

ice-sa **NEC Forum 6**

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SAICE CPD
Points

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FREE

**Thursday 10th July
4 pm - 6 pm**

**ECC4 Early Warnings and
Compensation Events**

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

10 NEC Jam Sessions Topics for 2025

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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 <i>Contractor</i> Involvement (ECI)
10 th July	ECC4 - Early Warnings and Compensation Events
14 th August	ECC4 – Dispute Avoidance
11 th September Presented by Richard Patterson	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

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

ECS Associates and Eskom – NEC Award!



Values:

Integrity

Professionalism

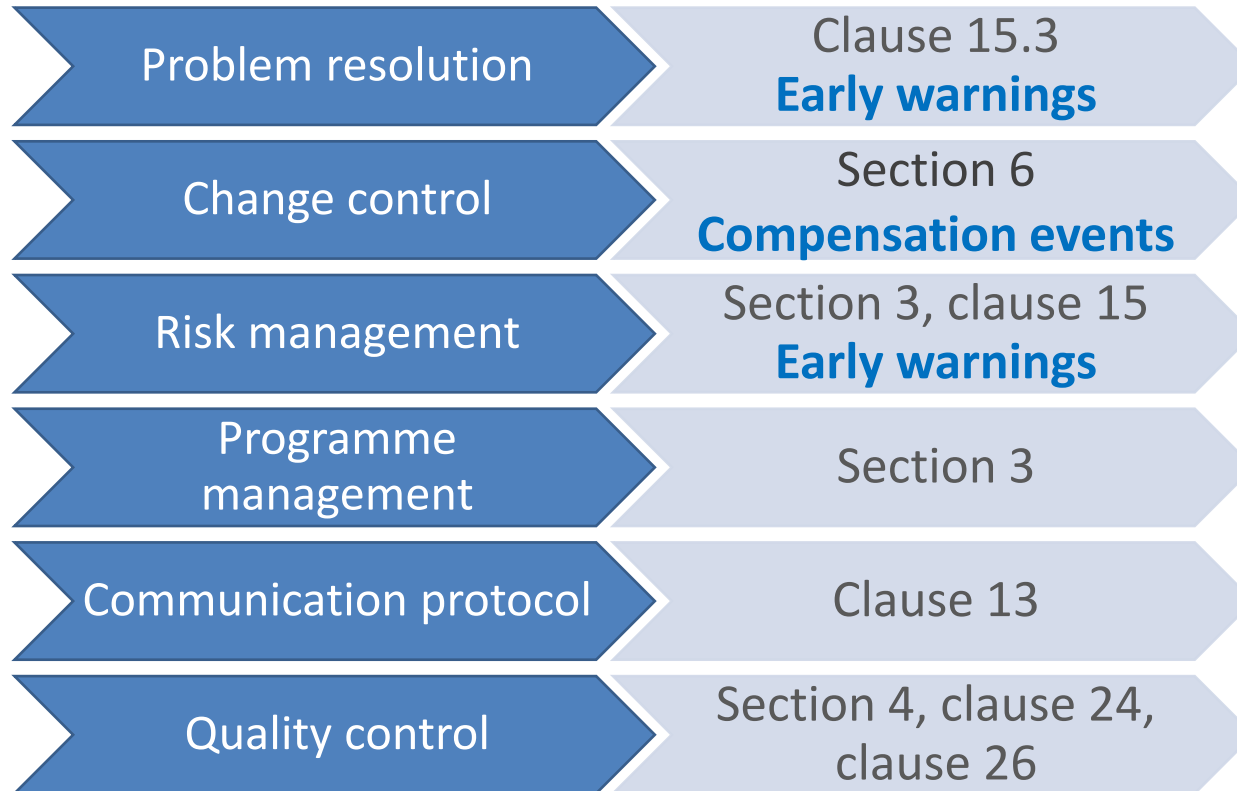
Collaboration

Courage

ECC4

Early warnings and compensation events

Project management principles in the ECC4



Following the contract ensures that these principles are implemented

Usual misconceptions about early **ice-sa** warnings and compensation events

- Early warnings
 - “they are a declaration of war!”
 - “they are providing contractual rights and/or liabilities!”
 - “this is how contractors start with claims!”
 - “they are waste of time. I (PM) run my weekly progress meetings that cover all the issues on the project!”
 - “they are the same as compensation events!”
- Compensation events
 - “contractors lower their prices just to get work and now they are using compensation events to make profit!”
 - “they are not in spirit of mutual trust and co-operation!”
 - “they are optional for contractors and PM will decide whether they are applicable or not!”
 - “if early warning was not issued, it is not possible to have compensation event!”

