

Risks in data centre construction

Perspectives from across the industry

September 2026

Contents

Foreword	03
Theme 1: Structuring contractual risk and pricing in data centre contracts	04
Theme 2: The OFCI Paradox: Why a procurement model designed for certainty divides the industry	08
Theme 3: Insuring the uninsurable? Risk transfer challenges in data centre construction	10
Theme 4: What happens when risk crystallises?	14
Theme 5: How can risk best be managed?	20
Appendix: Questions	24
Appendix: Methodology	26
Appendix: Glossary	28
Appendix: Editorial team	30

Foreword

Data centres have become as fundamental to modern economies as roads, railways and the power grid. They are now seen as “critical national infrastructure”, where thousands of computer chips train AI models to carry out advanced problem-solving from everyday tasks such as generating content from an OpenAI GPT prompt to sophisticated medical diagnostics. The eye-watering sums of money pouring into AI are fuelling the development of ever bigger and more complex data centre infrastructure. With the delivery of this new class of global infrastructure comes a unique level of technical complexity and risk that demands closer attention from all industry participants. To better understand how risk is perceived, allocated, transferred, and managed across the sector, we surveyed 123 professionals spanning developers, contractors, suppliers, investors, consultants, and tenants involved in data centre projects worldwide.

The findings are revealing, indicating trends and challenges for the construction industry. The industry is divided on whether established procurement models such as OFCI reduce or increase risk. An overwhelming 94% of respondents see benefit in a standard suite of data centre construction contracts – a clear market signal. Insurance, long assumed to be a reliable backstop, proves difficult to obtain for 65% of respondents, leaving substantial residual risks unaddressed. Interestingly, when disputes do arise (60% of respondents having escalated to formal resolution), project delays are their leading cause, but the prospect of further delays caused by formal dispute resolution ensure early resolution.

Perhaps most thought-provoking is what the data reveals about perception gaps: different parties to the same transaction often hold fundamentally different views of where risk sits and who bears its consequences.

The five articles that follow explore these themes in detail – from how risk is structured and allocated, through the limits of insurance as a transfer mechanism, to the realities of dispute resolution and the forward-looking question of how risk can be managed or avoided altogether. We hope the data challenges assumptions and prompts fresh thinking about how this sector manages its most significant risk exposures.

Authors



Steven Williams



Kevin O'Shea



David Parton



Matthew Taylor



Karen Arch



Jack Deung



Mark Breslin



Melissa Moriarty



Steven Williams

Co-head of Infrastructure, Construction and Energy Disputes, CMS.

“The pace of technological change and the sheer amount of investment in AI is making it very difficult for the global construction industry to build data centres quickly enough to meet demand. Whilst developers and customers will do all that they can to resolve time and money disputes to get data centres operational, the complexity of such infrastructure projects coupled with a limited skilled supply chain means that formal disputes are inevitable. Understanding such unique construction risks and seeking a fair allocation of risk in contracting will certainly reduce the prospect of disputes – but the sector would do well to go further and adopt more collaborative arrangements by integrating stakeholders in alliancing and JV arrangements to spread risk and ensure a joined-up project approach.”

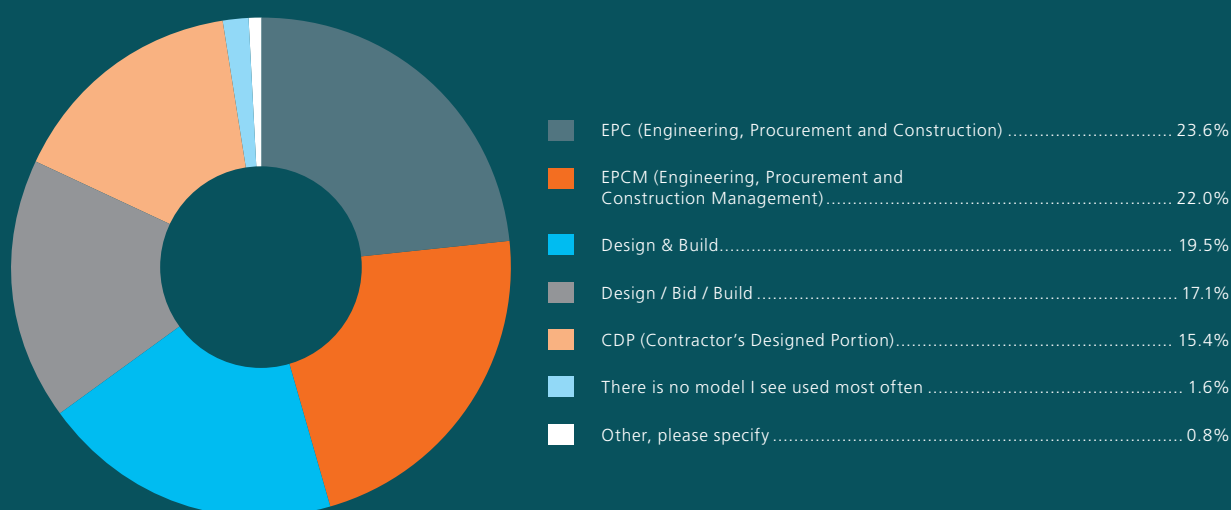
Theme 1

Structuring contractual risk and pricing in data centre contracts

We asked 123 respondents from across the data centre industry a series of questions about the pricing structure and contract model they see used most often, and their preferences. Although there was no consensus on either contract model or pricing structure, the following patterns emerged:

- Respondents reported having seen FIDIC, JCT, NEC and bespoke contracts used fairly equally, with FIDIC being used slightly more often than the other standard forms.
- An overwhelming majority (94%) of respondents considered there would be benefit in having a standard suite of construction contracts specifically for the data centre industry.
- No one pricing structure currently stands out as dominating the industry.
- Favoured pricing structure differed by business type, with developers tending to prefer lump sum/fixed price contracts.

