NEC Compensation Events Administration

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AGENDA

1. Introduction & Session Objectives
2. What is a Compensation Event
3. NEC vs Traditional Change Management
4. NEC Methodology for Managing Change
5. Identifying Compensation Events (Clause 60.1)
6. Additional Compensation Events (Main Option B)
7. The Compensation Event Process
8. Notification, Quotation, Assessment, Implementation
9. Lifecycle & Flow of Compensation Events
10. Key Takeaways
11. Questions & Discussion

ECS Associates: Facts & Values

Level 1 BBBEE Company with 35% Black Women Ownership

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 – low overhead cost (network 1000+)

Vision – to be recognised as the leading, fully-empowered organisation that delivers the most effective professional contract and project management services in the engineering and construction environment

Mission – We bring solutions to our clients through a combination of expert knowledge, hands on experience and best practice by being responsive to their needs through collaboration in their business endeavour and challenges

Integrity

Professionalism

Collaboration

Courage

ECS Associates

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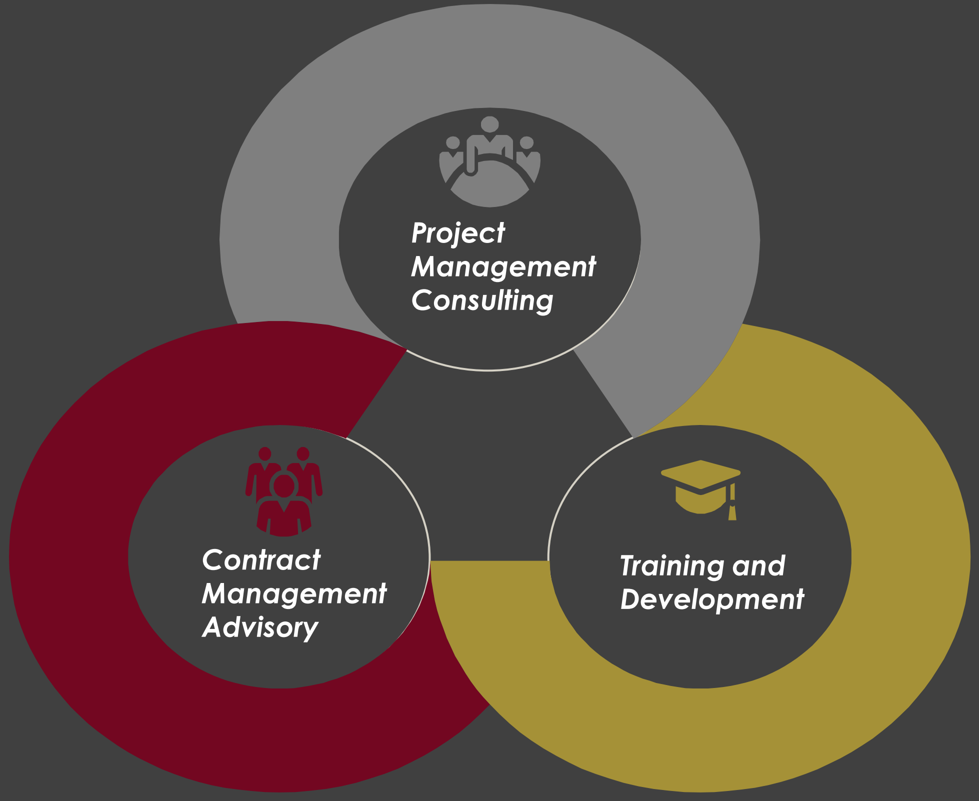
CAPITAL PROJECTS
CONTRACTS | MANAGEMENT | SMART

Concept → Design → Construct → Operate

Capital Project Advisory Services throughout the Project Lifecycle

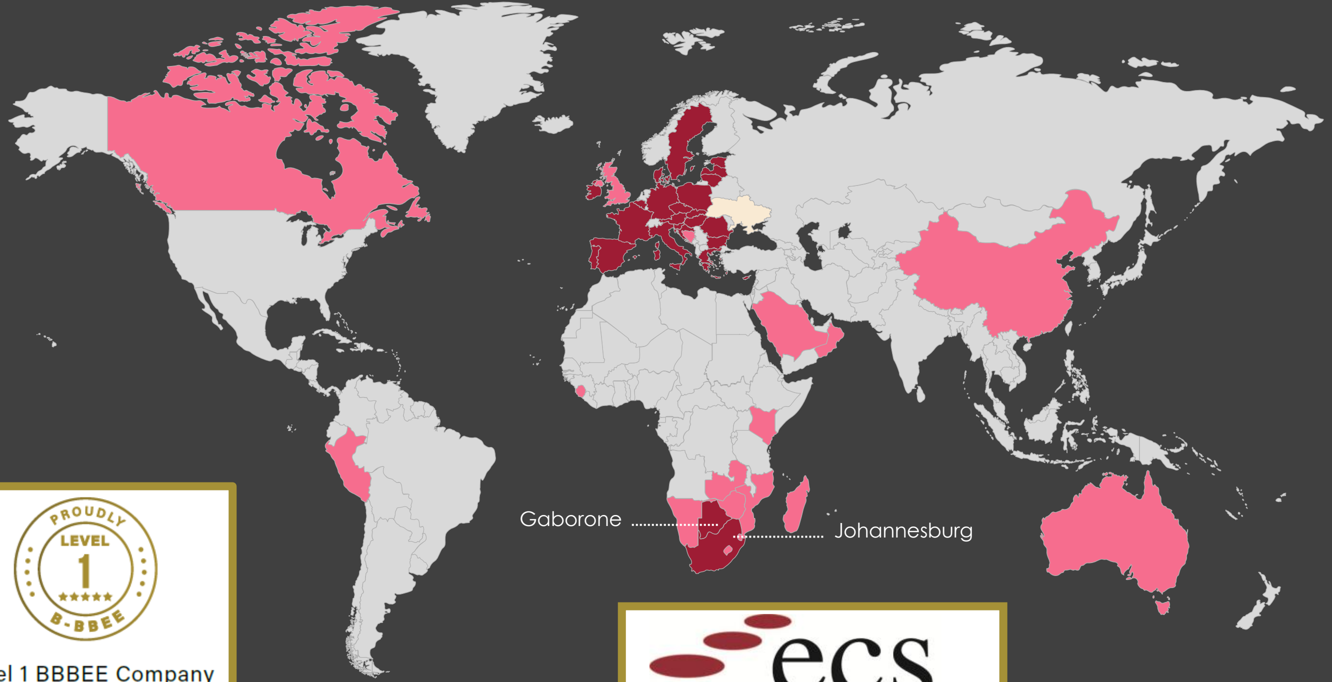


Collaborative Project Strategies

30 Years in existence

Projects in over 20 countries with a head office in South Africa

Specialist in Project and Contract Management services



PROUDLY LEVEL 1 B-BBEE

Level 1 BBBEE Company with 35% Black Women Ownership

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ECS ASSOCIATES (PTY) LTD
ECS ASSOCIATES PROPRIETARY LIMITED BOTSWANA

