

Comparing the Iraqi contracting terms with the (FIDIC - Red Book) conditions

Research

To: Kurdistan Engineering Union
With my Respect

Mechanical Engineer

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FIRST - SUBMITTED TO THE GENERAL CONDITIONS OF THE CONTRACTING AND OBSERVATIONS:

For several years, the contracting profession in Iraq has been organized according to (General Conditions of Contracting for Civil Engineering Works), and is continuously a major part of the contracts between the contractor and the employer.

These general conditions are the most biased of the employer and in some cases, there is a great injustice to the contractor. This is due to the time when these conditions entered Iraq and were used at the time the philosophy of the political system in the state is quite different with the present time.

This has a significant impact on imposing a prejudice in which the employer is (Government).

In 1972, the Iraqi Ministry of Planning issued the first edition of the General Conditions of Contracting, which was a college translation of the Red Book by FIDIC, with little change to fit the ideology and philosophy of the Iraqi regime.

Then, in 1987, the Iraqi Ministry of Planning issued the second edition of (General Conditions of Contracting for Civil Engineering Works). Since then, in Iraq these conditions have been applied to contracting work. And then also the Kurdistan region worked these conditions in the field of contracting.

Although FIDIC in 1987 published the 4th edition of the (Red Book).

In 1999, FIDIC issued its standard set of conditions for different types of contracting contracts as follows:

- 1- Conditions of contracting for construction works and engineering works designed by the employer (known as the Red Book).
- 2- Conditions of contracting for factories projects and design / construction projects. These conditions are suitable for mechanical or electrical industrial projects, for which the contractor is responsible for their design and implementation (known as the Yellow Book).
3. Conditions of contracting for turnkey projects, these conditions are suitable for large industrial and infrastructure projects, for which the contractor is responsible for designing, implementing and equipping them with the equipment and machinery needed for operation, and the intervention of the employer there on a small and limited scale (known as the Silver Book).
- 4 - Short contracting conditions, which are suitable for construction projects and The most recent version was issued in 2008, the terms of the contract for projects (design / construction / operation) which (known as the Golden Book).

However, Iraq since 1987 are completely cut off from the major changes that have occurred to the contracting conditions of FIDIC, and continue to work on the general conditions of the contracts issued in 1987.

In 2016, the Ministry of Planning in the Kurdistan Region (Instructions for the implementation of government contracts), and then issued several standard documents, which is a textual translation (of the General Conditions of Contracting to the World Bank and used in its projects).

For our part, we try with a series of articles highlighting the shortcomings of the general conditions and compare them with the standard documents issued by the Ministry of Planning for the Kurdistan Region and then be the projects of the contracting sector are subject to them:

First: Payment Advances:

One of the criticisms leveled at the Iraqi contracting conditions is the failure to observe justice and fairness in the distribution of risks to both parties to the contract, which is how to deal with the delay of the employer in paying the contractor's advances, which were covered by:

Article 62 (1-i): In the event that payment is delayed for more than thirty days because it is attributable to the employer or engineer for the compilation of work, the employer and the contractor shall discuss the matter with a view to agreeing on a solution.

We see that the contracting conditions in the part concerning the financial rights and entitlements of the contractor resort to manipulation of words that have no legal effect, see this part of the text that says:

"... the employer and the contractor to discuss the subject with a view to agreeing on a solution formula"

There is no legal meaning for this text and it is included in the template of the increase in speech, in order to help the employer to evade his obligation to compensate the contractor for damages caused by the delay of his predecessor, which can seriously damage the ability of the contractor to provide the financial flow of the project in the right amount and timing.

Whereas, if the contractor is several days late to complete the work, He is required to pay a fine for each day of delay, but when the employer is late in paying the dues to the contractor, he does not bear any responsibility according to the Iraqi contracting terms.

This represents a clear lack of justice between the employer and the contractor. The terms of the FIDIC (Red Book) gave the contractor in Article (14.8) the right to receive compound interest monthly on the late amounts in accordance with the interim payment procedures if the contractor's dues are delayed due to the employer or engineer.

