

Understanding & Managing Public Works Contracts

A large, faint watermark of the CMG logo is centered in the background. It consists of the letters 'CMG' in a bold, sans-serif font, enclosed within a circular border that has a gear-like or maze-like pattern.

CMG

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What we will cover

- Methods of Project Procurement
- Introduction to Public Works Contracts
- Tender and Schedule
- Conditions of Contract
- Claims under a Public Works Contract
- Dispute Resolution

Project Procurement (NOT Public Procurement)

The logo features the letters 'CMG' in a bold, sans-serif font, centered within a circular area. This central area is surrounded by a complex, multi-layered circular maze pattern that fills the background of the slide.

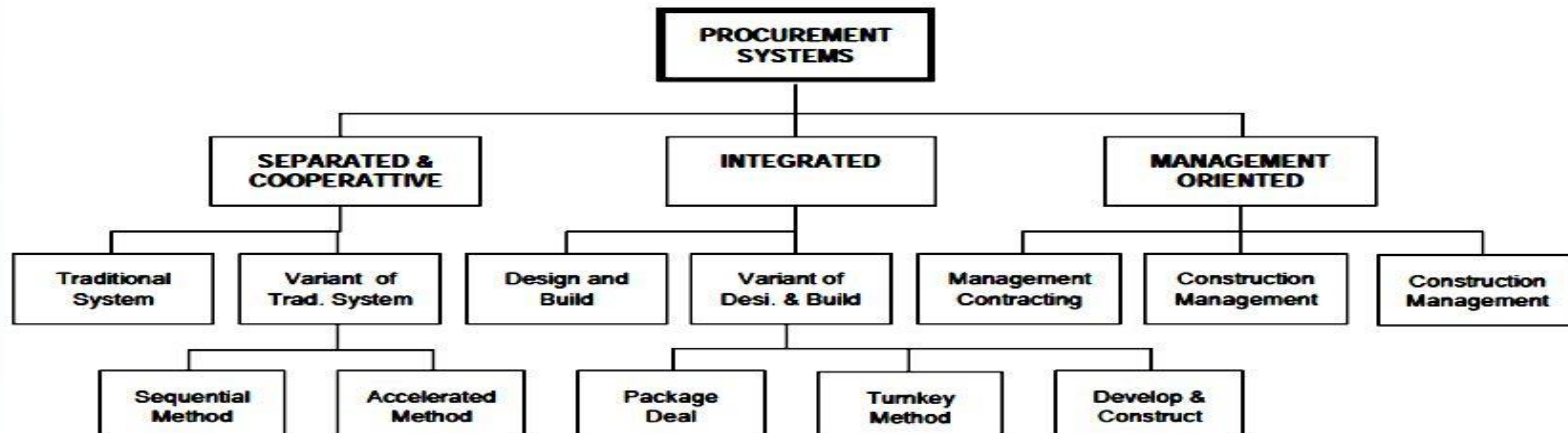
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Project Procurement



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Methods of Construction Procurement



Methods of construction project procurement (Mastermann, 1996).

Project Procurement



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- **Common Methods**

- Traditional Build only
- Design & Build
- Construction Management
- Management Contracting
- EPC or Turnkey/DBFO/PPP

- **Considerations**

- Time
- Cost
- Quality



Traditional (Build Only)



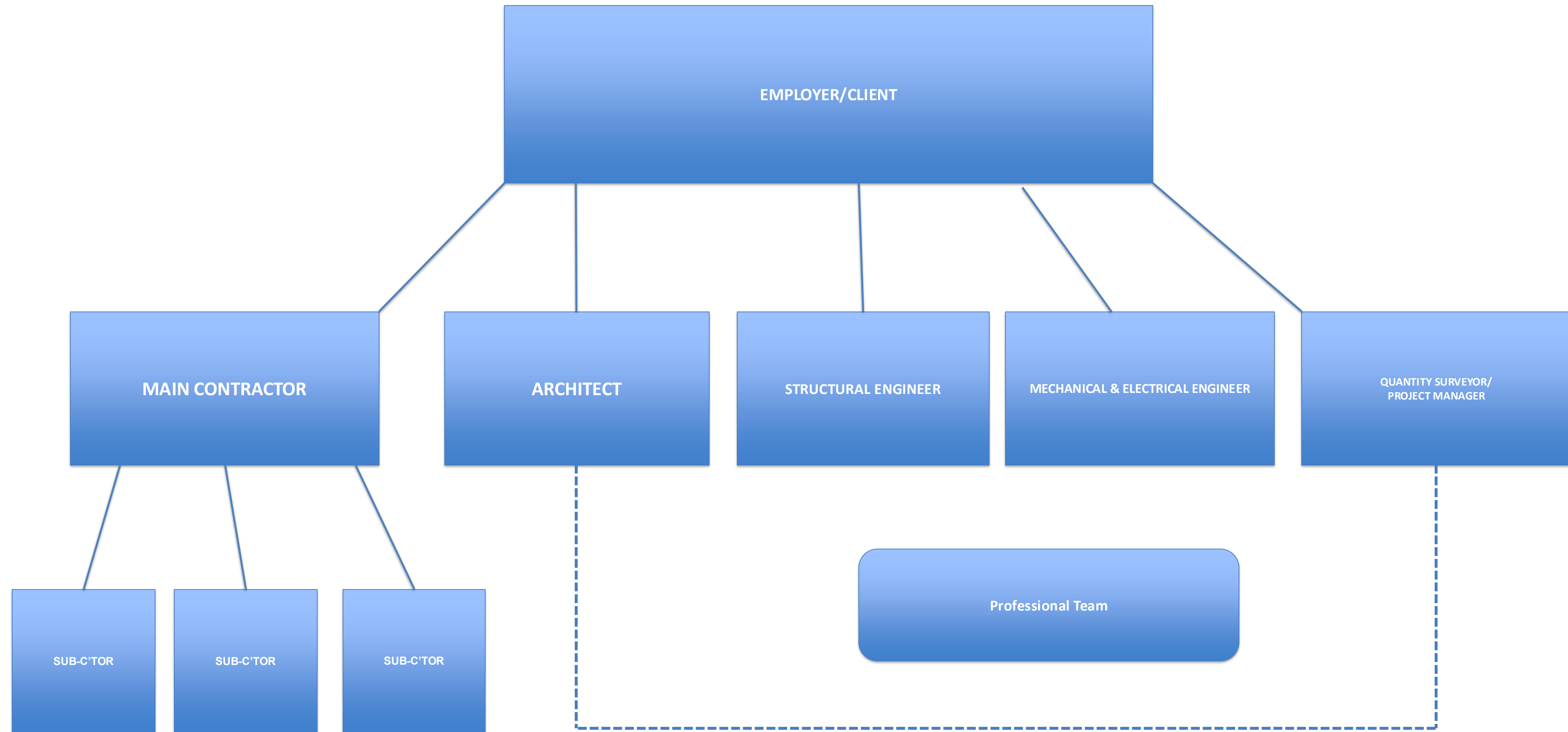
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- **Employer engages design team and contractor separately**
- Employer engages architect and other design professionals to prepare design
- Employer tenders construction work to a main contractor and architect 'administers' the building contract on behalf of the Employer
- Main Contractor engages various sub-contractors
- Separate lines of responsibility for design and construction
- Employer has 'privity' (i.e. direct contract) with both the designers and the Main Contractor and gets Collateral Warranty (CW) from nominated/selected sub-contractors

