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REPUBLIC OF SERBIA
MINISTRY OF EUROPEAN INTEGRATION

MINISTRY OF FINANCE
Department for Contracting and Financing
of EU Funded Programmes

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Infrastructure projects – Implementation

Key challenges from the Employer and End Recipient / Beneficiary point of view

How to manage signed Contract

- Introduction to management of FIDIC contract;
- Contract processes and procedures;
- Contract communication,
- Payments and payment procedures

Contract Management

Introduction

- Pre-implementation activities and horizontal issues;
- Contract implementation;
- Procedures and Activities;

Contract Management

- Ensuring sound financial management of the IPA assistance by:
- Ensuring the efficiency and effectiveness of the contracted operations (progress towards stated objectives/targets);
- Verification of the reality, regularity and legality of operations;
- Ensuring verification (administrative, financial, technical and physical aspects) that:
- Expenditure has been incurred in accordance with applicable rules;
- The services, supplies, works have been delivered in accordance with the approval decision and
- Payment requests are correct

Key activities of Contract Management

Managing following:

- Maintain open and effective communication between all parties;
- Manage, design changes, variations and other changes properly;
- Identify risks of cost overruns and prolongation of contract period are identified through proper monitoring and their effects minimized or eliminated;
- Manage claims in an efficient and effective manner and prompt action is taken to determine entitlement;

Key activities of Contract Management

Managing following:

- Maintain contractual records including guarantees, insurance policies, contractual correspondences, and reports with regard to quality, progress and other aspects which are connected to performance of the contract;
- Establish dispute resolution mechanisms and resolution of disputes in accordance with the contract;
- Make necessary amendments to a contract only upon following the proper procedure and obtaining necessary approvals;

Pre – implementation activities

- Before starting the implementation, PM should be sufficiently familiarised with the Contract and other background documents.
- Preparatory activities are often perceived as unnecessary investment postponing the actual start of activities, investing resources into quality preparation in practice is the best start of activities and often reduces the resources required during the subsequent phases
- Resources to be invested in the preparatory phase often vary, mostly taking into account whether the same PM was responsible for the project during the tendering phase or not – i.e. is more or less familiarized with the content.

Scrutinising relevant parts of the Contract

- PRAG guide;
- Manual of the procedures;
- Design documents;
- Technical conditions of the public bodies;
- Permit(s);
- Contract in particular Technical Specification / Employers requirement;

Check the status of fulfilment of any preconditions defined in the Contract, background documents as well as those not defined therein but which in reality are prerequisites for the implementation of activities under the Contract.

Project preparation

Approximately 10-20% of the overall workload of the PM is related to consolidation of documents and comments prepared by different parties as well as to re-typing the information that already exists somewhere else for different monitoring and reporting purposes.

- Analyse all the requirements at the beginning of the project and **propose information flows that are consistent, focused and avoid duplications.;**
- **Reduce as much as possible administrative requirements** - focus to the content itself.
- To the extent the administration cannot be avoided, set such standards for the preparation of documents that allow information prepared once for specific purpose;

Kick – off meeting(s)