We also see in the standard documents for the implementation of works issued by the Ministry of Planning of the Kurdistan Region, which came into force on 20/1/2019 and in the sixth section of those documents, which examines the general conditions of the contract in Article (61-j) says:

"The contractor has the right to receive interest on Amounts deferred from his payments in accordance with the percentage fixed in the special conditions in the event of delay in receiving payments for more than sixty days from the date of approval of the Engineer for reasons attributable to the employer or the Engineer".

Here we see that the employer is obliged to commit to pay the contractor's dues within sixty days from the date of the approval of the engineer on the payment due to the contractor, otherwise the contractor has the right to seek compensation for delaying his financial dues, for projects that cost more than three billion dinars.

However, for projects whose cost is small and less than three billion dinars, in section six of the standard documents for the implementation of contracts for small works, which comes into effect in (20/1/2020), which searches for the general conditions of the contract in Article (41 paragraphs 1 and 2) gives the contractor shall have the right to claim compensation for the delay.

Two - Stopping Work:

Another example that proves the lack of balance and justice for both parties of the contract (the employer and the contractor) is in article (41) of the General Conditions, which discusses (temporary suspension of works) by order of the engineer when it was necessary, as it was mentioned in the second paragraph of that article, which examines the temporary stoppage of work, which exceeds ninety days, and addresses it as follows:

"41.2 - If the work or any part thereof is suspended by a stop order for a period exceeding ninety days, the employer and the contractor shall examine all possible ways and means to resume work or adopt a new form of work".

Again, an expression that has no meaning and has no legal effect, in order to evade the responsibility of the employer when (the work stops for more than ninety days).

It is clear that this treatment in the above text is characterized by a high degree of imbalance and unfair in the distribution of risks to the parties to the contract, because it does not give the legal right of the contractor to protect himself from the risks and damages that occur to him because of the stoppage that lasts for more than ninety days.

Although in the first paragraph of this article gives the contractor the right to request the additional expenses that occur due to the order of suspension, because it is known to all who work in this field that the prolonged stopping of works in spite of the additional direct expenses also has indirect costs and damages to the contractor, which increases with the increase and continuity of the stopping period, which in the Iraqi contracting terms left this

issue open.

In fact, the paragraph in the text reads:

"... the employer and the contractor shall examine all possible ways and means to resume work in the business or adopt a new form of work".

It is not a fair solution as much as word manipulation and has no legal effect.

But to better illustrate the magnitude of inequity, this article can be compared with its counterpart in the FIDIC conditions (Red Book), Article 11-8:

Long-term cessation, which established a fair framework if the cessation lasts for more than 84 days.

1. This Article directed the Contractor to request the Engineer to authorize the continuation of the work.

2. If the Engineer does not give permission to continue within 28 days of receiving the contractor's request, the Contractor shall, after giving notice to the Engineer, consider the part of the works affected by the order of suspension covered by the provisions of Article (13) and deleted from work.

3- If the work as a whole is covered by the stop order, the contractor shall have the right to start the procedures of termination of the contract, in accordance with Article (16-2), provided that the Engineer shall be given notice of the intention of the contractor to commence such procedures.

It is clear the wide disparity between the lack of clarity in dealing with the terms of the Iraqi contract for the issue of long-term suspension, and clarity in addressing the terms of the FIDIC (Red Book), and thus the extent to each of the principle of fairness and fairness in the distribution of risks on both sides of the contract.

But in the standard documents for the implementation of the works issued by the Ministry of Planning for the Kurdistan Region, which includes projects with a budget of more than three billion dinars, which came into effect on (20/1/2019), which came in its sixth section, which discusses the general conditions of the contract, came in Article 41 where it treats the subject as follows:

41. Temporary suspension of employment:

41.1 Temporary Suspension:

41.2 Stoppage that lasts more than ninety days:

41.1 Temporary Suspension:

The Contractor shall, upon a written order from the Engineer referred to in this paragraph as the Stop Order, temporarily suspend the works or any part thereof for a period or periods as the Engineer deems necessary, during this suspension, the Contractor shall maintain and protect the Works, appropriately and as deemed necessary by the Engineer.

The direct additional expenses incurred by the Contractor as a result of the execution of the suspension order under this paragraph shall be borne and paid by the Employer unless such temporary suspension is provided for in the Contract or is necessary for the proper execution of the works or due to climatic conditions affecting the safety and quality of the works. Or due to a failure by the contractor.

