

ice-sa

NEC Forum 4

ONLINE

NEC training sponsored by  **eCS**

FREE

**Thursday 8th May
4 pm - 6 pm**

**Introduction to the NEC4 Professional
Service Contract (PSC)**

**Presented by Mile Sofijanic
ICE accredited NEC Tutor, NECReg**

10 NEC Jam Sessions Topics for 2025

ice-sa



13 th February	The NEC4 Family of Contracts - Introduction
13 th March	Procurement and Contract Strategies
10 th April	ECC4 - Core Clauses
8 th May	PSC4 - Introduction
12 th June Presented by Dr Jon Broome	Contract Strategy: Choosing the Main Options under the NEC4 Engineering & Construction Contract (with reference to other members of family + filling in Contract Data entries) and how to incorporate Early Contractor Involvement (ECI)
10 th July	ECC4 - Early Warnings and Compensation Events
14 th August	ECC4 – Dispute Avoidance
11 th September	Contract Strategy: The use of Option X29 : Climate Change
9 th October Presented by Dr Jon Broome	Contract Strategy: The Secondary Option 'X' clauses including preparation of the associated Contract Data.
13 th November	ECC4 – Tendering and Contract Finalisation

Objectives of 10 NEC Jam Sessions

ice-sa

- 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 ECC4 (Engineering and Construction Contract)
 - basic knowledge of the PSC4 (Professional Service Contract)

ECS Associates: Facts & Values



More than 3 decades of Project and Contract Management experience in South Africa and beyond



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



Collaborative Project Strategies©
Agile Project Delivery



Network based business model

Level 1 35% BWO BBEE company.

