**ECV’s CHALLENGING QUESTIONS REGARDING FIDIC 2017 CONTRACTS (RED & YELLOW)**

**ENIGMA NO 3: ENGINEER’S INSTRUCTIONS SUB-CLAUSES 3.4 & 3.5 & PRACTICAL USE WHEN EXECUTING CONTRACT**

Under Sub-Clause 3.5 The Contractor is given the opportunity to challenge a instruction given by the Engineer, the Engineer’s Representative (if appointed) or delegated assistant if the Contractor considers it a Variation but not stated as such or it does not comply with applicable Laws or reduces safety considerations

In such a circumstance, the Contractor is to give a Notice to the Engineer who has 7 days to respond

If the Engineer does not respond then the instruction is “deemed” to be revoked

Under Sub-Clause 3.4 the Contractor may challenge the authority of an Engineers assistant (no mention of the Engineer’s Representative) to give an instruction by a Notice to the Engineer who has 7 days to respond

If the Engineer does not respond the instruction is “deemed” to be confirmed

**ECV Enigma No 3 Questions**

1. The issue in each case is a failure either due to negligence, incompetence or otherwise by the Engineer to respond to a Notice for clarification by the Contractor so why are the “deeming” responses different? Surely they should be the same & as the Engineer has not responded then the instructions should be “deemed” to be revoked in both cases?
2. There are 22 number “deemed” situations where the Engineer does not undertake his/her obligations under the Contract compared with one in the 1999 Contracts. Why has the administrative Engineer become so incompetent since 1999 to require all these deeming provisions? Should there not be a Sub-Clause where such repetitive failures require the Engineer (the natural person) to be replaced?

More Enigmas to follow – next Sub-Clause 6.10

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