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CONTRACT MANAGEMENT

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Agenda

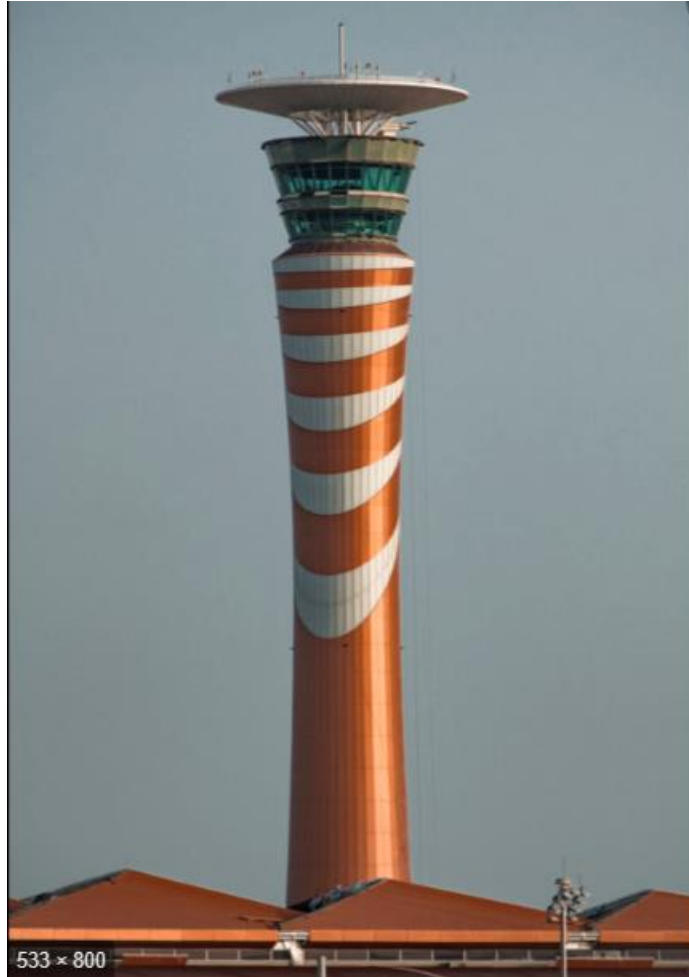
- **Part 1: Contract Management case study**
- **Part 2: General Considerations of Contract Management**
 - 1- What is Contract Management?
 - 2- The Organization and Planning of Contract Management
- **Part 3: FIDIC Red Book**



**Part 1:
Contract
Management
case study**



Construction of a new fully equipped Air Traffic Control Tower (ATCT) as part of an airport project.



- . Contract Value: EUR 55 M
- . Contract Duration: 18 months
- . Design supplied by Employer



Sequence of events:

- During the first three months (September to November 2008), the Contractor started the engineering design (shop drawings) reflecting the Specifications.
- On December 2008, the Employer, through the Engineer, issued the following letter:





Airport Engineering Company

December 1, 2008

Attention: Mr. Contractor

Dear Mr. Smith

We are notifying you to a change in the HVAC supplier. The supplier will change from MITSUBISHI to CARRIER.

Also, please note that the HVAC equipment must meet standard ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers).

There will be no increase in the contract price.

Yours sincerely

Mr. Engineer





Airport Contractor

December 8, 2008

Attention: Mr. Engineer

Dear Mr. Ahmed,

Thank you for your letter dated December 1, 2008 (reference # 3456).
We note the change in HVAC supplier and applicable standard.

We will inform you in due course of any impacts on contract price
and/or schedule.

Yours sincerely

Mr. Contractor





Airport Contractor

February 12, 2009

Attention: Mr. Engineer

CHANGE IN HVAC SUPPLIER

Dear Mr. Ahmed,

Further to our letter dated December 8, 2008 (reference # 3496). We have contacted the nominated supplier (CARRIER) and they have stated that they cannot supply the equipment as per the specification for the same price as MITSUBISHI.

The cost would be an additional USD 250,000.

Please confirm acceptance of the additional cost so that we can place an order. If we do not receive approval within the next 21 days, then this will cause a delay to the schedule.

Yours sincerely

Mr. Contractor



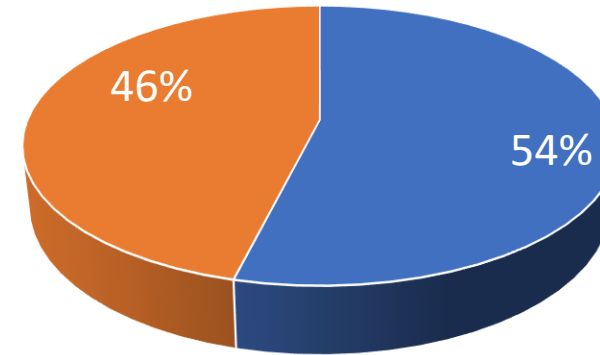
Sequence of events:

- The Contractor and the Engineer had frequent meetings during the next 3 months in order to reach an agreement on how the new specification for HVAC system will impact on the design.

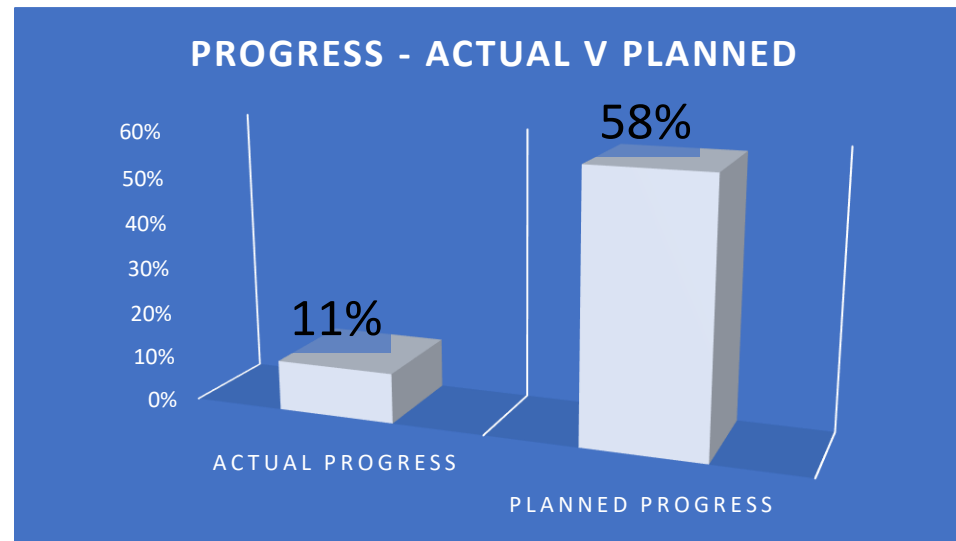


Program Monitoring

Program Monitoring	
Project Status as if May, 2009	
Commencement Date	25-Aug-08
Completion Date	25-Feb-10
Timed Elapsed	54%
Planned Progress	58%
Actual Progress	11%
Expected Completion Date	04-Jul-10
Variance to Completion	127 (Days)



■ Time Elapsed ■ Time Remaining



7.2 CLAIM REGISTER

Claim Ref	Description	Claimed Amount	Submission of Notice of Claim	Submission of fully detailed claim	Status to Date	Amount Certified
TL2909	Delay resulting from Engineer non-approval of HVAC specifications & price	Detailed claim creation is ongoing, but the delay is 4 months as per this report.	Notice of claim submitted on March 6, 2009.	First interim detailed claim submitted on March 25, 2009 and monthly updates submitted thereafter.	Under review by Engineer	



Extract form the Contractor's notice of Claim:

“The continuous delay in the commencement of the HVAC works had a catastrophic effect on the project as without the HVAC ducts being installed, it was not possible to carry out the installation of the electrical cable trays and cables, floor covering, internal doors, electrical lights and fittings or to complete any of the finishing works. Effectively, the whole of the internal works of the Technical Block was placed on hold until the ducts could be installed.”