ECS Associates Professional Services

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CAPITAL PROJECTS
CONTRACTS | MANAGEMENT | SMART

Focus on Claims and Dispute Avoidance

- NEC Accredited
- $10Bn Projects managed
- 1000+ Specialists Network
- 800+ Cumulative Years Experience
- 400+ Training sessions
- 16 Professional Affiliations

ice Institution of Civil Engineers
RICS

Project Management Consulting

- Capital Project Services
- Business/Project Analysis
- Independent Assurance
- Expert Resources
- Project Services
- Project Management Office
- SMART Construction
- Technical Advisory

Contract Management Advisory

- Commercial Management
- Procurement and Contract Strategies
- Claims Management
- Dispute Avoidance Board Services
- Expert Witness
- Risk Management
- Dispute Avoidance and Resolution

Training and Development

- Project Management
- Claims & Dispute Management
- Scope Management
- Construction Law and Contracts
- Data Visualisation and PowerBi
- Planning and Delay Analysis
- Collaboration Culture
- Contract (NEC, FIDIC, JBCC, GCC)

SMART SOLUTIONS

ORACLE | Partner

Sypro™

DIGITALBEEHIVE

ppo project portfolio office

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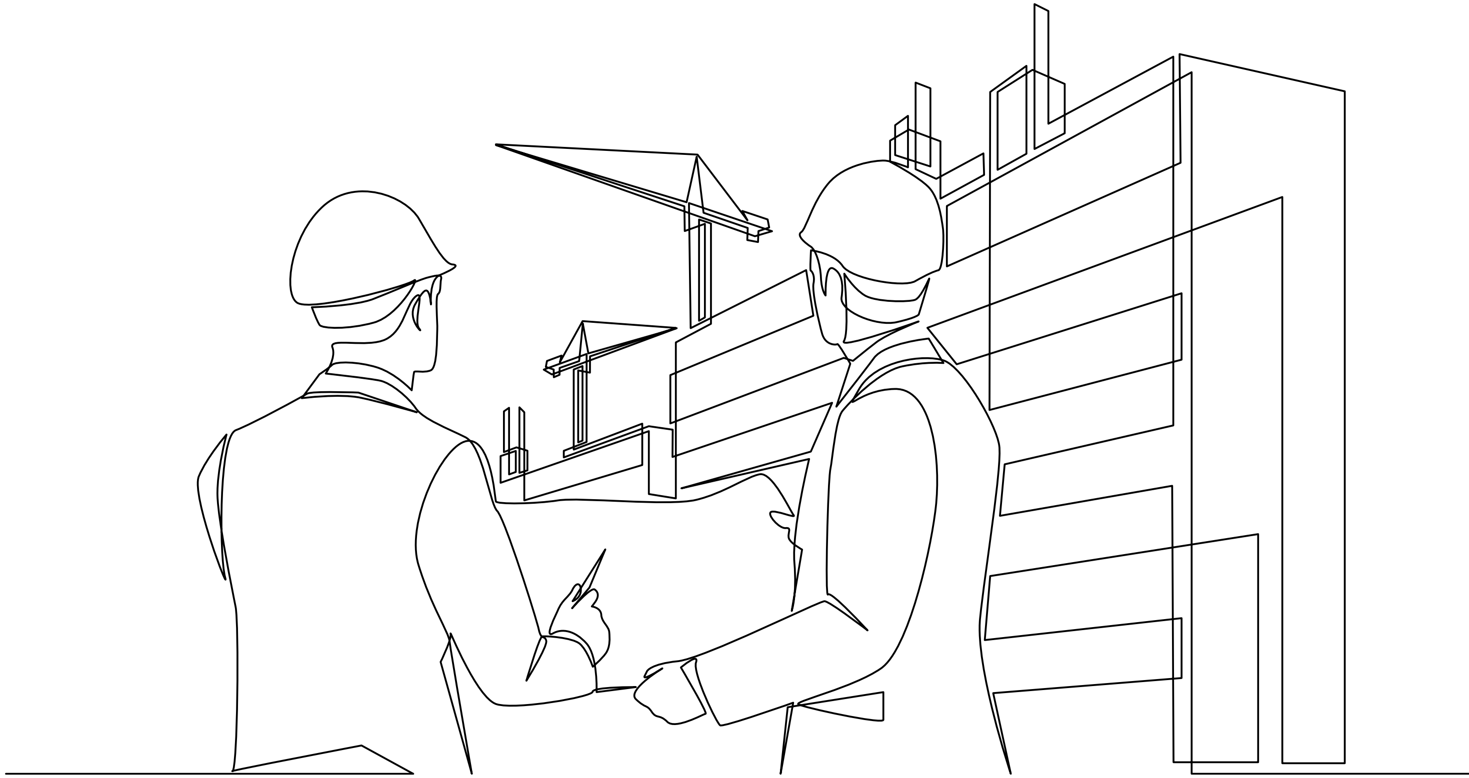
Core Clause 6: Compensation Events



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 *Employer* bears the risk, and	the Contractor is not required to make an allowance in time or cost during pricing.

Comparison with Other NEC's

$ In a continuous service (TSC) compensation may be a once off amount due or require a change to the Prices in the Price List:

- No time effect as *service period* not affected.

If X19 Task Order (TSC) applies, both time and money may be due like ECC;

- change to Task Completio n Date.

Should not be as significant as project compensation events.