Integrity

Professionalism

Collaboration

Courage

NEC4 Professional Service Contract

PSC4 - Introduction



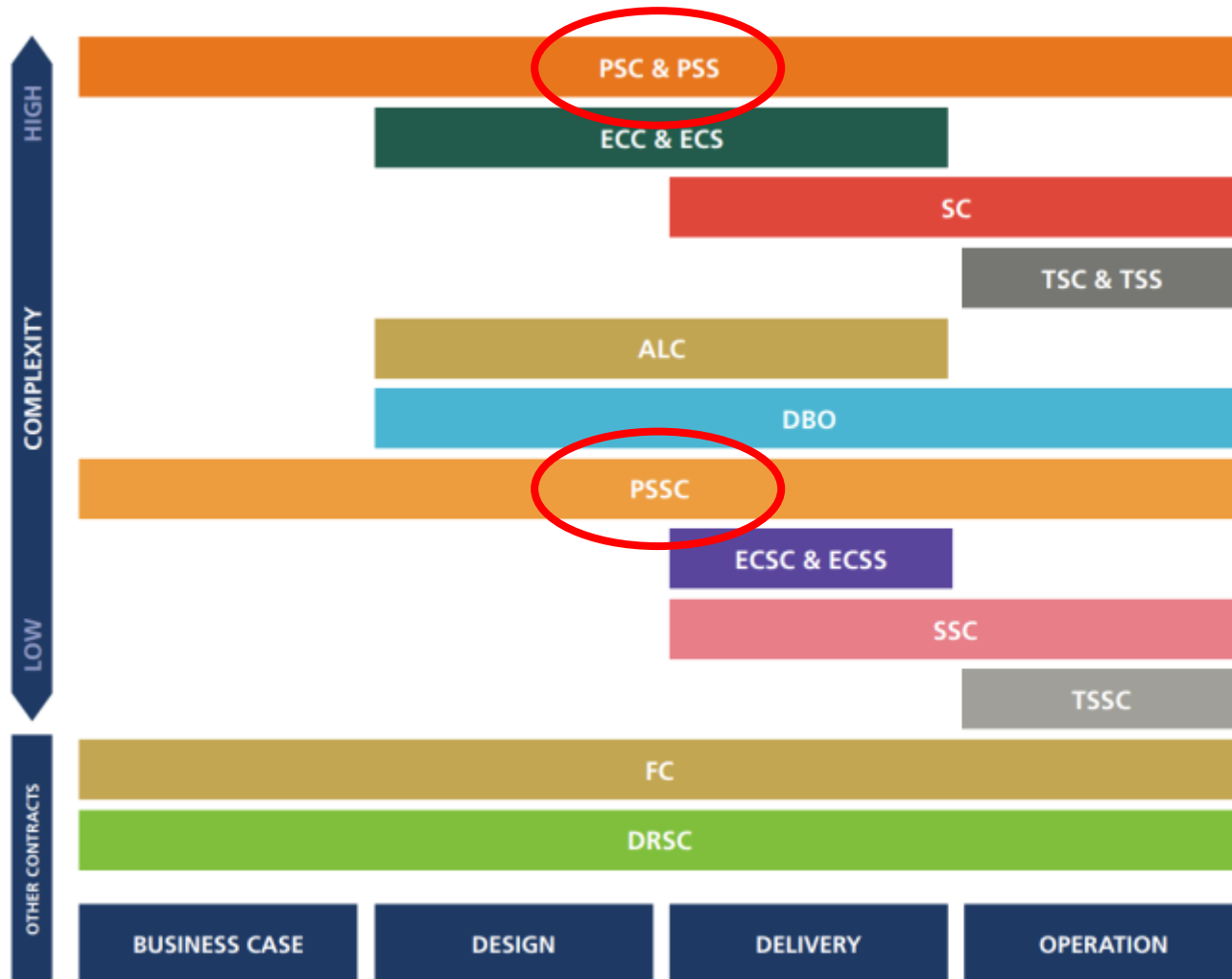
Contracts in NEC family

ice-sa

Multi discipline procurement of

- **WORKS:**
 - Civil, Building, Mech., E&I, Telecom
- **SERVICE:**
 - **Engineer, Architect, QS, Project Manager (PSC4)**
 - Term Service by a Contractor or Consultant
 - Design, Build and Operate
- **SUPPLY:**
 - Goods procured locally or foreign trade under **INCOTERMS**

Contracts in NEC4 family



User Guides for PSC4

User guides

- For all contracts
 - Vol 1 Establishing a procurement and contract strategy
 - Vol 3 Selecting a supplier
- For the PSC
 - Vol 2 Preparing a professional service contract
 - Vol 4 Managing a professional service contract
- Flow charts for the PSC - electronic only



Why use PSC4 and PSSC4 **ice-sa**

PSC4

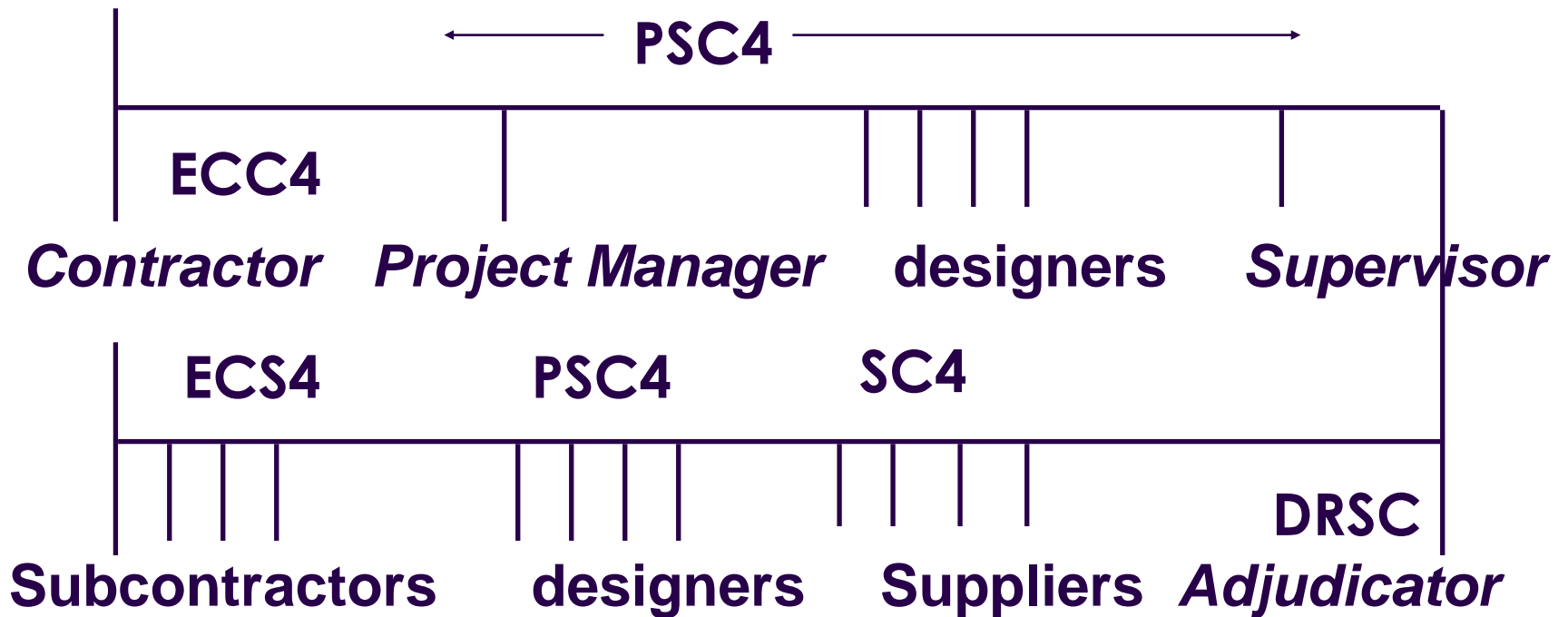
- Appoint professionals to provide a service on a fiduciary basis – can be any service
- Act as *Project Manager, Supervisor* in ECC4 contract, or designer, architect, QS and as EPCM consultant