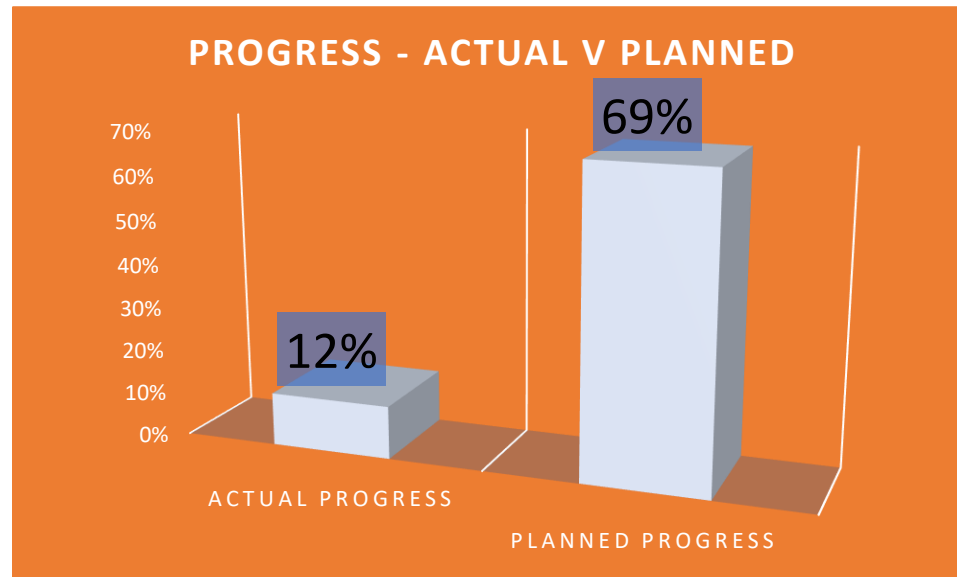
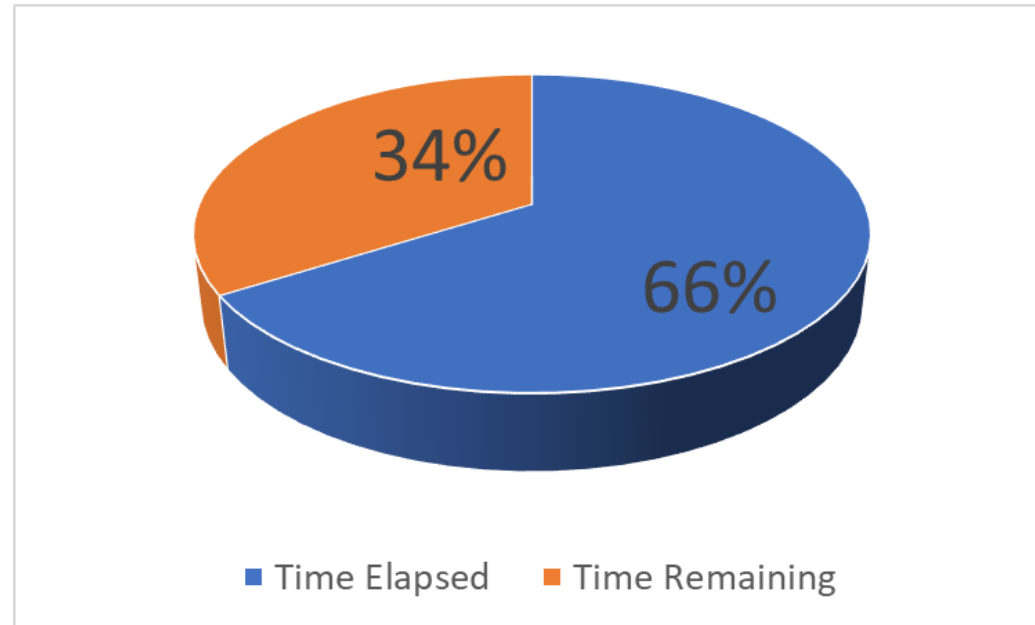
Sequence of events:

- In June 2009, the Engineer issued a revised set of HVAC drawings to the Contractor.
- The Contractor reviewed the new HVAC drawings and submits a series of RFIs to clarify various items.
- In response to the RFIs, the Engineer issued a revised set of HVAC drawings. It is now August 2009.
- In September 2009, the Contractor submitted and got approval on its shop drawing and prepared to mobilize for the construction.

Note: RFI = Request for Information



Program Monitoring	
Project Status as if August, 2010	
Commencement Date	25-Aug-08
Completion Date	25-Feb-10
Timed Elapsed	66%
Planned Progress	69%
Actual Progress	12%
Expected Completion Date	04-Oct-10
Variance to Completion	217 (Days)



7.2 CLAIM REGISTER

Claim Ref	Description	Claimed Amount	Submission of Notice of Claim	Submission of fully detailed claim	Status to Date	Amount Certified
TL2909	Delay resulting from Engineer non-approval of HVAC specifications & price	Detailed claim creation is ongoing, but the delay is 7 months as per this report.	Notice of claim submitted on March 6, 2009	First interim detailed claim submitted on March 25, 2009 and monthly updates submitted thereafter.	Under review by Engineer	



Sequence of events (continuation):

- In September 2009, the design issue was eventually resolved, and the Contractor was instructed to proceed on the basis of a revised detailed design.

→ As a consequence, the Contractor claimed for an extension of time of 7 months + associated cost representing 25% of the initial accepted contract amount (Euro 13.75 million)