Similar principle applies to changes for Key Dates and Completion Date

Total Price at award

Compensation events occur

Prices changed at Defined Cost plus Fee

No compensation events

Final cost = award price. Perfect control

Final cost

Traditional methodology for change management

procedure prescribed for some changes

- especially when bills are used

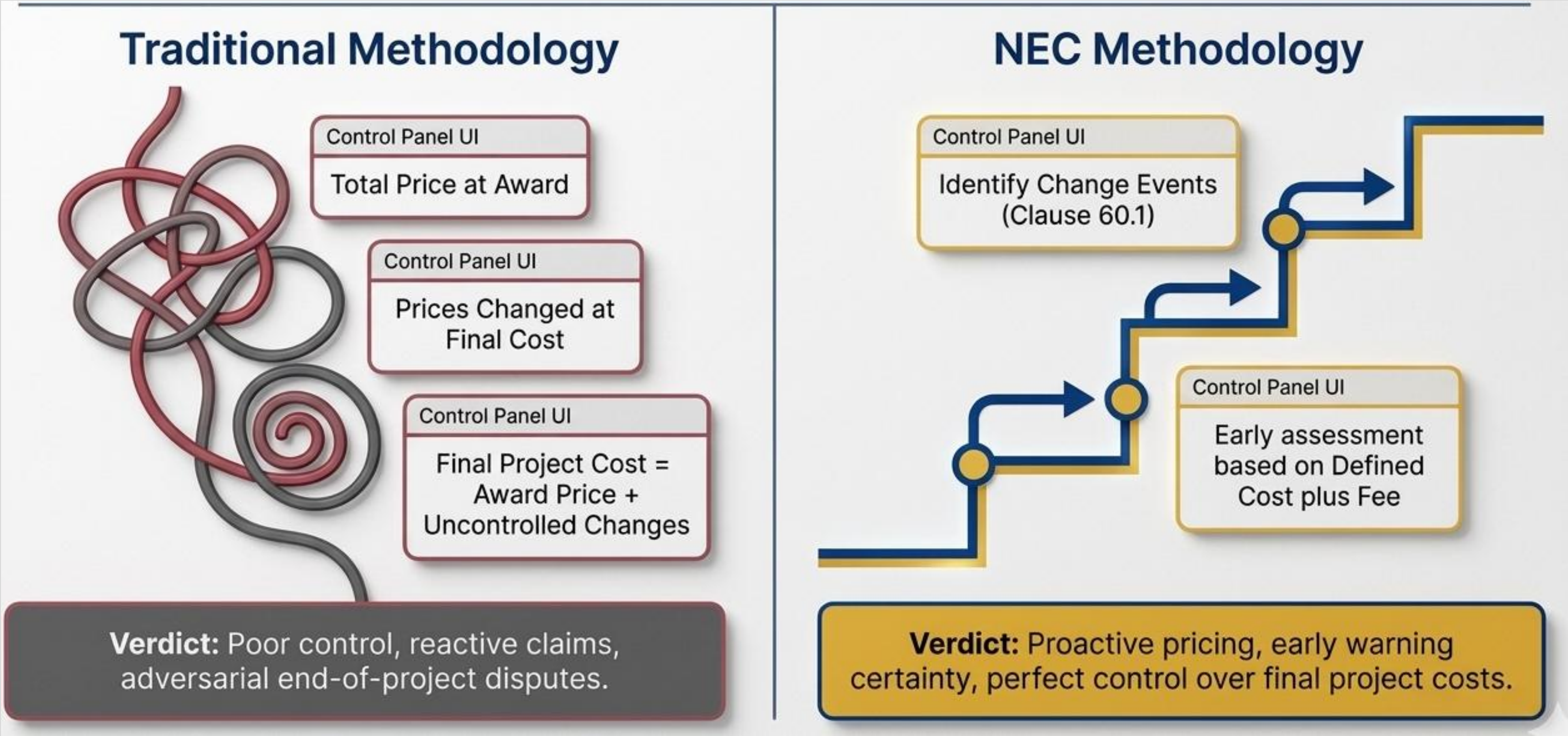
other changes rely on the reasonableness of the *Project Manager*/ architect / *Employer*

problem for lump sum and cost plus

what is cost and expense?

identifying events which lead to change ?

Traditional vs NEC Methodology



NEC Methodology

1

Identify <u>all</u> events which lead to change

2

use same procedure irrespective of pricing strategy or event

3

use “Cost Plus” to value effect of the change event : no reference to tender, provisional sums or dayworks (unless by agreement)

4

allow for alternative proposals

5

deal with <u>programme</u> at the same time

Compensation events relate to:

- what *Employer*, *Project Manager* and *Supervisor* do to the *Contractor*
- *Employer's* risks and damage
- *Employer's* design and use of the *works*
- adverse physical and unusual weather conditions (shared risks)
- other, depending on clause options

Identify change events

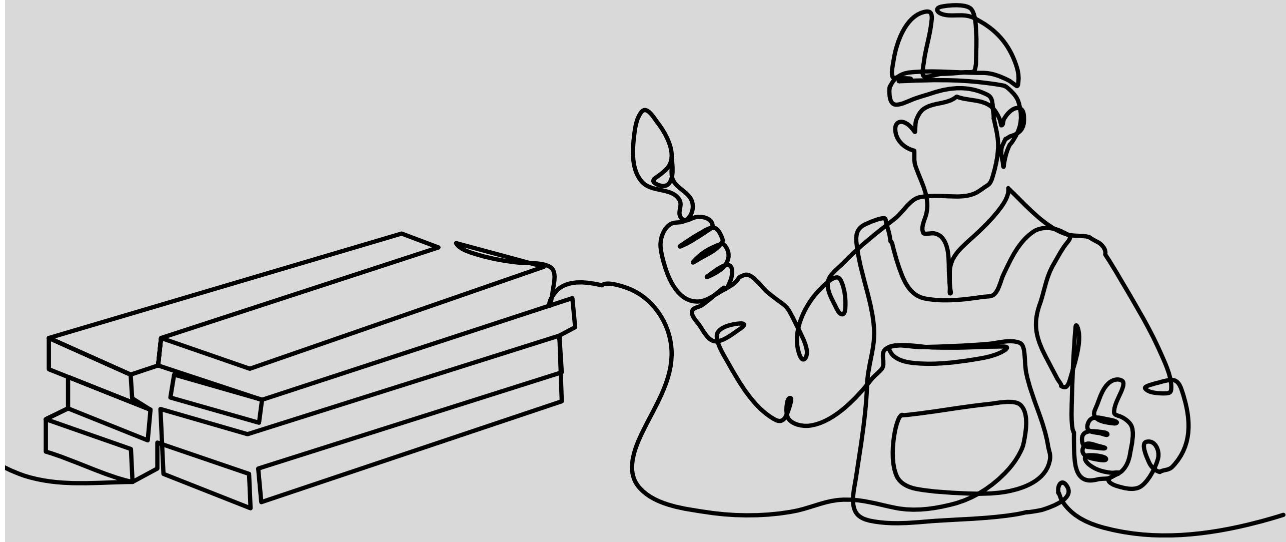
Clause 60.1 compensation events:

- a listed event which, if it occurs, allows for changes in the contract Price or time for completion providing it does not arise from a fault of the *Contractor*.

list is fully comprehensive; includes breach of contract by the *Employer*

19 in core (ECC); potentially 8 more in Options

Contractor carries cost of events not listed



Compensation Events

CORE COMPENSATION EVENTS (1 to 5)

Clause	Category	Event Trigger (The Cause)	Responsibility
60.1(1)	Project Manager	PM issues an instruction changing the Works Information.	Project Manager.
60.1(2)	Employer	Employer fails to provide site access by the agreed date.	Employer.
60.1(3)	Employer	Employer fails to provide promised materials or data on time.	Employer.
60.1(4)	Project Manager	PM instructs the contractor to stop or not start work.	Project Manager.
60.1(5)	Employer / Others	Delays or disruptions caused by the Employer or other site contractors.	Employer / Others.

