



CONSTRUCTION CONTRACTS :

NAVIGATING LEGALITIES IN THE
BUILT ENVIRONMENT

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PREFACE

The construction industry is a complex environment where successful project delivery depends on well-structured contracts and clear procedures. In this book, *Construction Contracts : Navigating Legalities in the Built Environment*, we aim to provide a practical and comprehensive guide to navigating the contractual processes that form the foundation of construction projects. Each stage of a contract's lifecycle is critical to achieving project goals within budget, on time, and in accordance with legal requirements.

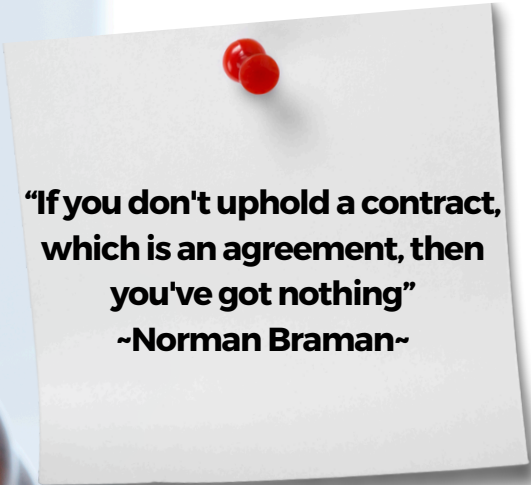

This e-book is designed for both students and professionals who are involved in or aspire to work in the construction industry. Understanding the contractual procedures and how they impact the built environment is essential for mitigating risks and ensuring project success.

We hope that this e-book will serve as a valuable resource in your journey to mastering the intricacies of construction contracts, empowering you to approach each project with confidence and clarity.

SAM
HRA

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**“If you don't uphold a contract,
which is an agreement, then
you've got nothing”
~Norman Braman~**



GENERAL LEARNING OUTCOME



Describe the
contract
procedure

Explain the
contract
procedure



SPECIFIC LEARNING OUTCOME

Describe contract and sub-contract

Explain principles of contract

Identify the features, requirements of contracts for;

- Lump sum contract
- Measure and value contract
- Cost reimbursement contract
- Turnkey contract
- Design and build contract
- Build operate transfer contract

Explain main contractor, domestic sub-contractors, nominated sub-contractors and nominated supplier



CHAPTER 1

INTRODUCTION



DEFINITION



A contract is a formal agreement between two or more parties that creates obligations or promises which are legally enforceable.

Source: Garner, Brian A. (2004). Black's Law Dictionary. Tomson West



A contract is a legally binding agreement that arises from an offer and its acceptance

Source: Martin, E. A. (2002). Oxford Dictionary of Law. Oxford University Press



INTRODUCTION



A contract is an agreement entered into between two or more people with the intention of creating legally obligations



A construction contract is a specific contract for the national construction sector that is subject to law



It is usually known as contract administration focusing on to see and solve problems that arise in managing a construction project



The Act used is Contract Act 1950

Source: Noor Khazanah et. al. (2022), 16



INTRODUCTION

A construction contract serves as a formal agreement that legally binds the client (referred to as the employer) and the contractor, specifying all the terms and conditions for the construction, repair, modification, renovation, or demolition of a structure

This document outlines the scope of work, responsibilities, timelines, payment terms, and any other requirements, ensuring that both parties understand their obligations and expectations

It also provides a framework for addressing issues such as delays, changes in work scope, or disputes, helping to protect the interests of both the client and the contractor throughout the project



PURPOSE OF CONTRACT

Obligation

To establish a relationship between the client and the contractor that clearly defines the terms, statements, and conditions

Legal compliance

The client's needs and interests regarding the contractor are clearly outlined in writing within the contract document