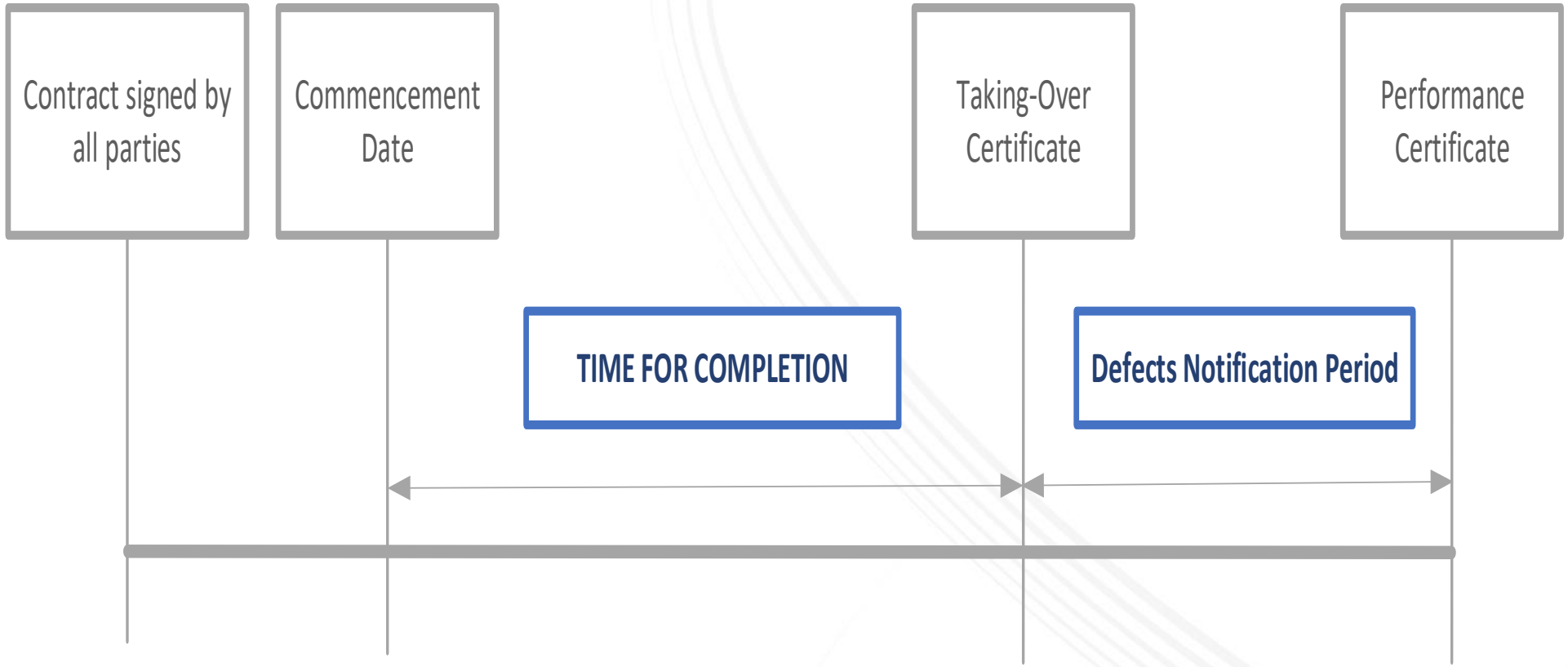
- Pre Kick – off meeting
  - Contracting Authority
  - End Recipient
  - Final Beneficiary
- Kick off meeting
  - Employer
  - Engineer
  - Contractor

