

AILA & AILD contract administration

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

June 2019

GRAHAM FLETCHER

1. **CONTRACT BASICS**
2. PROJECT
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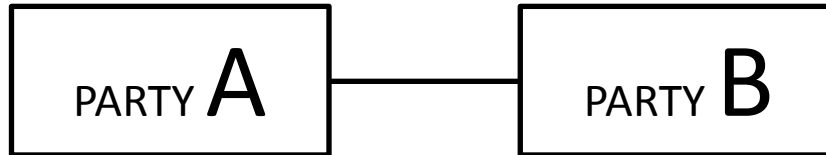
CONTRACT BASICS

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CONTRACT

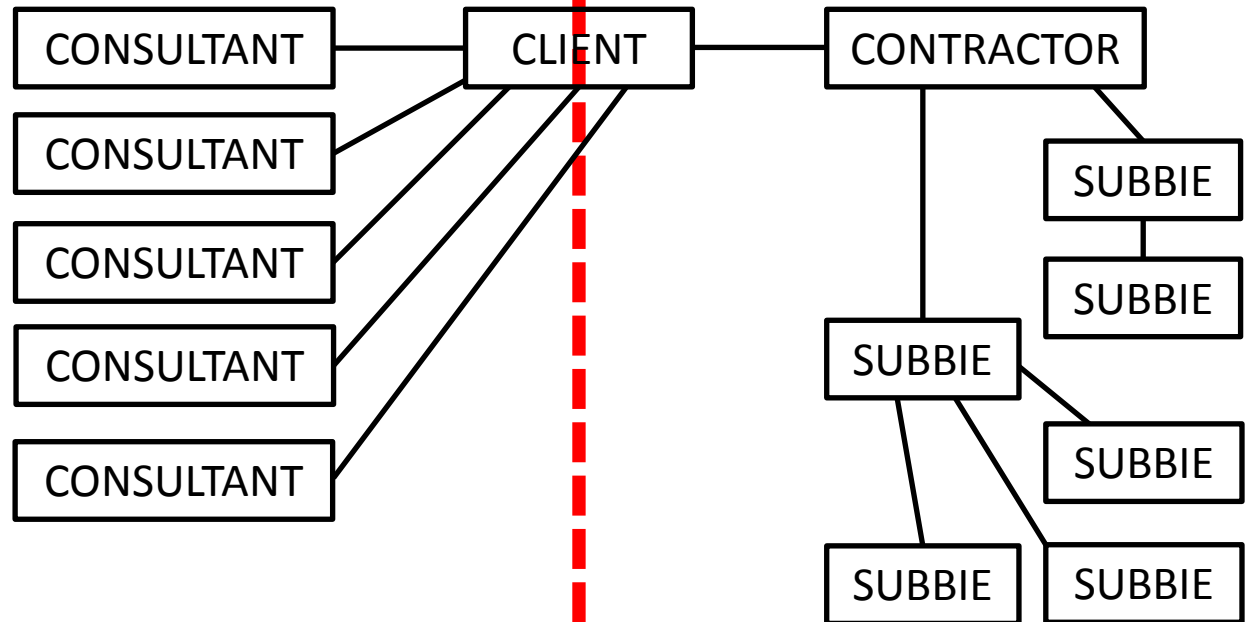
Legal agreement between **A & B**



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TRADITIONAL ARRANGEMENT

CONSULTANT = ADVISOR **CONTRACTOR = CONSTRUCTOR**



Assume that all participants at this CPD event are CONSULTANTS

If you are also a CONTRACTOR

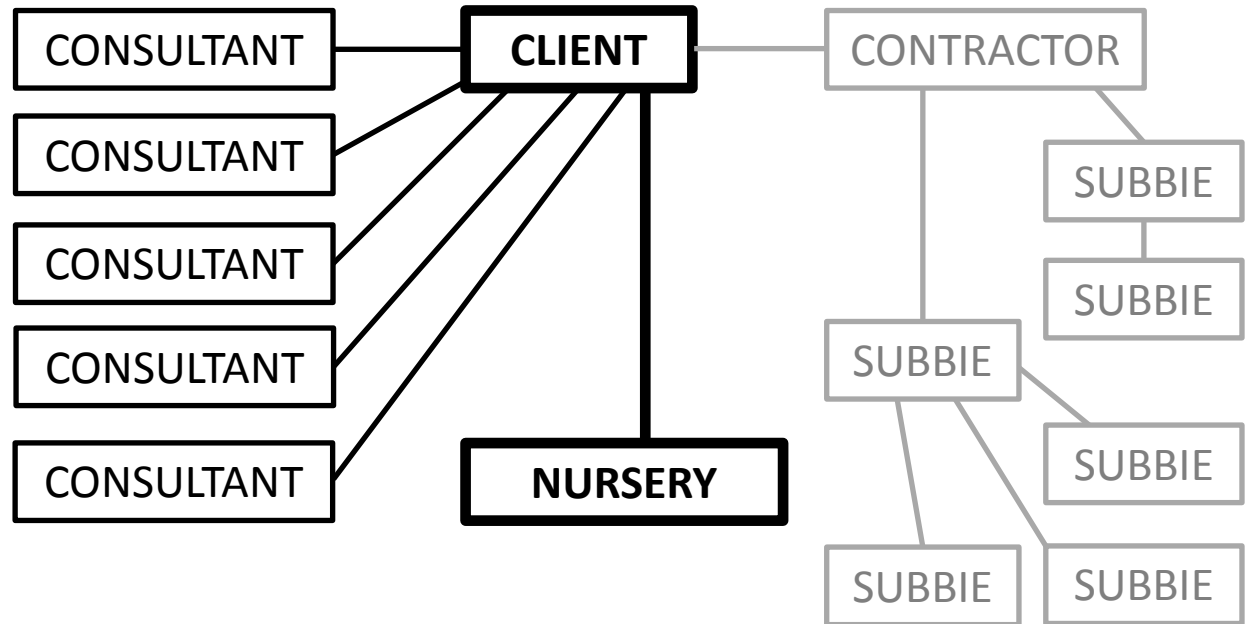
- You have responsibilities for both roles
- You may also have conflicts of interest

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NOVATION

Example:
Pre-grown plant supply contract



**The main contractor has not
been contracted yet,
(or any of the subbies)**

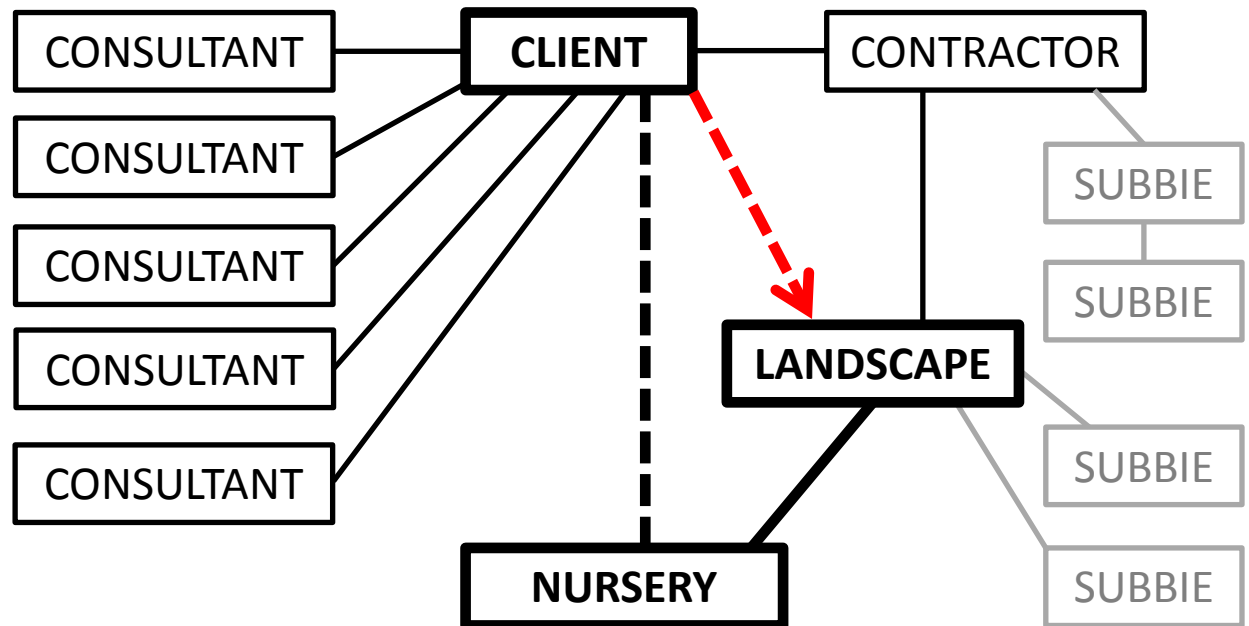
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NOVATION

Example:

Pre-grown plant supply contract



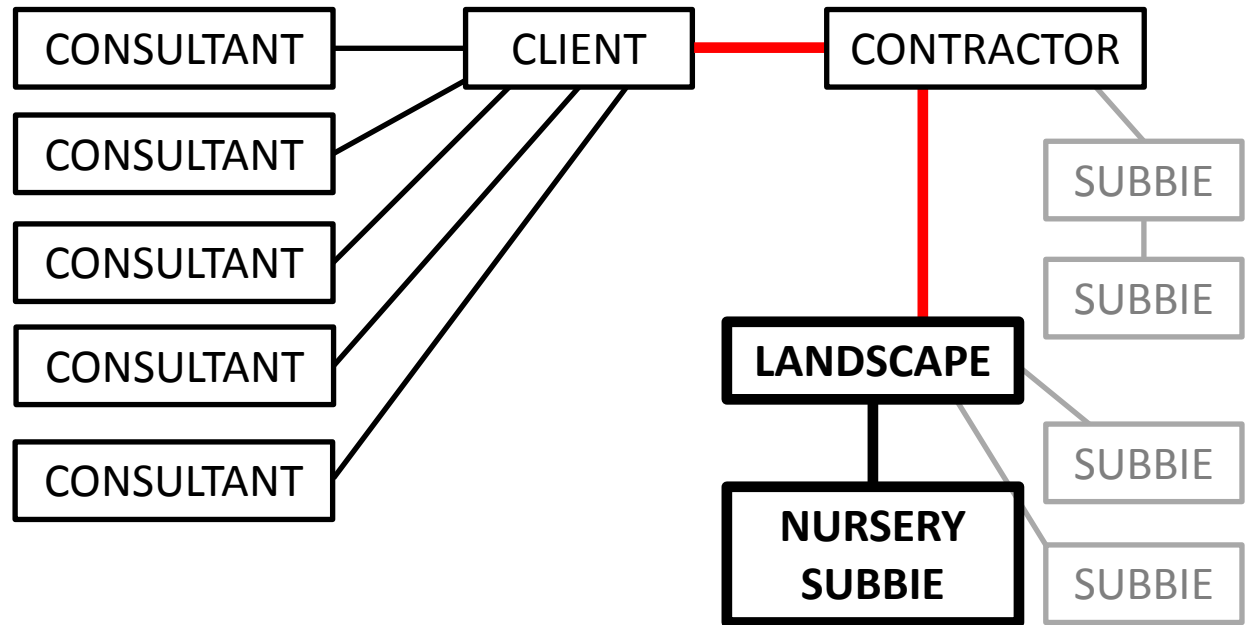
The **NURSERY** contract
NOVATED from **CLIENT**
to **LANDSCAPE CONTRACTOR**

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4. MONEY & TIME
5. PROFESSIONALISM

NOVATION

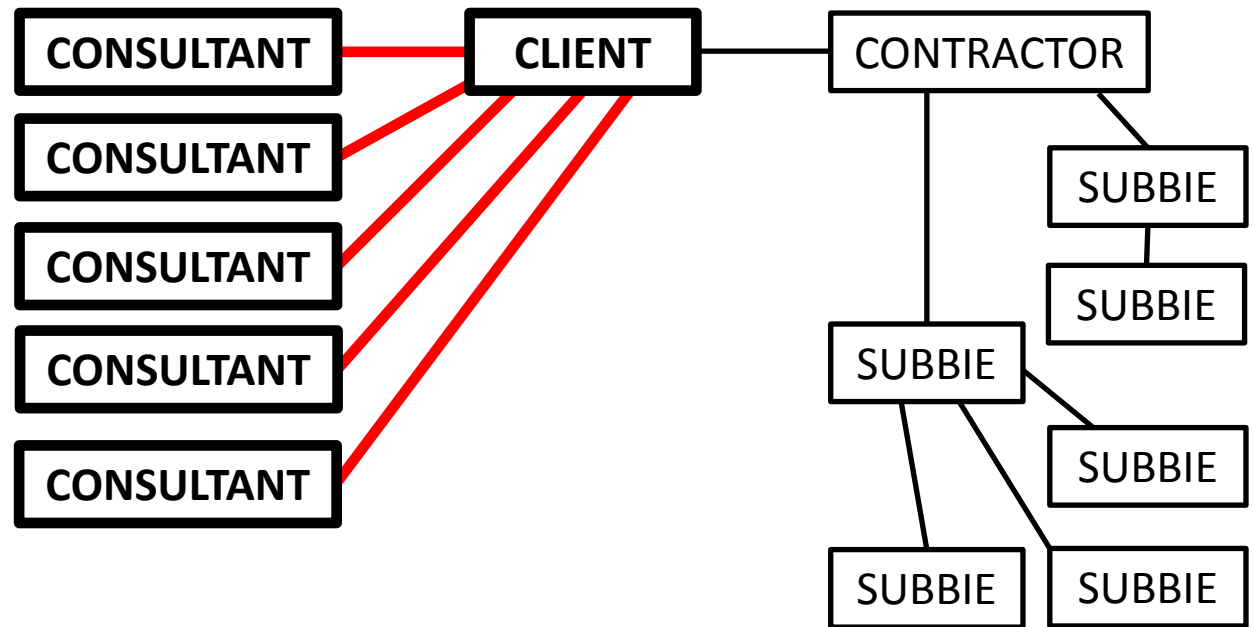
Example:
Pre-grown plant supply contract



**Conditions for
NURSERY CONTRACT
part of other contracts
as a Prime Cost (PC) item**

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SPECIALIST CONSULTANCY CONTRACTS

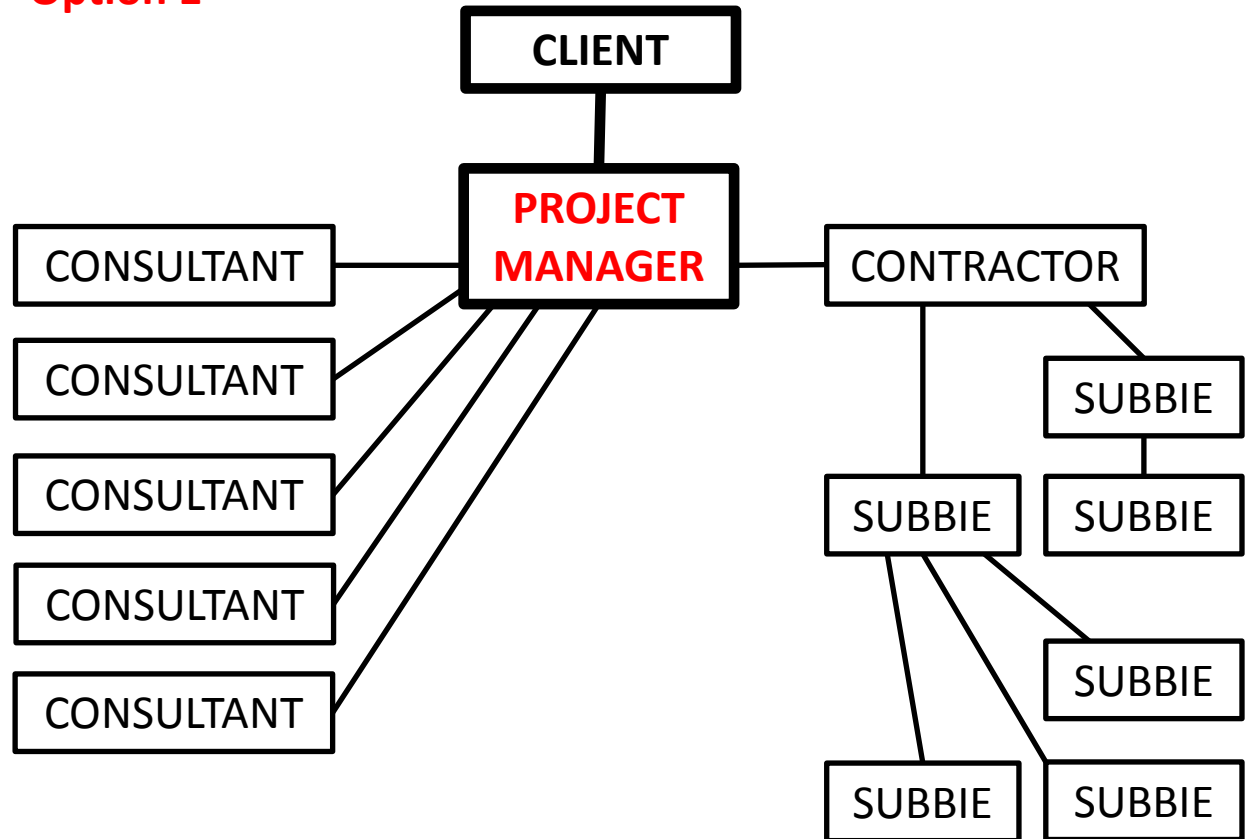
- **CLIENT** determines, often as per advice
- **AILA** recommends – *AS 4122 (2010) General Conditions of Contract for Consultants*
- **Others** from AIA, Governments, etc

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PROJECT MANAGER

Option 1



PROJECT MANAGER

- CLIENT'S agent
- Takes CLIENT's risk
- DESIGN & CONSTRUCT role
- Standard contract *AS 4902 (2000) General Conditions of Contract for Design and Construct*

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PROJECT MANAGER

Option 1

Standard contract *AS 4902 (2000) General Conditions of Contract for Design and Construct*

3 procurement models:

a. DESIGN AND CONSTRUCT

The client gives the Project Manager a brief.

