

Comparison of the Contractor's Claims According to the FIDIC Red Book and the Turkish General Specifications for the Construction Affairs

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Abstract: The concept of contract states an agreement, a convenience. In general a contract of work is a contract governed by private law, with the exception of being contrary to public order. In Turkish implementation of construction contract has a sub-regulation which used in public procurements. In generally, claim is an interest or remedy recognized by law; the means by which a person or organization can obtain a privilege, possession, or enjoyment of a right or thing. According to The FIDIC Red Book the contractor can claim extension of time, payment and resource however, according to the Turkish General Specifications for the Construction Affairs the contractor can only claim extension of time. In The FIDIC Red Book the engineer is an independent being but in the Turkish General Specifications for the Construction Affairs the engineer is an employee of the government and for this reason the engineer is not as independent as the engineer in the FIDIC Red Book. Detailed comparison of the contractors' claim in the each text is given in the article.

Keywords: Construction contracts, Contractor's claims, FIDIC red book, Turkish general specifications for the construction affairs

Introduction

Civil work is improving and expanding worldwide and construction sector became more affective and important in the world economy. Construction specifications and contracts are the most important instruments in the construction sector.

To fulfill a prompt, economic and reliable work in the construction sector, the resources (technical resources, monetary resources and even human resources) have to managed accurately. Accurate management of these resources need a discipline. It is clear that, the discipline needed if and only if with presence and implementation of some rules.

As stated above, signed contracts between the parties, law of the governments and neither regulations of international organizations provide to fulfill within a certain discipline and sometimes it provides implementation of several of these resources.

However, especially in terms of private law contracts which are characterized as "law of parties", plays a pioneering role in fulfilling of activity in construction works and in all private law affairs.

The concept of contract states an agreement, a convenience. Contracts have two parties; both parties owe each other with mutual and compatible course of conduct. Therefore both parties have to assert compatible behaviour. To establish a contract both parties have to show forth their mutual and compatible willpower for the legal outcome. The parties are charged to each other an obligation or duty, imposed by law or by the agreement which consists of an action concerning a burden to give, to do or not to do.

As stated above, a contract requires an exchange of assents between at least two parties. A valid agreement must have a legal cause and a legal subject matter. It must be based upon real or genuine assent and should be made in the form required by law.

Contracts may be classified, in terms of the degree of their enforceability, as valid, void or voidable. Valid contracts are those possessing all the elements, these contracts are fully binding and enforceable. Void contracts have no legal effect either because they are against law or morals, because of incapacity, lack of formality or impossibility. Voidable contracts are those which may be binding and enforceable, but due to lack of one or more elements of a valid contract, may be rejected at the option of one or both of the parties. These type of contracts are valid until declared invalid.

In civil work contracts have two sides; constructor and employer. As is known, arising out of the contract, employer and constructor can claim money, time and resource procurement.

Contract of work is a type of agreement which binds two parties mutual and legally. Contract of work is regulated under Articles 470 - 486 of the Turkish Code of Obligations numbered 6098 and entered into effect on July 1st 2012. According to the Turkish Code of Obligations contract of work defined as a contract under which the contractor undertakes to originate a work whereas the employer undertakes to pay a price in exchange.

In general a contract of work is a contract governed by private law, with the exception of being contrary to public order. In Turkish implementation of construction contract has a sub-regulation which used in public procurements.

In public procurements Turkey utilize "Turkish General Specifications for the Construction Affairs" that is addendum to "Governing Regulations of Construction Works Tender" issued in accordance with Public Procurement Law numbered 4734 and Public Procurement Contracts Law numbered 4735. Also, FIDIC Conditions are used on the construction contracts in Turkey. The FIDIC Conditions are used extensively on international contraction projects and for major infrastructure works. The FIDIC Forms are also used on projects founded by the World Bank.