To recover any of these additional expenses, the Contractor shall provide written notice of his intention to claim compensation to the Engineer within thirty days from the date of the stop order, the Engineer shall designate and specify the amount of additional amounts to be paid to the Contractor in respect of such claim as the Engineer considers it fair and reasonable.

41.2 Stoppage that lasts more than ninety days:

If the works or any part thereof are suspended by stoppage order for a continuous period exceed in ninety days, the employer and the contractor shall then consider possible ways to resume work within a period of (30) additional days from the date of the employer shall receive a request from the contractor to do ... so and if after the expiry of this additional period it is not possible to continue the works, the contractor shall have the right to terminate the contract under paragraph (67) - termination by the contractor.

But if such a suspension is related to only a certain part of the works, the contractor shall have the right to delete this part of the works, as well as a change order in accordance with paragraph 57, and the contractor shall have any dues due to him as a result of this deletion under paragraph 58.

However, with regard to project contracts whose budget is less than three billion dinars, according to (the standard tender documents for the implementation of small works contracts) of the Ministry of Planning in the Kurdistan Region, which comes into effect on 20/1/2020, where in Article 42 gives the right to the contractor to request compensation in the state of suspension of work when it was due to the employer or the engineer.

SECOND - For what types of contracts, and for what types of implementation systems fit the terms of the Iraqi contract and FIDIC?

The wide variety of types of contracts and implementation systems makes it impossible or even illogical to fix certain contractual conditions for all types of contracts and implementation systems.

It is very important for a successful application of the terms of a contract to a project to be clear about its suitability for application in that project.

The worst thing that can face projects, especially when these projects are a strategy with high cost and complexity, is to apply conditions that are not suitable for them.

FIDIC monitored the change in market trends regarding the project implementation systems used, In the early 1990s, a working group was formed to develop contracting terms for design / construction and turnkey projects that had begun to take an important place in the construction works market.

In 1995, conditions for contracting projects were issued (Design / Build & Turnkey) (Orange Book).

However, the publication of the Orange Book could be a shift in FIDIC's understanding of the nature of projects that require it to set conditions.

Until then, FIDIC had categorized projects by types, setting conditions for civil engineering projects and conditions for mechanical and electrical engineering projects. But after the orange book, FIDIC started to categorize the projects according to the implementation system that follows them, and sets conditions for Design / Construction and Turnkey projects, which varies with its previous classification of projects.

FIDIC Organization After issuing the orange book, it rushed to form a work team with the aim of a comprehensive reformulation of the contracting conditions issued by the organization, and after years of study, investigation and expert opinion all over the world, FIDIC issued a new set of contracting conditions in 1999 referred to above.

As a warning from FIDIC that it started a new era of contracting terms, each of these conditions has been marked as the "first edition". Generally, as far as the validity of FIDIC conditions is concerned, the new set of conditions is different from its predecessors in that they each dealt with a specific implementation system as follows:

1-Red Book:

Deals with projects that follow the implementation system (design / tender / construction) and not related to the type of project, whether it is a project of construction, manufacturing or generation of electric power, etc.

The important thing is that the design is mainly placed by the employer, and the responsibility of the contractor is mainly the implementation.

Therefore, the phrase (Civil Engineering Works) was deleted from the title of the Red

Book, and instead "Engineering Works" was placed. It also added the title "designed by the employer".

2-Yellow Book:

Is no longer solely dedicated to mechanical and electrical works as before, but became related to those mechanical and electrical works, as well as construction, and all other engineering works, in which the contractor is responsible for design and validity.

The old yellow book referred to this, however, it is limited to applying these conditions to specific types of projects, namely mechanical and electrical works.

The new yellow book, the terms have been expanded to include all engineering projects, provided that the implementation system is (Design / Construction).

3- Orange Book:

Has disappeared as its scope included two implementation systems: design / construction and turnkey,

and since the new methodology of FIDIC in setting conditions is related to implementation systems, so it would have been better to separate these two implementation systems, this is why the orange book disappeared.

4- Silver Book:

Instead of the orange book, the silver book for turnkey projects has appeared,

It is a system of implementation that in some respects is similar to a system of design / construction, and differs in other aspects, and this necessitated singling out its own conditions.