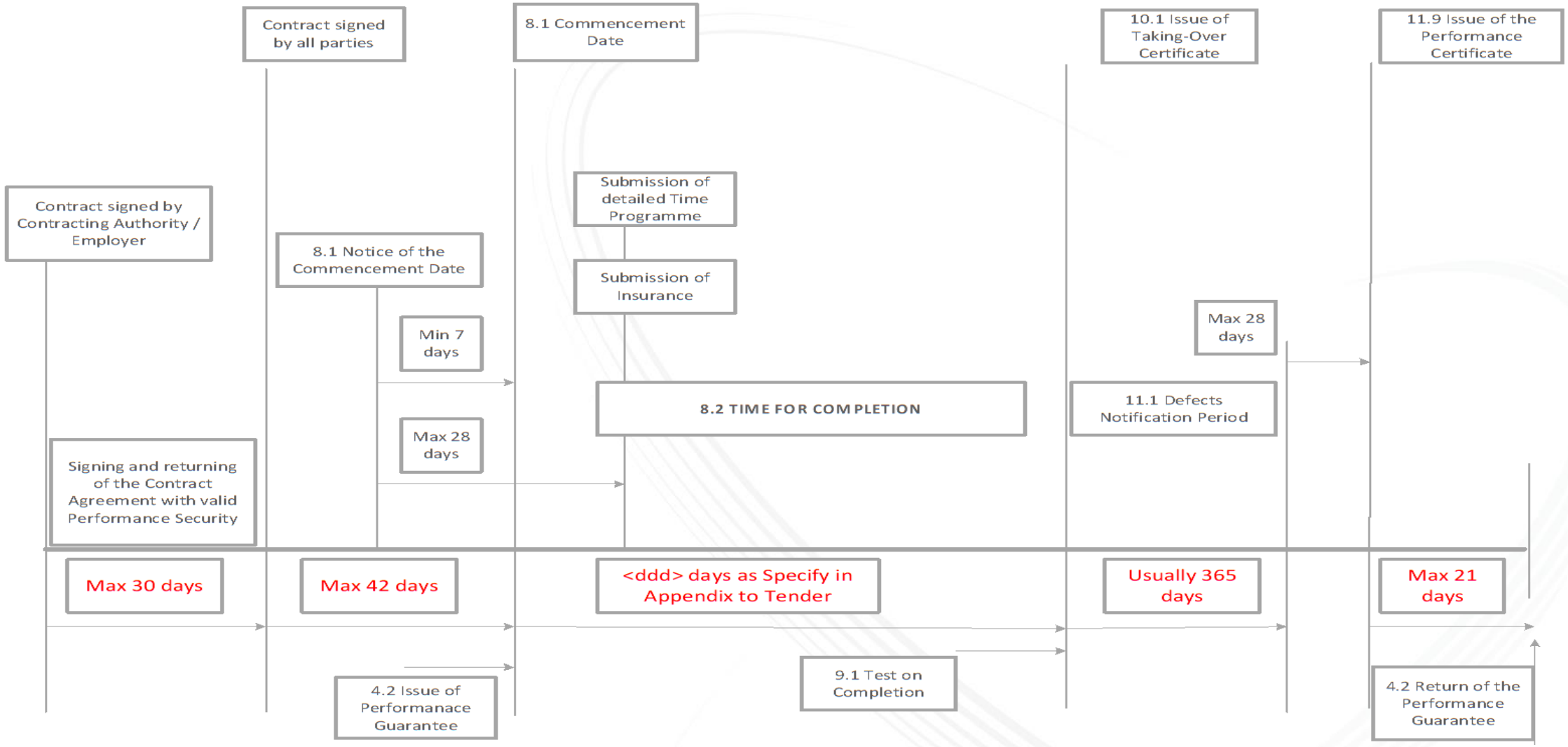
Kick – off meeting(s) – cont.

Key messages

- The roles and responsibilities of all the parties and key steps during the implementation;
- The scope and meaning of different provisions of the Contract to check whether the staff of the different stakeholders has the required understanding of all the matters;
- That implementation should be driven by the provisions of the Contract – i.e. only what is contracted matters (what was aimed during the tender preparation and contracting does not matter anymore);
- Approaches to be applied in case of any doubts, disputes or need to modify the scope or the methodology of the Contract.

Contract process and procedures




Contract signed by all parties
8.1 Commencement Date
10.1 Issue of Taking-Over Certificate
11.9 Issue of the Performance Certificate
Contract signed by Contracting Authority / Employer
Submission of detailed Time Programme
8.1 Notice of the Commencement Date
Submission of Insurance
Max 28 days
Min 7 days
8.2 TIME FOR COMPLETION
11.1 Defects Notification Period
Max 28 days
Signing and returning of the Contract Agreement with valid Performance Security
Max 30 days
Max 42 days
<ddd> days as Specify in Appendix to Tender
Usually 365 days
Max 21 days
9.1 Test on Completion
4.2 Issue of Performanace Guarantee
4.2 Return of the Performance Guarantee

Commencement of Contract

- Commencement of the Contract shall be considered as the Commencement Date defined in the Conditions of Contract
- Time for Completion of the Contract shall be calculated from such Commencement Date. The Contractor shall commence the execution of the Works as soon as reasonably practicable after the Commencement Date.
- Commencement date is contractual starting date
- Commencement of the works programme is the physical commencement of works based on the agreed programme.