According to FIDIC Clause 3, an engineer is the person by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data. The engineer is the first-step adjudicator or arbitrator. The Engineer is not there to reject claims, he is there to deal with them fairly. It means that, if the Contractor makes valid points, the Engineer should look into them, and arrive at a reasoned conclusion.

On the other hand, according to the Turkish General Specifications for the Construction Affairs the Engineer referred as the control mechanism that is included in the government. Hence, according to FIDIC the Engineer whom assigned by the Employer is a technical adviser and he has to be objective, but according to the Turkish General Specifications for the Construction Affairs the Engineer is biased because he works as a part of the government.

In generally, claim is an interest or remedy recognized by law; the means by which a person or organization can obtain a privilege, possession, or enjoyment of a right or thing. Claim can arise from a contract or a code. According to FIDIC Conditions claim separated into two groups; first one is the employers' claim (the engineer can also give notice to the contractor under the name of the employer.) and the second one is the contractors' claim. The employer and the contractor have to claim in a certain time.

This paper refers to the Contractor's claims in the FIDIC General Conditions of the Conditions of Contract for Construction, which known as "The Red Book" and the Turkish General Specifications for the Construction Affairs which used in the public procurements and the contracts which refer to the affair in Turkey. This study will consider claims of the Contractor with comparing FIDIC and Turkish General Specifications for the Construction Affairs.

Aim and Method

The difference of contractors' claims between FIDIC Red Book and Turkish General Specifications for the Construction Affairs are examined in detail and it is tabulated below. The Contractor's claims of The FIDIC Red Book stated above and below each article there are the articles of The Turkish General Specifications for the

Construction Affairs. Some of the contractors' claims which are stated in the Table 1. are similar but some of them are contradicting.

Findings

According to the aim stated above, the Table 1 stated below is created. The first column in the Table 1 is the clause number of FIDIC Red Book, the second column is the title of the clause and the third column is the content of FIDIC Red Book clauses and the equivalent clauses of Turkish General Specifications for the Construction Affairs. Related clauses are compared at the end of the Table 1.

Table 1. Compare of the regulations on FIDIC Red Book and the Turkish general specifications for the construction affairs

Article no.	Article Content	Provisions That May be Essential to FIDIC and Turkish General Specifications for the Construction Affairs
1.9	Delayed Drawings or Instructions	<p>FIDIC 1.9; (...) If the Contractor suffers delay and/or incurs Cost as a result of failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit, which shall be included in the Contract Price.</p> <p>At the implementation of FIDIC 1.9 the Engineer shall ensure the drawings to the Contractor. If the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor cannot be entitled to claim such extension of time, Cost or profit.</p> <p>According to Turkish General Specifications for the Construction Affairs Article 11/4d; in situations for which there are no provision, the reports about the projects that are given to the government (the Employer) by the Contractor, the reports shall be returned to the Contractor with the registration of completion of the incompleteness or changes that have been approved or deemed necessary within the period of one month to start from the date that the reports are delivered. If there is a delay about this matter, the Contractor shall be entitled to extend the period of work up to his delay.</p> <p>Turkish General Specifications for the Construction Affairs Article 29/4; If the Employer fails to fulfill its obligations (place delivery, approval of the projects, approval of the work program, lack of appropriation etc) related to the performance of the contract, without any fault of the Contractor, the time for part or all of the work is extended by at least the delayed time, if the Contractor's power to remove is not enough, according to the reason for the work interruption and the nature of the work to be done.</p>
		<p>FIDIC 2.1; (...) If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the</p>