Traditional (Build Only)



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Design and Build



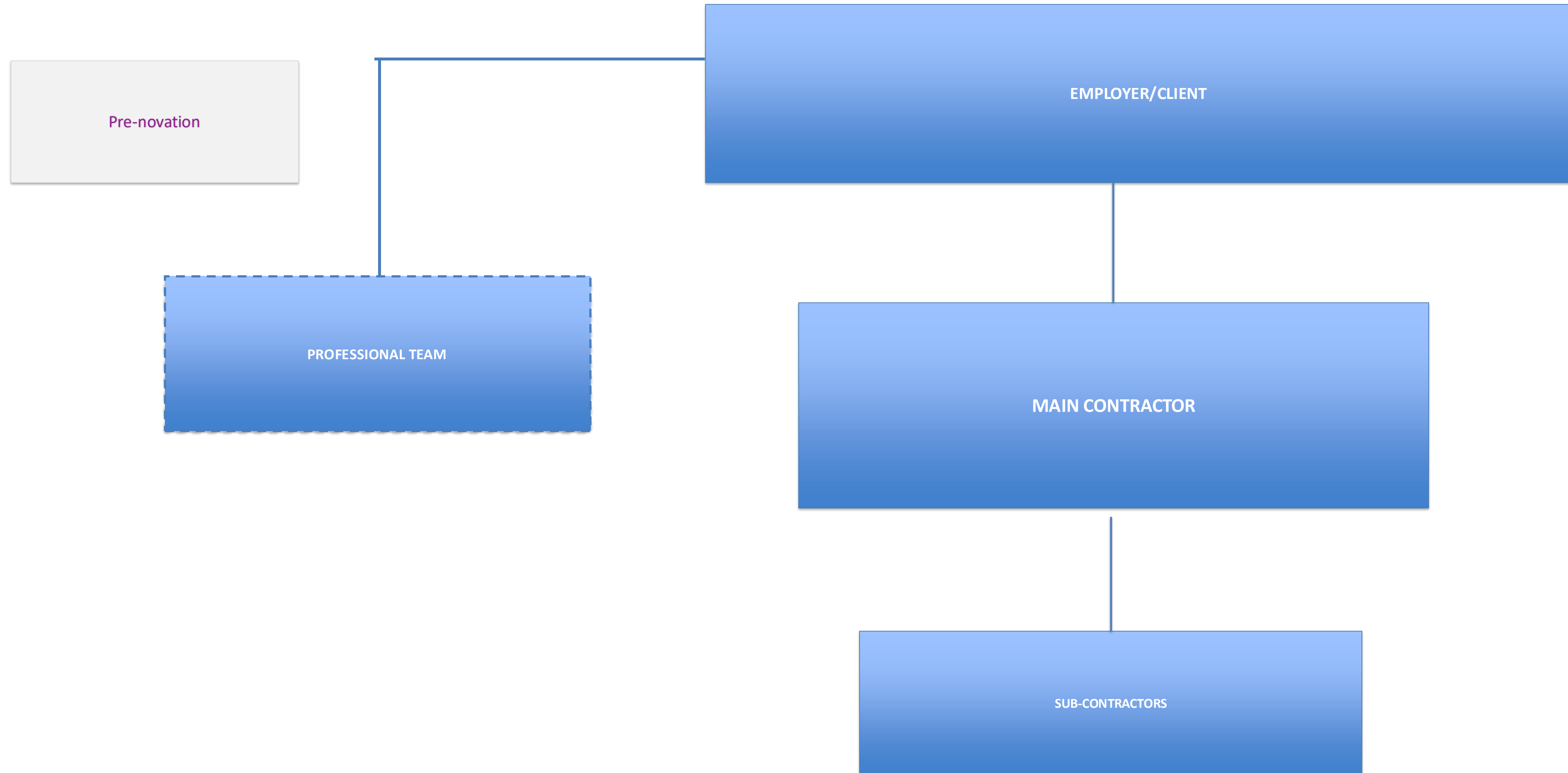
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- In design and build (D&B) procurement, the Main Contractor also takes on responsibility **for both design AND construction of the Works.**
- Design consultants are usually appointed by the Employer before the Main Contractor is selected
- Employer then transfers (or 'novates') to, and Main Contractor accepts, novation of design appointments with effect that sole responsibility for design (as well as
- workmanship) rests with the Main Contractor
- Main Contractor has greater control of the design process
- Employer has "one butt to kick" – single point of responsibility

Design & Build



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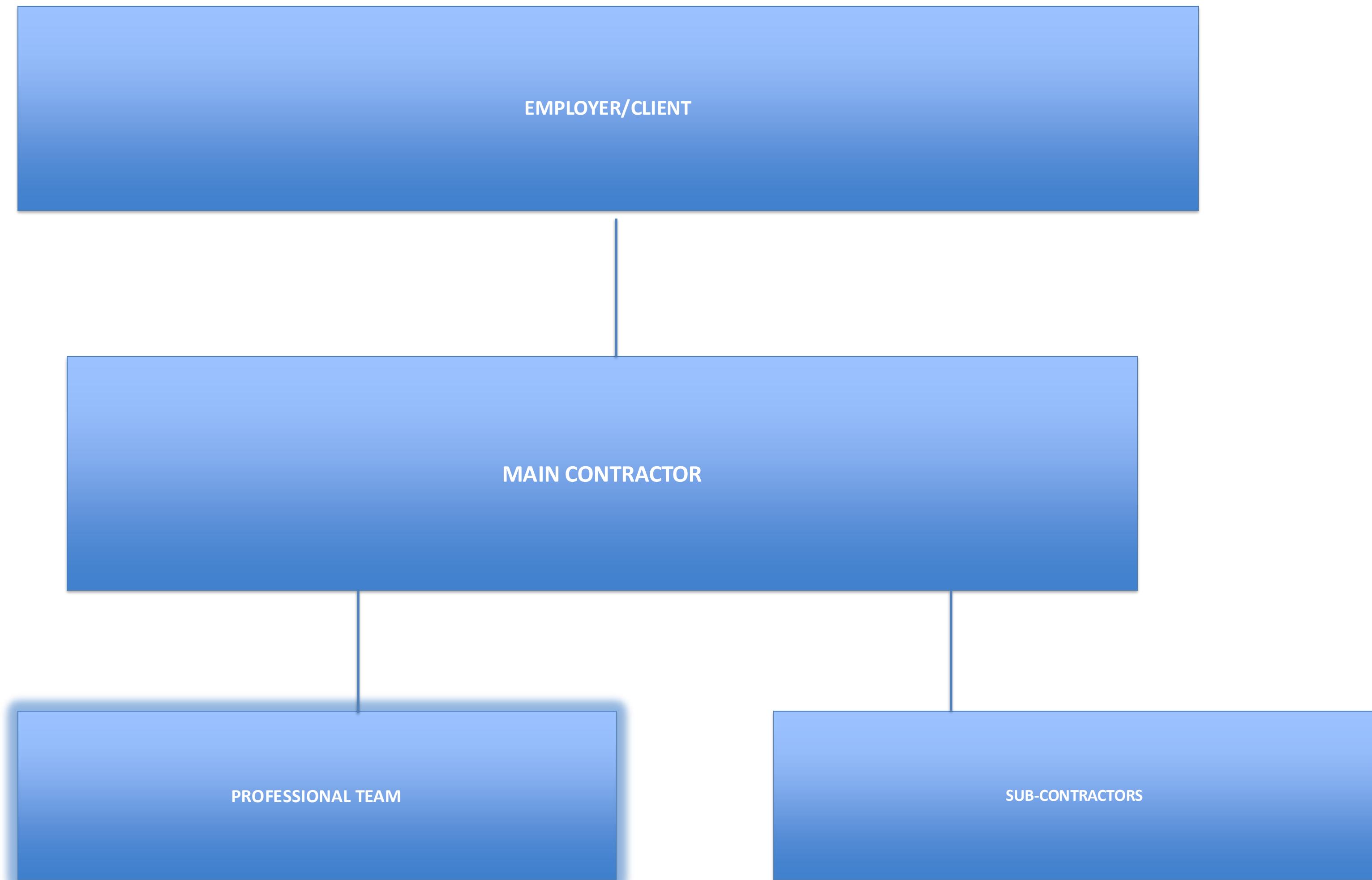