Compensation Events

CORE COMPENSATION EVENTS (60.1(6) to 60.1(9))

Clause	Category	Event Trigger (The Cause)	Responsibility
60.1(6)	Employer Change	Project Manager gives an instruction to stop or not start any work, or changes the Scope of the works.	Employer / Project Manager.
60.1(7)	Employer Information	Project Manager or Supervisor gives an instruction, certificate, decision, or provides information that is not in accordance with the contract.	Employer / Project Manager.
60.1(8)	Ambiguity / Error	Project Manager or Supervisor notifies an ambiguity or inconsistency in the Scope and the correction changes the Contractor's work.	Employer / Project Manager.
60.1(9)	Employer Risk	Project Manager instructs the Contractor to search for a defect and no defect is found (or the defect is not the Contractor's responsibility).	Employer / Project Manager.

Compensation Events

CORE COMPENSATION EVENTS (10 to 13)

Clause	Category	Event Trigger (The Cause)	Responsibility
60.1(10)	Supervisor	Supervisor orders a defect search, but no defect is actually found.	Supervisor.
60.1(11)	Supervisor	A test or inspection carried out by the Supervisor causes unnecessary delay.	Supervisor.
60.1(12)	External Risks	Contractor encounters unexpected and unpredictable ground/site conditions.	Shared Risk / Client.
60.1(13)	External Risks	Weather measurements show an adverse event occurring less than once in ten years.	Shared Risk / Client.

Compensation Events

CORE COMPENSATION EVENTS (14 to 19)

Clause	Category	Event Trigger (The Cause)	Responsibility
60.1(14)	Employer	An event occurs which is an employer's risk stated in the contract.	Employer.
60.1(15)	Project Manager	PM certifies takeover of a part of the works before completion.	Project Manager.
60.1(16)	Employer	Employer fails to provide materials, facilities, or samples for tests.	Employer.
60.1(17)	Project Manager	PM notifies a correction to a previously stated assumption about an event.	Project Manager.
60.1(18)	Employer	A general breach of contract by the employer occurs.	Employer.
60.1(19)	External Risks	An unavoidable external event stops or delays project completion.	Shared Risk / Client.

Compensation Events

QUANTITY & BOQ COMPENSATION EVENTS (60.4 to 60.7)

Reference	Category	Event Trigger (The Cause)	Key Condition / Impact
60.4	Quantity Variance	Final total quantity of work done differs from the quantity stated in the Bill of Quantities.	Must meet 3 conditions: 1. Not from a change to Works Information. 2. Changes unit Defined Cost. 3. Final value change >0.5% of Contract Prices. (If unit cost reduces, the rate reduces).
60.5	Delay by Variance	Final total quantity differs from the original quantity stated in the Bill of Quantities.	Delays Completion or misses the condition stated for a Key Date.
60.6	BoQ Correction	Project Manager corrects mistakes, measurement departures, or ambiguities in the BoQ.	Each correction is a compensation event and may lead to reduced Prices.
60.7	Assumed Correctness	Assessing a compensation event from an inconsistency between the BoQ and another document.	The Contractor is assumed to have taken the Bill of Quantities as correct.

Actions of Employer, PM & Supervisor

(1) Scope changes by PM.
(2, 3, 5, 16) Employer omissions.
(4) Suspension/deferment.
(6-9, 17) PM instructions/assumptions.
(10, 11) Delays to testing/searching.
(15) Take-over before Completion.

Shared Risks

(12) Adverse physical conditions (foreseeable but unreasonable to allow for).
(13) Unusual weather (1-in-10 year data benchmark).
(19) Force majeure (prevented from completing works).

Employer's Risk & Breach

(14) Clause 80.1 events (indemnity, loss/damage to free issue materials).
(18) Breach of contract not otherwise listed.

Other Events (Options)

Excess quantities & measurement departures (Options B, D).
Changes in the law (Option X2).
Advanced payment delay (Option X14).

Compensation Events

SECONDARY OPTION X1: PRICE ADJUSTMENT FOR INFLATION

Reference	Category	Event Trigger (The Cause)	Key Condition / Impact
X1.3	Inflation Assessment	The Defined Cost for compensation events is evaluated using current or base date cost levels.	Must apply 2 core calculation rules: 1. Current Defined Cost is adjusted back to the base date by dividing it by: (1 + Price Adjustment Factor from the last assessment). 2. Amounts derived from rates stated in the Contract Data for employees and Equipment are assessed directly at base date levels.

Compensation event admin.

1. Notification

2. Quotation.

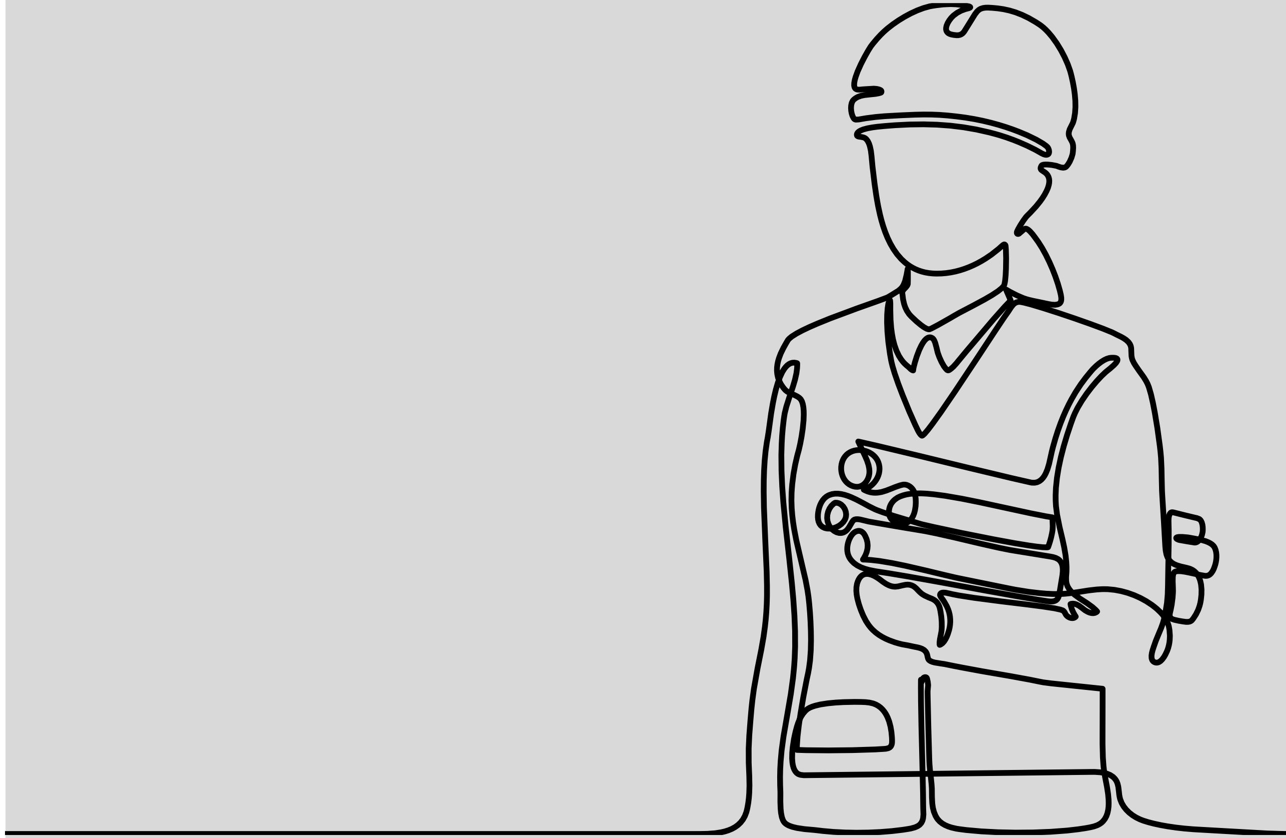
3. Assessment.
- *Employer* assesses if *Consultant* does not or does it incorrectly.