Contract models most often used



Contract model

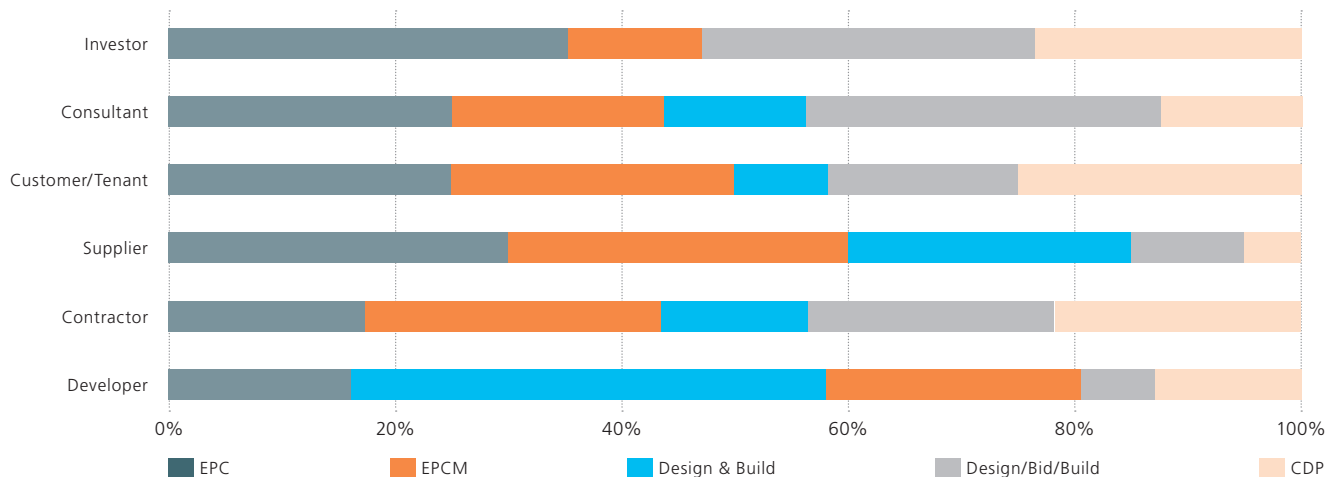
Data centre contracts are currently procured using a wide variety of contract models. When asked which contract model they see used most often, 98% of survey respondents pointed to one of the following five models: EPC (24%); EPCM (22%); Design & Build (20%); Design/Bid/Build (17%), and CDP (15%).

Whilst no single contract model predominates, we can draw some conclusions. Single party delivery models (EPC and Design & Build combined) made up 44% of responses, narrowly outweighing the models with a split responsibility approach (EPCM and Design/Bid/Build) with a 39% share.

We also looked at respondents' types of business and their correlation with forms of contract.

- 42% of developers identified Design and Build as the contract model they see most frequently. However, its visibility varies considerably by business type, with only 12.5% of consultants and no investors identifying it as their most commonly encountered model.
- Investors most commonly encounter EPC contracts (33%) and Design/Bid/Build contracts (28%).
- Consultants most commonly see Design/Bid/Build contracts (31%), a higher proportion than any other business type.
- Contractors report a relatively even spread across all five contract models, with EPCM the most common at 25%.