PSSC4

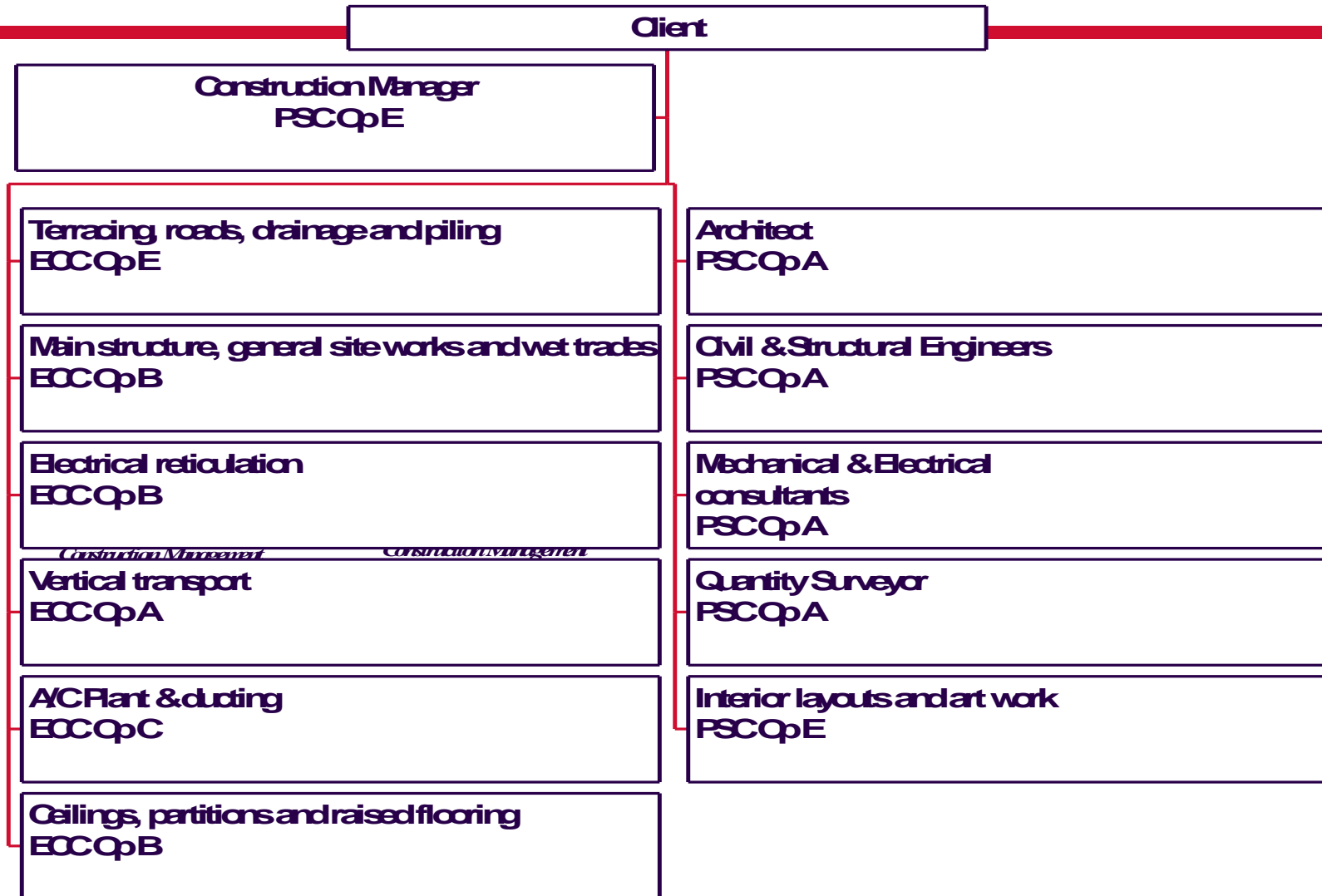
- Appoint a professional person or small enterprise for straightforward service, such as training, research etc.