4. Implementation.

Intent of NEC philosophy is:

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:

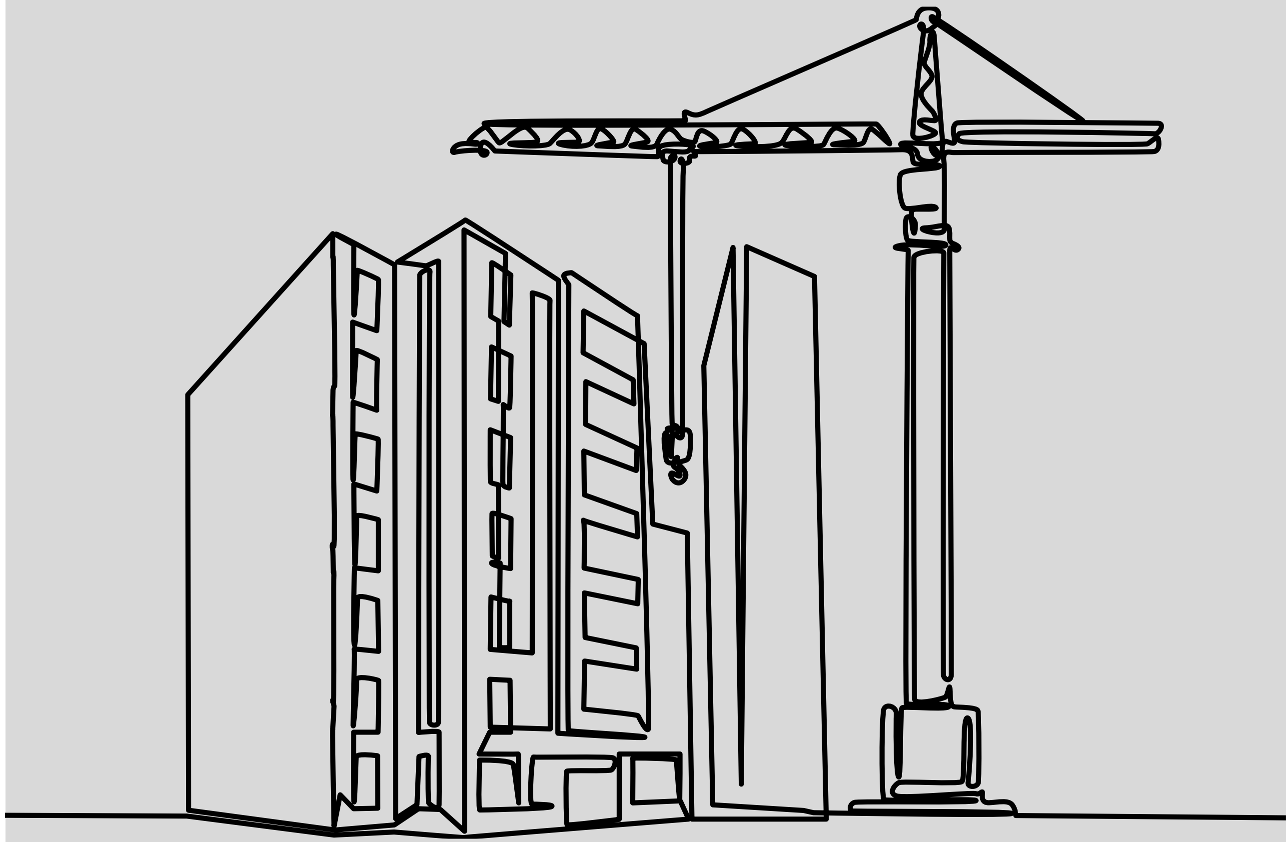
The *Employer* (customer)

