

أكاديمية العدالة Justice Academy

مقدمة - المطالبات حسب نماذج FIDIC

Claims under the FIDIC Conditions of Contracts
الكتب (الأحمر و الأصفر و الفضي)

Justice Academy

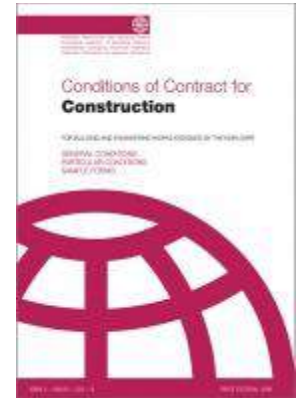
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- **Standard Contracts and Agreements (the FIDIC 1999 & 2017 Suites):**

- Construction (Red)
- Plant and Design – Build (Yellow)
- EPC / turnkey Projects (Silver)
- Short Form of Contract (Green)



The Latest Releases

- **The Emerald Book - Conditions of Contract for Underground Works**
 - This Book was released in April 2019
- **Conditions of Subcontract for Plant and Design (yellow book 1999) 1st Edition Dec. 2019.**
- **FIDIC Golden Principles first edition 2019 electronic version in PDF.**
- **The Short Form of Contract (Second Edition, 2021).**



Future Releases

- **Bronze Book – Form ODBO for brown field projects** (Test edition by the end of 2021).
- **Guide to the 2017 Suite of Agreements** (start Q4-2021 – end Q4-2022)
- **Guide to the 2017 Emerald Book** (end 2022)
- **Handbook for practitioners – Red, Yellow & Silver Books** (forms, letters, testing, certificates, flowcharts as to the contracts machinery ...). (start Q3-2021 – end 2023)
- **Subcontractors and JV Agreements(for Contractors) for the 2017 Suite of** (start Q3-2021 – end 2023)
- **Update of the FIDIC Procurement Guide** (start Q3-2021 – end 2023).

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Claims

What are Claims?

Under what Clauses are Claims addressed?

Who submits the Claim?

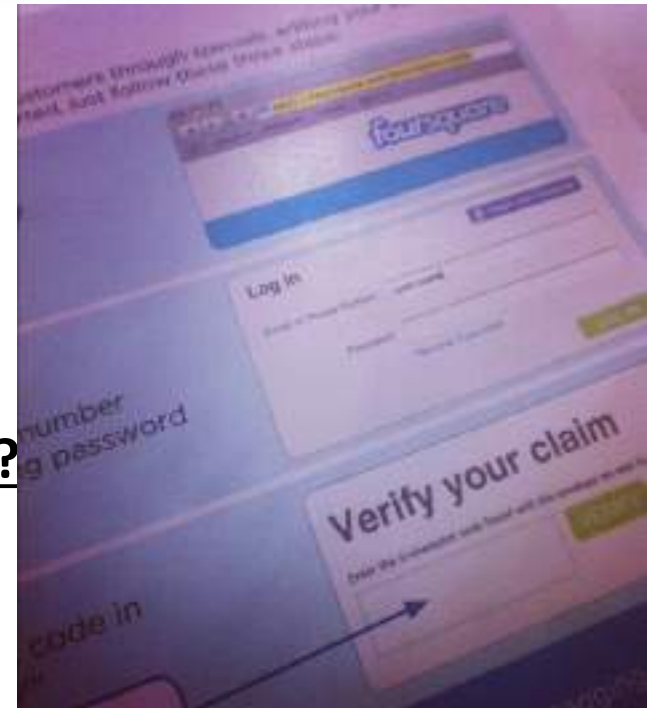
What S/C are relevant to Employer's Claims?

What S/C are relevant to Contractor's Claims?

What are the procedures for addressing Claims?

How to present a Claim?

To be discussed for the 1999 and 2017 FIDIC suites of Contracts (also, in some cases for the 1987 4th edition Red Book)



Outline

1. Introduction

1. What are Claims?

2. Addressing Claims

1. Sub-Clauses related to Claims
2. Who Submits a Claim
3. Procedures
 1. Notice of Claim
 2. Engineer's Action
 3. Contemporary Records
 4. Fully Detailed Claim
 5. Engineer's Action in case of Failure to Submit a Fully Detailed Claim
 6. Claims of Continuing Effect
 7. Avoidance of Claims
 8. Presentation of Claims

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What are Claims?

