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Chapter

# 4

## **Parties to the Contract**

In the international construction engineering industry, the parties from different countries are grouped for a period of time to accomplish a common mission, the successful completion of a project. Each of them shall fulfill their respective duties and obligations under the contract. Generally speaking, the project delivery process involves the following three major parties, that is, the employer, the contractor, and the engineer. Sometimes, the financier or donor (the one who provides funds for the project) also participates in the management of the project funds.

The employer, also referred to as the owner or the client, owns a project. He engages different parties to design, manage, and construct the project, and pays those parties for their service and work.

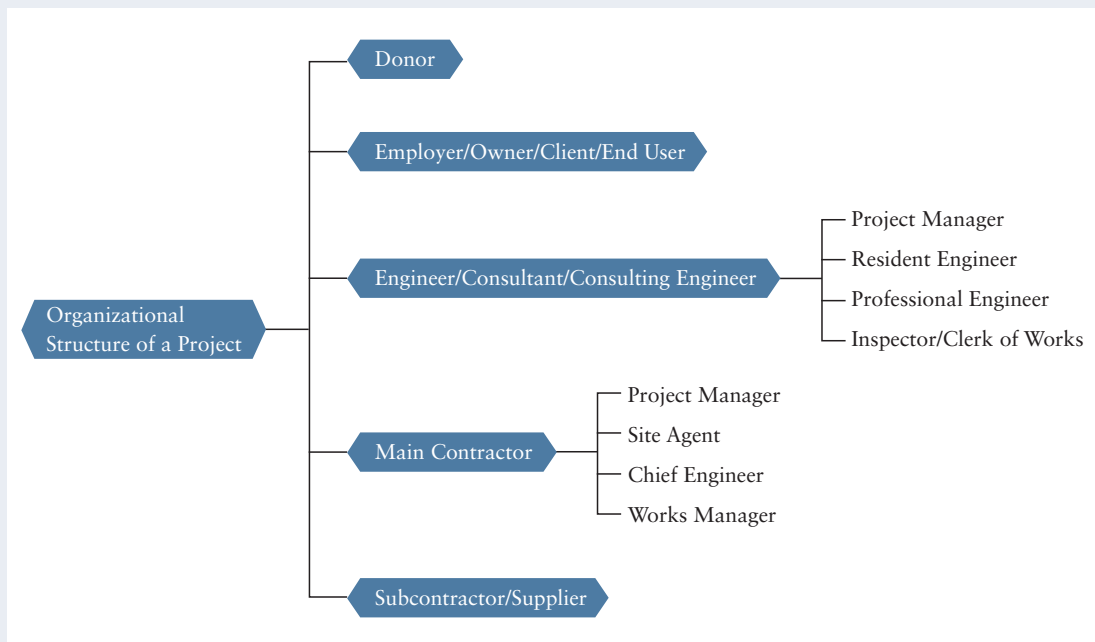
The contractor is responsible for the design (optional), execution, and completion of the work, and for remedying defects arising thereof.

The engineer, also called the consulting engineer, consultant, or architect, administrates the whole project execution process. It is worth noting that the engineer is not a party to the construction contract, but one appointed by the employer to carry out duties specified in the contract signed between the employer and the contractor.

It should be noticed that in the international construction industry the word literally means a person or a party also represents a corporation or other legal entities, unless specified otherwise. For example, the word *engineer* does not always denote a person who designs, builds, or maintains works. Instead, it often signifies a legal entity who acts as the agent of the employer and who administrates the project. As a legal entity, the engineer is invisible and intangible, but recognized by law. He can be an architectural firm, a design institute, an engineering firm, or the assistants (a term used in Clause 3.2 of *FIDIC Conditions of Contract for Construction*) who are given authority to administrate the contract. Generally speaking, these assistants include resident engineers, professional engineers, inspectors, or clerks of works, etc.