- 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

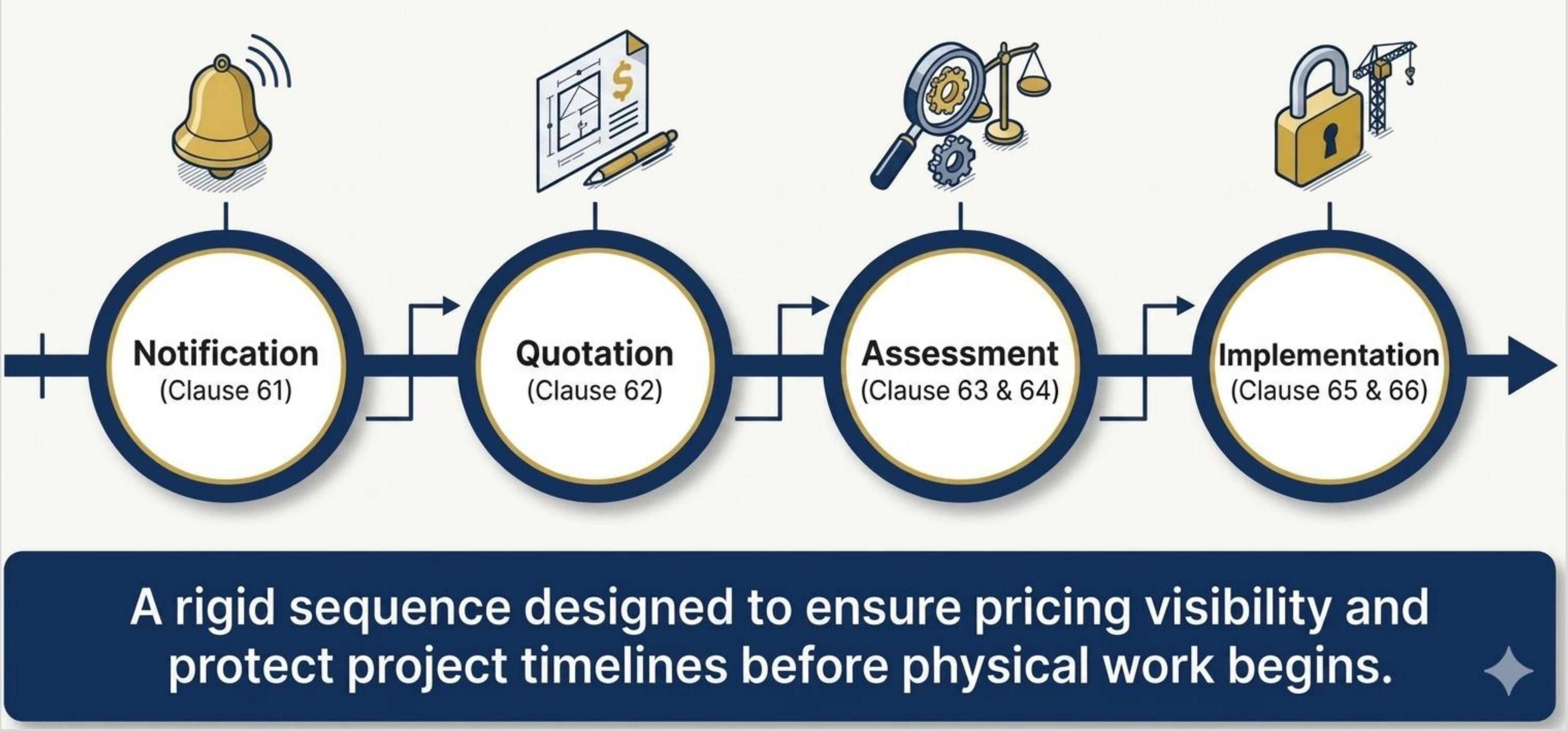
Compensation Events

This section consists of six main clauses

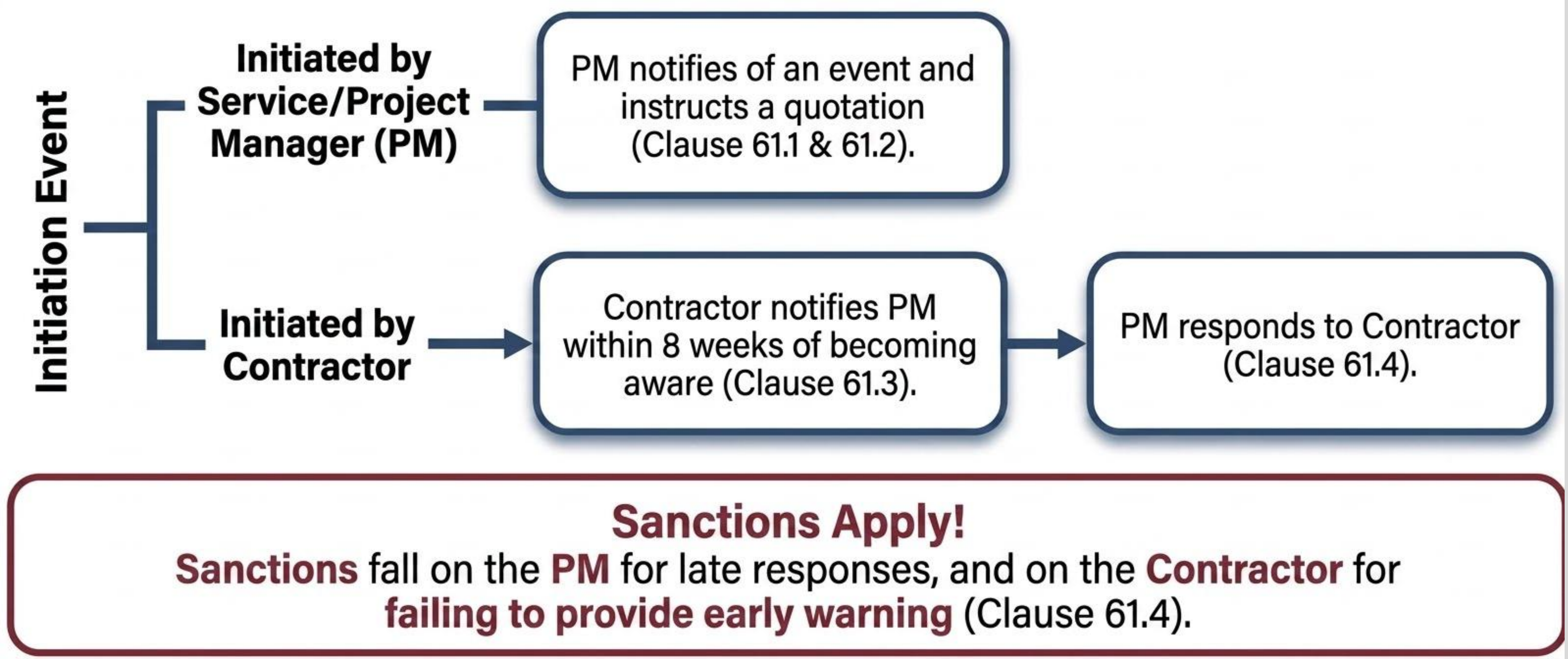
- Clause 60 defines compensation events.
- Clause 61 deals with notification, by either the *Project Manager* or the *Contractor*, that a compensation event has occurred.
- Clause 62 covers the submission of quotations for compensation events.
- Clause 63 sets out the rules for assessing the effects of a compensation event (time and money).
- Clause 64 covers assessments made by the *Project Manager*.
- Clause 65 explains *how any* changed prices or dates are incorporated into contract.



The Life Cycle of a Compensation Event



Phase 1: Notification (Clause 61)



Phase 2: Quotations (Clause 62)

Contractor Actions

- Submit quotation within 3 weeks (Clause 62.3).
- Must detail changes to Prices, Accepted Plan, and Completion Date (Clause 62.2).

Project Manager Actions

- Respond within 2 weeks (Clause 62.3).
- Power to instruct alternative solutions (Clause 62.1).

Default Acceptance Rule: If the PM fails to reply in time, the Contractor's quotation may be treated as accepted by default (Clause 62.6).

Phase 3: Assessment (Clause 63 and 64)

1 **Notification** (Clause 61) — 2 **Quotation** (Clause 62) — 3 **Assessment** (Clause 63 & 64) — 4 **Implementation** (Clause 65 & 66)

Assessment Trigger

Standard Route (Clause 63)

Assessment based on effect on Defined Cost + Fee (Clause 63.2).
Rates in Price List used when applicable (Clause 63.1).
Includes risk allowances for cost and time.

Sanction: If no early warning given, assessed as if there had been one (Clause 63.6).