One of the principal ways that FIDIC Contracts cover the special contingencies of construction projects is by:

- Specifying the claim rights for the Contractor and Employer;
- Identifying procedures for the enforcement of these rights.
- Two types of claims to assert the Parties' rights:
 - legal claims, i.e., claims which the Party may be entitled to assert under the law governing the Contract.
 - contractual claims, i.e., claims which the Party is entitled to assert by virtue of the specific provisions of the Contract.

What are Claims?

- The Engineer is unable to evaluate legal claims;
- For Employer's contractual claims, there are about 20 Sub-Clauses specifying events which, should they occur, will entitle the Employer to claim from the Contractor;
- For Contractor's contractual claims, there are about 30 Sub-Clauses specifying events which, should they occur, will entitle the Contractor to claim from the Employer.

What are Claims?

Categories of Claims

- Claims under the Contract.
- Claims arising out of or in connection with the Contract.
- Claims under the principals of the applicable law.
- Claims arising out of quantum meruit.
- Claims for ex gratia payment.

What are Claims?

- Definition of Claims

- In The Oxford Companion of Law a claim is defined as *“a general term for the assertion of a right to money, property, or to a remedy.”*
- *It would be considered a claim under the above definition:*
 - *When the Contractor applies for his monthly interim for the original scope of work, or*
 - *Whenever the Employer writes to the Contractor requiring him to remedy defective work.*

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What are Claims?

- Definition of Claims

- In construction contracts, a claim is generally taken to be an assertion for *additional* monies due to a party or *for extension of Time for Completion*.
- There is no express definition of a claim in the typical standard form of construction contract, and it is rare to find a definition of a claim in reference texts or authorities on Construction contracts.

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- *This was until the 2017 edition*

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What are Claims?

- Definition of Claims

- In 2017 recent release the definition of a claim was introduced:
- 1.1.{6, 5, 3} “Claim” means a request or assertion by one Party to the other Party for entitlement or relief under any Clause of these Conditions or otherwise in connection with, or arising out of, the Contract or the execution of the Works.

What are Claims?

- Definition of Claims

– البند الفرعي رقم 1.1 {3،5،6} "المطالبة" تعني طلبًا أو تأكيدًا من أحد الطرفين للطرف الآخر للاستحقاق أو الإعفاء بموجب أي شرط من هذه الشروط أو غير ذلك فيما يتعلق بـ أو ما ينشأ عن العقد أو تنفيذ الأشغال.

– The FIDIC 1999 Suite of Contracts as well as the **Gold Book** of 2008 do not have a specific definition of a Claim.

2. Addressing Claims

1. Sub-Clauses related to Claims
2. Who Submits a Claim
3. Procedures
 1. Notice of Claim
 2. Engineer's Action
 3. Contemporary Records
 4. Fully Detailed Claim
 5. Engineer's Action in case of Failure to Submit a Fully Detailed Claim
 6. Claims of Continuing Effect
 7. Avoidance of Claims
 8. Presentation of Claims

Under which Clauses are Claims addressed?

- In 1987, 4th edition Red Book:
- Clause 53 addresses the Procedure for Claims;
- It is composed of five Sub-Clauses:
 - Notice of Claims 53.1,
 - Contemporary Records 53.2,
 - Substantiation of Claims 53.3,
 - Failure to Comply 53.4,
 - Payment of Claims 53.5.
- This procedure covers claims by the Contractor.
- No specific Clause or Sub-clause for claims by the Employer.

Under which Clauses are Claims addressed?

- In 1987, 4th edition Red Book:
- Notice of Claims 53.1,
 - The notice shall be given within 28 days after the event has first arisen.
 - If the Contractor fails to comply with any of the provisions of this Clause (including giving the Notice), his entitlement to payment shall not exceed such amount as the Engineer or any arbitrator or arbitrators considers to be verified by the records. S/C 53.4
 - *This gives a window for the Contractor to be compensated even if he fails to give the notice.*

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Under which Clauses are Claims addressed?