The Project Manager designs and constructs to achieve a stated end result.

Commonly referred to as the 'turnkey' model.

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PROJECT MANAGER

Option 1

Standard contract *AS 4902 (2000) General Conditions of Contract for Design and Construct*

3 procurement models:

a. DESIGN AND CONSTRUCT

b. DESIGN DEVELOPMENT AND CONSTRUCT

The Client hires consultant(s) to prepare a preliminary design.

The Project Manager hires consultants and contractor(s) to complete the design detail and construct the project.

This is the most commonly used model.

This model is explained below.

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PROJECT MANAGER

Option 1

Standard contract *AS 4902 (2000) General Conditions of Contract for Design and Construct*

3 procurement models:

- a. DESIGN AND CONSTRUCT
- b. DESIGN DEVELOPMENT AND CONSTRUCT
- c. **DESIGN, NOVATE AND CONSTRUCT**
Same as DESIGN, DEVELOP AND CONSTRUCT, but preliminary design consultants are novated from Client to Project Manager.

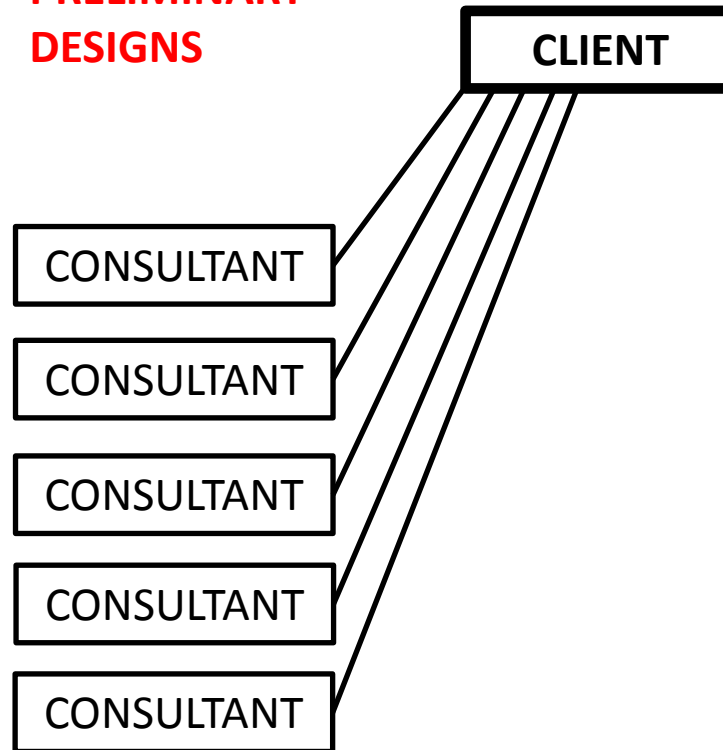
This model has a problem which is explained in the next few slides

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PROJECT MANAGER PROCESS - AS 4902

PRELIMINARY DESIGNS

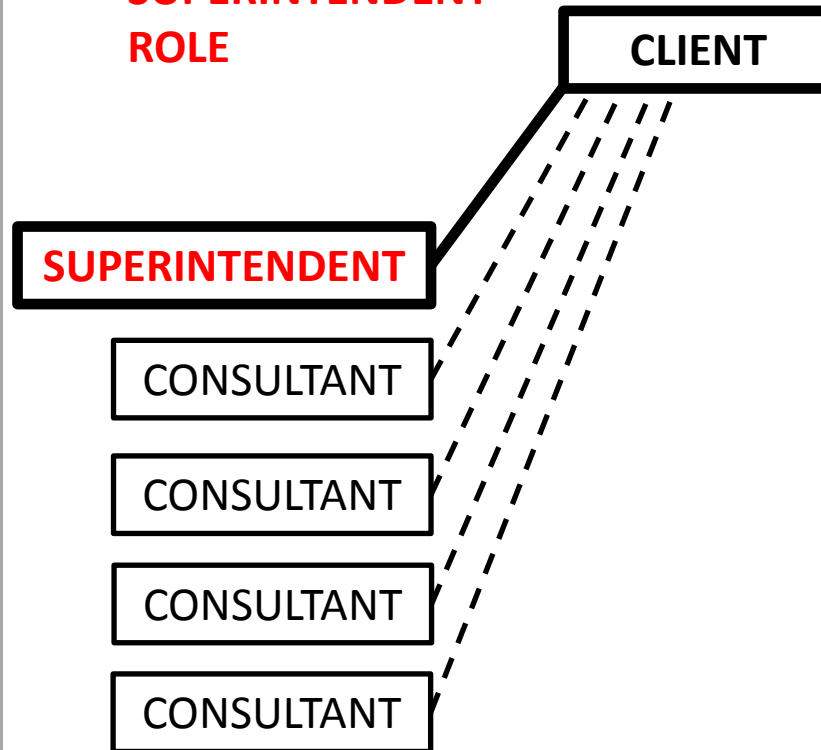


- **Designs completed as Concepts (Preliminary Designs)**
- **PROJECT MANAGER not engaged yet**

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PROJECT MANAGER **PROCESS** - AS 4902

SUPERINTENDENT ROLE



SUPERINTENDENT

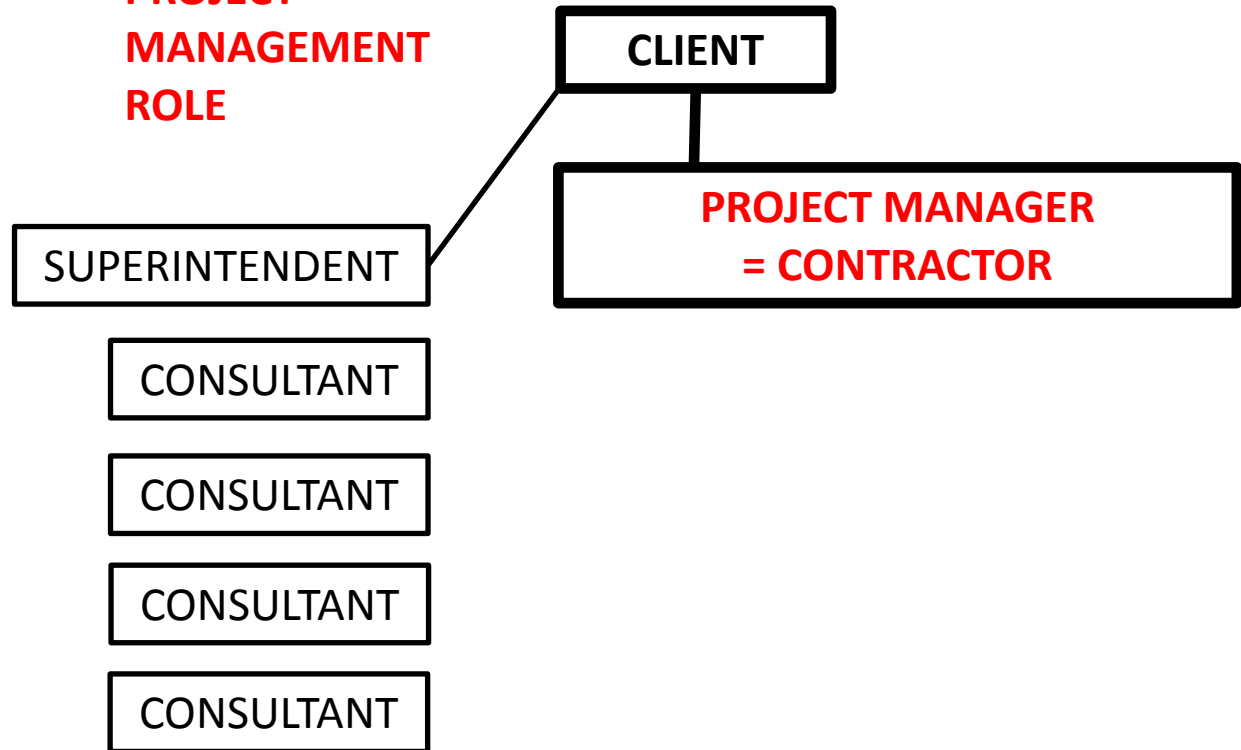
- **A CONSULTANT engaged as MAIN CONSULTANT (called 'SUPERINTENDENT')**
- **OTHER CONSULTANTS**
 - **Contracts complete, or**
 - **Contracts novated (model 3)**

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PROJECT MANAGER PROCESS - AS 4902

PROJECT MANAGEMENT ROLE



PROJECT MANAGER

- **Called 'CONTRACTOR'**
- **Sometimes LANDSCAPE CONSULTANT engaged for this role**
- **Role is DESIGN AND CONSTRUCT**

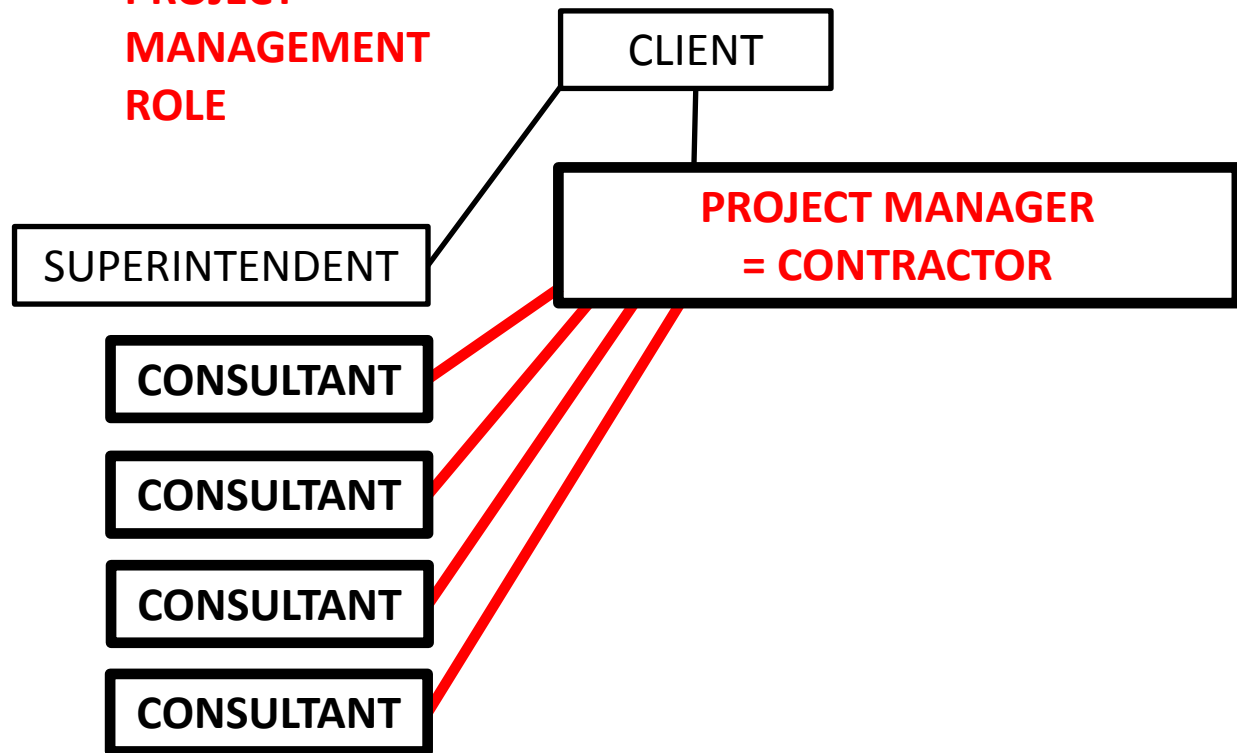
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PROJECT MANAGER **PROCESS** - AS 4902

PROJECT MANAGEMENT ROLE



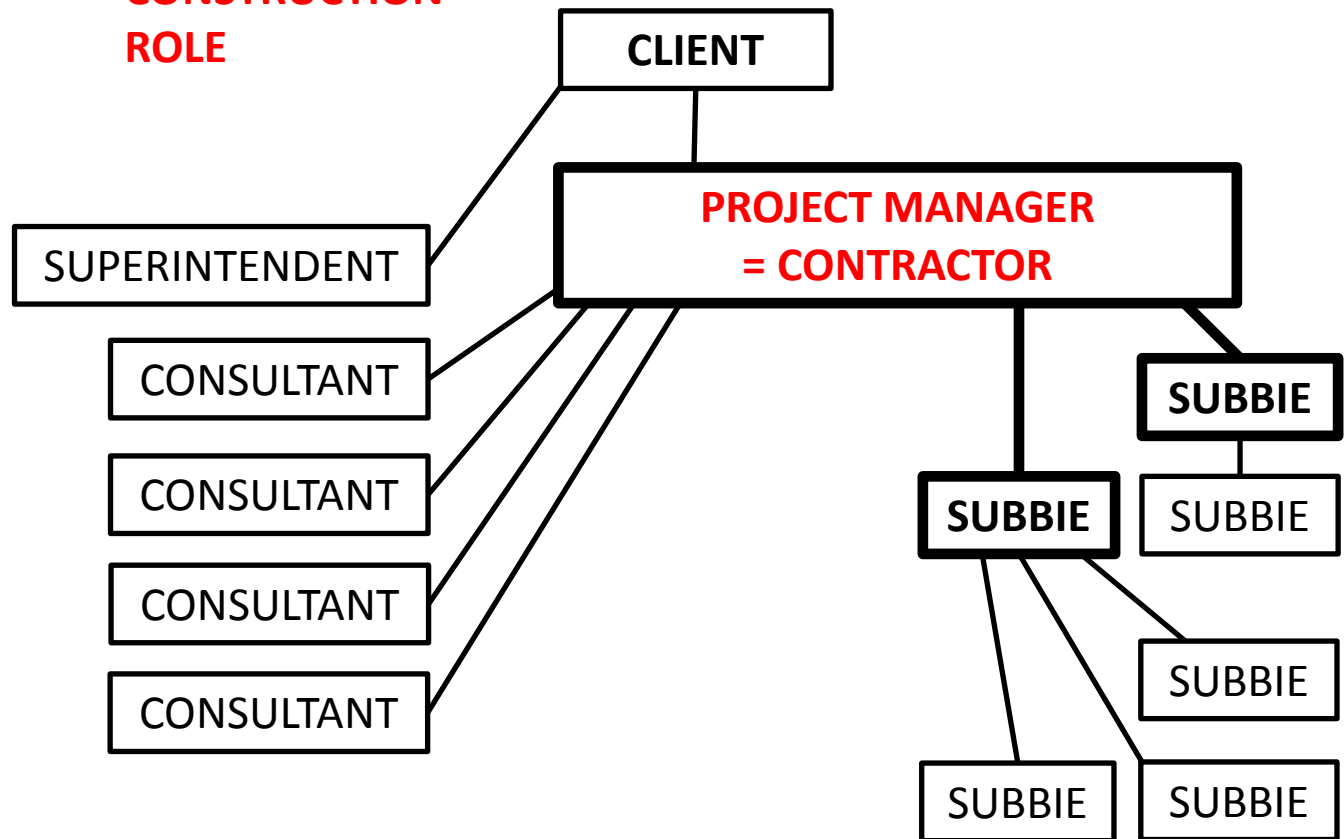
PROJECT MANAGER

- **CONSULTANTS** engaged under separate contracts, or contracts novated to **PROJECT MANAGER**
- **CONSULTANT** role is the same
 - Cannot sub-contract out their work
 - Carry own PI insurance