5-Golden Book:

In continuation of this approach, FIDIC issued the Golden Book in 2008, as mentioned above,

which is related to the projects of the implementation system (design / construction / operation), the implementation system that emerged in the eighties of the last century, and the most important types (building /operation / Transfer of ownership) (BOT).

THIRD - IRAQI CONTRACT TERMS:

The time has stopped since the nineties of the last century when the Iraqi legislator of the legal frameworks for construction projects, which classify projects according to their types.

So, the conditions of the Iraqi contracting were for "civil engineering works" as stated in its title, there were other conditions for mechanical and electrical work.

The Iraqi legislator neglected the conditions of the Iraqi contracting subject to the validity

of the conditions completely, the terms of the Iraqi contracting did not refer from near or far to the scope of their validity.

Its creator has not indicated whether it can be applied to contracts of the type of "lump sum" or "cost plus ratio", or whether it can be applied in other implementation systems other than "design / bid / build".

That inattentiveness has caused and continues to cause many problems for reconstruction projects in Iraq and the Kurdistan Region.

The ministries and reconstruction agencies in Iraq and the Kurdistan Region have begun to turn towards the implementation system "design / construction" in the implementation of their projects, which depends on the fact that the designer and the implementer are the one party that the employer contracts with.

However, those ministries and reconstruction agencies however, continued to adopt the conditions of the Iraqi contracting company, which did not address at all how to deal with the contractor, if his work required preparing project designs.

This defect caused major legal loopholes in the follow-up to the obligations, rights, duties and powers of the parties involved in projects implemented in a "Design / Construction" manner.

-The responsibility of the contractor in "design / bid / construction" projects differ radically from that of the contractor on "design / construction" projects.

-The mechanisms for designing, approving, and changing designs also differ in both systems.

-In addition to the difference in many other aspects such as exchange mechanisms, and mechanisms for adopting changes.

However, the matter was further complicated by the great confusion that takes place in the legal conditions set by the Iraqi government agencies in many of their projects, especially the strategic ones.

As it is subject to the contract with the contractor to adhere to the terms of the contract for civil engineering work as well as the contract conditions for mechanical and electrical engineering work!!!

The strange thing is that those government agencies did not pay attention to the fact that the contracting terms for civil engineering work do not hold the contractor responsible for errors in the designs, or it bears the burden of checking these designs, because they are taken from the terms of FIDIC - the old Red Book.

As for the terms of the contract for mechanical and electrical works, which are adapted from the terms of FIDIC - the old Yellow Book - the contractor is obligated in Article 4 thereof, entitled

"The scope of the contract", to acknowledge ... "that the plans, specifications, or data

supplied to it by the" employer "
or" The Engineer "(whether in the" documents "of the contractor" or others ")
It may not be complete and therefore the "contractor" acknowledges that his obligations in
the "contracting" are to design and implement the "works" so that they can be run
according to the "documents" of the contractor and the "engineer" instructions despite any
deficiency, omission, or mis description in any of these plans, specifications or data
“(Planning Authority 1987).

This is in complete contradiction to the contracting terms for civil engineering works, as
those conditions are considered in Article Twenty:

Care of Works (Item B-2):

That one of the risks excluded from the contractor taking responsibility for caring for the
works is “the engineer design for the works.”

While the terms of the contracting for electrical, mechanical and chemical engineering
works in the corresponding article, which is Article Sixteen:

Care for Business, Insurance and Compensation (Item B-2), you did not consider that the
engineer’s design of the works is among the risks excluded from the contractor’s
responsibility to take care of the work, and this is self-evident given the text mentioned
above, and quoted M Article 4 of these conditions.

This great confusion wasted billions of dinars, and wasted a lot of time in stops and lags in
these projects, as this confusion leads to the loss of legal responsibility for the validity of
the designs and their enforceability.

One of the most prominent examples of what we mean is the projects of sewage treatment
plants and drinking water treatment plants being implemented in Iraq.

Fortunately for the Kurdistan Region in the near future this problem is solved because the
Kurdistan Regional Government after 2016 issued several documents for the standard
tender for the implementation of works for multiple types of contracting projects, we hope
in the near future these documents will be a reason for solving the many problems in
projects, the main reason being the conditions Iraqi Contracting.