2.1	Right of Access to the Site	<p><i>Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</i></p> <p><i>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</i></p> <p><i>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</i></p> <p>If the Engineer fails and if his failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor cannot be entitled to claim such extension of time, Cost or profit.</p> <p><i>Turkish General Specifications for the Construction Affairs Article 6/6;</i> <i>Under the circumstances of the delay at delivering the work site to the Contractor, and if this delayed the completion of part or all of the work, the duration of the work determined on the contract shall be extended to meet the delay for a part or all of the work.</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 6/7;</i> <i>In case of necessity, changes can be made in the places where the contract price is not exceeded and the contractor has agreed to contract with the employer. In this case, the cost of transporting the materials, vehicles and machinery to the new job and the expenses for moving and establishing the new job site of the premises (if installed) and the premises are owned by the contractor. In this case, the duration of the job is extended to meet the delay for some or the entire job.</i></p>
4.7	Setting Out	<p><i>FIDIC 4.7;</i> <i>The Contractor shall set out the works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the works.</i></p> <p><i>The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.</i></p> <p><i>If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1[Contractor's Claims] to:</i></p> <p><i>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</i></p> <p><i>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 13;</i> <i>The Contractor will not submit any objections in case the project and other technical documents required for the work are delayed in delivery to the Contractor or in the event of a need to prepare a new</i></p>

4.12	Unforeseeable Physical Conditions	<p><i>project or document and therefore it requires to extend time to make alterations. However, if this delay delays the completion of part or the entire task on time, the duration of the contract is extended to meet the delay for some or the entire job.</i></p> <p>FIDIC 4.12; (...) If and to the extent that the Contractor encounters physical conditions which are unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1[Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</p> <p>In the Turkish General Specifications for the Construction Affairs the Contractor cannot claim an extension of time and payment for any such costs about physical conditions which are unforeseeable. The affair did not entitle the Contractor.</p>
4.24	Fossils	<p>FIDIC 4.24; (...) The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claim] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</p> <p>Turkish General Specifications for the Construction Affairs Article 32; The materials obtained during excavations and demolitions in state lands belong to the government. Cultural values, valuable goods and artworks which are acquire in the same way belong to the government. The expenses made by the Contractor for the taking out of these kinds of objects which are accepted by the government will be covered by the government.</p>
		<p>FIDIC 7.4; This Sub-Clause shall apply to all tests specified in the Contract, other than Tests after Completion (if any).</p>

7.4	Testing	<p><i>Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.</i></p> <p><i>(...)</i></p> <p><i>If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is reasonable, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claim] to:</i></p> <p><i>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</i></p> <p><i>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 15/3;</i> <i>The building inspector may conduct tests to examine and monitor the material for compliance with the technical specifications whether at work, private or public laboratories, shall be covered by the Contractor if there is no other provision in the expense contracts of these tests. If the Contractor wishes to carry out the tests at the workplace, he shall provide the necessary equipment and equipment for himself.</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 27/1ç;</i> <i>If the expenses shown in the following paragraphs, which are necessary for the realization of the work and which the contractor is obliged to do, are not specified in the contract or its annexes, and there is no provision to the contrary;</i></p> <p><i>(...)</i></p> <p><i>ç) expenses for loading and similar technical tests specified in the contract or its annexes,</i></p> <p><i>(...)</i></p> <p><i>belong to the Contractor.</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 41/10;</i> <i>If the Acceptance Committee find circumstances which cause hesitation in the work of the contractor, the Acceptance Committee may ask for the technical tests to be carried out for the investigation of the situation, all costs belong to the Contractor, even if it's not written in the contract.</i></p>
		<p><i>FIDIC 8.4;</i> <i>The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claim] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking-Over of the Works and Sections] is or will be delayed by any of the following causes:</i></p> <p><i>(a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure] or other</i></p>

