



Official FIDIC Regional Contract Users' Conference



Adj. Prof. Stephen Hibbert

Following 25 years in private legal practice in Australia; Asia and the Middle East, in 2012 appointed General Counsel of the newly formed Qatar Railways Company, in Doha.

QRC was charged with delivering the Doha Metro, comprising 37 stations (31 underground; 6 at grade) and 140 km of underground tunnels and track, with an capital cost of approx. \$USD 30bn. The full network went into operations during 2019.

Stephen was responsible for the drafting of all project contracts and remained on the project for 8 1/2 years, deeply involved in the administration of the contracts and all claims and disputes.



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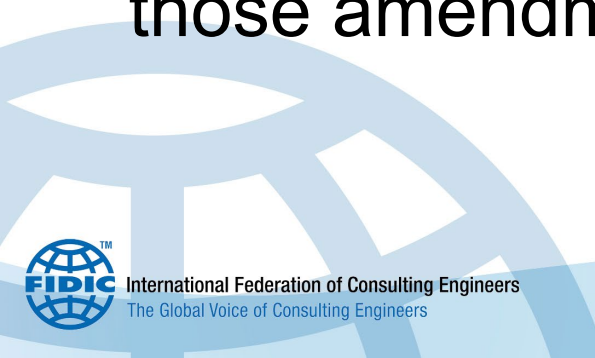


Features of the FIDIC (Yellow Book) contract used to deliver the Doha Metro project



FIDIC's Yellow Book: delivering the Doha Metro

- The Doha Metro was delivered using an amended form of the 1999 Yellow Book.
- The amendments were based on a number of key project principles and themes.
- The success of the project supports the view that those amendments played a constructive role.



1. The Contractor's cash flow is critical (to success) and should be paid promptly when milestones for core work are reached.
2. Engagement of the Employer: to be facilitated by the contract and applied in practice.
3. Where it is common for disputes to arise from processes under the contract – modify those processes.

Key Project Principles

To be ready for the 2022 FIFA World Cup, Doha had to have in place the stadiums and the transport system.

