

# INVESTIGATING SITE-RELATED NOTICES IN CONSTRUCTION CONTRACTS

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Notices issued under the construction contract serve several purposes, the most significant of which is to facilitate the progression of the works. This is done through establishing necessary communications among the project participants by acting in accordance with the callings of the contract conditions. Through an in-depth examination of the notices stipulated under the standard conditions for the construction contract issued by the International Federation of Consulting Engineers (FIDIC), it was found that 43 out of 93 encountered notices deal with issues related to activities taking place on the construction site. The purpose of this paper is to present a detailed analysis of these notices and highlight their operability properties. The analysis focuses on the various characteristics pertaining to this vital group of notices, namely: their types, the participants involved in their administration, their related time bars, and the concerned aspects of the site activities. Results of the performed analysis are twofold: (1) the majority of these notices are found to be of the structured (complex composition) type; and (2) the contractor has the larger share in triggering their associated sub-clauses, and to do so, for the majority of these notices, within numerically stipulated time bars. The main contribution of the presented work is in providing a focused reference that can help contract administration practitioners, dealing with site-related matters, improve the current state of practice.

*Keywords:* Works, Claims, Execution, Performance, Testing, Quality, Measurement.

## 1 INTRODUCTION

Construction sites are characterized by being dynamic work environments. A vast number of daily activities and tasks are performed by project participants driven by having to meet tight time schedules, stringent specifications and fixed budgets. The complexity of the work, which is usually associated with such conditions, is further increased due to the need to be fully compliant with the requirements made under the conditions of the construction contract. Notice provisions, along with other provisions described in the construction contract, shall be referred to almost on daily basis during the construction phase. Contract administrators attempt to well comprehend the circumstances that warrant the need to issue notices in order to fulfill the contractual obligations and protect the parties' rights. However, the complexity of site-related works, the insufficient communication between site workforce and contract administrators, and the shallow understanding of the related provisions impede the due performance of the parties under the contract.

## 2 LITERATURE REVIEW

Construction contracts have been gradually developing, and their content is becoming more sophisticated by hosting new provisions (Thomas 2001). The provisions included in the contract stipulate the procedures for communicating about certain events or situations, specifically those that might affect the project's cost and time (Thomas *et al.* 1990, Aibinu 2009). As construction contracts are argued to have a major impact on project success (Von Branconi and Loch 2004), it is thus important that clauses within the contract are clearly expressed to avoid disputes resulting from misunderstandings (Eggleston 2004). Additionally, it is argued that the behavior of the parties on a project is also shaped through the contract stipulations (Von Branconi and Loch 2004). Consequently, the parties shall be well aware of the requirements incorporated under the contract clauses in order to understand their rights, fulfill their obligations, and avoid being in any breach of the contract.

During the execution of the works, numerous occasions and events require that reference be made to the contract to figure out what actions are to be taken. In fact, professionals are often faced with the need to interpret construction contracts (Thomas 2009). Contractual issues, including compliance with the contract and clause-related issues, are major difficulties encountered during work execution (Sertyesilisik 2010). As such, there is a prime need to explore all kind of contractual obligations related to the work taking place on site, specifically in relation to notice provisions. It is important that practitioners fully grasp all circumstances and situations triggering the need to issue notices, which form a major means of communication during the construction process and facilitate the proper progression of the works.

## 3 RESEARCH SCOPE AND METHODOLOGY

The research reported in this paper focuses on the notices concerned with the activities taking place on construction sites and the notices' various characteristics. The research methodology included: (1) identifying and categorizing the notices found to be connected to site-related activities and (2) further analyzing these identified notices with respect to their types, the party issuing them, the time-bar governing their issuance, and their related prerequisite notices or actions.

## 4 SITE-RELATED NOTICES UNDER THE 1999 FIDIC CONDITIONS

An in-depth review of the FIDIC standard conditions for the construction contract (FIDIC 1999) revealed that 43 out of the total of 93 identified notices are found to be associated with site-related activities (Abdul-Malak and Khalife 2017a). These were classified into eight site sub-aspects including: accessibility, conditions, material and equipment, execution of works, inspections/tests, acceptance of works, measuring works, and taking over. These classifications show that dealing with site-related notices is spread along the project's construction phase, starting with the possession of site and up to the taking over of the built facility, then continuing through the defects notification period that leads to the final completion and contract close-out process.

