

Clause 6

Summary

Clause 6 deals with Staff and Labour. These provisions need to be read with the applicable laws where the works are being carried out or the relevant employment law if different.

Sub-Clause 6.1 commits the Contractor (unless otherwise specified) to pay for his staff and their housing feeding and transport.

Sub-Clause 6.2 requires the Contractor not to pay lower wages or give lower conditions than those generally applicable locally.

Sub-Clause 6.3 forbids the Contractor from attempting to recruit from the Employer's Personnel.

Sub-Clause 6.4 requires the Contractor to abide by labour laws and to require his staff to obey the law generally.

Sub-Clause 6.5 forbids work on locally recognised rest days or outside the working hours set out in the Appendix to Tender, unless stated in the Contract or agreed to by the Engineer or essential for the protection of life or property or for safety reasons.

Sub-Clause 6.6 requires the Contractor to provide and maintain all necessary accommodation for its personnel and for the Employer's personnel to the extent stated in the Specification. It is forbidden from permitting its own Personnel from living within the structures forming part of the Permanent Works.

Sub-Clause 6.7 requires the Contractor to maintain the health and safety of its personnel and maintain proper medical facilities for its own personnel and for any Employer Personnel accommodated. It is required to appoint an accident prevention officer. It is required to notify the Employer of any accidents and maintain records.

Sub-Clause 6.8 requires the Contractor to provide all necessary superintendence by a sufficient number of properly qualified people with adequate knowledge of the defined language of communications.

Sub-Clause 6.9 requires the Contractor to ensure that its personnel are properly qualified, skilled and experienced. The Employer may require the Contractor to remove any person employed on the Site or the Works who commits misconduct, is incompetent or negligent, fails to perform in accordance with any provision of the Contract or persists in any conduct prejudicial to health, safety or the environment. If a person is removed the Contractor will have to replace him.

Sub-Clause 6.10 requires the Contractor to submit to the Engineer details showing personnel and equipment on Site. This is required each month and must be in a form approved by the Engineer.

Sub-Clause 6.11 requires the Contractor to take reasonable precautions to prevent disorderly conduct by Contractor's Personnel and to preserve the peace and protection or nearby persons and property.

Origin of clause

Clause 6 of FIDIC 1999 had its origins in clauses 15.1, 16.1, 34.1 and 35.1 of the FIDIC 4th general conditions. Other clauses could be found in the Guidelines for the Particular Conditions.

Cross-references

Reference to Clause 6 is found in the following clauses:-

Sub-Clause 4.21 Progress Reports

Sub-Clause 6.1 Engagement of Staff or Labour

The Sub-Clause provides that: "Except as stated in the Specification" the Contractor has the responsibility for making "arrangements" for engaging all staff and labour and their "payment, housing, feeding and transport". The FIDIC Guide states:

"This Sub-Clause removes any implication of obligation on the part of the Employer to provide personnel, except to the extent (if any) that the Employer has

undertaken to do so. If the Employer is to make any personnel available, his obligations must be specified precisely. The consequences of shortcomings may need to be considered carefully before specifying these obligations.”

The Sub-Clause imposes obligations on the Contractor; however, it lacks detail. For example, would a Contractor be in breach of contract if the ‘housing’ he had arranged failed to meet basic standards? Possibly not under this Sub-Clause as the requirement is one to “make arrangements” for housing. The requirement to maintain accommodation and welfare facilities is then found at Sub-Clause 6.6 [*Facilities for Staff and Labour*]. The obligations under this Sub-Clause also have to be considered with the local law which will supplement and expand upon these obligations. Where a breach of an obligation under this Sub-Clause occurs then the Engineer has the right to issue a Notice to Correct under Sub-Clause 15.1 [*Notice to Correct*] and, if the breach is material, eventually to terminate the Contract.

Sub-Clause 6.2 Rates of Wages and Conditions of Labour

This Sub-Clause seeks to impose on Contractors a minimum standard for rates and conditions of labour and the FIDIC Guide states that it is not unreasonable to require the Contractor to be a good employer of his labour force. The construction sector is one of the largest employers of temporary workers. On a number of continents these workers are not registered employees and have no formal employment protection. Their wages can be low, even below the minimum to meet basic needs and their employment conditions can be unsafe.¹ The purpose of this Sub-Clause is to raise these standards so that workers employed are paid rates which are not less than those established for the trade and industry where the work is carried out. Where there are no established rates or conditions then the Contractor should pay rates of wages and observe conditions which are observed locally by employers whose trade or industry is similar. This, of course, will be extremely difficult to define.