The execution and completion of a project demand concerted and coordinated effort from all the parties. Each party must understand their respective responsibilities and their counterparts' under the contract. The following diagram shows the organizational structure of a typical international construction project.





## 4.1 Employer

The employer is the party who procures the work. The employer may be a private enterprise, a government institution, or a non-profit organization. When planning a project, the employer decides the scope and budget of the project. In addition, he has to face many challenges: the control of time, quality and cost, the selection of the management team and contractor, etc. During the design and construction phases, the employer monitors the progress of the work and makes periodic payments to the engineer and the contractor.

Traditionally, the employer has separate contracts with the engineer and the contractor. The engineer provides professional services and is responsible for the design and administration of the project, whereas the contractor executes and completes the construction work and remedies the defects.

The employer “shall grant access to the Site and possession of the Site, make arrangements for payments, pay the Contract Price, disclose Site data and co-operate with the Contractor to the extent provided by the Contract. He shall also compensate the Contractor for additional cost and disruption if a risk eventuates which is borne by the Employer” (Jaeger & Hök 2010: 177).

In short, the employer’s obligations can be classified into three main categories: duty to pay, duty to cooperate, and duty to compensate.

## Duty to Pay

The contractor gets paid for the work he performs, and the employer gets the work he is paying for. A fundamental obligation for the employer is to make payments in accordance with the contract. For example, the Contract Agreement recommended by FIDIC stipulates that the employer covenants to pay the contractor the contract price in consideration of the execution and completion of the works and the remedying of defects therein. To put it more specifically, the employer shall make an advance payment (if any) against a suitable guarantee from the contractor before the commencement of work. During construction, the employer shall make payments to the contractor as certified by the engineer to be due under the contract. He shall not withhold any payments or set other offers off against an amount certified in a payment certificate.

## Duty to Cooperate

To ensure that the progress of the works will not be adversely interfered with, the employer is required to grant the contractor the right of access to the site, to assist the contractor in obtaining permits or licenses, to provide information, and to minimize delay. Among them, the duty to grant the right of access to the site often gives rise to disputes and claims.

According to Sub-Clause 2.1 [*Right of Access to the Site*] in *Conditions of Contract for Construction*, or the Red Book, (FIDIC 1999: 8–9), the employer “shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Appendix to Tender.” “If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor’s Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- b) payment of any such Cost plus profit, which shall be included in the Contract Price.”

## Duty to Compensate

One essential function of the construction contract is to apportion and reallocate risks between the employer and the contractor. In most standard forms of contract, risks are balanced by various compensation claims.

Among various kinds of compensation from the employer, the one made for unforeseeable physical events may be the most important. According to Sub-Clause 4.12 [*Unforeseeable Physical Conditions*] in the Red Book (FIDIC 1999), if the contractor

encounters adverse physical conditions which are recognized by the engineer as unforeseeable, and suffers delay, and/or incurs cost due to these conditions, he is entitled to an extension of time (EOT) and payment of any such cost by the employer.

In addition to the above duties, the employer also gives consent to or declines the contractor's request to assign any portion of the work, prepares the contract agreement (if any) for execution by both parties, and approves the performance security, the insurers, and the terms of the insurance policy submitted by the contractor. The employer will wish to ensure that the contract works insurance is in accordance with the laws and regulations of the country in which the works are to be executed, that the policy adequately covers the employer's risks, and that the deductible limits are acceptable. Provided it is acceptable to the employer, the contractor will normally use his customary sources for the provision of security and insurance.

## **4.2 Contractor**

### **4.2.1 General Contractor**

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Under most forms of contract, the contractor is required to execute and complete the works in accordance with the contract and the engineer's instructions, within the time specified in the contract. In addition, he has an obligation to remedy any defects during the defects liability period (or the defects notification period). Depending on the procurement method and/or the contract, the contractor may also be responsible for the design of all or part of the work.

The contractor shall submit security, bonds and guarantees in the forms and amounts stated in the contract, effect and maintain insurance as required, and commence the work as notified by the engineer.

