

ice-sa **NEC Forum 2** Including Jam Session 2

Thursday 14th March 2024
4 pm – 5:30 pm

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**Improving SA Infrastructure
using NEC Contracts as intended**

NEC Jam Session 2

**CPD
Accredited**

**– Presented by
Mile Sofijanic from ICE-SA
NEC sub-committee**

**TOPIC: – Procurement &
Contracts, Parties & Role
Players, Getting the best
out of the NEC contract**

10 NEC Jam Sessions Topics

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Session 1

Introduction to the NEC3 family of contracts; How it came about, what it tries to do and how it is used; Synopsis of each of the 12 contracts in the family.

Session 2

Procurement & contract strategies; Parties and role players; Getting the best out of the NEC contract - change of the culture.

Session 3

Introduction to the sections of Core Clauses & actions in ECC3,
Section 1 – General.

Session 4

Section 2 - Contractor's main responsibilities,
Section 3 – Time.

Session 5

Section 4 - Testing & Defects (Quality),
Risk Management.

Session 6

Alignment between contracting parties,
Diversity and Inclusion.

Session 7

Section 5 - Payment, Cost and the Options,
Section 6 - Change management through compensation.

Session 8

Section 7 - Title,
Section 8 - Liabilities and insurance,
Section 9 - Termination,
Disputes and Adjudication.

Session 9

Pre-award documentation & Developing a contract.

Session 10

NEC3 and NEC4 – the differences.

Objectives of 10 NEC Jam Sessions

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- Delegates should leave with
 - an understanding of the NEC philosophy, its associated culture change and how it contributes to the effective management of a project;
 - a basic understanding of how to prepare, tender to, and administer the ECC3 (Engineering and Construction Contract)

Introduction to ECS ice-sa

Collaborative Project Strategies©

ECS Associates
Empowered Contract and Project Management Services



www.ecs.co.za

Facts and Values

A leading, fully-empowered organisation.
35% black woman owned. BBBEE Level1

3 decades of experience in South Africa and
overseas

Delivery of international best practice
professional contract and project management
services from front end studies to
implementation

Business solutions through a combination of
expert knowledge and hands on experience

Drive clients' success through collaborative,
mutually beneficial contract and business
management practices

Collaborative Project Strategies©
Agile Project Delivery

Our Founder Andrew Baird was a key member
of the drafting committee for NEC 1, 2 & 3

Our associate Peter Higgins is chairman of the
drafting committee for NEC4

Network based business model – low overhead
cost
(current staff 100+, network 1000+)