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PROJECT MANAGER PROCESS - AS 4902

CONSTRUCTION ROLE



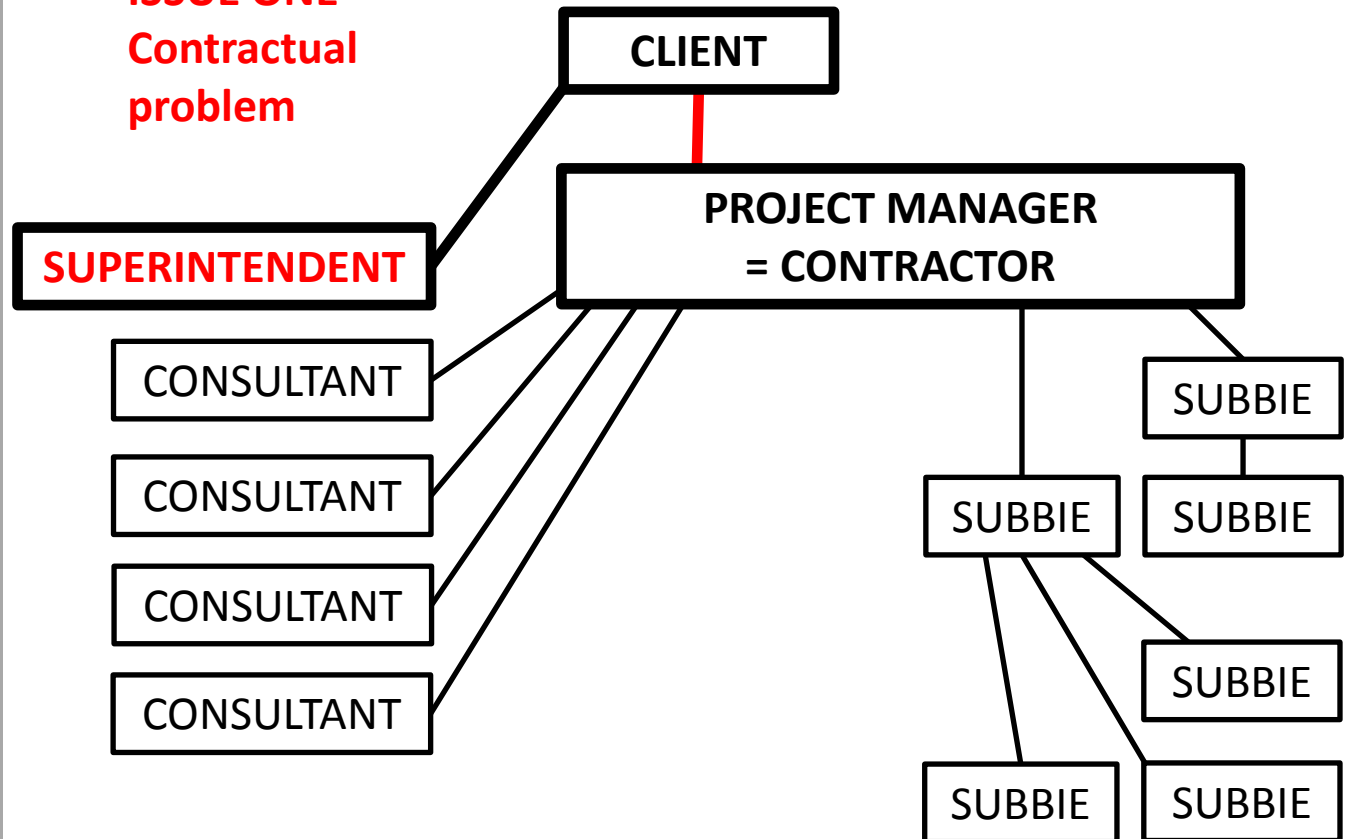
PROJECT MANAGER

- CONTRACTORS have direct contract with PROJECT MANAGER, or
- With another CONTRACTOR = standard SUBBIE role

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PROJECT MANAGER **PROCESS** - AS 4902

ISSUE ONE Contractual problem



If you are a **CONSULTANT**

- **CLIENT's SUPERINTENDENT manages CLIENT & PROJECT MANAGER contract only**
- **For NOVATED CONSULTANT contracts, CONSULTANTS must not report to SUPERINTENDENT**

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PROJECT MANAGER **PROCESS** - AS 4902

ISSUE ONE

**Contractual
problem**

HOW TO SOLVE THIS ISSUE

If you have a contract with the PROJECT MANAGER...

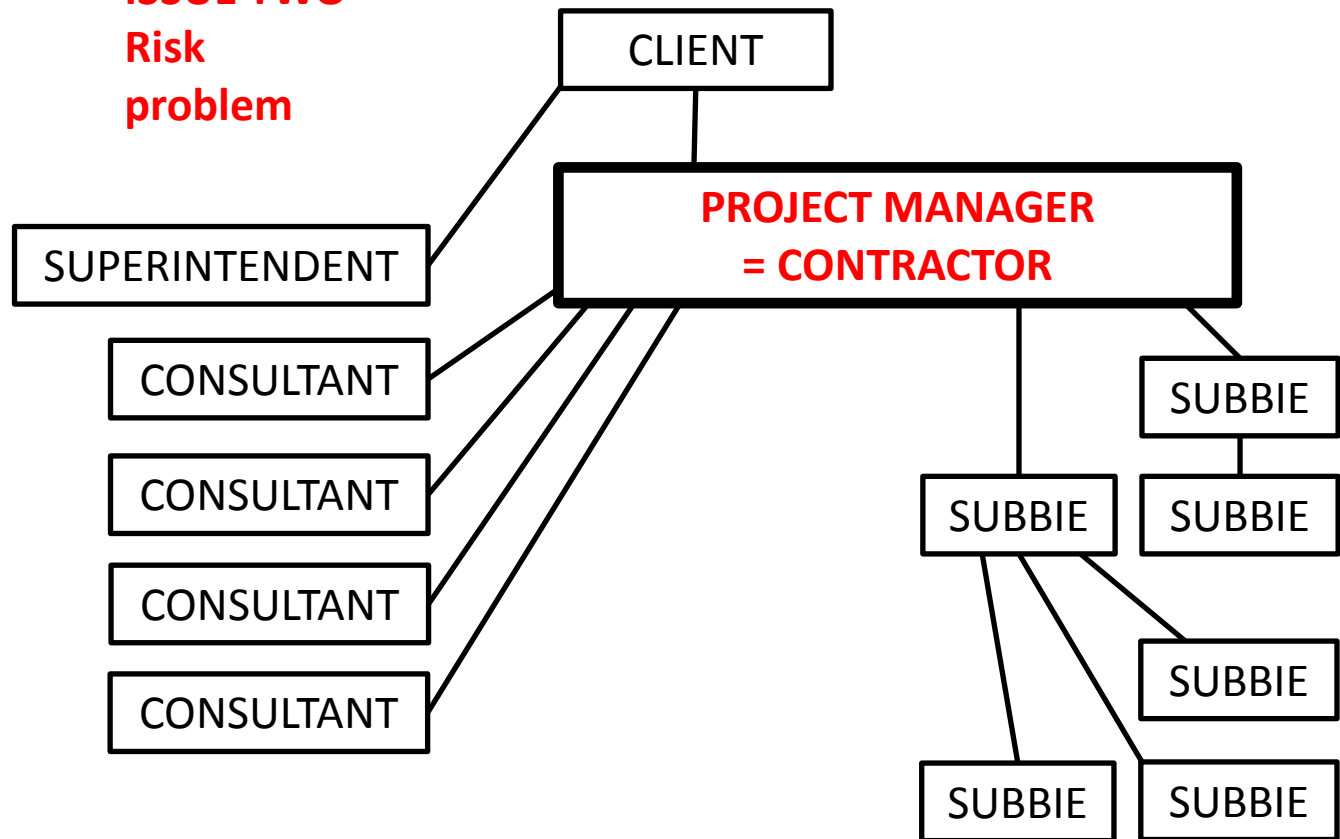
- **Ignore the CLIENT's SUPERINTENDENT**
- **Do not send them any information about what you are doing**

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PROJECT MANAGER **PROCESS** - AS 4902

ISSUE TWO

**Risk
problem**



INSURANCE & RISK

- LAs & LDs sometimes engaged in PROJECT MANAGER role = POTENTIAL PROBLEM because...
- PROJECT MANAGER responsible for all CONSULTANT and CONTRACTOR risk and
- Risk only partly devolved to others

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PROJECT MANAGER **PROCESS** - AS 4902

ISSUE TWO

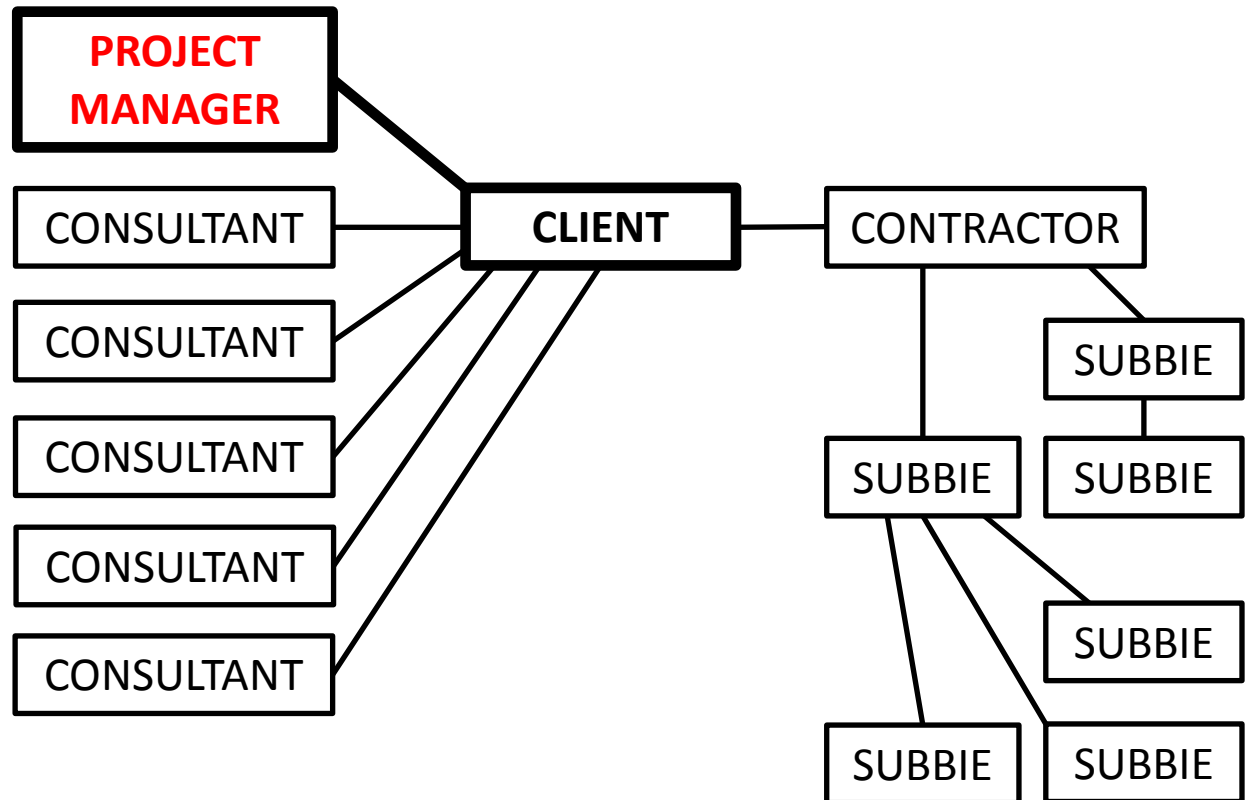
**Risk
problem**

HOW TO SOLVE THIS ISSUE

- **Advise the client to hire each of the parties directly, based on advice from you**
- **This changes the role to being one of the CONSULTANTS ... see next slide**
- **But be carefully that your contract with the client allows you to do this**

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PROJECT MANAGER



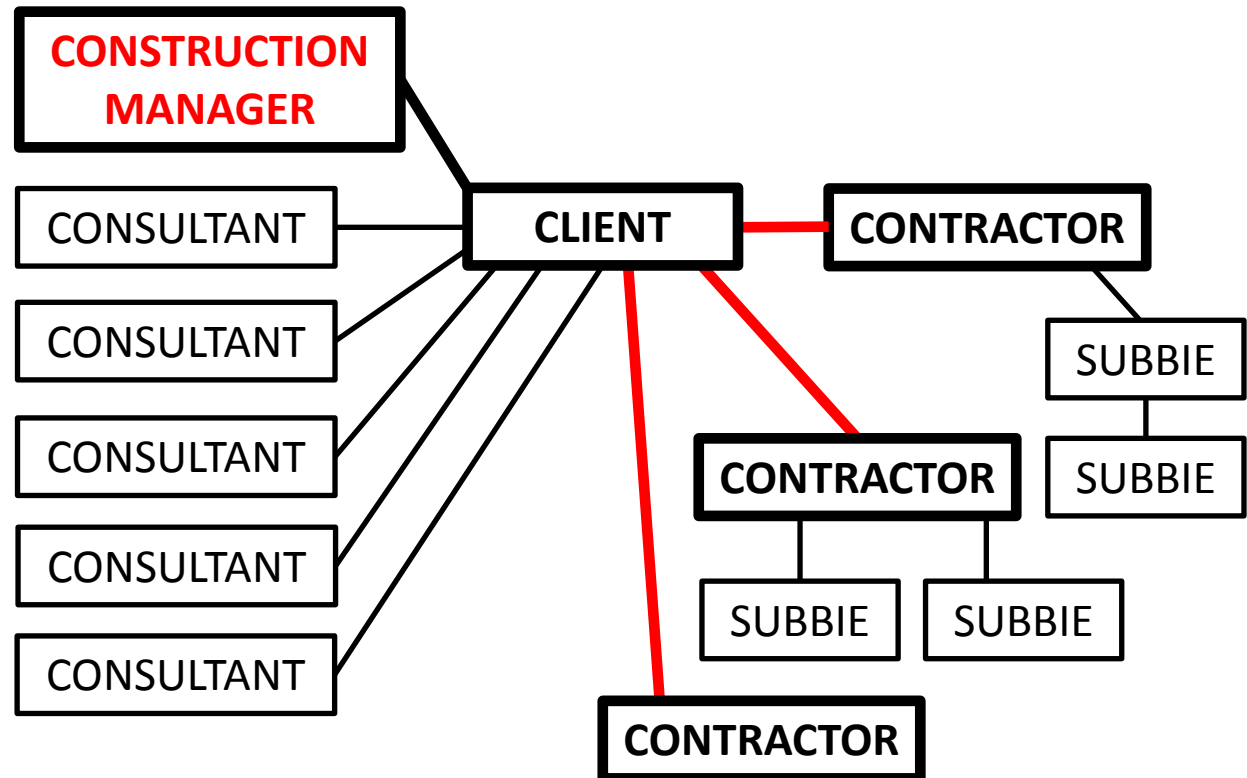
PROJECT MANAGER

- Advises **CLIENT** on all aspects of project
- Be clear about your role if the **CLIENT** has also hired a **SUPERINTENDENT**