As with sub-Clause 6.1, the Employer has the right to give notice under Sub-Clause 15.1 [*Notice to Correct*] if the Contractor does not observe this provision. However, it will not always be easy to assess whether a breach of this provision has occurred because the rates of pay and the conditions which may be observed locally may differ vastly from one employer to another.

¹ *Implementing Labour Standards in Construction, A Sourcebook*: Ladbury, Cotton & Jennings (2003) published by Hickling and Squires, page 1

Sub-Clause 6.3 Persons in Service of the Employer

The provision against attempting to recruit or recruiting the Employer's staff and labour is clear. The term "Employer's Personnel" is defined in Sub-Clause 1.1.2.6 and includes all the Engineer and the assistants referred to in Sub-Clause 3.2 [*Delegation by the Engineer*] and "all other staff, labour and other employees of the Engineer and of the Employer". It also includes other personnel notified by the Employer or Engineer as being Employer's Personnel.

The FIDIC Guide suggests that the clause is a reasonable one because otherwise the Contractor could undermine the Employer's activities. It also states that each party should seek the other Party's agreement to the recruitment of its personnel. The Sub-Clause does not, however, appear to prevent a Contractor hiring someone who has left the employment of the Employer because he will no longer fall within the definition of "Employer's Personnel"

Of course, this Sub-Clause does not prevent the Contractor from hiring the Employer's staff which have either been identified in the Contract or otherwise with the agreement of the Employer. It should be noted that the Engineer cannot agree to the Contractor hiring the Employer's Personnel because this would be an amendment to the Contract – see Sub-Clause 3.1 [*Engineer's Duties and Authority*].

Sub-Clause 6.4 Labour Laws

The Contractor is obliged to abide by labour Laws applicable to the Contractor's Personnel. The clause then specifically lists laws relating to employment, health, safety, welfare, immigration and emigration laws. In this regard there is some repetition with the requirements set out in Sub-Clause 4.8 [*Safety Procedures*].

"Laws" are a defined term meaning all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority. The definition is not limited to the law of the "Country". Similarly, in Sub-Clause 6.4 the reference to "Laws" is not limited to just the laws of the "Country". The Contractor may therefore be obliged to apply different laws depending on where its personnel were employed. For example, an Italian Contractor working in Africa may bring with him some Italian staff and will have to apply a different law to those staff which are employed locally.

If the Contractor breaches Sub-Clause 6.4 then the Employer would struggle to identify a loss. However, this is an obligation which could be enforceable by notice under Sub-Clause 15.1 [*Notice to Correct*].

It is questionable whether this Sub-Clause is strictly necessary given the wide wording of Sub-Clause 1.13 [*Compliance with Laws*].

Comments on health and safety are dealt with below when considering Sub-Clause 6.7 [*Health and Safety*].

Sub-Clause 6.5 Working Hours

This provision only applies to work on Site. Thus works at off-Site locations (for example quarries are often off-Site) are not subject to this restriction.

This Sub-Clause provides that unless otherwise stated or agreed, no work will be carried out on “locally recognised days of rest.” Many laws provide for “days of rest” but do not specify the day of rest which has to be taken. In some countries there are specific laws dealing with “days of rest”; for example, under Israeli law the Hours of Work and Rest Law (Amendment No 16) Law 5778-2017 provides that an employee’s weekly rest must not be less than thirty-six consecutive hours in a week. For Jews the weekly rest period must include Saturday; for non-Jews, “the Sabbath day or Sunday or Friday, whichever is ordinarily observed by him as his weekly day of rest.” In other countries the law may not specify a day but either a Friday, Saturday or a Sunday is recognised locally as being the day(s) of rest.

“or outside the normal working hours stated in the Appendix to Tender”. This provision is likely to be used where the Works are being carried out in an inhabited area. It may, for example, prevent night work from being undertaken. The Contractor also needs to have regard to the planning or building consent conditions. These may impose limits on the hours when work can be undertaken or on the days that can be worked. These conditions will be enforceable at law and therefore despite what is written in the Appendix to Tender the Contractor may only have limited times when it is permitted to undertake the Works.

There are three situations where the Contractor may work on locally recognised days of rest or outside the normal working hours.² These are:

² Except where prohibited by the law of the Country

- Where otherwise stated in the Contract;
- Where the Engineer gives his consent; and
- The work is unavoidable or necessary to protect life and property or for the safety of the Works.