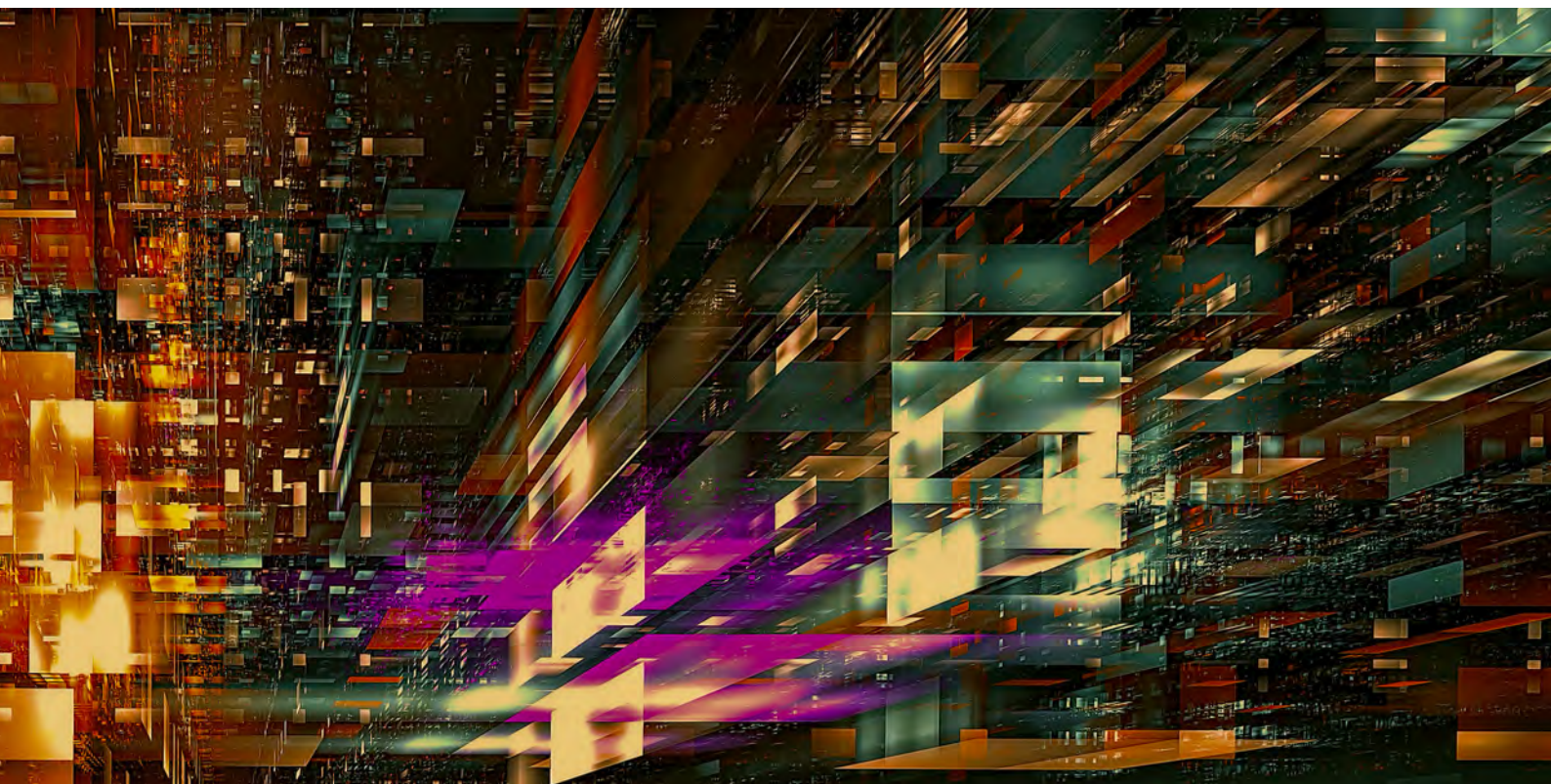
Business type by contract model



Interestingly, the responses reflect a large regional disparity in the use of Design & Build, with only 5% usage in the Middle East compared with 40% in the Asia-Pacific region: the greatest regional disparity of all the models.

EPCM is used by 22% of all survey respondents. However, it is disproportionately a UK phenomenon (27%), with its use dropping sharply amongst respondents from outside the UK (4%-18%).

Notably, a significant proportion of users of bespoke contract cited EPCM as their most commonly encountered contract model. This may reflect a number of recent supply-chain insolvencies that have affected the UK construction industry, with many affected projects being completed on a construction management basis.

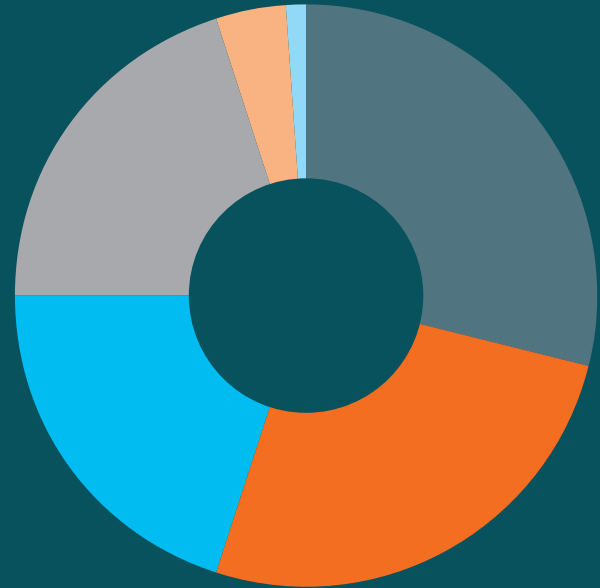


Pricing structure

No single pricing model dominates data centre development. There is a fairly even spread, with Target Cost / Guaranteed Maximum Price being used most often (29%) and Remeasurable / Schedule of Rates the least used (20%). Unsurprisingly, Target Cost / Guaranteed Maximum Price taken together with Lump Sum / Fixed Price accounted for 55% of total responses, indicating that cost certainty remains a key driver in procuring these projects.

Target Cost / Guaranteed Maximum Price	29%
Lump Sum / Fixed Price	26%
Cost Plus / Cost Reimbursable	20%
Remeasurable / Schedule of Rates	20%
There is no structure I see used most often	4%
Other	1%

Pricing structures most often used



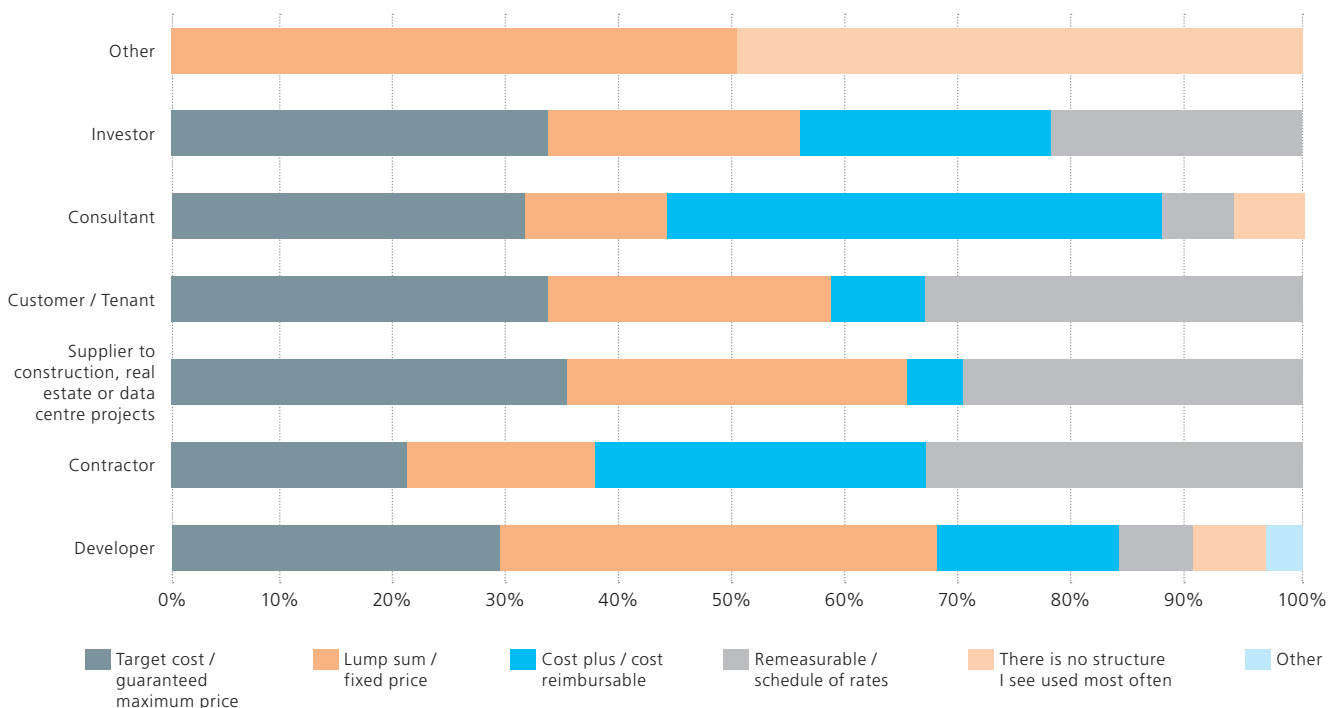
Pricing structures reflect organisational frameworks. Developers have a strong preference for Lump Sum / Fixed Price structures (39%), understandably since they value cost certainty and clarity of outcome for their projects.