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CONSTRUCTION MANAGER

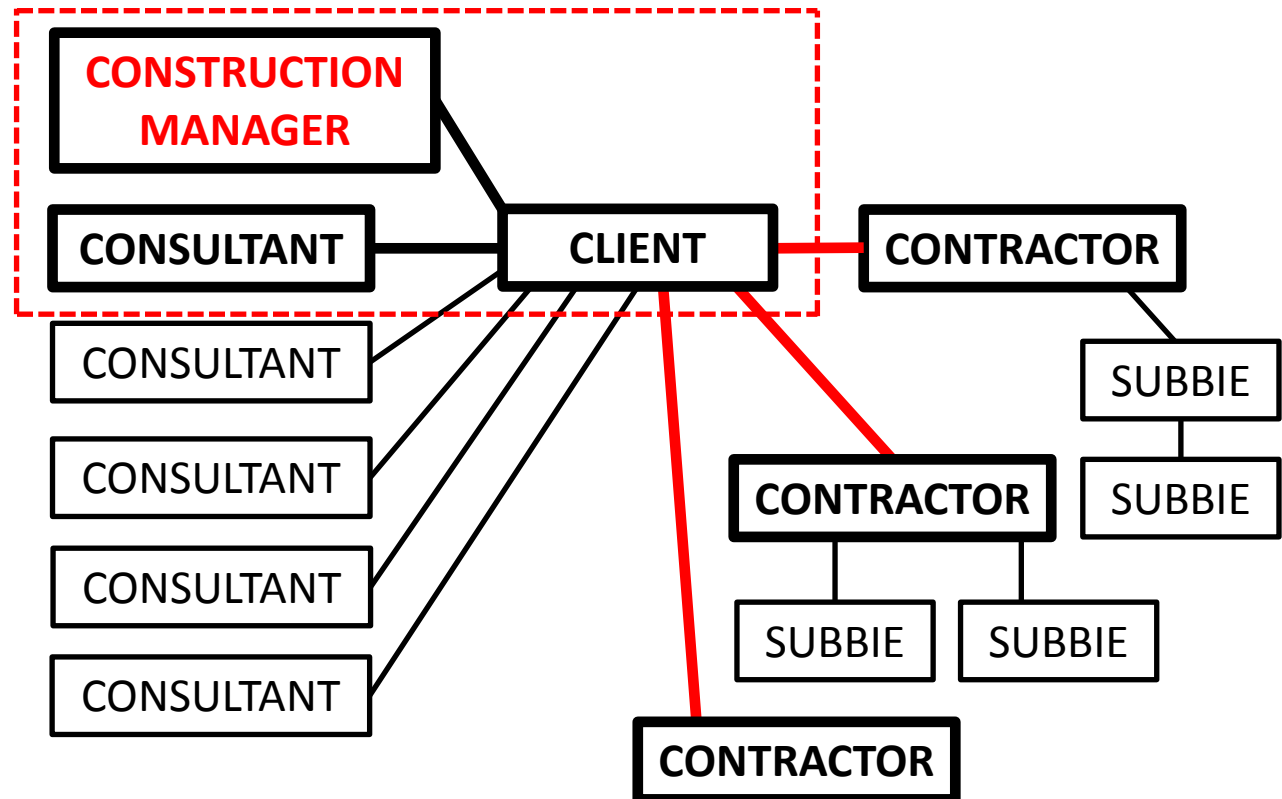


CONSTRUCTION MANAGER

- When there isn't a MAIN CONTRACTOR
- Manages the direct construction contracts with CLIENT
- Control over construction time, money & quality
- Used for fast-track projects

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CONSTRUCTION MANAGER



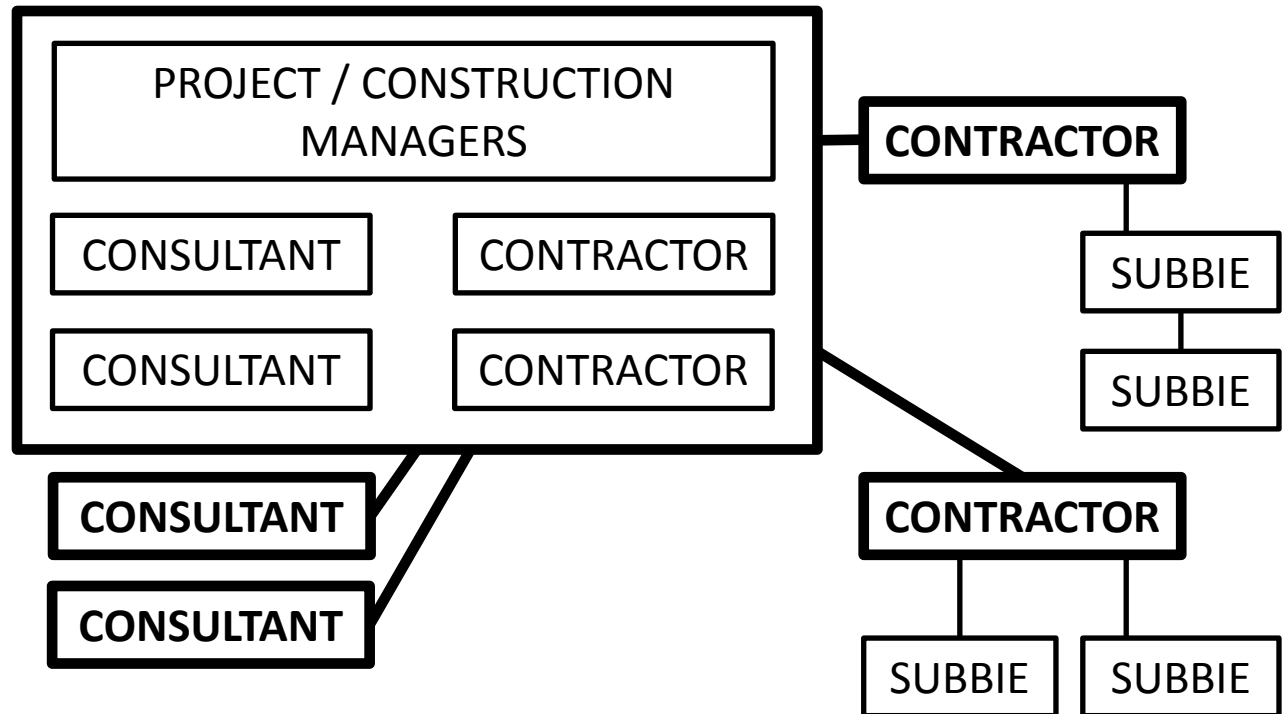
CONSTRUCTION MANAGER

- Forms 3-way partnership with CLIENT & MAIN CONSULTANT (perhaps also with MAIN CONTRACTOR)
- Advises on construction

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DEVELOPER, GOVERNMENT

Option 1



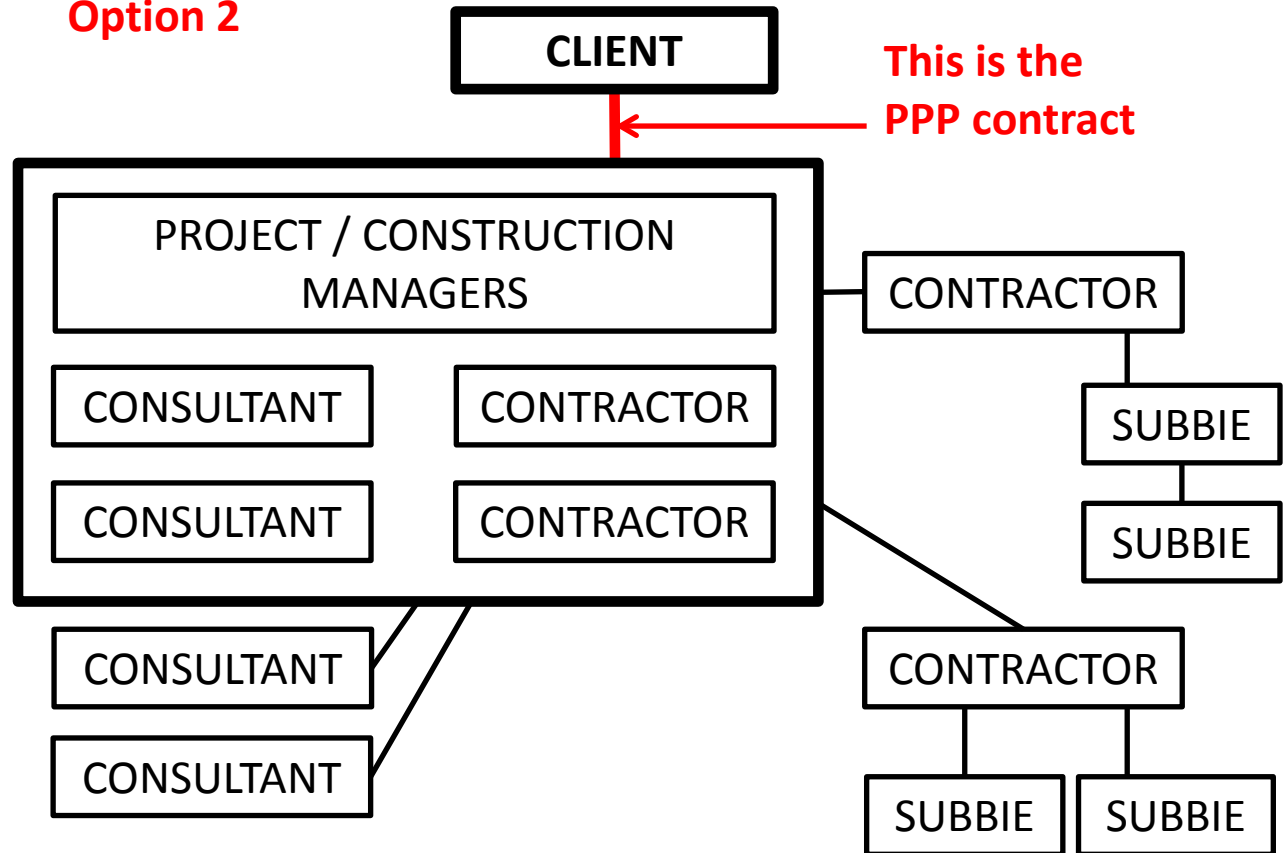
DEVELOPER or GOVERNMENT both work this way

- **CLIENT employs DESIGN &/or CONSTRUCT in-house**
- **Hires external CONSULTANTS if needed**
- **Hires external CONTRACTORS if needed**

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DEVELOPER, GOVERNMENT

Option 2



GOVERNMENT contracts with DEVELOPER

- Public Private Partnerships (PPPs)
- Shared risks & rewards

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LANDSCAPE CONSULTANT'S CONTRACTUAL RESPONSIBILITIES

TYPE 1

- Professional advice to contracted party as
 - MAIN CONSULTANT or
 - PROJECT MANAGER (including as 'CONTRACTOR' or 'SUPERINTENDENT' in AS 4902) or
 - SPECIALIST CONSULTANT
- Responsible for that professional advice