Commencement of Contract - cont

Activities to be performed before

- If the Engineer is not named in the Contract, the Engineer shall be appointed and the Contractor shall be informed;
- Issue the Engineer with copies of all relevant documentation, including all contract documentation, drawings, site investigation reports, survey details, designs and other information;
- Issue the Contractor with copies of the contract document and all other relevant documentation;
- Provide the Contractor with detailed information on survey control points;
- Ensure that the Contractor receive the Advance Payment, if the Contractor submits the Advance Payment Guarantee within a time specify in Condition of Contract;
- The Engineer shall appoint Engineer's Representative(s), and the appointment letter shall include a list of powers and duties which he intends to delegate to his representative. Engineer's Representative(s) shall have all relevant licences to perform supervision works according to the Serbian laws.

Commencement Date vs commence. of the works

- GCC require the contractor to submit the program of works. Usually there are no contractual reference points except the Completion Date, for how work will be carried out or it can impose obligations to deliver the works in a certain way and by certain dates.
- Employer is entitled to rely on the program when planning his activities and the contractor is expressly required to proceed in accordance with the program, however, the program is not a document that the Employer, through the Engineer, needs to approve.
- The program is not just give the Contractor contractual responsibilities, but the Employer will have to provides the Contractor with the facilities to complete the works in accordance with the program (access, design documents and decisions on time).

Thus, the Project Manager (PM) should closely monitor the Work programme (using as appropriate project management software), since the Employers personnel shall be entitled to rely upon the programme when planning their activities

Updating of work programme

- At the start of the project, the Engineer shall review the original Contractual Program submitted by the Contractor.
- This program shall be **sufficiently detailed** to identify **individual activities, milestones and relationship between them**. The program also shall indicate sequence of activities and milestones and the **critical path** and it shall comply with the contractual requirements. **Keeping Contractual Program current is a key element of contract management;**
- The Contractual Program shall be fixed as a "baseline" program and actual progress shall be periodically updated to give a comparison between planned and actual progress;
- As work progresses, actual progress data will be input on a regular basis for comparison with that planned in the original Contractual Program. The progress data will be entered at least monthly but shorter periods may be preferable if the activities are of short duration and critical;
- As they occur, impacts of delays shall be identified and analysed to determine whether the contractor is entitled for an extension for such delays

Managing contract amount

- The Contract Amount is an estimated cost which is an expected value of a contract at a given time, calculated by making adjustments to the Accepted Contract Amount **based on latest information available.**
- Such new information may be value of works actually executed and value of works to be executed calculated based on latest information available, variations for which valuation agreed or determined and variations for which the Engineer agree in principle, claims agree or determined and claims for which the Engineer agree in principle, adjustments made for changes in legislation and work carried out under provisional sums in accordance with the Contract.
- The Forecast Cost of a contract is an estimated cost which is an expected value of a contract at a given time, calculated by making adjustments to the Accepted Contract Amount based on latest information available and amounts claimed for variations and claims by the Contractor.

Completion date – Issuing taking over certificate

- Time for Completion of works contract under the FIDIC is elaborated in the relevant Sub-Clause of the General Conditions and should be stated in the Appendix to Tender. Time for completion is calculated from issuance of Commencement order until issuance of Taking over Certificate.
- The Contractor shall complete the whole of the works, and each section (if any), including tests on completion for the purposes of Taking Over and issuance of Taking-Over Certificate by the Engineer.
- This is not the actual completion of the contract, it is the only completion of the contracted physical works, after which begins a phase of Defects Notification Period.
- The Works shall be taken over by the Employer (CA) when they have satisfactorily passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued by the Engineer.

Managing Extension of time (EOT)

- GCC in Sub-Clause 8.4 provides that the Contractor is entitled for an Extension of Time (EOT) for Completion, if completion of the Works is or will be delayed by any of the following causes:
- A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract;
- A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions;
    - Exceptionally adverse climatic conditions;
    - Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
    - Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