8.4	Extension of Time for Completion	<p>substantial change in the quantity of an item of work included in the Contract,</p> <p>(b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these conditions,</p> <p>(c) exceptionally adverse climatic conditions,</p> <p>(d) Unforeseeable shortages in the availability of personnel of Goods caused by epidemic or governmental actions, or</p> <p>(e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.</p> <p>If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.</p> <p>Turkish General Specifications for the Construction Affairs Article 29; (2) Extensions can be given due to force majeure under these circumstances:</p> <p>a) natural disasters</p> <p>b) lawful strike</p> <p>c) epidemic</p> <p>ç) partial or full mobilization notice</p> <p>d) other similar conditions to be determined by Public Procurement Authority when necessary.</p> <p>(3) In order to be excepted as force majeure to give extension of time to the contractor the situation the conditions in the second sub clause have to be accepted as force majeure;</p> <p>a) if the Contractor is not faulty,</p> <p>b) the fact that the undertaking is an obstacle to fulfillment,</p> <p>c) if the contractor cannot remove the obstacle,</p> <p>ç) within twenty days following the date on which the combatant has come to the scene, the Contractor's written notice to the Employer,</p> <p>d) certification by competent authorities,</p> <p>is mandatory.</p> <p>(5) In cases where an increase in work is required due to unforeseeable circumstances, additional time required for additional work is awarded to the Contractor.</p> <p>(6) In case of a delay which is not because of the contractor but because of force majeure and/or the conditions which are cause by the government, the condition will be examined by the government and the time of work will extended according to the force majeure and the qualification of the work.</p>
		<p>FIDIC 8.9; If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit, which shall be included in the Contract Price.</p>

8.9	Consequences of Suspension	<p>Turkish General Specifications for the Construction Affairs Article 29/4; If the Employer fails to fulfill its obligations (place delivery, approval of the projects, approval of the work program, lack of appropriation etc) related to the performance of the contract, without any fault of the Contractor, the time for part or all of the work is extended by at least the delayed time, if the Contractor's power to remove is not enough, according to the reason for the work interruption and the nature of the work to be done.</p> <p>FIDIC 10.2; (...)If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the works part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.</p> <p>Turkish General Specifications for the Construction Affairs Article 43/3; Arising from the use and operation of extinguished constructions by the government or reparations except for the Contractor's flaws are out off the maintenance obligation.</p>
10.2	Taking Over of Parts of the Works	
10.3	Interference with Tests on Completion	<p>FIDIC 10.3; (...)If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</p>
13.7	Adjustments for Changes in Legislation	<p>FIDIC 13.7; (...) If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit , which shall be included in the Contract Price.</p>
		<p>FIDIC 17.4; If and to the extent that any of the risks listed in Sub-</p>

17.4	Consequences of Employer's Risks	<p>Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.</p> <p>If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(b) payment of any such Cost plus profit, which shall be included in the Contract Price.</p>
18.1	General Requirements for Insurances	<p>FIDIC 18.1; In this Clause, "insuring party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.</p> <p>(...)</p> <p>If the insurance party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums to the other Party, and the Contract Price shall be adjusted accordingly.</p> <p>Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring party.</p> <p>Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Employer's Claims] or Sub-Clause 20.1 [Contractor's Claims] as applicable.</p> <p>Turkish General Specifications for the Construction Affairs Article 9/8; In case of cancellation or liquidation of the contract the insurances; the work shall be continued by the Contractor until the tender to the new Contractor from the start of the cancellation or liquidation of the contract.</p>
		<p>FIDIC 19.4; If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such</p>

19.4	Consequences of Force Majeure	<p><i>Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</i></p> <p><i>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</i></p> <p><i>(b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].</i></p> <p><i>Turkish General Specifications for the Construction Affairs Article 29;</i> (2) Extensions can be given due to force majeure under these circumstances:</p> <p><i>a) natural disasters</i></p> <p><i>b) lawful strike</i></p> <p><i>c) epidemic</i></p> <p><i>ç) partial or full mobilization notice</i></p> <p><i>d) other similar conditions to be determined by Public Procurement Authority when necessary.</i></p> <p><i>(3) In order to be excepted as force majeure to give extension of time to the contractor the situation the conditions in the second sub clause have to be accepted as force majeure;</i></p> <p><i>a) if the Contractor is not faulty,</i></p> <p><i>b) the fact that the undertaking is an obstacle to fulfillment,</i></p> <p><i>c) if the contractor cannot remove the obstacle,</i></p> <p><i>ç) within twenty days following the date on which the combatant has come to the scene, the Contractor's written notice to the Employer,</i></p> <p><i>d) certification by competent authorities,</i></p> <p><i>is mandatory.</i></p> <p><i>(5) In cases where an increase in work is required due to unforeseeable circumstances, additional time required for additional work is awarded to the Contractor.</i></p> <p><i>(6) In case of a delay which is not because of the contractor but because of force majeure and/or the conditions which are caused by the government, the condition will be examined by the government and the time of work will be extended according to the force majeure and the qualification of the work.</i></p>
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Comparison between the two main texts for each relevant issue is below. A further analysis showing the differences between the two texts is made at the end of the comparison.