The sub-clauses calling for site-related notices to be issued are shown in Figure 1, per each of the identified site aspects. As it can be seen, the highest number of notices (17 ones) is that corresponding to the execution of works. These are found to mainly connected to: Clauses 4 and 7 pertaining to execution methods and remedial work, Clause 11 related to the defects notification period, Clauses 15 and 16 dealing with termination and suspension, Clause 17 concerned with employer's risks, and, finally, Clause 19 tackling force majeure issues. The second highest

number of notices (10 ones) is that concerned with inspections and testing. These notices are issued whenever parts of the works are ready for examination and for the purpose of the tests on completion and the repetition of tests after remedying defects. Other notices are distributed among the other aspects, as clarified under Figure 1. To be noted is that the asterisk indicates that two notices are called for under the concerned sub-clause.

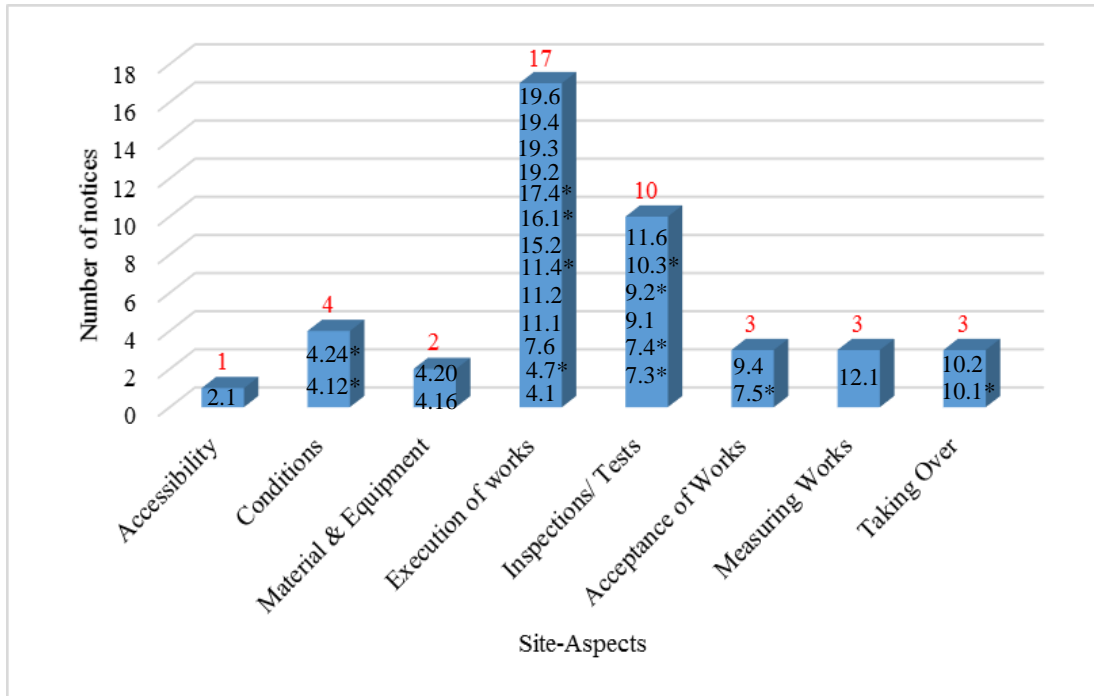


Figure 1. Number of notices per each site aspect with their corresponding sub-clauses.

#### 4.1 Types of Site-Related Notices

Notices serve manifold purposes when called to be issued under the conditions of contracts. In addition to their main purpose of enabling communications about certain events, notices are served in order to bring attention concerning the progress of work, alert the other party about some serious events that need prompt actions, claim in respect of certain rights given under the contract, and/or object regarding a taken action, among other relevant purposes. Accordingly, the types of notices connected with site activities were deduced, as shown in Figure 2.

Attention notices are found to be the most common followed by the claim notices with 15 and 14 cases identified, respectively. The majority of the attention notices are concerned with the inspections and tests aspect (6 notices) and the work execution aspect (6 notices). Other attention notices are issued whenever there is shortage or defects in free-issue material, discovery of fossils, and measurements to be attended. As for the claim notices, these are applicable to all the site aspects except for those dealing with material and equipment and measuring works. The four information notices are found to be in connection with: material and equipment, whenever there is transport of goods; inspections and tests, whenever there is intention to attend tests or when the engineer does not require to inspect or to have a test performed; and execution of works, with respect to notifying about the items of reference. As for the three causation/alarm notices, these precede notices of claims in connection with unforeseeable physical conditions, employer's risks,

and force majeure events. The five other notice types are found to be related to the following site aspects: certification notices, concerned with the taking over of the works; objection notices, issued in connection with inaccuracy in measuring the works; plant and/or materials rejection notices, related to the acceptance of works; and suspension and termination notices, concerned with execution of works.