Integrity

Professionalism

Collaboration

Courage

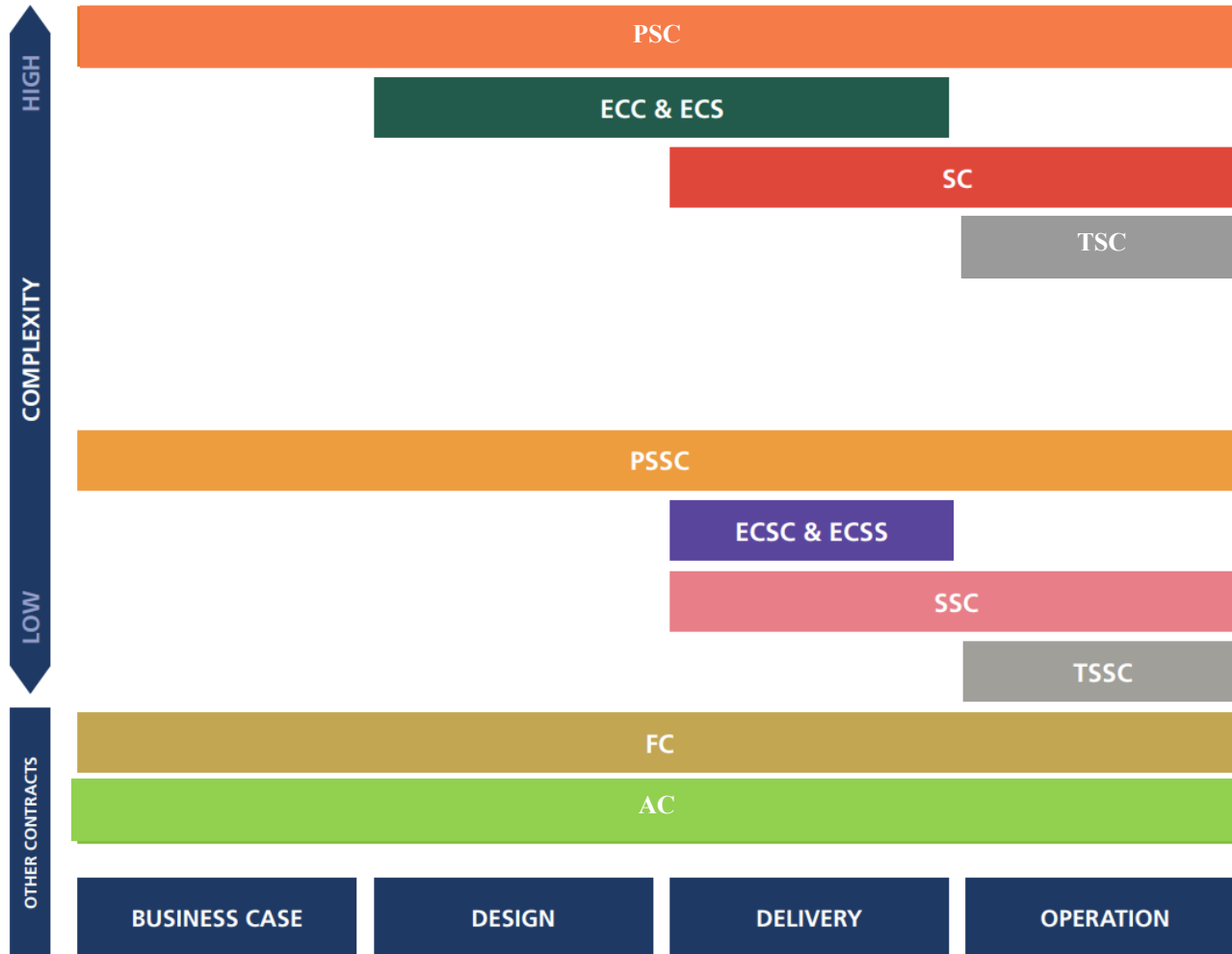
Reflection on the previous session

- Flexibility
- Clarity and simplicity
- Stimulus to good management
 - The most important objective; every procedure is designed to contribute to rather than detract from the effectiveness for all parties
 - foresight applied collaboratively mitigates problems and shrinks risk
 - clear division of function and responsibility helps accountability and motivates people

Stimulus to good management

- Done by introducing Project Management into contractual relationships; minimum legalese
 - Single point accountability
 - Apply planning and cost management tools
- Forecast not react to events
- Give risk to party best able to *manage* it
- Result: Manage TIME / COST / QUALITY

