



**ICCP**

**PUBLIC WEBINAR SERIES**

**NOTICES UNDER THE  
1999 FIDIC CONTRACTS**

Presented by

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- This presentation uses the FIDIC Red Book 1999 edition for illustrative purposes
- The principles are applicable to many other standard form of contract
- The contractual requirements for giving notice
- Delivery of notices
- Time frames for notices
- The format and content of notices
- The importance of notices
- The consequences of not giving notices

# A QUICK POLL

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**POLL**

The following are the number of obligations or opportunities in the 1999 FIDIC Red Book for either of the Parties or the Engineer to give notice:

Contractor: 33

Employer or Engineer: 19

Either Party: 06

**TOTAL:**

**58**



- The giving of notices is invariably related to matters of importance which need to be formally recorded, not only so that there is a record of the giving and receipt of the notice, but also so there is a record of the events giving rise to the notice for future reference
- Notices generally fall into the following categories:
  - Notice that an action required under the Contract needs to be taken
  - Notice that an action required or permitted under the Contract has been, or will be, taken
  - Notice that an event has occurred which could cause, or is causing, delay

# WHEN DOES THE CONTRACT REQUIRE NOTICES TO BE GIVEN?

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- Notice that an event has occurred which could cause, or is causing, the occurrence of additional cost
- Notice that the Contractor considers that the Contractor is entitled to an extension of time
- Notice that either Party considers that the Party is entitled to additional payment from the other Party
- Notice of instructions by the Engineer or the Employer
- Notice of an error or default by one of the Parties
- Notice of agreement or determination
- Notice of disagreement or dissatisfaction

- Sub-Clause 1.3 (*Communications*) requires:
  - notices to be in writing
  - notices to be delivered by the means stated in the Appendix to Tender
  - notices to be sent to the addresses stated in the Appendix to Tender
  - that all parties are sent copies of notices

- Sub-Clause 4.21 (*Progress Reports*) requires the Contractor to include a '*list of Notices given under Sub-Clause 2.5 (Employer's Claims) and Notices given under Sub-Clause 20.1 (Contractor's Claims)*' in the monthly progress reports

- Many of the clauses which require Notices in the 1999 FIDIC contracts stipulate time frames which must be complied with. FIDIC uses various phrase such as:
  - *'Promptly'*
  - *'As soon as practicable'*
  - *'Not less than (a stipulated number of) days'*
  - *'Not later than (a stipulated number of) days after the Contractor became aware, or should have become aware, of the event or circumstance'*
- The mantra to always be adopted when considering when to send a Notice should be “as soon as possible”

- Other than the fact that Notices shall be in writing, the 1999 editions of the FIDIC contracts do not offer any advice as to the format of a Notice
- Good practice dictates the following:
  - Submitted in the format of a letter or other formal document
  - Clearly state that the communication is a notice
  - Contain reference to the contractual clause or clauses under which the notice is submitted
  - Clearly describe the events or circumstances giving rise to the notice

- Record the dates of the relevant events or circumstances where appropriate
- Avoid going into details of delays and/or payment - the place to do this is in a fully detailed claim
- Avoid blame allocation and “finger pointing”
- Compose the notice so that it may be clearly understood if relied upon in a claim or during dispute proceedings by someone with no prior knowledge of the events or circumstances
- Be signed by a person authorised by the Party issuing the notice to do so

- Sub-Clause 20.1 (*Contractor's Claims*) provides that:

*'If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The Notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.'*

- This is a requirement to give NOTICE OF ENTITLEMENT to an extension of time and/or additional payment

- Sub-Clause 20.1 (*Contractor's Claims*) also provides that:

*'The Contractor shall also submit any other Notices which are required by the Contract...'*

- Many other clauses require the Contractor to give NOTICE OF DELAY AND/OR INCURENCE OF COST

## **Notice that Action is Required**

Sub-Clause 1.9 (*Delayed Drawings or Instructions*) deals with circumstances whereby the Contractor requires information, drawings or instructions to be able to maintain progress and states that:

*'The Contractor shall give Notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The Notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late...'*

### **Notice of Delay and/or the Incurrence of Cost**

Sub-Clause 1.9 (*Delayed Drawings or Instructions*) continues:

*‘If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the Notice with supporting details, the Contractor shall give a further Notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:*

*‘(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and*

*‘(b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price...’*

## **Notice of Entitlement**

Sub-Clause 20.1 (*Contractor's Claims*) provides that:

*'If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The Notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance...'*

- Sub-Clause 20.1 (*Contractor's Claims*) provides that:

*'If the Contractor fails to give Notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim...'*

- To make the Employer and the Engineer aware that:
  - An action that could affect the project is required from them
  - An event which could affect the project has happened
  - The Contractor is suffering delay
  - The Contractor is incurring Cost
  - The Contractor intends to make a claim

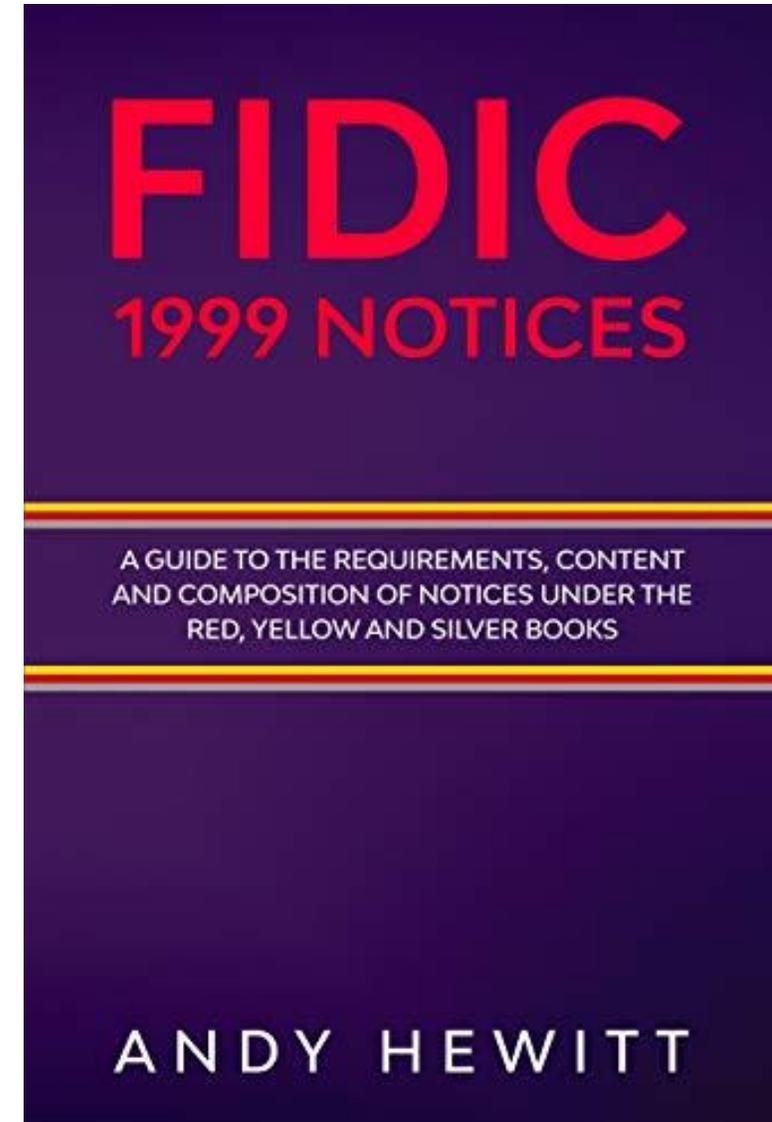
- Timely issue of notices allows the Employer and/or Engineer to mitigate the circumstances
- If mitigation is not possible, the Employer and/or Engineer may make provisions for additional time and/or cost
- If a notice is not submitted, then the Contractor may have prevented the Employer and/or Engineer from taking such actions and the Contractor would be regarded as having caused damage to the Employer.

# WHY DO CONTRACTORS FAIL TO GIVE NOTICE?

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- They don't know that notices are required
- They don't have anyone on the project who is suitably qualified and experienced in contractual matters to ensure they perform their obligations
- They don't wish to upset the Engineer or the Employer
- They do not wish to be seen as being "claims conscious"
- They have such high profit margins, they can afford the deduction of delay penalties
- They have such high profit margins, they don't care about recovering additional costs and payment for variations

- Examines each clause in the 1999 Red, Yellow and Silver Books that requires notices to be given by the Contractor, Employer and Engineer
- Explains why and under what circumstances each notice is required
- Provides real-world examples of the wording and content of notices for each clause



# QUESTIONS



**QUESTIONS?**

## TELL ME MORE

To learn more about the ICCP please visit:  
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