ICCP

Construction Clinic 27

FIDIC 2017 – What's Changed?

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WHAT'S NEW?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- More prescriptive
- 72% heavier – 558g to 962g
- 71% more pages – 62 pages to 106 pages
- Significantly more words – 30,400 words to 50,00 words
- Only 4% increase in the number of clauses and sub-clauses – 167 to 1745

FIDIC'S GOALS FOR 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Increase clarity, transparency and certainty
- Reduce disputes
- Increase successful projects
- Increased emphasis on dispute avoidance
- More clarity and procedural requirements for claims
- Mandatory referral of disputes to the DAAB

WHAT REMAINS THE SAME?

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Risk sharing across the three forms of contract
- Colours of the “Books”
- Clause structure (with a few amendments and the split of 1999 Clause 20 (*Claims*) into Clause 20 (*Claims*) and Clause 21 (*Disputes*)

MAIN CHANGES IN 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Many more notice requirements
- Employer and Contractor claims are both included under Clause 20 and have the same procedural rules and time-bars
- Many “deeming” provisions have been added
- The other Party may give Notice if a deeming provision comes into force and the Party disagrees with its outcome

MAIN CHANGES IN 2017

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- New definitions:
  - Notice
  - Claim
  - Dispute
  - Cost Plus Profit
  - Notice of No-objection
- % Profit should be included I the Contract Data (or 5% if not stated)

SUB-CLAUSE 1.3 (*NOTICES AND OTHER COMMUNICATIONS*)

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- A Notice shall be identified as a Notice
- A Notice shall include reference to the provision of the Contract under which it is submitted
- A Notice shall have effect when it is received
- Provisions for the format and delivery of Notices are similar to the 1999 Editions

THE ROLE OF THE ENGINEER

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- In 1999 it was not clear whether the Engineer making a “fair determination” was still acting on behalf of the Employer
- In 2017 Sub-Clauses 3.2 (*Engineer’s Duties and Authority*) and 3.7 (*Agreement of Determination*) makes it clear that the Engineer remains the Employer’s agent, except when making determinations, where he/she shall act neutrally
- The Engineer has many more time limits to perform obligations and for the issue determinations

CLAIMS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Employer and Contractor's Claims are subject to the same procedure
- The Engineer is obliged to give a Notice if he/she considers that a Notice of Claim does not comply with the 28 day period
- Sub-Clause 20.2.4 provides details of what shall be include in a "fully detailed claim"

CLAIMS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- A fully detailed claim shall be submitted within 84 days of the event
- If the claimant fails to submit a “statement of the contractual and/or legal basis of the claim” within 84 days, the Claim will be time-barred
- The Engineer is obliged to give a Notice if he/she considers that the above obligation has not been complied with

CLAIMS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- The Engineer shall consult with the Parties and attempt to reach agreement on the Claim within 42 days
- If no agreement is reached within 42 days, the Engineer shall make a fair determination within a further 42 days
- Agreements and/or determinations shall be issued by Notice

DISPUTE ADJUDICATION

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

- Disputes now separated from Claims
- The Dispute Adjudication Board (DAB) has become the Dispute Avoidance/Adjudication Board (DAAB)
- Greater emphasis on dispute avoidance
- Standing DAABs now included for all three forms of contract
- Employer and Contractor have the right to terminate for failure to comply with a DAAB decision

QUESTIONS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

CONTACT DETAILS

INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

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

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