Design & Build



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Post-novation



Public Works Contracts



Public Works Contracts



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- **Capital Works Management Framework**
- Designed to deliver public sector construction procurement reform
- Government Contracts Committee for Construction (GCCC)
- Main Objectives are:
 - Cost certainty at tender award stage
 - Best value for money
 - More efficient delivery of public works contracts

Public Works Contracts



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- **Capital Works Management Framework**
- Consists of a suite of:
 - Guidance Documents
 - Standard Form Construction Contracts
 - Standard Conditions of Engagement
 - Standard Templates to record Cost Planning and Control Information

Public Works Contracts



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- **Mandatory for:**
 - Public sector projects
 - Where the exchequer provides at least 50% of the funding
- Contracts are not negotiated
- Greater level of risk borne by contractor
- Rationale is that this is possible by providing appropriate information in the tender documents to enable a contractor to assess the risk
- Information supplied depends on the contract being used

Public Works Contracts



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- **Structure:**
- Letter of Acceptance
- Agreement
- Contract Conditions
- Tender & Schedule
- Works Requirements

<https://cwmf.gov.ie/en/pillars/>

Letter of Acceptance



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Letter of Acceptance

Note Please click + left of title 'Letter of Acceptance' to read Employers Instructions prior to issue of letter.

To:

Regarding:

Date:

A Dhaoine Uaisle

I refer to your tender for the above Contract dated ¹(the Tender). Terms used in this letter that are defined in the Conditions of that Contract have the same meaning in this letter.

On the basis that the contract formed by acceptance of your Tender will consist of the documents set out below, I accept your Tender:

- ☐ This Letter of Acceptance
- ☐ The Agreement
- ☐ The Conditions of
- ☐ The Tender and Schedule appended² to this Letter of Acceptance
- ☐ Any Novated Design Documents
- ☐ The following post-tender clarifications³:

This is the Letter of Acceptance referred to in the Conditions.

The Contract Sum is euro [excluding VAT/ including VAT at standard and zero rates only/ including VAT at standard, reduced and zero rates].⁴

I draw attention to your obligations in clause 9.1 of the Conditions about documents to be provided before the Starting Date.

Please return to me a copy of this letter acknowledging receipt as indicated below.

Is mise, le meas

Signed
On behalf of , duly authorised to accept the Tender

¹ Insert date of tender

² Ensure that Schedule is appended to the letter

³ Insert references to any post-tender clarifications

⁴ Keep the one that is relevant and delete the other two.

Agreement



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PUBLIC WORKS CONTRACT FOR BUILDING WORKS DESIGNED BY THE EMPLOYER

Agreement

THIS AGREEMENT is made on [date] BETWEEN

The Employer:

Principal office of Employer:

AND

The Contractor:

Registered office / principal
place of business of
Contractor:

Background

The Employer has accepted the Contractor's tender to complete the Works, which consist, in general, of

THE EMPLOYER AND THE CONTRACTOR AGREE as follows:

- Article 1** The Contractor shall execute and complete the Works subject to and in accordance with the Contract and shall comply with its other obligations in the Contract.
- Article 2** The Employer shall pay the Contractor the Contract Sum subject to and in accordance with the Contract and shall comply with its other obligations in the Contract.
- Article 3** The initial Contract Sum is

insert in words

(€insert in figures).

- Article 4** The initial Contract Sum is a lump sum and shall only be adjusted when the Contract says so. The Contractor has satisfied itself before entering into the Contract of all the circumstances that may affect the cost of executing and completing the Works and of the correctness and sufficiency of the Contract Sum to cover the cost of performing the Contract. The Contractor has included in the initial Contract Sum allowances for all risks, customs, policies, practices, and other circumstances that may affect its performance of the Contract, whether they could or could not have been foreseen, except for events for which the Contract provides for adjustment of the initial Contract Sum.
- Article 5** The Contract consists of the following documents:
- this Agreement
 - the Contractor's tender and the Letter of Acceptance and any post-tender clarifications listed in it
 - the attached Conditions and completed Schedule
 - the Works Requirements, completed Pricing Document, and Works Proposals identified in the attached Schedule
- Article 6** The Contract takes effect from the Contract Date.

PUBLIC WORKS CONTRACT FOR BUILDING WORKS DESIGNED BY THE EMPLOYER

The Employer¹

Given under the Employer's seal:

Affix Employer's seal

Signatures of persons
authorised to authenticate the
seal:

OR

Signed on behalf of the Employer:

Signature of person
authorised to sign contracts on
behalf of the Employer:

In the presence of

Name of witness:

Signature of witness:

Witness's occupation:

Witness's address:

The Contractor

Signed on behalf of the Contractor:

Signature of person authorised
to sign contracts on behalf of
the Contractor:

In the presence of

Name of witness:

Signature of witness:

Witness's occupation:

Witness's address:

¹ Execution in accordance with the legislation governing the authority, or articles of association if a company.

