

The New FIDIC 2017 Yellow Book - what you need to know

Published 19 October 2017

The New FIDIC 2017 Yellow Book was pre-released in draft form in December 2016. There has been plenty of concern expressed by contractor bodies from across the globe as to some of the proposed changes so whether all of them make it into the 2nd Edition is very much debatable.

The 1999 Edition of the Yellow Book presented a balanced approach as to risk between the Employer and the Contractor. This new edition moves more towards the Silver Book in terms of putting further risk onto the Contractor. The basic nature is the same - a lump sum contract where the Contractor designs and takes the risk on quantities.

FIDIC are keen to see increased project management and a more collaborative approach with the intention of reducing disputes - only time will tell if they have been successful. We highlight some of the principal changes and identify whether they are Employer or Contractor friendly or simply neutral.

Notices and Time Bars

The new contract lays particular emphasis on Notices and Time Bars which both the Contractor and now the Employer as well should take care to ensure that they have appropriate systems in place to ensure that they serve Notices on time.

Notices

The new contract provides that in order for a Notice to be valid it must clearly state that it is a Notice and make reference to the sub-clause under which it is issued.

This is to avoid arguments about whether a Party can for example rely on a reference in a progress report or programme as providing notice.

Saving Clauses

The Engineer has a positive duty within 14 days of receipt of the Notice of Claim to give a preliminary response if he considers the initial Notice is time barred.

Sub-clause 20.3 provides the DAB with the power to waive a failure to follow a time bar requirement but this has to be addressed within 14 days of a Party seeking relief from the refusal of an Engineer to consider a claim because it is said to be time barred.

The DAB can take the following into account:

- whether the other Party would be prejudiced by acceptance of the late submission;
- whether the other Party had prior knowledge of the event in question or basis of claim; and
- the extent to which, if at all, the Engineer may already have proceeded to make a determination or more likely sought to negotiate an agreement.

These are all factors that will be familiar to UAE Contractors to excuse late or even sometimes non-existence notices.

Clause 3 the Engineer Clause

The Engineer must be suitably qualified and fluent in the language of the contract which is new and to be welcomed by both Employers and Contractors. The Engineer can appoint an Engineer's Representative who shall remain on site throughout the execution of the works.

Variations

If the Contractor believes that an instruction constitutes a variation though the instruction does not make that apparent then the new Clause 3.5 allows the Contractor to issue a Notice to the Engineer that the instruction is a variation. If the Engineer does not respond within seven days then the Engineer is deemed to have revoked the instruction. This provision will be welcomed by Contractors.

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