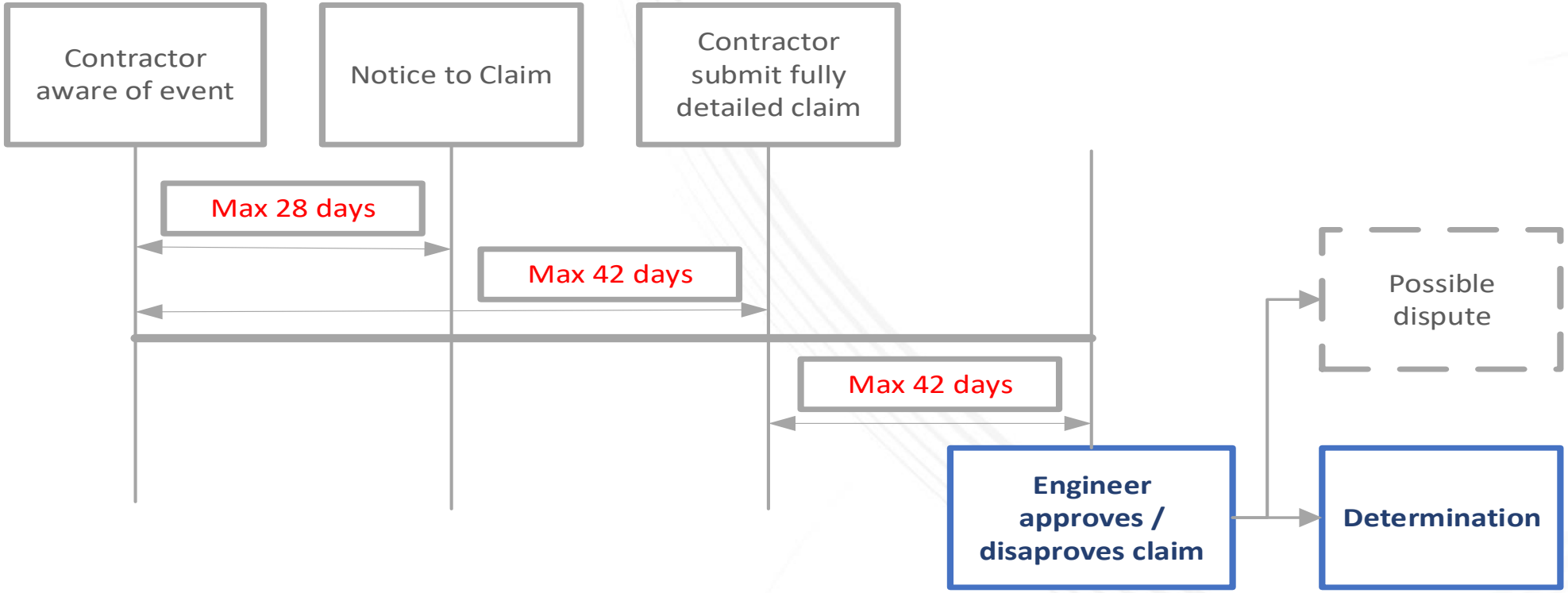
Defect Notification Period (DNP)

- DNP is defined as the period for notifying defects in the Work calculated from the date on which the Taking-Over Certificate is issued for the Works or a Section of the Works. Usually DNPlasts for a period of 365 days.
- During the DNP, the Engineer may request the Contractor to identify the cause of a defect. In such event, the Contractor is required to investigate the cause, using design verification, investigation and or testing, under the direction of the Engineer.
- The cost of such search and or investigation shall be at the cost of the Contractor if the cause of such defect is attributable to the Contractor

Performance Certificate

- The Performance Certificate is issued when the Engineer is satisfied that the Contractor has fulfilled his obligations during the DNP and when all defects or damages have been rectified, and the Works have satisfactorily passed any specified tests, including Tests after Completion.
- Contractually, the Works shall not be considered as completed until the Performance Certificate has been signed by the Engineer and delivered to the Employer, with a copy to the Contractor.
- The Performance Security shall be released by the Employer to the Contractor within 21 after his receipt of the Performance Certificate from the Engineer.
- The Engineer may withhold the Performance Certificate if the Contractor has failed to submit all the Contractor's Documents and complete and test all the Works, including remedying any defects and damages.
- Issued Performance Certificate constitute acceptance of the Works.