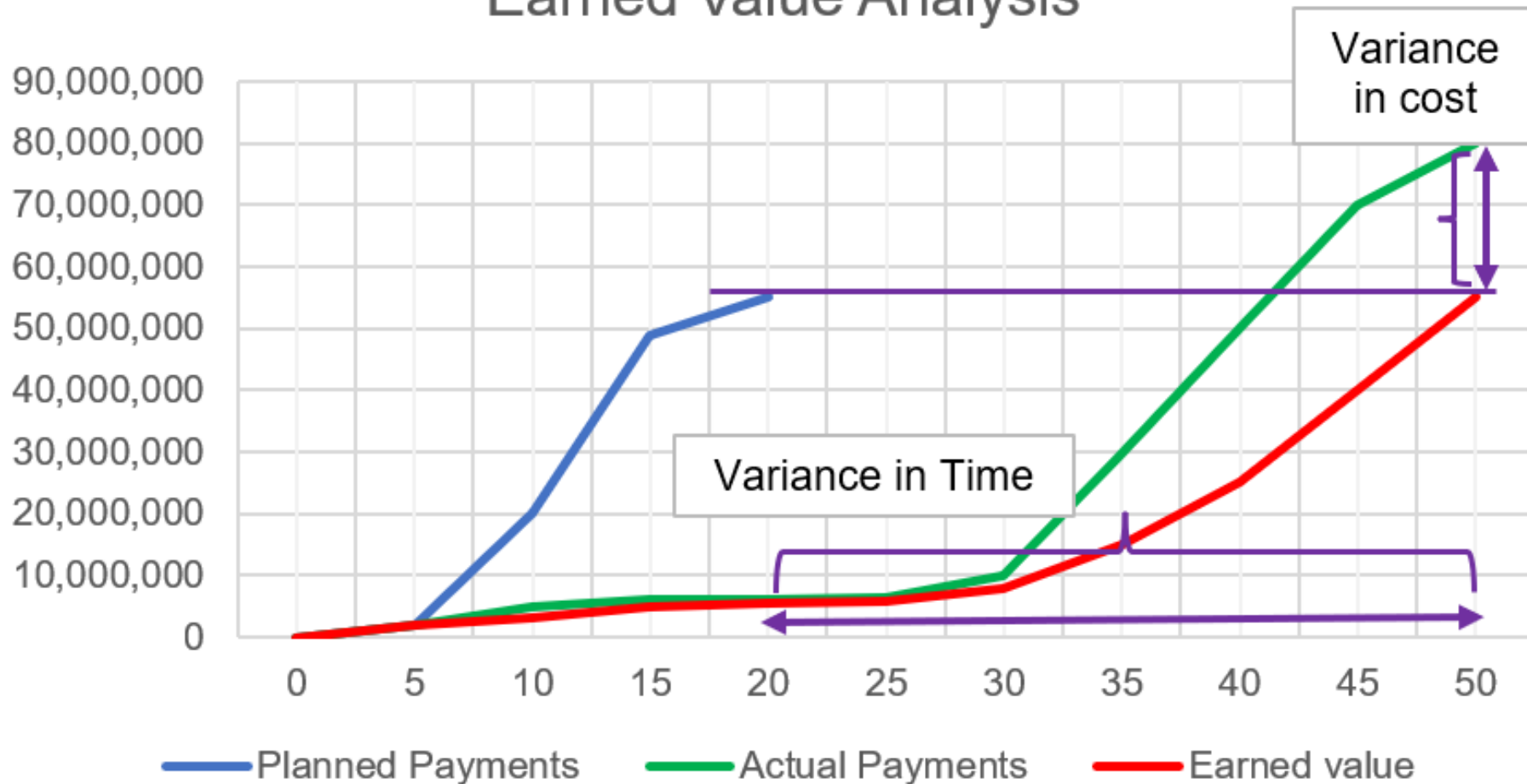


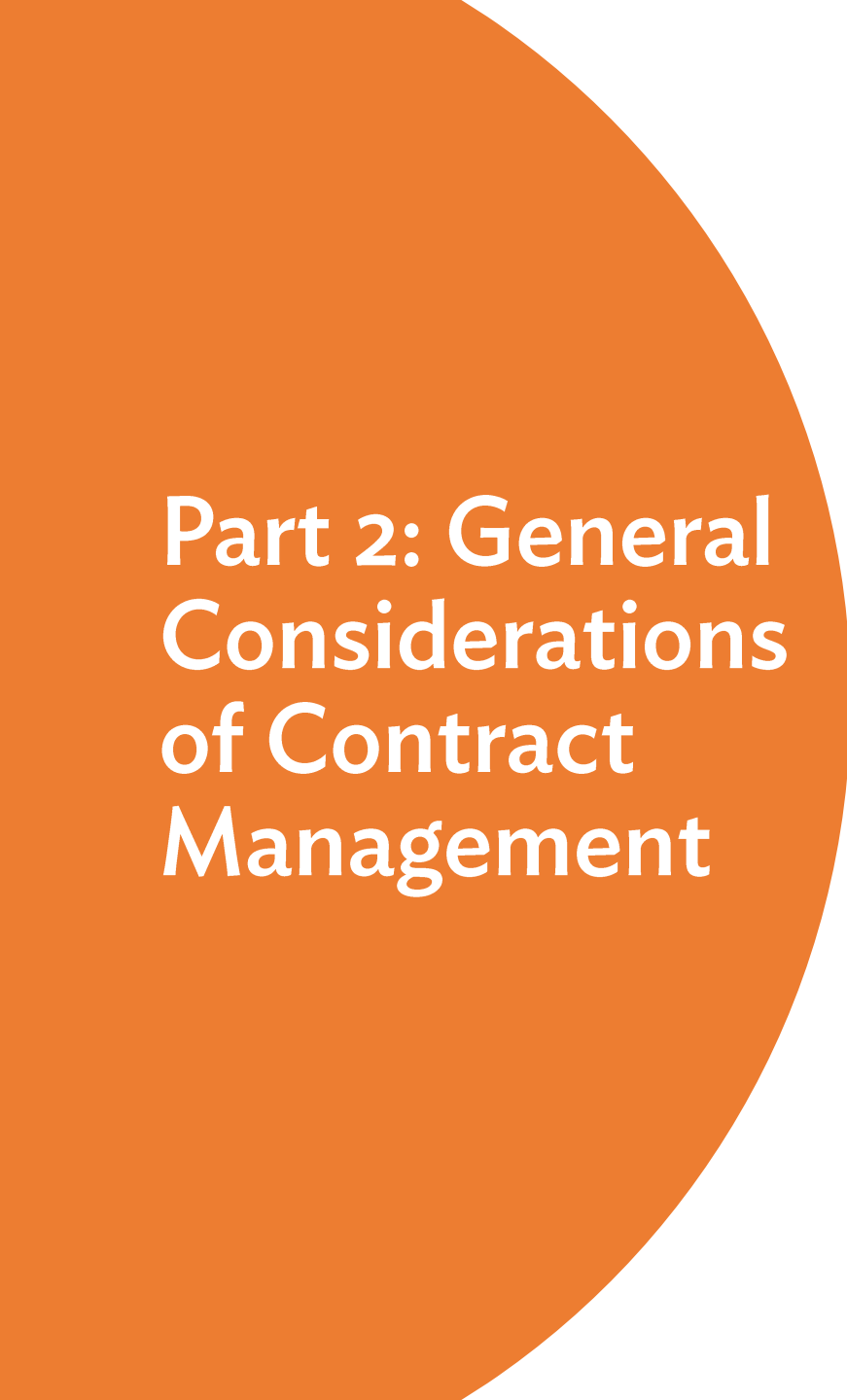
Result of contract implementation

Euro 25 million cost overrun

32 months delay

Earned Value Analysis





**Part 2: General
Considerations
of Contract
Management**

1- What is Contract Management?

**2- The Organization and Planning of
Contract Management**



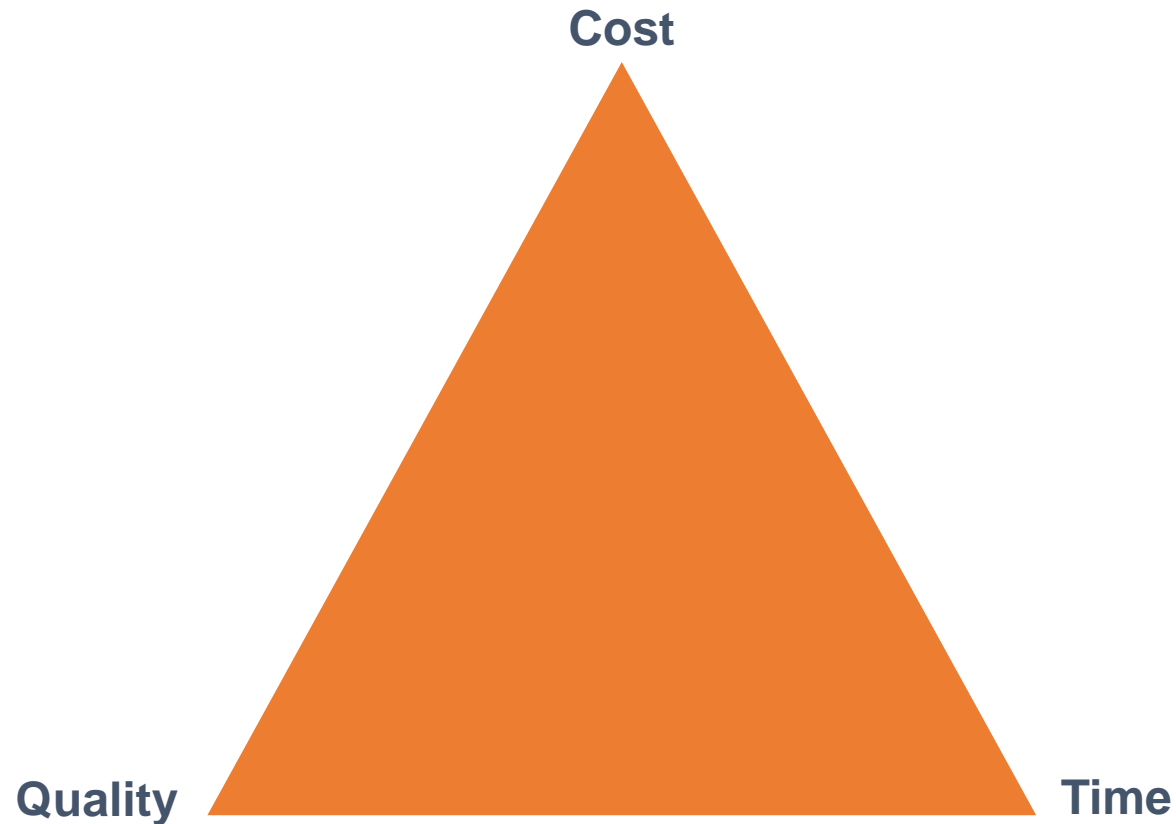
What is Contract Management ?

- Often perceived as a discipline to be practiced by Contractors/Suppliers to monitor their risks and “defend” (or increase) their profit margins.
- In fact, Employers as well should engage in Contract Management.



What is Contract Management ?

From the Employer's perspective, CM is the monitoring the Contractor's obligations and performance to ensure optimal outcomes from a contract are achieved:



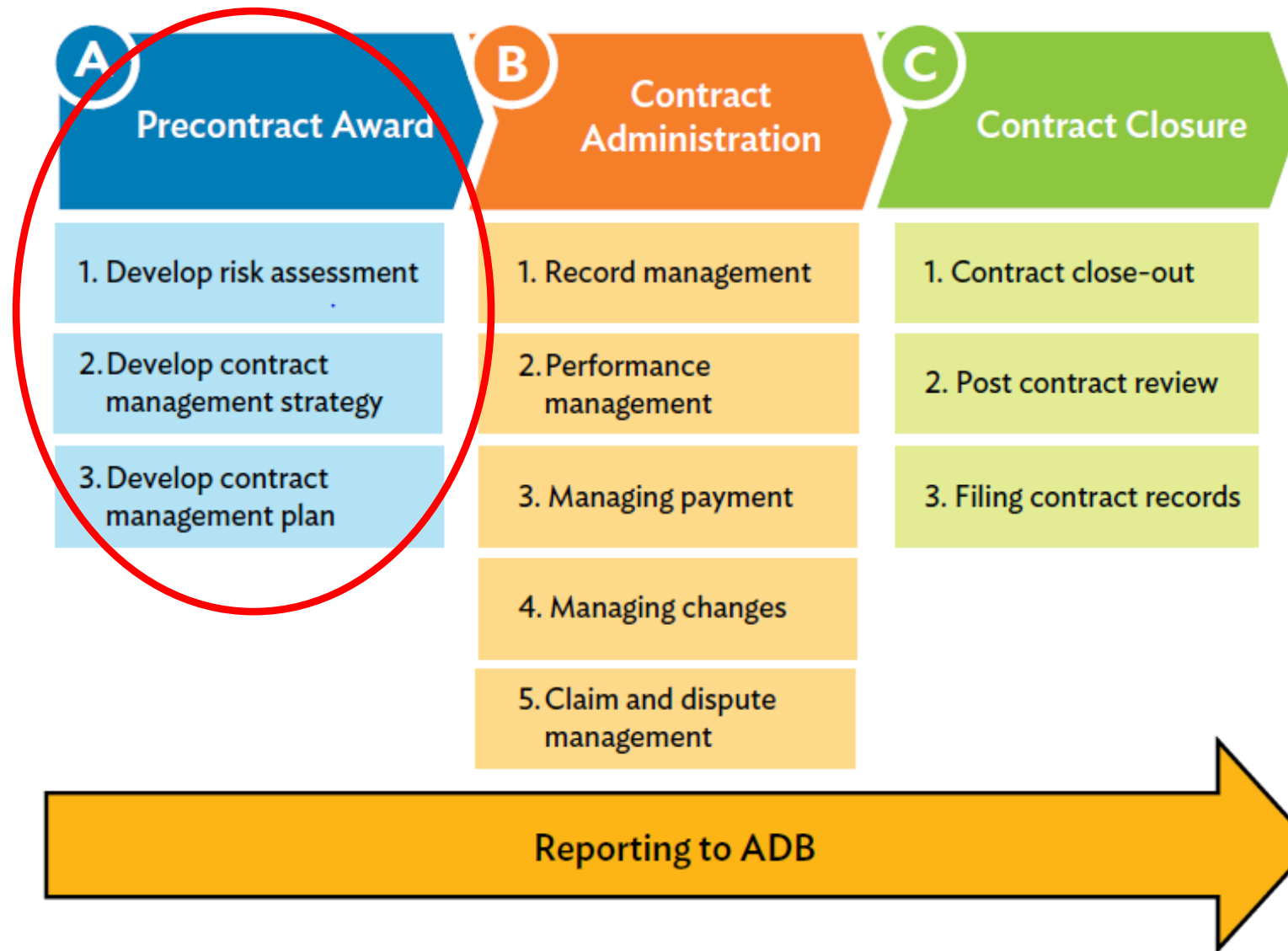
Typical issues that CM is meant to prevent:

- Poor quality of the works
- Safeguard compliance is not meet
- Health and safety issues on site
- Recurrent claims from the Contractor
- Cost overruns - Extension of Times, Delays
- Disputes, including termination



Contract Management Process

The three phases of Contract Management



A) Pre-contract award

- 1. Develop Risk Assessment and Management Plan**
- 2. Develop Contract Management Strategy**
- 3. Develop Contract Management Plan**



A) Pre-contract award

A1.1 Tables A1.1, A1.2, and A1.3 describe risk likelihood, risk consequence, and the risk rating matrix, respectively. Table A1.4 describes the risk rating key.

Table A1.1: Risk Likelihood

Descriptor	Likelihood Score	Description	Indicative Probability
Almost certain	5	Expected to occur	> 95%
Likely	4	Probably will occur	66%–95%
Possible	3	May occur at some stage	26%–65%
Unlikely	2	Would be surprising if it occurred	5%–25%
Rare	1	May never occur	< 5%

Source: Asian Development Bank.

Table A1.2: Risk Consequence

Descriptor	Consequence Score ^a	How the risk identified affects the achievement of					Value for Money (6)
		Economy (1)	Efficiency (2)	Fairness (3)	Transparency (4)	Quality (5)	
Insignificant	1						
Minor	2						
Moderate	3						
Major	4						
Severe	5						

^a For each risk identified, the assessor assigns a consequence score for each relevant core procurement principle. If a risk has an impact on more than one principle, the highest-rated impact should be recorded and used as the input for the risk rating matrix in Table A1.3 to determine the risk rating.

Source: Asian Development Bank.

Table A1.3: Risk Rating Matrix

Risk Likelihood		Risk Consequence				
		Insignificant	Minor	Moderate	Major	Severe
		1	2	3	4	5
Almost certain	5	Moderate	Moderate	Substantial	High	High
Likely	4	Moderate	Moderate	Substantial	Substantial	High
Possible	3	Low	Moderate	Moderate	Substantial	Substantial
Unlikely	2	Low	Low	Moderate	Moderate	Substantial
Rare	1	Low	Low	Low	Moderate	Moderate

Source: Asian Development Bank.

Table A1.4: Risk Rating Key

High	
Substantial	
Moderate	
Low	

Source: Asian Development Bank.



A) Pre-contract award

Risk Management Plan (example)

Risk	Probability	Impact	Countermeasure	Timeline	Responsible Person
Contract rates become unrealistic due to high volatility of market prices for certain materials	Medium	High	<ul style="list-style-type: none"> Carefully consider risk to be borne by employer by introducing price adjustment clause irrespective of the duration of the contract 	Prior to tendering	Procurement team
Single foreign contractor is inexperienced in the country	Low	High	<ul style="list-style-type: none"> Engineer to closely monitor the material and other subcontracting arrangements and ensure qualified, approved subcontractors working on-site 	Kick-off meeting, and continuously	Engineer and project manager
Major partner of joint venture not participating in contract implementation	Medium	High	<ul style="list-style-type: none"> Ensure appropriate, stringent clauses in the contract such as "project manager must be from major joint venture partner and full time on-site" 	Procurement stage and contract signing stage	Procurement team and project director



A) Pre-contract award

1. Develop Risk Assessment and Management Plan

2. Develop Contract Management Strategy

3. Develop Contract Management Plan



A) Pre-contract award

2. Develop Contract Management Strategy

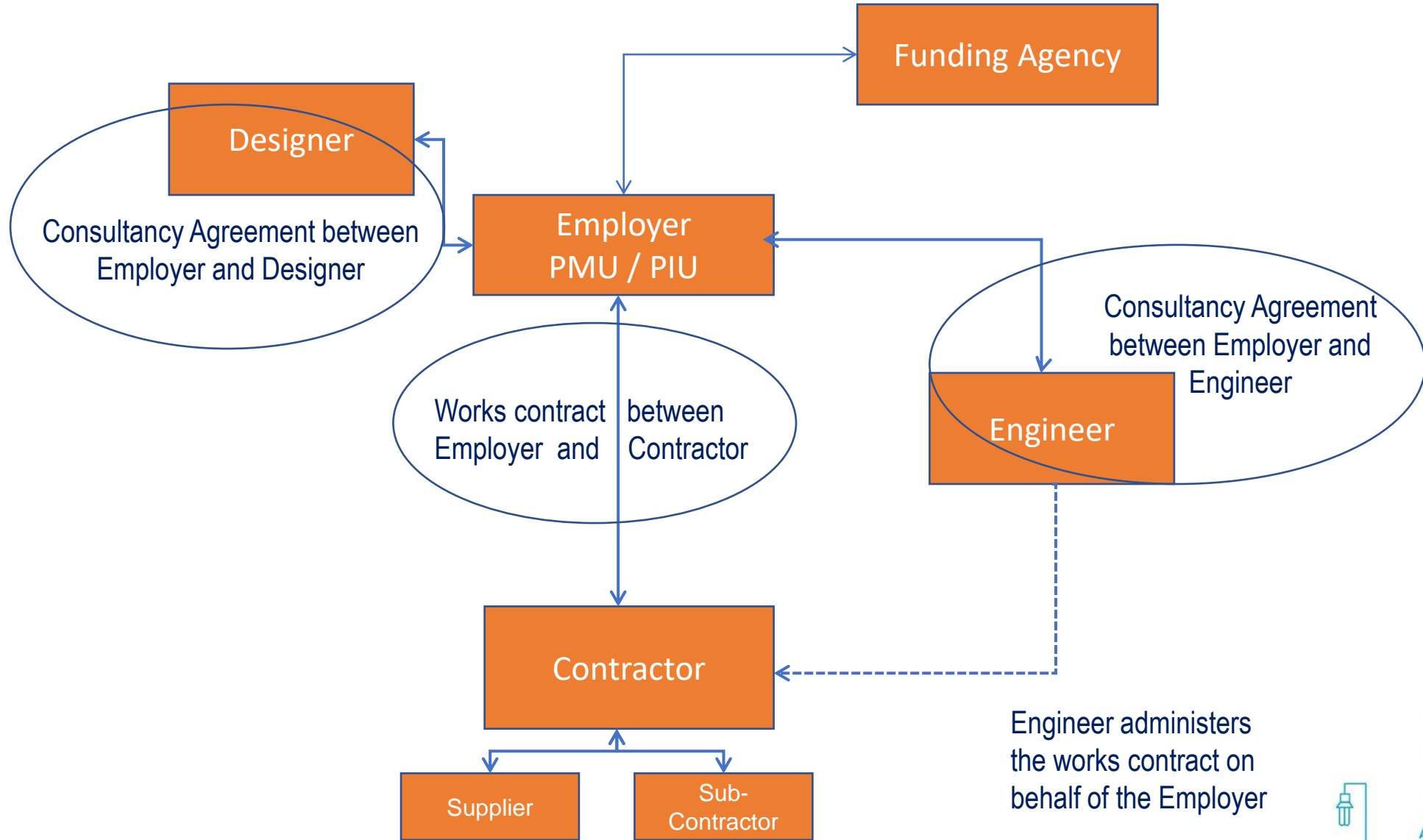
2.1 Calibrating the relevant resources needed to conduct contract management activities and to manage the risk management plan

- Technical expertise
- Costing (QS) and finance expertise
- Scheduling expertise,
- Contractual/legal expertise