PSC4 in a design by Client arrangement

Client



PSC4 in complex project ice-sa



Structure of a PSC4 Contract **ice-sa**

- Core Clauses always apply (1-9)
- Choose one main Option (A, C and E)(Note: no G)
- Select Dispute Resolution Option W1 (W2 for the UK)
- Choose required secondary Options
- Contract Data selects *conditions of contract*
 - Contract Data part one by the *Client*
 - Contract Data part two by the *Consultant*

Resolving the absence of **ice-sa** Option G

- PSC3 has Option G for term contract approach – the *Employer* to call-off separate packages of work/ service over a period of time
- NEC4 replacement options for G:
 - Use of NEC Framework Contract with PSC and PSSC as service contracts (Time Charge Orders)
 - Use of NEC Term Service Contract (for operations and maintenance support)
 - Compensation events within PSC4

Core clauses always apply

ice-sa

1. General
2. The *Consultant's* main responsibilities
3. Time
4. Quality management
5. Payment
6. Compensation events
7. Rights to material
8. Liabilities and insurance
9. Termination

Select only those required

- X1 Price adjustment for inflation (A & C only)
- X2 Changes in the law
- X3 Multiple currencies (A only)
- X4 Ultimate holding company guarantee
- X5 Sectional Completion
- X6 Bonus for early Completion
- X7 Delay damages
- X8 Undertakings to the *Client* and Others

PSC4 Secondary options

Select only those required

X9 Transfer of rights

X10 Information modelling

X11 Termination by the *Client*

X12 Multiparty collaboration (not with X20)

X13 Performance bond

X18 Limitation of liability

X20 Key Performance Indicators

Z Additional *conditions of contract*

Section 1 General

Actions and Definitions

10.1 The Parties and the *Service Manager* shall act as stated in this contract

10.2 (and) in a spirit of mutual trust and co-operation

11. Definitions - also in main option clauses
Italicised terms are identified in Contract Data

Clause 11.2 Definitions

- 11.2(1) The Accepted Programme
- 11.2(2) Completion
- 11.2(3) The Completion Date
- 11.2(4) The Contract Date
- 11.2(5) A Corrupt Act
- 11.2(6) A Defect
- 11.2(7) The Early Warning Register
- 11.2(8) The Fee
- 11.2(9) A Key Date
- 11.2(10) Others
- 11.2(11) The Parties
- 11.2(12) To Provide the Service
- 11.2(13) Scope
- 11.2(14) A Subcontractor
(note: not Subconsultant)

Clause 11.2 Definitions

There are additional definitions in Main Options:

11.2(15) Activity Schedule (A and C)	11.2(20) The PSPD (A)
11.2(16) Defined Cost (A)	11.2(21) The PSPD (C and E)
11.2(17) Defined Cost (C and E)	11.2(22) The Prices (A and C)
11.2(18) Disallowed Cost (C and E)	11.2(23) The Prices (E)
11.2(19) The People Rates (A)	

PSPD – The Price for Service Provided to Date

12 Interpretation and the law

ice-sa

- Contract governed by the *law of the contract*
- No change unless in writing & signed by the Parties – The *Service Manager* is not a Party
- This contract is the entire agreement
 - Pre-tender agreements not selected in a contract are thus invalid

- which can be read, copied and recorded
 - in writing; oral has no validity
- effective on receipt, or in accordance with communication system specified in the Scope
- respond within *period for reply*
- each notification & certificate to be separate from other communications

14 *Service Manager*

- *Services Manager*
 - acceptance of a communication does not change *Consultant's* responsibility
 - may delegate any action – in writing
 - may withhold acceptance for any reason. Can be a compensation event
- only *Service Manager* can change Scope or a Key Date
- *Client* may replace *Service Manager* after notifying the *Consultant*

15 Early warning

- *Consultant and Service Manager* notify early warning about price increase, delay or impair usefulness of the *service* or any other matter which could change *Consultant's* total cost
- *Service Manager* enters early warnings in Early Warning Register
- Either *Service Manager* or *Consultant* call early warning meeting
- Seek solutions and revise Early Warning Register

16 Requirements for instructions

ice-sa

Clause 16 deals with ambiguities and inconsistencies

- Precedence statement not required as drafting takes account of it
- *Service Manager* or *Consultant* to notify ambiguity, inconsistency, illegal or impossible requirements as soon as either is aware
- *Service Manager* gives instruction resolving it
 - May lead to a compensation event

17 Corrupt Acts

The Consultant:

- does not do a Corrupt Act
- takes action to stop a Corrupt Act of a Subcontractor or supplier
- Includes a similar provision in its subcontracts

- Based on a supervening event stopping the work (force majeure)
- Which neither Party could prevent
- The *Consultant* would not have allowed for it
- The *Service Manager* gives instruction how to deal with it
 - Could lead to compensation event
 - The *Client* can terminate if prevention continues

Section 2

The Consultant's Main Responsibilities

20 Consultant Provides the Service

20.1 Provides the Service in accordance with the Scope

- implications of *Consultant's* Scope
- *Service Manager* may instruct change in the Scope 14.3
- *Consultant's* obligation is to use skill and care normally used by professionals providing services similar to the service (20.2)
- *Consultant* is not liable for a Defect unless it failed to use that skill and care (20.3)
- *Consultant* obeys the *Service Manager's* instruction per 24.2

21. Consultant's people

- *key persons* named in Contract Data
- substitution needs *Service Manager* acceptance
- removal for reasons in one day – must have valid reason, e.g.
 - health and safety violation
 - not competent
 - aggressive behaviour

11.2(14) Labour broker -not a Subcontractor

23 Subcontracting

- **Consultant** liable as if it had not subcontracted
- Subcontractor's people as though they were **Consultant's**
- Subcontractor and its documentation subject to **Service Manager's** acceptance

24 Other Consultant's responsibilities

ice-sa

24.1 Design approval from Others

24.3 *Consultant* acts in accordance with health and safety requirements stated in the Scope

25 Assignment

25.1 Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The *Client* does not transfer a benefit or any rights if the party receiving the benefit or right does not intend to act in a spirit of mutual trust and co-operation.

26 Disclosure

26.1 The Parties do not disclose information obtained in connection with the *service* except when necessary to carry out their duties under the contract

