

The key differences between the ECC and the ECSC

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Speakers



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Questions in the 'chat'
please!!!!

NEC article – Richard Patterson and NEC Board

6 July 2023

Comparison of the NEC4 ECSC with the NEC4 ECC



<https://www.neccontract.com/news/comparison-of-the-nec4-ecsc-with-the-nec4-ecc>

Subcontract too!

Everything here also applies to a comparison between:

- The Engineering and Construction Subcontract (ECS) and
- the Engineering and Construction **Short** Subcontract (ECSS)

- Contractors should surely be using the ECSS more often!

ECSC vs ECC

- Simpler
- **Designed for simple, low risk contracts**
- No *Project Manager* or *Supervisor* – just *Client* and *Contractor*
- Priced only – mix of quantities and activities
- Very light on *Contractor* design
- No requirements for programme unless required in Scope
- The compensation event process is simpler
 - quotation submitted with *Contractor* notification
 - Either *Client* or *Contractor* can state assumptions
 - no option for *Client* to ask for revised quotation – so talk!
 - no *Client* response in time? - treated as accepted!

Contract preparation

It's shorter!

ECC has:

- 96 pages!

ECSC has:

- 17 pages

Payment basics

ECC has six main options:

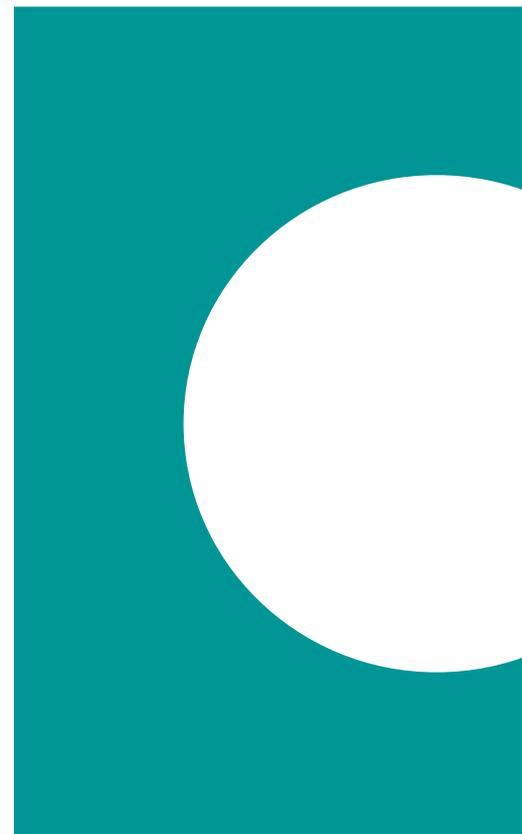
- A Priced contract with activity schedule
- B Priced contract with bill of quantities
- C Target contract with activity schedule
- D Target contract with bill of quantities
- E Cost reimbursable contract
- F Management contract

ECSC has:

- the **‘Price List’**
 - lump sums and/or
 - quantity * rate
- So a ‘priced’ contract
- Mix of ECC A and B
- Includes ‘the method and rules used to compile the Price List’
 - As the *‘method of measurement’* in ECC

Simple but

- Price List includes: 'The method and rules used to compile the Price List are:
- 14.3 'The *Client* gives an instruction to correct a **mistake** in the Price List which is
 - a **departure from the method and rules** stated in the Price List and used to compile it or
 - due to an **ambiguity or inconsistency.**'
- 60.1(12) compensation event:
 - The Client gives an instruction to correct a **mistake** in the Price List.
- So 'correctness' of Price List is a *Client* risk
- Cannot be right if *Client* has asked the bidder to offer its priced items to get paid for the Scope.



