

From Dominance to Dialogue: How FIDIC contracts reshape employer-contractor relations

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1. Introduction

Construction is one of the most dynamic and transformative sectors, fundamentally shaping the way modern societies grow and connect. Across regions, we see cities expanding and previously undeveloped areas evolving through construction and complex infrastructure initiatives – and Georgia is no exception. According to recent research conducted by Geostat, Georgia is experiencing a steadily increasing trend in the implementation of construction and infrastructure projects¹. This growth is particularly evident in urban expansion, road and energy networks.

As projects grow in scope and complexity, the limitations of traditional, one-sided contractual models become more apparent. In Georgia, employer-contractor relationships have long been governed by bespoke contracts, often drafted solely by the employer and heavily skewed in their favor. These agreements frequently lacked transparency, equitable risk-sharing, or credible dispute resolution tools.

The employer – as the project financier – has traditionally sought to complete projects as swiftly and cost-effectively as possible, often relying on rigid, unilateral contracts to maintain control and minimize liability. Contractors were rarely in a position to negotiate. Winning the project often meant accepting unfavorable terms without recourse.

But this dominant model has proven unsustainable. It creates mistrust, increases the risk of disputes, and undermines the collaborative mindset required for successful delivery. Today, there is a growing recognition – among both private and public sector clients – that contractors are not adversaries to be controlled, but vital partners in a shared objective: delivering infrastructure that meets timelines, quality standards, and public needs.

2. A Shift Toward Fairer Contracts: How FIDIC Is Changing the Rules

The traditional, employer-dominated model of contracting is gradually giving way to a more balanced and partnership-based approach. This shift is not just legal or procedural change – it reflects a profound transformation in how project participants define their roles and responsibilities.

FIDIC contracts have played a key role in this transformation. With their emphasis on fairness, clarity, and cooperation, FIDIC standardized forms are increasingly used in Georgia, particularly in donor-financed and high-value public projects. These contracts promote transparency and structured collaboration – features essential for maintaining trust and continuity in complex project environments.

Unlike bespoke contracts, which often vaguely define obligations and shift risks to the contractor, FIDIC contracts clearly define the roles of the employer, contractor, and engineer. This clarity prevents misunderstandings and creates a contractual environment where cooperation is not only possible but expected.

3. How FIDIC Helps the Contractor in Negotiations and to Overcome the Employer's Dominant Position.

3.1. The Golden Principles

While FIDIC's General Conditions can be modified to suit the needs of a particular project, the organization has developed five Golden Principles (hereinafter "GP") to ensure that the core values of the contract are maintained. These principles serve as a benchmark for assessing whether a modified contract reflects the spirit of fairness, clarity, and cooperation advocated by FIDIC, and they offer contractors a practical basis to negotiate:

GP1: *"The duties, rights, obligations, roles, and responsibilities of all the Contract Participants must be generally as implied in the General Conditions and appropriate*

to the requirements of the project." This principle prevents the parties from modifying the contract terms in a way that undermines its balance or intent.

GP2: *"The Particular Conditions must be drafted clearly and unambiguously"*². In practice, there are frequent cases where a contracting party intentionally formulates certain provisions of the contract to make them ambiguous and allow for different interpretations. This ambiguity is especially problematic when it comes to the main rights and duties of the parties. GP2 ensures clarity in how duties and authority are distributed.

GP3: *"The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions"*³. Risk allocation is one of the most important factors that is always under consideration by the parties during the negotiation process. For fair risk allocation in construction, the Abrahamson Principles, developed by Max Abrahamson, are often used. These principles suggest that risk should be assigned to the party who can best control and manage it⁴. These principles, later refined by Dr. Nael Bunni, are also adopted by FIDIC and integrated into GP3.

GP4: *"All time periods specified in the Contract for Contract Participants to perform their obligations must be of reasonable duration"*⁵. In terms of exercising specific rights and obligations, the term "reasonable time" is often used in contracts. This term seems subjective and often becomes subject to interpretation by dispute resolution bodies. In this regard, FIDIC offers the contracting parties a fixed time bar with reasonable time limits, which becomes a tool for contractors to use in response to the employer's attempt to revise the timeframes proposed by FIDIC.

GP5: *"Unless there is a conflict with the governing law of the Contract, all formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration"*⁶. This maintains structured procedures for claims and disagreements and gives contractors a formal and enforceable process to assert their rights. The advantages of using a DAB/DAAB will be outlined in the following section.