He shall be responsible for the adequacy, stability, and safety of all site operations and of all construction methods. He shall set up a quality assurance system to fulfill his obligations with respect to achieving the quality control target. He shall provide all necessary labor, equipment, materials, and temporary works and develop a method of carrying out the works. He shall prepare the construction program and submit monthly progress reports.

The contractor receives and complies with the instruction from the engineer, who acts on behalf of the employer. He is responsible for the care of the work throughout the construction period until the work is taken over by the employer.

The contractor shall comply with all applicable laws and regulations during the construction period and be responsible for the actions and defaults of his subcontractors, agents, or employees.

Normally, the contractor is responsible for the design of temporary works. He shall submit his proposal, with necessary calculations, to the engineer for comment. If, during the construction period, he encounters unforeseen physical conditions on site, he shall notify the engineer. The engineer will review the circumstances and determine to what extent, if any, the contractor may be reimbursed or granted an EOT.

If the employer fails to meet his obligations and breaches the contract, such as failure to make payments as required, the contractor may have the rights to: 1) suspend the progress of the work; 2) reduce the rate of work and claim an appropriate extension of time and/or an additional payment; or even 3) terminate the contract.

In very large or complex projects, some enterprises may form a joint venture or consortium to act as the contractor. In such cases the same principles apply as in the situation where there is only one contractor, and the employer would normally require that all the parties to the joint venture have joint and several liability.

In the projects where several contractors simultaneously operate on a single site under separate contracts, the general contractor must reasonably schedule and coordinate the work with other contractors, providing them with opportunities to carry out their own work, and this should be reflected in the terms of the contracts and in the respective programs.

According to Surahyo (2018: 23–24), the contractor's main responsibilities can be summarized as follows (with a few changes):

- 1) Supply and provide labor, material, and equipment as necessary to perform the works within the contract period;
- 2) Submit all necessary guarantees and provide insurance not only to meet his direct liability but also to protect the employer;
- 3) Provide competent, experienced management and supervision for performance of the work;
- 4) Comply with all statutory laws and regulations during execution of the works and ensure that all who are employed on the site abide by these conditions;
- 5) Receive and comply with instructions from the engineer acting on behalf of the employer;
- 6) Select and provide the means, methods, techniques, sequences, and procedures of construction;



- 7) Initiate, maintain, and supervise all safety precautions and programs for all personnel on site and the general public who may be affected by the works. In this regard, the Contractor shall ensure that all personnel on site are adequately trained and observe safe working procedures;
- 8) Implement quality control systems for aspects of the works as specified;
- 9) Schedule and coordinate the work with other groups like suppliers, subcontractors, etc. working on site;
- 10) Warrant and guarantee that all work done will be in accordance with the Contract Documents and will not be defective.

### 4.2.2 Subcontractor

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Subcontractors are appointed by general contractors to carry out part of the work on their behalf. As construction has become more and more complicated, the construction work itself is now performed substantially by specialty contractors and subcontractors. General contractors no longer attempt to be an expert in all the different fields. They often require other experts' assistance in large, specialized, or diversified projects when they do not have the resources on hand or need additional expertise. It has become increasingly common for general contractors to subcontract certain parts of the work to others instead of employing a large workforce themselves, which is beneficial in terms of cost, quality, and efficiency. By subcontracting the work, the general contractor also shifts the legal responsibility for performance of each portion of the work to the specialty subcontractor, and establishes a firm price for each portion of the subcontracted work.

In most cases, it is the general contractor, not the employer, who has a direct contractual relationship with the subcontractors. In the main contract between the employer and the contractor, subcontractors are regarded as the contractor's personnel, which requires **the general contractor to bind his subcontractors to all the obligations he assumes to the employer in the main contract for the subcontractor's portion of the work.** Therefore, the risks taken by the general contractor under the main contract could be transferred to the subcontractors, and the subcontractors should be well informed about the provisions contained in the contract between the employer and the contractor. To ensure reasonable sharing and transferring of these risks, subcontracts must be drafted in such a way that the subcontractor is obliged to perform all the contractor's obligations and duties under the main contract.