The FIDIC Guide states: “When the tender documents are being prepared, consideration may be given as to whether this Sub- Clause is required (if not, it may be deleted) and, if so, for what reason.” In many cases this clause will not be required because the Employer will simply not need to know when the Contractor intends to carry out its work. However, where the Works involve construction on an operational Site or liaising with the Employer’s other contractors then the requirement to know when and what hours the Contractor intends to work may be highly important.

In many countries it is now usual to find regulations dealing with working times. Throughout Europe there is a Working Time Directive (2003/88/EC) which was drafted in order to protect workers’ health and safety. The Working Time Directive requires EU countries to guarantee the following rights for all workers (although the workers can opt out):

- a limit of a 48 hours working week on average, including any overtime;
- a minimum daily rest period of 11 consecutive hours in every 24 hour period;
- a rest break if more than 6 continuous hours are worked;
- a minimum weekly rest period of 24 uninterrupted hours for each 7-day period; worked which is in addition to the 11 hours’ daily rest;
- paid annual leave of at least 4 weeks per year; and
- extra protection for night work.

When establishing its programme a Contractor should have regard to any statutory limits that he can require his employees to work.

Sub-Clause 6.6 Facilities for Staff and Labour

This Sub-Clause provides that except as stated in the Specification, the Contractor is to provide and maintain all necessary accommodation and welfare facilities for the Contractor’s Personnel. In some respects this provision mirrors Sub-Clause 6.1, which requires the Contractor to arrange for the provision of accommodation and feeding. Equally important the Contractor is required to provide the facilities for the Employer’s Personnel as stated in the Specification. This may include offices, accommodation and

laboratories. This needs to be carefully considered by the Contractor as this can involve a substantial additional cost to the Works.

The Sub-Clause concludes that the Contractor is not permitted to allow any of its personnel to maintain temporary or permanent living quarters within the structures forming part of the Works.

Sub-Clause 6.7 Health and Safety

This important Sub-Clause should be read in conjunction with any local law requirements and Sub-Clause 4.8 [*Safety Procedures*]. The Contractor is required at all times to take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. He is also required to make arrangements for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor has to liaise with local health authorities and ensure that medical staff, first aid facilities, sick bay and ambulance services are available at all times at the Site and at Site camps. The FIDIC Guide states: "If the local facilities seem likely to be insufficient for the numbers of personnel on Site, the Contractor must overcome the shortfall. In certain circumstances, it may even be necessary for him to provide a fully-equipped hospital."

There is a requirement for the appointment of an accident prevention officer. His role is to maintain safety and protection against accidents. The Contractor is required to provide to the Accident Prevention Officer whatever is needed for that person to carry out their duties.

"This person shall be qualified for this responsibility." There are a raft of qualifications relevant to health and safety from a Certificate or Diploma in Occupational Health and Safety Practice to Degrees and Masters Qualifications. This Sub-Clause does not specify a level of qualification, simply that the Accident Prevention Officer shall be qualified for this responsibility. The Royal Society for Prevention of Accidents suggests that a Diploma is the required minimum level of qualification for most health and safety manager roles.

"and shall have the authority to issue instructions and take protective measures to prevent accidents." The protective measures that might be taken by the Accident Prevention Officer could include:

- Develop safety policies and plans;

- Safety Training; and
- Review accidents and suggest ways to prevent further occurrences.

The Contractor is required to send to the Engineer details of any accident as soon as possible after the occurrence. The Contractor must also maintain records and make reports to the Engineer, as may be required, on (a) health; (b) safety and welfare of persons; and (c) damage to property.

Health and safety has been a major issue arising from the construction of the Qatari World Cup Stadiums, hotels and transport links. The Secretary General of the Supreme Committee for Delivery and Legacy, the Qatari body in charge of the building of the tournament's venues, is using a suite of contracts for the works packages that are based on FIDIC forms of contract (Yellow, Silver and Red Books). However, there have been reports that the health and safety provisions of the contracts are not being implemented and statistics have been published which allege that over 1200 workers have died.³ This may be compared to the seven fatalities caused from construction of the infrastructure works for the Brazil World Cup.

Health and safety legislation will differ from one country to another. However, throughout Europe it is dealt with by EU directives which has established a system of basic principles of safety and health management. These are then transposed into national law by the Member States.

Under EU law the European Framework Directive (1989/391/EEC) establishes a number of general principles for managing safety and health. These include: responsibility of the employer, rights/duties of workers, using risk assessments to continuously improve company processes, and workplace health and safety representation. Directives set out the detail of specific health and safety requirements and follow these common principles. Member States may exceed those standards when transposing the Directives into national law but they must not lower standards.