PURPOSE OF CONTRACT

Dispute

In the event of a dispute, the contract document serves as a reference



CONTRACT STANDARD



Standard form construction contracts are widely used but are not mandatory



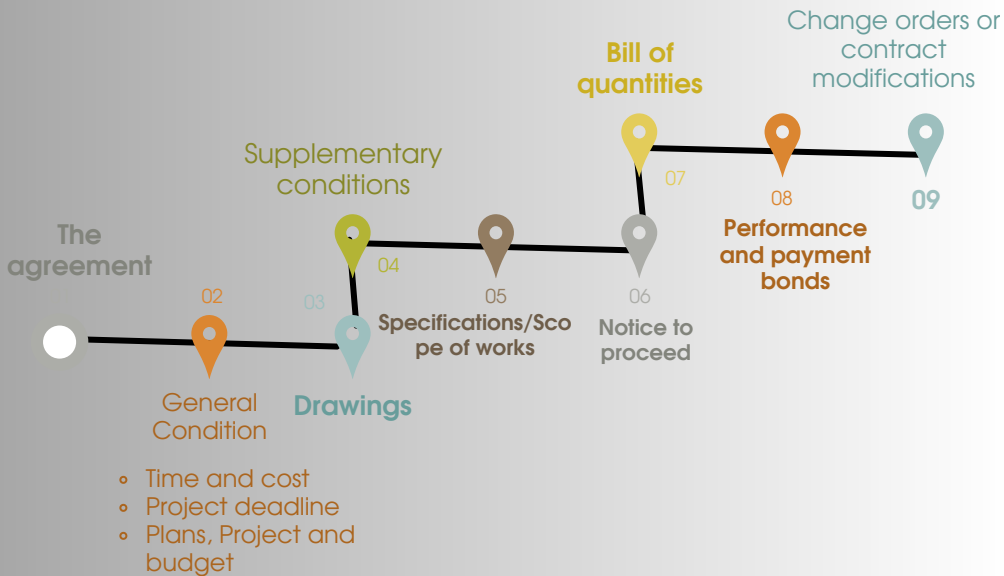
Most public sector projects use the Public Works Department (PWD) forms.

Source: Noor Khazanah et. al. (2022), 128



WHAT SHOULD BE INCLUDED IN CONTRACT DOCUMENTS?

Construction contract documents generally include:



CONTRACT STANDARD

GOVERNMENT OF MALAYSIA

STANDARD FORM OF CONTRACT TO BE USED
WHERE BILLS OF QUANTITIES FORM PART OF
THE CONTRACT

P.W.D. FORM 203A (Rev. 1/2013)

Between the government (as employer) and contractor:

- PWD Form 203A (where bills of quantities form part of the contract)
- PWD Form 203 (contract based on drawings and specifications)

GOVERNMENT OF MALAYSIA

STANDARD FORM OF CONTRACT
PWD FORM 203N (Revised 1/2013)
For Nominated Sub-Contractor
Where The Main Contract Is Based Upon
PWD Form 203 Or 203A

Between the contractor and the nominated subcontractor:

- PWD Form 203N

GOVERNMENT OF MALAYSIA

STANDARD FORM OF CONTRACT
PWD FORM 203P (Revised 1/2011)
For Nominated Suppliers
Where The Main Contract Is Based Upon
PWD Form 203 Or 203A

Between the contractor and the nominated supplier:

- PWD Form 203P

GOVERNMENT OF MALAYSIA

STANDARD FORM OF DESIGN AND BUILD CONTRACT
PWD FORM DB (Rev. 1/2010)