26.2 The *Consultant* may publicise the *service* only with the *Client's* agreement

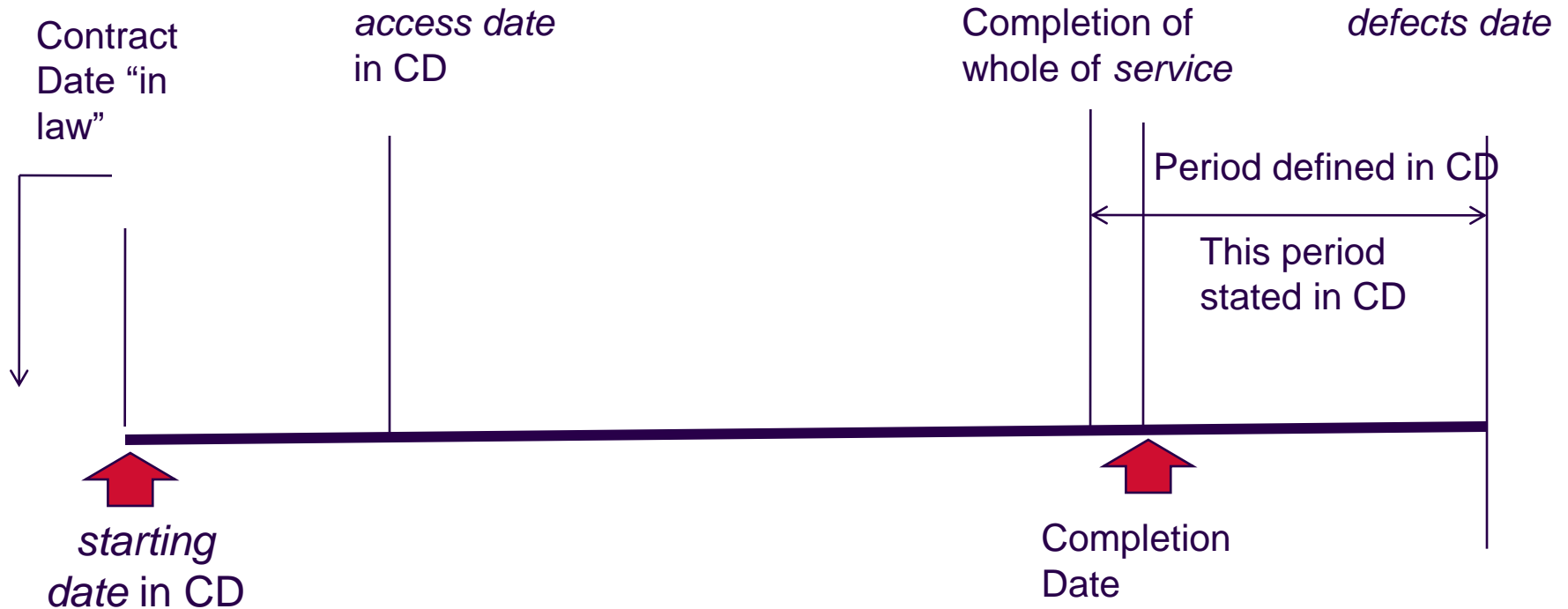
Section 3 Time

Planning and programming of the Service

Clause 31.2 programme to show

- *starting, access, Key Date(s) and Completion Date*
- *planned Completion*
- *Order and timing of operations*
- *Order & timing of work of the Client & Others*
- *Dates planned to meet Condition and allow others to do their work*
- *Provisions for*
 - *Float & time risk allowances*
 - *Health & safety requirements*
 - *Procedures set out in the contract*

Principal dates in PSC4 showing early Completion



Completion Date is *completion date* in CD unless later changed

CD = Contract Data

31.3 Within 2 weeks of receiving *Consultant's* programme, *Service Manager* **MUST** either accept or not accepted for one of the listed reasons

- Failure of *Service Manager* to act treated as acceptance of programme (new for PSC4)

32.1 Lists what is to be shown on each revised programme

32.2 When revised programmes are to be submitted for *Service Manager's* acceptance

35 Acceleration

35. Acceleration - not to deal with delays

- Either *Service Manager* or *Consultant* may propose to the other an acceleration to achieve Completion before the Completion Date
- *Consultant* provides a quotation; not a compensation event. No criteria stated for acceptance hence subject to negotiation
- *Service Manager* changes Completion Date on acceptance

Section 4 Quality management

Testing & Defects

- **41.1 *Service Manager and Consultant* notify each other as soon as they find a Defect**
- **Significance again for the quality of the *Client's Scope***

41.2 Consultant corrects Defects even if Service Manager does not notify

- **Consultant corrects Defects within time which minimises adverse effect on Client or Others**

Section 5 Payment

**Certification & payment including
the main Options**

Assessing the amount due

50.1 *Service Manager* assesses the amount due

- at each assessment date
- considers any payment application received

50.3 Price for Service Provided to Date (PSPD) per main option

- other amounts due or retained from *Consultant*
 - retention & inflation % of PSPD
 - other amounts; (as per secondary options or disallowed cost where applicable)

50.5 Retain 25% if no programme containing information which this contract requires

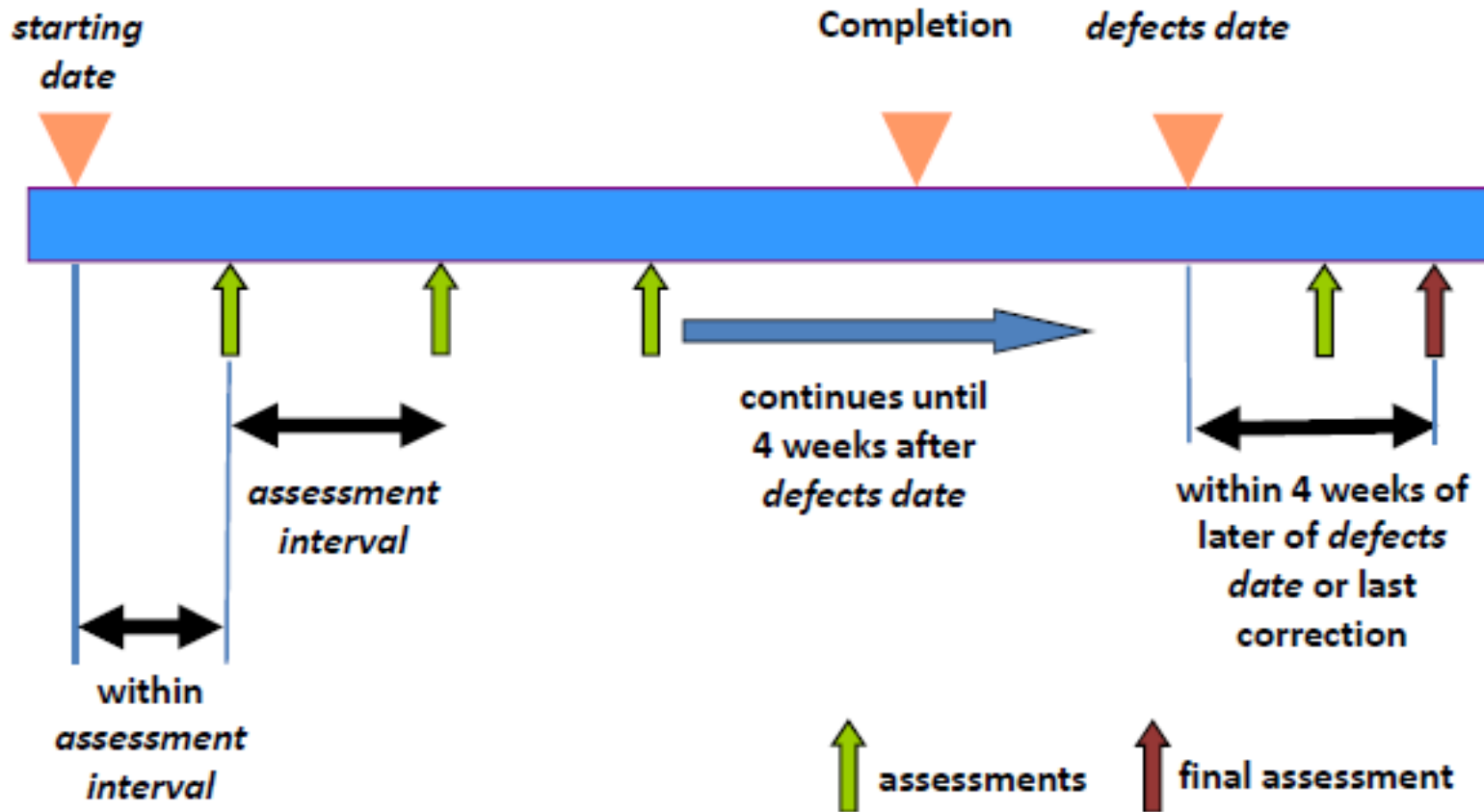
<u>Option</u>	<u>Prices</u>
A & C	Activity Schedule prices for activities 11.2(20)
E	Defined Cost + Fee 11.2(21)