In addition to general regulations dealing with health and safety in the workplace and its management, the following are matters which are likely to be covered by health and safety regulations and which can affect a construction project:

- Working at height;

³ <https://www.bbc.co.uk/news/magazine-33019838> and https://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf

- Head protection;
- Lifting operations, lifting equipment and manual handling;
- Work machinery, including the guarding of dangerous parts of work machinery, providing visibility and ensuring regular inspection;
- Protection from exposure to harmful or hazardous substances;
- Control of noise;
- Control of vibrations; and
- The reporting of injuries, disease and dangerous occurrences.

Sub-Clause 6.8 Contractor's Superintendence

This Sub-Clause places on the Contractor the fundamental principle that it is responsible for planning, arranging, directing, managing, inspecting and testing the work to ensure satisfactory and safe execution. If the Contractor does not it will not only be in breach of contract, but will also likely delay the Works and possibly lose any right of an extension of time. Superintendence needs to be given by a sufficient number of people having adequate knowledge of the language for communications, of the operations to be carried out, knowledge of the methods of construction, the hazards to be encountered and methods of preventing accidents.

There is an interesting link here between Sub-Clause 8.6 [*Rate of Progress*] and Sub-Clause 15.1 [*Notice to Correct*]. Where the lack of progress is a result of breach of the fundamental obligations expressed in Sub-Clause 6.8, the Employer/Engineer has a choice. It can give an instruction to expedite under Sub-Clause 8.6, or a Sub-Clause 15.1 notice, or both. The latter places a great deal more pressure on the Contractor and may thus be a useful accompaniment to the Sub-Clause 8.6 notice.

Short of making use of either Sub-Clause 8.6 or Sub-Clause 15.1, the Engineer/Employer should note any breach of Sub-Clause 6.8 as a basis for disputing applications for extension of time.

Sub-Clause 6.9 Contractor's Personnel

In reading this provision it is important to bear in mind the very broad definition of Contractor's Personnel – this includes Subcontractor staff and any persons assisting the

Contractor. Thus, in order to be sure that it can meet its obligations under this provision, the Contractor needs to ensure that there are back-to-back provisions in its subcontracts and probably also in any consultancy or supply contracts.

The right of the Engineer to require the Contractor to remove staff under this provision is not completely congruent with the Contractor's obligation. The Contractor is required to appoint appropriately qualified skilled and experienced staff but the Engineer can only ask for the removal for misconduct, incompetence, negligence, non conformity with the Contract or conduct prejudicial to safety, health or the protection of the environment. There is a gap between those two standards which the provision does not recognise.

On the other hand, from the Contractor's point of view, the provision is open to abuse. Staff members may be required to be removed for simple failure "to conform with any provisions of the Contract". This could apply to the most trivial non-conformity.

Sub-Clause 6.10 Records of Contractor's Personnel and Equipment

This Sub-Clause is not only a recording requirement it is also a reporting requirement – the Contractor is under an obligation to keep the Engineer informed about its utilisation of personnel and equipment. It is cross referenced for this reason in Sub-Clause 4.21 [*Progress Reports*]. Regard should also be had to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] which requires the Contractor, as part of his application for payment, to include all the information within Sub-Clause 4.21 [*Progress Reports*]. The documents referred to in this Sub-Clause are therefore part of the "supporting documents" for an application for payment. This is therefore pertinent to the Employer's obligations to pay. The FIDIC Guide suggests that: "The period for payment under paragraph (b) of Sub-Clause 14.7 does not commence until the relevant report has been submitted under Sub-Clause 4.21, including the data described in Sub-Clause 6.10."

Since the requirements in Sub-Clause 4.21 are often replaced with more detailed particular conditions, it may be worth checking whether Sub-Clause 4.21 has been amended at the same time or whether there are in fact two (possible cumulative or inconsistent) reporting obligations.

The need to record Personnel and Equipment will also be important for both claims and Variations. Without this information the Contractor may not be able to substantiate any standing time for plant or personnel.

Sub-Clause 6.11 Disorderly Conduct

Again it should be noted that Contractor's Personnel include Subcontractor staff and any persons assisting the Contractor. The obligation extends to the preservation of "peace and protection" of neighbours of the Works. The wording is not entirely clear but it may be argued to include an obligation not to carry out the Works in such a way as to disturb the peace of neighbours to the Works. This puts considerable power in the hands of the Engineer if there are complaints from neighbouring people and it augments the obligations of the Contractor under Sub-Clause 4.14 [*Avoidance of Interference*].

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