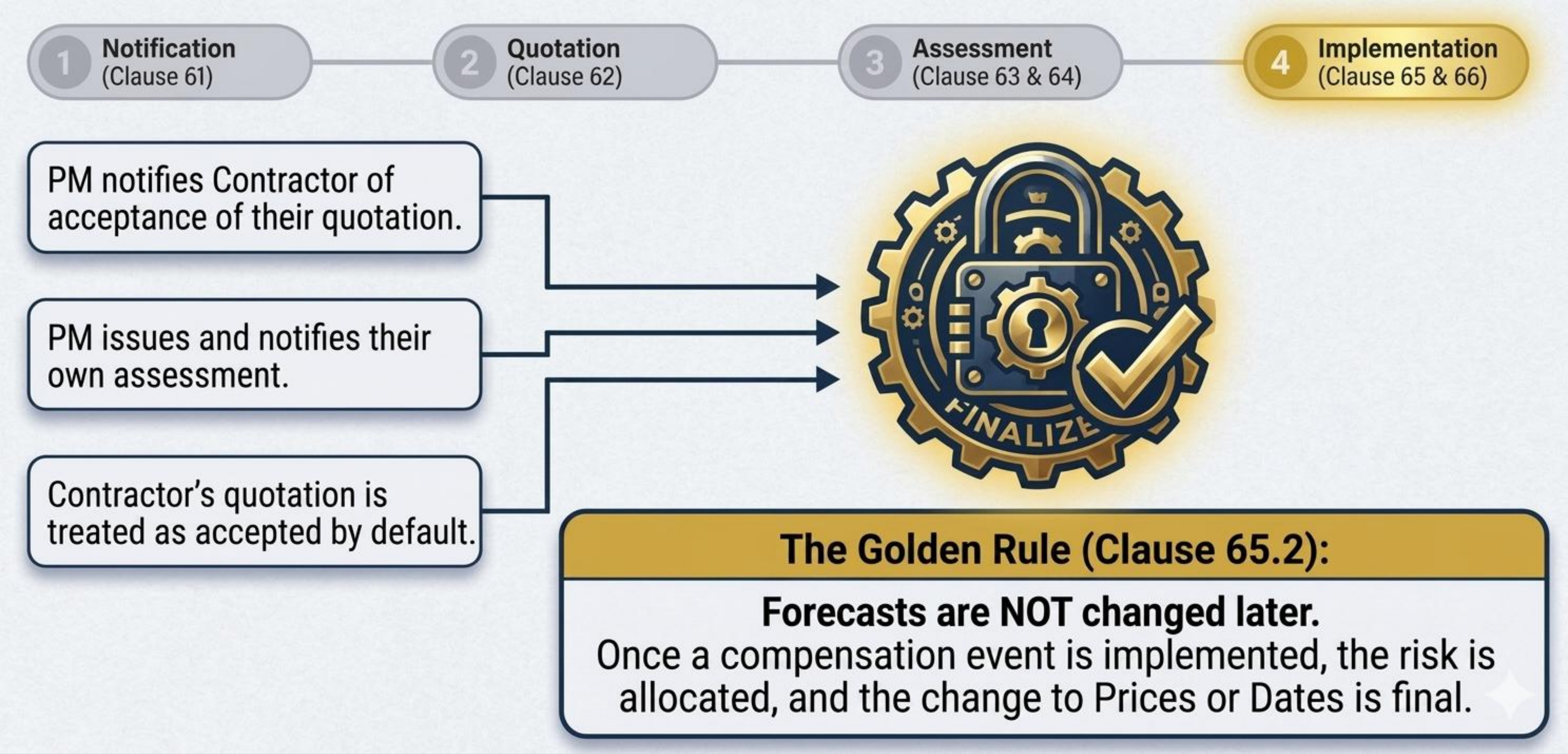
PM Intervention (Clause 64)

PM takes over assessment if the Contractor:

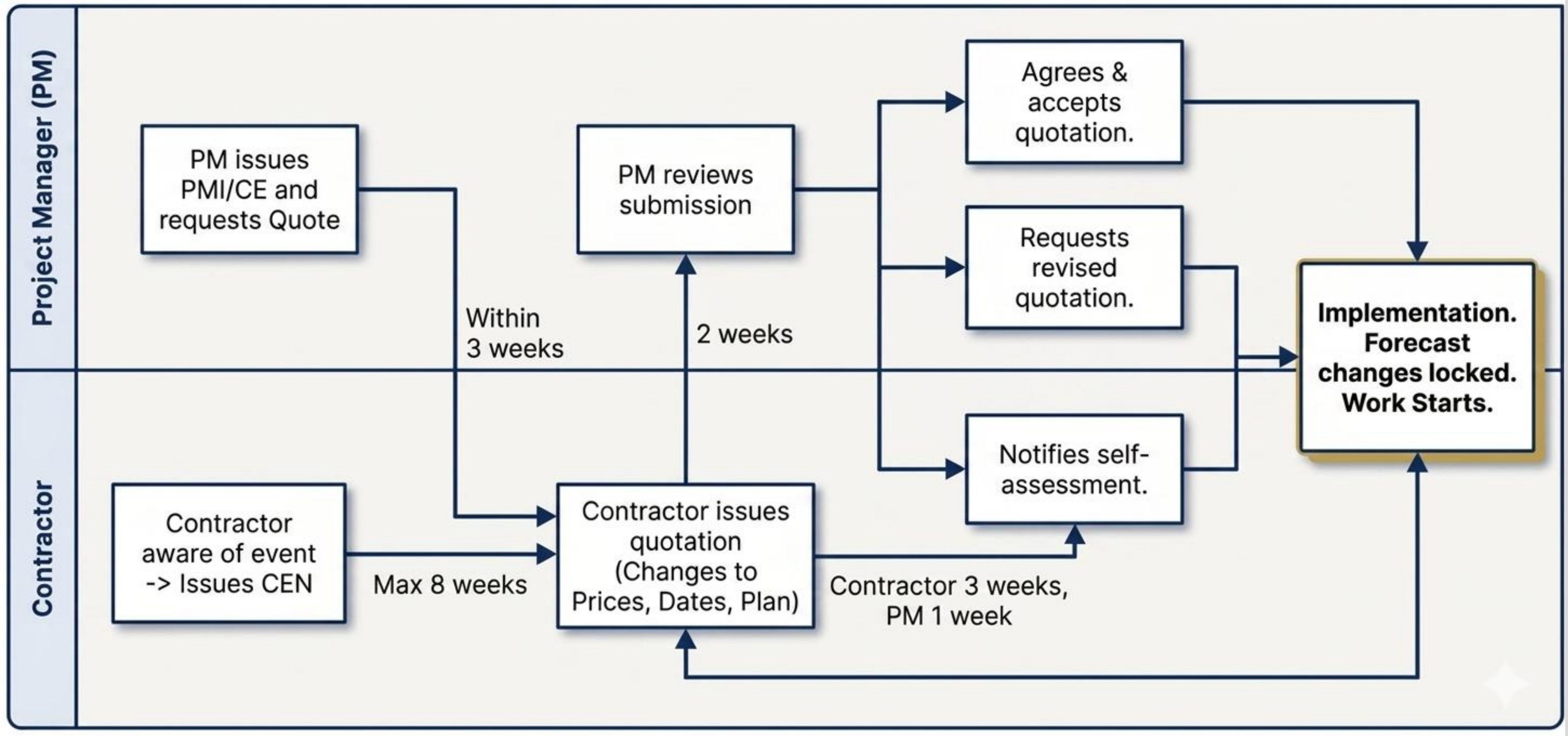
- Fails to submit quotation on time.
- Submits incorrectly or without effect on plan.
- Latest design is unaccepted.

