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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

"House rules"

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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

Introductions

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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

PURPOSE

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PURPOSE

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Why are construction contracts important to us?
- So why FIDIC?
- Why the updates and what has been updated?
- How to get the message across?

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FOOD FOR THOUGHT

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

Overall dispute cause	2020 Rank	2019 Rank
Owner/contractor/subcontractor failing to understand and/or comply with its contractual obligations	1	3
Owner-directed changes	2	*
Third-party or force majeure events	3	*

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FOOD FOR THOUGHT

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

ARCADIS
Global Construction Dispute Report

DISPUTE CAUSE	2015 RANK	2016 RANK
Failure to properly administer the contract	1	1
Poorly drafted or incomplete and unsubstantiated claims	2	2
Employer/Contractor/Subcontractor failing to understand and/or comply with its contractual obligation	5	3
Errors and/or omissions in the contract document	3	4
Incomplete design information or employer requirements (for Design-Build and Design & Construction)	4	5

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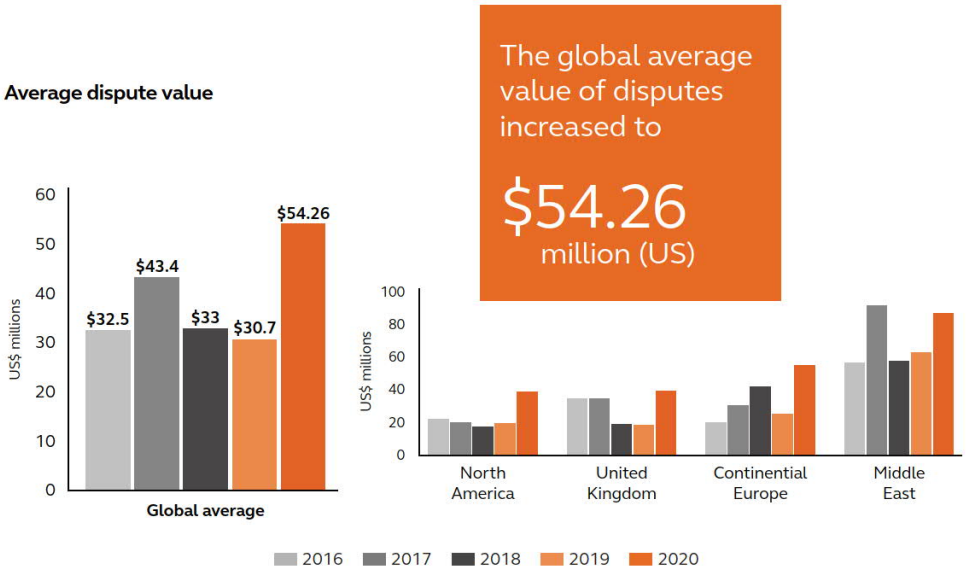
FOOD FOR THOUGHT

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS



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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

SO WHY FIDIC

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SO WHY FIDIC?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Well-accepted globally
- Different contract formats for different applications

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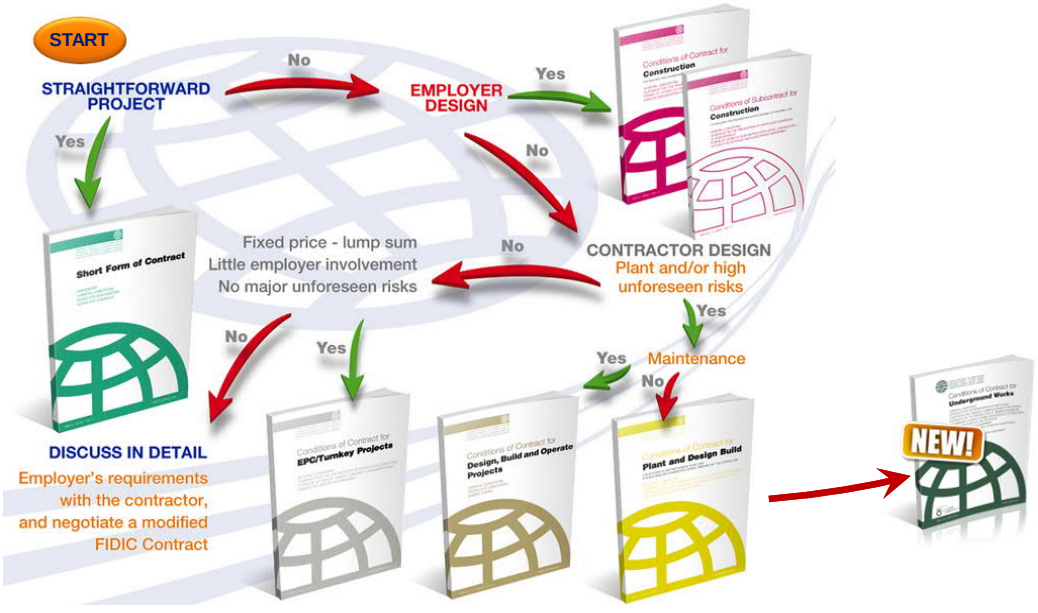
FIDIC: DIFFERENT CONTRACT FORMS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS



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SO WHY FIDIC?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Well-accepted globally
- Different contract formats for different applications
- Three main contract forms

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FIDIC: MAJOR FORMS OF CONTRACT

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- RED Book
  - CoC for Construction of Building and Engineering Works Designed by the Employer
- YELLOW Book
  - CoC for the Plant and Design Build, for Electrical and Mechanical Plant (and for Building and Engineering Works), Designed by the Contractor
- SILVER Book
  - CoC for EPC/Turnkey Projects

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SO WHY FIDIC?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Well-accepted globally
- Different contract formats for different applications
- Three main contract forms
- Standardization

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SO WHY FIDIC?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Well-accepted globally
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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

SO WHY THE CHANGES?

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SO WHY THE CHANGES

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Increase clarity and give more certainty
- Reduce the risk of disagreements over the interpretation of contractual terms
- Introduce mechanisms for disputes avoidance; and
- Improve contractual provisions by making them more
  - prescriptive
  - introducing step-by-step project management and procedural mechanisms and
  - setting out exactly what is expected from each of the different parties.

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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

SUMMARY OF CHANGES

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- General Conditions of Contract (Old vs New)

FIDIC 1999	
20:	Claims, Disputes and Arbitration

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- General Conditions of Contract (Old vs New)

FIDIC 1999		FIDIC 2017	
20:	Claims, Disputes and Arbitration	20:	Employer's and Contractor's Claims
		21:	Disputes and Arbitration (Emphasis on "avoidance")

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Particular Conditions (Old vs New)
  - Part A: Contract Data
  - Part B: Special Provisions

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Particular Conditions (Old vs New)
  - Part A: (
  - Part B:

14.3 Application for Interim Payment

The Contractor shall submit a Statement to the Engineer after the end of the period of payment stated in the Contract Data (if not stated, after the end of each month). Each Statement shall:

(a) be in a form acceptable to the Engineer;

(b) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data; and

(c) show in detail the amounts to which the Contractor considers that the Contractor is entitled, with supporting documents which shall include sufficient detail for the Engineer to investigate these amounts together with the relevant report on progress in accordance with Sub-Clause 4.20 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

(i) the estimated contract value of the Works executed, and the Contractor's Documents produced, up to the end of the period of payment (including Variations but excluding items described in sub-paragraphs (ii) to (x) below);

(ii) any amounts to be added and/or deducted for changes in Laws under Sub-Clause 13.6 [*Adjustments for Changes in Laws*], and for changes in Cost under Sub-Clause 13.7 [*Adjustments for Changes in Cost*];

(iii) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the amounts under sub-paragraphs (i), (ii) and (vi) of this Sub-Clause, until

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Particular Conditions (Old vs New)
  - Part A: (
  - Part B:

14.3 Application for Interim Payment

The Contractor shall submit a Statement to the Engineer after the end of the period of payment stated in the Contract Data (if not stated, after the end of each month). Each Statement shall:

(a) be in a form acceptable to the Engineer;

(b)

(c)

Sub-Clause	Data to be given	Data
14.3.....	period of payment	
14.3(b).....	number of additional paper copies of Statements	
14.3(iii).....	percentage of retention.....	%
14.3(iii)..... (i)	limit of Retention Money (as a percentage of Accepted Contract Amount)	%
14.5(b)(i)	Plant and Materials for payment when shipped.....	