TYPE 2

- Professional advice to employer
- Responsible for that professional advice

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TRADITIONAL STAGES

PROJECT DESIGN

PROJECT DOCUMENTATION

PROJECT IMPLEMENTATION

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TRADITIONAL STAGES

**Often this is
ONE CONTRACT
= DESIGN &
DOCUMENTATION**

PROJECT DESIGN

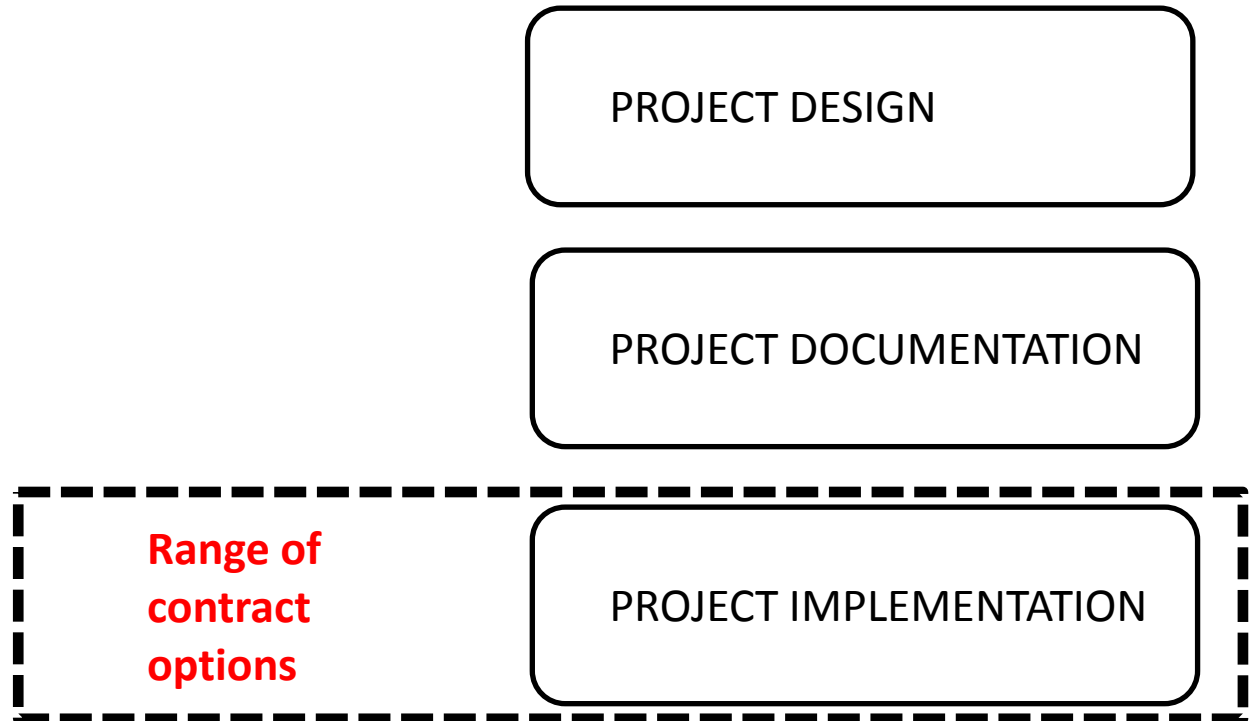
PROJECT DOCUMENTATION

PROJECT IMPLEMENTATION

**But there may be
more earlier
stages of
PLANNING +
PRE-DESIGN**

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TRADITIONAL STAGES



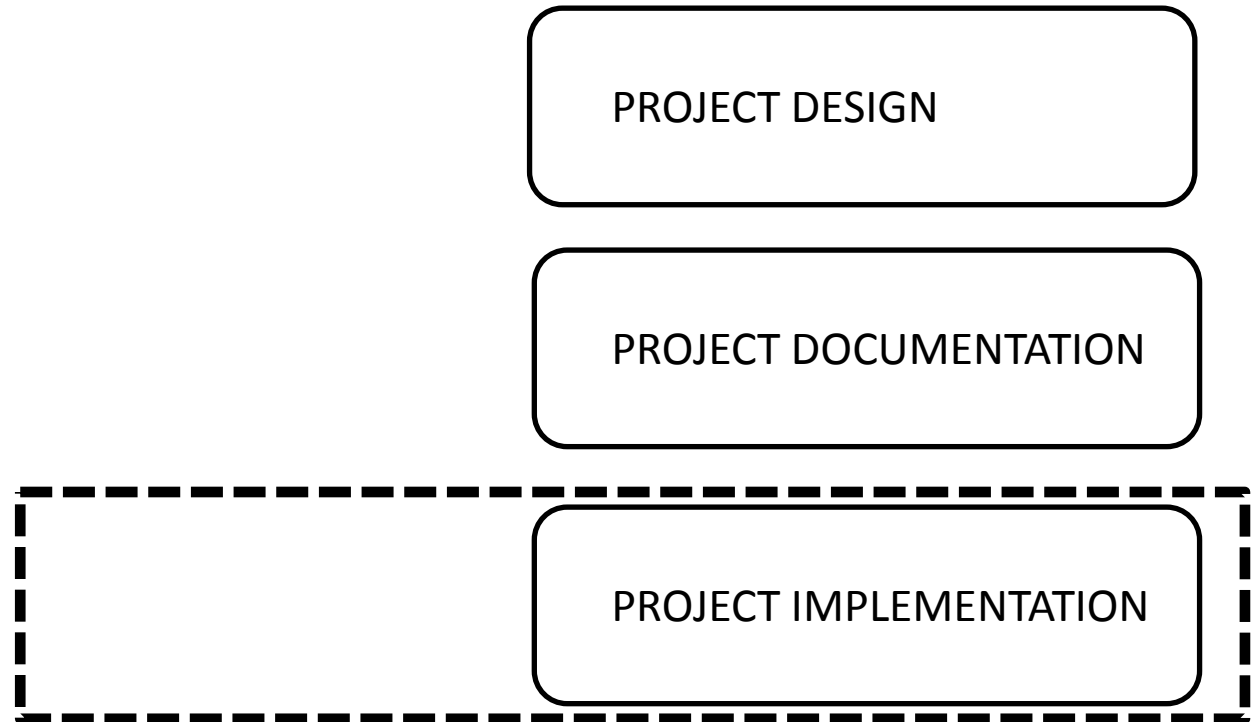
Some contract options:

1. **SAME CONTRACT as design & documentation**
2. **SEPARATE CONTRACT**
3. **NOVATED CONTRACT**

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TRADITIONAL STAGES



PROJECT IMPLEMENTATION

- TENDER PHASE
- CONTRACT ADMINISTRATION
- CONTRACT SUPERINTENDENCE

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2. PROJECT
IMPLEMENTATION
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3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

PROJECT IMPLEMENTATION

Tender Phase

- Selection of **CONTRACTOR**

1. **CONTRACT BASICS**
2. PROJECT IMPLEMENTATION BASICS
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PROJECT IMPLEMENTATION

Tender Phase

- Selection of CONTRACTOR

Contract Administration

- Contract LEGAL compliance
- Contract TECHNICAL compliance
- SATISFACTORY WORK
- Contract procedures – MONEY
- Contract procedures – TIME

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PROJECT IMPLEMENTATION

Tender Phase

- Selection of CONTRACTOR

Contract Administration

- Contract LEGAL compliance
- Contract TECHNICAL compliance
- SATISFACTORY WORK
- Contract procedures – MONEY
- Contract procedures – TIME

Contract Superintendence

By SPECIALIST consultant

- Contract TECHNICAL compliance
- SATISFACTORY WORK

...but terms are often misused

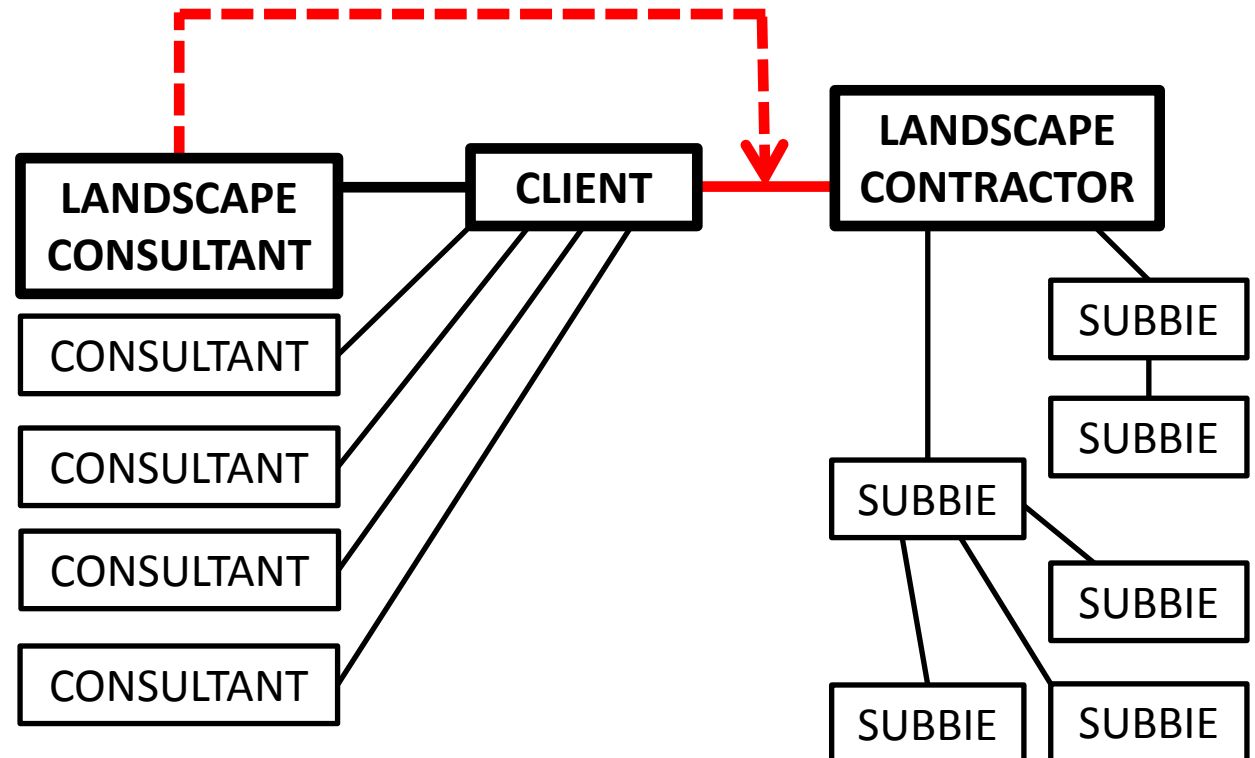
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Project Implementation when

- LANDSCAPE CONSULTANT is **MAIN CONSULTANT**
- LANDSCAPE CONTRACTOR is **MAIN CONTRACTOR**

- ✓ **TENDER PHASE**
- ✓ **CONTRACT ADMINISTRATION**
- ✓ **CONTRACT SUPERINTENDENCE**



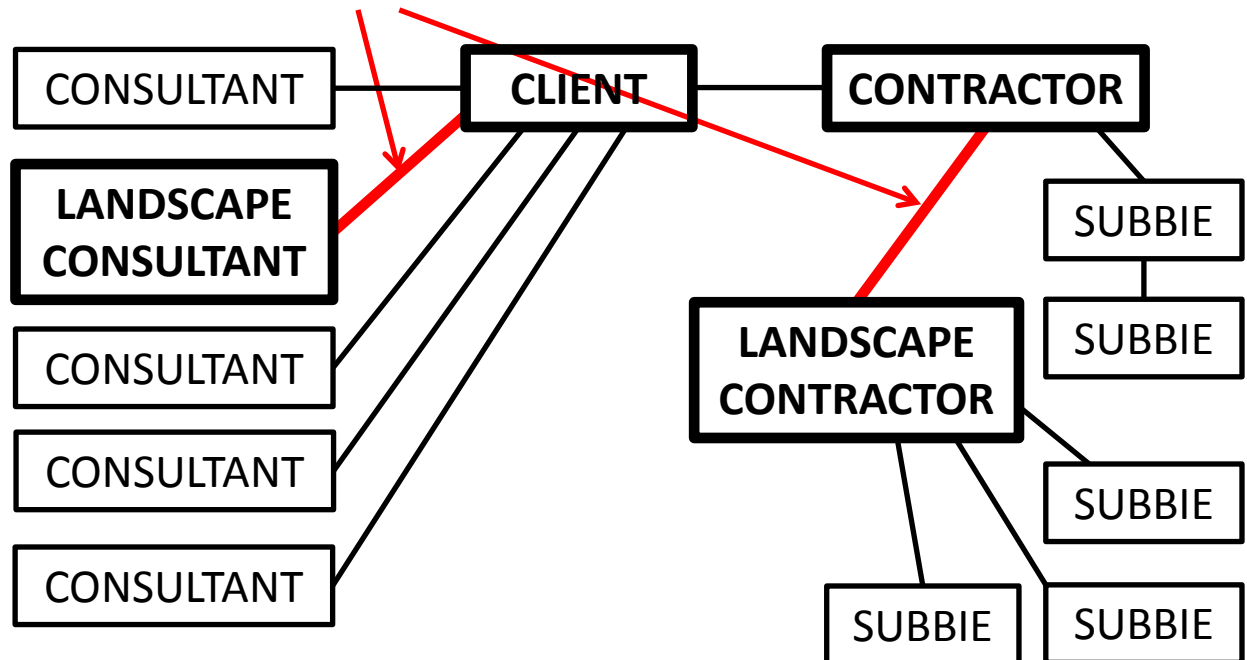
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Project Implementation when

- LANDSCAPE CONSULTANT is **SPECIALIST CONSULTANT**
- LANDSCAPE CONTRACTOR is **SUB-CONTRACTOR**

**DIRECT COMMUNICATION CAN'T EXIST
between the parties in these two contracts**

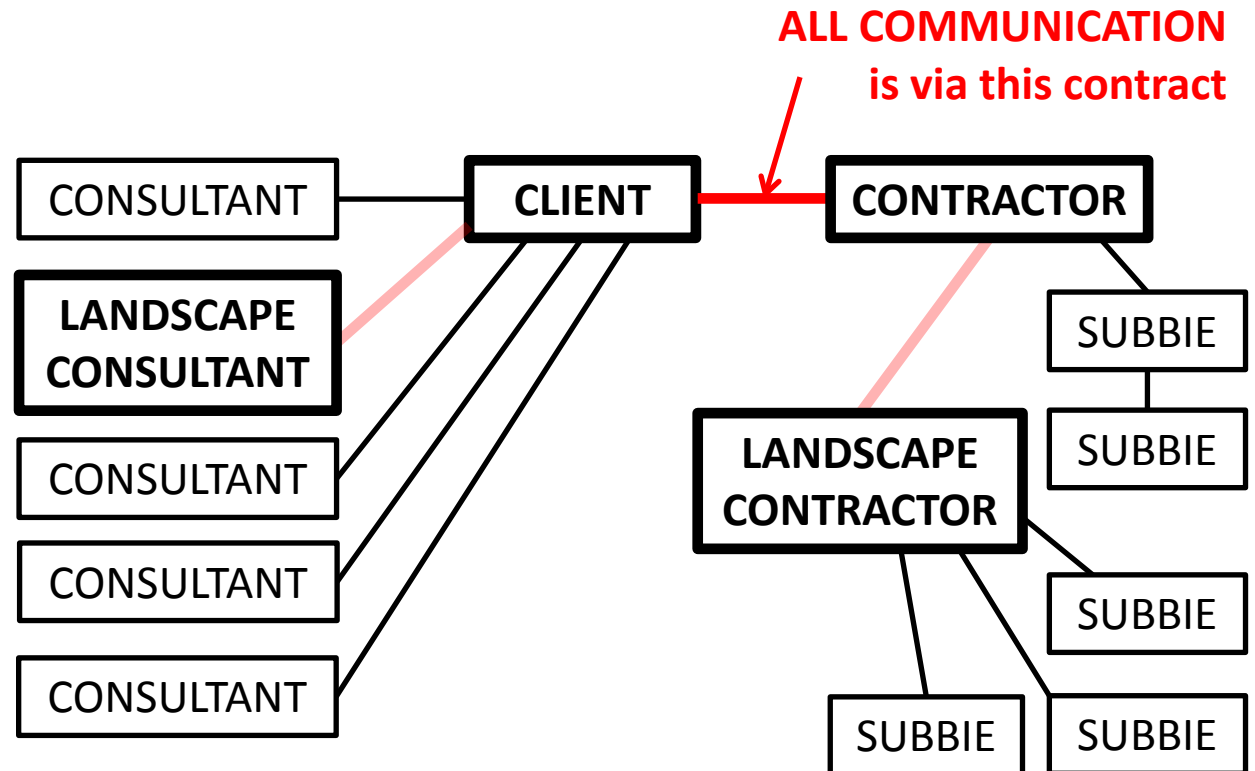


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Project Implementation when

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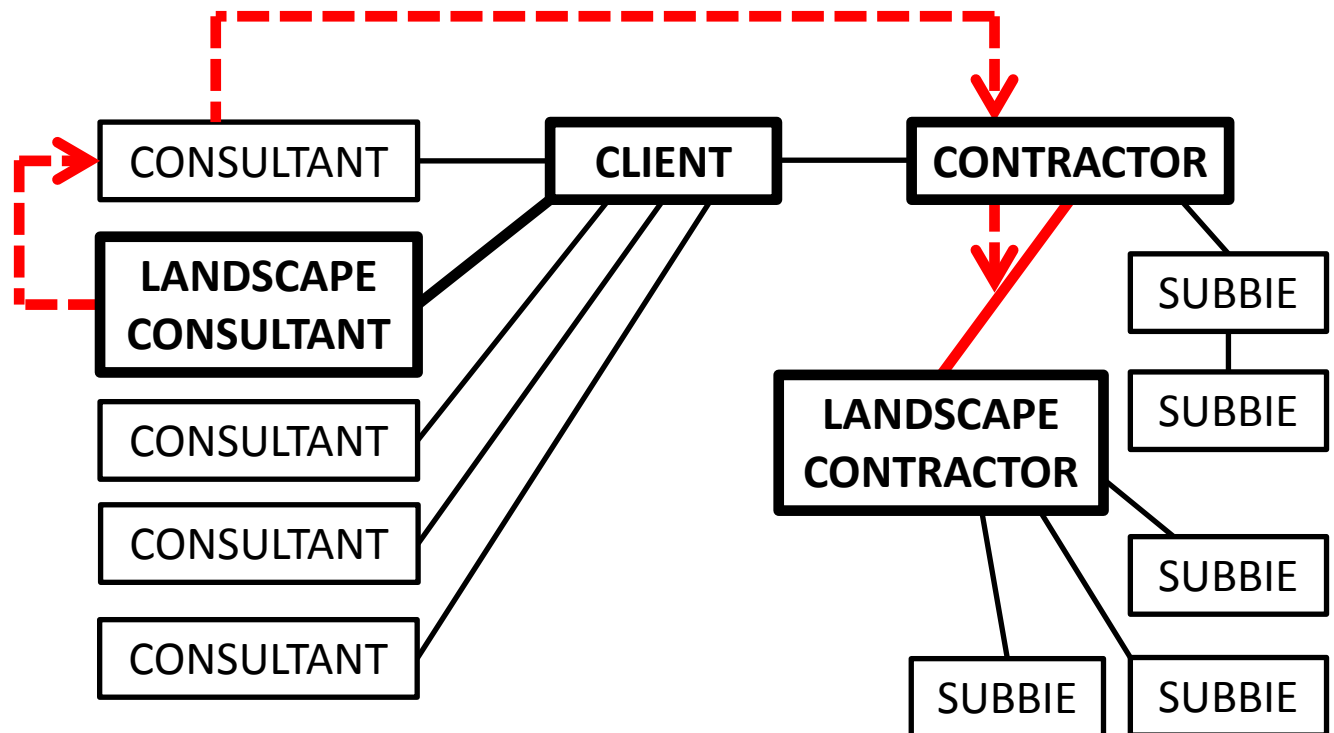
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Project Implementation when