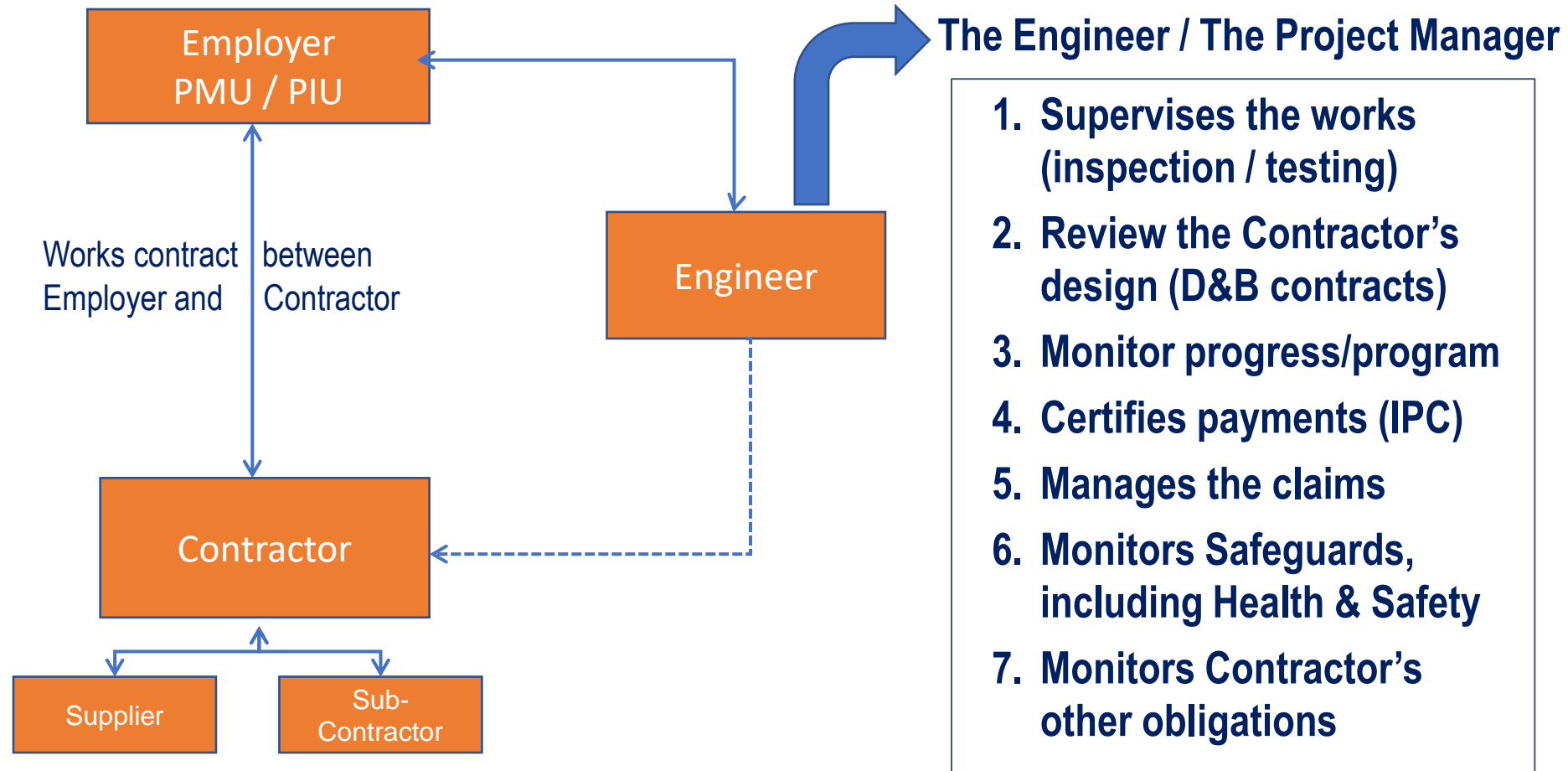
2.2 Defining how the borrower and the contractor will communicate during contract implementation (progress meetings) and what report should be submitted.



