



CONTRACTS FOR CIVIL ENGINEERING WORKS IN UAE

By Roy Nolan

During the past years the author has been involved in disputes affecting construction works, sometimes as one of the disputants, either acting for the main contractor against an employer or acting for a subcontractor against a main contractor and, on occasions, acting as the ad hoc arbitrator in disputes. Many of these disputes have been in the courts in the UAE and not under arbitration rules. The court on such occasions has appointed one or three experts to give an opinion on the technical aspects of the dispute and to make recommendations. In appearing in front of such experts it has been interesting to note the varying approaches and attitudes such experts have adopted to examine the facts being presented. Because the dispute is in court the disputants at these meetings are represented by lawyers and their own engineering experts; the lawyers being present to comment, if necessary, on the engineering contract conditions or on UAE law and the experts on technical matters. Thought-provoking observations have come out of such meetings and from conversations with the disputants. For example:

Court appointed experts generally perform their duties well with seeming fairness to both parties and make efforts to understand fully the contractual and technical aspects of the dispute, however, there are exceptions. Some do not fully understand the documents being presented and, occasionally, they have difficulty in grasping the contractual aspects of the points being argued in the dispute. Some lack the detail knowledge of how construction contracts work, how they are formed and what documents actually form the basis of the contract. In one instance the parties to a dispute were instructed to send copies of their respective files, including Contract Documents and all contract correspondence files, to each other – in Common Law jurisdictions a novel form of discovery. In another case claim and defence documents only were presented and the court experts wanted all arguments, including technical aspects, to be presented through the lawyers representing the parties. Some court experts want everything in Arabic even though the Contract and supporting documents are all in English, others are content to handle the dispute in English: it all depends upon the court expert appointed.

Lawyers on the other hand understand the law but are not technocrats and at times seem not to appreciate how engineering contracts work. One can spend much time explaining technical matters and the relationship between the parties involved in disputes.

In the United Arab Emirates the majority of construction contracts are let on FIDIC forms of Contract for Civil Engineering Works usually modified by the Employer to give him greater control over clauses that affect time and money. The FIDIC form mainly used is the Fourth Edition 1987, though on some larger projects later FIDIC forms are in use,