Employer's Claims

- In 1999 Suite of Contracts Employer's Claims were introduced under Sub-Clause 2.5 (Sub-Clause 20.2 in the **Gold Book**):
- Sub-Clause 2.5 [*Employer's Claims*] is present in **RB**, **YB**, **SB Books**.
- The Employer can claim for:
 - (1) any payment under any Clause of the Conditions or otherwise in connection with the Contract.
 - (2) an extension of the Defects Notification Period (Sub-Clause 11.3).

Under which Clauses are Claims addressed?

Employer's Claims

- In 1999 Suite of Contracts:
- Sub-Clause 2.5 requires the Employer to adhere to a claim procedure, which is specified with less precision than the procedure imposed on the Contractor.
- The wording in the **RB** and **YB** Books are identical. The last paragraph in the **SB** (Fourth) has been amended from that in the **RB** and **YB**.

Under which Clauses are Claims addressed?

Contractor's Claims

- In 1999 Suite of Contracts:
- Sub- Clause 20.1 covers Contractor's Claims.
- This Sub-Clause sets the procedure for the submission and handling the Contractor's Claims.
- The wording in the **RB** and **YB** Books are identical and with minor difference in the **SB** which relates to the Employer instead of the Engineer.

Under which Clauses are Claims addressed?

Claims

- Clause 20 in the 1999 edition has the title [*Claims, Disputes and Arbitration*]
- This Clause is split in the 2017 edition into two main Clauses:
 - Clause 20 [*Employer's and Contractor's Claims*]
 - Clause 21 [*Disputes and Arbitration*]
- Clause 20 is composed of 2 Sub-Clauses in the 2017 and Clause 21 is 8 Sub-Clauses.
- Sub-Clause 2.5 in the 1999 edition became part of Clause 20 in the 2017 edition.

Under which Clauses are Claims addressed?

Employer's and Contractor's Claims

- In 2017 Suite of Contracts:
 - Clause 20 covers Claims from both the Employer and the Contractor.
 - Sub-Clause 20.1 [*Claims*] addresses when Claims may arise:
 - (a) if the Employer considers that he/she is entitled to payment or extension of the DNP;
 - (b) if the Contractor considers that he/she is entitled to additional payment or extension of the Project Time for Completion; or
 - (c) if either Party considers that he/she is entitled to another entitlement or relief against the other Party.
 - In case of (a) & (b) above, Sub-Clause 20.2 shall apply. It is not applicable in case of item (c).
 - The Claimant Party {applies to the Employer and the Contractor}.

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Sub-Clauses relevant to Employer's Claims

In 1999 & 2017 Suite of Contracts:

- Most relevant Sub-Clauses in respect of Employer's Claims against the Contractor:

Sub-Clause		Description	Sub-Clause		Description
1999	2017		1999	2017	
	2.6	Employer-Supplied Materials and Employer's equipment	12.3	12.3	P& DB Retesting
4.19		Electricity, Water and Gas	12.4	12.4	P& DB Failure to Pass Tests after Completion
4.20		Employer equipment and Free Issue Material	13.7	13.6	Adjustments for Change in Legislation Adjustments for Change in Law
7.5	7.5	Defects and Rejection	14.4	14.4	Schedule of Payments
7.6	7.6	Remedial Work	15.3	15.3	Valuation at Date of Termination Valuation after Termination for Contractor's Default
8.6	8.7	Rate of Progress	15.4	15.4	Payment after Termination for Contractor's Default
8.7	8.8	Delay Damages	17.1		Indeminties
9.4	9.4	Failure to Pass tests on Completion		17.4	Indeminties by Contractor
10.2	10.2	Taking-Over of Parts of the Works		17.6	Shared Indeminties
11.3	11.3	Extension of Defects Notification Period	18.1	19.1	General Requirements for Insurances Insurance for Works and Contractor's Equipment (last paragraph) Insurance to be provided by the Contractor
11.4	11.4	Failure to Remedy Defects	18.2	19.2	Optional Payment, Termination and Release Optional Termination
12.3	12.3	CONS: Evaluation Valuation of the Works	19.6	18.5	



