, drainage structures, and other measures in compliance with the Contract Law.

The Consultants are happy to work in coalition with the local authorities and the Contractor to **secure prolongation of their contracts and their future cooperation** with succeeding awards of projects.

D _ Engineer’s Staff

And the engineers, who provide their **sophisticated services for their Consultant services** for 600 Euro FEE per day (7-8 hours pd) + 200 Euro per diem per presence days (30 dpm), they should think twice: why I am so stupid not increasing my “second” income (bottom-up kleptocracy), if others take an leverage effect of 1000 in their authorities and ministries (top-down kleptocracy).

Low paid engineers are anyway prone to connive with the Parties. This has a great advantage for the contra bones mores – system: **All parties behave “unethical”, “unmoral” and hence all will keep silence.**

E _ Technical Issues

The technical aspect to complete a project within a time frame, within a budget frame and proper **workmanship / Quality assurance and to secure the investment over a long time is pushed to minor tier**. All parties produce a lot of publications to praise the completed infrastructure with **success stories**, but nobody questions the time, budget and nobody is interested in long-durable projects. And all “beneficiaries” are happy about the received advance payments, except of the Contractors, who got almost bankrupt.

F _ Conclusions

F1 _ Investment Coordination

Donor’s should **coordinate their investments**, instead to finance the same issue in different ministries several times. But it is important to keep a lot of ministers happy ... the Taxpayers of the “developing countries” are not aware about the waste of money.

World Bank finances for over 600 Million in four West-African Countries transmission power lines with 235 KV .. a methuselah technology ... State of Art : 500 KV DC and Siemens built in China a 800 KV bi-polar Converter station to convey the current with less energy loss.

And what shall the countries transmit? They cannot even cover their own country's power demand. In question: a lot of corrupt governments have plundered the state budget which will not be able to pay for the transmitted energy. Consequently the Taxpayer shall pay again.

Besides: **Privatization** and **toll gates** are also a kind of plundering:

Ask the masses of consumers to cover up the dividends of the politicians' share in the fuel and power industry.

F2 _ Procurement rules, Project Cycles, Selection of Consultants

Banks should review their **procurement rules** and find a way not to being cheating by by-passing communication channels, to send to the Contractors "fake"-addenda (to **increase artificial the bid price**), which are withdrawn at contract award. The Donor is not even aware about this procedure. Donor's engineers show signs of bureaucrats and **lacking of technical "practical hands-on knowhow and experiences"** to identify all the discrepancies. Perhaps the Donor Management even do not want to employ well-seasoned staff.

F 3 _ Procurement and Awarding Strategy

Service and Works Contracts should be awarded as **output- and performance based** infrastructure contracts (OPIC) – similar Design+Build+Operate/Maintain+Transfer within a **fixed LUMP SUM Budget**, Timeframe for construction, operation and maintenance with transfer (e.g. entire period : 10 years).

It helps to save costs for the supervising and monitoring Consultant, because the responsibility is with the Contractor. If he carries out botch works during the 2 years implementation, he will be punished during the operation/maintenance works. **No Authorities and other involved parties can influence and blackmail the Contractor**. A lot of Contractors in the developing countries complain that a lot of material flow (best with duty waivers) goes to the Consultant.

F 4 _ Grievance Procedures / Crown Witnesses / Whistle Blowers

Grievance procedure has to be laid down, that Contractor who gets mostly exploited. The status of a crown witness / whistle blower should be introduced: If they divulge bribe approaches (material flow, share contributions, money transfers, aso), the Legislation should give the **crown witnesses / whistle blowers** impunity and 10-15% of the recovered bribes. The jurisdiction has to be enforce and abide to the Law.

F5 _ Audits / Mid-term Reviews / Evaluations

Technical and Financial should be carried out **from "neutral / independent Assessors"** which do **not work in the field of Service Contracts**.

An employed engineer of Consultant A, who is doing an audit for the Consultant B is not free in his professional conduct. On the other side, next time the employed engineer of Consult B is evaluate the works and services of the Consultant A. As you see, nobody will harm the other side – hence no truth will be disclosed. i.E. All the 300 Million Euro Framework Contracts does not stop the additional

spending's between "awarded contract price" and "final statement of account" for the service and works contracts within the EU. A neutral assessor will be free of conflicts to disclose the defaults and defects of ALL involved parties, because the EU should award the audit contract directly in Brussel and not in the countries Delegation of EU – and he should be a taxpayer in EU28-1, otherwise he is not interested in "value for money".

Anyway a technical auditor has not enough time to [disclose the \(i\) quantity issues](#) [covered up permanent works, exaggerative overhaul calculation + wrong applied adjustment for changes in costs, and other "measurements"] and (ii) [artificial reasons/ground](#) to justify Claims for Extension of time and extra payment, Variation orders, and the (iii) [cartel of deals and collusion in general](#).