- LANDSCAPE CONSULTANT is **SPECIALIST CONSULTANT**
- LANDSCAPE CONTRACTOR is **SUB-CONTRACTOR**

- × TENDER PHASE
- × CONTRACT ADMINISTRATION
- ✓ **CONTRACT SUPERINTENDENCE**



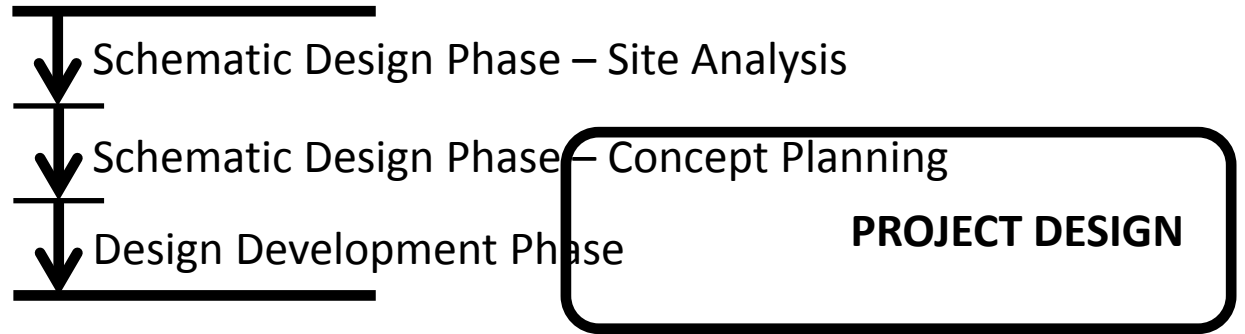
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PROJECT IMPLEMENTATION BASICS

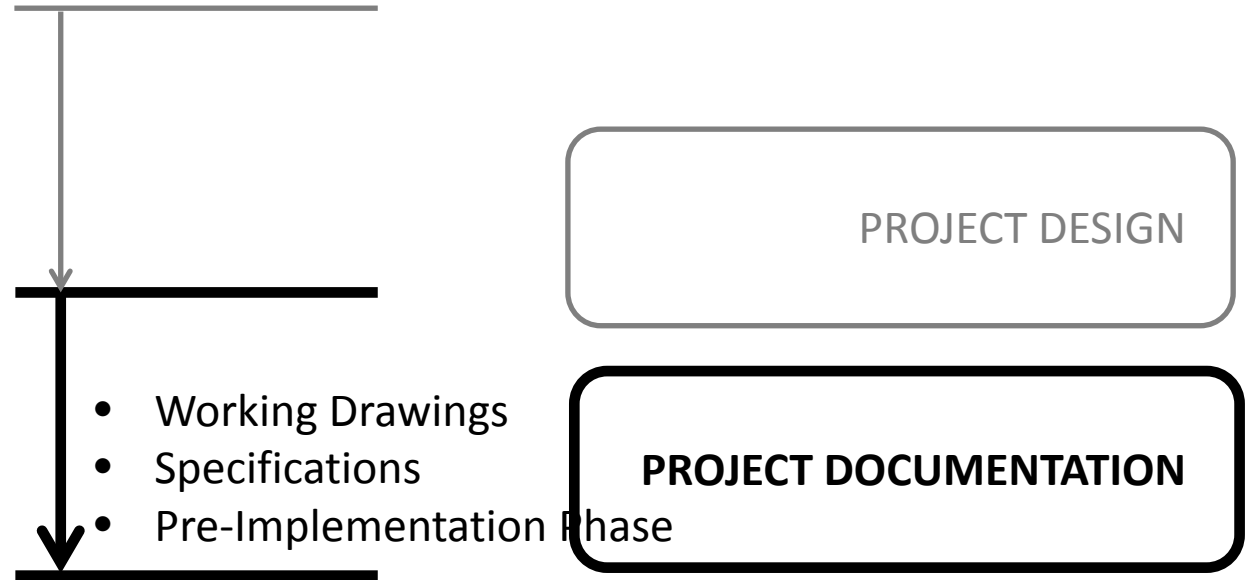
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**This stage describes the documents & standards.
We need to look at this briefly before we move on.**

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PROJECT DOCUMENTATION

PROJECT DOCUMENTATION is a detailed description of the project to be implemented, prepared by the CONSULTANT(S).

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5. PROFESSIONALISM

PROJECT DOCUMENTATION

PROJECT DOCUMENTATION is a detailed description of the project to be implemented, prepared by the CONSULTANT(S).

Tenderers (potential contractors) prepare their response to this detailed description, and this response forms the basis for the CONTRACT which is administered in the next stage – PROJECT IMPLEMENTATION.

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Almost all detailed descriptions include

- The legal requirements
- The technical requirements
- The standard of expected outcomes

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PROJECT DOCUMENTATION

LEGAL

- **Inclusion of a standard form of contract**
- **Specifics for the project, the site, time, etc**
- **Inclusion of schedules**

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PROJECT DOCUMENTATION

LEGAL

TECHNICAL

- A technical specification, plans, & details

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PROJECT DOCUMENTATION

LEGAL

TECHNICAL

2 ways of writing the description

1. **TECHNICAL DESCRIPTION** of what to do, required materials, tolerances, etc
2. **PERFORMANCE DESCRIPTION** of the expected outcomes, finishes, etc

Most contracts have **TECHNICAL** clauses for some types of work & **PERFORMANCE** clauses for other types.

DO NOT describe anything using both TECHNICAL & PERFORMANCE clauses.

Examples of these

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PROJECT DOCUMENTATION

LEGAL TECHNICAL

OUTCOMES

Work must be to industry standards

- Standards are described in the contract documents (specification, details, etc)
- Listing Australian Standards is not good enough – must be specific; but
- All work must be to an acceptable quality (satisfactory) regardless of what is in the contract.

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4. MONEY & TIME
5. PROFESSIONALISM

PROJECT DOCUMENTATION

LEGAL TECHNICAL

OUTCOMES

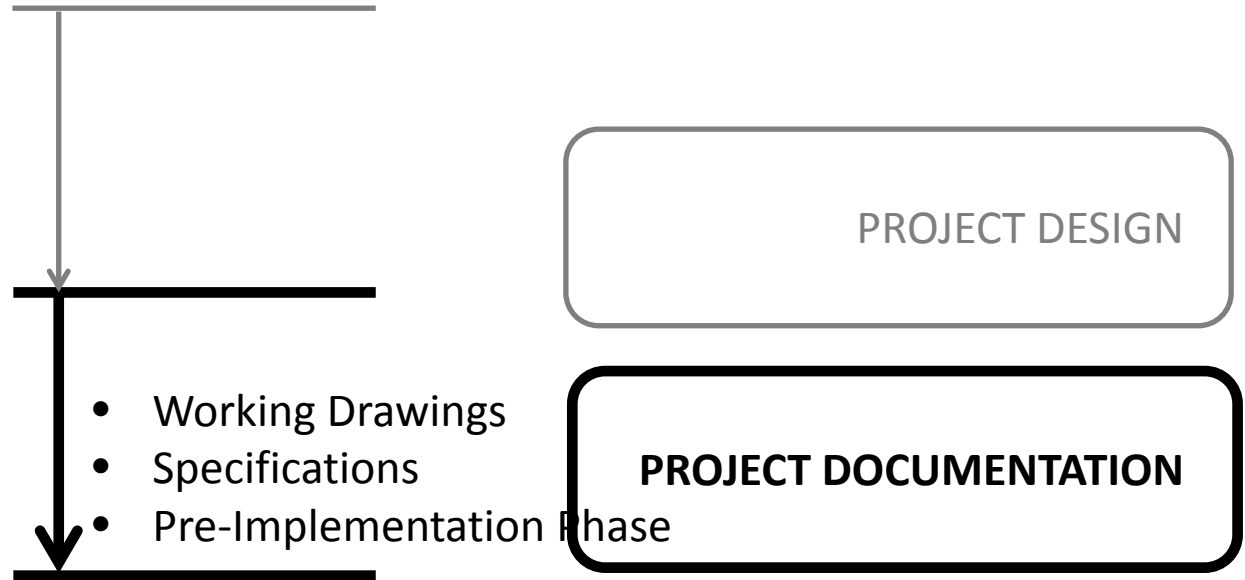
3 standard ways of paying for work

1. For work that is able to be fully specified and quantifiable – LUMP SUM price, payable by progress payments
2. For work that is able to be fully specified but NOT quantifiable – SCHEDULE OF RATES
3. For work that is NOT able to be fully specified – COST PLUS, payable as Lump Sum or Schedule of Rates for labour, and Cost + something for materials

Most contracts have at least a little of all 3.

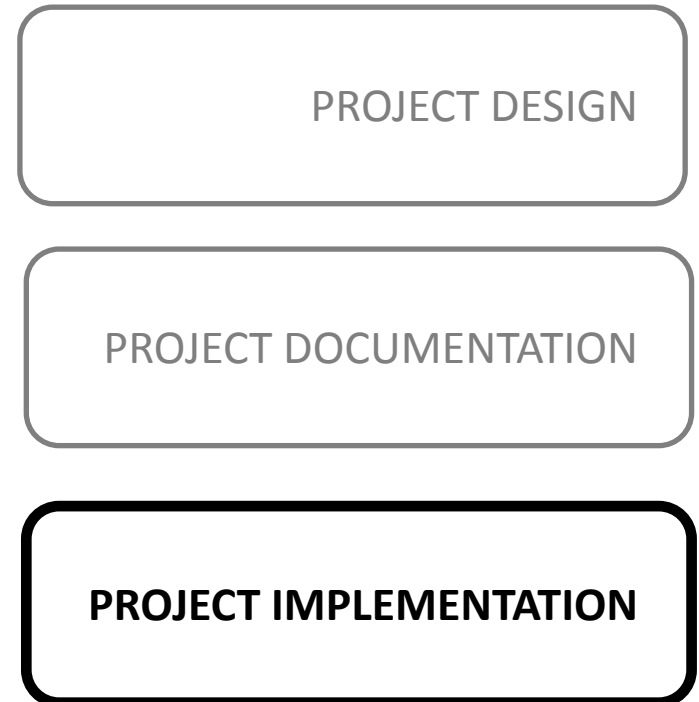
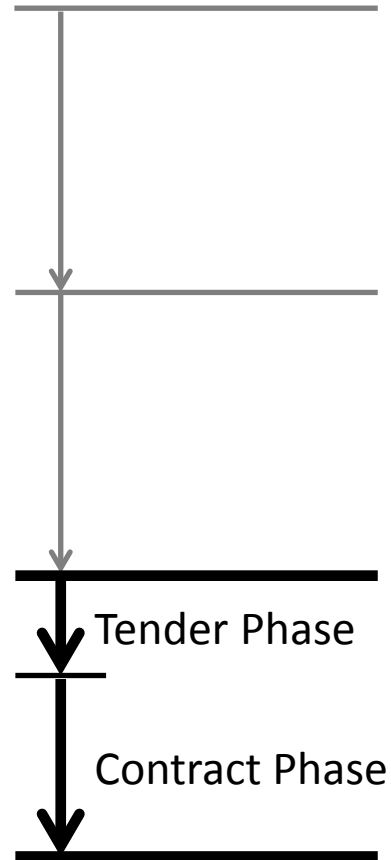
AILA & AILD contract administration

1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM



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1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM



Contract Phase includes

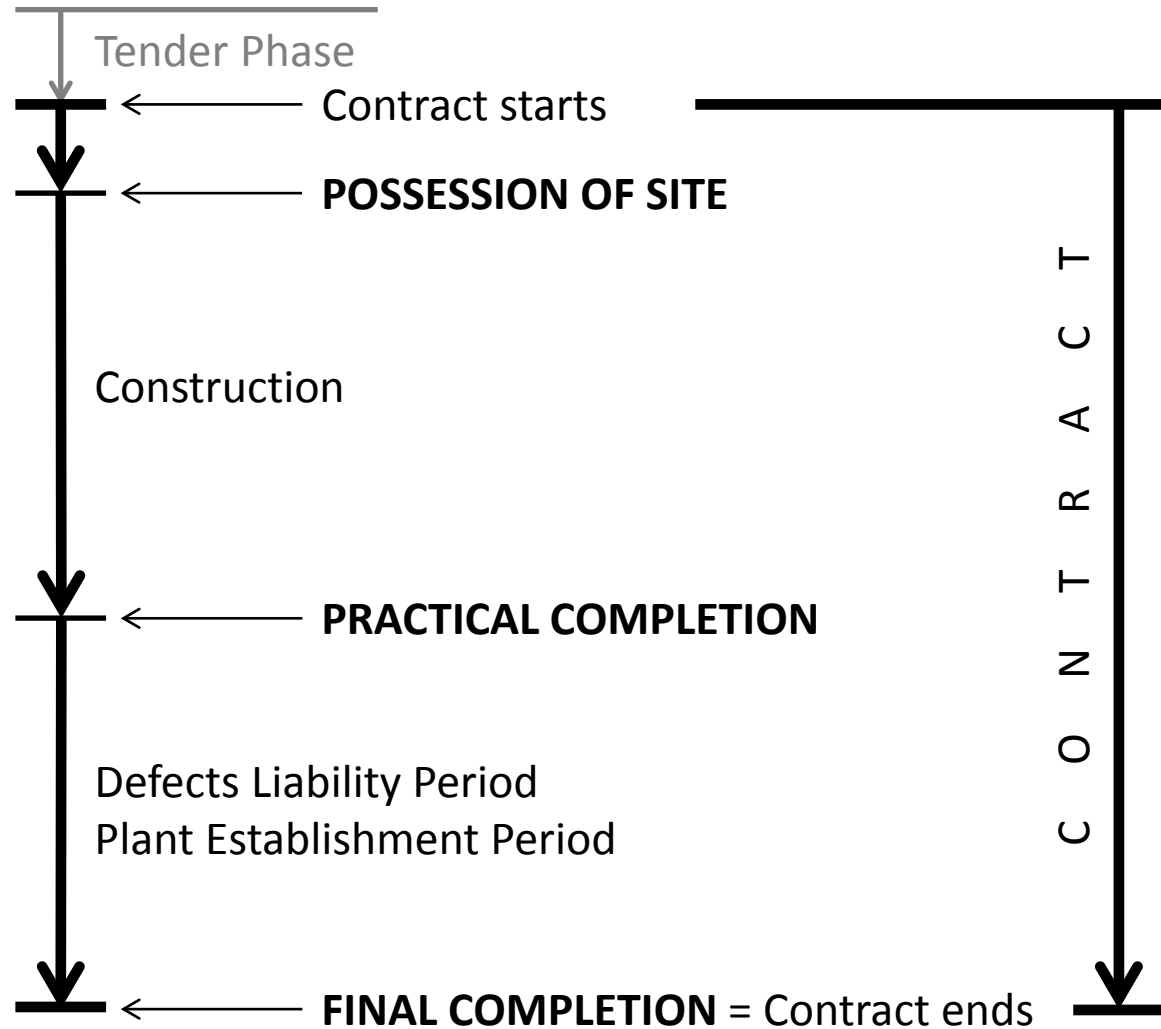
- Construction
- Defects Liability
- Plant Establishment

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1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