Sub-Clauses relevant to Contractor's Claims

In 1999 & 2017 Suite of Contracts:

- ▶ Most relevant Sub-Clauses in respect of Contractor's Claims against the Employer:

Sub-Clause		Description	Sub-Clause		Description
1999	2017		1999	2017	
1.9	1.9	CONS - Delayed Drawings or Instructions	8.5	8.6	Delays Caused by Authorities
1.9	1.9	P&DB - Errors in Employer's Requirements	8.9	8.10	Consequences of Employer's Suspension
2.1	2.1	Right of Access to the Site	10.2	10.2	Taking-Over of Parts of the Works
4.7	4.7	Setting Out	10.3	10.3	Interference with tests on Completion
4.12	4.12	Unforeseeable Physical Conditions	11.8	11.8	Contractor to Search
4.24	4.23	Fossils Archaeological and Geological Findings	12.2	12.2	P&DB - Delayed Tests
7.4	7.4	Testing by the Contractor	12.3	12.3	CONS Evaluation Valuation of the Works
8.4	8.5	Extension of Time for Completion	12.4	12.4	CONS Omissions

Sub-Clauses relevant to Contractor's Claims

In 1999 & 2017 Suite of Contracts

- ▶ Most relevant Sub-Clauses in respect of Contractor's Claims against the Employer:

Sub-Clause		Description	Sub-Clause		Description
1999	2017		1999	2017	
12.4	12.4	P&DB - Failure to Pass Tests After Completion	17.1		Indeminties
13.2	13.2	CONS Value Engineering	17.4		Consequences of Employer's risks
13.3	13.3	Variation Procedures		17.5	Indeminties by Employer
13.7	13.6	Adjustments for Change in Legislation Adjustments for Change in Law		17.6	Shared Indemnities
14.4	14.4	Schedule of Payments	18.1	19.1	General Requirements for Insurances
14.8	14.8	Delayed Payment	18.2	19.2	Insurance for Works and Contractor's Equipment (last paragraph) Insurance to be provided by the Contractor
16.1	16.1	Contractor's Entitlement to Suspend the Work Suspension by Contractor	19.6	18.5	Optional Payment, Termination and Release Optional Termination
16.4	16.4	Payment on Termination Payment after Termination by Contractor			

Who submits a Claim?

In 1999 Suite of Contracts:

In case of Employer's Claims S/C 2.5

- The Employer or the Engineer shall give notice and particulars to the Contractor with respect to the Claim, but notice is not required to payments due:
 - (a) under Sub-Clause 4.19 [Electricity, Water and Gas]
 - (b) under Sub-Clause 4.20 [Employer's Equipment], or
 - (c) for other services requested by the Contractor.

In case of Contractor's Claims S/C 20.1

- The Contractor shall give notice and particulars of the Claim of time or money he claims to the Engineer.

Who submits a Claim?

In 2017 Suite of Contracts:

In the first paragraph of S/C 20.2 [*Claims for Payment or EOT*], it is stated that:

- “If **either Party** considers that he/she is entitled to any payment by the other Party (or in the case of the Employer, a reduction in the Contract Price) and/or to EOT (in case of the Contractor) or an extension of the DNP (in case of the Employer) under any Clause of these Conditions or otherwise in connection with the Contract, the following Claim procedure shall apply:”
- *What does this mean?*

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Who submits a Claim?

In 2017 Suite of Contracts:

This means that the Employer is the Party who shall give Notice of his/her Claims. The Engineer is not acting on behalf of the Employer in this respect.

The important discussion is related to the procedure of Claims and the differences between the 1999 and 2017 releases.

Before that, we will have a look at the Sub-Clauses were the
27 Employer or the Contractor may refer the Claims to.



What are the procedures for addressing Claims?