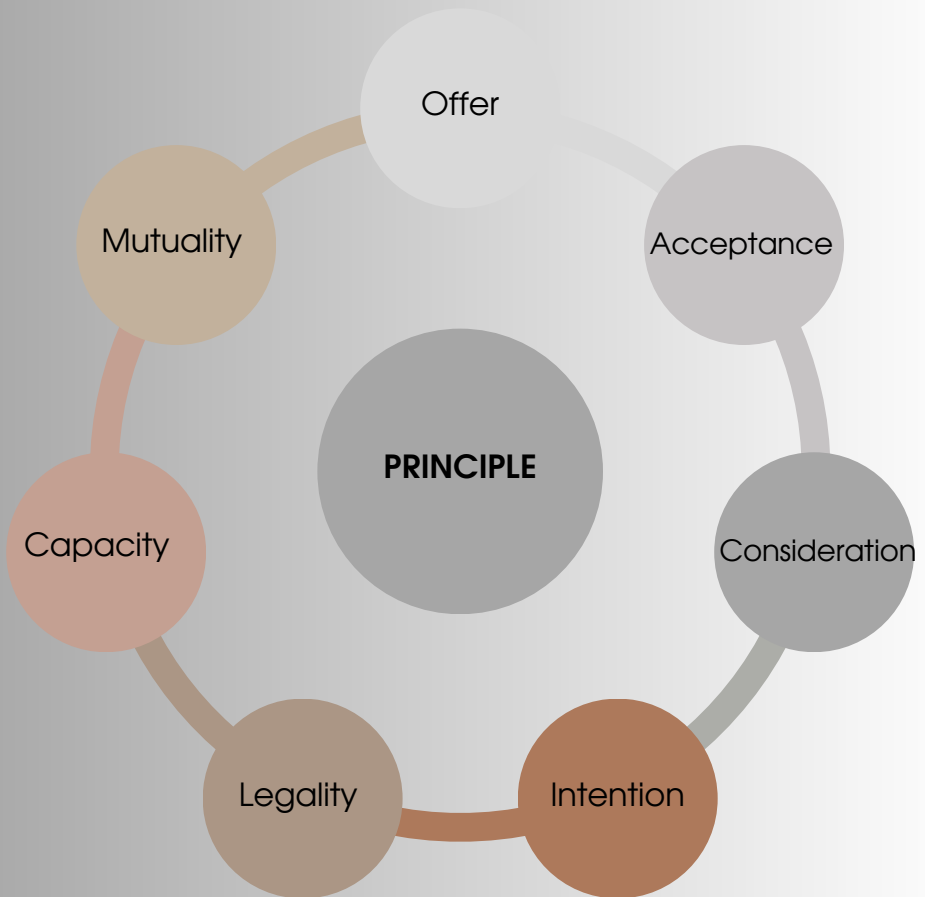
Design and build system of procurement:

- PWD Form DB

Source: PWD Form



PRINCIPLE OF CONTRACT



PRINCIPLE OF CONTRACT

| PRINCIPLE | DESCRIPTION |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Offer | Clients states attention to propose and invites contractor to execute the planned project |
| Acceptance | Contractor accepts the client's proposal without other conditions imposed other than as stated in the contract and will not breach all the conditions stated in the contract |
| Consideration | Action taken by the recipient to accept the tender/offer. Tender acceptance is usually done either verbal, in writing or by action |
| Intention | Client and contractor intend to bind the sincere, responsible and mutual relationship and will not breach all the conditions stated in the contract |



PRINCIPLE OF CONTRACT (CONT'D)

