

A Comparative Analysis of Claims Procedure under the FIDIC Yellow Book, 2017 and the IRR of RA 9184 for Design and Build Projects

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Abstract- Design and Build (DB) procurement is becoming a preferred approach for public infrastructure projects because it promotes better coordination, faster delivery, and clearer accountability. In the Philippines, DB projects are guided by the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, while many foreign-assisted projects rely on the FIDIC Yellow Book 2017 (FIDIC for brevity). This research proposal presents a qualitative comparative study that examines how each framework handles claims procedures. In this research, the two systems will be highlighted on how they differ and where they are aligned. This research also aims to propose practical recommendations which will improve streamline the claim management and help minimize disputes in Philippine public infrastructure projects.

I. INTRODUCTION

Design and Build (DB) has become a popular alternative procurement method to Design-bid-build (DBB) in developing countries (Konchar & Sanvido, 1998). It is a project delivery approach in which both project design and construction undertakings are carried out by a single entity. Design and Build is currently the fastest-growing project delivery approach in the construction market in the United States and all over the world (Hashem, 2014). While DBB is a project delivery method in which the owners enters into a contract, appoints an Architect/Engineer (A/E) firm for design services based on the requirements provided by the owner (Hale et.al., 2009). It is also proven of an inadequate expectation of finishing the project within the budget, completing within the stipulated time and satisfaction on quality by owner (Kartam et al., 2000). Due to this, alternative delivery methods such as Design-Build (DB), Private Finance Initiative (PFI), and Build-Operate-Transfer (BOT) have been introduced and are now being considered by public sector owners to address the limitation of the traditional Design-Bid-Build (DBB) approach.

In the Philippines, several projects are executed under the Design-bid-build scheme. Currently, there are projects implemented by the Department of Public Works between 2016-2025 that are using the Design and Build scheme for project implementation. Most of the private sector in Philippines has widely used the design-build delivery system with a great deal of success. However, in public sector, design and build is still alleged to be subjective and complicated. It is because the owner is still skeptical and hesitant (Ndekugri & Turner, 1994). Seeing the number of projects implemented by a national government agency in the Philippines, it is perceived that the experience in the area of DB construction project is quite limited among the public sector.

In the Philippine setting, procurement of public projects is executed using the Implementing Rules and Regulations (IRR) 2016 of the Republic Act No. 9184. Provisions providing the guidelines in the procurement and implementation of infrastructure projects under a design and build scheme. Almost all of the projects that was procured by the government uses the RA 9184 as a basis on the execution of the project. On the other hand, the rising number of the foreign funding sources has been on demand specially in supporting public projects. This rooted the confusion on what guidelines is applicable and most efficient to use as basis of procurement and implementation of projects.

In the midst of the contract administration of infrastructure projects, the management of claims is one of the complex procedures and typically the root of dispute between parties. Conflicting provisions for claim procedures from submission to approval/resolution results in difference of interpretations and high risk of dispute. By assessing the difference by providing a systematic comparison

of these procedures is therefore essential to clarify the differences and support more comprehensible and effective contract management practices.

1.2 Objective of the Study

General Objective

This study aims to examine and compare the claims procedures outline in the FIDIC Yellow Book 2017, and the RA 9184 IRR, to explore potential alignment of the two in the execution of the projects.

Specific Objectives:

- A. To identify the difference of provisions of parties' roles and responsibilities of project stakeholders in the submission and evaluation of claims;
- B. To provide analysis with regards to similarities and differences in contract implementation requirements, particularly in timelines, documentation, and notification periods for claims;
- C. To develop recommendations for collaboration of the provisions of RA 9184 and the FIDIC Yellow Book in the future design and build projects' contracts

1.3 Significance of the Study

The significance of the study lies in its potential contribution to both government agencies and private sector practitioners involved in the preparation and administration of DB contracts. By highlighting the limitations and inconsistencies in existing claims procedures, the research provides a foundation for minimizing disputes and enhancing the overall efficiency, predictability, and effectiveness of infrastructure project management in the Philippines.

II. METHODOLOGY

2.1 Research Design

This study employs a qualitative type of research design, through an in-depth content analysis of the two primary guidelines to obtain information of the claims procedure during contract administration within the DB framework. This methodology is appropriate as the research focuses on the interpretation and comparison of the texts rather than empirical field data.

