

Do you wait for missions – without any compensation - ?

Contract period: i.e. 6 months, but mission details not defined

Why do you not request for a **Retainer Fee**? Do you synchronize the client's notice period to deliver and notice period for termination, if there is another opportunity and no retainer fee has been agreed for **idle / stand-by times**.

Please refer to the FIDIC (MDB) for Construction in compliance with Appendix: General Conditions of Dispute (Adjudication) Boards, Clause 6 Payment.

Retainer fee :

Applicable, if available on 28 days's notice for all site visits and hearing and becoming conversant with project developments, preparatory services for the "urgent" mission, a.s.o..

I _ Retainer Fee set off against Regular Service Fee

1 _ As and when basis

- A _ **Retainer Fee / Management Fee** in accordance to ICC-Rules
3 time of the daily fee = $24 * \text{hourly rate} = \text{monthly fee to be prepared to assist you}$
- B _ **Discount of the "retainer fee"** will be given for any rendered billed services
The formula of the monthly
Discount = minus $[24/176] * y$ (rendered hours) * Y (hourly rate)] =
= minus 13,6 % of the monthly rendered service value (x*Y)

2 _ Home-based performance

Fee for negotiation, say 110 Euro per hour

3 _ Field - Missions / Site Visits

- A _ hourly fee for home-based desk work and field-missions
- B _ per diem per presence day according to EU per diem country table
(includes the reasonable hotel accommodation, food allowances transport)
- C _ pre-paid flight economic or business, depending of the flight duration
- D _ Local travel to and from airport, printing expenditures, internet, phone to be reimbursed or lump sum amount, agreed prior to mission.

II _ Sample of Method of Measurement and Payment

A _ Assumption

- 1 _ Number of service hours to be rendered, as and when basis;
utilized hours per month $x = [\text{Hour}]$
- 2 _ Hourly Rate $Y = \text{Euro/hour}$
- 3 _ Available Hours to render the services = 22 working days * 8 hours/day
- 4 _ Monthly Retainer Fee / Management Fee in compliance with ICC-Rules and Red FIDIC Book
= 3 times of the daily fee $> 3 * 8 * Y = 24 Y$
- 5 _ Retainer Fee is foreseen to be ready for a mission or for home-based services
- 6 _ Discount of the Retainer Fee will be given, if the client request services within the respective month
- 7 _ Per diem in Line with "EU per diem country table"
<https://ec.europa.eu/europeaid/sites/devco/files/perdiem-rate-20150318.pdf>
- 8 _ The Contract / Claim Manager rendered services in Month January 2017
 - a _ home based services, 40 working hours (10 day @ 4 hours)
 - b _ one mission to Greece, 7 working days @ 8 h = 56 hours

B _ Calculation

- 1 _ Hours rendered: $40 + 56 = 96$ hours per month
- 2 _ Hourly rate between min 99 up to 115 Euro per hours
- 3 _ N / A
- 4 _ min. Retainer Fee = $3 * 8 * 99 = 2.376$ Euro per Month
- 5 _ N / A
- 6 _ Discount = $-13,6\% * 96 \text{ h} * 99 = -13,6\% * \text{turnover} = -13,6\% * 9.504 = - 1.292,54$ Euro

C _ Invoice

- 1 _ Retainer Fee / Management Fee / Stand-by +2.376,00 Euro min.
 - 2 _ minus Discount -1.292,54 Euro
 - 3 _ Fee 96 hours @ i.e. 99 Euro per Hours +9.504,00 Euro
 - 4 _ per diem i.e. Greece 7 days @ 222 +1.554,00 Euro
 - 5 _ Travel to airport, Taxi, Internet, say +450,00 Euro
 - 6 _ VAT / GST - out of EU28 – not applicable 0,00 Euro
- "Recipient owes VAT" (similar Reverse Charge Procedure).

 7 _ Invoice amount to be paid without any reduction.
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Flexible contractual relationship
 either by freelance or by German registered company contract agreement.

D _ Inquiries

Please request more details for negotiation
 to support your contract administration in all sectors, project cycles and functions
 to deliver excellent products.

III _ Graphic for Discount Calculation

Derivation of the Discount

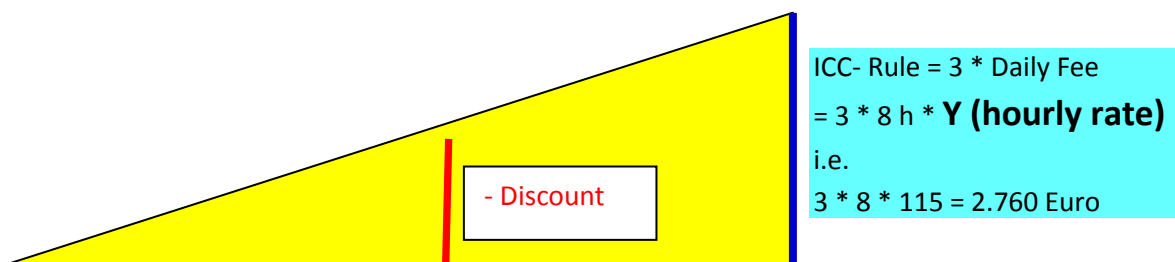
deducted from the monthly Retainer Fee / Stand-By against delivered services