Contracts in NEC3 family^{ice-sa}



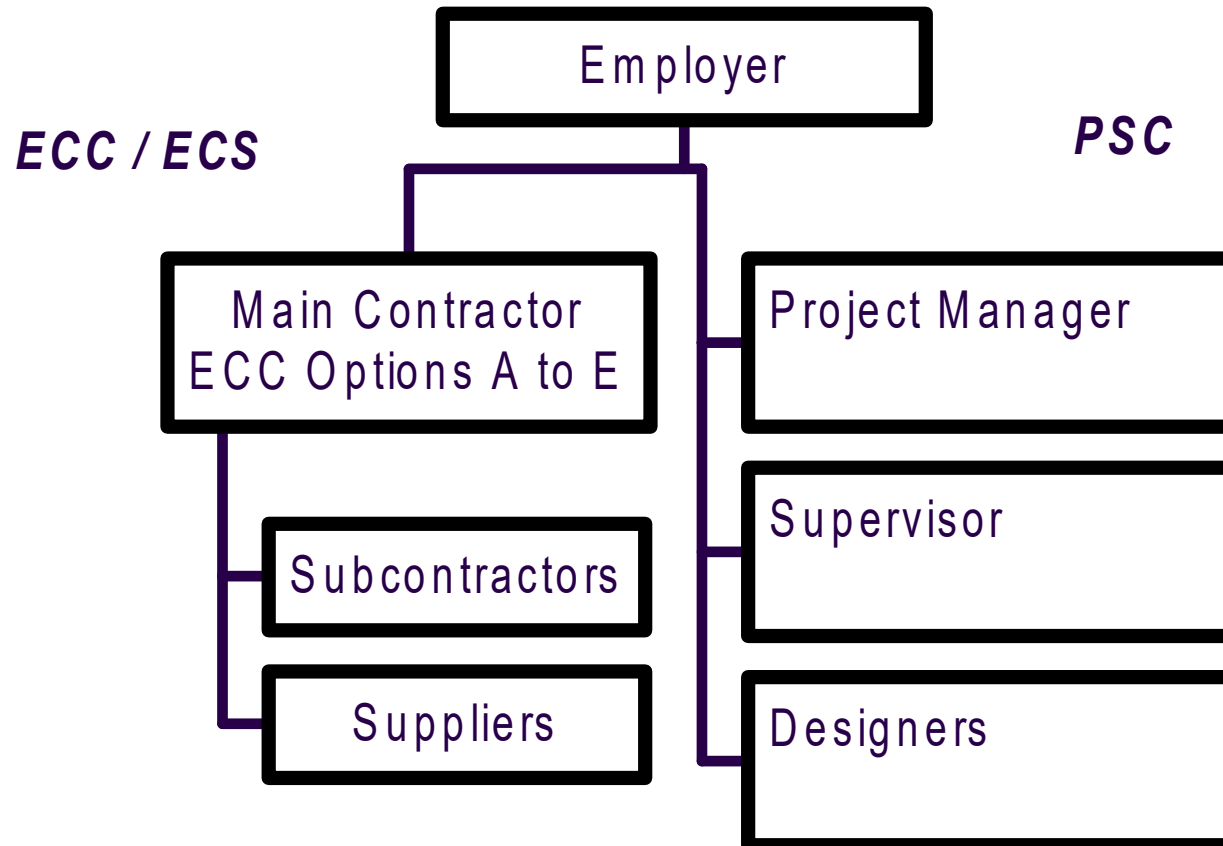
NEC Jam session 2

- Procurement & contract strategies; Parties and role players;
- Getting the best out of the NEC contract - change of the culture

Procurement Strategies

- How to split project in smaller components if required?
- Who does Engineering, Procurement and Construction?
- Who is managing interfaces?