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PROJECT IMPLEMENTATION MAIN CONSTRUCTION CONTRACT

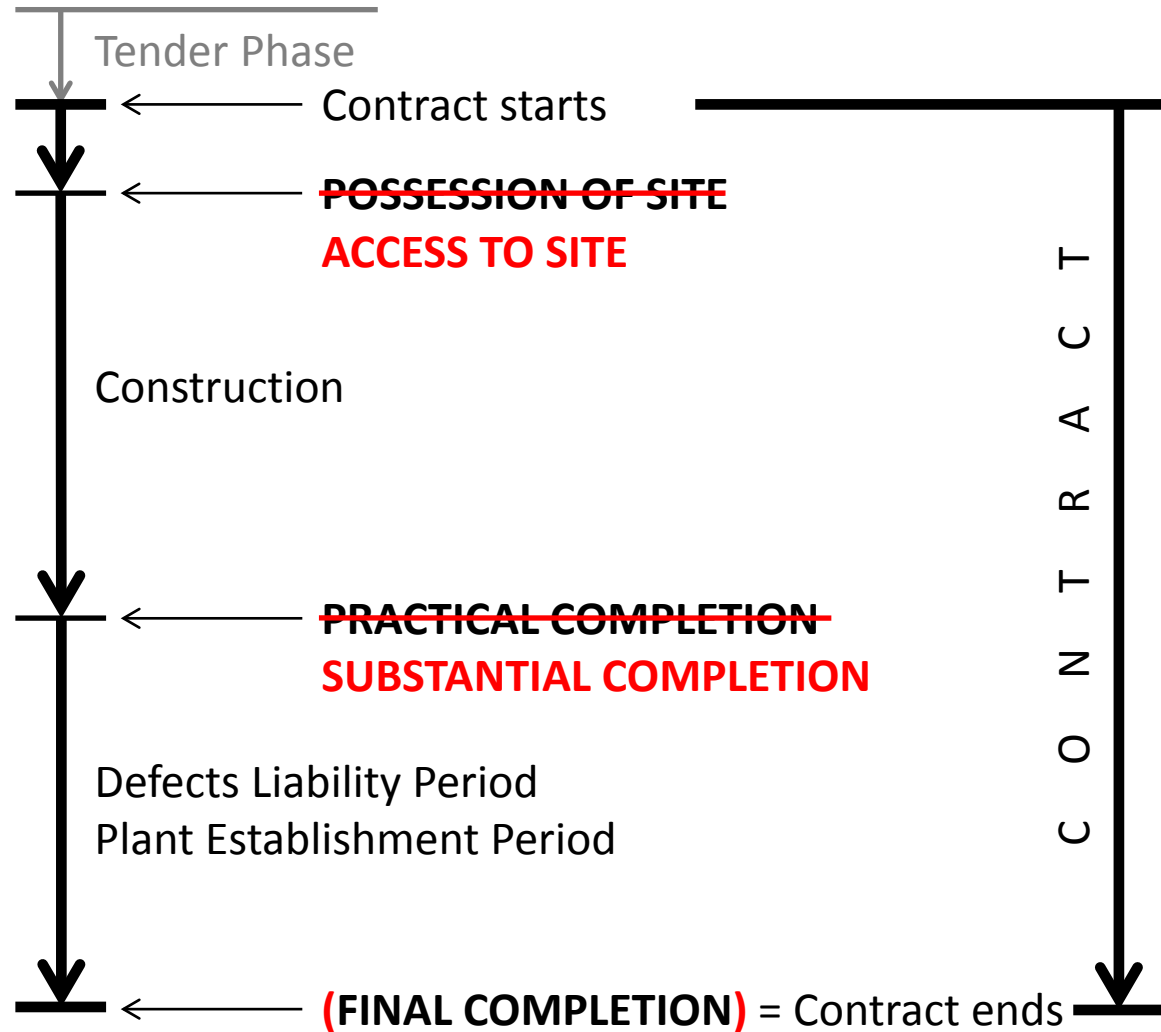


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1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

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PROJECT IMPLEMENTATION SUB-CONTRACTS

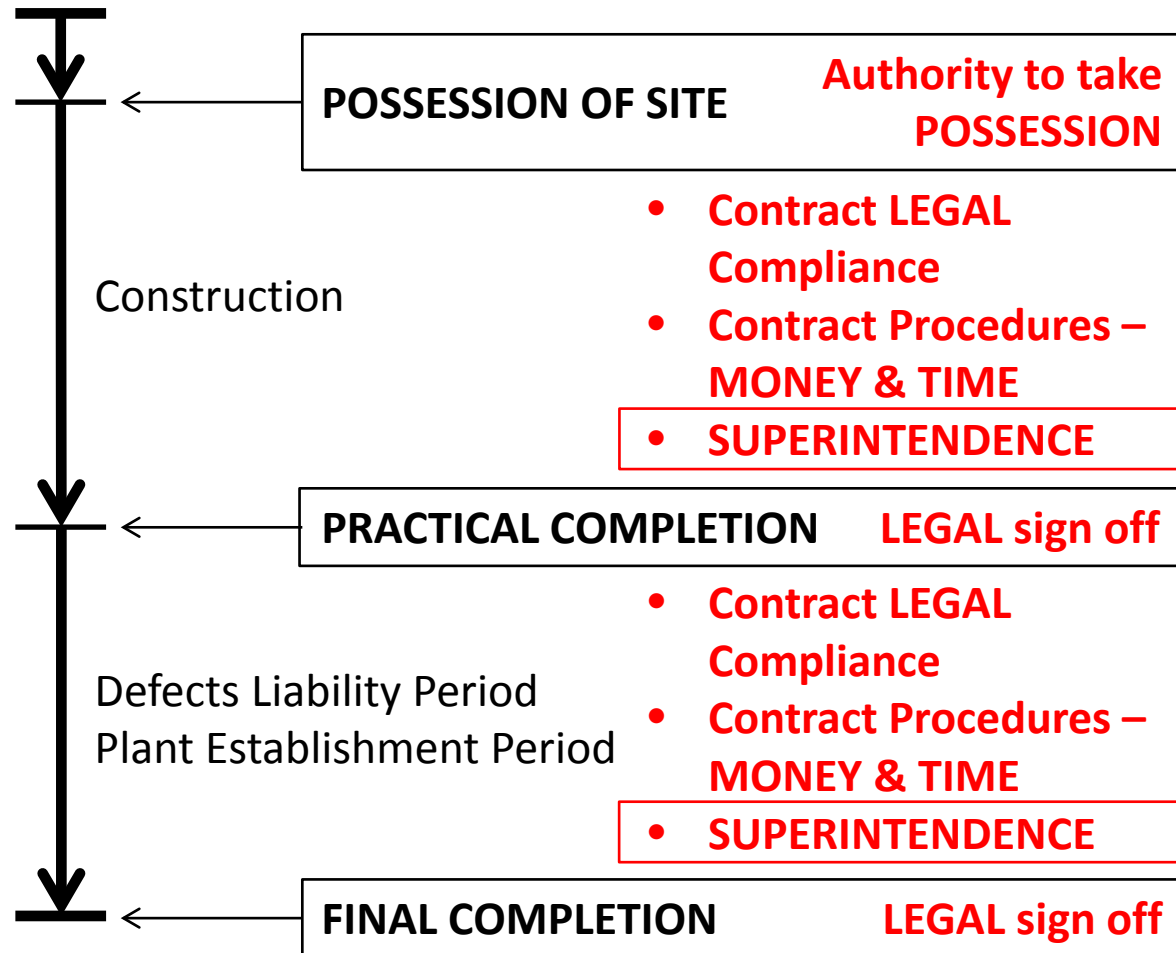


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1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

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PROJECT IMPLEMENTATION CONTRACT ADMINISTRATION

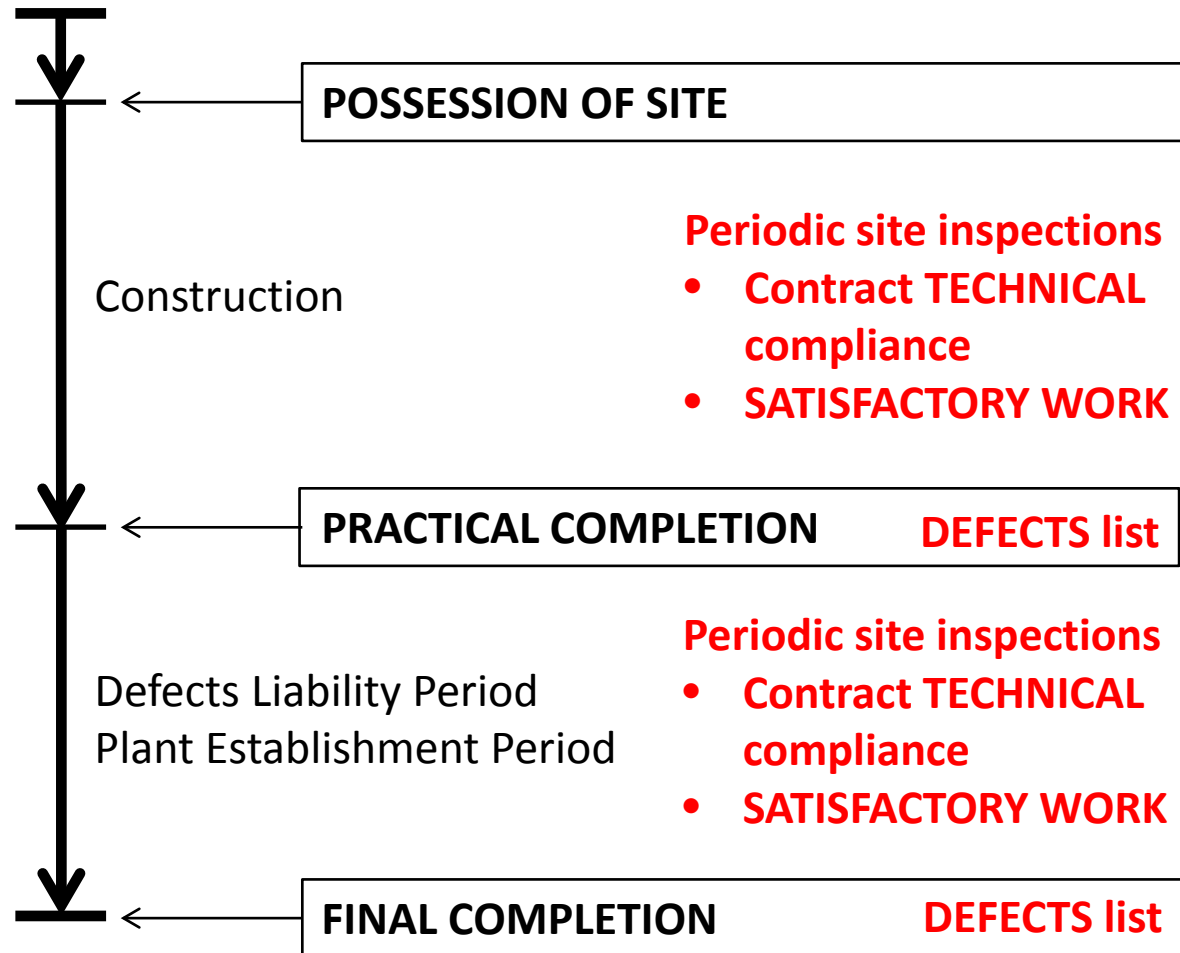


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1. CONTRACT BASICS
2. **PROJECT IMPLEMENTATION BASICS**
3. CONTRACT ADMINISTRATION STEP-BY-STEP
4. MONEY & TIME
5. PROFESSIONALISM

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PROJECT IMPLEMENTATION SUPERINTENDENCE



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administration**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION STEP-BY-STEP

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE

- **All pre-Possession duties done**
 - **Formal contract signing**
 - **Insurances confirmed**
 - **Proposed site establishment approved**
 - **Government approvals in place**
 - **Samples / substitutions approved**
 - **Proposed sub-contractors approved**
 - **Meetings, site visits, procedures & forms**
 - **Arrangements for contract admin confirmed**
 - **Works programme clarified**
 - **Work before site meeting confirmed**
 - **Representatives identified & contact details**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE

- All pre-Possession duties done
- **Site ready for Possession**
 - **Authority from client to start**
 - **Site conditions checked & documented**
 - **Survey marks identified**
 - **Any site discrepancies resolved**

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE

POSSESSION OF SITE

- **Formal notification**
 - **Main contractor starts responsibility for site**
 - **Main contractor insures site**
 - **Everyone has access determined by main contractor**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- **Date & time**
 - **Hold points, critical points**
 - **As per stages in contract**
- **Those present & who they represent**

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- Date & time
- Those present & who they represent

- **Walk around site to inspect work progress**
See SITE INSTRUCTIONS later

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- Date & time
- Those present & who they represent
- **Walk around site to inspect work progress**

- **Against contract expectations**

See CONTRACT LEGAL COMPLIANCE later

See CONTRACT TECHNICAL COMPLIANCE later

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- Date & time
- Those present & who they represent
- **Walk around site to inspect work progress**
 - Against contract expectations
 - **Against work quality expectations**

See SATISFACTORY WORK later

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- Date & time
- Those present & who they represent
- Walk around site to inspect work progress
 - Against contract expectations
 - Against work quality expectations

- **Claims for payment, variations, extensions of time**
See MONEY & TIME later

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE POSSESSION OF SITE

SITE INSPECTIONS

- Date & time
- Those present & who they represent
- Walk around site to inspect work progress
- Claims for payment, variations, extensions of time
- **Implications for contract**
- **Proposed work before next site inspection**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS

CONTRACT LEGAL COMPLIANCE

- **Ensure contractor follows all legal responsibilities**
- **Things to watch for**
 - **Specific requirements in contract**
 - **Safety issues**
 - **Appropriate supervision**
 - **Record keeping**
 - **Site security**
 - **Temporary works, storage**
 - **Environmental issues – water & drainage, noise, dust, tree protection & maintenance**

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS

CONTRACT LEGAL COMPLIANCE

- Ensure contractor follows all legal responsibilities
- **Ensure you follow all legal responsibilities**
 - **Understand what's in your contract**
 - **Your responsibilities**
 - **Professional negotiation is best technique**
 - **But if negotiation isn't effective, know how far you can 'push' contractor (and others, including client)**

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

ENFORCEMENT STEPS

- 1. BREACH**
- 2. SUBSTANTIAL BREACH**
- 3. DEFAULT**
- 4. TERMINATION**

little bit bad



very bad

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
3. **CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

ENFORCEMENT STEPS

1. BREACH

WHAT IT MEANS

One party has done something, or failed to do something, contrary to their contract conditions.

RAMIFICATIONS

The other party notifies them of the **BREACH** and gives 'reasonable time' to rectify it.

MONEY

The offending party is only required to pay the other party money, or expect that money due will be withheld, if it is stated in their contract that money is claimable for a **BREACH**.

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

ENFORCEMENT STEPS

1. BREACH
- 2. SUBSTANTIAL BREACH – usually defined in the contract**

WHAT IT MEANS

One party has failed to rectify a **BREACH** within a 'reasonable time', or has done something contractually important, or failed to do that something, contrary to their contract conditions.

RAMIFICATIONS

The other party notifies them of the **SUBSTANTIAL BREACH** and gives 'reasonable time' to rectify it.

MONEY

The innocent party is able to claim the cost of out-of-pocket expenses directly caused by the **SUBSTANTIAL BREACH**, and **BREACH**.

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

ENFORCEMENT STEPS

1. BREACH
2. SUBSTANTIAL BREACH
- 3. DEFAULT**

WHAT IT MEANS

One party has failed to rectify a **SUBSTANTIAL BREACH** within a 'reasonable time', or has done something to make the contract unworkable or impossible, or failed to do that something, contrary to their contract conditions.

RAMIFICATIONS

The other party notifies them of the **DEFAULT** and gives 'reasonable time' to rectify it.

MONEY

The innocent party is able to claim damages suffered by the **DEFAULT**. Damages may include direct costs, secondary costs and costs of recovery.

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

ENFORCEMENT STEPS

1. BREACH
2. SUBSTANTIAL BREACH
3. DEFAULT
- 4. TERMINATION**

WHAT IT MEANS

One party has caused the contract to end prematurely.