Axis of abscissae (hours)

Max available service hours = 22 days @ 8 h = 176 hours per month

Axis of ordinate (Discount, Retainer Fee / Management Fee)

Retainer Fee = 3 times of daily rate >>> $3 * 8 * Y = 24$ times hourly rate



X = service hours rendered in this month

Max 22 Service days / month @ 8 hours/day = max available service hours = 176 hours (22 working days)

$D / x = (3 * 8 * Y) / 176 \gg \gg - D = (24/176) * x * Y = 0,136 * \text{rendered service value } x * Y$

Discount D = minus 13,6% * rendered Value of Service per month
 The Discount will be deducted from the monthly agreed Management / Retainer Fee for stand-by / being available for site visits and required home-based services.

IV: Offered Contract / Claim Management -Tasks and Duties to being delivered by GuB GmbH

- 1_ **Review of Tender Dossiers** to **prevent / avoid claims** / dispute for time and monies
 - (i) Special / Particular Conditions of Contract either EU-EDF or "rainbow" FiDiC.
 - (ii) Technical Special Specification, (iii) Drawings and (iv) Bill of Quantities
- 2_ **Programming** in all project cycles / business development phases (**Time & Budget**) with realistic **sequences and dependencies** to identify the critical / sub-critical path and Turnover. Cost Estimates with detailed breakdown of prices - based on viable **production rates** - derived by team configurations of resources, construction procedures, types of landscape and material, depreciation / wear+tear, repair, interest of equipment, transport capacities, Ascertain **direct + indirect cost** of site / HO overheads and profit; **unit rate analysis** to evaluate bids and claims.
- 3_ **Administration** of the execution of works [Implementation and Defect Liability (N) Period]: Tight and not time-distant **reporting, updated project tracking and trending** with critical / sub-critical path analysis on a monthly basis to derive non-controversial ascertainment, contractual correspondence in compliance with the Contract, application of EDF Revision of Prices / Price Variation and FIDIC **Adjustments for Changes in Costs**, follow up the procedural rules and resolution of claims/disputes "contemporarily / prompt" and provisional /final **acceptance** / Taking-Over Certificate, Performance Certificate, Final Statement of Account.
- 4_ **Workshops / tailored Training for Contract/Claim Management, Project Management, Delay- and Disruption Analysis with MS-Project Tools**
All "rainbow FIDIC" Forms for supply, services and works, **network establishment + analysis** with sequences and dependencies, head- and tail slacks, free floats, ... with **Cost/Turnover** implications.
- 5_ **Claim Notices and Claim Request**
Intention to request EoT + Money claims, provide positions to agree or reject **in principle**. **Particular** and details to substantiate the claim with convincing **cause-effects** evidences, initiated by EMP / ENG / CON like **faulty** instructions or **defects** / errors in design + programming + execution of works + reporting, which impact / violate / infringe the fulfilment of obligations, rights, and duties of each Party.
- 6_ **Instruction (!), Variation Procedure / Variation Order** in compliance to MDB / "rainbow FIDIC Conditions of Contracts": entitlements/ merits, quantum (T+C), legal consequences.
- 7_ **Negotiations** in good faith, in an endeavour to **reach an equitable solution** that maintains the economic equilibrium complying with the "Contract", Unidroit / PECL / CISG Principles
- 8_ Support for **Determinations** (Claims, Variations, Suspension and Terminations) to provide **non-contentious statements** for Merits and Quantum (Time and Cost plus profit) either by agreements or by ascertainment of the issues.
- 9_ Notices for **Suspension and Termination** of Contract: **financial EMP arrangement**, late or non-payment, failures to perform obligations under the Contract by EMP, ENG and CON.
- 10_ Settlement (S.) of Disputes: EDF-Amicable S. / EDF-Conciliation / **MEDIATIONS** / FiDiC-**Referral to DB/DAB/DRB**, FiDiC-amicable S.: Provide assistance for all Alternative Dispute Resolutions (ADR) i.e. Statement of Case / Response to Statement of Case / Hearing of Dispute (Adjudication/Review) Board, Responses and formal Notices of **Dissatisfaction**.
- 11_ **Procedure for Arbitration Tribunals** (ICC or UNCITRAL or DIS)
to support the lawyers with technical particulars, design and programming errors, SCL delay- and disruption analysis and synthesis about all occurred events and observed circumstances, defaults, financial / economic contract expertise – to reach an **Arbitral Award by CONSENT**.
Note: An arbitration award does not mean the losing party will be paid!
Hence a lot of arbitration judgements have to be challenged and enforced by Court orders.
- 12_ **Civil Law / Common Law**
Support in (i) **rescission** (Anfechtungsverfahren), (ii) provisional enforcement / seizure order, (iii) **enforcement proceedings**/ measures of executions (Vollstreckung) of the arbitral verdict.
Note: It is advice to develop a suitable Resolution strategy a.s.a.p., if a dysfunctional jurisdiction exists in the Country. It indicates, the number of submitted claims requests and arisen disputes are on a low side, because the resolution is allegedly being carried out by alternative means (bribes/corruption money/Baksheesh).