Some major issues that concern the general contractor should be covered in his contract with the employer. The general contractor must have an adequate amount of

money due and payable at the proper time to enable him to finance the work of each of his subcontractors as well as the work which he will perform directly. The general contract must specify the amount, method, and time of payments to be made by the employer to the general contractor, and the percentage of the retention money (if any) to be withheld from progress payments by the employer. The general contract must also stipulate accurately the scope of work to be performed and the time within which the work must be completed. In addition, provisions are necessary to establish fair and precise procedures for handling variations. Other provisions may include a definition of the rights of both parties upon a default or termination of the contract.

In general, there are two types of subcontractors: nominated subcontractors and domestic subcontractors.

### Nominated Subcontractor

A nominated subcontractor is any merchant, tradesman, specialist or “a person, firm (or others) nominated in accordance with the contract to be employed by the contractor for carrying out work or supplying goods, materials or services for which a prime cost item or a provisional sum has been included in the contract” (Eggleston 2001: 15). In *Conditions of Contract for Construction* (FIDIC 1999: 21), nominated subcontractors are those “stated in the Contract as being a nominated Subcontractor, or whom the Engineer, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor.”

Nomination of subcontractors can happen when the employer has involved a subcontractor in the design process, when the employer wishes to achieve a very specific outcome, when they have an existing relationship, or when the employer needs to secure the supply of certain goods or services. Nominated subcontractors may be selected before or after the contract is entered into between the employer and the general contractor.

Ultimately, a nominated subcontractor has to sign a subcontract with the general contractor. Such a contractual relationship is imposed by the employer. This can be allowed for in the contract of a prime cost sum, to which the contractor is permitted to add profits and mark-ups. However, the general contractor will commonly be granted the right of objection to the nomination of particular subcontractors under certain conditions. In addition, some of the terms and conditions in the main contract may also indemnify the general contractor against the possible harm arising from the misconduct of the nominated subcontractor.

### Domestic Subcontractor

A domestic subcontractor is any subcontractor other than a nominated subcontractor, who is appointed by the general contractor to carry out part of the work. The work of the subcontractor is the responsibility of the general contractor as far as the contract between the contractor and the employer is concerned.

Subcontractors can be considered domestic if 1) they are freely selected by the contractor, and 2) they are selected by the contractor from a list of at least three possible subcontractors. This means that the nominated subcontractors in effect become domestic subcontractors once they are appointed by the general contractor.

## 4.3 Engineer

The engineer is a consulting firm, an architectural firm, or an engineering firm engaged by the employer to take on the overall engineering responsibility for the establishment of a civil engineering project. Depending on different project procurement methods, the engineer may have different roles under the contract. Generally, the engineer's duties include conducting initial studies, providing feasibility reports, developing designs, preparing tender and contract documents and drawings, and supervising the construction during the execution of the project.

The introduction of the engineer into project management is based on very practical reasons. When procuring a project, the employer normally has no capability to plan and design the work and could not provide enough experienced professionals to supervise and manage the contract. To ensure the success of a project, the employer has no choice but to employ a person or company with a professional background and experience to help him in the procurement process.

In most cases, the employer signs separate contracts with the engineer and the contractor. There is no contractual relationship between the contractor and the engineer, as the engineer is not a party to the contract between the employer and the contractor. In a construction project, the engineer acts as the employer's agent. During the construction process, it is the engineer rather than the employer that the contractor will deal with on a daily basis. The fact that the engineer acts as the employer's agent to supervise and administrate the contractor's work during the project delivery process makes one thing extremely essential; that is, all the three parties should understand the engineer's roles in the project management. To do this, the engineer's responsibilities and limits of authority should be clearly defined not only in the service agreement between the employer and the engineer, but also in construction contract documents.