Public Works Contracts



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- **Current Suite:**
- PW-CF1 Building Works Designed by the Employer
- PW-CF2 Building Works Designed by the Contractor
- PW-CF3 Civil Engineering Works Designed by the Employer
- PW-CF4 Civil Engineering Works Designed by the Contractor
- PW-CF5 Minor Works For Building and Civil Engineering Works designed by the Employer (value between €1m and €5m)
- PW-CF6 Short Form Contract (Value less than €1m)

Public Works Contracts



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- **Current Suite:**
- PW-CF7 Investigation Contract
- PW-CF8 Short Form of Investigation Contracts (Value less than €50k)
- PW-CF9 Framework Agreement
- PW-CF10 Early Collaboration (Value in excess of €100m)
- PW-CF11 Term Maintenance and Refurbishment Works

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Public Works Contracts



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Exercise

Coffee Break



Tender and Schedule



Structure



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- Tender
- Schedule:
 - Part 1 – Completed by Employer before Tender
 - Part 2 – Completed by Contractor and included with Tender
 - Part 3 – Completed by the Employer after receipt of Tender but before issuing Letter of Acceptance

Tender



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- Contractor's Offer
- Lump Sum amount to carry out and complete the Works in accordance Pricing Document, Schedule and Works Proposals
- Agreement not to withdraw offer for a period
- Agreement in relation to costs of arbitration



Schedule – Part 1

- Details of Employer's Representative and details for Communications
- Documents
- PSCS
- Insurance
- Performance Bond
- Collateral Warranties
- Ancillary Certificates
- Named Specialists
- Dates for Substantial Completion, Liquidated Damages and Retention
- Early Completion
- Defects Period
- Random Checks of Employment Records
- Delay Events (Part 1, K)
- Payment Particulars

Schedule – Part 1



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- Price Variation
- Conciliation Adjudication and Arbitration
- Rights in Contractor's Documents

Schedule – Part 2



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- Communications
- Parent Company Guarantee
- Dates for Substantial Completion
- Adjustments to the Contract Sum, including Delay Costs
- Specialists named by the Contractor (CF2 and CF4 only)

Schedule – Part 3



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- Project Board
- Named Specialists
- Dates for Substantial Completion
- Conciliation Adjudication and Arbitration

Schedule – Part 1, K



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- Risk Allocation Matrix/Risk Register
- Compensation Events
- Delay Events

K Delay Events, Compensation Events, Programme Contingency, Delay Costs, Adjustments
(Sub-clauses 9.3, 9.4, 10.1, 10.6, 10.7, clause 14)

Delay Events and Compensation Events are as follows:

Event		Delay Event	Compensation Event
1	The Employer's Representative gives the Contractor a Change Order	Yes	Yes
2	The Employer's Representative directs the Contractor to search for Defects or their cause and no Defect is found, and the search was not required because of a failure of the Contractor to comply with the Contract	Yes	Yes
3	The Employer's Representative directs the Contractor to suspend work under sub-clause 9.2	Yes	Yes
4	The Contractor suspends work in accordance with sub-clause 12.3	Yes	Yes
5	There is a factual error in information about the Site or setting out information in the Works Requirements. [This does not include an error of interpretation.]	Yes	Yes
6	The Employer takes over part of the Works before Substantial Completion of the Works and any relevant Section	Yes	Yes
7	The Employer's Representative does not give the Contractor an instruction required under sub-clause 4.5.4 within the time required under sub-clause 4.11.2 when the Contractor has asked for the instruction in accordance with sub-clause 4.11.1	Yes	Yes
8	The Employer does not allow the Contractor to occupy and use a part of the Site in accordance with sub-clause 7.1	Yes	Yes
9	The Employer does not give the Contractor a Works Item or other thing as required by the Contract when the Contractor has asked for it in accordance with sub-clause 4.11.1	Yes	Yes



10	Employer's Personnel working on the Site under clause 7.6 interfere with the execution of the Works on the Site, and the interference is unforeseeable and not in accordance with the Contract	Yes	Yes
11	The Employer instructs the Contractor under sub-clause 3.2.3 to rectify loss of or damage to Risk Items for which the Contractor is not responsible	Yes	Yes
12	Loss of or damage to the Works that is at the Contractor's risk in accordance with sub-clause 3.2	Yes	No
13	A weather event as described below	Yes	No

¹³ If no period stated, one year applies.

Event		Delay Event	Compensation Event
14	A strike or lockout affecting the construction industry generally or a significant part of it, and not confined to employees of the Contractor or any Contractor's Personnel	Yes	No
15	Delay to the Works caused by the order or other act of a court or other public authority exercising authority under Law, that did not arise as a result of or in connection with an act, omission or breach of Legal Requirements of the Contractor or the Contractor's Personnel or a breach of the Contract by the Contractor	Yes	No
16	A breach by the Employer of the Contract delaying the Works that is not listed elsewhere in this table.	Yes	Yes
17	A difference between the Contract value of the Works according to the quantities and descriptions in the Pricing Document and the Contract value of the Works described in the Works Requirements, because the Pricing Document, when compared with the Works Requirements ■ includes an incorrect quantity or ■ includes an item that is not included in the Works Requirements or ■ excludes an item that is included in the Works Requirements or ■ gives an incorrect item description and the difference for an item in, or that should have been in, the Pricing Document is more than €500.	No	Yes
18	An item of archaeological interest or human remains is found on the Site, and it was unforeseeable	Yes	No
19	The Contractor encounters on the Site unforeseeable ground conditions (not resulting from weather) or unforeseeable human-made obstructions in the ground, other than Utilities	Yes	No
20	The Contractor encounters unforeseeable Utilities in the ground on the Site	Yes	No
21	Owners of Utilities on the Site do not relocate or disconnect Utilities as stated in the Works Requirements, when the Contractor has complied with their procedures and the procedures in the Contract, and the failure is unforeseeable	Yes	No

In the above table

Utilities means conducting media and apparatus for water, sewage, electricity, gas, oil, telecommunications, data, steam, air, or other services, and associated apparatus and structures.

A condition, circumstance or occurrence is **unforeseeable** if an experienced contractor tendering for the Works could not have reasonably foreseen it on the Designated Date, having inspected the Site and its surroundings and having satisfied itself, insofar as practicable and taking into account any information in connection with the Site provided by the Employer, as to all matters concerning the Site, including its form and nature and its geotechnical, hydrological and climatic conditions.

WE 1.0 is the document entitled Weather Events WE 1.0 published on www.constructionprocurement.gov.ie on the Designated Date.

A **weather measurement** for a month means each of the following:

- the number of days with rainfall exceeding 10 millimetres
 - the number of days with minimum air temperature less than 0 degrees Celsius and
 - the number of days with maximum mean 10 minute wind speed exceeding 15 metres per second
- as recorded at [REDACTED] weather station.

If no weather station is named, the Met Éireann station nearest the Site is used. If the station named, or the nearest one, does not record the weather measurements, the station nearest the Site that records that weather measurement is used.

A **weather event** is when in a month between the Starting Date and the Date for Substantial Completion of the Works a weather measurement exceeds the number of days for the same item, the same weather station, and the corresponding month in WE 1.0.

If a weather event occurs in a month and there is to be an extension to a Date for Substantial Completion under sub-clause 9.3.2, the amount of the extension is the lesser of (a) the extension to be made under sub-clause 9.3.2 and (b) the difference between the weather measurement and the number of days for the corresponding item in WE1.0. No day is counted for more than one weather measurement.

An **order or other act of a court or other public authority exercising authority under Law** includes a Covid-19 Mandatory Closure.