Contractors, by contrast, prefer Remeasurable / Schedule of Rates (33%), the highest of any group. Not only do these methods assist with the management of pricing and cost risk, but they are better able to deal with unforeseen scope creep, as

well as minimising the risk of mispricing which contractors may encounter when using Lump Sum / Fixed Price contracts.

Consultants favour Cost Plus / Cost Reimbursable (44%, more than double the average of 20%). We can assume that this preference is because they are more heavily involved in the calculation and procurement of these contracts and are likely to benefit from additional fees in maintaining and running these structures.

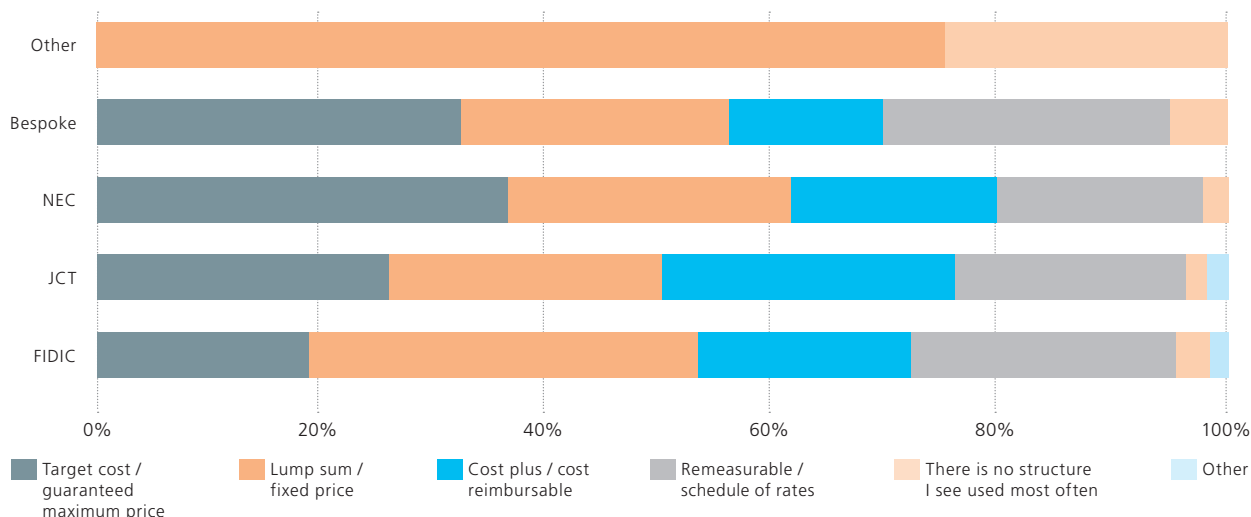
Pricing structure by business type



We were also able to determine a correlation between preferred form of contract and pricing model preference. Respondents who reported using NEC and bespoke contracts leaned more towards Target Cost / Guaranteed Maximum Price (37% and 32% respectively). FIDIC respondents favoured Lump Sum / Fixed Price structures (34%).

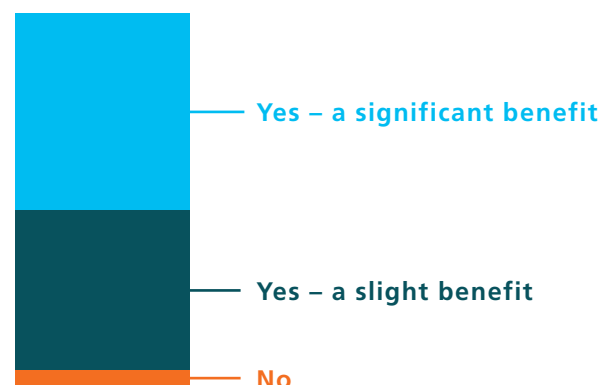
Cost Plus / Cost Reimbursable pricing structures were evenly distributed across construction contract types. None of these results were surprising since NEC's Option C contains a target cost mechanism, while FIDIC's Red Book is more naturally aligned with the Lump Sum / Fixed Price pricing structure.

Pricing structure by construction contract types



Would the industry benefit from a standard suite of data centre contracts?

When asked whether there would be a benefit in having a standard suite of construction contracts specifically for the data centre industry, an overwhelming majority, 94% of respondents, agreed. This response was consistent amongst users of all the standard forms of contract, as well as across business types, with 100% of tenants, consultants and contractors favouring a standard suite, and only a slightly lower percentage (87%) of developers.



Takeaway

The survey presents a picture of an industry crying out for its own standard form. Given the wide variety of contract models that are currently encountered, as well as the variety of pricing structures, it is easy to see how a standard form could save parties time and cost in negotiating amendments. As respondents' preferred pricing structure is largely determined by their business type, any move to a standard suite of data centre contracts would require the adoption of a default pricing mechanism. It will be interesting to see whether any one pricing mechanism prevails.



David Parton

Head of Construction and Engineering, CMS

"94% of respondents saw clear value in a standard suite of construction contracts – an overwhelming endorsement of the principle. Yet endorsement and execution are very different things. Who will take the pen on drafting such a suite? Should it be developer-led, hyperscaler-led, or driven by the supply chain? Perhaps more pointedly, how much influence will project financiers and their legal advisers demand over the final form - and will the industry ultimately adopt it when pitched against contract forms that are already deeply entrenched in the market?"

Theme 2

The OFCI Paradox: Why a procurement model designed for certainty divides the industry

What is OFCI?

By allowing developers to secure critical equipment directly, the owner-furnished, contractor-installed procurement model (or “**OFCI**”) offers developers the prospect of greater control over cost, quality and supply chains. Yet the reality is more complicated. While OFCI has the potential to eliminate some traditional procurement risks, it can also create new interfaces, new liabilities and new opportunities for dispute.

