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

**ENIGMA NO 5: RATE OF PROGRESS SUB-CLAUSE 8.7 & PRACTICAL USE WHEN EXECUTING CONTRACT**

The last paragraph entitles the Engineer to instruct under Sub-Clause 13.3.1 acceleration measure to reduce delays resulting from Extension of Time (EOT) causes listed under Sub-Clause 8.5

Under Sub-Clause 8.5 the Contractor in seeking an EOT must make a Claim under Sub-Clause 20.2 other than if the cause is a Variation where Sub Clause 13.3.1 or 13.3.2 apply

Such a Claim or Variation has to be dealt with under Sub-Clause 3.7 where there is either agreement by the Parties or failing this the Engineer make as determination. In both scenarios an EOT when awarded changes the Time for Completion of the Works

Under Sub-Clause 8.5 once an EOT is awarded it may not be decreased

**ECV Enigma No 5 Questions**

1. Is not the Contractor entitled to have its EOT dealt with in accordance with Sub-Clause 20.2 and Sub-Clause 3.7 for a Claim & Sub-Clause 3.7 for a Variation?
2. Once an EOT is either agreed by the Parties or failing this determined by the Engineer Sub-Clause 8.5 advises it cannot be reduced so is not an instruction to reduce the EOT by the Engineer invalid?
3. In the case where the Contractor’s Claim for an EOT is to be determined by the Engineer under Sub-Clause 3.7 for the Engineer to consider any acceleration he/she has to determine the EOT that the Contractor is entitled to. Would not a denial of the full EOT to the Contractor mean the Engineer is changing the Contract which under Sub-Clause3.2 he is not entitled to do?
4. If the Engineer did instruct such acceleration measures which the Contractor considered invalid and declared a Dispute and referred it to the DAAB, must the Contractor still proceed with the instruction?
5. If the DAAB agrees with the Contractor & awards significant Costs to the Contractor, may the Employer sue the Engineer for issuing the acceleration instruction?

David Heslett, Managing Director, ECV Consultancy Ltd -www.ecvglobal.com