### 4.3.1 Agreement Between the Employer and the Engineer

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The engineer is chosen by the employer based on his previous performance and experience. The ability of the consulting engineer to render the required services is judged by the employer from his own knowledge and personal recommendation, by referring to the professional association of consulting engineers or by publicly inviting prospective consulting engineers to submit proposals to prequalify.

When the employer has appointed a consulting engineer as the engineer of a project, an agreement is entered into between the two. Major issues included in the agreement may cover the following:

- 1) Duration of the agreement;
- 2) Ownership of documents and copyright;
- 3) Arbitration clauses for the settlement of disputes which may arise;
- 4) Scope of the consulting engineer's services;
- 5) Information and services (if any) to be provided by the employer to the engineer;
- 6) Terms of payment;
- 7) Fees payable in the event of the postponement, cancellation, or abandonment of the project;
- 8) Effects of force majeure on the services to be rendered by the engineer;
- 9) Responsibilities of the parties in respect of taxation, customs duties, and other duties;
- 10) Places at which notices are to be served under the agreement;
- 11) Language to be used in correspondence and documents in connection with the agreement;
- 12) Law applicable to the agreement.

### 4.3.2 Engineer's Roles

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As indicated in the above section, the role and legal position of the engineer are governed by the professional service agreement entered into between the employer and the engineer. The engineer acts as the agent of the employer, and his powers and duties to administer the project are defined in the construction contract between the employer and the contractor. He may be sued by the employer for negligence and incompetence, and for not performing his duties with reasonable care and skill.

When performing his functions, the engineer alone is responsible for giving instructions and making decisions on any matters related to the contract. Traditionally, the

engineer should not consider the employer's attitude or preference in the discharge of his duties. The engineer must act independently when administering the contract and make his judgment about matters arising therefrom fairly, without showing any bias towards either the employer or the contractor. However, the engineer is in essence an employee of the employer, and it is quite hard for him to take an unbiased attitude towards both the employer and the contractor throughout the project delivery process. Therefore, FIDIC advocates that the consulting engineer shall "be impartial in the provision of professional advice, judgment or decision; inform the client of any potential conflict of interest that might arise in the performance of services to the client; not accept remuneration which prejudices independent judgement."

### 4.3.3 Engineer's Duties and Responsibilities

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The engineer offers professional services in three phases, namely, the pre-construction phase, the construction phase, and the post-construction phase. Generally, the service agreement between the employer and the engineer includes the necessary pre-construction services, and those for the administration of the construction are included in the construction contract between the employer and the contractor.

Typically, the pre-construction phase includes the feasibility study stage, the preliminary design stage, and the design and tender stage.

A feasibility study is a prerequisite to determining the budget or financial commitment of a project. The engineer should know the employer's intention regarding the capital expenditure. Once having figured out the employer's planned expenditure, the engineer sets essential requirements of the project, on the basis of which he will then conduct an investigation to make reliable recommendations to the employer.

During the preliminary design stage, the engineer has to define the engineering work involved and the means by which it can generally be executed. The engineer will prepare outline drawings, estimates, and other documents to obtain the employer's approval in principle for the works, and to enable him to obtain planning permission for the works from government departments, authorities, or other bodies.

In the design and tender stage, the engineer describes the scope of work for the contractor. He has to prepare designs, tender drawings, specifications, and other documents required for the appointment of a contractor through competitive bidding. The components of the work may be summarized as follows:

- 1) Prepare designs and tender drawings for the works;
- 2) Assess materials and manufactured articles that are necessary for the works;