3 August 2021

Price lists in NEC short contracts: how clients can simplify the process

Price lists in NEC short contracts and how clients can simplify the process

Options

ECC has:

- Resolving and avoiding dispute options
W1,W2,W3
- *Senior Representatives*

ECSC has:

- Statement Housing Grants Act **does/does not** the Housing Grants Act apply
- Dispute resolution in 93, based on W1

Options

ECC has secondary options:

- Option X1 Price adjustment for inflation (used only with Options A, B, C and D)
- Option X2 Changes in the law
- Option X3 Multiple currencies (used only with Options A and B)
- Option X4 Ultimate holding company guarantee
- Option X5 Sectional Completion
- Option X6 Bonus for early Completion
- **Option X7 Delay damages**
- Option X8 Undertakings to the Client or Others
- Option X9 Transfer of rights
- Option X10 Information modelling
- Option X11 Termination by the Client
- Option X12 Multiparty collaboration (not used with Option X20)
- Option X13 Performance bond
- Option X14 Advanced payment to the Contractor
- Option X15 The Contractor's design
- **Option X16 Retention (not used with Option F)**
- Option X17 Low performance damages
- Option X18 Limitation of liability
- Option X20 Key Performance Indicators (not used with Option X12)
- Option X21 Whole life cost
- Option X22 Early Contractor involvement (used only with Options C and E)
- Option X29 Climate change

ECSC has:

- No 'options'
- But as standard:
 - Delay damages
 - Retention
 - Can be set to zero
- Can bring in ECC options as additional conditions but KISS!

Options

ECC has secondary options:

- Option Y(UK)1 Project Bank Account
- **Option Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996**
- Option Y(UK)3 The Contracts (Rights of Third Parties) Act 1999

ECSC has:

- 4 Clauses if the Housing Grants Act applies
- ‘does or does not apply’ box in *Client’s Contract Data*

Options

ECC has:

- Option Z Additional conditions of contract

ECSC has:

- ‘additional conditions’ added at the end of the *Client’s Contract Data*

Structure

ECC has:

- Contract Data that neatly points to all other documents in the contract

ECSC has:

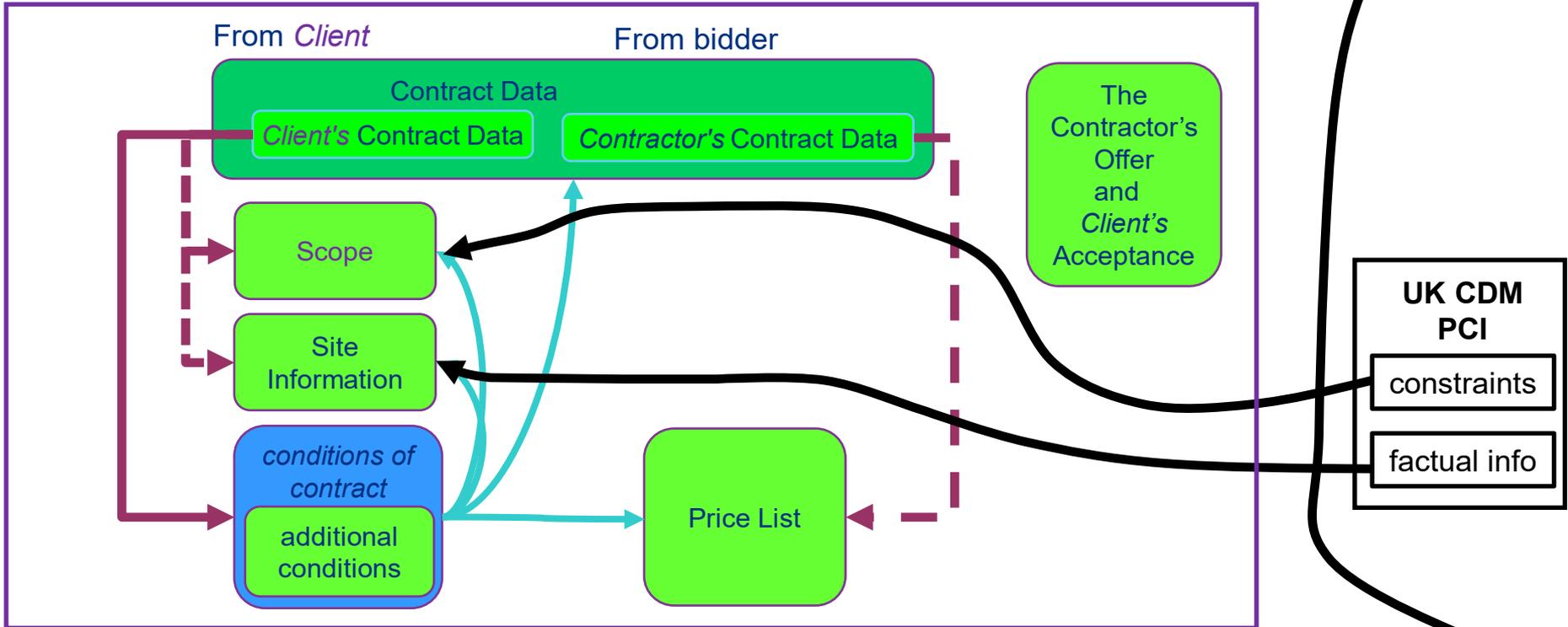
- ‘templates’ for Scope and Price List ready to be ‘filled in’.
- May be better to point to these from Contract Data!