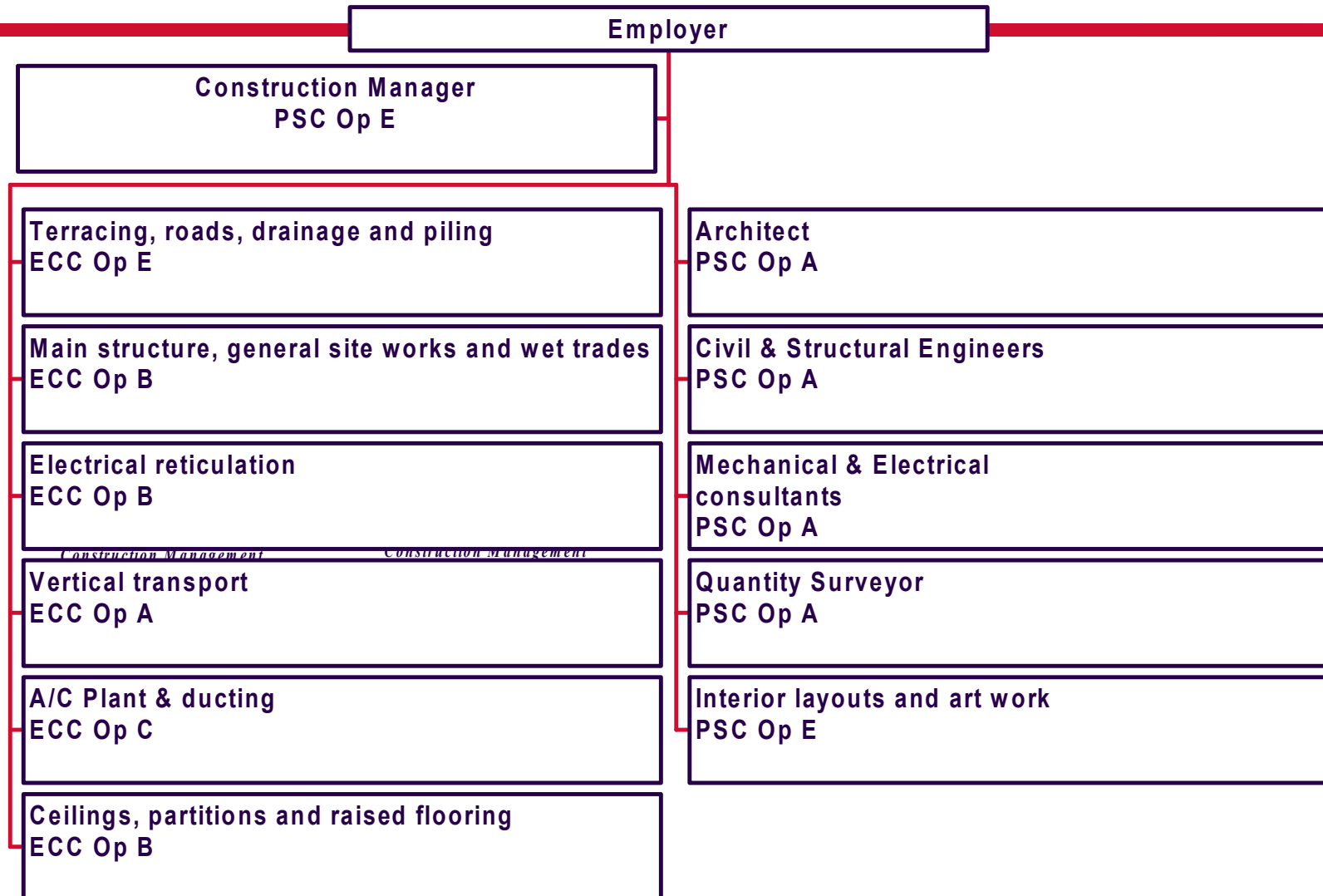
Single main contract



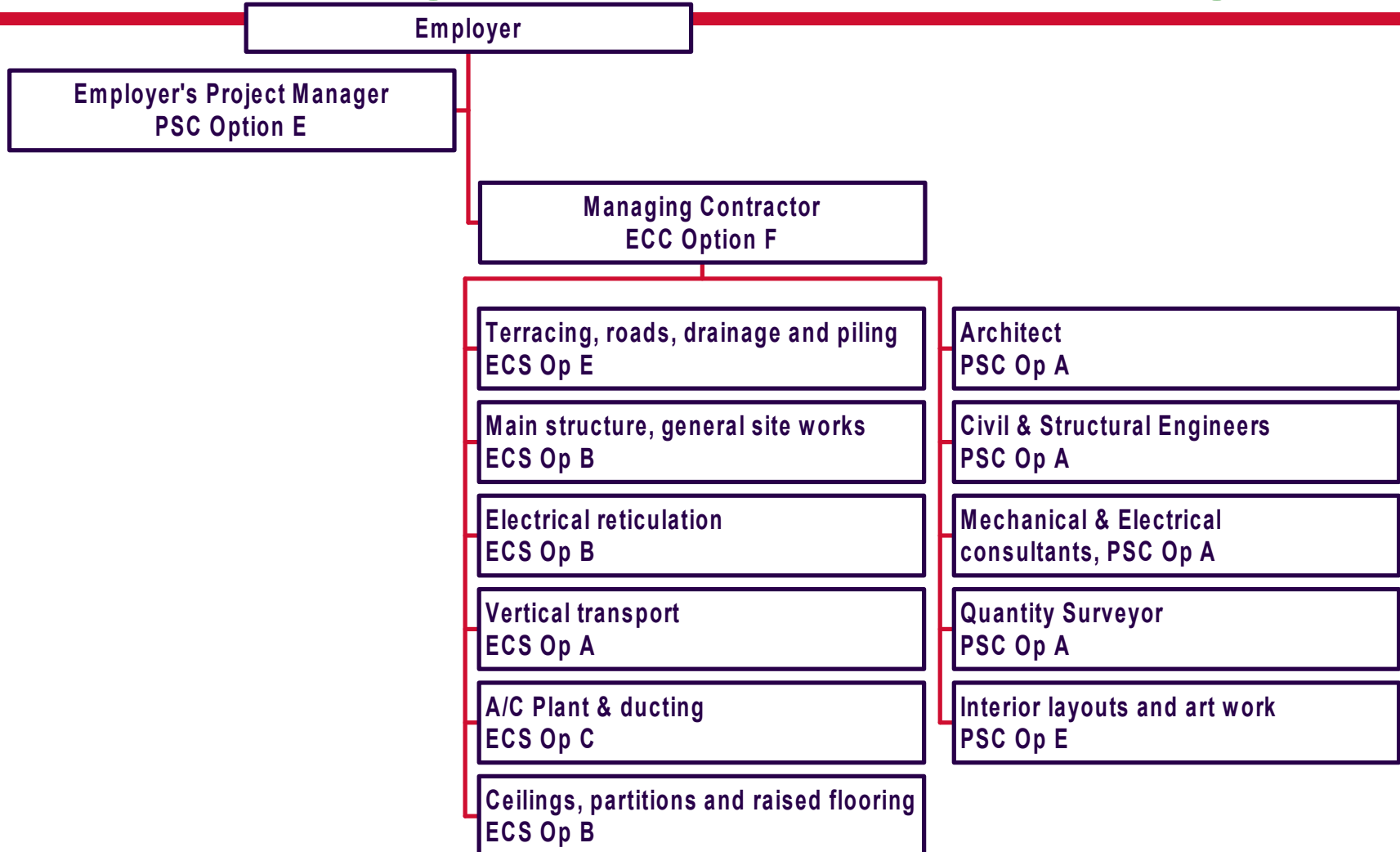
Early contractor involvement

- Bring contractor on board early by process of competitive selection
- Assist with finalization of design and clause 31.2 programme
- Review all design work for constructability
 - See potential savings
 - Switch from Options A or B to C or D?