RAMIFICATIONS

The other party notifies them of their intention to **TERMINATE** the contract and gives 'reasonable time' to show cause why the contract should not be terminated.

MONEY

The innocent party is able to claim damages suffered by the **TERMINATION**. Damages may include direct costs, secondary costs, costs of recovery, and the reasonable cost of completion of the project or damages suffered for its non-completion.

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE

CONTRACT TECHNICAL COMPLIANCE

- **Work matches specification, details, plans**
- **Test compliance**
 - **Measure things, but know industry tolerances**
 - **Check against samples**
 - **Performance requires testing too**

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE

SATISFACTORY WORK

- **Work matches expected performance**
 - **Needs testing & comparison against?**
 - **Need to know what the client expects**
 - **Need to know what the public expects
(cannot contract to do a bad job)**
- **Work matches industry standards**
 - **Each part matches trade standard**
 - **Plumbing matches plumbing standards, etc**
 - **Structures match engineering standards**
 - **May need others to sign off work compliance**
 - **Surveyor**
 - **Engineer**

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. **MONEY & TIME**
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK

CONTRACT PROCEDURES – MONEY & TIME

See MONEY & TIME later

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
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CONTRACT PROCEDURES – MONEY & TIME

DEFECTS LIST (or LIST TO FINISH)

- **Inspection(s) prior to Practical Completion & Final Completion**
- **List of things to fix / finish prior to PC / FC**
- **Contractor has 3 options**
 - **Fix / finish**
 - **Do nothing – if ‘trivial’, consider client**
 - **If item is change to contract – claim variation**

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
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SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST

SITE INSTRUCTIONS

- **All instructions need to be in writing**
 - **Method acceptable to client & contractor**
 - **Eg email using standard template, or**
Hard copy on site – parties take photo

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST

SITE INSTRUCTIONS

- All instructions need to be in writing
- **These include**
 - **Legal compliance**
 - **Technical compliance**
 - **Satisfactory work**
 - **Money & time**
 - **Defects**

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administration**

- 1. CONTRACT BASICS
- 2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
- 4. MONEY & TIME
- 5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

SITE INSTRUCTIONS

- **Template**
- **Include business identification / authority to issue**

INSTRUCTION	No.		
Project: Issued to: Issued by: Date:	Note this comment 		
If the contractor believes that part or all of this instruction involves a change to the <u>contract sum or contract time</u> , seek approval from the superintendent. Do not comply with that part of this instruction until approval to vary the contract has been received from the superintendent.			
No.	Description	Action	Check
Copies issued to:			

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST
SITE INSTRUCTIONS

PRACTICAL COMPLETION

- **Not the same as 'Handover'**
- **Construction complete, but not Plant Establishment (different in ACT)**
- **Insurance of site finished**
- **All parties 'happy'**

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
- 3. CONTRACT
ADMINISTRATION
STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE

POSSESSION OF SITE

SITE INSPECTIONS

CONTRACT LEGAL COMPLIANCE

CONTRACT TECHNICAL COMPLIANCE

SATISFACTORY WORK

CONTRACT PROCEDURES – MONEY & TIME

DEFECTS LIST

SITE INSTRUCTIONS

PRACTICAL COMPLETION

PRACTICAL COMPLETION – LEGAL SIGN OFF

- **All parties know changes to responsibilities**
- **Certificate of Practical Completion issued**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
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CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST
SITE INSTRUCTIONS
PRACTICAL COMPLETION
PRACTICAL COMPLETION – LEGAL SIGN OFF
DEFECTS LIABILITY

- **Client notifies a defect – do they know what it is & when to notify you?**
- **You need to know difference between ‘failed to meet expectations’ and ‘fair wear & tear’**
- **Issue instruction to fix**
 - **Within reasonable time**
 - **Without charge (unless authorised as variation)**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST
SITE INSTRUCTIONS
PRACTICAL COMPLETION
PRACTICAL COMPLETION – LEGAL SIGN OFF
DEFECTS LIABILITY

PLANT ESTABLISHMENT

- Not maintenance
- Need to be specific in contract – what it is OR isn't
- Needs inspections & site instructions

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
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DEFECTS LIST
SITE INSTRUCTIONS
PRACTICAL COMPLETION
PRACTICAL COMPLETION – LEGAL SIGN OFF
DEFECTS LIABILITY
PLANT ESTABLISHMENT

FINAL COMPLETION

- All work & defects finished
- All parties 'happy'

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
- 3. CONTRACT ADMINISTRATION STEP-BY-STEP**
4. MONEY & TIME
5. PROFESSIONALISM

CONTRACT ADMINISTRATION

STEP-BY-STEP

AUTHORITY TO TAKE POSSESSION OF SITE
POSSESSION OF SITE
SITE INSPECTIONS
CONTRACT LEGAL COMPLIANCE
CONTRACT TECHNICAL COMPLIANCE
SATISFACTORY WORK
CONTRACT PROCEDURES – MONEY & TIME
DEFECTS LIST
SITE INSTRUCTIONS
PRACTICAL COMPLETION
PRACTICAL COMPLETION – LEGAL SIGN OFF
DEFECTS LIABILITY
PLANT ESTABLISHMENT
FINAL COMPLETION

FINAL COMPLETION – LEGAL SIGN OFF

- **All parties know changes to responsibilities**
- **Certificate of Final Completion issued**

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY & TIME

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

Standards for work established by whatever is legislated

- **NSW Fair Trading determines the rules for contracts with consumers**
- **B2B contracts can include different rules, but courts are cautious if contracts in dispute have rules different from those for consumers**

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1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT

**Maximum 10% deposit for all sizes of
building work (for consumers) in New
South Wales**

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/guide-to-home-building-contracts>

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1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT

Maximum 10% deposit for all sizes of building work (for consumers) in New South Wales

When there is a Contract Administrator or Superintendent

- No deposit
- Payment only for completed work

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT

SECURITY

Bank guarantee / Unconditional undertaking

- Contractor to client
- Rarely client to contractor

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT SECURITY

PROGRESS CERTIFICATES for COMPLETED WORK

PROGRESS CERTIFICATE No.							
Project:		Excl.					
Contractor:		GST	GST	Incl.			
A	Total of certified work to date	\$					
B	Less retention (see later)	\$					
C	Less amount certified on previous certificates	\$	\$	\$			
D	Amount certified to be paid (A-B-C)	\$	\$	\$			
<p>We hereby certify that the contractor is authorised to receive \$.....</p> <p>Certified by</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center; width: 33%;">Name</td> <td style="text-align: center; width: 33%;">Signature</td> <td style="text-align: center; width: 33%;">Date</td> </tr> </table>					Name	Signature	Date
Name	Signature	Date					

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administration**

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

PROGRESS CERTIFICATE No.			
Project:	Excl.		Incl.
Contractor:	GST	GST	GST
A	Total of certified work to date	\$	
B	Less retention	\$	
C	Less amount certified on previous certificates	\$	\$
D	Amount certified to be paid (A-B-C)	\$	\$
<p>We hereby certify that the contractor is authorised to receive \$.....</p> <p>Certified by <div style="display: flex; justify-content: space-around; width: 100%;"> Name Signature Date </div> </p>			
CONTRACT SUMMARY			
E	Contract Sum	\$	\$
F	Less contingency sum	\$	
G	Resultant Contract Sum (E-F)	\$	
H	Total approved variations to last certificate	\$	
I	Approved variations since last certificate •	\$	
J	Adjusted Contract Sum (G+H+I)	\$	\$
	Less total of certified work to date (A)	\$	
K	Value of work to complete project (J-A)	\$	\$

AILA & AILD contract administration

1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT SECURITY

PROGRESS CERTIFICATES

- **Note: *Building and Construction Industry Security of Payment Act [NSW] 1999*, as amended**

Points about the Act

- **Applies to landscape work (& lots more)**
- **Statutory right to progress, milestone, final & one-off payments**
- **Bans pay if paid & pay when paid**
- **Enforced through courts**
- **Payments usually based on Payment Schedule**
- **Each payment claim has statement saying**

This payment claim is made under the *Building and Construction Industry Security of Payments Act*

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment>

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2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

DEPOSIT SECURITY

PROGRESS CERTIFICATES as per SCHEDULE OF PRICES
(see later)

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MONEY

DEPOSIT

SECURITY

PROGRESS CERTIFICATES as per SCHEDULE OF PRICES

VARIATIONS + and – as per SCHEDULE OF RATES

(See later)

What are the rules for variations?

- **No variation for issues that the contractor should have identified before agreeing to contract**
- **No variation unless agree to by both parties (or agent) in writing that includes changes to \$ and / or time**
- **In general, variations must be agreed to before doing the varied work**

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2. PROJECT
IMPLEMENTATION
BASICS
3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
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5. PROFESSIONALISM

MONEY

- **SCHEDULE OF PRICES**
- **SCHEDULE OF RATES**
- **(PRICED) BILL OF QUANTITIES**

What are these?

When do you use them?

**AILA & AILD
contract
administration**

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MONEY

(PRICED) BILL OF QUANTITIES

REF	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
1	SITE ESTABLISHMENT	item			
2	SITE PREPARATION				
2.1	Remove path	m ²	50		
2.2	Remove fence	lm	65		
4.2	FCR supply, grade and compact	m ²	620		
4.3	Roadbase supply, grade and compact	m ²	620		
4.4	25mm asphaltic concrete supply and install	m ²	620		
4.5	Line marking (PC sum)	item			450.00
12	CLEAN UP	item			
13	CONTINGENCY	item			3,000.00
14	PLANT ESTABLISHMENT	item			

- Gives **ADVICE** on **PROBABLE COST**
- Use INDUSTRY STANDARD RATES only – eg LNA Rates Guide (current version is \$400)
- Do NOT include in **TENDER DOCUMENTS** unless prepared by Quantity Surveyor

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
- 4. MONEY & TIME**
5. PROFESSIONALISM

MONEY

SCHEDULE OF RATES

REF	DESCRIPTION	UNIT	QUANTITY	RATE
2	SITE PREPARATION			
2.1	Remove path	m ²	to 10	
		m ²	over 10	
2.2	Remove fence	lm	to 20	
		lm	over 20	
4.2	Driveway pavement, including	m ²	to 5	
to	• FCR supply, grade and compact			
4.4	• Roadbase supply, grade and compact			
	• 25mm asphaltic concrete supply and install			
		m ²	over 5 to 200	
		m ²	over 200	
12	CLEAN UP			
12.1	Dispose of green waste	tonne	to 5	
		tonne	over 5	
12.2	Dispose of clean soil fill	tonne	to 10	
		tonne	over 10	
12.3	Dispose of material for recycling	tonne	to 10	
		tonne	over 10	
14	PLANT ESTABLISHMENT	week	Oct to March	
		week	April to Sept	

- Used for VARIATIONS
- **CONTRACTOR** inserts rates as part of **TENDER**

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- 4. MONEY & TIME**
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MONEY

SCHEDULE OF PRICES

REF	DESCRIPTION	PRICE
1	SITE ESTABLISHMENT	
2	SITE PREPARATION Remove all features not forming part of the completed project	
4.2	Driveway pavement, including	
to	• FCR	
4.4	• Roadbase	
	• Asphaltic concrete	
4.5	Line marking (PC sum)	450.00
12	CLEAN UP prior to Practical Completion	
14	PLANT ESTABLISHMENT Price per month October to March	
	Price per month April to September	

- Used for PROGRESS PAYMENTS
- Can be used to assess **TENDERS** against Priced Bill of Quantities (but be aware of industry practice to load early work)
- **FAIRER** for all parties

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MONEY

SCHEDULE OF PRICES

- Easiest is to set it out as a PAYMENT SCHEDULE
As per Building and Construction Industry Security of Payment Act [NSW] 1999, as amended
- AMOUNTS TO BE PAID on completion of stated work

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MONEY

DEPOSIT SECURITY PROGRESS CERTIFICATES VARIATIONS **RETENTION**

Standard for landscape works

- 10% of \$ for work completed to date...
- To maximum total of 5% of contract sum

Retention released

- Half at PRACTICAL COMPLETION
- Half at FINAL COMPLETION

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TIME

CONTRACT PERIOD

- Before **POSSESSION OF SITE**
- To **FINAL COMPLETION**

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TIME

CONTRACT PERIOD

VARIATIONS and EXTENSIONS of TIME

- Use standard format for both
- Check / confirm at every site meeting

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TIME

CONTRACT PERIOD VARIATIONS and EXTENSIONS of TIME

LIQUIDATED DAMAGES

What is Liquidated Damages?

- Not a penalty
- \$ in provable damages due to late completion
- If not stated in contract, will need a court to enforce

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TIME

CONTRACT PERIOD VARIATIONS and EXTENSIONS of TIME LIQUIDATED DAMAGES

STATUTE of LIMITATIONS and IMPLIED WARRANTY STATUTE OF LIMITATIONS

- **Is the time a contract is still 'alive'**
- **The time starts when the contract is finished**
- **Simple contracts = 6 years (3 in NT)**
- **Deeds (contracts with a company as 1 or both parties) = 12 years (15 years Vic & SA)**

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TIME

CONTRACT PERIOD VARIATIONS and EXTENSIONS of TIME LIQUIDATED DAMAGES

STATUTE of LIMITATIONS and IMPLIED WARRANTY IMPLIED WARRANTY

- **All commercial contracts have a warranty – implied if not stated**
- **'Reasonable' time if not stated in contract**
- **Clarify at FINAL COMPLETION**

- **Recommend advice after, say 1 year**

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TIME

**CONTRACT PERIOD
VARIATIONS and EXTENSIONS of TIME
LIQUIDATED DAMAGES**

**STATUTE of LIMITATIONS and IMPLIED WARRANTY
NEGLIGENCE**

- 'Reasonable' time is undefinable – can be forever
- Applies with / without a contract

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4. MONEY & TIME
5. **PROFESSIONALISM**

PROFESSIONALISM

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contract
administration**

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2. PROJECT IMPLEMENTATION BASICS
3. CONTRACT ADMINISTRATION STEP-BY-STEP
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PROFESSIONALISM

AGENT

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administration**

1. CONTRACT BASICS
2. PROJECT
IMPLEMENTATION
BASICS
3. CONTRACT
ADMINISTRATION
STEP-BY-STEP
4. MONEY & TIME
5. **PROFESSIONALISM**

PROFESSIONALISM

AGENT

COMMUNICATION
= Risk management

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1. CONTRACT BASICS
2. PROJECT IMPLEMENTATION BASICS
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5. **PROFESSIONALISM**

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PROFESSIONALISM

AGENT COMMUNICATION

EVERYTHING IN WRITING

- **Own notes at meetings**
- **Diary**
- **Phone calls**
- **Emails**

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5. **PROFESSIONALISM**

PROFESSIONALISM

**AGENT
COMMUNICATION
EVERYTHING IN WRITING**

ACCESSIBLE ELECTRONIC RECORDS

- **12 years** (up to 15 years in Vic & SA)
- **In what format & where?**

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5. **PROFESSIONALISM**

PROFESSIONALISM

**AGENT
COMMUNICATION
EVERYTHING IN WRITING
ACCESSIBLE ELECTRONIC RECORDS**

PUBLISHED INFORMATION

- **Emails & social media are all published = evidence**

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PROFESSIONALISM

**AGENT
COMMUNICATION
EVERYTHING IN WRITING
ACCESSIBLE ELECTRONIC RECORDS
PUBLISHED INFORMATION**

AT WORK / NOT AT WORK

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June 2019

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Concluding comments

1. The information in this presentation is general in nature and should not be relied on as legal advice.
2. It is important that you understand which parts apply to you.
3. Please use the references to understand more about this area of professional practice.
4. If in doubt, please seek professional advice.
5. **The main purpose of providing this advice to you is to enable you to MANAGE THE RISK of making inappropriate (or not making appropriate) management decisions.**