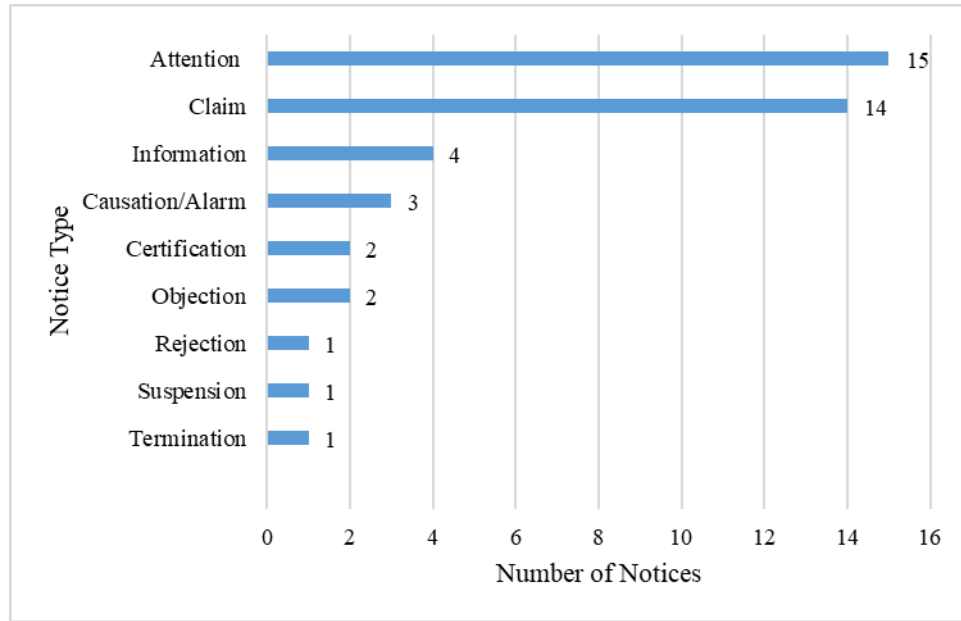


Figure 2. Site-related notices' types.

#### 4.2 Parties Responsible for Issuing Site-Related Notices

In this section, the number of site-related notices issued by each of the involved parties is investigated, with the purpose of identifying the respective responsibilities in regards to acting in reaction to site-related events. The frequency of notices pertaining to each party is as shown in Figure 3. The contractor is found to be responsible for issuing notices in 24 instances, the employer in four instances, and the engineer in eight instances. Other cases refer to either the employer or engineer and to either party (the contractor or employer), with four and three cases, respectively. By way of elaborating, the following are the events/aspects relating to each party:

- Contractor: eight cases are related to notices of claim, two to materials and equipment, two to site conditions, five to inspections and tests, three to execution of works, two to measuring of works, and two to the taking over aspect;
- Employer: one notice is related to of termination and three to remedying defects;
- Engineer: five notices pertain to inspections/testing, one to attendance of measurements, one to acceptance/rejection of works, and one to specifying items of reference;
- Employer or engineer: four notices may be issued in association with Sub-Clause 2.5 Employer's Claims as a result of: rejection and retesting, failure to pass tests on completion, failure to comply with instructions, and failure to remedy defects or damage;

- Party: three notices, linked to force majeure events, may be issued by either party, firstly, whenever a party is or will be prevented from performing its obligation under the contract due to a force majeure event, secondly, upon the ceasing of the force majeure, and, thirdly, when the event otherwise continued for more 84 days or for multiple periods totaling more than 140 days thereby warranting a notice of termination.

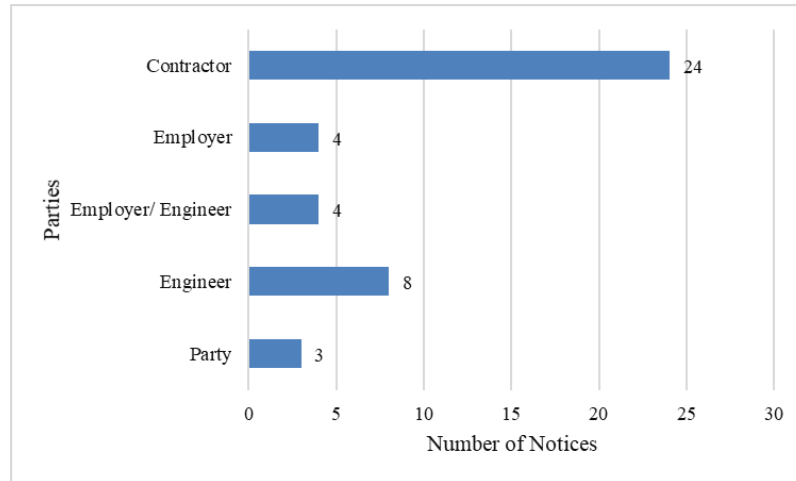


Figure 3. Frequency of site-related notices issued by each party.