General

In addressing a claim the following shall be considered:

- The Notice of Claim,
- The Engineer's initial action,
- The records describing: the event or circumstance, the impacts and consequences resulting from the event or circumstance, all the supporting calculations, etc.
- The detailed Claim,
- The nature of event giving rise to the Claim whether it is one time event or continuing event,
- The approach to reach an agreement,
- The determination by the Engineer in case of disagreement, and
- The time bars for the above actions

What are the procedures for addressing Claims?

the Notice of Claim

- Definition of the Notice:
- 1.1.{56, 56, 48} “Notice” means a written communication identified as a Notice and issued in accordance with Sub-Clause 1.3 [*Notices and Other Communications*].
- 1.1.{57, 57, 49} “Notice of Dissatisfaction” or “NOD” means the Notice one Party may give to the other Party if it is dissatisfied, either with an Engineer’s determination under Sub-Clause 3.7 [*Agreement or Determination*] or with a DAAB’s decision under Sub-Clause 21.4 [*Obtaining DAAB’s Decision*].

What are the procedures for addressing Claims?

the Notice of Claim

- In the 1999 suite of Contracts any notice under S/C 1.3 [*Communications*]:
 - (a) shall be **in writing** delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender;
- In the 2017 suite of Contracts Notices under S/C 1.3 [*Notices and other Communications*]
 - (a) shall be:
 - (i) **a paper-original signed** by the Contractor's Representative, the Engineer, or the authorized representative of the Employer (as the case may be); or
 - (ii) **an electronic original** generated from any of the systems of electronic transmission as stated in the Contract Data (if not stated, system(s) acceptable to the Engineer),

What are the procedures for addressing Claims?

the Employer's notice of Claim, 1999 Suite

- In the 1999 suite of Contracts the Employer's notices of claims are served under S/C 2.5 [*Employer's Claim*],
- The Employer or the Engineer shall give notice and particulars to Contractor.
- The notice shall be given **as soon as practicable** after the Employer became aware of the event or circumstances giving arise to the claim.
- A notice relating to any extension of the DNP shall be given before the expiry of such period.

What are the procedures for addressing Claims?

the Contractor's notice of Claim, 1999 Suite

- In the 1999 suite of Contracts the Contractor's notices of claims are served under S/C 20.1 [*Contractor's Claim*],
- 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 circumstances
- 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** .

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What are the procedures for addressing Claims?

the Employer's & Contractor's Notice of Claim, 2017 Suite

- In the 2017 suite of Contracts both the Employer's and Contractor Claims are covered by S/C 20.2
- The Claims cover Payments and EOT
- The Employer and the Contractor are treated equally in the submission and processing of Claims.
- The Notices of Claims are served under S/C 20.2 [*Claims for Payment and EOT*],
- The claiming Party gives the Notice to the Engineer,

What are the procedures for addressing Claims?

the Employer's & Contractor's Notice of Claim, 2017 Suite

- The claiming Party shall give the Notice of Claim **as soon as practicable** and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstances,
- If the **claiming Party fails** to give a Notice of a claim within this period of 28 days, the claiming Party shall not be entitled to any additional payment (Contractor), the Contract Price shall not be reduced (Employer), the Time for Completion (Contractor) or the DNP (Employer) shall not be extended, and the **other Party shall be discharged from any liability in connection with the event or circumstances given rise to the Claim.**

What are the procedures for addressing Claims?

Engineer's action in case of failure to submit the Notice of Claims

- In the 1999 suite of Contracts the Engineer is not required to do any action in case of Contractor's failure to give the notice of claim within 28 days ...
- In the 2017 suite of Contracts, if the claiming Party fails to give Notice of Claim within 28 days the Engineer shall, within 14 days after receiving the Notice of Claim give a Notice to the claiming Party accordingly (with reasons).
- If the Engineer does not give such a Notice within the period of 14 days, the Notice **shall be deemed to be a valid Notice.**

What are the procedures for addressing Claims?