F6 _ Mediation

Why does the Donors, Authorities, Consultant Engineers not consider in the FIDIC 2017 / MDB2010 and EU-EDF not consider a Mediation procedure!

As you know, [Mediations does not require a lawyer](#), because the Mediator does not provide legal advise, he is only a guide to bring the two parties for a resolution together.

The advantages to apply a Mediation procedure are demonstrated below this article.

F7 _ Tax Avoidance in EU(28-1)

If you cannot change the system, you can only use the existing system and to elaborate your Tax Avoidance system for your entire extended family in EU28-1. Think about it, who does not pay taxes (in or outside EU28-1), he is not interested as a tax payer's trustee to look for "value for money". He want to promote his own participation toward "ownership actions"

We have the solution not to pay any type of tax (incorporation, income, input VAT, output GST, VAT). Inquire – and send a message to Katharina@GuB21.de

F8 _ Cartel of Silence

Finally, no highly skilled engineers are required and in principle not really wanted.

It is important that [everybody supports Extension of Time, Extra Payment for claims and variations, over measurements, duty and customs waivers to give and take advantages out of the delays](#).

The donors use to pay and the co-financing Government officials are also happy. Everybody is part of the chain of immoral conduct, which keeps the kleptocracy system so successful: top down and bottom up. Everybody is aware it and remains silent.

And some donor has even their [philosophy / approach: do not harm anyone](#), as it understood, do support the top down kleptocracy, isn't it?

F9 _ DAAB / Arbitrations / Law suits

The industry of lawyers has taken over the FIDIC content, to rule the infrastructure project "completion" and to suck the money off. The technical issue, fit for the use / fit for the purpose to complete the project in time, budget and quality are most unimportant topics.

F10 _ Overall conclusion – no options

Apparently there is no other option to join and follow the rules of the ["cartel of silence"](#), but please do not provide sophisticated services as [an underpaid knight](#) i.e. 600 Euro FEE + 200 Euro per diem. Request your just share as well.

Besides think about tax avoidance for your entire family in EU28-1.

- 1 _ Please follow the linkedin group : www.Linkedin.com/in/GuB21 (Katharina Brinkmann GuB GmbH)
- 2 _ Join the shortly established LinkedIn Group: <https://www.linkedin.com/groups/10350187>
- 3 _ Website : GuB GmbH / addresses free lancers to provide some thought for their "gray FIDUC book".
www.GuB21.de/911/

Advantages / Benefits of Mediations in connection with an Amicable Settlement (FIDIC) or Conciliation (EU / EDF) against Arbitrations

The writer of the article has carried out Mediation (Alternative Dispute resolution ADR, similar Conciliation).

Basic approach

- (i) [Pre-conditions of the Mediation](#) have been met:
 - both parties were ready and willing to participate,
 - each party brought along legal representatives and
 - legally aged / competent / authorized decision makers,
- (ii) [a guided interactive process](#) resolved the conflicts
Discrepancies of **needs, rights, and interests** have been settled by a guided process in a satisfactory manner and within one month only.
and
- (iii) a review and ratification / endorsement safeguarded the decision to [become final and conclusive](#)
- (iv) The Mediator is not allowed to divulged any data (duty to keep confidential) about the disputing Parties, the Project, the Investment and the content of the satisfactorily achieved results – **without prejudice privilege**- , except

Advantages / Benefits of Mediations in connection with an Amicable Settlement (FIDIC) or Conciliation (EU / EDF) against Arbitrations:

A_ **Confidentiality:**

Procedure is not in the public.

B_ **Control over resolution procedure:**

Parties have control over the resolution procedure; in court the parties "obtain a decision" with unpredictable outcome

C_ **Cost saving due time savings:**

The Mediator may charge a fee comparable like an attorney, but the mediation process takes generally less time than moving the case through the legal channels. Mediation can be achieved - with proper preparations - within days and hours – if the phases of mediations are considered!

D_ **Mutuality:**

Both parties attain together the mutually agree [personal autonomy / freedom of contract between the parties]. The parties have not to deploy an attorney to force compliance with the agreement.

The Agreement is fully enforceable in a court

E_ **"Without-prejudice privilege"**

The Without-prejudice privilege helps to discuss openly the approach of each party

F_ **Self-Determination ("Eigenverantwortlichkeit") / Responsiveness**

The Self-determination and responsiveness of the parties outside the strict legal rules of the legal system expedites the resolution for the satisfaction of both parties – without outside influence and confidentiality - .

G_ **Renew Relationships**

The Mediation provides the opportunity to renew relationships to make a positive change for future cooperation.

H _ No legal advisor as a Mediator is required.

Experts in the construction area support the process that both parties to motivate them to move from their fixed positions to a resolution. We think it is better that three butchers discuss a dispute instead a shoemaker leads the process to reach an settlement between the two butchers.

Do you agree?

Your opinion please: Katharina@GuB21.de

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