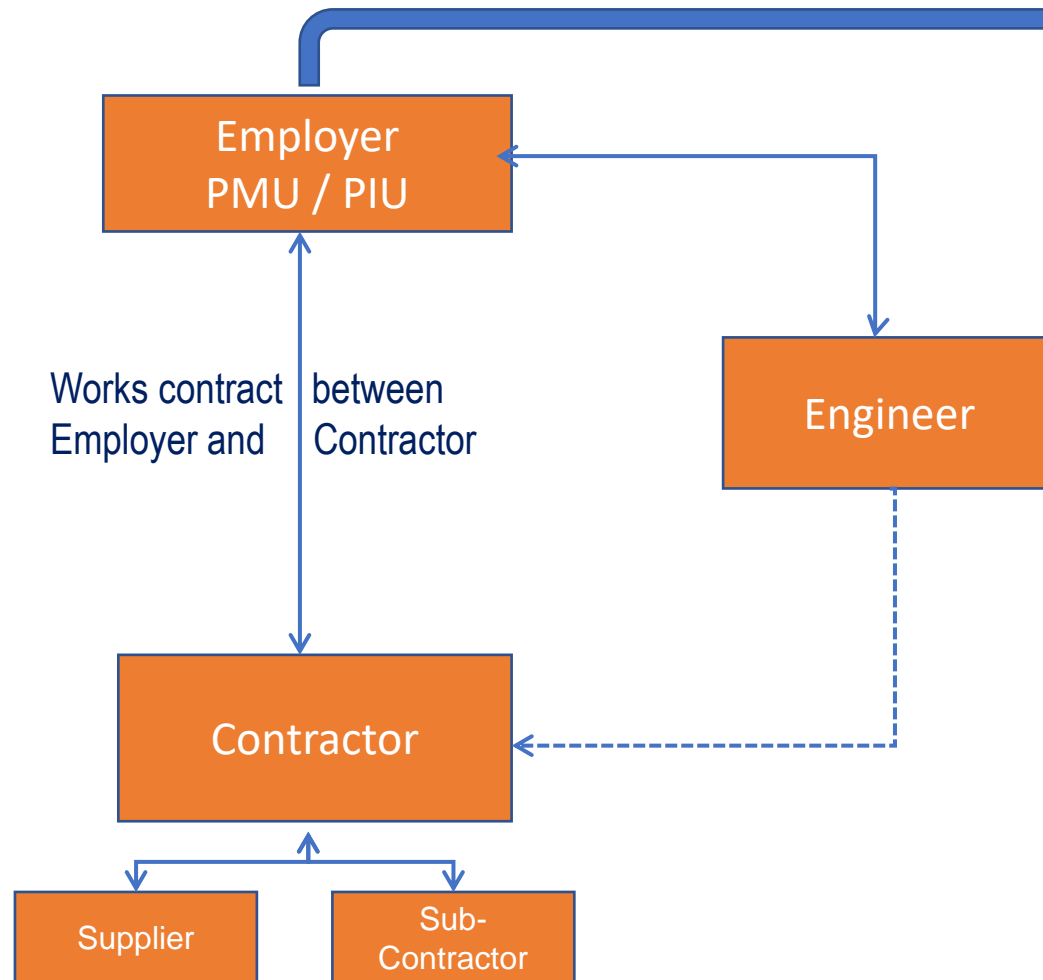
TRADITIONAL RELATIONSHIP BETWEEN THE PARTIES FOR AN EMPLOYER'S DESIGN PROJECT



Role of the Construction Supervision Consultant



Role of the Employer



The Employer through the PMU/PIU

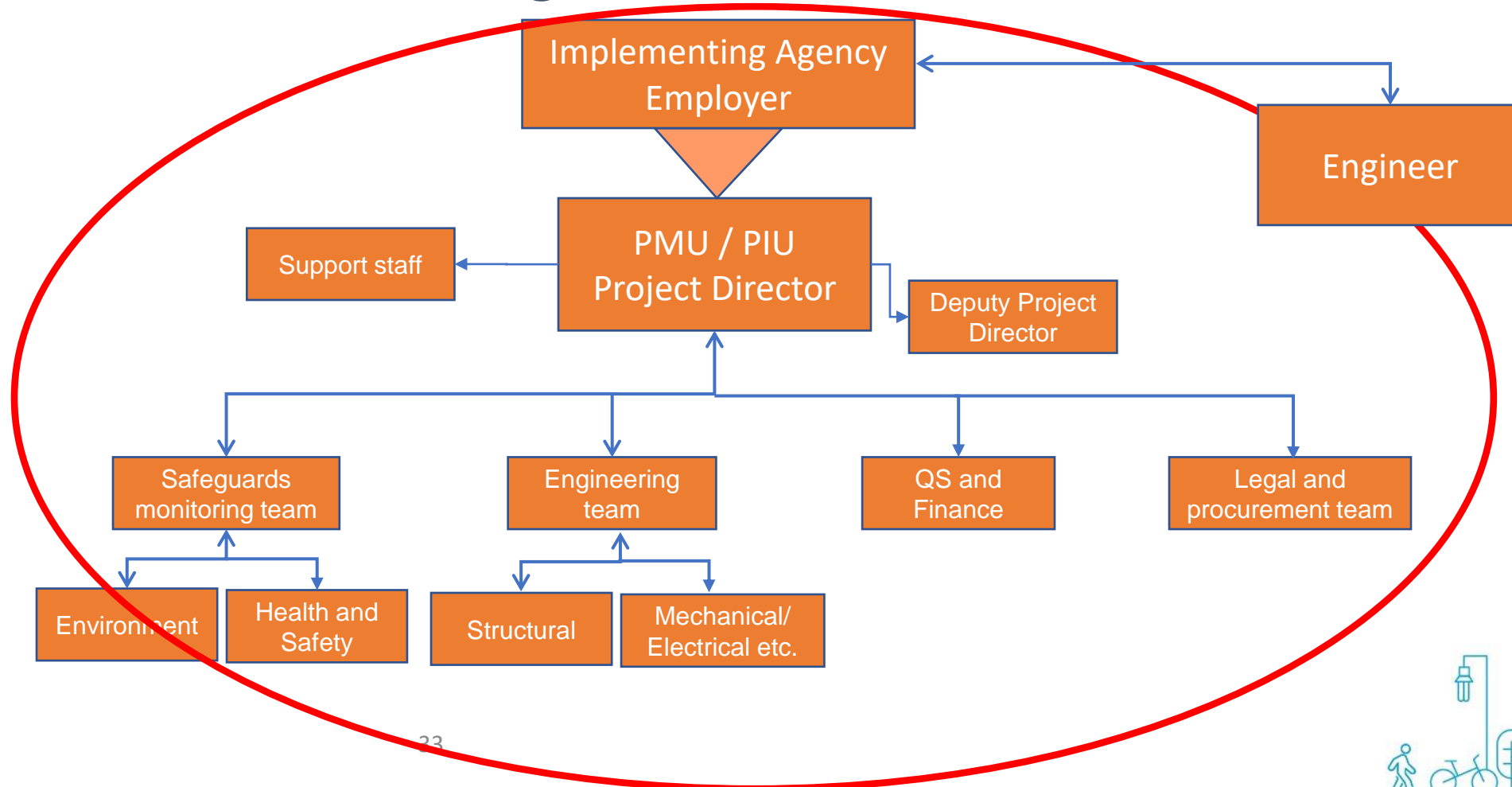
1. Monitor the Contractor's performance based on CMP
2. Monitors Safeguards
3. Manages the Risks (RMP)
4. Decides and implements mitigative/corrective measures
5. Make payments (through IFI)
6. Report to ADB



A) Pre-contract award

2. Develop Contract Management Strategy

2.1 Calibrating the relevant resources:



A) Pre-contract award

1. **Develop Risk Assessment and Management Plan**
2. **Develop Contract Management Strategy**
3. **Develop Contract Management Plan**



A) Pre-contract award

3. Develop the Contract Management Plan

- The scope and content of a CMP should be proportional to the complexity, risk, and value of the contract
- **For Simple and low value Contracts**
 - key roles and responsibilities,
 - key contractual dates and delivery milestones,
 - budget and payment milestones, and
 - record-keeping requirements.
- **For Complex, High Value and High risk Contracts**
 - Potential risks and mitigation measures
 - Key contacts, roles and responsibilities of the parties
 - Communication and reporting procedures
 - Key contractual terms and conditions
 - Contractual milestones including critical path
 - Key contract deliverables
 - Key performance indicators and measurement process
 - Contract variation control mechanisms
 - Record keeping requirements



A) Pre-contract award

Typical Contract Management Plan for a high value/complex contract

- Executive Summary and Recommended Action Plan
- Monthly Project Update
 - Section 1: Permits, Licenses, and Approvals
 - Section 2: Contract Start-up Activities and Submittals
 - Section 3: Risk Management
 - Section 4: Program Monitoring
 - Section 5: Change Management
 - Section 6: Financial Management
 - Section 7: Disputes
 - Section 8: Environment, Social, Health & Safety, Security related Obligations
 - Section 9: Completion of Work and Contract Closure Activities
 - Section 10: Recent Photographs of Site Activities
- Contract Key Data/Information
 - Section 1: Contract Details
 - Section 2: Communications and Reporting
 - Section 3: Securities and Insurances



A) Pre-contract award

Typical Contract Management Plan for a low value/simple contract

- Executive Summary and Recommended Action Plan
- Monthly Project Update
 - ~~Section 1: Permits, Licenses, and Approvals~~
 - ~~Section 2: Contract Start-up Activities and Submittals~~
 - Section 3: Risk Management
 - Section 4: Program Monitoring
 - ~~Section 5: Change Management~~
 - Section 6: Financial Management
 - ~~Section 7: Disputes~~
 - Section 8: Environment, Social, Health & Safety, Security related Obligations
 - ~~Section 9: Completion of Work and Contract Closure Activities~~
 - ~~Section 10: Recent Photographs of Site Activities~~
- Contract Key Data/Information
 - Section 1: Contract Details
 - ~~Section 2: Communications and Reporting~~
 - Section 3: Securities and Insurances



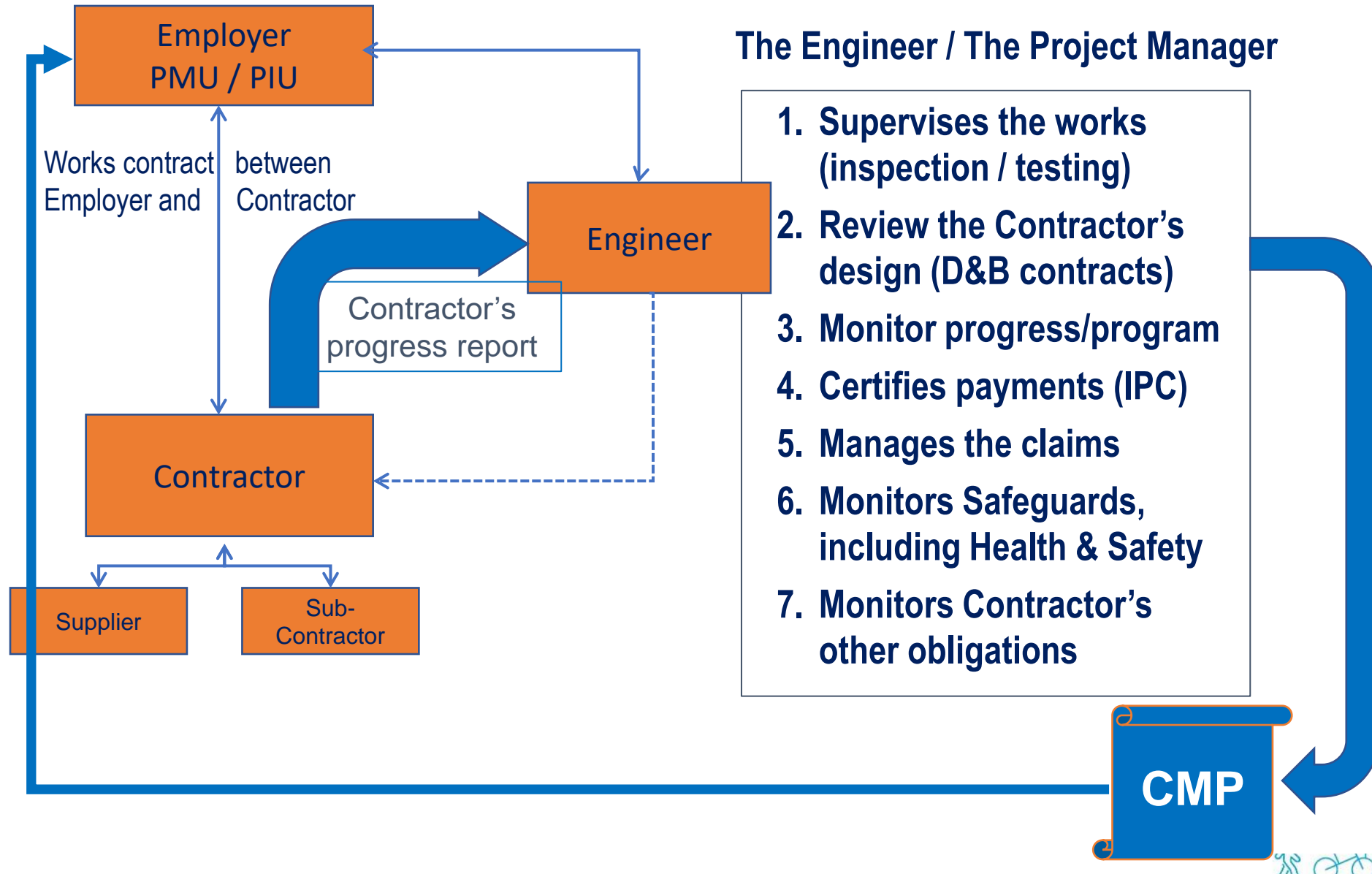
A) Pre-contract award

Example of a CM tool for a simple supply contract (vaccine delivery)

Vaccine program delivery management checklist		
Contract info		
Contract number		
Contract value		
Product		
Supplier		
Incoterms		
Contract signing date		
Payment terms		
Delivery milestones		
1. Contract Management	Process to consider	Notes
A) Transport and delivery		
Insurance	Has it been arranged? What conditions? Responsible party?	
Pre-delivery inspection	Who/where/how/ on what basis? Record?	
Transportation - international	Who/approval requirements/ how often will update be provided on status?	
Transportation - national	Who/approval requirements/ how often will update be provided on status?	
Customs clearance	Responsible party/Amount of duties?	
B) Acceptance and payment by the Client		
Post-delivery inspection	Who/where/how/ on what basis? Record?	
Payment	When (milestones)/How much?	
Claims	e.g. claim for delayed delivery, claim for price increase	
Disputes		
2. Vaccination programme monitoring		
Storage (e.g. temperate control)	Where will it be stored at central/local level?	