Engineer's action in case of failure to submit the Notice of Claims

- If the other Party disagrees with such deemed valid Notice, the other Party shall give a Notice to the Engineer which shall include details of disagreement.
- If the claiming Party receives a Notice from the Engineer under this S/C and disagrees with the Engineer or considers there are circumstances which justify late submission of the Notice of Claim, the claiming Party shall include in fully detailed Claim under S/C 20.2.4 [*fully detailed Claim*] details of such disagreement or why such late submission is justified (as the case may be).

What are the procedures for addressing Claims?

Contemporary records

- “Contemporary records” means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.
- The claiming Party (2017) – (the Contractor in the 1999 suite) shall keep contemporary records as may be necessary to substantiate the Claim.
- The Contractor shall permit the Engineer to inspect all these records and shall if instructed submit copies of these records.

What are the procedures for addressing Claims?

Fully detailed Claim

- This term as a heading and a definition within the S/C is introduced in the 2017 edition,
- in the 1999 edition it is mentioned in the fifth paragraph of S/C 20.1 [*Contractor's Claims*] that “..., the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and the extension of time and/or additional payment claimed.”

What are the procedures for addressing Claims?

Fully detailed Claim

- The definition of the fully detailed Claim in S/C 20.2 in the 2017 edition: “fully detailed Claim” means a submission which includes:
 - (a) a detailed description of the event giving rise to the Claim;
 - (b) a statement of the contractual and/or other legal basis of the Claim;
 - (c) all contemporary records on which the claiming Party relies; and
 - (d) detailed supporting particulars of the amount of additional payment claimed (or amount of reduction in the Contract Price in case of the Employer as the claiming Party), and or EOT claimed (in the case of the Contractor) or extension of the DNP claimed (in the case of the Employer).

What are the procedures for addressing Claims?

Fully detailed Claim – Time Bar

- The time bar for submitting the fully detailed Claim:
 - in the 1999 edition – in the case of the Contractor:
 - in the fifth paragraph of S/C 20.1 [Contractor's Claims], the Contractor shall send to the Engineer within 42 days after the he/she became aware (or should have become aware) of the event or circumstance giving rise to the claim,
 - or within such other period as may be proposed by the Contractor and approved by the Engineer.
 - in the 1999 edition - the case of the Employer, there is no time bar on the submission by the Employer under S/C 2.5 [*Employer's Claims*]

What are the procedures for addressing Claims?

Fully detailed Claim – Time Bar

- The time bar for submitting the fully detailed Claim:
 - in the 2017 edition – the time bar applies equally to the Employer and the Contractor:
 - in the second article of sub-subclause 20.2.4 [Fully Detailed Claim], the claiming Party shall submit to the Engineer a fully detailed Claim within:
 - 84 days after the he/she became aware (or should have become aware) of the event or circumstance giving rise to the Claim, or
 - such other period as may be proposed by the claiming Party and agreed by the Engineer.

What are the procedures for addressing Claims?

Engineer's action in case of failure to submit the fully detailed Claim

- In the 1999 suite of Contracts the Engineer is not required to do any action in case of Contractor's failure to send the fully detailed claim within 42 days or as approved otherwise.
- if the Contractor fails to comply with this or another S/C in relation to any claim, any EOT and/or additional payment shall take account to the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded.

What are the procedures for addressing Claims?

Engineer's action in case of failure to submit the fully detailed Claim

- the 2017 suite of Contracts if the claiming Party fails to submit the statement of Claim within 84 days or as agreed otherwise, the Notice of Claim shall be deemed to have lapsed, it shall no longer be considered as a valid Notice, and
- the Engineer **shall**, within 14 days after this time limit has expired, give a Notice to the claiming Party accordingly.
- If the Engineer does not give such a Notice within the period of 14 days, the Notice **shall be deemed to be a valid Notice**.

What are the procedures for addressing Claims?

Engineer's action in case of failure to submit the fully detailed Claim

- If the other Party disagrees with such deemed valid Notice, the other Party shall give a Notice to the Engineer which shall include details of disagreement.
- If the claiming Party receives a Notice from the Engineer under this S/C 20.2.4 and disagrees with the Engineer or considers there are circumstances which justify late submission of the Notice of Claim, the claiming Party shall include in fully detailed Claim under S/C 20.2.4 [*Fully detailed Claim*] details of the claiming Party's disagreement or why such late submission is justified (as the case may be).