3.1. Delayed drawings and instructions are stated in Article 1.9 of FIDIC Red Book and stated in Article 11/4 and 29/4 of the Turkish General Specifications for the Construction Affairs. According to FIDIC, if the Contractor suffers delay and/or incurs cost as a result of the delay of the drawings or instructions the Contractor can claim an extension of time if the completion is or will be delayed and payment of any such cost plus profit with giving a notice to the Engineer. However, according to the Turkish General Specifications for the Construction Affairs under similar circumstances the Contractor can only claim extension of time at minimum delay time, he cannot claim any cost plus profit.

3.2. According to the FIDIC Red Book the Employer should give access to, and possession of, all parts of the Site within the time(s) stated in the contract. If the Contractor suffers delay and/or incurs cost as a result of a failure by the Employer to give any such right or possession within such time. The Contractor can claim an extension of time for any such delay and payment of any such cost plus profit by giving notice to the Engineer. On the other hand, the Turkish General Specifications for the Construction Affairs if there is a delay because of the delay of the delivery of the site to the Contractor the time which is stated in the contract shall be extended. In

this affair the Contractor does not have to give notice to the Engineer. In case of emergency the employer can change the site which is delivered to the contractor. In the circumstances the removal and the setting up of the materials will be done by the contractor. The contractor cannot claim any payment from the employer. Whereas in the FIDIC Red Book the contractor does not have an obligation like this.

3.3. In FIDIC Red Book conditions the Contractor shall set out the works in relations to original points, lines and levels of reference specified in the contract or notified by the engineer. The employer shall be responsible for any errors in these specified or notified items of reference. The contractor has to use reasonable efforts to verify their accuracy. If the contractor suffers delay and/or incurs cost from executing work which was necessitated by an error in the items of reference, and an experienced contractor could not reasonably have discovered such error and avoided the delay and/or cost. The contractor can claim an extension of time for any such delay and payment for any such cost plus profits. On the other hand according to the Turkish General Specifications for the Construction Affairs if there is a delay in the delivery of the projects and other technical documents for the work or in the conditions that there is a need to prepare new projects and documents to be applied in the given project and documents the contractor cannot object that however, the contractor can claim an extension of time if there will be a delay in the completion of the project. The contractor cannot claim any cost in this condition too.

3.4. Due to an unforeseeable physical conditions, if the contractor suffers delay and/or incurs cost the contractor can claim extension of time for any such delay and payment of any such cost according to the FIDIC Red Book. In the Turkish General Specifications for the Construction Affairs the Contractor cannot claim an extension of time and payment for any such costs about physical conditions which are unforeseeable. The affair did not entitle the Contractor. The Turkish General Specifications for the Construction Affairs the Contractor do not accept any claims which are caused by unforeseeable physical conditions.

3.5. In the discovery of any such fossils, findings the conditions of the FIDIC Red Book and the Turkish General Specifications for the Construction Affairs are similar. The Turkish General Specifications for the Construction Affairs stated that the findings are belong to the Turkish government and the contractor have not got any claim of extension of time however the Turkish government shall defray the cost of the removal of the objects other than the FIDIC conditions.