Conditions of Contract





Structure PW-CF1 - 5

- Clause 1 The Contract
- Clause 2 The Law
- Clause 3 Loss, Damage and Injury
- Clause 4 Management
- Clause 5 Contractor's Personnel
- Clause 6 Property
- Clause 7 The Site
- Clause 8 Quality, Testing and Defects
- Clause 9 Time and Completion
- Clause 10 Claims and Adjustments
- Clause 11 Payment
- Clause 12 Termination
- Clause 13 Disputes
- Clause 14 Limit on Liability
- Clause 15 Price Variation



Structure PW-CF6

- **PW-CF6:**
- Clause 1 This Contract
- Clause 2 The Site, starting and Completing the Works
- Clause 3 The Works
- Clause 4 The Price and payment
- Clause 5 Representations and communications
- Clause 6 Contractor's Personnel
- Clause 7 Pay and condition of employment of workers
- Clause 8 Loss and Damage to the Works
- Clause 9 Indemnity for claims and damage
- Clause 10 Insurance
- Clause 11 Property
- Clause 12 Termination
- Clause 13 Ethics in Public Office
- Clause 14 Project Supervisor for the Construction Stage
- Clause 15 Law, jurisdiction and disputes
- Clause 16 Covid-19 Mandatory Closure
- Clause 17 Limit on Liability
- Clause 18 Price Variation

PW-CF1 to PW-CF5



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- **Most commonly used clauses:**
- Clause 4 Management
- Clause 9 Time and Completion
- Clause 10 Claims and Adjustments
- Clause 11 Payment
- Clause 13 Disputes

Claims Under Public Works Contracts

The logo for CMG is centered on the slide. It consists of the letters "CMG" in a bold, sans-serif font. The letters are a light teal color, matching the background. Behind the letters is a circular maze-like pattern made of concentric lines, also in a light teal color. The entire logo is set against a solid teal background.

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Clause 10 - Claims

- Clause 10 sets out the process for:
 - The Contractor making claims
 - The ER making a determination
 - How claims will be valued
-
- Claims must be notified throughout the contract and not all at the end
 - Compliance with contractual procedure - necessary for a successful claim
 - Compliance only – ensures ability to make claim but no guarantee of successful outcome



Clause 10 – Contractor

- When making a claim, it is important to bear in mind that the Contractor must:
- Comply with the notice requirements
- Prove the event occurred
- The event caused delay and/or cost impact
- Impact affects critical path or causes a financial loss
- **Records are critical to substantiate claims**



Clause 10.3



10.3 Contractor Claims

10.3.1 If the Contractor considers that under the Contract there should be an extension of time or an adjustment to the Contract Sum, or that it has any other entitlement under or in connection with the Contract, the Contractor shall, as soon as practicable and in any event within 20 working days after it became aware, or should have become aware, of something that could result in such an entitlement, give notice of this to the Employer's Representative. The notice must be given according to sub-clause 4.14 and prominently state that it is being given under sub-clause 10.3 of the Contract. Within a further 20 working days after giving the notice, the Contractor shall give the Employer's Representative details of all of the following:

- (1) all relevant facts about the claim
- (2) a detailed calculation and, so far as practicable, a proposal, based on that calculation, of any adjustment to be made to the Contract Sum and of the amount of any other entitlement claimed by the Contractor
- (3) if the Contractor considers that the programme contingency referred to in sub-clause 9.4 should be used or that there should be an extension of time, the information required under sub-clause 9.3, and, so far as practicable, a proposal, based on that information for any use of the programme contingency or any extension to the Date for Substantial Completion of the Works and any affected Section.



Clause 10.3 - Contractor

- Notify ER in writing within 20 Working days
- Must identify that it is given under this sub-clause
- Claim for an extension of time
- Claim for delay
- Within a further 20 Working Days provide:
 - full details
 - calculation of the adjustment to the Contract Sum
 - proposal for an extension to the Date for Substantial Completion
- If the claim has a continuing effect, the Contractor must update the information at monthly intervals

Clause 10.3 - Contractor



- Suggested Structure for a Notice of Claim:
 - Project Details
 - Contractual Basis
 - Reasons additional costs/extension request
 - Chronology of Events
 - Cause and Effect
 - Delay Impact Analysis
 - Costs
 - Mitigation Efforts
 - Supporting Documents



Clause 10 - Employer

- Establish procedures and methodologies for recording events and claims
- When a claim is received, consider:
- Has the Contractor complied with the notification requirements?
- Has the Contractor demonstrated an entitlement?
- Has the Contractor provided contemporaneous records detailing:
 - actual losses; and/or
 - impact to the programme





Condition Precedent

- Clause 10.3.1 of the PWC contains a conditions precedent clause that must be strictly complied with
- A condition precedent is clause which requires that an event, circumstances or action is taken before the relevant contractual provision will become operable
- Condition precedents should be clear in terms of their requirements and effect. If they are ambiguous, then they may not be upheld
- They do not need to specify that they are a “condition precedent” but their conditionality and effect needs to be readily identifiable
- Clause 10.3.2 confirms that if clause 10.3.1 is not strictly complied with then:
 - the Contractor shall not be entitled to an increase to the Contract Sum; and/or
 - the Contractor shall not be entitled to an extension of time or use of the programme contingency; and
 - the Employer shall be released from all liability

10.5 ER's Determination



- Clause 10.5.1
- Within 20 working days of receiving it:
 - direct the Contractor to give additional information
 - make a determination of any adjustments to the Contract Sum, use of programme contingency or extension to the Date for Substantial Completion
- Clause 10.5.3
- If the ER fails to take any of the actions in sub-clause 10.5.1 within the time stated, the ER shall be **deemed** to have made a determination that there is:
 - no adjustment to the Contract Sum
 - no use of programme contingency
 - no extension to the Date for Substantial Completion

10.5 ER's Determination



- Clause 10.5.14
- A determination of the ER shall be final and binding unless, within 28 days of receiving the notice of determination (or 28 days of a deemed determination), one party gives notice to the other under clause 13.1.1 or 13.2.1 disputing the determination and referring it to the dispute resolution procedures.
- Final and binding means that the determination cannot subsequently be challenged!