What are the procedures for addressing Claims?

Engineer's action in case of submission of the fully detailed Claim

- In the 1999 suite of Contracts:
 - the Engineer shall within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, respond with approval or disapproval and detailed comments.
 - the Engineer shall proceed in accordance with S/C 3.5 [*Determinations*] to agree or determine (i) the EOT and/or (ii) the additional payment if any.
 - There is no time limits for the Agreement or determination under S/C 3.5 [*Determinations*]

What are the procedures for addressing Claims?

Engineer's action in case of submission of the fully detailed Claim

- In the 2017 suite of Contracts, Sub-Clause 20.2.5 - Agreement or determination of the Claim - addresses the actions of the Engineer:
 - the Engineer shall proceed under S/C 3.7 [*Agreement or Determinations*] to agree or determine (i) the additional payment if any or the reduction in the Contract Price and/or (ii) the EOT or extension of the DNP.
 - the Engineer shall act in accordance with S/C 3.7 [*Agreement or Determinations*].

What are the procedures for addressing Claims?

Engineer's action in case of submission of the fully detailed Claim

- In the 2017 suite of Contracts, if the Engineer has given a Notice under S/C 20.2.2 [Engineer's initial response] and/or under Sub-Clause 20.2.4 – [Fully detailed Claim], the Claim shall nevertheless be agreed or determined in accordance with S/C 20.2.5.
- the agreement or determination of the Claim shall include whether or not the Notice of Claim shall be treated as a valid Notice taking account of the details included in the fully detailed claim or why the late submission is justified.

What are the procedures for addressing Claims?

Engineer's action in case of submission of the fully detailed Claim

- the circumstance to be taken into account (shall not be binding) may include:
 - Whether or to what extent the other Party would be prejudiced by acceptance of the late submission;
 - In the case of the time limit under Sub-Clause 20.2.1 [*Notice of Claim*], any evidence of the other Party prior knowledge of the event or circumstances giving rise to the Claim, which the claiming Party may include in its supporting particulars; and
 - In the case of the time limit under Sub-Clause 20.2.4 [*Fully detailed Claim*], any evidence of the other Party prior knowledge of the contractual and/or other legal basis of the Claim, which the claiming Party may include in its supporting particulars.

What are the procedures for addressing Claims?

Claims of continuing effect

- in the 1999 and 2017 editions:
- The first submitted fully detailed claim within (42 days in 1999 edition) or (84 days in 2017 edition) shall be considered as the first interim fully detailed Claim;
- The Engineer shall give his/her response on the contractual or other legal basis by giving Notice to the claiming Party in accordance with S/C 3.7.3 of 2017 edition;
- The claiming Party shall submit further interim fully detailed Claims at monthly intervals 2017 edition (the Contractor in case of 1999 edition).
- the claiming Party (the Contractor in the 1999 edition) shall submit a final fully detailed Claim within 28 days after the end of the effects resulting from the event or circumstances, or within such other period as may be proposed by the claiming Party (the Contractor in the 1999 edition) and agreed by the Engineer.

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What are the procedures for addressing Claims?

Avoidance of Claims

- We can find that Claims could arise as a result of:
 - Variations
 - Insufficient information in the drawing and poor designs
 - Failure to provide access to site
 - Obtaining necessary permits
 - Delayed payments
 - Poor performance of any or all the parties to the Contract
 - Adverse physical conditions or obstructions
 - And so on

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What are the procedures for addressing Claims?

Avoidance of Claims

- Claims may result in either or all of the following:
 - Disruption to the Works thus incurring additional costs
 - Prolongation of the project duration where the Contractor and the Employer will incur additional cost and suffer from the consequences of the delay.
 - The Employer may lose the benefits should the Works not finish on time, such as property income, property use for public sector as schools and roads, incurring additional staff and administrative costs including the professional services, etc.

What are the procedures for addressing Claims?