- 3) Prepare specifications, bills of quantities, and schedules, as appropriate;
- 4) Assess provisional sums and prime cost items that are required to be incorporated into the bill of quantities;
- 5) Identify the type of contract that is to be adopted (unit price, lump sum, or cost-reimbursement, etc.);
- 6) Prepare tender documents and drawings for the construction contract;
- 7) Prepare tender documents for obtaining nominated subcontractors, as appropriate;
- 8) Identify the way of inviting tenders (open tendering, selective tendering, single-stage tendering, etc.);
- 9) Assess the qualification and suitability of prospective tenderers, and advise the employer on qualified and suitable tenderers;
- 10) Update the estimates of the capital cost of master programs;
- 11) When required, invite tenders on behalf of the employer from the tenderers approved by him;
- 12) Evaluate tenders received, prepare an adjudication report, and recommend to the employer the tenderer most suitable for carrying out the work. A draft letter of acceptance to the recommended tenderer is often appended to the adjudication report.

The employer is generally advised to employ the same engineer from project inception to completion. The employer, however, can also choose different engineers to carry out the design work and construction administration separately.

As stated previously, the engineer has at the construction stage to perform duties stipulated in both the service agreement he has with the employer and in the construction contract. The duties of an engineer may include the following:

- 1) Issue the order to commence the works;
- 2) Supervise the works;
- 3) Issue further drawings and instructions for the due execution of the works;
- 4) Examine and approve or consent to the contractor's proposals, construction methodologies, temporary works, or construction plant;
- 5) Satisfy himself that the quality of materials to be used on site conforms to the specifications;
- 6) Inspect and test the materials and plant used for permanent works;
- 7) Supervise acceptance tests on site;
- 8) Issue orders to vary the works and fix rates;

- 9) Issue instructions on expenditure under provisional sums and prime cost items in the bill of quantities;
- 10) Measure the quantity of works completed;
- 11) Prepare and issue payment certificates;
- 12) Assess the claim submitted by the contractor;
- 13) Give an engineer's decision on any dispute or difference which may arise out of the contract;
- 14) Issue taking-over certificates and performance certificates.

The engineer manages and supervises the project delivery process generally through the acts such as giving approval, checking, issuing certificates, giving consent, carrying out examination and inspection, giving instructions, giving notices, making proposals, making requests, and doing tests. Most of these activities are performed through correspondence. Attention should be paid to the lines of communication between the engineer and the contractor. It is normal to stipulate that direct communication will be between the contractor's head office and the engineer's head office and between the contractor's project manager and the resident engineer, but never between the contractor's project manager and the engineer's head office or between the contractor's head office and the resident engineer.

## New Words

**access** /'ækses/ *n.* the right to enter a place  
进入权

**adverse** /'ædvɜ:s/ *adj.* not good or favorable  
不利的

**arbitration** /,ɑ:bɪ'treɪʃən/ *n.* the hearing and determining of a dispute or the settling of differences between parties by a person or persons chosen or agreed to by them 仲裁

**assume** /ə'sju:m/ *v.* to take power or responsibility of 接受 (权利、责任)

**commitment** /kə'mɪtmənt/ *n.* an amount of money that you have to pay regularly 需要定期支付的款项

**consent** /kən'sent/ *v.* to give your permission for sth. or agree to do sth. 同意, 允许  
*n.* permission to do sth. 许可

**coordinate** /kəu'ɔ:dɪneɪt/ *v.* to organize an activity so that the people involved in it work well together and achieve a good result 协调

**covenant** /'kʌvənənt/ *v.* to make an agreement between two or more persons 订立契约

**default** /drɪ'fɔ:lt/ *n.* failure to do sth. that you are supposed to do according to the law or because it is your duty 违约

**discharge** /'dɪstʃɑ:dʒ/ *n.* the act of performing a duty or responsibility (职责的) 履行

**expertise** /,ekspɜ:'ti:z/ *n.* special skills or knowledge in a particular subject, that you learn by experience or training 专门技能或知识

**grant** /grɑ:nt/ *v.* to give sb. sth., or allow them to have sth. that they have asked for 准予

**impartial** /ɪm'pɑ:ʃəl/ *adj.* not involved in a particular situation, and therefore able to give a fair opinion or piece of advice 不偏不倚的, 公正的

