

## 'Pacta Sunt Servanda': Which Form of Contract to Use in the Construction Industry

**Authors :** Ahmed Stifi, Sascha Gentes

**Abstract :** The contract in its simplest definition is an agreement involving parties with a number of documents which may be as little as a marriage contract involving two parties or as big as a contract of construction and operation of a nuclear power plant involving companies and stakeholders with hundreds or even thousands of documents. All parties in the construction industry, not only the contract experts, agree that the success of a project is linked primarily to the form of contract regulating the relationship between stakeholders of the project. Therefore it is essential for the construction industry to study, analyze and improve its contracts forms continuously. However, it should be mentioned that different contract forms are developed to suit the construction evolution in term of its machinery, materials and construction process. There exist some similarities in some clauses and variations in many of these forms depending upon the type of project, the kind of clients and more importantly the laws and regulations governing the transaction in the country where the project is carried out. This paper will discuss the most important forms of construction contracts starting from national level, intended to the contract form in Germany and moving on to the international level introducing FIDIC contracts and its different forms, some newly developed contracts forms namely the integrated form of agreement, the new engineering contract and the project alliance agreement. The result of the study shows that many of the contract's paragraphs are similar and the main difference comes in the approach of the relationship between the parties. Is it based on co-operation and mutual trust, or in some cases a load of responsibility for a particular party which increases the problems and disputes that affects the success of the project negatively. Thus we can say that the form of the contract, that plays an essential role in the approach of the project management, which is ultimately the key factor for the success of the project. So we advise to use a form of contract, which enhance the mutual trust between the project parties, contribute to support the cooperation between them, distribute responsibility and risks on an equitable basis and build on the principle "win-win". In addition to the conventional role of the contract it should integrate all parties into one team to achieve the target value of the project.

**Keywords :** contract, FIDIC, integrated form of agreement, new engineering contract, project alliance agreement

**Conference Title :** ICSECM 2015 : International Conference on Structural Engineering, Construction and Management

**Conference Location :** Boston, United States

**Conference Dates :** April 20-21, 2015