

CONTRACTOR CLAIMS UNDER THE SAICE GENERAL CONDITIONS OF CONTRACT FOR CONSTRUCTION WORKS THIRD EDITION (2015)

Practice Note 23

23 February 2022



CONTRACTOR CLAIMS

Introduction

- ◆ This Practice Note is based on the provisions of the General Conditions of Contract (2015) – GCC 2015. The claims on FIDIC contracts should be dealt with in a similar manner
- ◆ Contractor's Claims are often unavoidable. They can result from the actions and/or omissions of all three parties - the Contractor, the Employer or the Employer's Agent
- ◆ The Employer's Agent must not take the view that a claim reflects badly on their ability to design and administer a project
- ◆ It is important to stress at the site hand-over that the GCC 2015 clauses of the Contract will be strictly applied. This will make the quantification and ruling of any claim on the Contract more manageable
- ◆ If contractual procedures are followed, the parties will be in the best position to accept a satisfactory ruling on a claim
- ◆ The Employer's Agent is obliged to adjudicate claims fairly and without bias

CONTRACTOR CLAIMS

Best Practice

- ◆ Examples where claims can arise out of actions and/or omissions of the Employer
 - ◆ Supplementary conditions of Contract in the Contract Data may create ambiguity and unintended consequences
 - ◆ Scope of Work is amended
 - ◆ Unforeseen existing services
 - ◆ Adverse Physical Conditions
 - ◆ Failure of the Employer to respond timeously
 - ◆ Request for an acceleration of the construction of the Works
 - ◆ Early taking over of the Works
 - ◆ Delay in obtaining the Construction Work Permit
 - ◆ Labour rates/ Business Fora/30% Sub-contractor requirement

CONTRACTOR CLAIMS

Best Practice

- ◆ Examples where claims can arise out of changing legislation
 - ◆ Pandemic
 - ◆ Additional special non-working days
 - ◆ Labour Rates

CONTRACTOR CLAIMS

Best Practice

- ◆ Examples where claims can arise out of actions or omissions of the Employer's Agent
 - ◆ Errors in drawings
 - ◆ Omissions from the Bill of Quantities
 - ◆ Changes in specifications
 - ◆ Failure of the Employer's Agent to respond timeously

CONTRACTOR CLAIMS

Best Practice

Contractors will submit claims. Some of these may be excessive, fraudulent or spurious.

However, many claims will be genuine. The Contractor has spent money on Labour, Materials and Plant and wishes to be placed on at least the same financial position had the disruption or delay event not occurred.

- ◆ Examples are numerous, often quite unexpected and include
 - ◆ Access to the site
 - ◆ Design errors or omissions
 - ◆ Omissions or changed quantities in the Bill of Quantities
 - ◆ Changes to the specifications
 - ◆ Unforeseen physical conditions
 - ◆ Changes in legislation
- ◆ The Contractor is to notify the Employer's Agent in writing of his intention to claim



CONTRACTOR CLAIMS

Best Practice

- ◆ There is a set procedure to be followed by the Contactor and Employer's Agent for the claim to be considered
 - ◆ **The Contractor must notify the Employer's Agent in writing, within 28 days, setting out the full particulars of the claim and list the circumstances giving rise to the claim**
 - ◆ **Or the Contractor must notify the Employer's Agent within 28 days of when he should have become aware of the circumstances giving rise to the claim**
 - ◆ **If the claim is on-going notify, the updated particulars relating to the claim must be submitted on a monthly basis**
 - ◆ **At the end of the events leading to the claim the Contractor has 28 days to submit the final particulars for that claim**
- ◆ Failure to adhere to these timeframes could lead to the claim being Time-Barred by the Employer's Agent. By mutual agreement, these time frames can be extended



CONTRACTOR CLAIMS

Best Practice

The Employer's Agents power to rule on claims may well be limited by the Employer either in the Professional Services Agreement with the Employer or as laid down in the Special Conditions of Contract in the Contract between the Employer and the Contractor.

This is done to ensure that the Employer has control of the project budget

- ◆ **These limitations in power may include, amongst others, the following**
 - ◆ Variation Orders
 - ◆ Extensions of Time
 - ◆ Reduction of Penalties

There is a contractual obligation in terms of Clause 3.2.2 of the GCC 2015 for claims to be discussed between the parties

CONTRACTOR CLAIMS

Best Practice

The Contractor's claim should be presented in terms of Clause 10.1 or 10.2 of the GCC 2015 in the following manner:

- ◆ Give the circumstances leading to the claim
- ◆ A motivation on the merits of the claim
- ◆ A historical list of events
- ◆ A basis for an extension of time, if applicable
- ◆ A cost calculation, if applicable
- ◆ Supporting documents properly identified and numbered

The Contractor may not consolidate claims. Each claim must be presented individually.

The claim can be two-fold namely time and/or additional payment

CONTRACTOR CLAIMS

Best Practice

The Engineer's Representative must review all claims in terms of the following:

- ◆ Validity - Contractual
- ◆ Merit and Quantum – Technical and Financial

Often a delay being claimed by a Contractor runs concurrent with one or more of his own delays and will then not be valid

For a claim to be considered the delay must affect the Critical Path on the Contractor's approved programme

To look for concurrency of claims and to ensure timeframes are met it is useful to prepare an excel spreadsheet reflecting the following:

- ◆ Date of claim
- ◆ Response date
- ◆ Days claimed for each respective claim
- ◆ Non-working days – statutory non-working days, pay weekends, rain

CONTRACTOR CLAIMS

Best Practice

Useful tools to evaluate a claim include the following:

- ◆ **Employer's Agents Daily Diary**
- ◆ **Contractor's Daily Diary**
- ◆ **Site and Technical Meeting minutes**
- ◆ **Photographic evidence**
- ◆ **Tally Sheets**
- ◆ **Delivered receipts of correspondence and emails**
- ◆ **Read receipts of emails**
- ◆ **Site Instruction Book**
- ◆ **Contractor's Request for Information notices**

CONTRACTOR CLAIMS

Best Practice

- ◆ Failure of the Employer's Agent to rule timeously can lead to an interest claim from the Contractor
- ◆ Failure to rule at all signifies that the claim is rejected and that may lead to the Contractor declaring a dispute and that could lead to Mediation, Adjudication, Arbitration or Court
- ◆ Generally, a Contractor has had to Tender optimistically as he needs to submit his lowest price. This places financial pressure on the Contractor when unforeseen events occur
- ◆ Sometimes the Contractor has underquoted and will look to claim his way to a more profitable position
- ◆ Do not carry baggage – don't let emotions get in the way of good practice
- ◆ It is far better to rule timeously, in a fair manner and without bias

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