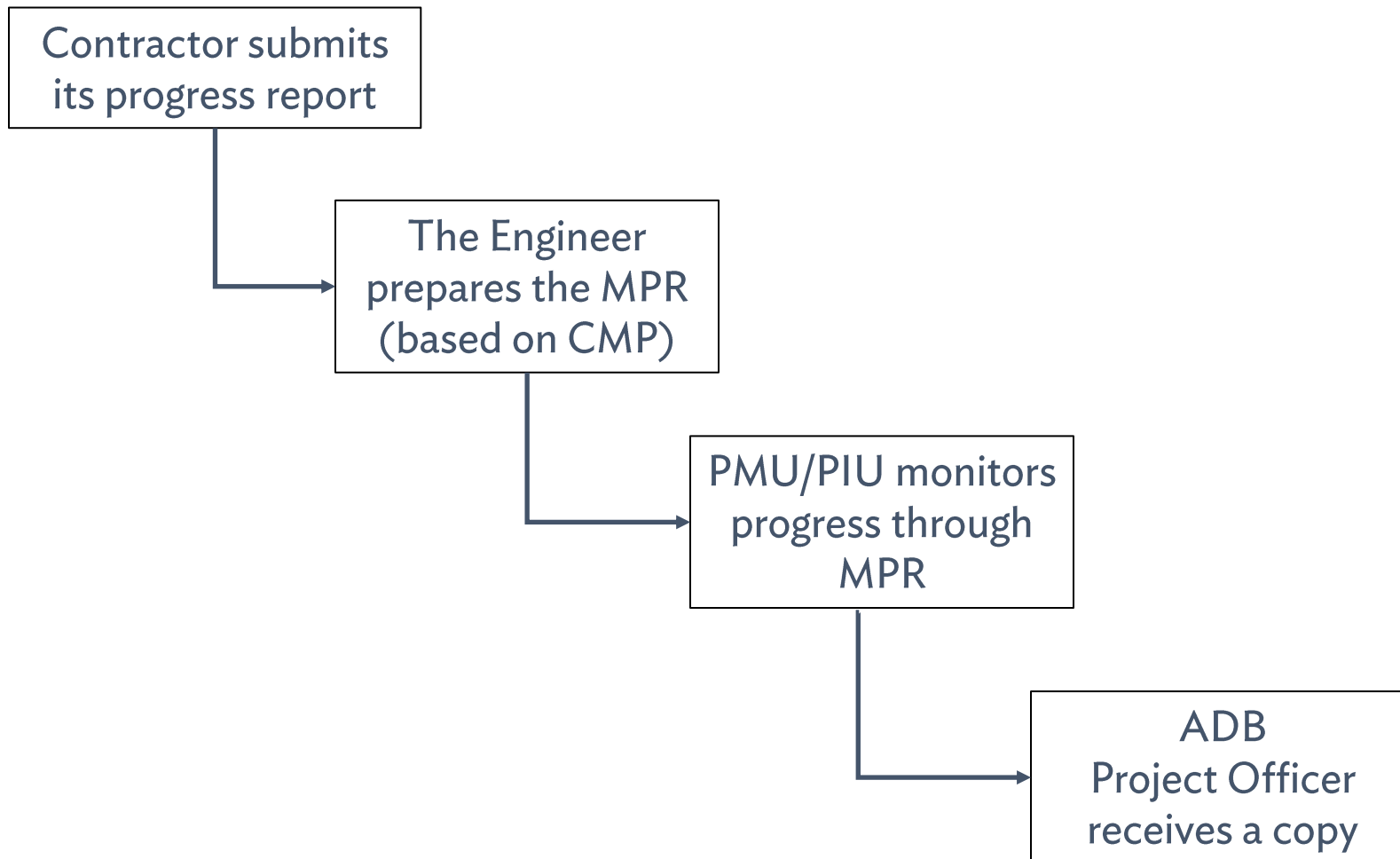


Who should prepare the Monthly Progress Report (based on CMP template)?



B) Contract Administration

Generation and use of the Contract Management Plan



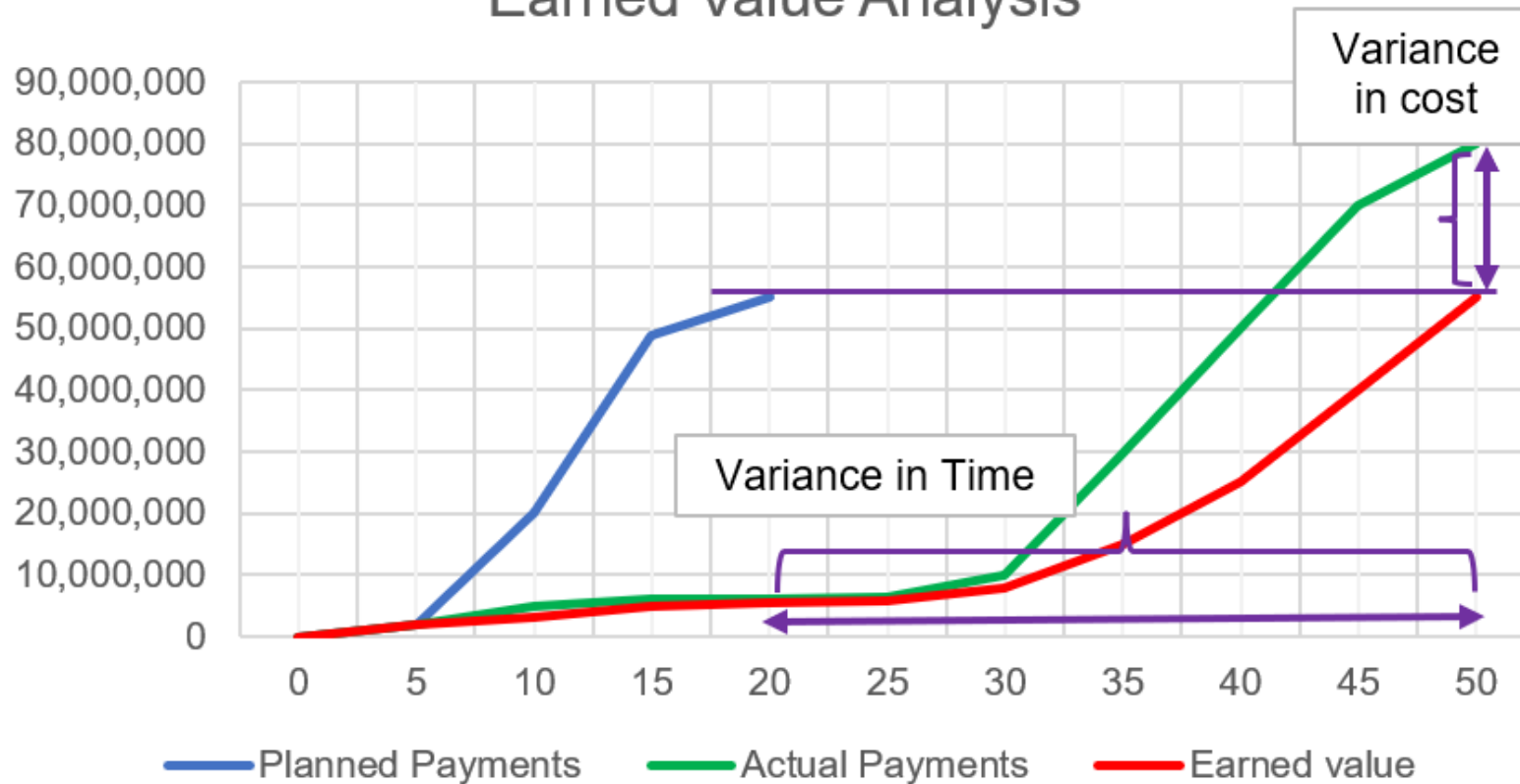
- **CMP is also useful in that it must conclude by a corrective action plan for any detected variance.**
- **Corrective action plan may spur management meeting between the parties to examine and try to resolve actual or potential problems.**
- **Contract management aims at fostering a culture a dialogue between the parties and common understanding of potential problems and possible remedies thereto.**