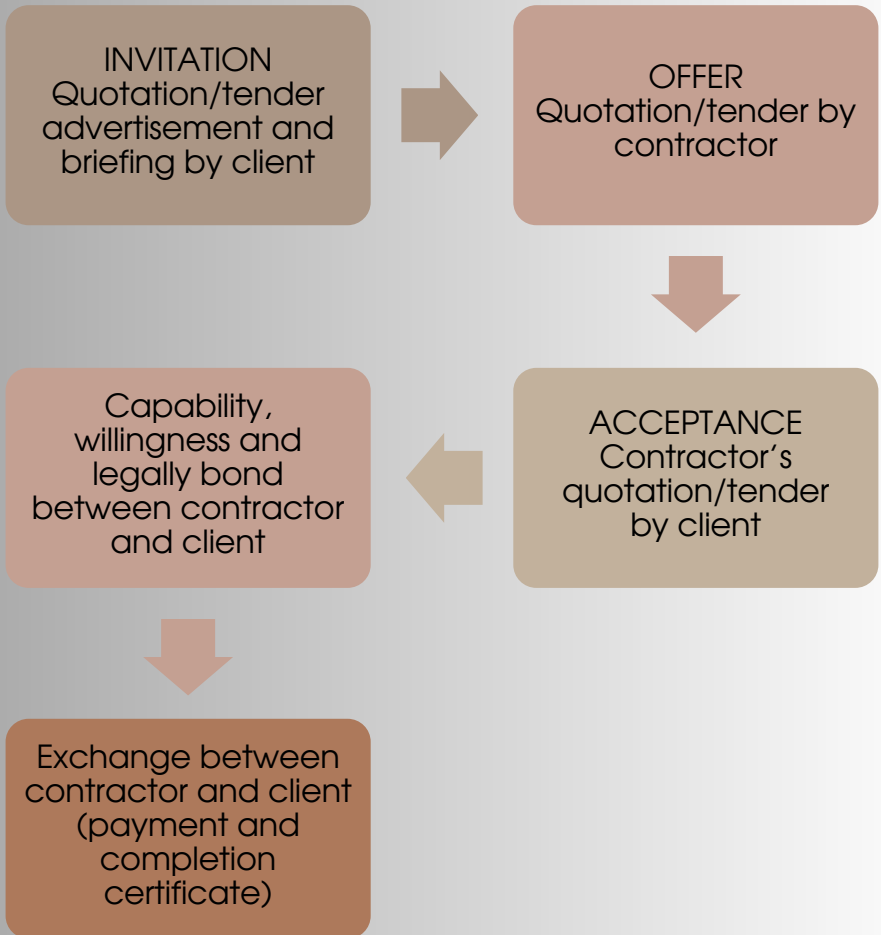
| PRINCIPLE | DESCRIPTION |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legally | <p>Any agreement between the proposer and the receiver (client and contractor) is legal according to Government's law stated in the contract</p> <p>Agreement that violates state law is invalid and cannot be enforced in accordance with the Contract Act 1950</p> |
| Mutuality | <p>Bound contract does not burden of both parties (client and contractor) and will not create problems during its execution</p> |
| Capacity | <p>No record such as careless work, breach of contract, or bad work performance before binding the contract</p> |