Price for Service Provided to Date (PSPD)

ice-sa

<u>Option</u>	<u>PSPD</u>
A	Total of the Prices for completed activities 11.2(20)
C and E	Defined Cost forecast to be paid before next assessment date + Fee 11.2(21)

Assessment time periods



– Defined Cost (52.1)

- All the *Consultant's* costs which are not included in the Defined Cost are treated as included in the Fee
- Includes only amounts
 - calculated using rates and percentages stated in the Contract Data
 - and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered

PSC4 Schedule of Cost Components

ice-sa

- list of definitions of identifiable components of cost (Defined Cost) for
 - People, Subcontractors, Charges, Insurance
- tendered *fee percentage* applied to total Defined Cost

Payment of Defined Cost for PSPD

ice-sa

<u>Option</u>	<u>Defined Cost</u>
C and E	11.2(24) Cost of components in the SCC less Disallowed Cost 11.(17) [All payments]

Disallowed Cost

<u>Option</u>	<u>Disallowed Cost</u>
C and E 11.2(28)	Cost which <ul style="list-style-type: none">- is not justified by <i>Consultant's</i> accounts and records- should not have been paid to a Subcontractor...- was incurred only because the <i>Consultant</i> did not....give an early warning...- correcting Defects after Completion etc.

11.2(8) The Fee

- is the sum of the amounts calculated by applying the *fee percentage* to the Defined Cost
- *Fee percentage* is tendered by *Consultant* in Contract Data part 2
- All the *Consultant's* costs which are not included in the Defined Cost are treated as included in the Fee

Amounts due from secondary Options

ice-sa

X1 Price adjustment for inflation

X3 Multiple currencies

X6 Bonus for early Completion

X7 Delay damages

X20 Key Performance Indicators

Plus quotations and compensation events

Section 6 Compensation Events

Change management

- Identify all events which lead to change
- use same procedure irrespective of pricing strategy or event
- use “cost plus” to value effect of the change event : no reference to tender, provisional sums or rates
- allow for alternative proposals
- deal with programme at the same time

- 16 listed in Section 6
- changes in the law, (Option X2)
- advanced payment delay (Option X14)
- also in secondary Options X10.5, X12.3(6) & (7) and possibly Z if used
- additional events listed in Contract Data part one
 - (see User Guide for drafting advice)

Compensation event admin.