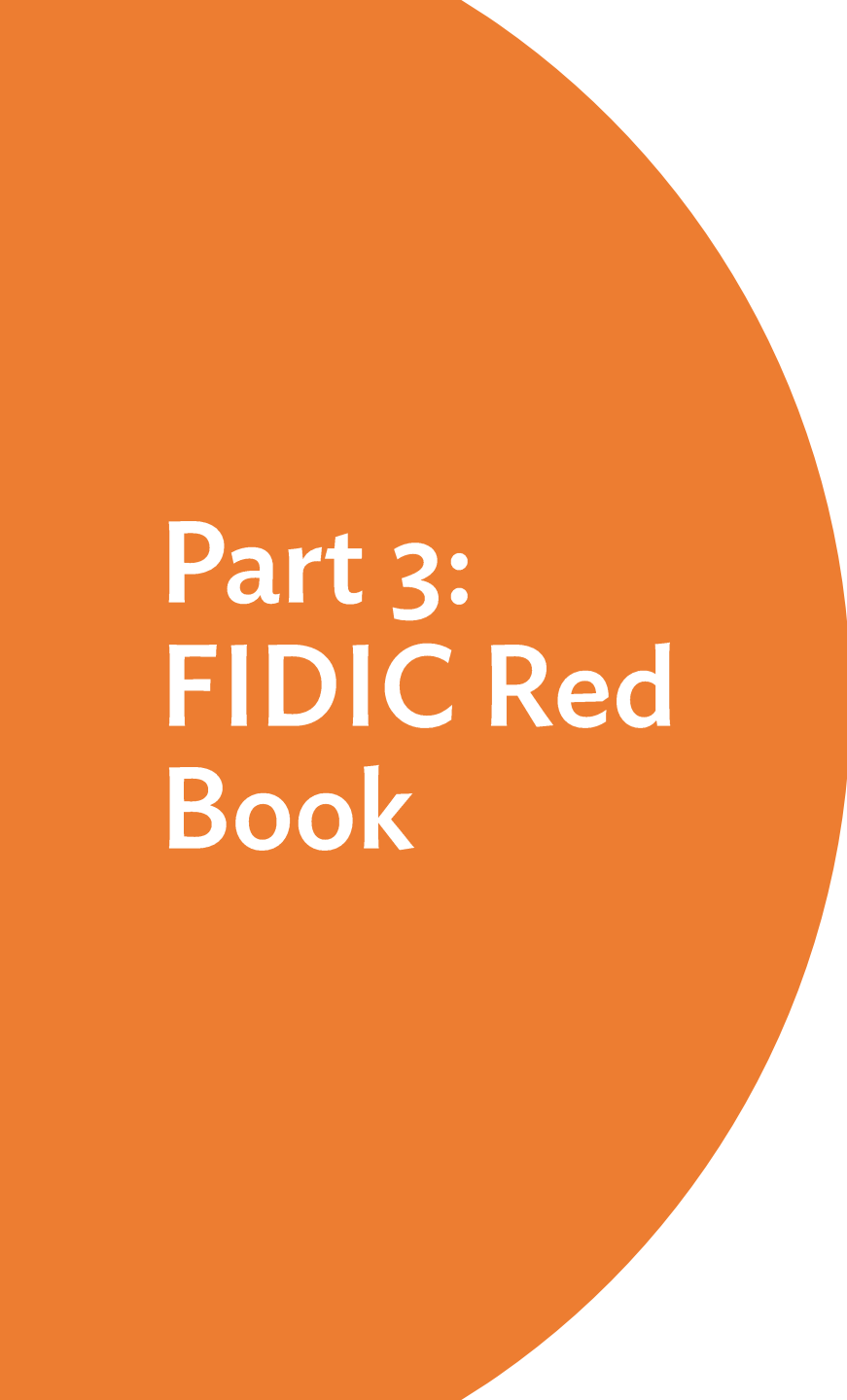


Changes in design in the course of the contract should definitely be avoided.

The use of CMP could not have prevented this situation but a CMP could have resolved the situation quickly

Earned Value Analysis

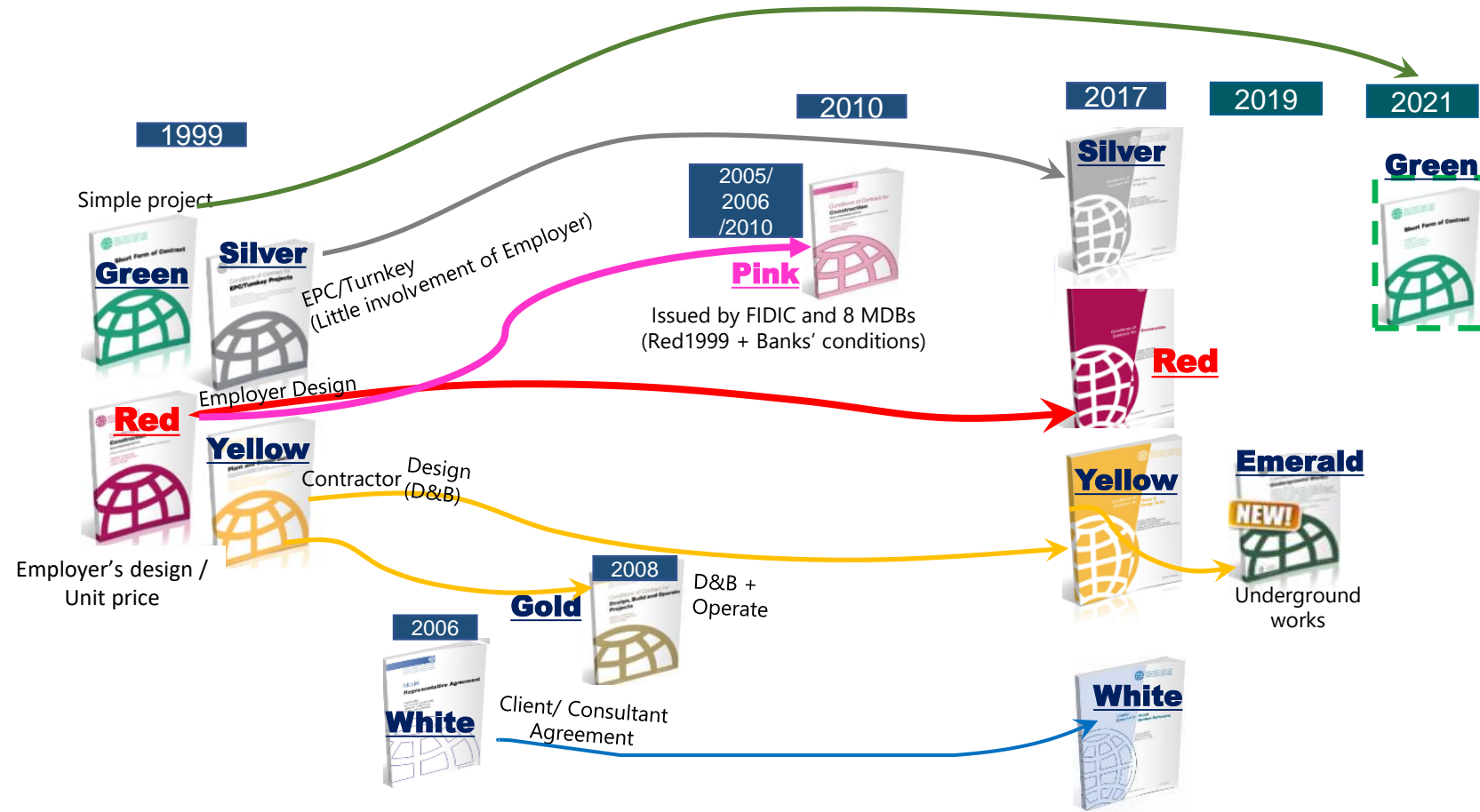




Part 3: FIDIC Red Book



FIDIC Rainbow Suite of Contracts since 1999



FIDIC License Agreement with ADB: Key Points

- License period** 5 years starting 11 Oct 2021, renewable by agreement
- License Type**
- Non-exclusive,
 - Right to refer to the FIDIC Books for ADB funded projects, where ADB SBDs are used (to be incorporated by reference)
 - Not authorized to publish any of the FIDIC Books on ADB's website or make it public in any other way due to FIDIC's copyright
 - ADB, Borrowers (consultants, contractors) required to purchase original copy of the FIDIC books from FIDIC



What has changed from 2010 Pink Book to 2017 Red Book ?

2010 Pink Book



85 pages



2017 Red Book



128 pages

Retained in 2017 RB

- Layout/Structure/Concept
- Risk sharing between the parties
- Same definitions, wording, language
- Harmonization across suite/versions

Enhanced in 2017 RB

- Fairness Principle
- Applicability in diverse civil/common jurisdictions

Significant changes in 2017 RB

- **Greater detail and clarity** on the Contract Requirements & Procedures
- **Enhanced provisions** for Quality and Contract Management
- **Detailed provisions** for Claims and Disputes resolution
- **MDB specific requirements** not included (because Red 2017 is based on Red 1999, which did not have MDB requirements)



Conditions of Particular Application ('COPA')

The “COPA” will constitute Section 8 of the SBD (37 pages)

- They are partly (but not fully) aligned with WB's
- They introduce a number of clauses that were specific to the Pink Book (as compared with Red Book)
- They also introduce ADB specific provision in areas such as Corrupt and Fraudulent Practices and safeguards
- They are structured in four parts:

Part A: Contract Data

Part B: Special Provisions

Part C: Corrupt and Fraudulent Practices

Part D: Environmental, H&S – metrics for progress reports



Questions



and Answers