Claims


Contractor aware of event
Notice to Claim
Contractor submit fully detailed claim
Max 28 days
Max 42 days
Max 42 days
Possible dispute
Engineer approves / disaproves claim
Determination

Dispute Resolutions

- Disputes may arise due to a variety of reasons under a Contract.
- The goal of the dispute resolution process is to resolve disputes before they escalate to the next level.
- Adjudication is a quick and relatively inexpensive way of resolving disputes in construction Contracts. For the purpose of resolving such disputes, Contracts require appointment of Disputes Adjudication Boards (DAB).
- DAB consist of either a sole adjudicator or three adjudicators with one of them acting as the chairman.
- In case of disputes, PM shall collect and obtain all information regarding the dispute from all relevant sources, including Engineer, Contractor and members of ER, FB (if relevant)

Decisison of DAB

When DAB give its decision on the dispute, the PM shall ensure that the decision is **thoroughly reviewed** by a **competent panel of persons** and give their opinion on the reasonability and acceptability of such decision.

If the PM is of the view that the DAB's decision is reasonable and acceptable, he shall forward his recommendation for approval.

If the PM is of the view that the DAB's decision is unreasonable or unacceptable, he shall upon obtaining prior approval send a Notice of Dissatisfaction to the Contractor within 28 days.

Notice of Dissatisfaction shall state that it is given under the Sub-Clause 20.4, and shall set out the matter in dispute and the reason(s) for dissatisfaction.

Ways of communication

Sub-Clause 1.3

- Notices, consents, approvals, certificates, determinations or decision, has to be concluded in writing. According to the PRAG Glossary, in writing means any hand-written, typed or printed communication, including telex, cable, e-mail and fax transmissions.
- Also, although such definition does not oblige the parties to use written communication in daily correspondences, it is advised that PM uses written communication for any legally binding correspondence.
- To ensure compliance with the Contract, national legislation and international rules as well as standard practices on one hand, and to avoid too heavy administrative burden on the other hand, it is advised to manage communications as follows:

Communication procedures

Examples: Employer / or Contractor to each other

Description	Sub-Clause	Party	to	Party	CC
Error or defect in a document	1.8	Employer	⇔	Contractor	Engineer
Events or circumstances as Force Majeure	19.2	Employer	⇔	Contractor	Engineer
Dissatisfaction with a DAB decision	20.4	Employer	⇔	Contractor	Engineer
Claim particulars	2.5	Employer	⇨	Contractor	Engineer
Details of a replacement Engineer	3.4	Employer	⇨	Contractor	Engineer
Defects during the DNP	11.1	Employer	⇨	Contractor	Engineer
Termination by Employer	15.2	Employer	⇨	Contractor	Engineer
Suspend or reduce work	16.1	Employer	⇦	Contractor	Engineer
Termination	16.2	Employer	⇦	Contractor	Engineer

Communication procedures

Examples: Engineer to Contractor

Description	Sub-Clause	Party	to	Party	CC
Commencement Date	8.1	Engineer	⇨	Contractor	Employer
Programme does not comply with the Contract	8.3	Engineer	⇨	Contractor	Employer
Instruction to carry out delayed tests	9.2	Engineer	⇨	Contractor	Employer
Test on Completion after delay by the Employer	10.3	Engineer	⇨	Contractor	Employer
Further tests	11.5	Engineer	⇨	Contractor	Employer
The part of the Works is to be measured	12.1	Engineer	⇨	Contractor	Employer
Payment is to be withheld	14.6	Engineer	⇨	Contractor	Employer
Correct a failure to carry out an obligation	15.1	Engineer	⇨	Contractor	Employer
Agreement or Engineers determinations	3.5	Engineer	⇨	Employer / Contractor	-