Fourth – FIDIC – RED BOOK:

The terms (FIDIC - Red Book) have clearly indicated their validity and applicability in
implementation systems or different types of contracts.

This is what the Iraqi contracting conditions completely ignored, and one of the
consequences was that the conditions of the Iraqi contracting were used randomly in
projects that could not be rationally or legally used in them.

This is what we believe is costing the Iraqi government dearly in the context of implementing reconstruction projects.

Briefly, we highlight a few differences:

4.1-Structural:

The conditions of the Iraqi contracting differed from the conditions of (FIDIC - Red Book) in the structure, fundamentally different, as the terms of (FIDIC - Red Book) It included more sections and appendices that are more varied, detailed and ordered than the Iraqi conditions. This difference can be summarized as follows:

4.1.1- Tracking charts

At the beginning, the terms of (FIDIC - Red Book) included basic charts for the follow-up of contract events, and the time intervals between those events, which may be compulsory at times.

These diagrams help excellent in understanding a number of concepts, terms and project milestones, and their relationship to each other.

The conditions of the Iraqi contracting company are free of any from those charts.

4.1.2- General conditions section

Perhaps one of the most important differences in the structure between the conditions of (FIDIC - Red Book) and the conditions of the Iraqi contracting is how the legal articles are presented in the general conditions section in each who are they.

While the General Conditions section of the Iraqi Entrepreneurial Conditions included (72) items, some of which contain sub-materials, they do not follow a specific arrangement or format in the way they are presented,

For the conditions of (FIDIC - Red Book) were divided into (20) chapters, in which these chapters gathered together the legal articles that concerned a certain body, or dealt with responsibilities or powers one of the project parties, or specialized in a specific subject.

This difference in the presentation of the articles of the General Conditions section can be considered a fundamental difference due to the following reasons:

- A comparative study between the contracting terms for civil engineering works and the terms of the (FIDIC - Red Book) the grouping of similar legal materials together in unified chapters makes it easier to refer to and infer them, and link the provisions with a common effect to each other, which helps in a better understanding of the requirements, responsibilities, duties and legal obligations of the parties the project, even by non-specialists.
- On the other hand, we find the conditions of the Iraqi contracting whose legal materials, even those similar to them, or close to attention, have been scattered throughout the (72) legal articles, which made it difficult at times to trace the impact of legal responsibilities and the distribution of powers and duties to the parties participating in the project.

• This scattering becomes more apparent in other subjects, such as the rights, responsibilities and legal obligations of the contractor.

Whereas the conditions of (FIDIC - Red Book) compiled them in Chapter Four under a broad title, "The Contractor",

The conditions of the Iraqi contracting were strewn with articles confusingly about the duties and rights of the contractor in a confusing manner, and therefore, a comprehensive view of those rights, duties, and legal obligations towards the various cases and disputes that contractor is a party to it during the project, sometimes ambiguous.

Fifth – Definitions:

Definitions / The tabulation terms of (FIDIC - Red Book) of the definitions was also different from that of the Iraqi contracting terms, as the terms of (FIDIC - Red Book) were collected at the beginning of the general conditions section, including all the definitions that the user may need in four pages. Moreover, these definitions were classified according to their similarities, or the topics they deal with, as follows:

- The contract, which contains (10) definitions.
- Parties and Participating Persons, which includes (10) definitions.
- Appointments, examinations, terms and terminations, and it contains (9) definitions.
- Amounts and payments, which includes (12) definitions.
- Business and supplies, and it includes (8) definitions.
- Other definitions, which includes (9) definitions.

And with a total of (58) definitions.

As for the Iraqi conditions, they initially did not devote definitions to a section of their own, but rather included them all in the first article, entitled Definitions and Interpretation. Also, its number was small, and it did not exceed (17) definitions.

Perhaps one of the reasons for the big difference between the number of definitions in the terms of (FIDIC - the Red Book) and their number in the conditions of the Iraqi contracting is that many of the definitions in the conditions of the Iraqi contracting were distributed on the materials for those topics, and were not presented separately in the article definitions, and therefore it was littered in the folds of (41) pages, is the number of pages of general conditions of Iraqi conditions. The classification of definitions as adopted in the terms of (FIDIC - Red Book) facilitates the task of everyone who wants to refer to them, and retrieving information from them quickly, and according to his need, which makes their users more familiar with them.