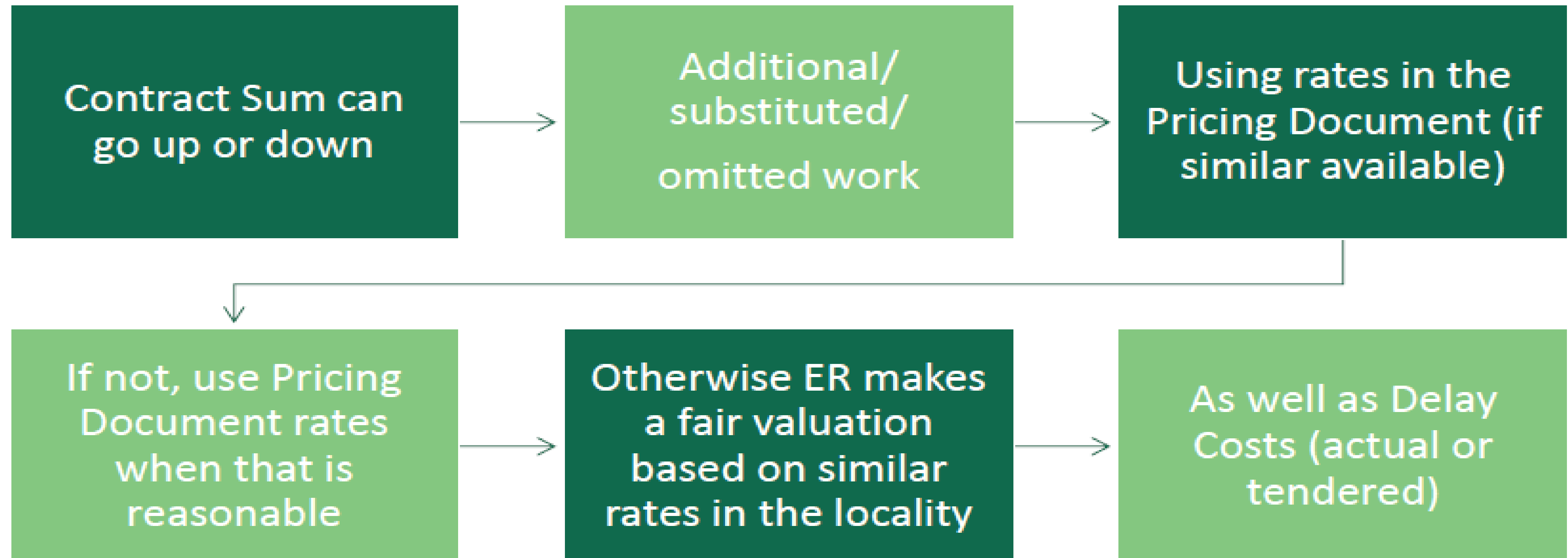
Adjustments to the Contract Sum

- Clause 10.6 governs valuation
- An adjustment to the Contract Sum may happen when:
 - Additional, substituted, or omitted work is required due to a Compensation Event;
 - There are delay costs under sub-clause 10.7
- How Is the Adjustment Valued?
 - 10.6.1 – Rates in the Pricing Document
 - 10.6.2 – If not exact rates, rates in the Pricing Document if reasonable
 - 10.6.3 – Fair Valuation
 - 10.6.4 - Costs Based Valuation (if directed by ER)

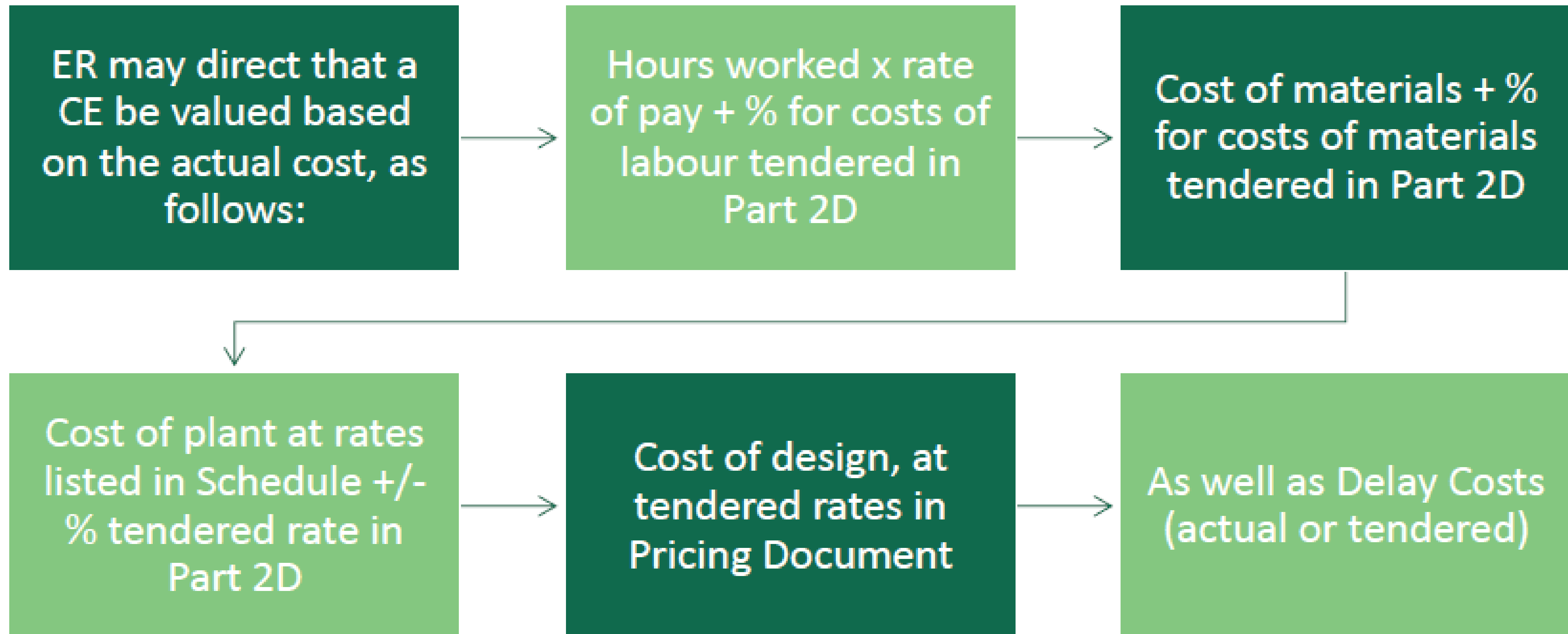
Clauses 10.6.1 – 10.6.3



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Clauses 10.6.4



Delay Cost

- Clause 10.7.1 provides for delay costs resulting from a Compensation Event to be paid:
 - (1) the expenses [excluding profit and loss of profit] incurred by the contractor, or
 - (2) the rate per Site Working Day inserted in the Schedule part 2D by the contractor at tender stage.
- Save for any delay costs allowed under clause 10.7.1, clause 10.7.4 purports to exclude all delay and disruption claims

Except as provided in this sub-clause 10.7 [notwithstanding anything else in the Contract] losses or expenses arising from or in connection with delay, disruption, acceleration, loss of productivity or knock-on effect shall not be taken into account or included in any increase to the Contract Sum, and the Employer shall have no liability for such losses or expenses.