2.2 Data Collection Method

The study is centered entirely on documentary sources. The primary documents include the FIDIC Yellow Book 2017, and RA 9184 IRR. Secondary literature will be composed of scholarly articles, government circulars, and procurement policy issuances which will be used as support to the context but will be not part of the comparative data.

2.3 Data Analysis

The data analysis will follow the Asian Development Bank's (ADB) Contract Management Phases, the Pre-Contract Award, Contract Administration, and Contract Closure. The provisions with regards to the claim procedures during Contract Administration will be extracted and compared using a matrix guided by the following criteria:

| Criteria | Source/Basis |
|-----------------------------|--|
| Notification Periods | Timelines for submitting notices of claims |
| Documentation Requirements | Required substantiation and supporting documents |
| Role of the Engineer/Owner | Responsibilities in evaluating and determining claims |
| Claim Assessment Procedures | Steps involved in validating and processing claims |
| Dispute Escalation | Mechanisms available when claims are contested or denied |

These criteria are grounded in established literature, including ADB's Contract Management Guidance (2021) and studies on risk allocation and construction performance.

The criteria for this study are grounded in established contract management and procurement literature. Contract management phases follow ADB's Contract Management Guidance Note on Procurement, 2021. Variations and claim procedures derive from contract administration and risk management research (Bunni, 2003; Love & Edwards, 2004). Performance security criteria are drawn from public procurement regulations (RA 9184 IRR, World Bank, 2020).

III. RESULTS AND DISCUSSION

Notification Period

The submission of the claim by the Contractor is one of the vital steps in the claims procedure. The provisions for the Notification Period was tabulated with the following subcriteria as extracted from the two guidelines:

| SubCriteria | FIDIC Yellow Book 2017 | RA 9184 |
|------------------------------|------------------------|------------------------|
| | Clause Number | Summary |
| Initial Notice of Claim | 20.2.1 | Annex E (1.5 and 11.1) |
| Submission of Detailed Claim | 20.2.4 | Annex E (1.5 and 11.1) |
| Ongoing | 20.2.6 | N/A |

| Events | | Contract or shall submit interim reports every 28 days until the event ends. The final claim shall be due for submission within 28 days after the effects of such event ends. | | provisions/procedure address claims with continuous effects. |
|-----------------------------|--------|---|----------------|--|
| Consequences of Late Notice | 20.2.1 | Claims that are not submitted within specified time shall be considered time-barred, unless the Engineer waives the time bar for fairness. | Annex E (11.1) | Variation and CTE. Failure to provide notice constitute a waiver by the Contractor of any claim. |

*cd = calendar days

FIDIC provides the Contractor 28 days to submit their notice of claim after becoming aware of the event the Contractor, followed by a fully detailed claim to be submitted within 84 days. On the event of continuous effects of reasons to justify the claim, FIDIC also provided that the initial notice of claim shall be considered interim, and the Contractor needs to submit fully detailed claims at monthly intervals. In case the Contractor did not notify the Engineer of the occurrence of the reasons to justify the claim within 28 days, or the Contractor failed to submit within the same timeframe, the claim shall be considered time-barred. However, the Engineer may waive the time bar for fairness.

The provisions that the FIDIC provided include all types of claims, whether monetary or extension of

contract time. These deadlines will help identify issues early and reinforce timely dispute resolution, if any. The structured timeline of FIDIC promotes efficiency, predictability, and early dispute avoidance, which is an important aspect in large-scale infrastructure projects.

Meanwhile, RA 9184 IRR prescribed the Contractor to submit a notice within 7 cd after the work needed to mitigate the reasons for justifying the claim, or 28 cd after the occurrence of such circumstances. Likewise, it also requires the Contractor to submit a full and detailed particulars within 7 cd after the work has started, or 28 cd after the occurrence of the reasons of the claim. In the case of extension of time, RA 9184 until 30 cd after the needed work has been commenced, or before the contract time expires, to submit a notice of claim. Lastly, failure to provide a notice waives the Contractor of any claim.

In contrast, FIDIC and RA 9184 provide almost the same timeframe to submit a notice of claim, and both time-barred. FIDIC provides flexibility in the case of issues/events with continuous effects which may be used to mitigate unforeseeable effects.