#### 4.3 Time Bars for Issuing Site-Related Notices

One of the important characteristics associated with notices is that related to the time stipulations encountered under the concerned sub-clauses and governing their issuance. Time stipulations could be numerical, where a certain period is specified for the notice issuance, or qualitative, where various terminologies, such as promptly or as soon as practicable, are used. On the other hand, some notices are found with no time bars specified in connection with their issuance. The frequency for each of these three categories is presented in Figure 4.

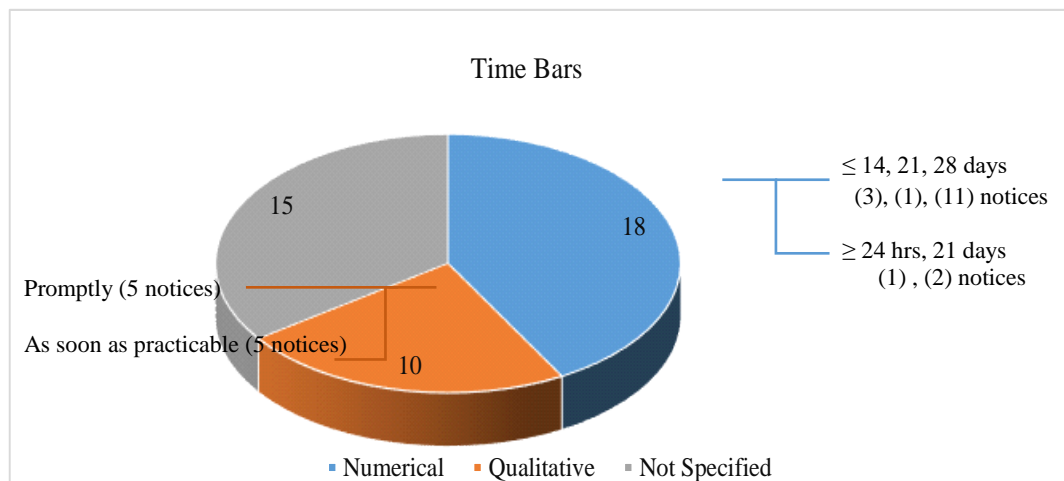


Figure 4. Number of site-related notices for each of the time-bar categories.

Eighteen notices were found to be numerically bounded by time stipulations, either by setting a minimum threshold ( $\geq 24$  hrs. and  $\geq 21$  days) or a maximum threshold ( $\leq 14, 21$ , or 28 days). Of these 18 notices, 15 are issued by the contractor, two by the engineer, and one by either party.

#### 4.4 Structured and Non-Structured Site-Related Notices

Notices can be classified as structured or non-structured depending on whether they are connected to a series of events (such as prerequisite actions and/or other notices) and/or time-bar stipulations (Abdul-Malak and Khalife 2017b). Accordingly, the site-related notices were analyzed to filter the ones that are justifiably said to be structured and the others which are not. The results showed that 32 out of the 43 notices (equivalent to 74.4 percent) were found to be structured. Such a high number of site-related notices being classified as structured notices is an indication that the scant understanding of such notices and their provisions is likely to lead to detrimental effects on the concerned aspects of the works.

### 5 CONCLUSION

Site-related notices pertain to different aspects of the works and events taking place on the construction site. The wide array of identified notices is found to be related to events likely to happen as early as the possession of site stage and up to the final completion and contract close out stage. Various types of site-related notices were deduced, which reflect the different purposes these notices serve, other than the customary purpose of claiming for extra time or money by a notice of claim. The participants (owner, contractor, and engineer) on a project share the responsibilities for issuing these notices; yet, the analysis revealed that the contractor has the largest share. In addition, the findings showed that the vast majority of site-related notices have to be issued within specific time period stipulations. In addition, most of the site-related notices are structured notices. Accordingly, contractual obligations, represented by serving notices whenever it is required to do so under the conditions of the contract, should be a major concern to all concerned, and more particularly to practitioners working with the contractor's team on site. The main incentives are to avoid any breach to the contract and protect the parties' rights.

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