3.6. According to the FIDIC Red Book if the engineer attend on the given time and in the given place or if he made a decision about he will not be able to attend and if the contractor did not say the opposite the contractor can do the tests and these tests will be accepted as the employer did them. If the contractor suffers delay and/or incurs cost he can claim extension of time for any such delay and payment of any such cost by giving notice to the engineer. On the other hand according to the Turkish General Specifications for the Construction Affairs the engineer did not do the testing, the building inspector makes the testing and the expense of the test belongs to the contractor unless otherwise provided in the contract. According to the FIDIC Red Book if the contractor pays for the tests he can claim a payment from the employer. However, according to the Turkish General Specifications for the Construction Affairs the contractor cannot claim a payment for the testing expenses, which are made by the contractor, from the employer. Expenses such as loading are belong to the contractor if the parties decided otherwise and if the contractor wants the testing in the work place he has to provide the materials. There is an accepting committee in the Turkish General Specifications for the Construction Affairs, if the committee saw things which cause hesitation they can claim for a testing from the contractor and these testing expenses are belong to the contractor and he cannot claim for a payment from the employer in this case. The Turkish General Specifications for the Construction Affairs put the contractor under obligation and did not give a right to claim contrarily to the FIDIC Red Book.

3.7. According to FIDIC Red Book the contractor has a right to claim extension of time for the completion of construction or for turn up to the determined level. However, the contractor can claim an extension of time in some conditions. In the presence of one of the conditions below the contractor can claim extension of time;

- a) A variation or other substantial change in the quantity of an item of work included in the contract,
- b) A cause of delay giving an entitlement to extension of time under sub-clause of these conditions,
- c) Exceptionally adverse climatic conditions,
- d) Unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions, or
- e) Any delay, impediment or prevention caused by or attribute to the Employer, the Employer's personnel, or the Employer's other contractors.

In one of these conditions the contractor can claim extension of time by giving a notice to the engineer.

The conditions to claim of extension of time in the Turkish General Specifications for the Construction Affairs are similar to the FIDIC Red Book conditions. According to the Turkish General Specifications for the Construction Affairs the contractor has to give a written notification for his claim, the contractor have to give the notification in the given period. If the contractor is late in the delivery of the notification, the notification will be void.

3.8. According to the FIDIC Red Book if the Contractor suffers delay and/or incurs cost from complying with the Engineer's instructions and/or from resuming the work, the contractor can claim an extension of time for any such delay and payment for any such cost. The contractor shall not be faulty for the delay to claim an extension of time and payment. On the other hand according to the Turkish General Specifications for the Construction Affairs after the stoppage decision of the employer and when the work restarts, if the contractor encounters a delay and/or an additional expense and if the delay and the additional expense is unpredictable the contractor can claim an extension of time and payment for the additional cost. The Turkish General Specifications for the Construction Affairs do not mention suspension exactly. The difference between the FIDIC Red Book and the Turkish General Specifications for the Construction Affairs is; the FIDIC regulates the condition after the suspension however, the Turkish General Specifications do not regulate that condition.

3.9. If the Contractor incurs cost as a result of the employer taking over and/or using a part of the works, other than such use as is specified in the contract or agreed by the contractor, the Contractor can claim a payment for the additional expenses according to FIDIC Red Book. The Turkish General Specifications for the Construction Affairs has a parallel provision. In case of usage and management of the work or the in the situations which the contractor is not faulty, the employer shall pay for the expenses for the necessary repairs, these expenses are not one of the contractors' obligations.

3.10. According to the FIDIC Red Book condition about the interference with tests on completion if the contractor suffers delay and/or incurs cost as a result of this delay in carrying out the tests on completion, the contractor can claim an extension of time in any such delay and payment in any such cost plus profit. However, the Turkish General Specifications for the Construction Affairs have not got any clause about the interference with the tests on completion.

3.11. In the conditions of the changes in the laws or in such interpretations, made after the base date. As a result of these changes, if the contractor suffers (or will suffer) delay and/or incurs (or will incur) additional cost the contractor can claim an extension of time for any such delay and payment for any such cost. On the other hand the Turkish General Specifications for the Construction Affairs have not got a clause about the adjustments for changes in legislation because it is an affair.