The FIFA infrastructure

FIFA Stadiums



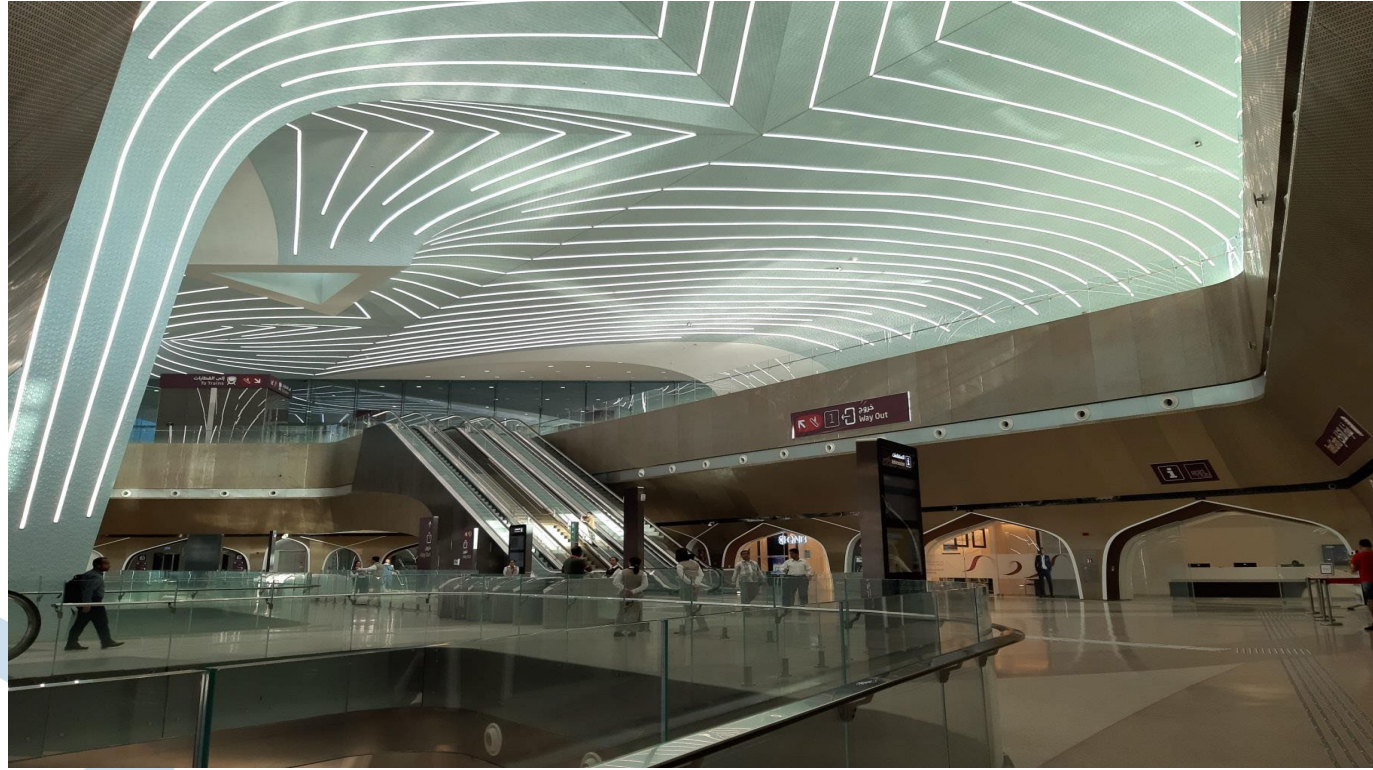
FIFA Stadiums



FIFA Stadiums



Stations: Vaulted Spaces



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Doha Metro: Phases 1 & 2



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Key Categories of contract amendments

1. Engagement of the Employer

- A key philosophical topic in construction contract seminars – esp. FIDIC – is the desired degree of engagement of the Employer.
- It could be said that the progressive revisions to the FIDIC conditions have tended to push the Engineer forwards and the Employer further to the back of engagement with the Contractor.

Engagement of the Employer

- On this project – and from experience – I was looking for a high level of Employer engagement for reasons that included:
 - Ownership of issues
 - Efficient decision making
 - Building a good relationship with the contractor
 - No surprises



Engagement of the Employer

How best to achieve that objective?

- In clause 3 (The Engineer) it was a pre-condition to the Engineer exercising certain powers that he first obtain the Employer's approval.
- Examples: cls 8.4 (EOT); 8.6 (Delay Damages); 8.8 (Suspension); 13 (Variations).



Engagement of the Employer

- (New Clause) Contract Control Group
 - Contractually mandated “monthly” meeting chaired by the Engineer, with the Contract AND the Employer (Rep.)
 - With standing agenda covering project status (design and construction) and a primary list that could be amended and supplemented as needed.



2. Scope of Contractor's 'Design' (cl5)

Better define and expand the scope of the contractor's "design" obligations in Cl 5

- There is value to an Employer in specifying far more detail regarding the contractor's scope of work for the "design" obligation in cl5.
- "Design" on a major project includes: taking over and completing the preliminary design; preparing specifications; procurement of plant and equipment to meet the Employer's Requirements

Expanding the Contractor's "design" scope

And if things go wrong...?

- When part of a complex project fails or more relevantly under-performs – often the source of the issue is in the design; specification and selection of the relevant part or system.
- If an Employer wishes to take action, he needs first clear contractual obligations applicable to the contractor and then transparency so as to identify the “*design*” step(s) that caused the fault or failure.

Many GC provisions overlap with sections in the Employer Requirements

- Eg. Cl 8.3 ('99 version and more so 2017) specify great detail in the programmes to be provided by the Contractor.
- Yet few contract drafters take the time to read and understand what is covered on this topic in the Project Controls section of the ER's. *Attachment A is the table of contents of QR's Employer's Rrq's: Vol4.*
- Hence there are most likely 2 sections of the composite contract covering the same topic.

4. No Arbitration during construction

It's a personal view but one gaining support

- On the QR project cl 20.4 stated that there could be no reference to arbitration until after TOC. Yes, there was some initial push back from bidding contractors.
- But with a commercial payment plan that was positive for the contractor and pre-arbitration ARD steps, it was agreed and proved not an issue in practice.





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