Communication procedures

Examples: Contractor to Engineer

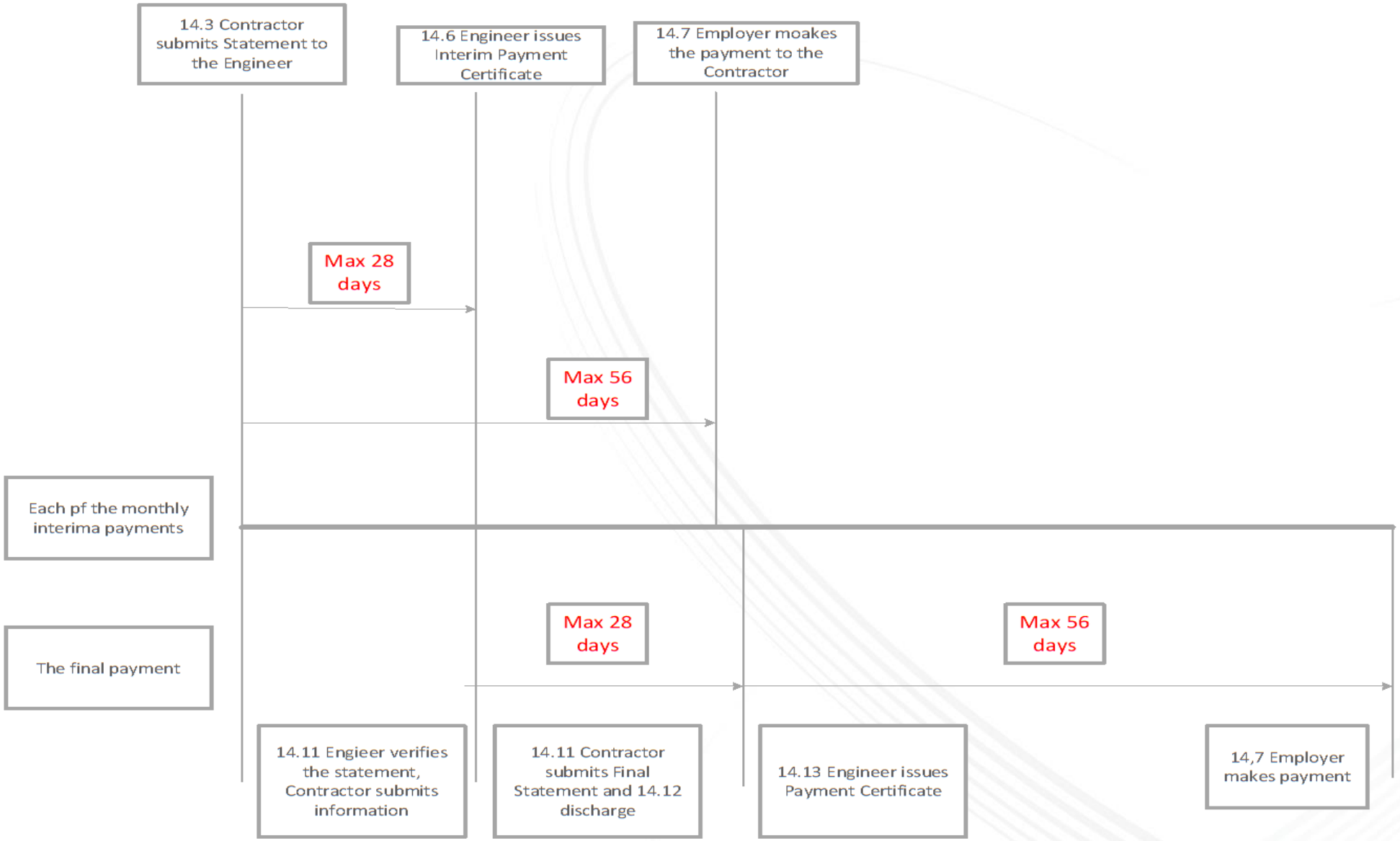
Description	Sub-Clause	Party	to	Party	CC
Claims	1.9, 4.12, 4.24, 16.1, 17.4, 19.4	Contractor	⇨	Engineer	-
Requiring a drawing or instruction	1.9	Contractor	⇨	Engineer	-
Date of Commencement of Subcontractors Work	4.4	Contractor	⇨	Engineer	-
Delivery to Site of Plant or other major items	4.16	Contractor	⇨	Engineer	-
Circumstances which may have an adverse effect	8.3	Contractor	⇨	Engineer	-
Date for delayed Tests on Completion	9.1	Contractor	⇨	Engineer	-
Application for a Taking Over Certificate	10.1	Contractor	⇨	Engineer	-
Records are inaccurate	12.1	Contractor	⇨	Engineer	-
Damage due to Employers risks	17.4	Contractor	⇨	Engineer	-