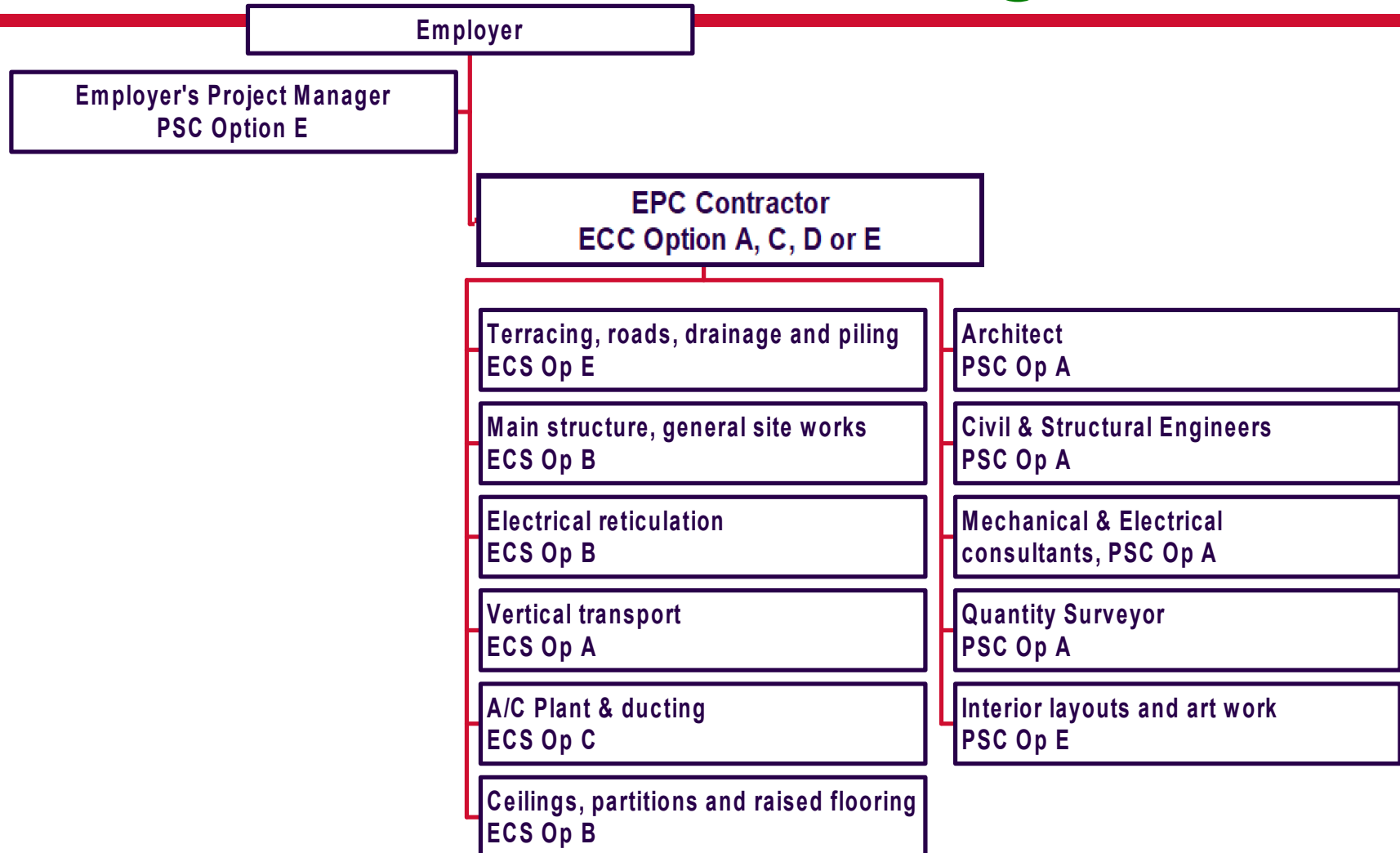
Combination of Construction & EPCM



Management contracting



EPC contracting



Contract Strategies

**Allocation of risk and incentive
Choosing the right Options
(Main and Secondary Options)**

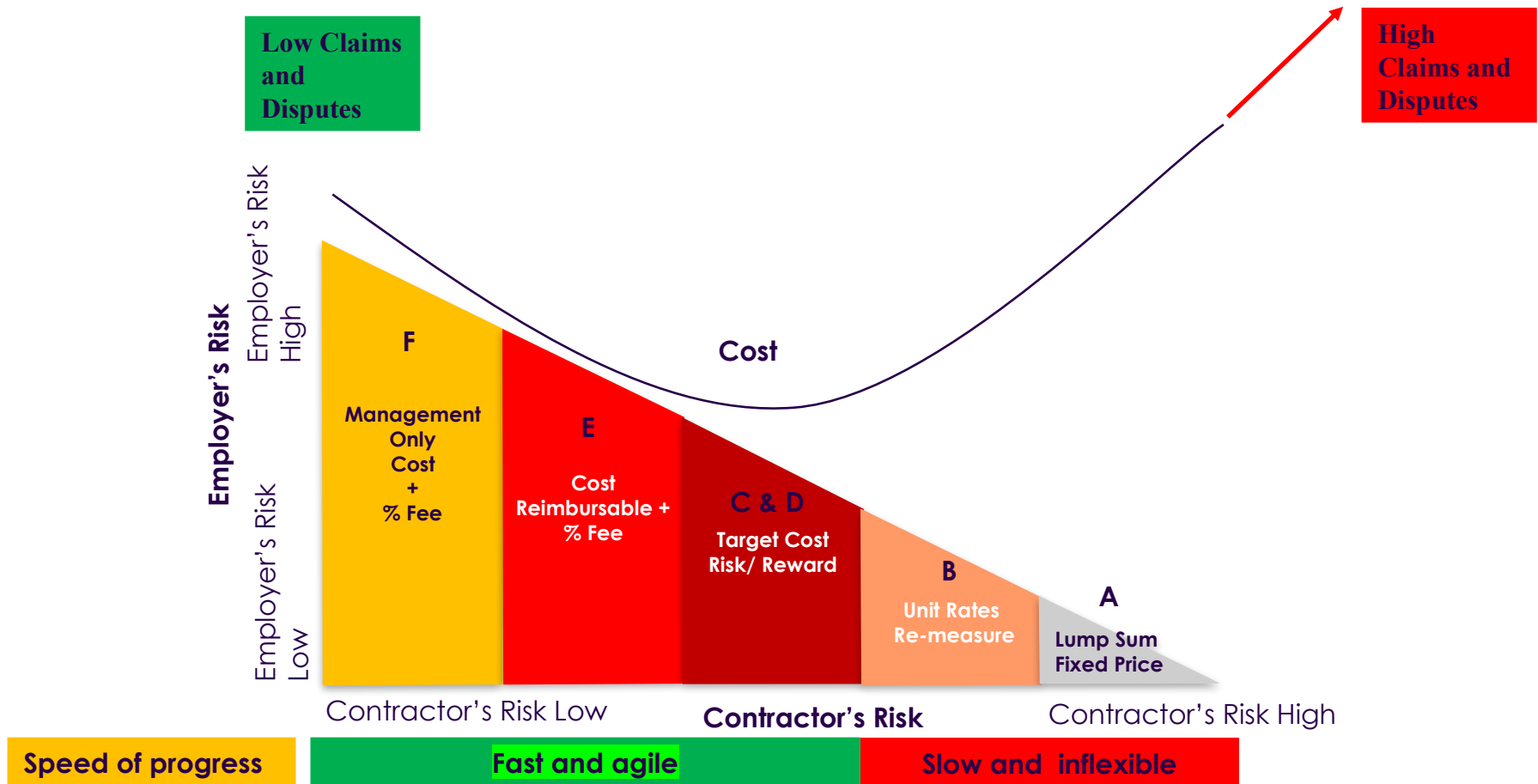
Sections in Core Clauses of ice-sa NEC3 contracts (excluding AC3 and FC3)

- | | |
|--|---|
| 1. General | 6. Compensation events |
| 2. The Contractor's (Parties') main responsibilities | 7. Title (Rights) |
| 3. Time | 8. Risks and insurance; liability & indemnity |
| 4. Testing and Defects (Quality) | 9. Termination |
| 5. Payment | |

Contracting strategies^{ice-sa}

- **Option A: Priced contract with Activity Schedule**
 - Paid tendered price of each activity when completed
- **Option B Priced contract with Bill of Quantities**
 - Paid for quantities of work done at tendered rates
 - Ideally not a provisional bill; must be representative of final work to be done
- **Options C and D Target cost contracts**
 - Paid Defined Cost; Compare final cost with tendered target & share over/under-run
- **Options E and F Cost reimbursable contracts**
 - Paid Defined Cost plus tendered fee %
- **Option G – Term Contract in PSC3 only**

Project Risks and Types of ice-sa Contract



Contracting strategies **ice-sa**

- **Secondary Options**

X1 to X20 (options X8 to X11 and X19 are not used)

Z clauses (they could be introduced to add new or change standard clauses)

Dispute resolution W1 always used in South Africa

The Parties & their Agents

Who is in the saddle?