Many of the definitions mentioned in the terms of (FIDIC - Red Book) are not included in the conditions of the Iraqi contracting, neither a direct statement nor a hint or a reference, which makes the terms of (FIDIC - Red Book) superior in terms of ease of use and benefit.

Standard Forms Package and Alphabetical Index:

(FIDIC - Red Book) Terms included a package of several standard forms and formats official transactions and correspondences referred to by these conditions.

These include:

Bid Submission Letter, Good Performance Letter of Payment, Advance Payment Guarantee Letter (Operating Advance), Bid Submission Form, Contract Agreement Form, Arbitration Agreement.

A letter of guarantee for tender,
Guarantee letter for good performance,
Guarantee letter for advance payment (operational advance),
Application form for tender,
Contract agreement form,
Arbitration agreement.

Except for the (Application form for tender and the contract agreement form), the Iraqi contracting terms are free of any of these standard forms.

The regulation of transactions and communications through standard forms will definitely contribute to reducing errors, judgments and differences between the two parties to the contract.

The General (FIDIC -Red Book) Conditions section included an alphabetical index of the sub-articles that the conditions contained FIDIC is in its twenty chapters.

This index, in its simplicity, provides a useful tool for the user of FIDIC terms enabling it to retrieve information faster, refer to sub-articles accurately, and smooth navigation between conditions articles (FIDIC - Red Book) in order to fully understand the legal dimensions of those materials.

Sixth - Department of the special conditions of the contract:

The terms of (FIDIC - Red Book) didn't set a fixed standard model for the special terms of the contract, as did the conditions of the Iraqi contracting company, in order to provide the greatest flexibility to the framers of the contract to make that contract consistent with the nature of the project as well as with the requirements of the employer.

Nevertheless, the conditions of (FIDIC - Red Book) didn't leave the set of the special conditions unaided, as I put him a special guide for preparing the special conditions. This made the conditions of (FIDIC - Red Book) truly distinguished in its flexibility and

applicability in various types of international, governmental and private projects.

The structure adopted by the (FIDIC - Red Book) conditions has a major impact in increasing the effectiveness of these conditions, and facilitating their reference. It is not at all strange that the scattering of legal articles and clauses in the Iraqi contracting terms leads to the user's fees for, or exceeding, a material or sub-clause related to the topic that is looking at its legal aspects.

About defining the cost, whatever the contractor spends inside and outside the site, including petty cash. This definition is fairly broad for the contractor, and it has no equivalent, not only in the conditions of the Iraqi contracting, but in general Relevant Iraqi legislation.

Article (4.1) clarifies that one of the contractor's obligations is "Design (to the extent stipulated in the contract), Executing and completing works ... etc. " This article gives flexibility to both parties, the employer and the contractor, to prepare or complete some design parts, which may interfere with construction methods or equipment specifications (for example, in sewage treatment plants). As such, both parties may avoid many problems resulting from a lack of some design details, or a potential conflict between some parts of the design and the specifications approved by equipment manufacturers considered part of the permanent work. The Iraqi contracting conditions did not refer to this except when defining permanent works, without any detail other than mentioning the word design, it would have been better if that commitment was better articulated.

The terms (FIDIC - Red Book) through Article (2.4) gave the contractor the right to require the business owner to provide convincing evidence that he had taken the necessary financial measures to pay his financial obligations under the contract. This right granted to the contractor is of great importance in reassuring the contractor about the stability and stability of the financial flow necessary to finance the project. As it is known that many projects in many countries are hampering their implementation due to the employer's delay in granting the contractor his financial entitlements within the contexts and periods specified in the contract. The Iraqi conditions showed no effect of that commitment, as the contractor has no right to ascertain the employer's ability to finance the project.

Seven - Engineer:

One of the criticisms that have always been accompanied by (FIDIC - Red Book) terms in their previous releases is a dualism the role of the engineer, while the engineer is paid by the employer, he is essentially considered a neutral party in the project, and there is the

same problem in the Iraqi contracting terms.

The terms of (FIDIC - Red Book) in its new releases (1999) dealt with this matter. The engineer is employed by the employer, and therefore cannot be a neutral party because he must work to preserve the interests of the business owner, as directed in that Article (3.1-a) of The Red Book.