An industry divided

The survey data shows that industry opinion is divided as to whether OFCI delivers certainty or simply shifts risk from one party to another. Nearly half of respondents (49.6%) agreed that OFCI introduces uncertainty into the construction schedule and exposes parties to risk, while at the same time 40.7% considered that it provides certainty and reduces risk. This striking split suggests that OFCI is inherently neither a risk-reduction mechanism nor a risk-creation mechanism. Rather, it fundamentally changes where risk sits.

- From a developer’s perspective, OFCI can create greater certainty in several respects. Direct procurement provides control over equipment selection, enables standardisation across portfolios and can generate cost savings through economies of scale. The survey reflects this perspective: developers were more likely than any other group to identify potential cost savings from OFCI. However, the same survey shows that developers were among the groups

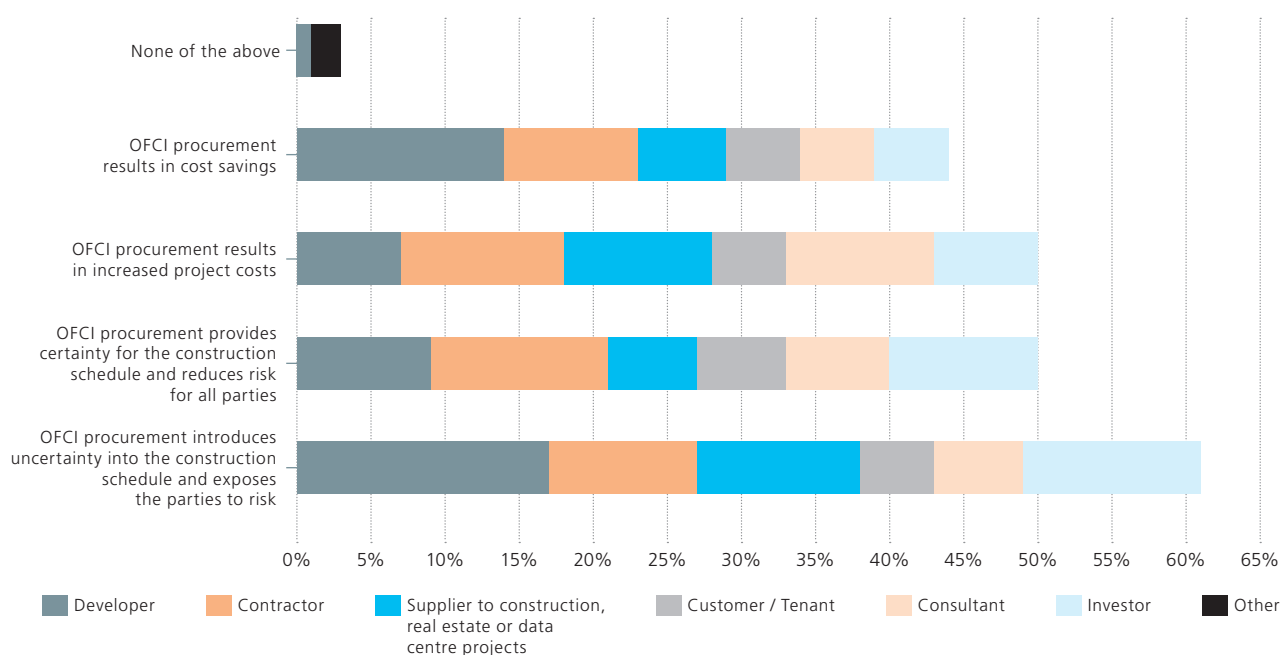
most likely to believe OFCI introduces uncertainty and risk. This is perhaps unsurprising because many of the key risks of a traditional construction project transfer from the contractor to the developer under the OFCI model, particularly the risk of project delays.

- For main contractors, the picture is more nuanced. Contractors were one of the few stakeholder groups more likely to view OFCI as creating certainty rather than risk. This is understandable as removing responsibility for procuring long-lead equipment should reduce their exposure to supply-chain volatility and market pricing fluctuations. Nevertheless, at a practical level, contractors remain highly exposed to the consequences of delays, defects and interface failures involving OFCI equipment.

OFCI – a cause of disputes?

- We are already seeing a significant number of disputes arising from OFCI procurement. Where equipment fails performance tests or defects emerge during commissioning, determining whether the root cause lies with the equipment supplier, the installer, the designer or another party can be highly complex.
- Such disputes frequently evolve into broader arguments about extensions of time and loss and expense claims which can be costly for all parties involved. Unresolved disputes can cause headaches for contract administrators and further project delays if parties are unable or unwilling to move forward when questions of liability remain outstanding.

Perceptions of OFCI by business type



Is there a better way?

Perhaps the key question, therefore, is not whether OFCI itself is inherently risky, but whether the interfaces it creates are properly managed and whether the risk sits with the party best able to manage it.

Several practical measures could help to reduce OFCI-related disputes:

Practical measure

Purpose / impact

Define roles and responsibilities with precision

Contracts should clearly identify responsibility for design integration, assembly requirements, ancillary components, testing and commissioning activities, and final connections.

Draft equipment supply agreements with downstream risks in mind

Supply agreements should address delay-related costs and consequential losses that may arise if equipment fails or arrives late.

Integrate OFCI procurement into the project programme

Delivery milestones should be fully integrated so that changes to equipment delivery dates flow through to construction sequencing and commissioning activities.

Use pre-agreed dispute resolution mechanisms

Expert determination panels or similar mechanisms can help establish responsibility quickly before project delays escalate.

Takeaway

Ultimately, OFCI offers developers the prospect of greater commercial certainty, procurement control and standardisation. However, it also introduces significant interface and schedule risks that can become fertile ground for disputes if poorly managed. The survey results suggest the

market has not reached a consensus on whether OFCI creates certainty or risk because, in reality, it does both. Success depends less on the procurement model itself and more on the quality of the contracts, programme management and governance structures that sit behind it.