Source: Noor Khazanah et. al. (2022), 126

Mohd Nazir Ismail (2016), 2&3



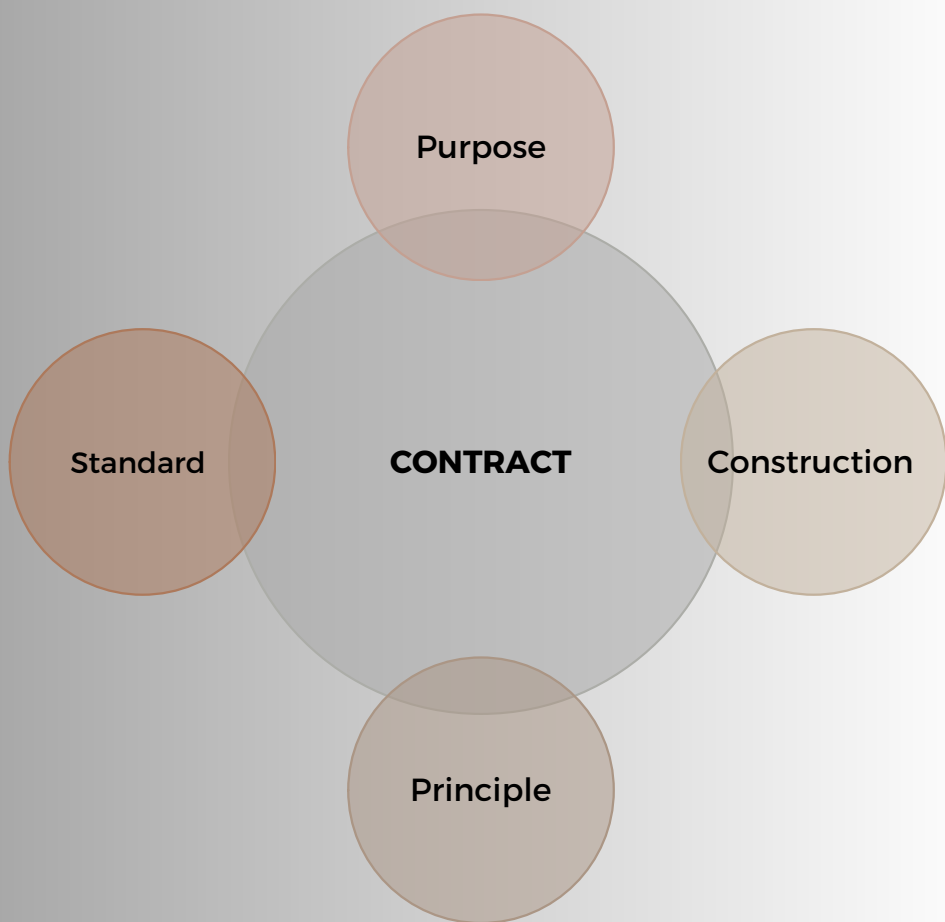
CONTRACT PROCESS



Source: Noor Khazannah et. al. (2022), 21



END OF CHAPTER 1

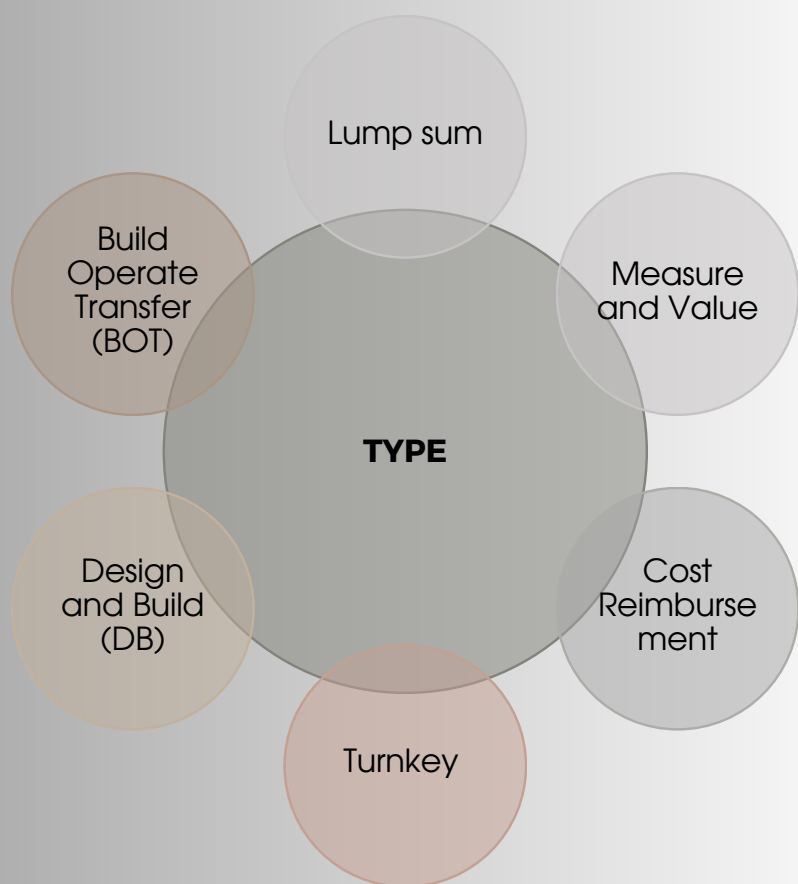


CHAPTER 2

TYPES OF CONTRACT



TYPE OF CONTRACT



LUMP SUM CONTRACT

1. Based on drawings and specifications

Suitable for projects that are simple and need to be completed quickly

The contractor only refers to the drawings and specifications that state the quality and quality of the work as a guide to price the tender

The contractor needs to make serious research on the drawings and specifications to avoid mistakes in putting the price in the tender which brings risks to the contractor



LUMP SUM CONTRACT (CONT'D)

2. Based on drawings and bill of quantities

Tender documents containing drawings and bill of quantities provide accuracy and fairness to the contractor

This contract facilitates the payment of progress payments and variations can be calculated easily



LUMP SUM CONTRACT (CONT'D)

3. Based on drawings and schedule of rates

This type of contract is suitable for urgent projects where the preparation of documents is short or for building maintenance work