Documentation Requirements

| SubCriteria | FIDIC Yellow Book 2017 | | RA 9184 | |
|----------------------|------------------------|---|---------------|---|
| | Clause Number | Summary | Clause Number | Summary |
| Supporting Documents | 20.2.4 | The Contractor is required to submit a) detailed description of the event giving rise to the claim b) legal/contractual basis of the claim c) all contemporary records d) detailed supporting particulars of the amount of additional payment, and/or extension of time | Annex E | The Contractor is required to submit documentation consistent with COA audit standards, including breakdown of cost, legal basis, justification, and technical reports. |

| | | | | |
|--------------------------|--------|--|---------|--|
| Completeness Requirement | 20.2.4 | The Contractor is required to submit (b), unless, the claim shall be deemed to have lapsed, and it was no longer considered as a valid notice. | Annex E | Contractors must submit evidences as a proof that the event is beyond their control and the claim is reasonable and necessary, and corresponding cost breakdown. |
|--------------------------|--------|--|---------|--|

In evaluating claims, the FIDIC framework outlines several documentary requirements that the Contractor must submit. It places strong emphasis on establishing a clear legal and contractual basis for the claim, as this forms the foundation of the Engineer's evaluation. FIDIC also requires the submission of contemporary records such as site data, correspondence, and other relevant evidence to substantiate the Contractor's position. The Engineer, acting as the reviewer, may further request additional documents if needed to fully assess the claim. Overall, FIDIC provides a set of general but sufficient documentation requirements that enable the Contractor to justify its entitlement.

RA 9184 generally requires the Contractor to demonstrate that the event giving rise to the claim is beyond the control of the parties. The documentation must also comply with the standards of the Commission on Audit (COA), which typically include cost breakdowns, justifications, and supporting reports. Unlike FIDIC, RA 9184 does not prescribe a specific or uniform list of required documents. Instead, the documentary requirements vary across government agencies, but must always align with established accounting, auditing, and procurement regulations. This results in a more variable and audit-driven approach to claim documentation. rules governed by the implementing agency.

Role of the Engineer/Owner

| SubCriteria | FIDIC Yellow Book 2017 | | RA 9184 | |
|----------------------------|------------------------|--------------------------|---------------|----------------------|
| | Clause Number | Summary | Clause Number | Summary |
| Response to Initial Notice | Clause 3 | The Engineer responds to | Annex E and G | The Procuring Entity |

| | | | | |
|---------------|------------|---|---------------|---|
| | | the notice of claims. | | evaluates claims. RA 9184 does not provide allowable response period. <u>Timelines maybe dependent on the existing rules and regulations of the agency.</u> |
| | Clause 2 | The Employer as the owner of the project, has the right to vary the works in terms of the as stipulated in the contract. | | |
| Determination | Clause 3.7 | The Engineer shall act neutrally between the parties and shall not be deemed to act for the Employer. The Engineer may issue a determination on the submitted claims. | Annex E and G | The Procuring Entity is both the owner of the project and the evaluator of the claim. |

In the FIDIC framework, the Engineer serves as the primary evaluator of the Contractor’s claim. The Engineer reviews the submission and may either reject it or endorse it to the Employer. Meanwhile, the Employer retains the authority to modify or vary the works as allowed by the contract.

Under RA 9184, the situation is different. The Procuring Entity acts both as the project owner and the evaluator of the Contractor’s claim. Because of this dual role, the Procuring Entity is not a neutral party. The final decision on the claim rests entirely with the Procuring Entity.

Claim Assessment Procedures

| SubCriteria | FIDIC Yellow Book 2017 | | RA 9184 | |
|-------------|------------------------|--|---------------|---|
| | Clause Number | Summary | Clause Number | Summary |
| Assessment | Clause 20 | Assessment is based on contractual entitlement, causation, and quantification. The Engineer must consider parties’ opinions and apply contract provisions objectively. FIDIC follows a structured multi-step process: Submission of fully detailed claim, Engineer’s review, and determination | | RA 9184 does not prescribe a uniform claims procedure. Claims are evaluated based on reasonableness, necessity, compliance with procurement rules, and audit defensibility. RA 9184’s process include technical evaluation, legal review, and financial validation. |
| Obligations | Clause 20 | All parties are obligated to comply with the strict and enforceable timelines. The Engineer is expected to make a fair determination of the claim. | | The Contractor is obliged to comply with the strict timeframe of submissions of the claims. |

Under the FIDIC framework, the assessment of claims is guided by Clause 20, which lays out a clear, structured, and objective procedure. The Engineer plays a central role in this process, reviewing the claim and issuing a fair determination based on an impartial consideration of both the Contractor’s and the Employer’s positions.