3.2. Dispute Avoidance and Resolution Mechanisms: Another Strategic Tool for the Contractor

FIDIC contracts offer contractors another powerful advantage-system that ensures dispute prevention and resolution. These mechanisms are not just reactive tools for when something goes wrong – they are preventive mechanisms that strengthen the contractor's position from the very beginning of the negotiation process.

FIDIC contracts place particular emphasis on identifying and resolving issues at an early stage, before they escalate. This is achieved through clearly defined procedures such as:

- Reporting claims within specified time limits,
- Maintaining detailed records,
- Engaging in structured dialogue with the engineer or employer's representative.

These steps create a transparent environment where contractors can raise their concerns without fear that their claims will be unilaterally rejected or delayed.

3.3. Dispute Boards as a Neutral Ground for Fairness

One of FIDIC's most effective tools is the use of **Dispute Avoidance/Adjudication Boards (DABs)**. These are independent panels appointed at the start of the project, tasked with:

- Helping parties resolve disagreements informally,

¹ Geostat - Construction Statistics: <https://www.geostat.ge/en/modules/categories/80/construction>.

² FIDIC, the FIDIC Golden Principles, First Edition, 2019. Available at: https://fidic.org/sites/default/files/_golden_principles_1_12.pdf.

³ Ibid.

⁴ Ibid.

⁵ RISK MANAGEMENT, MAX W. ABRAHAMSON, (Mod), B.A., LL.B. Available at: <http://alliancecontractingelectroniclawjournal.com/wp-content/uploads/2017/04/Abrahamson-M.-1984-%E2%80%99Risk-Management%E2%80%99.pdf>.

⁶ FIDIC, the FIDIC Golden Principles, First Edition, 2019. Available at: https://fidic.org/sites/default/files/_golden_principles_1_12.pdf.

⁷ Ibid.

- Issuing decisions when disputes arise, and
- Maintaining continuity and trust throughout the project lifecycle.

For contractors, the presence of DAAB provides reassurance that disputes will be handled by a neutral body.

In Georgia, however, employers – especially public institutions – often try to remove the DAAB mechanism from contracts. This may be due to two main reasons:

1. The concept of a DAAB sounds unusual or unfamiliar in the context of Georgian legal traditions.
2. DAAB decisions are binding but not final. Since disputes can still go to arbitration afterward, some parties don't see the value in having an intermediate body whose decisions are not immediately enforceable.

However, it is important to understand that the resolution of disagreement through DAAB (Dispute Avoidance and Resolution Board) is much cheaper and faster than taking a case directly to arbitration. DAAB helps to resolve issues in a timely manner, maintains project continuity, and avoids lengthy and costly legal disputes – which is why it is widely used in international projects. This is especially effective when DAAB is appointed on a Standing basis, from the very beginning of the project. Such a board is involved in the process throughout the project, is well informed with its progress and context, which allows it to quickly and effectively resolve issues before they turn into serious disputes. This continuous involvement further increases the efficiency of the process and reduces costs.

Considering all above, when negotiating contract terms, contractors can reference these mechanisms to:

- Push back against clauses that attempt to bypass or weaken the dispute resolution process,
- Ensure that timelines for claims and responses are realistic and enforceable,
- Advocate for the appointment of a standing DAAB rather than an ad hoc one – especially in long-term or high-value projects.

By doing so, contractors not only protect their rights but also demonstrate a commitment to structured, professional project governance – a quality that many employers and donors value.

4. Conclusion

The evolution of Georgian construction contracts reflects a global trend – a movement from client-centric control to balanced and collaborative partnerships. FIDIC contracts have played a central role in this transformation – offering contractors not only a fair framework, but also practical tools with which they can protect their rights and negotiate on a level playing field.

Through a structured format, Golden Principles and dispute resolution mechanisms, FIDIC enables contractors to challenge unbalanced terms, clarify responsibilities and ensure fair allocation of risks. These features help build trust, reduce conflict and increase transparency – essential for the implementation of all successful projects.

As more public and private sector entities in Georgia adopt FIDIC standards, the construction industry is gradually adopting a new approach: a culture of dialogue and partnership instead of dominance and control. This change is not just contractual – it's cultural. And it represents a significant step forward in how infrastructure projects are planned, managed, and implemented.



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