(ii) any amounts to be added and/or deducted for changes in Laws under Sub-Clause 13.6 [*Adjustments for Changes in Laws*], and for changes in Cost under Sub-Clause 13.7 [*Adjustments for Changes in Cost*];

(iii) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the amounts under sub-paragraphs (i), (ii) and (vi) of this Sub-Clause, until

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FIDIC 1999 →FIDIC 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

SPECIAL PROVISIONS: FIDIC 5 Golden Principles

- Duties, rights, obligations and responsibilities should generally be as defined in the General Conditions, and appropriate to the requirements of the project
- The Particular Conditions must be drafted clearly and unambiguously;
- The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions
- The parties should have a reasonable time in which to perform their obligations and exercise their rights
- All formal disputes must be referred to a Dispute Avoidance/Adjudication Board

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FIDIC 1999 →FIDIC 2017

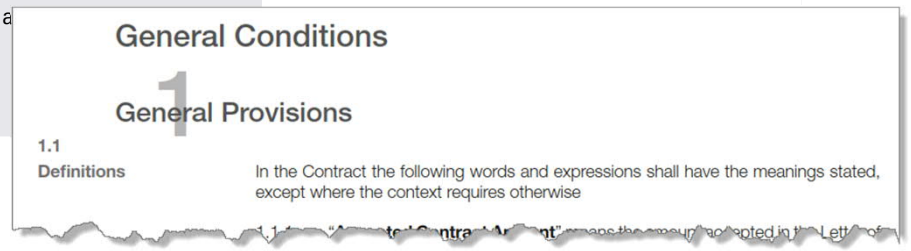
INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- DEFINITIONS (Old vs New)

FIDIC 1999

Split in sub-sections

- Contract
- Parties & Persons
- Dates, Tests, Periods and Completion
- Money & Payments
- Works a
- Other


General Conditions

1 General Provisions

1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated, except where the context requires otherwise

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DEFINITIONS & CLARIFICATIONS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Review / Outcome of a Review

"**Review**" means examination and consideration by the Engineer of a Contractor's submission in order to assess whether (and to what extent) it complies with the Contract and/or with the Contractor's obligations under or in connection with the Contract.

RED BOOK

The Engineer shall, within 21 days after receiving the Contractor's Document and this Notice from the Contractor, give a Notice to the Contractor:

(i) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works); or

(ii) that the Contractor's Document fails (to the extent stated) to comply with the Contract, with reasons.

If the Engineer gives no Notice within this period of 21 days, the Engineer shall be deemed to have given a Notice of No-objection to the Contractor's Document.

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DEFINITIONS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Review / Outcome of a Review

YELLOW BOOK

required to demonstrate that the Contractor's design complies with the Contract, the Contractor shall prepare and submit them promptly to the Engineer at the Contractor's cost.

If the Engineer gives a Notice under sub-paragraph (b) above, the Contractor shall:

(i) revise the Contractor's Document;

(ii) resubmit it to the Engineer for Review in accordance with this Sub-Clause 5.2.2, and the Review Period shall be calculated from the date that the Engineer receives it; and

(iii) not be entitled to EOT for any delay caused by any such revision and resubmission and/or by subsequent Review by the Engineer.

If the Employer incurs additional costs as a result of such resubmission and subsequent Review, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred.

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NOTICES & COMMUNICATIONS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- When do we need a “Notice”?
- What is considered a “Notice”?
  - A ***written*** communication
  - ***Identified*** as a Notice and
  - ***States*** it is issued in accordance with a Sub-clause
- What if one doesn’t respond to a Notice (in time)?

matters which will not substantially affect the Works); or

(ii) that the Contractor’s Document fails (to the extent stated) to comply with the Contract, with reasons.

If the Engineer gives no Notice within this period of 21 days, the Engineer shall be deemed to have given a Notice of No-objection to the Contractor’s Document.

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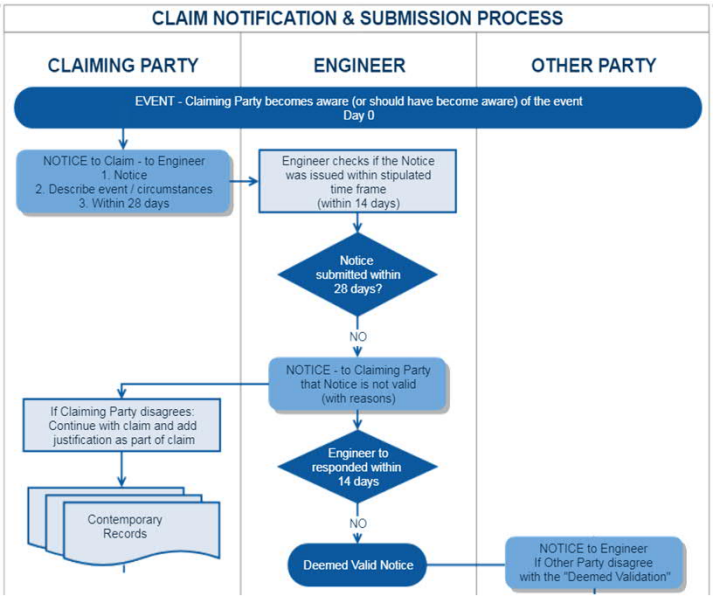
SAMPLE (PART-) PROCESS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS



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EMPLOYER'S REQUIREMENTS (YB, SB)

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Elevated into the Contract Conditions
- Content
  - Technical Requirements
  - Administrative Requirements
- Errors in Employer's Requirements
  - Yellow Book
  - Silver Book

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THE ENGINEER

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Legal Entity → Natural Person (to "act on behalf of")
- Agent for the Employer vs **Neutrality**
  - SC3.7: *Consultation and* Determinations
  - Not allowed to delegate *[24 sub-clauses]*
- Delegation of Authority
  - In writing
  - Engineer's Representative ➔ to be full time on Site
- Other Major Changes in Duties *[some]*
  - SC3.8: Call and be called for Meetings *[new]*
  - SC8.4: Advance Warning *[new]*
  - SC10.1: Taking Over the Works and Sections *[revised]*
  - SC15.1: Notice to Correct *[revised]*
  - Cl20: Employer's & Contractor's Claims *[new & revised]*
  - Cl21: Disputes & Arbitration *[new & revised]*

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DAAB VS DB/DAB

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- Nominations as part of Tender Documents
- Standing vs Ad-hoc
- Emphasis on Dispute AVOIDANCE

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INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

TAKE AWAYS

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HIGHLIGHTS

- FIDIC: Range of SYNCHRONIZED contract forms
- New FIDIC: Has raised the bar for ALL
  - *[but for good reasons]*
- How are YOU going to equip you and your people to face the challenge?
- Get your DAAB constituted EARLY and make full use of it

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QUESTIONS

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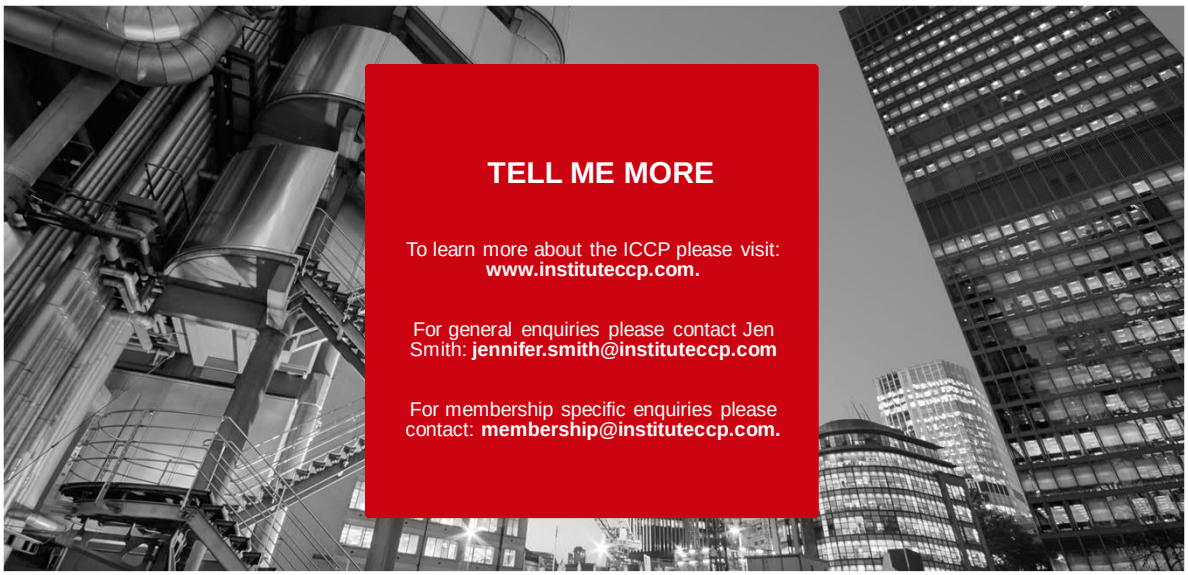
CONTACT DETAILS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS



TELL ME MORE

To learn more about the ICCP please visit: **www.instituteccp.com.**

For general enquiries please contact Jen Smith: **jennifer.smith@instituteccp.com**

For membership specific enquiries please contact: **membership@instituteccp.com.**

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