Effect of 10.7.4

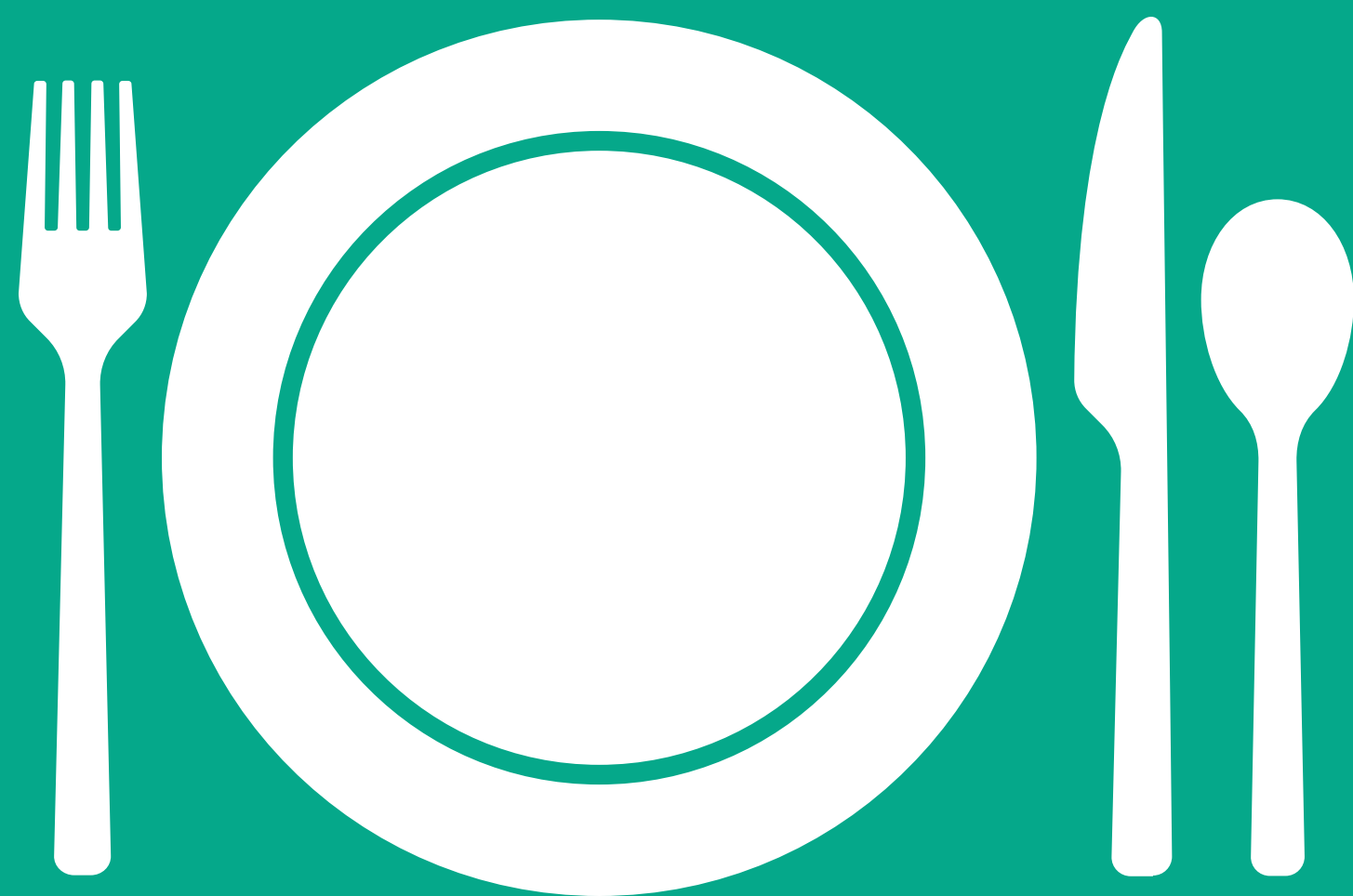
- The Employer is not liable for losses or expenses incurred by the Contractor due to delays caused by the Employer or by others under their control
- The Employer is also not liable for losses or expenses related to acceleration of the works that they may have required
- Clause 10.7.4 specifically excludes the Employer's liability for disruption costs, loss of productivity, or knock-on effects resulting from delays or acceleration
- While the Contractor cannot claim for disruption costs under 10.7.4, they can still claim for additional costs arising from compensation events (changes to the works, etc.) under Clause 10.6



Concurrent Delay

- Clause 10.7.2
- If the Works are concurrently delayed by more than one cause, and one or more of the causes is not a Compensation Event, there shall be no increase to the Contract Sum for delay cost for the period of concurrent delay
- Where there is shared responsibility for delays, time may be granted but not costs
- General principle in common law is that where a project suffers from a period of “concurrent delay”, the contractor is entitled to an extension of time (such that the employer is not entitled to claim liquidated damages). However, the contractor is not entitled to recover from the employer its prolongation costs.

Lunch



Dispute Resolution



Main Causes of Disputes



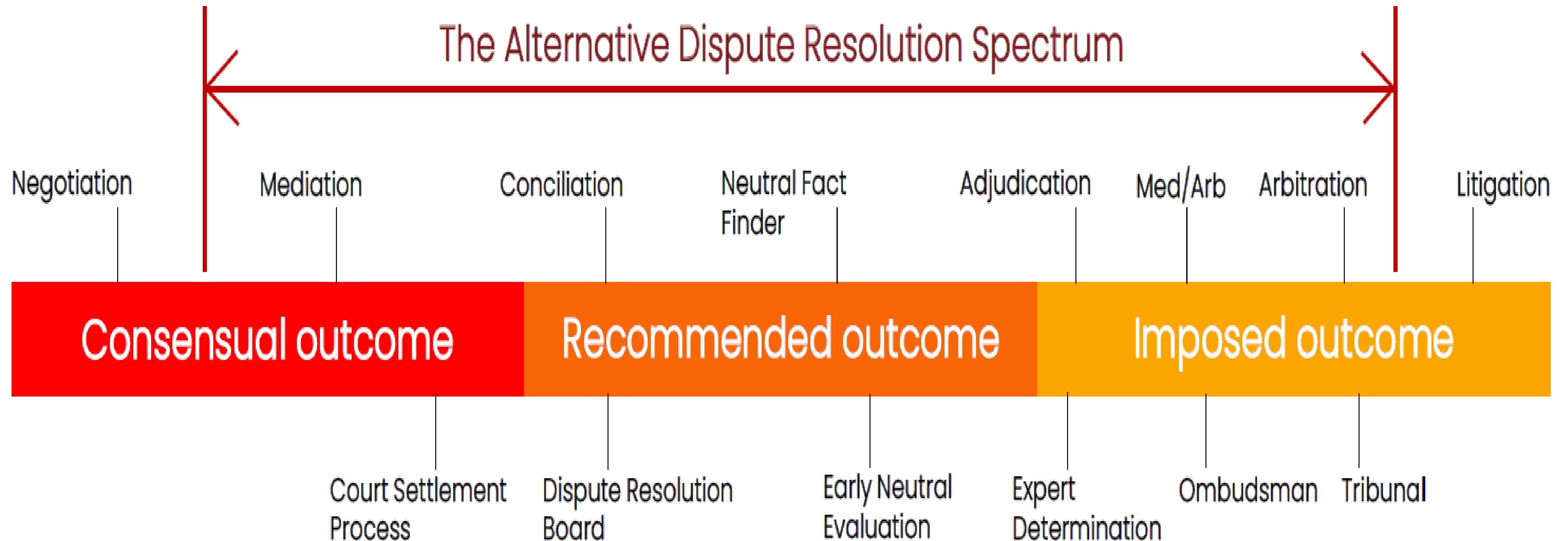
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- Poor Contractor Claims
- Errors or omissions in the Contract Documents
- Parties failing to comply with contractual obligations
- Employer directed changes

Dispute Resolution



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Disputes



- Often overlooked but worth bearing in mind clause 4.1.4:

"The Parties may agree to consult or communicate, without prejudice. In any case, offering or giving co-operation does not imply any admission of any responsibility or alter either Party's rights or duties unless otherwise agreed in writing. The Parties shall convene meetings of the Project Board to review, without prejudice, disputes referred thereto."