Theme 3

Insuring the uninsurable? Risk transfer challenges in data centre construction

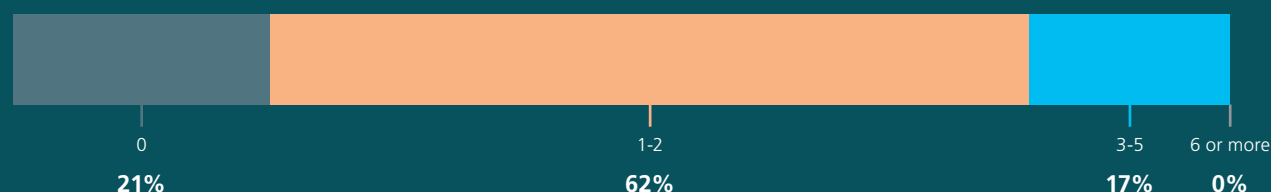
Insurance is one of the principal mechanisms by which risk is transferred on construction projects. In the data centre sector, however, our survey data suggests that the effectiveness of this mechanism is under significant strain.

Claims are widespread

The majority of respondents involved in data centre projects have made at least one insurance claim, with only 21% reporting zero claims. The most common frequency band was one to two claims (62%), followed by three to five (17%).

Contractors stand out: nearly all (94%) have made at least one claim – the highest claims-experience rate of any business type – while developers reported a somewhat lower rate of 79%.

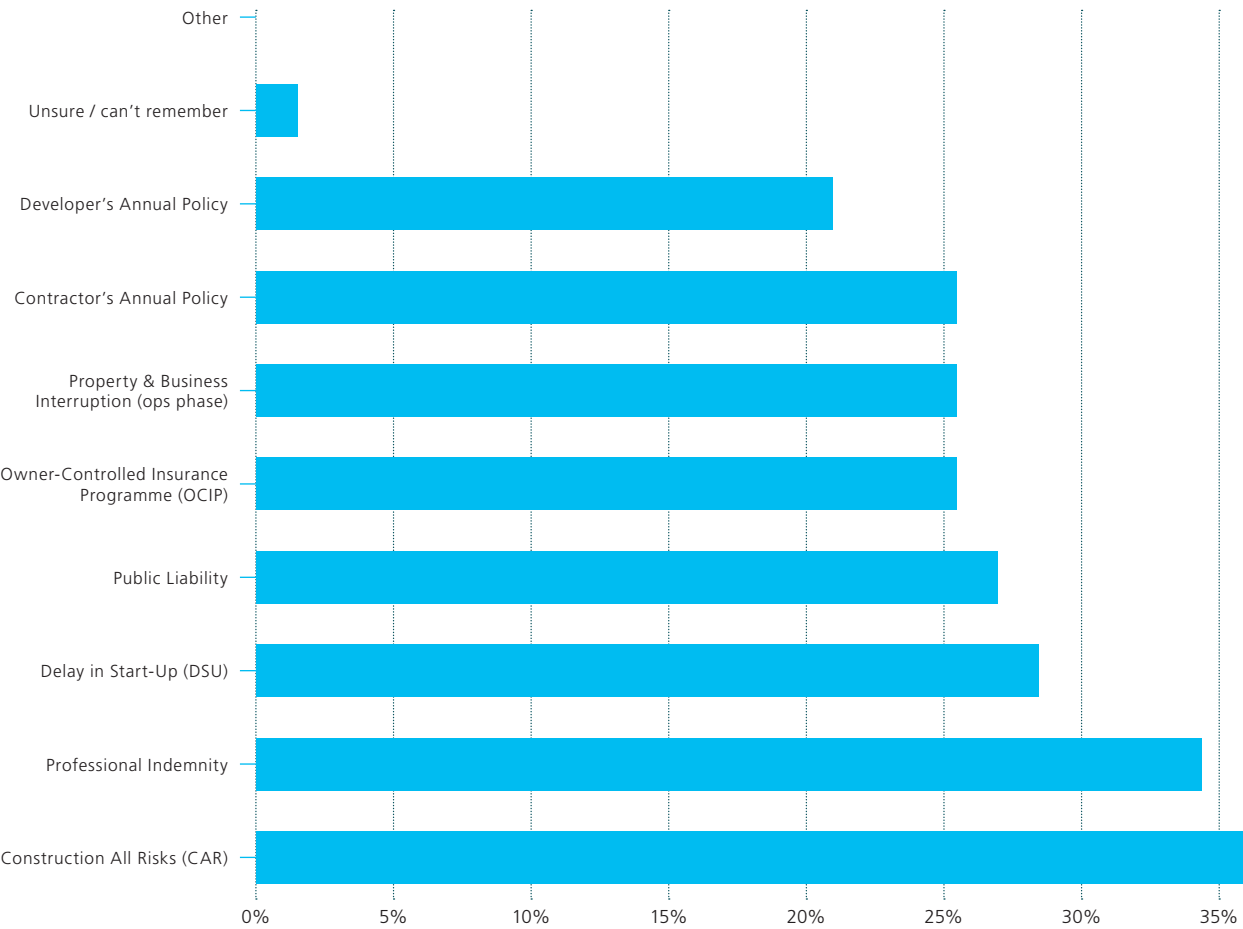
Number of insurance claims made by respondents



The policy types most commonly triggered were Construction All Risks (36%), Professional Indemnity (34%), Delay in Start-Up (28%), and Public Liability (27%). Owner-Controlled Insurance Programmes and Property & Business Interruption each featured

in around 25% of claims. The prominence of CAR and Professional Indemnity as claim types is consistent with the high-value, design-intensive nature of data centre construction.

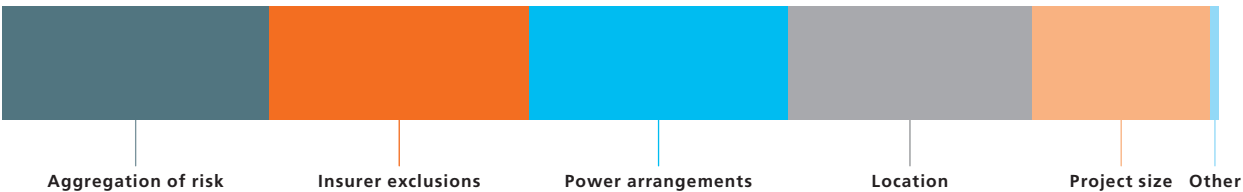
Types of insurance policy involved in claims



Notably, respondents using NEC-form contracts showed a comparatively elevated claims profile – both in frequency and in the breadth of policy types involved – compared with those using FIDIC,

JCT or bespoke forms. This pattern recurs throughout the responses and is a finding that merits further consideration.