Agents of the Parties **ice-sa**

- **ECC3, TSC3 and SC3 use an agent named in the Contract Data**
 - ECC3 has two agents, Project Manager and Supervisor
- **PSC3 uses an agent if secondary Option X10 is selected**
- **No named agents in the short contracts but main party can delegate to one**
- **No agents in the subcontracts**

Roles and responsibilities

- Agents have considerable authority
- Role defined by the actions which the contract says they take
- Act on behalf of the employing party
 - Assumed they are not constrained
- May delegate their actions; not advised
- Motivated to act reasonably by presence of the Adjudicator

Adjudicator

- Appointed jointly by Parties when forming contract
- Party 1 proposes in enquiry
- Party 2 accepts or proposes other
- Only used when dispute arises
- Fees paid 50/50 by Parties
- Must be impartial and VERY knowledgeable of NEC contracts

NEC3 Contracts Summary

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Contract	Core Clauses	Main Options	Dispute Resolution	Secondary Options	Schedule of Cost Compon.	Contract Data	Agent
ECC	9	A,B,C,D,E,F	W1	X1-X20 Z	SCC SSCC	2	PM Supervisor
PSC	9	A,C,E,G	W1	15 X options additional Z options	N/A	2	X10
SC	9	N/A	W1	10 X options additional Z options	N/A	2	Supply Manager
TSC	9	A,C,E	W1	10 X options additional Z options	N/A	2	Service Manager
FC	4	N/A	N/A	N/A	N/A	2	N/A
AC	4	N/A	N/A	N/A	N/A	1	N/A

People's attitudes ...

- **Successful use of NEC depends on**
 - Aligning the interests of the Parties
 - Foresighted, co-operation between the Parties
 - Proactive behaviour
 - Direct effort towards the future
- **NEC provides financial incentives to co-operate**

Getting the best out of NEC

- **The Parties - from top management down - and their agents *MUST* be prepared to enter spirit of NEC's drive for change and be driven by its better standards of management by all**
- **Start off with a traditional adversarial “provisional bill of quantities” approach and the outcome could be a disaster**

Confrontation...



Change of culture

- NEC says it is too late to intervene once things have gone wrong
- NEC procedures are designed to motivate the parties to work together as a team to shrink risk and plan ahead
- Control and the exercise of choices are only possible over what has not yet been done. It is not possible to control that which has already been done; only the consequences can be managed

Change of mindset

NEW mindset

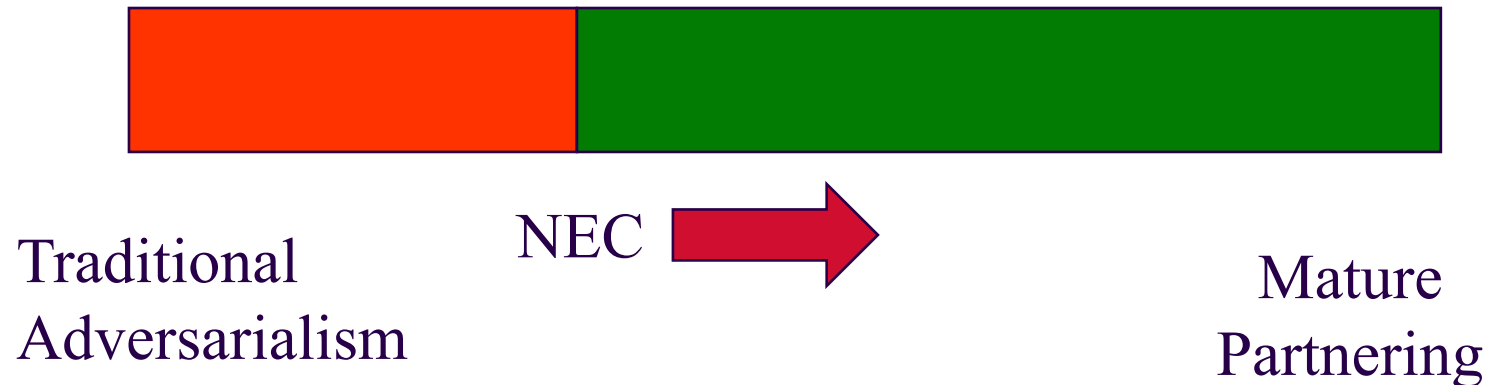
- Allocate risk to party best able to manage it
- Opened risk interpretation base
- Reducing problems
- Remobilising resources