The contractor must provide a price quote for each item specified



MEASURE AND VALUE CONTRACT

Suitable for projects that need to be kept secret such as prisons

The price is difficult to determine because there is no provision of drawings and equivalent materials

The contractor only fills in the percentage of the price in the schedule of rates which contains the description of the work and materials to be used

Payments are made based on the work completed and the price rate in the contract



COST REIMBURSEMENT CONTRACT

In this contract, the contractor will receive payment of all project costs along with the agreed fees

The cost reimbursement consists of the cost of materials, labor costs, machinery and equipment costs issued by the contractor for the implementation of the project

The fee in this contract covers overhead cost and profit

The selected contractor has good performance, is skilled and is believed to be able to complete the project in time, cost and quality of the client

This contract is divided into 3 types which are cost reimbursement and fixed fees, cost reimbursement and percentage and cost reimbursement and targeted fee



TURNKEY CONTRACT

The contractor is responsible for managing from the design stage until the construction is completed and the project is handed over to the client

Suitable for mega projects, complicated and requiring a relatively long construction period

The selected contractor is authoritative and believed to be capable of making the construction project a success

The client is only involved at the initial stage to ensure that all requirements are met in the contract

An example is a hospital construction contract and the contractor must also provide beds, laboratory equipment and hospital supplies



DESIGN AND BUILD CONTRACT

Contract is almost similar to turnkey and the only difference is the scope of work

The contractor is only responsible for the design and construction work without involving the supply of equipment for the building

Usually the client will make a separate supply contract for the needs of the building



BUILD OPERATE TRANSFER CONTRACT

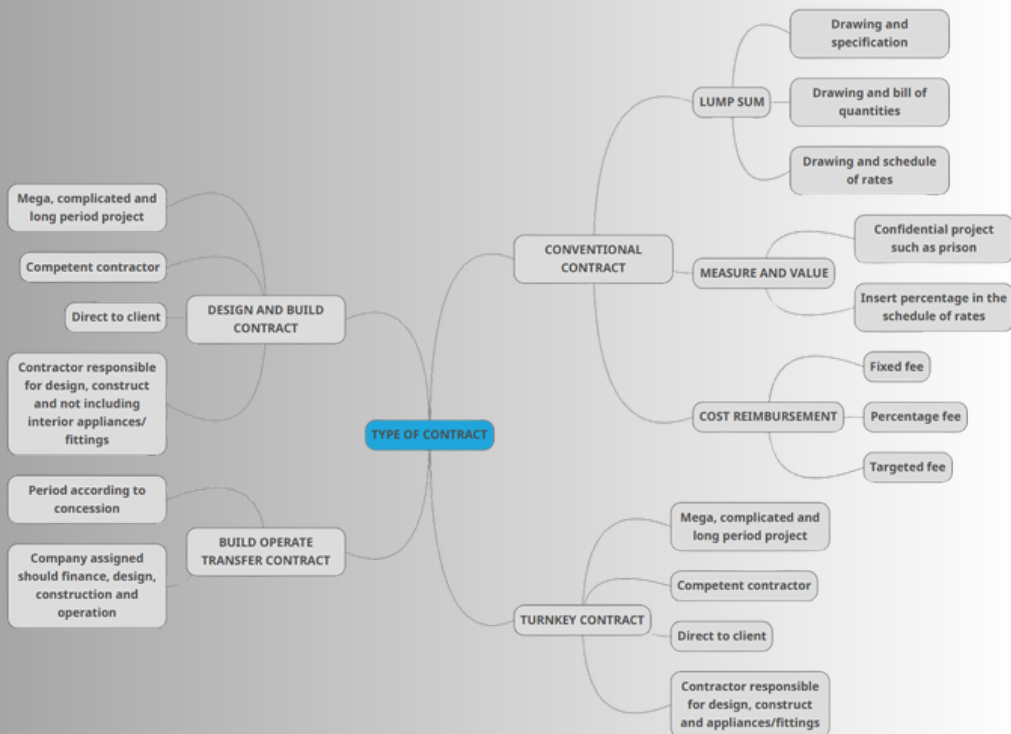
In this contract, the client is usually the government, which will grant concessions to private companies to finance, build and operate the project