Drivers of insurance procurement challenges



Obtaining cover is difficult

Almost two-thirds (65%) of respondents reported difficulty in obtaining adequate and affordable insurance cover for data centre projects. This is a significant finding: it indicates that insurance as a risk transfer mechanism has real limitations in this sector, meaning that contractual risk allocation may be doing more heavy lifting than parties assume if the insurance backstop is unreliable.

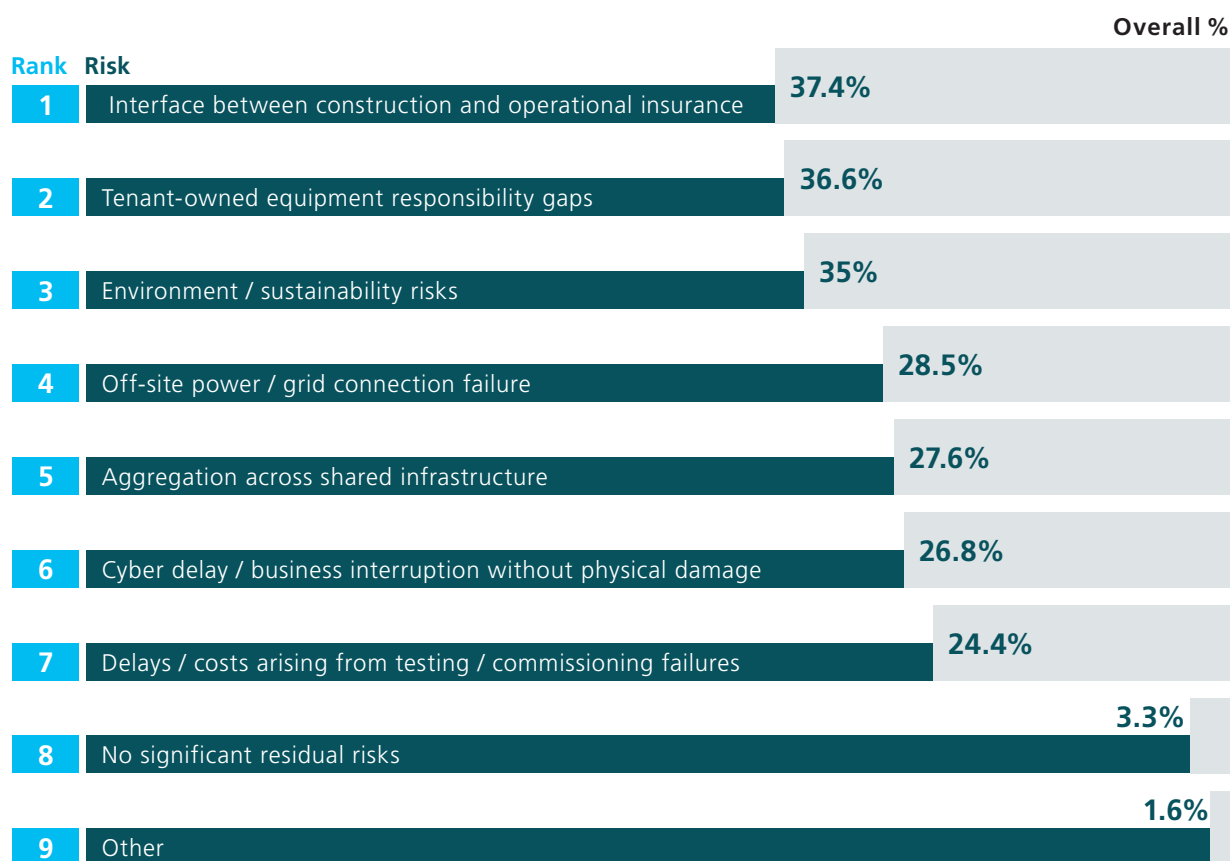
The principal drivers of those difficulties were broadly spread, with aggregation of risk (41%), insurer exclusions (40%) and power arrangements (40%) ranking highest. Aggregation risk is a particular feature of the data centre sector given the concentration of value in single locations, while the prominence of power arrangements as a driver connects directly to the broader finding elsewhere in this report that access to energy is the top forward-looking risk facing new projects.

Gaps remain

When asked about the most significant residual or uninsured risks, only 3% of respondents said there were none. The leading concerns were the interface between construction and operational insurance (37%), tenant-owned equipment responsibility gaps (37%), and environmental or sustainability-related risks (35%).

Off-site power and grid connection failure (29%), aggregation across shared infrastructure (28%), and cyber-related delay or business interruption without physical damage (27%) followed closely.

Uninsured risks



Most significant residual/uninsured risks

These results point to several practical challenges. Interface risk – the gap between construction-phase and operational-phase insurance programmes – is a structural problem rather than a simple coverage gap. Phased handovers, early energisation and sectional completion all create periods where responsibility may fall between two stools, and standard CAR and operational property policies may not seamlessly dovetail. Contractual mechanisms such as joint-names insurance obligations, handover protocols or bespoke wrap-up arrangements may help bridge these gaps.

The emergence of environmental, sustainability and cyber-related risks highlights the growing relevance of exposures that fall outside traditional policy coverage. Whether the market is developing bespoke products for these risks, or whether contractual indemnities must fill the void, is a question the industry will need to address.

Takeaway

Insurance remains a critical tool for managing risk on data centre projects, but our survey suggests it is not operating as effectively as the market needs. Two-thirds of respondents face difficulties obtaining adequate cover. Given that the primary causes, namely aggregation limits, exclusions and power arrangements are embedded features of the sector, the resulting gaps in cover appear to be structural rather than incidental.