Payments

Advance Payment

Interim Payment

Final Payment


14.3 Contractor submits Statement to the Engineer
14.6 Engineer issues Interim Payment Certificate
14.7 Employer moakes the payment to the Contractor
Max 28 days
Max 56 days
Each pf the monthly interima payments
The final payment
Max 28 days
Max 56 days
14.11 Engieer verifies the statement, Contractor submits information
14.11 Contractor submits Final Statement and 14.12 discharge
14.13 Engineer issues Payment Certificate
14,7 Employer makes payment

Advance Payment

- The Project Manager (PM) shall ensure that following requirements are fulfilled by the Contractor prior to making the advance payment
  - An acceptable Advance Payment Guarantee is submitted;
  - An acceptable Performance Guarantee is submitted;
  - A statement for the Advance Payment is submitted.
- The PM shall ensure that the Advance Payment is paid within the time frame specified in the Contract if the Contractor fulfils all the conditions precedent to the payment of the Advance Payment;
- Advance Payment shall be repaid through percentage deduction in Payment Certificates, as specify in General Conditions Sub-Clause 14.2 unless other percentages are stated in the Appendix to Tender or, other specify in Particular Conditions.

Interim Payment – cont.

- The Engineer shall certify amounts as appropriate upon deduction of amounts certified in all previous Payment Certificates, within 28 days (unless other specify in Particular Conditions) after the Engineer receives the Statement and supporting documents;
- The Employer shall ensure that amounts certified by the Engineer as interim payments are paid to the Contractor within the deadline specify in Condition of Contracts after the Engineer receives the Statement and supporting documents.

Final Payment

- The Contractor shall within 56 days after receiving the Performance Certificate submit a draft final statement together with supporting documents showing in detail the value of all work done in accordance with the Contract and any further sums which the Contractor considers to be due to him under the Contract;
- The Engineer shall review the draft final statement to verify the accuracy of measurements of the works executed. The Engineer shall also review amounts claimed by the Contractor for entitlement;
- The Engineer shall review the draft final statement and in case of disagreement asked Contractor to submit further information, and /or make any changes in the draft as may be agreed between them;

Final Payment

- The Contractor shall than submit the final statement together with the written discharge which confirms that the total of the final statement represents full and final settlement of all moneys due to the Contractor under the Contract;
- The Engineer shall review the received statement and within 28 days (unless other specify in PCC) after receiving the final statement shall issue to the Employer the final payment certificate which shall state the amount which is finally due, and the balance (if any) due from the Employer to the Contractor, or from the Contractor to the Employer;
- In case of any dispute, Engineer shall instead of final payment certificate issue Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter if the dispute is finally resolved under Sub-Clause 20.4 the Contractor shall then prepare and submit to the Engineer a final statement;

Closing out the contract

- The PM shall ensure that the Contractor submits to the Engineer, a draft final statement with supporting documents showing in detail, the value of all work done in accordance with the Contract, and any further sums which the Contractor considers to be due to him under the Contract or otherwise within 56 days after receiving the Performance Certificate;
- The PM and the Engineer shall make arrangements to wind up the project and following activities shall be carried out:
  - Packing and labelling of all project documents and handing over them to a person nominated by the Management;
  - Backing up of all information in the Server and the computer network;
  - Handing over of all buildings, furniture and equipment to persons nominated by the Management;
  - Transfer or terminate all staff involved in the project as directed by the Management;
- Drafting of the Final Completion Report

Handing over of completed works

The PM shall arrange handing over procedure of the Works to End Recipient according to the signed End Recipient Agreement;

The PM shall ensure that following items are handed over to the representatives of the End Recipient, in addition to the Works:

- As-built documents;
- Operation and Maintenance Guides (if applicable) ;
- Spare parts, spare materials and certain consumables;
- Tools and accessories;
- Inspection and test equipment;
- Catalogues and Warranties for equipment;
- Keys, computer software and licenses;
- Contact information of the Contractor, sub-contractors and equipment suppliers;

EU PROJECT PREPARATION FACILITY PROJECT

All documents, information, materials and pictures from this
EU PPF training are available for download in the download section of our site
www.ppf.rs

Questions and assistance

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Thank you for your attention!