ECC4

Early warnings

Contract Data parts one and two – **ice-sa** matters for the Early Warning Register

- In Contract Data parts one and two both Parties list the matters to be included in the Early Warning Register
- It provides the initial building blocks of the post-contract Early Warning Register which is then supplemented by early warnings

Items identified in Contract Data parts one and two (headed 'matters to be included in the Early Warning Register') do not change the risk allocation!

Their purpose is to support post-contract risk management

Early warning

15
15.1

The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date or
- impair the performance of the *works* in use.

The *Project Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor's* total cost. The *Project Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

15.2 The *Project Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Project Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*.

Later early warning meetings are held

- if either the *Project Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case,
- at no longer interval than the interval stated in the Contract Data until Completion of the whole of the *works*.

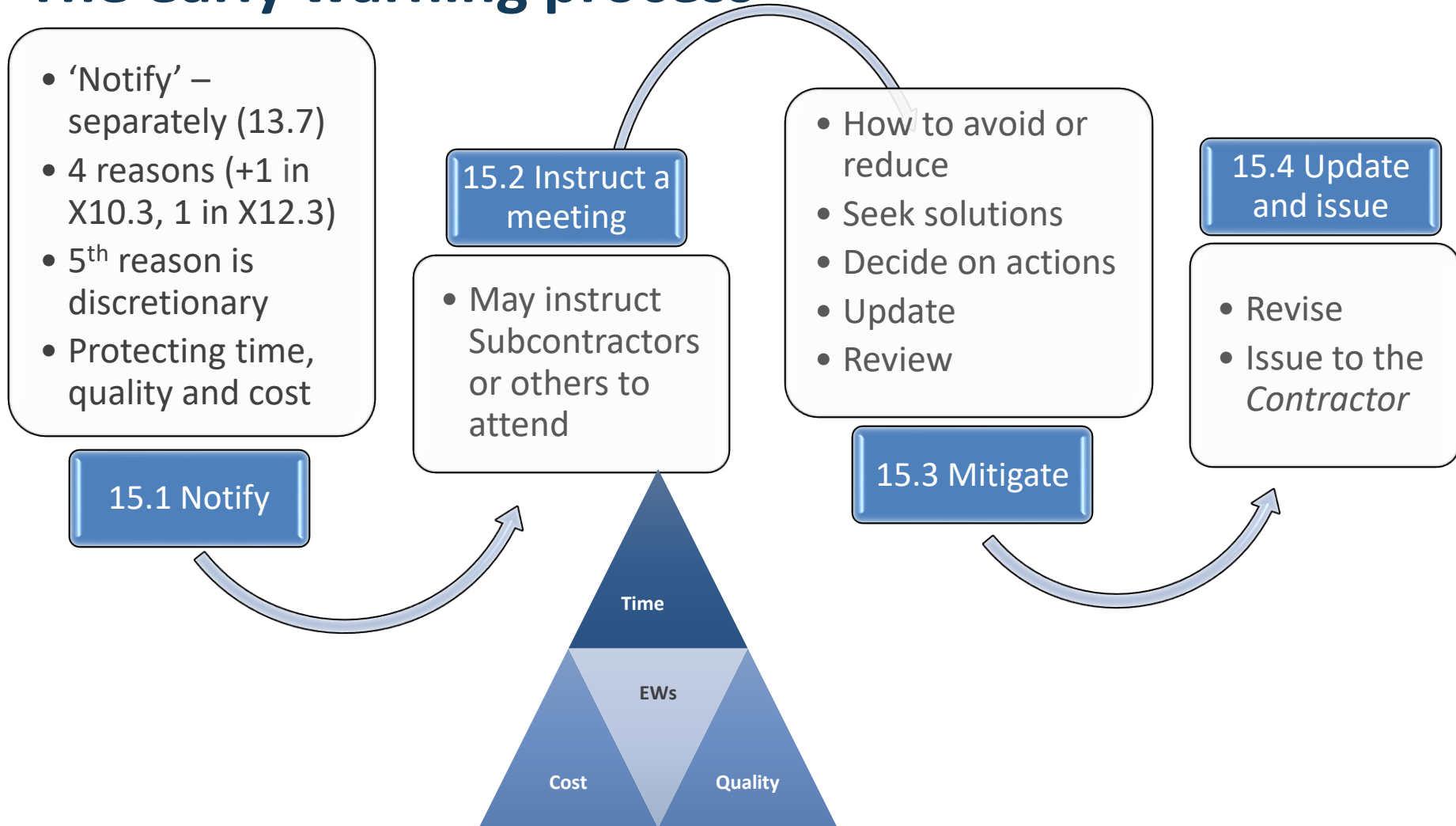
The *Project Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in
- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with the contract, will take them,
 - deciding which matters can be removed from the Early Warning Register and
 - reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

- 15.4 The *Project Manager* revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the *Contractor* within one week of the early warning meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Early Warning Register is issued.

