



ICCP Public Webinar Series

Webinar 4: Get it Right - Notice Requirements Under the FIDIC, JCT and NEC Contracts | 29th January 2020

The following includes all questions that we did not have time to respond to during the live webinar. We have collated all question answers below for the benefit of all attendees.

Question 1

From: Abhishek Changani

Question: On an EPC lump sum contract, if a notice for liquidated damages is not sent before contractual completion, can the delay in serving the notice be deemed as extension of time to the Contractor? Note: Contract is FIDIC as well as in-house customized contract.

Answer: EOT is generally only available to a contractor for a delaying event, such as additional work, the timing of an instruction or an act of prevention by the employer, etc. I cannot see how the timing of a notice to deduct damages can be construed as a delay event. The notice re: damages will need to be issued in accordance with the Contract.

Question 2

From: Karim Farghaly

Question: If I submit the notice on time but I submit the detailed claim late (not as per contract) will it affect entitlement to claim?

Answer: You may recall from the webinar that answers to questions like this are often: "It depends". You need to go back to the construction of the contract and see if there is a valid time bar clause on the submission of the particularised claim. You can generally revise a claim and so my advice would, in future, be to submit a draft claim and then update it later. Of course, the best advice is to submit a notice and a particularised claim on time in accordance with the contract.

Question 3

From: Maksym Molchan

Question: Bill, could you please give your opinion on a situation under a project in a civil law country, where both parties have not followed contractual time bars for the notice delivery for almost 1.5 years, and later on one the Employer wish to decline notice to EOT based on the fact that it has not been provided within the 28 days time bar (FIDIC 1999). Would it be treated as a valid notice?



Answer: It would seem to me to be unethical to 'cherry pick' one notice for special treatment when accepted custom and practice was to behave outside of the contractual requirements for a time bar. However, if the contract has not been formally amended the tribunal may view, on the construction of the contract, that the notice is in fact time barred. It is difficult to give a definite answer to a question like this without more information re: the context. In a civil law jurisdiction, a tribunal may be reluctant to reward an employer with an entitlement to damages where an employer breach prevented the contractor from completing on time; notwithstanding the fact that the contractor's notice was late.

Question 4

From: Mohammed Ashram

Question: Does the notice have to be sealed / stamped?

Answer: Generally no, but as in all cases like this you need to refer back to the construction of the contract. If this is a requirement of the contract, I would suggest this is one of the 'trip hazards' I referred to in the webinar. I say this because such a requirement serves no useful purpose.