In contrast, RA 9184 does not provide a uniform claims assessment procedure. Instead, the evaluation

process varies depending on the nature of the claim submitted by the Contractor. Claims are assessed based on their reasonableness, necessity, and alignment with procurement regulations, as well as their defensibility under government audit standards. This results in a more bureaucratic process, often requiring multiple layers of validation including technical assessment, legal review, and financial evaluation before a claim can be resolved. Although RA 9184 lacks a standardized claims workflow, it reinforces the Contractor’s responsibility to strictly comply with required timeframes and procedural obligations.

Dispute Escalation

| SubCriteria | FIDIC Yellow Book 2017 | | RA 9184 | |
|-----------------------------------|------------------------|--|-----------------------|--|
| | Clause Number | Summary | Clause Number | Summary |
| Dispute Escalation and Resolution | 21.1 | The Dispute Adjudication is appointed at the start of the contract. | Rule XVIII Section 59 | RA 9184 requires that contracts arising from public procurement must contain an arbitration clause. Disputes must be submitted to the arbitration in accordance with Arbitration Law and Alternative Dispute Resolution Act of 2004. |
| | 3.7 | The Engineer first attempts to reach an agreement or makes a “fair determination” on a claim. | | |
| | 3.7.5 | If either party disagrees with the Engineer’s determination, they must issue a Notice of Dissatisfaction within 28 days. Once a valid NOD is issued, the matter is officially classified as a “Dispute” and can be referred to DAAB. | | |

The FIDIC Yellow Book 2017 sets out a highly structured and time-critical framework for dispute escalation, where compliance with prescribed “time-bars” becomes a prerequisite for pursuing any form of contractual relief. Under Clauses 20 and 21, the transition from a claim to a formal dispute is

tightly regulated through specific procedural windows: contractors have 28 days to submit a Notice of Dissatisfaction (NOD) after receiving the Engineer’s determination, followed by a 42-day period within which the matter must be elevated to the Dispute Avoidance/Adjudication Board (DAAB). From an analytical standpoint, the “Final and Binding” effect of these provisions operates almost as a contractual cutoff mechanism, failure to act within the stipulated periods effectively extinguishes the party’s right to challenge the decision. This design reflects FIDIC’s broader intent to promote contemporaneous dispute resolution, ensuring that issues are addressed and settled within the active life of the project rather than accumulating into a backlog of unresolved claims at project closeout.

In contrast, the dispute escalation process under the RA 9184 IRR is more bureaucratic and less straightforward. Instead of using a neutral body like FIDIC’s DAAB for interim decisions, RA 9184 requires disputed claims to pass through several administrative layers within the Procuring Entity. Typically, the issue is first elevated to the Head of the Procuring Entity (HOPE) for an administrative ruling before it can be brought to the Construction Industry Arbitration Commission (CIAC) under the country’s ADR framework.

Although the IRR sets certain periods for administrative actions, it does not impose strict “time-bar” rules similar to FIDIC’s Sub-Clause 21.4, where missing the 42-day referral period makes the Engineer’s determination final. Under RA 9184, delays in escalation do not immediately invalidate a claim; instead, they often lead to slow administrative processing and increased exposure to audit findings. This shows that while RA 9184 allows more flexibility for government oversight, it lacks the procedural discipline needed to prevent disputes from dragging on even after the project has been completed.

IV. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

4.1 Summary of Findings

This study compared the claims management procedures of the FIDIC Yellow Book 2017 and the IRR of RA 9184 for Design and Build (DB) projects

in the Philippine public sector. The study provides matrix based on the notification period, documentary requirements, roles of the Engineer/Owner, claim assessment procedures, and dispute escalation mechanisms, and there are identified differences in how each guideline approaches claims administration.

The findings show that FIDIC Yellow Book 2017 adopts a highly structured, contract-driven, and time-sensitive approach. Its provisions under Clauses 20 and 21 establish strict requirements for notice, detailed submissions, and dispute escalation. The Engineer is mandated to act neutrally, and the Contractor must provide contemporary records and a clear contractual basis for every claim. FIDIC's system is designed to promote early issue identification, objective evaluation, and contemporaneous dispute resolution, preventing unresolved claims from accumulating toward the end of the project.