The early warning process



ECC4

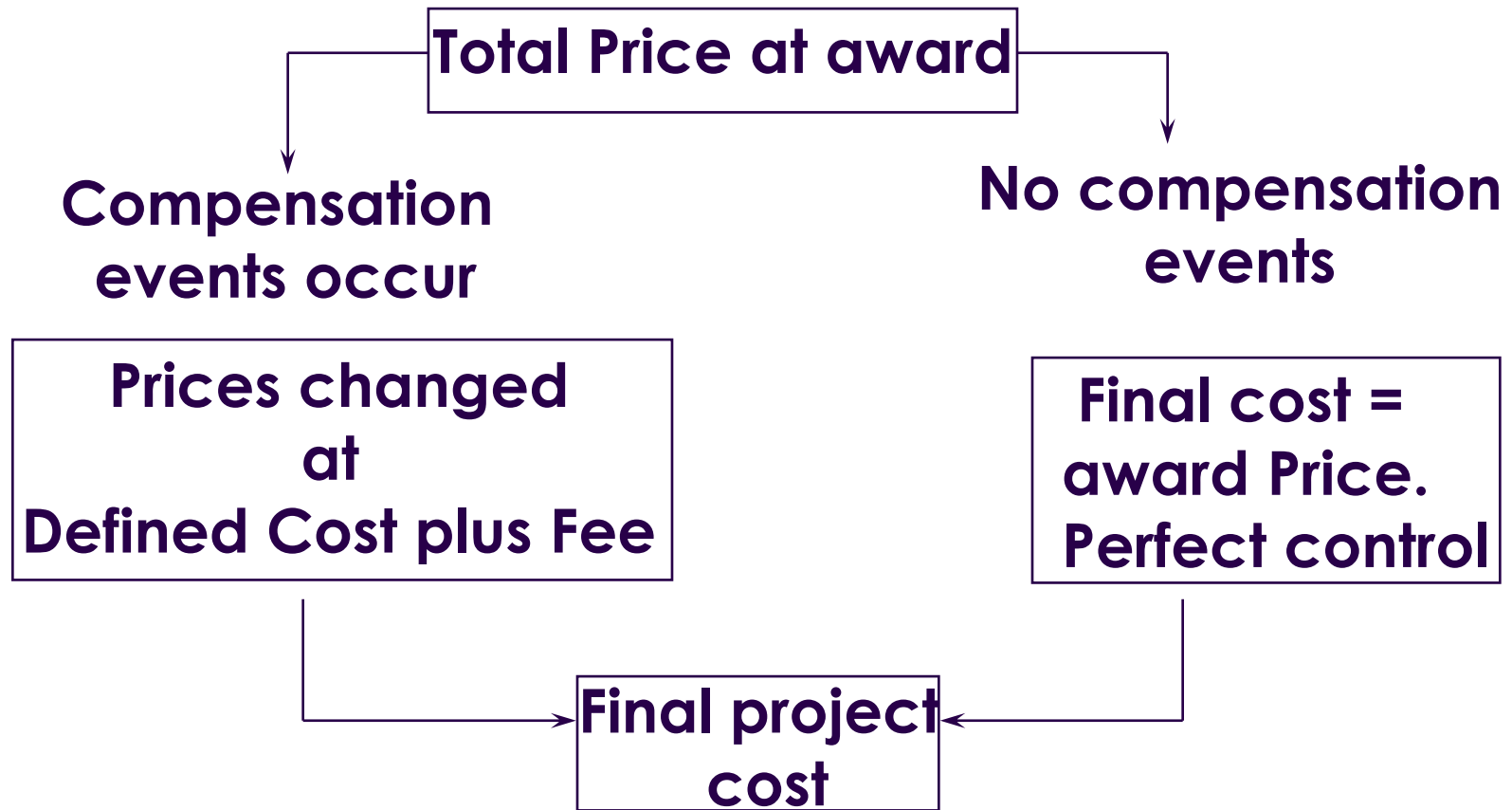
Compensation events

What is a compensation event?

- Events which entitle the *Contractor* to be compensated for their effect on the Prices, Key Dates and Completion Date
- They are events for which
 - the *Client* has defined its risk and
 - the *Contractor* has made no allowance in time or cost or pricing

Extent of project cost change likely...