The company will operate the project possibly for 20 or 30 years to recover its investment through toll collection or rent and will hand it back to the government after the concession period expires

An example of the first BOT project is the North South Highway Project (PLUS)



END OF CHAPTER 2



CHAPTER 3

PARTIES INVOLVED IN CONTRACT



Main contractor

- An individual that signs a contract to perform a part or all of the obligations
- Direct contractual relationship between the client

Sub-contractor

- A sub-contractor is an individual that signs a contract to perform a part of the obligations of another's contract

Nominated supplier

- Appointed by owner to supply material and construction item to main contractor for the project
- Contract with main contractor
- Payment by the main contractor



Nominated sub-contractor

- Direct contractual relationship between the client
- Payment by the owner/client
- Special work - piling work, electrical work, water supply, air conditioning work, fire prevention and others

Domestic sub-contractor

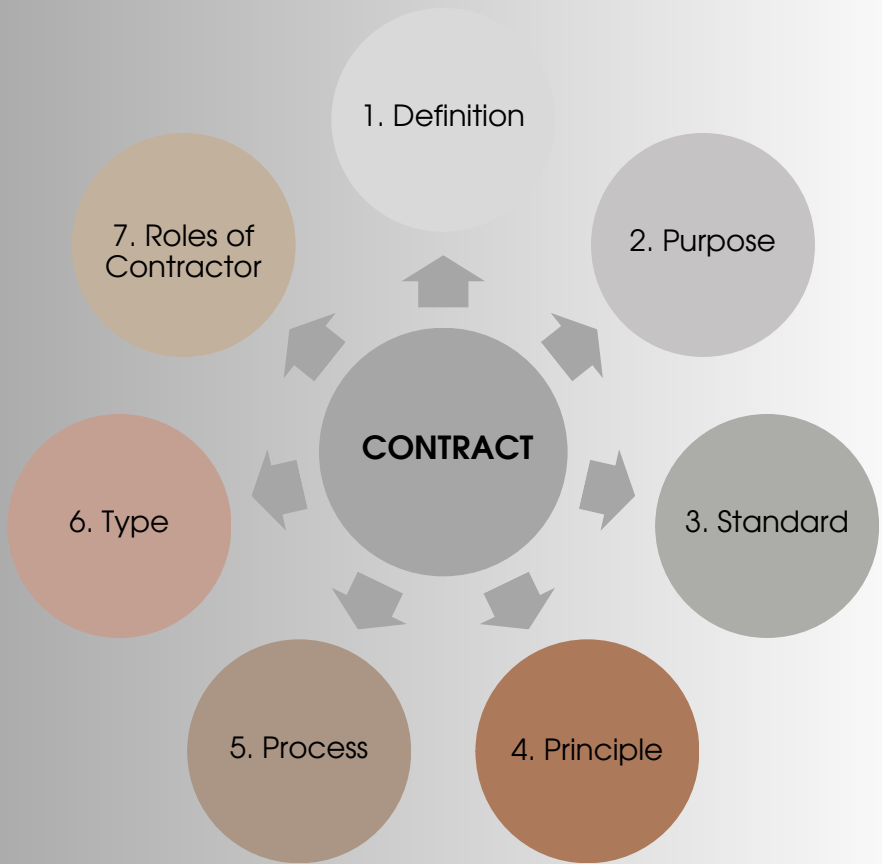
- A sub-contractor is hired by a main contractor to perform a specific task as part of the overall project
- Payment by the main contractor
- Types of domestic subcontractor :
 - i. Material – supply goods (nominated supplier)
 - ii. Labour - skilled, semi-skilled and unskilled



SUMMARY



SUMMARY



TUTORIAL

1. Define **contract and sub contract** in construction industry.
2. Identify these terms:
 - a. domestic sub-contractor
 - b. nominated sub-contractor
 - c. main contractor
 - d. nominated supplier
3. Explain the following principles of contracts:
 - a. offer
 - b. acceptance
 - c. intention
4. **Lump sum contract** is a type of contract commonly applied in the construction industry. Explain briefly **FIVE (5)** characteristics of a lump sum contract.
5. **Turnkey contract** is one of the contracting methods used in construction industry. Identify **FIVE (5)** characteristics of the contract.