Suggest add links to Scope, Site Information and Price List in the Contract Data

Some clients might want a short form of agreement

ECSC Contract Documents

All set out in 'one' document



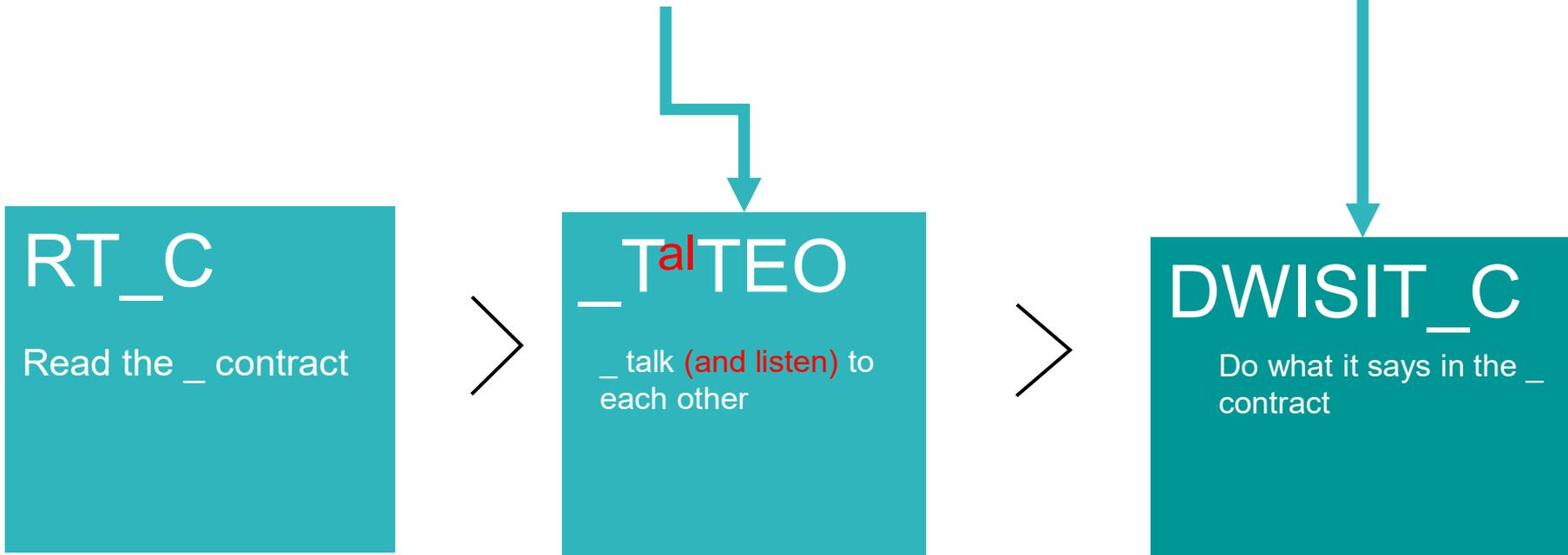
➡ Only the conditions incorporated by ref.

➡ requires info. to be stated in

Contract management

10.1 The Parties shall act as stated in this contract.

10.2 The Parties act in a spirit of mutual trust and co-operation.



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People

ECC has:

- *Supervisor* (testing and Defects)
- *Project Manager* (everything else!)