PM must notify Contractor of their own assessment within stated time.

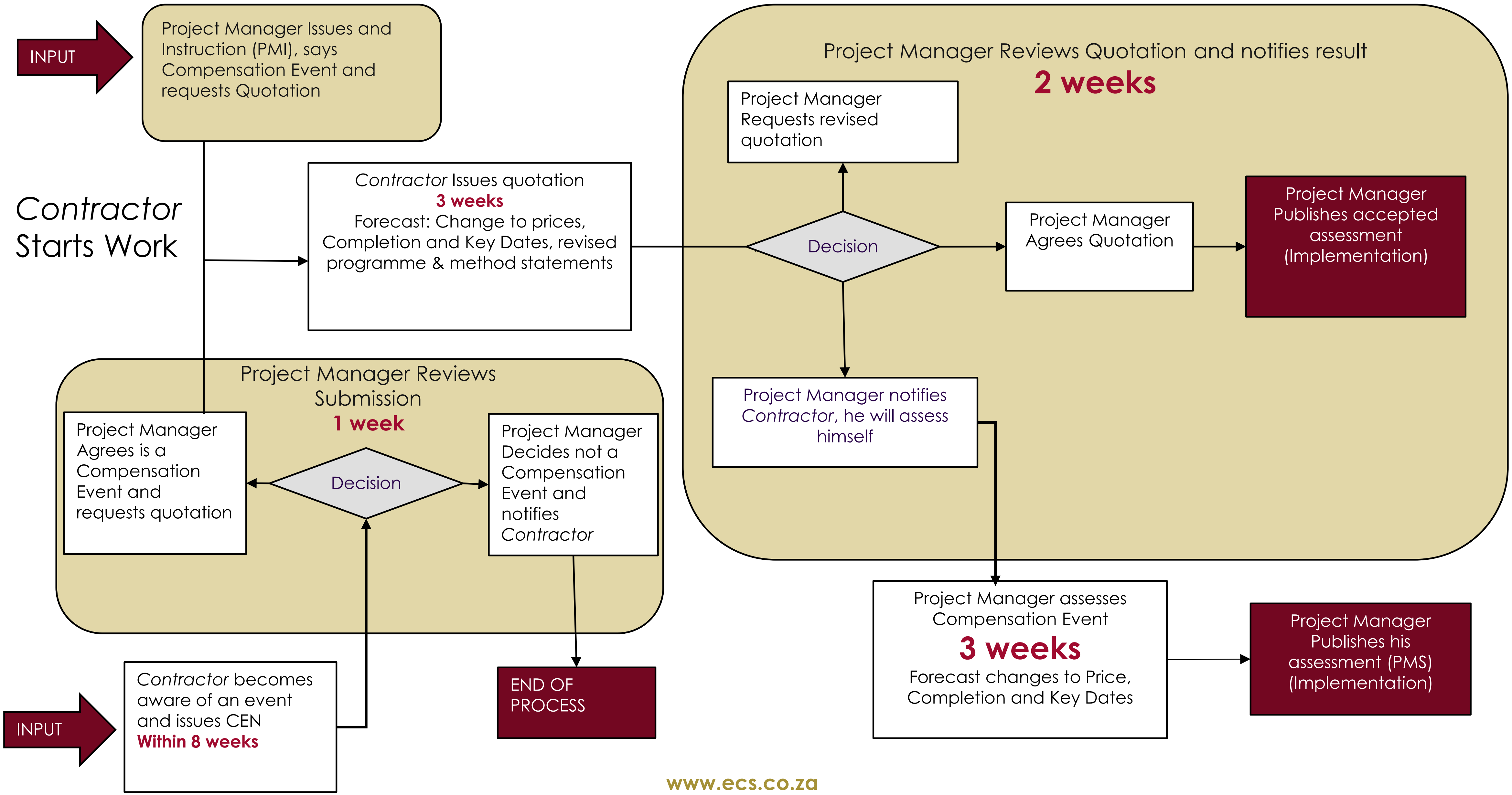
Phase 4: implementation (Clause 65 and 66)



Compensation Events Flowchart



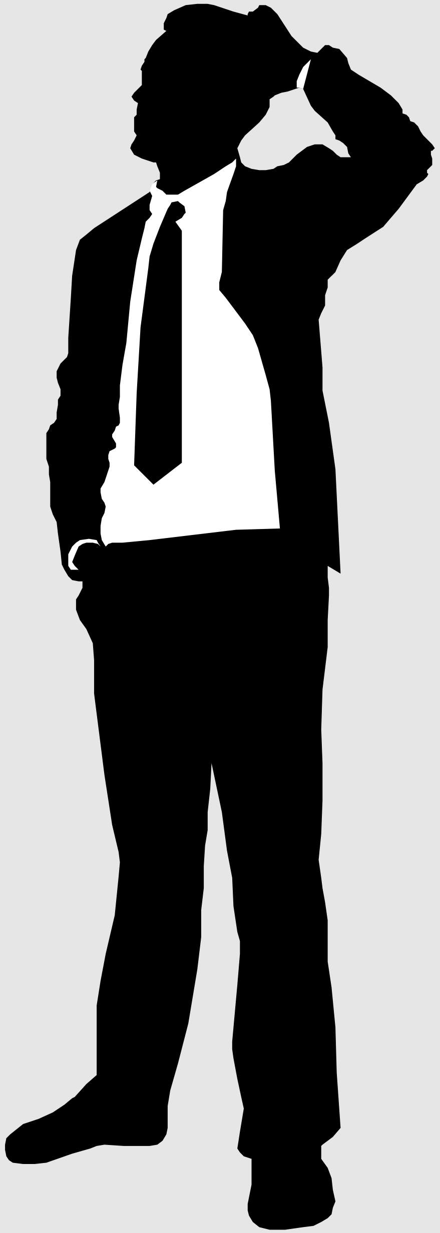
Compensation Events Flowchart



Compensation Events

NEC ECC					
Phases	**Clause**	**Contractor**	**Project Manager**	**Project Manager (after Contractor reminded)**	**Sanction (Treated as accepted)**
1.	Notification (Clause 61)	8 Weeks (if not they loose entitlement)	1 Week (to pronounce a decision)	2 Weeks	Accepted (CL 61.4)
2.	Quotation (Clause 62)	3 weeks			
3.	Assessment (Clause 63 and 64)		2 Weeks	2 Weeks	Accepted (CL 62.6)
4.	Implementation (Clause 65)				

Questions



Thank you for your participation

Feedback is welcome

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