**inception** /ɪn'sepʃən/ *n.* the start or beginning of sth. 开始, 开端

**incorporate** /ɪn'kɔ:pəreɪt/ *v.* to include sth. as part of a group, system, etc. 把(某事物)并入, 包含

**intangible** /ɪn'tændʒəbəl/ *adj.* not having physical presence 无形的

**misconduct** /mɪs'kɒndʌkt/ *n.* unacceptable or bad behavior by sb. in a position of authority or responsibility 不端行为

**prejudice** /'predʒʊdɪs/ *v.* to influence sb. so that they have an unfair or unreasonable opinion about sb. or sth. 使有偏见, 使有成见

**preliminary** /prɪ'limɪnəri/ *adj.* happening before sth. that is more important, often in order to prepare for it 初步的, 预备的

**prerequisite** /pri:'rekwɪzɪt/ *n.* sth. that is necessary before sth. else can happen or be done 先决条件, 前提

**reimburse** /ri:'ɪmbʊrs/ *v.* to pay money back to sb. 偿还

**remuneration** /rɪ,mju:nə'reɪʃən/ *n.* the pay you give sb. for sth. they have done for you 报酬, 酬金

## Expressions & Terms

**adverse physical condition** 不利的物质条件

**competitive bidding** 竞标

**comply with** 遵守

**deductible limit** 最低免赔额

**domestic subcontractor** 主包自选分包商, 内部分包商

**enter into** 达成(合同、协议等)

**extension of time (EOT)** 工程延期

**feasibility study** 可行性研究

**inspector/clerk of works** 现场监工

**insurance policy** 保单, 保险单据

**insurer** 保险人, 保险公司

**joint and several liability** 连带责任

**law applicable** 适用法律

**legal entity** 法人, 法律实体

**line of communication** 交流渠道

**nominated subcontractor** 业主指定分包商

**permanent work** 永久工程(相对于承包商为实施项目搭建的、在项目结束时必须移除的临时工程)

**prime cost** 主要成本

**progress payment** 工程进度款(按工程进度分期付款)

**provisional sum** 暂定费(指在工程量或工程项不明确的情况下, 预估的一笔可能产生的费用)

**resident engineer** 驻场工程师

**scope of work** 工作范围

**specialty contractor** 专业承包商(也可称为 specialist contractor)

**suspension of work** 暂停施工

**temporary work** 临时工程

**term of payment** 付款条件



## I Questions for Discussion I

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1. What are the employer's major responsibilities?
2. What will the contractor do after he signs a construction contract?
3. What responsibilities does a general contractor have to his subcontractors?
4. If more than two contractors are performing their contractual obligations on site, what are the possible relations between them? What are their roles in the contract?
5. How many types of subcontractors are there, and what are they? What are the problems they generally face when they execute a project?
6. What are the major issues that the agreement between the employer and the engineer has to cover? What is the engineer's legal position in a project?
7. What does the engineer do from project inception to completion?
8. In your opinion, how should the three parties to a contract interact with each other? What is the role of the engineer when he mediates the dispute between the employer and the contractor?

## I Understanding Sentences I

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Read the following sentences and analyze their structures.

### Example 1

*The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.*

The core elements of this sentence are *The Contractor shall design, execute and complete the Works, and shall remedy any defects*. The Chinese translation is: 承包商应设计、实施和完成工程，并修补所有缺陷。The parenthesis *to the extent specified in the Contract* defines the scope of the contractor's design work. Its Chinese translation is 合同规定的范围。The adverbial *in accordance with the Contract and with the Engineer's instructions* states how the contractor should act, and its Chinese translation is 按照合同和监理工程师的指示。

Therefore, this sentence can be translated as: 承包商应按照合同和监理工程师的指示，（在合同规定的范围内）设计、实施和完成工程，并修补工程中所有的缺陷。