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Similar principle applies to changes for Key Dates and Completion Date

Traditional methodology for **ice-sa** change management

- procedure prescribed for some changes
 - especially when bills are used
- other changes rely on the reasonableness of the Engineer / architect / Client
- problem for lump sum and cost plus
- what is cost and expense ?
- identifying events which lead to change ?

- 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 dayworks
- allow for alternative proposals
- deal with programme at the same time

Intent of NEC philosophy is: **ice-sa**

Contractor

- can price what it sees at tender and be indifferent to what may be changed by *Client* after award
- should not be held to tendered rates
- is aware of what compensation may be due and how it is calculated
- but knows that it needs to prove entitlement on basis of its programme and proven cost

Intent of NEC philosophy is: **ice-sa**

The *Client* (customer)

- Can ask *Contractor* (through the *Project Manager*) for a firm quotation for a change before it is implemented
- May seek quotations for different ways of completing the change, including maintaining the same *Completion Date*
- Is entitled to be notified early about events that may lead to change and not be held to ransom over an end of contract claim

Identify change events **ice-sa**

Where are they listed?

Four sources of compensation events

1. Clause 60.1 (21 reasons)

2. A further 3 stated in clauses 60.4, 60.5 and 60.6 (Options B and D)

3. Also secondary Options X2.1, X12.3(6) and (7), X14.2, X15.2 and Y2.5

4. Potentially additional compensation events in Contract Data part one and / or Option Z

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Compensation event administration

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- Notification (Clause 61)
- Quotation (Clause 62)
- Assessment (Clause 63): *The Project Manager assesses (Clause 64) if the Contractor does not provide a quotation or does it incorrectly*
- Implementation (Clause 66)

Proposed instructions (Clause 65)

Compensation Event Process

Notification (Clause 61) (either by the *Project Manager* or the *Contractor*)

Is there a compensation event?

The *Project Manager* instructs the *Contractor* to provide a quotation (Clause 61.2 and 62.1)

The *Contractor* prepares a quotation (Clause 62)

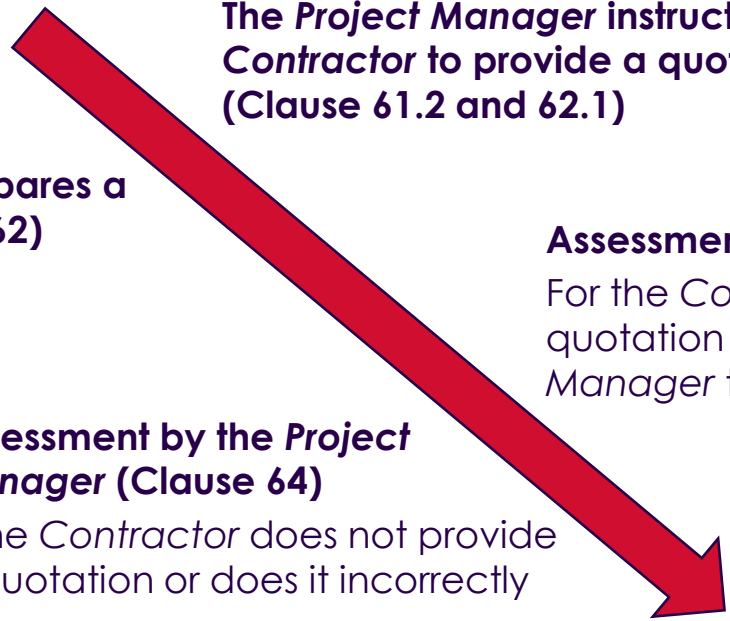
Assessment (Clause 63)

For the *Contractor* to prepare a quotation and for the *Project Manager* to review a quotation

Assessment by the *Project Manager* (Clause 64)

