The role of the Engineer in accordance with FIDIC

We have already learned that a typical Contract includes the following:

- Form of Tender
- Tender Security Bank Guarantee
- Form of Agreement
- Performance Security Bank Guarantee
- Advance Payment for Mobilization
- Bank Guarantee
- Declaration Form
- Information for Tenderers
  - Specifications
  - Conditions of Contract
  - Part I - General Conditions
  - Part II - Conditions of Particular Application and Amendments to Part I - General Conditions
  - General Index

Engineer’s Duties and Authority

(a) The Engineer shall carry out the duties specified in the Contract.

(b) The 

Engineer may exercise the authority specified in or necessarily to be 

Authority implied from the Contract, provided, however, that if the Engineer is required, under, the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising any such authority, particulars of such requirements shall be set out in Part II of these Conditions. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

(c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.
Engineer’s Representative

- Sub-clause 2.2

- The Engineer’s Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

Engineer’s Authority to Delegate

Sub-Clause 2-3:

- The Engineer may from time to time delegate to the Engineer’s Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation.

- Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.

Engineer’s Authority to Delegate

Sub-Clause 2-3:

- Any communication given by the Engineer’s Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that:

(a) any failure of the Engineer’s Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof, and

(b) if the Contractor questions any communication of the Engineer’s Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

Appointment of Assistants

Sub-Clause 2.4:

- The Engineer or the Engineer’s Representative may appoint any number of persons to assist the Engineer’s Representative in the carrying out of his duties under Sub-Clause 2.2.
Appointment of Assistants

Sub-Clause 2.4:

- He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer’s Representative.

Instructions of the Engineer

Sub-Clause 2.4:

- The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the works and the remedy of any defects, all in accordance with the Contract.

Instructions of the Engineer

- The Engineer has the power to issue additional or modified drawings. This is an important power because many Contracts under the FIDIC Conditions of Contract rely on a small number of Drawings in the Tender documents.

Instructions in Writing

Sub-Clause 2.5:

- Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.

Who is the ‘Engineer’?

- The ‘Engineer’ is defined as the person appointed by the Employer and named in the Appendix to Tender. The word ‘person’ can mean a company, so the Engineer may be named as a firm of Consulting Engineers rather than an individual.

- If the Engineer is a company, then the company should designate an individual to carry out the role of the Engineer.

- The Engineer has an extremely important role in the administration of the Contract and the way in which he carries out his duties will have a major impact on the work of the Contractor and the success of the project.
Replacement of the Engineer

• If the Employer intends to replace the Engineer, the Employer shall not less than 42 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer.

• The Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection with supporting particulars.

Replacement of the Engineer

• However a change to the named individual, when the Engineer is a company, does not require this notification.

• Reasonable notice and discussion would assist in efficient administration.

• A change of Engineer could also mean changes to other assistants appointed.

• The Contractor should indicate as quickly as possible whether he intends to object to the replacement Engineer so that the 42 day period can be used as a changeover period as well as a notice period.

Determinations

• The Engineer shall consult with each Party in an endeavour (try) to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract.

• The determination must express the rights and obligations of the Parties in accordance with the Contract and the applicable law, regardless of the preference of either Party.