SELF ASSESSMENT 1

1. Based on the Contract Act 1950, **list FIVE (5)** principles of contract.
2. A sub-contractor is a person or a company that has been selected to carry out on behalf of the main contractor. **Compare FOUR (4)** differences between domestic sub-contractor and nominated sub-contractor.
3. Design and built contract is another contracting method used in the construction industry. **Identify FIVE (5)** characteristics of the contract.



http://bit.ly/self_assessment_contract_1



SELF ASSESSMENT 2

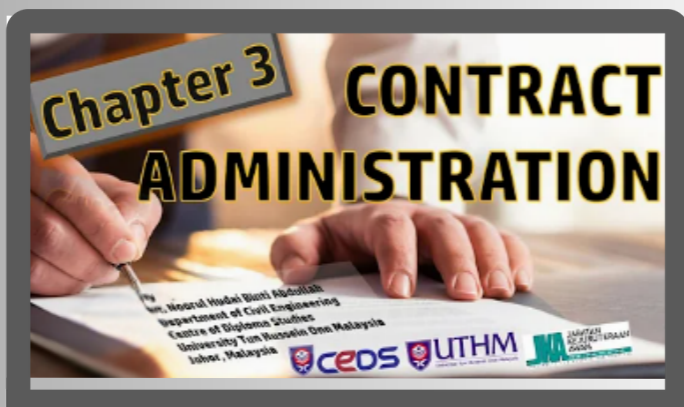
1. **Define** contracts in the construction industry.
2. A lump sum contract is one of the construction contracts. **Explain TWO (2)** types of Lump Sum Contracts.
3. **Differentiate** elements of cost reimbursement contract and measure & value contract.



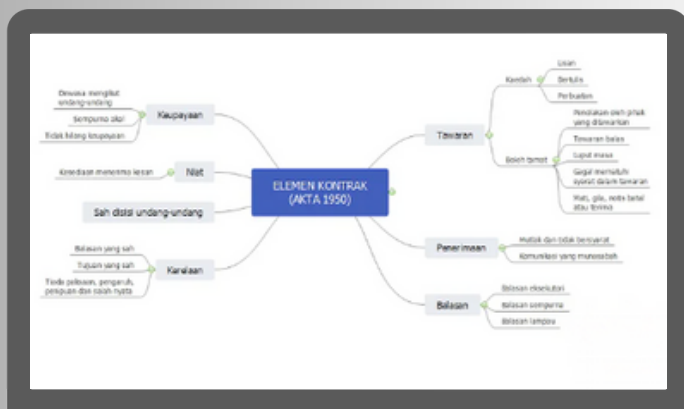
http://bit.ly/self_assessment_contract_2



ADDITIONAL INFORMATION



<https://www.youtube.com/watch?v=qrxH0H34gDw>



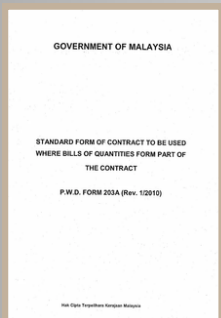
<https://www.youtube.com/watch?v=qrxH0H34gDw>



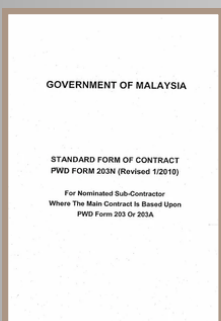
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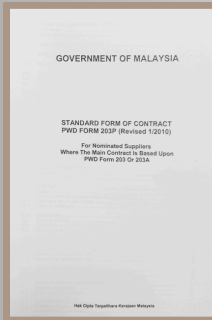
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“A promise should be as binding
as a contract”

~Frank Sonnenberg~





Thank
you!