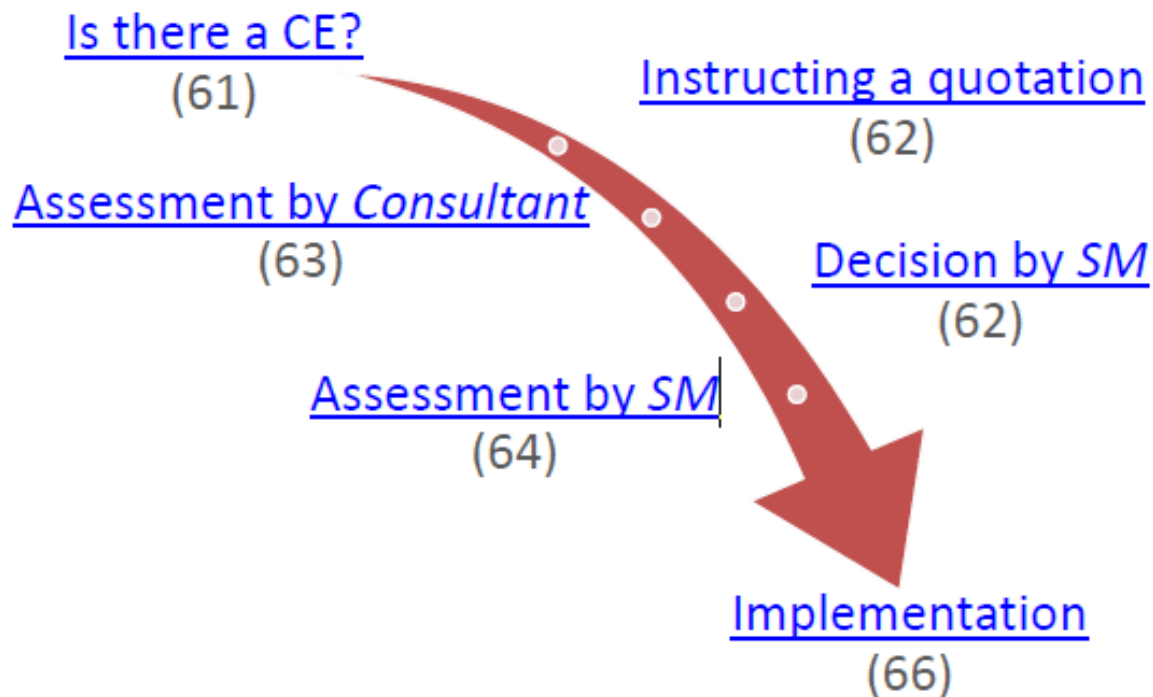
ice-sa

1. Notification
2. Quotation
3. Assessment: *Service Manager* assesses if *Consultant* does not or does it incorrectly
4. Implementation

Compensation Events PSC4

ice-sa

The compensation event process



Section 7 Rights to material

Use of material Intellectual property right

ice-sa

- *Client* has use of material provided by *Consultant* only as stated in Scope.
- *Consultant* obtains equivalent rights from Subcontractors
- *Client* only owns these rights if Option X9 used
- *Consultant* has right to use material provided by *Client* only to Provide the Service
- *Consultant* may use its own material elsewhere unless stated otherwise in Scope

Section 8 Liabilities and insurance

**Respective liabilities, insurance &
limitation of liability**

Client's and Consultant's liabilities and insurance

- 80 *Client's* liabilities (damage and 3rd party claims)
- 81 *Consultant's* liabilities unless stated as being the *Client's*
- 82 Recovery of costs
 - each Party pays for events for which they are liable
 - net contribution
- 83 Insurance cover – 3 No
- 84 Insurance policies
- 86 Insurance by *Client*

Limits of liabilities

- 87 *Consultant's* total liability
 - total liability stated in core clause; value in Contract Data
 - assumption that total liability will be capped
- X18 Limitation of liability for remaining issues
- Any Defect corrected for which *Consultant* is found not to be liable is a compensation event (60.1(13))

Section 9 Termination

Details about reasons, procedures and amounts due for termination

Reasons, procedures & amount due

ice-sa

- **Either Party may terminate *Consultant's* obligation to Provide the Service (90.1); we do not cancel the contract**
- **Reasons for termination listed (90.2)**
 - Note 4 weeks notice
- ***Client* may terminate for any other reason with Option X11**
- **Procedures to suit reasons (92)**
- **Amount due set-out in table (93)**
- **Obtain good legal advice before terminating**

W1 (outside of the UK)

- *Senior Representatives* are involved first
- If not resolved: Adjudication
- If not resolved: the *tribunal*, which is usually Arbitration

The end of NEC Jam Session 4



Next NEC Jam Session **ice-sa**

12 June 2025

Contract Strategies

By Dr Jon Broome

**Thank you for your
participation**

Feedback is welcome

communication@ice-sa.org.za

admin@ecs.co.za