However, Article (3.5) exempted from that, in the event that any of the articles of the FIDIC conditions are requested (the Red Book) from the engineer to rule on a problem related to the contract, his ruling must be fair, and taking into consideration consider all circumstances related to the problem.

Nevertheless, this major shift did not diminish the importance of "engineer" decisions, and did not relieve "engineer" of duty carefulness and fairness in dealing with both parties to the contract, the employer and the contractor.

One of the consequences of this shift was that the contractor could terminate the contract if the engineer failed to issue the payments phased during the specified period.

This is possible because the engineer in terms of FIDIC (Red Book) is from "employer employees" and therefore failure to issue interim payments during the specified period can be counted as a breach by the employer of the terms of the contract.

Eighth - Employer:

As mentioned previously, the conditions of the Iraqi contracting gave the employer the authority to appoint the representative of the engineer (the material I-e), while the terms of FIDIC - the Red Book did not give the employer such a right (3.2).

Giving the employer the right to interfere in a professional matter such as choosing the representative of the engineer may be an impediment to the optimal performance of his responsibilities by the engineer, which affects the workflow on the site.

In Article (52) of the Iraqi contracting conditions, changes and orders for change, we note the total absence of the opinion of the employer regarding changes, and perhaps the merger between the employer and the "engineer", in the public sector projects in particular, is the reason for the absence of the employer's opinion.

However, such absenteeism from the employer's opinion does not exist in the terms of (FIDIC - Red Book), which are directed to take the opinion of the employer regarding the assessment of the value of the changes.

For the secondary contractor, the conditions of the Iraqi contractor have given the employer, in addition to the engineer, the right to name the named sub-contractor. This is not what the terms of (FIDIC - Red Book) did, which gave this right exclusively to the engineer. This is the difference and impact on the project, especially in the event of a dispute in the project regarding the rights of the sub-contractor.

**9-Comparing the Iraqi contracting terms with the (FIDIC - Red Book) conditions
we come to these conclusions and recommendations:**



The conditions of the Iraqi contracting, whether they are for civil engineering work, or for electrical, mechanical and chemical engineering work, are outdated, and were developed at a time when the political and economic system in Iraq was completely different from the current, and therefore the legalization philosophy that was based on these conditions is not valid in many of the Sometimes applicable to current construction projects.

The Iraqi contracting conditions were established on the basis of the types of projects, but Iraq's need to use new implementation systems, such as (design / construction and turnkey delivery), makes it not possible to apply those conditions to projects that are implemented according to the new implementation methods. On the contrary, the terms of FIDIC were updated in 1999 to apply to various implementation systems, rather than types of projects, and this broadened the power to apply FIDIC terms with their new releases.

The terms of the Iraqi contracting were biased to the employer, which is the government as its authors assumed, and conversely, the terms of FIDIC were keen to be fair and equitable regarding the distribution of risks to the main parties to the contract, the employer and the contractor.

The conditions of the Iraqi enterprise did not have sufficient flexibility to make it appropriate and applicable to the broad spectrum of reconstruction projects needed by Iraq

and the Kurdistan Region, unlike the terms of FIDIC that the framers were keen to give enough flexibility to be able to apply not only to various types of projects, but also at the international level and local.

But the conditions of the Iraqi articles are not consistent in any way for their use in international contracts, because foreign companies cannot accept these conditions in their contracts while it is stated in those terms that the debt of the business owner, which the government has an excellent characteristic of other debts according to the government debt collection law.

Also, foreign companies cannot accept that the business owner appoints the project management team to the job site.

FIDIC conditions have a much better structured and structured structure than the Iraqi contracting terms, so as to facilitate their use, reference and rapid inference in various types of contracts and projects.

FIDIC conditions include tracking charts, standard template packs, details and clear time frames that make them more effective and comprehensive than the Iraqi contract terms.

FIDIC conditions are clearer and more detailed than the Iraqi contracting terms in determining the powers, obligations, duties and responsibilities of the parties participating in the contracting contracts.

Based on the foregoing, the conditions of the Iraqi enterprise need a fundamental change that affects the philosophy of rationing, structure and detail, in order to make it fit the requirements of construction projects in Iraq and the Kurdistan

[Thank you very much for your reading](#)