### Example 2

*The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.*

The sentence can be simplified as *The Contractor shall provide the Plant and Contractor's Documents, and all Contractor's Personnel, Goods, consumables and other things and services.* The simplified sentence is a little bit long, but its structure is simple. It has a subject-verb-object construction, and its Chinese translation is: 承包商应提供生产设备和承包商文件, 以及所有承包商人员、货物、消耗品以及其他物品和服务。

The past participle phrase *specified in the Contract* is reduced from the clause *that are specified in the Contract*, meaning 合同规定的。

The last part of the sentence, *whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects* is the apposition of the object *all Contractor's Personnel...and services*. Here, *whether of a temporary or permanent nature* is in fact an incomplete clause, which when completed should be *whether they are of a temporary or permanent nature*. Its Chinese translation is 不管是临时性质的还是永久性质的。 *Required in and for this design, execution, completion and remedying of defects* is the further explanation for this object.

Therefore, this sentence can be translated as: 承包商应提供合同规定的生产设备和承包商文件, 以及此项设计、施工、竣工和修补缺陷所需的所有临时性或永久性的承包商人员、货物、消耗品以及其他物品和服务。

## I Exercises I

I. Fill in the blanks with the words or phrases given below. Change the form where necessary.

coordinate	incorporate	comply with	enter into	consent
default	grant	remedy	assume	misconduct

1. An employer may be liable for an independent contractor's \_\_\_\_\_ if the employer was negligent in selecting or retaining the independent contractor.
2. Permission for the project to be continued is expected to be \_\_\_\_\_ within days.
3. If you fail to submit an answer within 15 days, you will be deemed in \_\_\_\_\_.

4. This service will also utilize comprehensive speech recognition for the first time and will also \_\_\_\_\_ features such as call return.
5. Failure to \_\_\_\_\_ these conditions could result in prosecution.
6. They direct and \_\_\_\_\_ activities of deans of individual colleges and chairpersons of academic departments.
7. Equal rights for women were necessary to \_\_\_\_\_ the injustices done to them over the centuries.
8. The engineer \_\_\_\_\_ a duty to prepare design documents that meet this standard.
9. David Holton and Hughes \_\_\_\_\_ an agreement with the local state attorney to settle criminal charges.
10. Planning permission is the \_\_\_\_\_ of your local authority to a proposed building project.

## II. Translate the following phrases into English.

1. 暂定费
2. 业主指定分包商
3. 工程延期
4. 驻场工程师
5. 连带责任
6. 可行性研究报告
7. 保单
8. 竞标
9. 交流渠道
10. 暂停施工

## III. Translate the following sentences into Chinese.

1. The employer “shall grant access to the Site and possession of the Site, make arrangements for payments, pay the Contract Price, disclose Site data and co-operate with the Contractor to the extent provided by the Contract. He shall also compensate the Contractor for additional cost and disruption if a risk eventuates which is borne by the Employer.”
2. The employer shall make an advance payment (if any) against a suitable guarantee from the contractor before the commencement of work. During construction, the employer shall make payments to the contractor as certified by the engineer to be due under the contract.

3. The employer will wish to ensure that the contract works insurance is in accordance with the laws and regulations of the country in which the works are to be executed, that the policy adequately covers the employer's risks, and that the deductible limits are acceptable.
4. The contractor is required to execute and complete the works in accordance with the contract and the engineer's instructions, within the time specified in the contract. In addition, he has an obligation to remedy any defects during the defects liability period (or the defects notification period).
5. The general contractor must have an adequate amount of money due and payable at the proper time to enable him to finance the work of each of his subcontractors as well as the work which he will perform directly. The general contract must specify the amount, method, and time of payments to be made by the employer to the general contractor, and the percentage of the retention money (if any) to be withheld from progress payments by the employer.
6. The engineer must act independently when administering the contract and make his judgment about matters arising therefrom fairly, without showing any bias towards either the employer or the contractor.