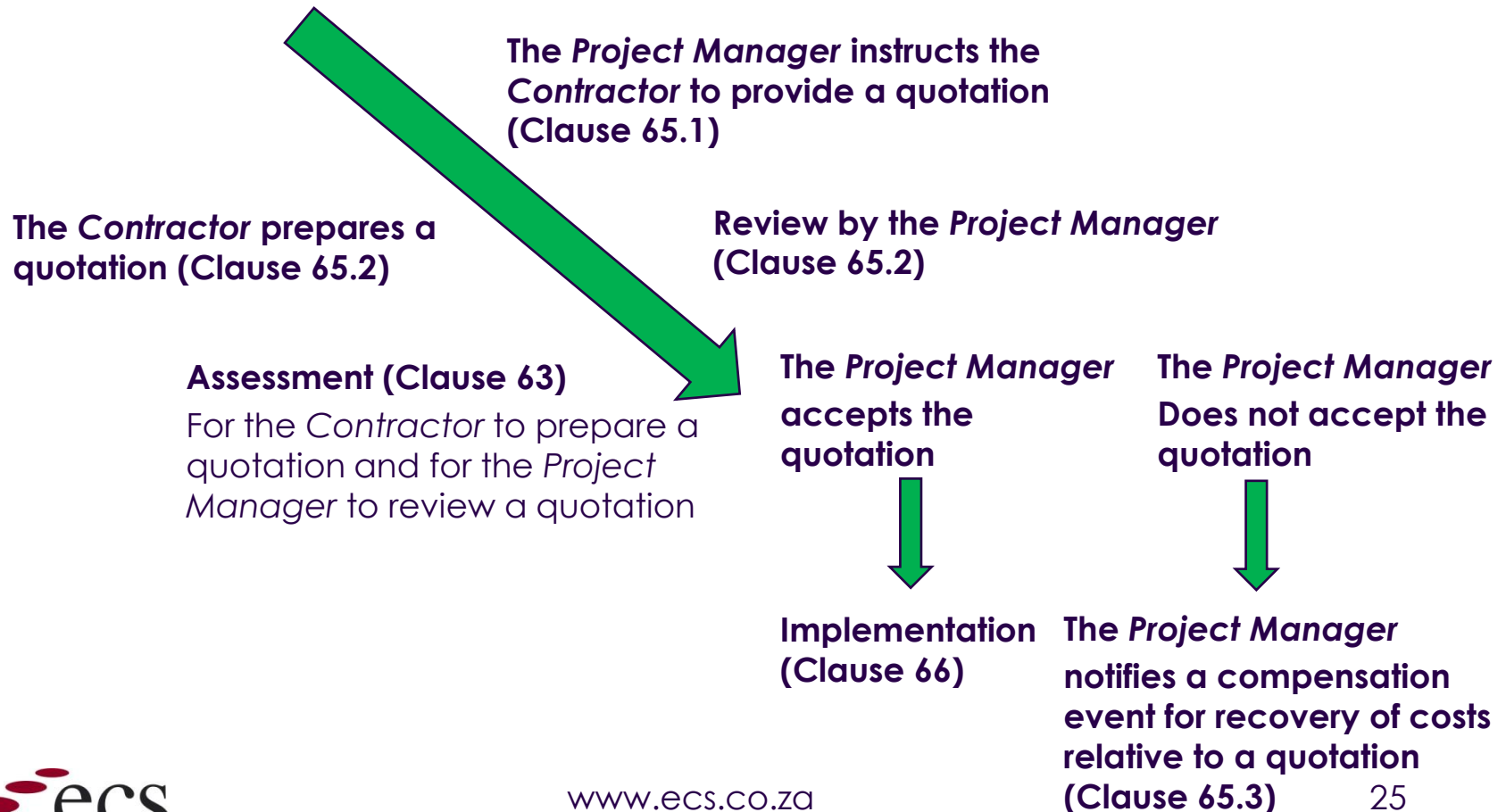
if the *Contractor* does not provide a quotation or does it incorrectly

Implementation (Clause 66)



Compensation Event **ice-sa** Process – Proposed Instructions

Proposed instruction – it may lead to a compensation event
implementation only if a quotation is accepted by the *Project Manager*



In summary - early warnings and compensation events are...

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- Early warnings are risk management and problem resolution tool. They are mandatory (Clause 10.1 and 15)
- Early warning and compensation events are separate processes
- Early warning notice must be followed up with an action, which is agreed in a meeting
- Compensation events are only those events that meet criteria for compensation events (Clause 60.1, additional clauses in main and secondary options, Z clauses and as per Contract Data)
- If no early warning was notified when it was supposed to be notified, entitlement in a compensation event may be reduced, not voided
- Not all early warnings will become compensation events
- Early warning are supported by collaboration (there are no contractual liabilities or rights except in reduction of compensation events values if early warning is not given and it was supposed to be given)
- Compensation events give right (not a “nice to have fringe benefits”) to a contractor to get additional Defined Costs and Fee, plus time when conditions are met
- Both of them are fully aligned with Clause 10.1 and 10.2!

The end of NEC Jam Session 6



Next NEC Jam Session **ice-sa**

14 August 2025

ECC4 - Dispute Avoidance

By ECS Associates

Presenter:

Sharm Bauchoo

ICE Accredited NEC Tutor, NECReg

**Thank you for your
participation**

Feedback is welcome

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