Avoidance of Claims

- Claims may result in either or all of the following:
 - The Contractor may lose other business opportunities, increased direct and indirect expenditures, negative impact on reputation, etc.
 - One of the worst impacts could be the tension that would be created in the job site and resulting negative impacts on the progress of works.

What are the procedures for addressing Claims?

Avoidance of Claims

- Can claims be completely avoided?
- If not, how can we minimize the recurrence of claims in a construction Contract?
- What action the Employer need to do to minimize the risks of claims and reduce the negative impacts?
- What actions the Contractor has to take to be protected from the impacts of the claims and their delayed process.

What are the procedures for addressing Claims?

Avoidance of Claims

- The choice of the good designers, consultants and contractors by the Employer is the first step and most important one to minimize the occurrence of claims.
- Proper pre-qualification process will assist in the proper choice of the Engineer and the Contractor.
- Each party to a contract should ensure that they understand their duties and obligations under the contract and that they have the ability to perform these duties and obligations as required by the contract
- Employers should ensure that a project is well planned from the outset to minimize the need for change orders or change directives.

What are the procedures for addressing Claims?

Avoidance of Claims

- Both Employers and Contractors should do what they can to ensure proper management and administration of the project, including proper and adequate staffing and co-ordination of the project and trades.
- While it may be initially attractive to a Party to shift all of the risk in the Contract to the other Party for matters such as insufficient plans and specifications and unexpected site conditions, a contract overly skewed in favor of one Party over the other results in a higher chance of there being a dispute and hence, a construction Claim.
- a Contract that protects the interests of all Parties and that does not include an overly unfair allocation of risk will result in a decreased likelihood of construction claims.

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What are the procedures for addressing Claims?

Avoidance of Claims

- Ensure proper and adequate documentation for the project.
- Acknowledge and settle claims which have merit at an early stage.
- Ensure that the contract has an adequate ADR process for dispute resolution.
- All parties benefit from an atmosphere of mutual trust and respect and each party should do what they can to engender such an atmosphere

What are the procedures for addressing Claims?

Presentation of Claims

Records

- Actual and accurate records and information are necessary to establish the costs incurred as a result of any of the events leading to a Claim and the provisions of Claims Sub-clause must be complied with. It is recommended that records include:
 - Sub-Clause 8.3 Programme setting out what the Contractor had intended for the order, sequence and timing of the various activities at the time of the tender.
 - An estimate of resources and anticipated expenditures in units of time, which are required to achieve the Sub-Clause 8.3 Programme
 - Any updated revisions of Sub-Clause 8.3 Programme together with records of the actual resources and actual expenditures

What are the procedures for addressing Claims?

Presentation of Claims

Records (Cont'd)

- It is recommended that records include:
 - Progress photographs and / or videos
 - Drawings register (with details of amendments and updates, if any)
 - Site diaries
 - Approved Minutes of Meetings
 - daily reports
 - Labor and plant allocation sheets

What are the procedures for addressing Claims?

Presentation of Claims

- Whether a Claim is submitted to the Engineer or to an arbitrator as part of a statement of Claim, it should be coherent but not wordy presented in a clear and logical manner.
- A well prepared and documented Claim should have the following:
 - Introduction providing details of the Parties, the Contract, the project, relevant dates and other pertinent information.
 - Brief description of the Works as required and specified in the relevant documents.
 - Description of the Claim events as they occurred and the nature of the resultant problems encountered.
 - A section containing a statement of facts, so that facts can be established.

What are the procedures for addressing Claims?

Presentation of Claims

- A well prepared and documented Claim should have the following: (Cont'd)
 - An analysis of the facts showing the legal basis upon which the claim is founded, citing the relevant provisions and Clauses of the Conditions of Contract under which the relief is claimed.
 - Description of the procedural steps already taken in dealing with the Claim event, including Notices given, if any.
 - Calculation of claimed extensions of time, if any showing critical and non-critical delays encountered.
 - Calculation of disruption experienced, if any, and the method use to calculate its impact.
 - Appendices which should include all contemporaneous records and relevant correspondences relied on.

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