Towards Partnering

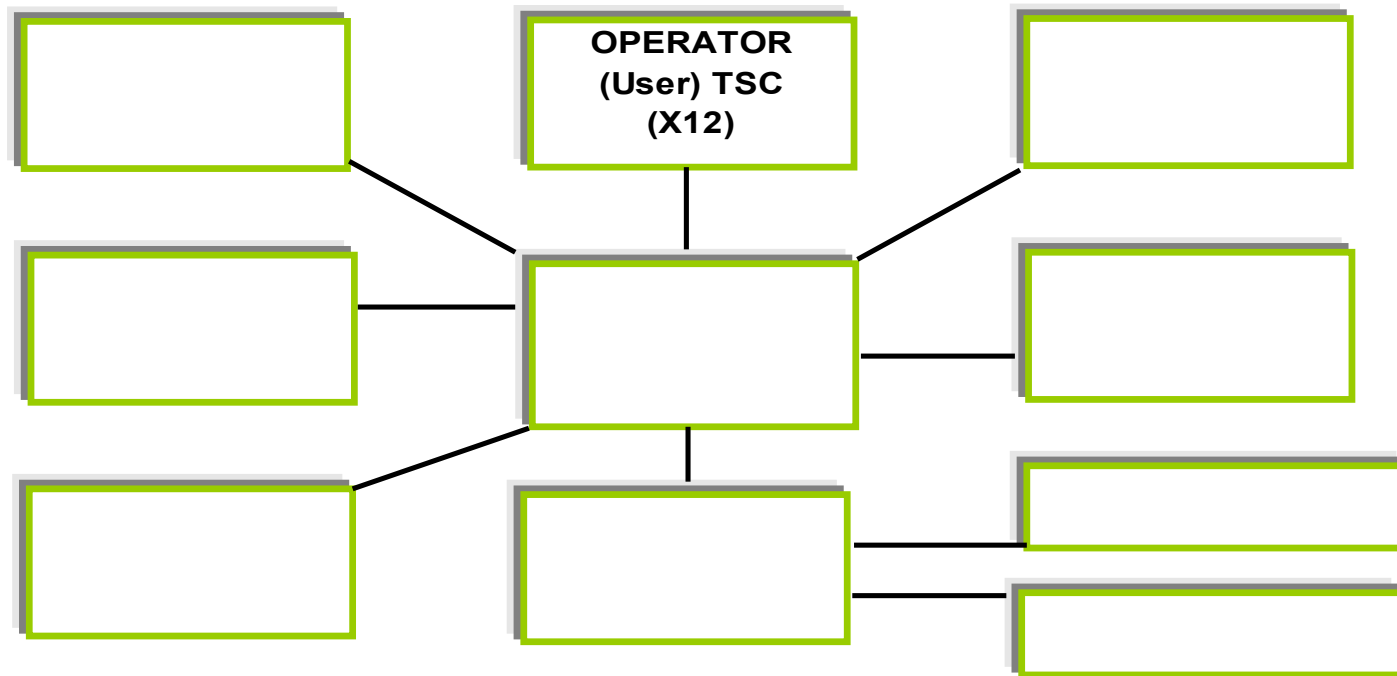
- Early Contractor Involvement
- Co-operative long term relationships between separate firms
- Mutual objectives, decision systems and continuous improvement
- Keep project teams together; fewer management decisions needed

NEC is the route to partnering

Moving industry culture



Project partnering in NEC with X12



A Partnering Option (X12) is used in each Own Contract

Total procurement activity

- Each of these four key issues has an effect on the other
 - Procurement strategy; planning for risk allocation
 - Contract strategy and development; what the contract should say; its quality and completeness
 - People skills; no such thing as an unsophisticated contract
 - Contract management; Read the Contract
- The weakest link could cause a disaster

Lessons Learned No.3



You cannot have too many friends...

If we fight with project challenges, can we afford to fight with people around us?

Listen and talk to people. Respect and engage. Everyone has something to contribute.

The end of NEC Jam Session 2



Next NEC Jam Session

Session 3

- Introduction to the sections of Core Clause & actions in ECC3,
- Section 1 – General.

**Thank you for your
participation**

Feedback is welcome

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