RA 9184 IRR follows a governance-centric and audit-oriented model. While it prescribes timelines for certain types of claims (e.g., variations and contract time extensions), it does not provide a uniform claims procedure applicable to all claim types. Documentation requirements vary across agencies and are heavily influenced by COA audit standards, emphasizing cost reasonableness, necessity, and compliance with procurement rules. The Procuring Entity acts both as the project owner and the evaluator of claims, which removes the neutrality present in the FIDIC system. As a result, the RA 9184 process tends to be bureaucratic, involving multiple layers of technical, legal, and financial review.

4.2 Conclusions

The comparative analysis highlights several key insights:

1. Notification Periods

Both frameworks require timely submission of claims, but FIDIC enforces strict time-bars, while RA 9184 allows more flexibility. FIDIC's structured deadlines support efficient dispute avoidance, whereas RA 9184's flexibility may lead to administrative delays.

2. Documentation Requirements

FIDIC requires contemporary records and a clear contractual basis, ensuring objective evaluation. RA 9184 requires compliance with COA standards, resulting in more variable and audit-driven documentation requirements.

3. Role of the Engineer/Owner

FIDIC's Engineer acts as a neutral evaluator. RA 9184's Procuring Entity is both owner and evaluator, which may affect impartiality and decision-making.

4. Claim Assessment Procedures

FIDIC follows a consistent, multi-step process grounded in contractual entitlement. RA 9184 lacks a standardized procedure, leading to variability across agencies and potential delays.

5. Dispute Escalation

FIDIC's DAAB mechanism ensures early resolution and strict procedural discipline. RA 9184 relies on administrative review and arbitration under ADR laws, which may prolong dispute resolution.

Overall, the study concludes that FIDIC provides procedural discipline and neutrality, while RA 9184 provides administrative flexibility and audit compliance. These differences create challenges in hybrid or foreign-funded DB projects where both frameworks may apply. Harmonization is therefore necessary to improve efficiency, reduce disputes, and strengthen claims management in Philippine public infrastructure projects.

4.3 Recommendations

Based on the findings, the following recommendations are proposed to enhance claims management practices and improve alignment between FIDIC and RA 9184:

1. Develop a Standardized Claims Procedure for RA 9184

Government agencies should adopt a uniform claims management workflow that outlines steps for notice, documentation, evaluation, and resolution. This would reduce inconsistencies and improve predictability across DB projects.

2. Introduce a Neutral Technical Review Mechanism

To address the lack of impartiality in RA 9184, agencies may establish a third-party technical review

panel or a DAAB-like mechanism for complex claims. This would promote fairness and reduce disputes.

3. Harmonize Documentation Requirements

A standardized documentation template should be developed to satisfy both FIDIC's contemporary record requirements and COA's audit standards. This would streamline submissions and reduce repetitive requests for additional evidence.

4. Strengthen Capacity Building in Claims and Contract Management

Training programs for government engineers, procurement officers, and project managers should focus on FIDIC principles, risk allocation, and claims evaluation. Improved institutional capacity will lead to more efficient and consistent claim assessments.

5. Establish Internal Timelines for Claims Processing

Even without strict time-bars, agencies should adopt internal deadlines for reviewing and resolving claims. This would minimize administrative stagnation and prevent claims from extending beyond project completion.

6. Issue Supplemental Guidelines for Hybrid FIDIC-RA 9184 Projects

For foreign-funded or mixed-framework projects, agencies should develop bridging guidelines that clarify how conflicts between FIDIC and RA 9184 provisions will be resolved. This will reduce confusion and ensure consistent contract administration.

7. Promote Early Dispute Avoidance Practices

Government agencies should adopt early warning mechanisms similar to FIDIC's contemporaneous resolution principles. Encouraging early communication and documentation can significantly reduce the likelihood of disputes.

5.3 Final Remarks

This study demonstrates that effective claims management requires a balance between contractual discipline and public-sector accountability. As the Philippines continues to implement large-scale DB projects, harmonizing FIDIC's structured approach with RA 9184's governance framework will be essential to improving project delivery outcomes. By

adopting the recommendations presented, government agencies can strengthen their claims management systems, reduce disputes, and enhance the overall efficiency and transparency of public infrastructure procurement.

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