ECSC has:

- Just 'the *Client*'
- *Client* can delegate (14.5)

Defined Cost

ECC has very detailed :

- Schedule of Cost Components (options C,D, E)
- Short Schedule of Cost Components (options A and B)
- Used for assessment of compensation events (all options) and payment for options C and E

ECSC has:

- Much simpler Defined Cost definition:
 - People
 - Plant and Materials
 - Work subcontracted
 - Equipment on *site*

Only used to assess compensation events

Early warning

ECC has:

- early warnings
- Early Warning Register
- early warning meetings

ECSC has:

- early warnings
- 15.2: ‘The *Contractor* and the *Client* co-operate in making and considering proposals for how the effect of each mattercan be avoided or reduced and deciding and recording actions to be taken.’
- Might want a meeting!
- Logical to keep a ‘register’!

Contract's proposals and reasons for instructions

ECC has:

- Contractors proposals (value engineering)
- Instructions re:
 - ambiguity
 - impossibility

ECSC has:

- Nothing!

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Design

ECC has:

- ‘designs the parts of the works as stated in the Scope’
- Particulars of design as Scope required to be submitted for acceptance
- May submit in parts

ECSC has just:

- 20.2 ‘The *Contractor* does not start work which the *Contractor* has designed until the *Client* has accepted that the design complies with the Scope.’
- **FULL STOP!**
- Will still need details in the Scope
 - submission required
 - time periods for *Client* review
 - reasons for non-acceptance

Subcontractors

ECC has requirements:

- to get Subcontractors accepted
- to get subcontracts accepted

ECSC has:

- No *Client* oversight on subcontracting
- *Some Clients will want some inserted!*

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Programme

ECC has:

- The most detailed requirement re programme in any contract on the planet!
- Direct reference to the 'Accepted Programme' in assessment of delays to the Completion Date due to compensation events

ECSC has just:

- 31.1 The Contractor submits programmes to the Client **as stated in the Scope.**
- **Nothing re acceptance**
- 30.2 The *Contractor* submits a **forecast of the date of Completion**each week from the starting date until Completion.
- **No ref to programme in assessment of compensation events**
- Whatever you want will need to be in the Scope!

Programme

ECC has:

- Key Dates
- X5 section completion
- acceleration
- take over

ECSC has:

- None of that!

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Defects

ECC has:

- Quality management system
- *Supervisor* looking after testing and Defects
- Tests and inspections
- Searching for and notifying Defects
- Correcting Defects
- Accepting Defects
- Uncorrected Defects

ECSC has simple processes for

- Tests and inspections
- Searching for and notifying Defects
- Correcting Defects
- Accepting Defects
- Uncorrected Defects
- **Remember – no *Supervisor!***

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Payment

ECC has:

- application from *Contractor*
- assessment by the *Project Manager*
- *Special 'final assessment'*

ECSC has:

- assessment and application by *Contractor*
- Can be corrected by the *Client*
- Oddly (as ECC) has 25% of PWDD retention **if** the *Client* requires a programme to be submitted and it has not been submitted
- No special 'final assessment'