Without Prejudice

- The “without prejudice” principle means statements made in a document marked “without prejudice” or made verbally on a “without prejudice” basis, in a genuine attempt to settle the dispute, will generally not be admissible in court as evidence against the person making the statement.
- It permits parties to compromise their position in settlement discussions but without compromising their openly stated position in the dispute or proceedings
- If a party tries to settle a dispute on the basis of without prejudice privilege, such communication cannot be used against the party when the matter becomes before the courts

Co-operation Meeting

- Clause 4.1.5 – ability to convene a Co-Operation Meeting
- No later than 5 working days of the notice.
- Senior representatives of the parties
- Standing Conciliator can facilitate
- Concludes when
 - Parties reach agreement
 - Either party notifies the other of its intention to conclude
 - Within 20 working days from the date of agreement to convene the Co-Operation Meeting
- Clause 4.1.9 notice requirements and timelines suspended, except for initial notice



Clause 13 Disputes

- Anticipates a stepped escalation process
- PW-CF1 to 4
 - 1 Project Board (if utilised)
 - 2 Conciliation
 - 3 Arbitration
- PW-CF5
 - 1 Conciliation
 - 2 Arbitration
- PW-CF6
Conciliation only; no arbitration clause
- Bearing in mind that a party has a right to go to adjudication at any time pursuant to the Construction Contracts Act 2013



Standing Conciliator

- A Standing Conciliator must be appointed where the Contract Sum >€10m
- Optional where the Contract Sum is <€10m
- Can work with the Project Board:
 - may be asked to advise on protocol for the review of disputes by PB
 - chair or be invited to attend PB meetings
 - informally assist the parties in resolving dispute
 - offer views 'without prejudice' of the likely outcome of a dispute
 - Hold separate meeting with the parties
 - Hold informal meetings of Members of the PB



Standing Conciliator

- SC has considerable latitude to prevent a dispute from crystallising – private meetings, give an opinion etc.
- The process is confidential and 'without prejudice' allowing parties the freedom to engage better
- The SC will act as Conciliator, which could lead to a speedy resolution of disputes
- Can assist in maintaining good working relationships

Project Board



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- Mandatory for PW-CF1 to 4 where Contract Sum >€10m
- Can have 1 to 3 members from each party
- Default is 1 member
- Employer confirms in Schedule Part 1A
- Contractor's member notified following receipt of successful tenderer letter
- Employer then includes details in Schedule Part 3A
- Each member must hold negotiating and agreement authority

Project Board



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- Mandatory for PW-CF1 to 4 where Contract Sum >€10m
- A Project Board can be constituted even where there is no Standing Conciliator
- It permits the Parties to engage in a resolution process concerning disputed ER determinations under subclauses 10.5.4 and 10.5.5
- Any dispute referred to Clause 13.1 process is required to go through the DMP process before it can be referred to conciliation
- This is the main issue with Project Boards, remit confined to 10.5.4 and 10.5.5 notices!

Project Board



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- Meets every 60 days or sooner
- Quorum is a minimum of 1 member from each party
- Can engage on a without prejudice basis amongst the PB and with the standing conciliator
- Any agreement to resolve the dispute shall be in writing and signed by the parties
- Unresolved disputes are notified the next working day. The dispute can then be referred to conciliation within 14 days

Conciliation

- Clause 13.2 – where a dispute arises under the Contract, or has been referred to the dispute management procedure but not resolve, can be referred by notice in writing to conciliation
- Save where a standing conciliator is appointed, within 10 working days the parties must jointly appoint a conciliator, failing which the conciliator will be appointed by a default nominating body
- Once conciliator is appointed, will usually convene a preliminary meeting to agree timeline, process etc
- Conciliator is conducted on a without prejudice basis
- The costs of the Conciliator are shared with parties paying their own costs

Conciliation

- The Conciliator acts as a mediator and facilitates the parties to find a resolution
- The primary objective is to find a settlement
- If the parties cannot reach a settlement 42 days of appointment, the Conciliator will issue a recommendation
- The Recommendation is the Conciliators view on how the dispute might settle
- Conciliator's recommendation is issued to the parties who can accept/reject within a period of 42 days
- A party can reject the recommendation by issue a notice of dissatisfaction
- If no notice of dissatisfaction issues, then the recommendation becomes conclusive and binding



Conciliation - Process

- Preliminary Meeting
- Experts
- Conciliation Submissions
- Conciliation Hearing/Session/Meeting
- May be multiple meetings
- May require further submissions
- No agreement, Conciliator will issue a recommendation
- Recommendation is binding if not rejected within a certain period of time

Arbitration



- If a dispute is not resolved through Conciliation and a notice of dissatisfaction has issued, then the dispute can be referred to arbitration – clause 13.4
- Features of Arbitration:
 - Private litigation
 - Creature of Contract
 - Arbitration Act 2010
 - Arbitration Agreement separate to contract
 - Private and confidential
 - Arbitrator usually someone with technical/legal expertise
 - UNCITRAL Rules
 - Difficult to challenge
 - Similar to Court process
 - Can look to Courts for support



Arbitration – Process

- Referral to Arbitration
- Appointment of Arbitrator
- Procedural Meeting/Case Management Directions
- Statement of Case
- Response/Defence
- Counter Claim
- Disclosure/Discovery
- Hearing
- Orders
- Costs

Adjudication



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- Statutory under the Construction Contracts Act 2013
- Any party can refer a dispute at any time
- Process more akin to arbitration i.e. more formal
- 28 day process but can be extended to 42 days by referring party. A longer timeline can be agreed by both parties



Adjudication Process

- Steps:
 - Notice to Refer
 - Appointment of Adjudicator
 - Referral Notice
 - Reply
 - Usual that there are no hearings/meetings
 - May be further submissions
 - Decision
- Decision is binding in the interim
- Decision is enforceable in the High Court
- Can be overturned by arbitration/court

Adjudication – Interplay with PWC



13.3 Adjudication

- 13.3.1 The parties have recourse to Adjudication in accordance with the Construction Contracts Act 2013
- 13.3.2 Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute shall not be referred to the dispute management procedure or conciliation under the Contract.
- 13.3.3 If a dispute between the Parties is referred to Adjudication, any dispute management procedure or conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the dispute management procedure or conciliation from the date the dispute was referred to Adjudication. In the event that a decision is reached by the adjudicator, the dispute management procedure or conciliation for that dispute shall be terminated.

Claims and Dispute Resolution



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Exercise

A large, faint, circular watermark logo is centered in the background. It features the letters 'CMG' in a bold, sans-serif font, surrounded by concentric circles and a stylized, maze-like pattern.

Thank you

Questions??