3.12. According to the FIDIC Red Book conditions if the contractor suffers delay and/or incurs cost from rectifying the loss or damage, the contractor can claim an extension of time for any such delay and payment of any such cost. According to this clause the cost plus profit shall be payable. However, the Turkish General Specifications for the Construction Affairs have not got a clause about the consequences of employers' risks.

3.13. The provision of insurance in the FIDIC Red Book is not only for the contractor but also for the employer. The FIDIC uses the term "insuring party" and this term is for the both sides. The contractor and the employer can be the insuring party and according to this the demandant/claimant side will change. According to FIDIC if the insuring party fails to effect any of the insurances it is required to effect and maintain under the contract, or fails to provide satisfactory evidence and copies of policies, the other party may effect insurance for the relevant coverage and pay the premiums due. The insuring party have to pay the amount of these premiums to the other party. On the other hand the Turkish General Specifications for the Construction Affairs mention the rescission of the contract and liquidation. After the date of rescission of the contract or liquidation the contractors' insurance will continue until the employer awards the contract to a new contractor. The contractor has the right to claim the payment for his insurance from the employer.

3.14. According to the FIDIC Red Book, if the contractor has to make additional expenses or suffers delay because of a force majeure, the contractor can claim an extension of time for any such delay and payment of the additional expenses. The conditions of force majeure which the FIDIC Article 19.4 states are not limited however, the force majeure which are stated in the Turkish General Specifications for the Construction Affairs are limited. In case of a force majeure the contractor can claim extension of time, to claim an extension of time the situation has to abide to the criteria which stated in the Turkish General Specifications for the Construction Affairs. If the situation did not abide to the criteria, the contractor cannot claim for an extension of time. If there is an unforeseeable situation and if there is a delay because of that situation the government will give an

extension of time to the contractor, the contractor can also claim for it. In case of a delay because of the force majeure the government will examine the situation and as a result of the examination the employer shall give an extension of time.

3.15. Under Clause 20.1 of the FIDIC Red Book the Contractor must give notice of claim not later than 28 days after the contractor became aware, or should have become aware, of the event or circumstances giving rise to the claim. The exact conditions are valid for the employer. Clause 20.1 requires the Contractor to follow up his notice within 42 days of the occurrence of the circumstances giving rise to claim, not within 42 days of giving the notice, or within such other period as may be proposed by the Contractor and approved by the Engineer. The Contractor shall send a fully detailed claim which includes full supporting particulars of the claim to the Engineer. According to the article 29/7 of the Turkish General Specifications for the Construction Affairs the contractor have to give a written notice in 20 days after the events that cause delay to the employer who is the government. The contractor shall state the circumstances and its' details which caused delay and has to state how long the time has to extended for the completion. If the delay is because of the employer (government), the obligation to give a written notice to the government is not required. If the contractor do not give the notice in the given time the written notice which is given after 20 days will not be considered. The Turkish General Specifications for the Construction Affairs does not regulate any other time.

As a result of the comparison above, some of the contractors' claims are similar and some of them are contradicting in the FIDIC Red Book and the Turkish General Specifications for the Construction Affairs. Generally the major difference is about the Employer, according to the Turkish General Specifications for the Construction Affairs the Employer is the government however, in the FIDIC Red Book the Employer is an institution or a natural person.

Conclusion and Suggestions

In Turkey there is not an engineer as mentioned in The FIDIC Red Book because according to the Turkish General Specifications for the Construction Affairs the employer is usually the government and the engineer is usually the employee of the government. Therefore it is very difficult to mention objectivity of the engineer. For this reason the position of the engineer must be noted when doing business in Turkey. The Turkish General Specifications for the Construction Affairs ought give more rights to the contractor and the engineer must separated from the government to ensure objectivity and equality. If this is provided, the time, source, money optimization will be more accurate for the construction project in question.

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