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Compensation events

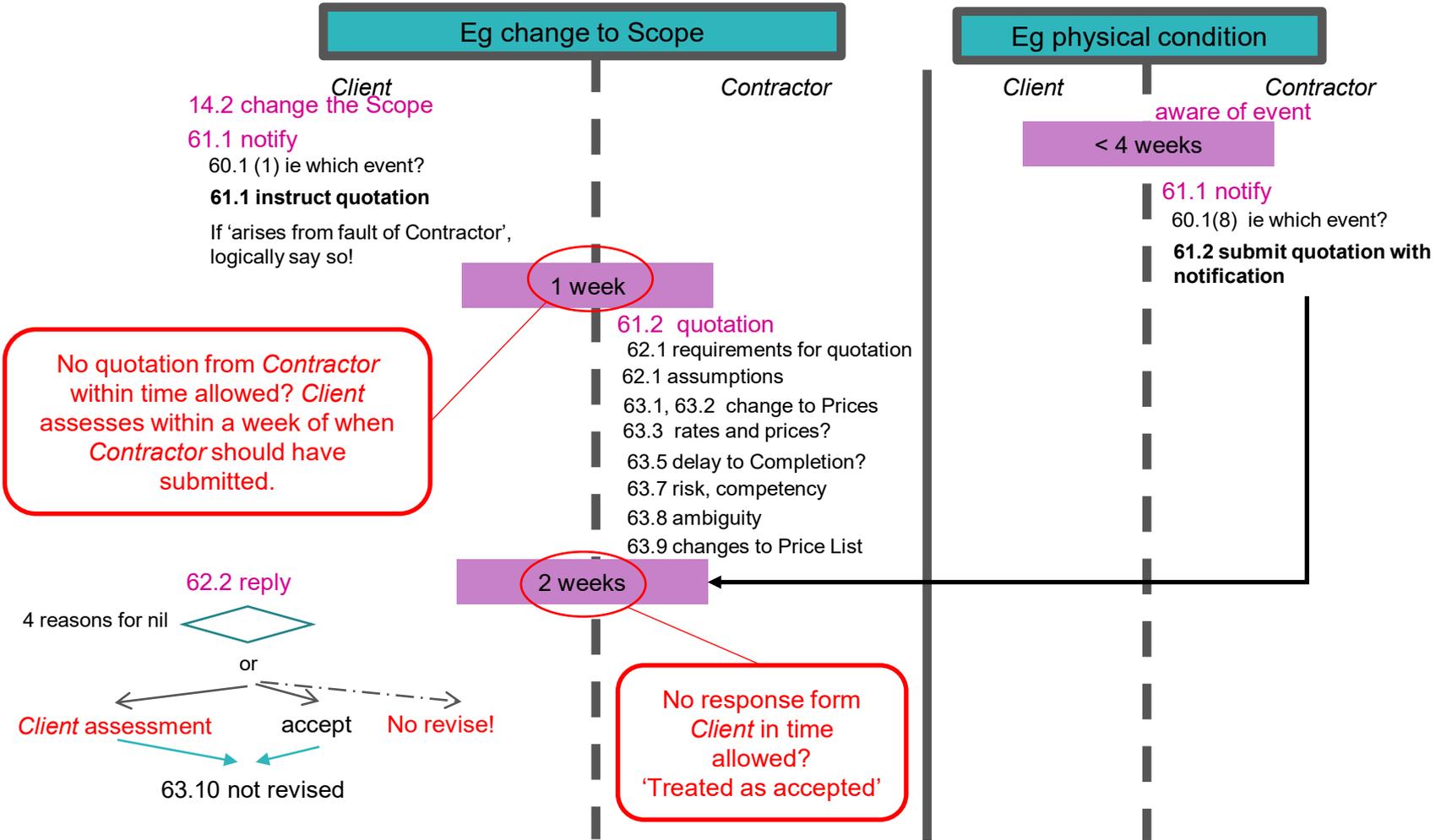
ECC has:

- Two stage process – notify then quotation
- Assumptions only from the *Project Manager*
- *PM* can ask for revised quotation
- Needs a prompt to get a quotation ‘treated as’ accepted

ECSC has:

- Quotation with *Contractor’s* notification
- Assumptions from *Client* OR *Contractor*
- *PM* can only accept or make its own assessment
 - so TALTEO!
- Treated as accepted if *Client* does not respond in two weeks! (No prompt required)

ECC compensation events – key clauses – ECSC4



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Title

ECC has:

- Clauses re transferring title to *Client*

ECSC has:

- Silence!!



Liabilities and insurance

ECC has:

- X15 to limit liability to due skill and care
- Requirements to submit certificates of insurance
- Provision for *Client* to insure if *Contractor* does not

ECSC has:

- Tick 'yes' to a statement in the *Client's* Contract Data
- Nothing re certificates of insurance
- No mechanism for *Client* to insure if *Contractor* does not.

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Termination and resolving disputes

ECC has:

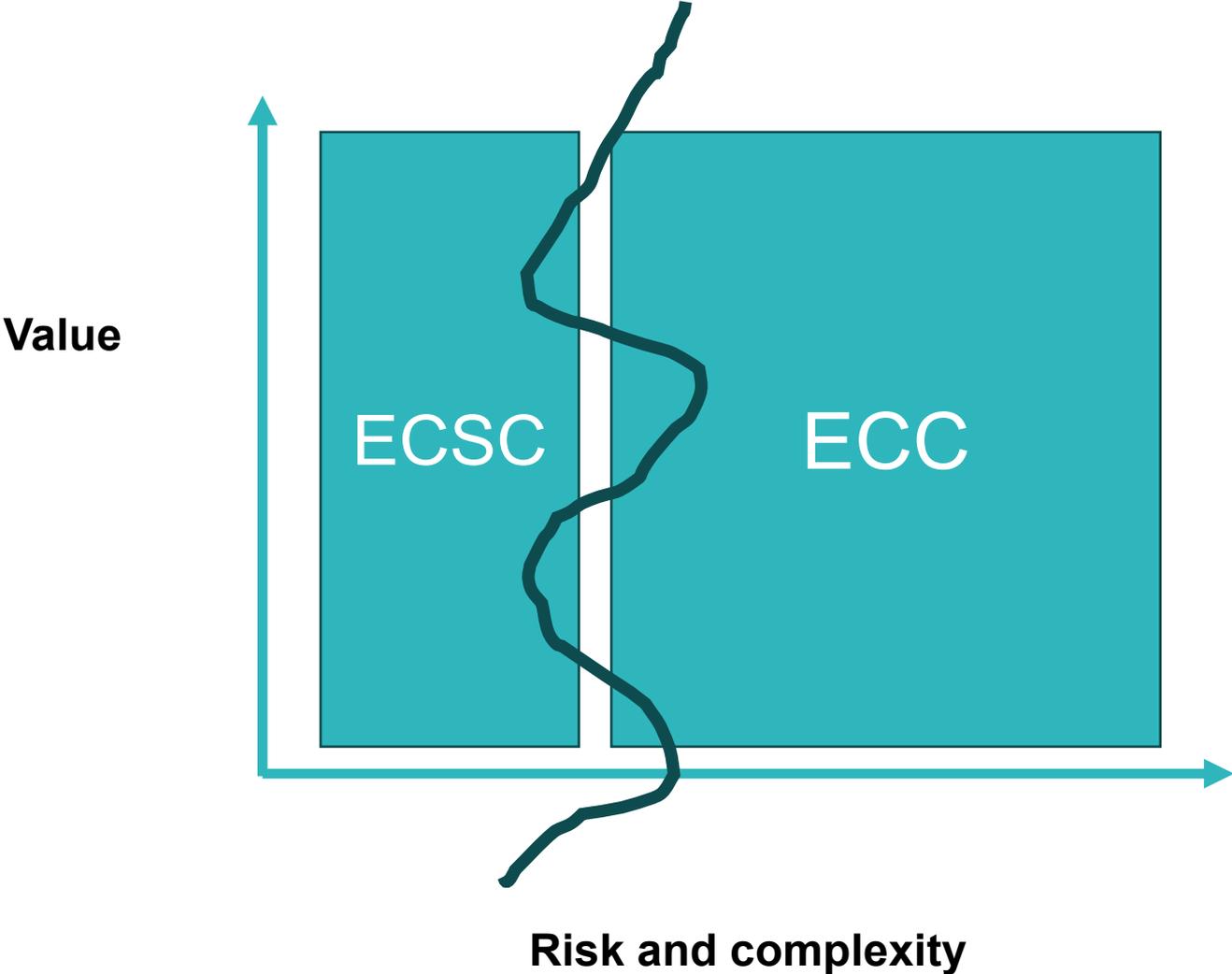
- Party notifies *PM* if it wants to terminate
- *PM* issues termination certificate if reason complies
- Dispute options W1,W2,W3
- *Senior Representatives*

ECSC has:

- Party notifies the other Party
- Dispute resolution in 93, based on W1
- Additional words in clause if Housing Grants Act applies

ECSC vs ECC

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When to Use

Contract	Abbreviation	When to use it
NEC4 Engineering and Construction Contract	ECC	For the appointment of a supplier to provide a 'significant' project.
NEC4 Engineering and Construction Short Contract	ECSC	As an alternative to the ECC , for the appointment of a supplier for providing straightforward project which dos not require sophisticated management techniques and imposes only low risk on both Parties

When to Use

Feature	ECC	ECSC
Type of service	Anything	Anything - Simple
Price/Value (not a driver)	Any (any value but requires detailed management)	Any (no critical interfaces, low risk, etc)
Risk	High	Low
Level of management techniques required	Sophisticated	Simple
Programme	Involved Interfaces	Simple Interfaces

NOTE: Use not limited to construction

An aside

NEC is working to develop some changes to the ECSC to make it more appealing to NGOs for use internationally.

NEC Annual Conference and Martin Barnes Awards

One Great George Street, London
Friday 21st June 2024



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