For those developing, investing in or advising on data centre projects, this reinforces the importance of treating insurance programme design and contractual risk allocation as complementary workstreams rather than alternatives.



Kevin O'Shea
Partner, CMS

"Our survey reveals that insurance – the construction industry's principal risk transfer mechanism – is under significant strain in the data centre sector. With two-thirds of respondents struggling to obtain adequate cover, claims widespread across nearly all contractor respondents, and structural gaps persisting at the interface of construction and operational phases, it is clear that contractual risk allocation is doing far more heavy lifting than many parties assume. The message for developers, investors and advisers is straightforward: insurance programme design and contractual risk allocation must be treated as complementary workstreams, not alternatives, if the sector is to manage its rapidly evolving risk landscape effectively."

Theme 4

What Happens When Risk Crystallises?

Introduction

Data centre projects are among the most complex and fast-paced developments in the construction sector. Driven by unprecedented demand for digital infrastructure, these projects are often delivered under intense time pressures, challenging site conditions and evolving commercial expectations. Unsurprisingly, the evidence from our survey indicates that these projects are also highly contentious with 60% of respondents confirming that they had referred a dispute to a formal dispute resolution process. As the sector continues to mature, disputes are now relatively common, and some interesting themes are emerging:

- Whilst disputes are frequently viewed as the result of a single critical failure, the evidence from our survey suggests a different reality.
- Project delay is simultaneously the top cause of disputes, the top driver of formal escalation, and the top barrier to referral. This circular dynamic – where the fear of causing further delay prevents parties from pursuing formal

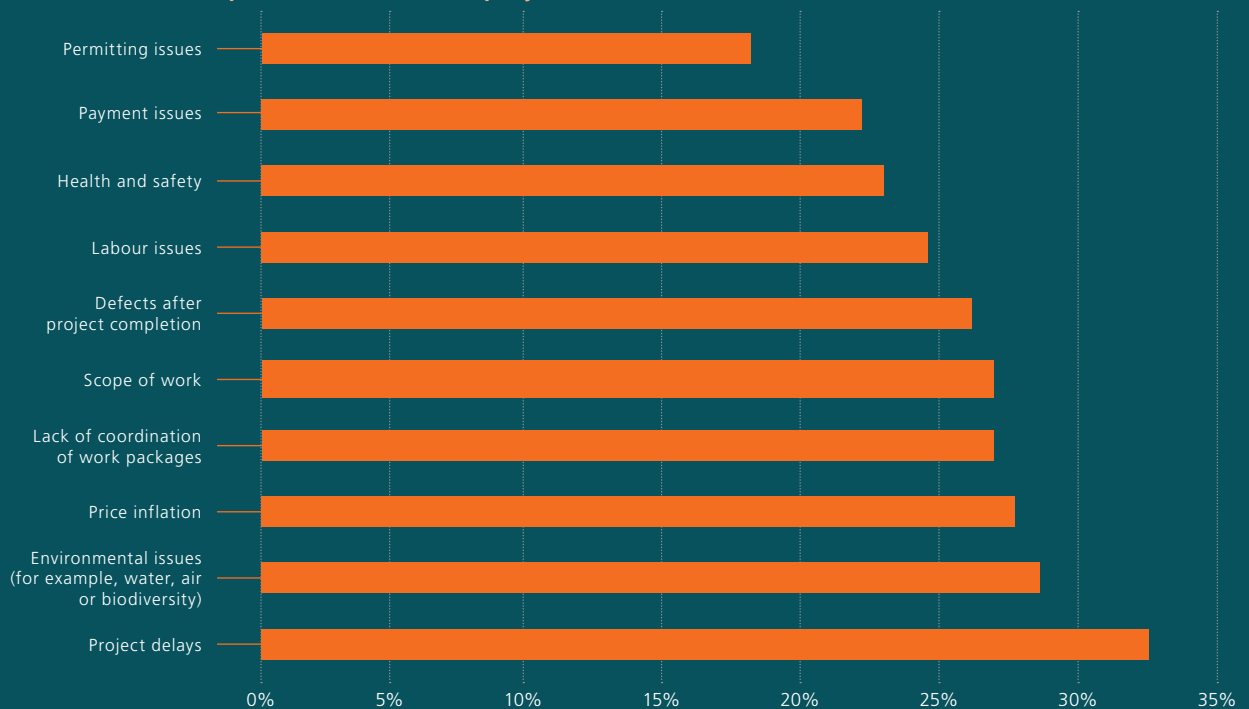
resolution of delay-related disputes – may result in claims being warehoused until project completion, potentially weakening evidence and increasing settlement costs.

- In respect of the protagonists, the survey indicates that data centre project disputes are not concentrated against a single type of party – instead, friction arises across all major contractual interfaces which is consistent with the complex, multi-party structures typical of data centre delivery.
- Customer relationships are sacrosanct. The nature of the data centre market, where customer relationships and confidentiality are king, creates structural disincentives to formal escalation of disputes. This has implications for whether disputes are genuinely resolved or merely deferred.
- Insofar as formal dispute resolution is necessary, confidentiality ranks higher than might be expected in general construction disputes albeit arbitration as a means to resolve disputes appears to be the least common forum.

What causes disputes in the sector?

Disputes in data centre projects appear to arise less from one isolated issue and more from the accumulation of multiple delivery pressures that, when combined, create the conditions for conflict. The survey findings highlight this pattern clearly:

Main causes of disputes in data centre projects



As can be seen from the data:

- Project delays emerge as the most significant cause of disputes, identified by 33% of respondents.
- Environmental issues and price inflation follow closely, each cited by 28% of respondents.
- Lack of co-ordination between work packages and issues relating to scope of work were both identified by 27% of respondents.
- Less frequent but still a major cause of disputes were issues related to permitting and payment issues.

Project delay occupies a particularly important position within this risk landscape. Delays are rarely confined to programme impacts alone. A delayed project can increase exposure to rising labour and material costs, create congestion on site, disrupt sequencing between contractors and intensify pressure on project teams. In turn, these consequences can generate disagreements over responsibility, entitlement and mitigation measures.

The survey findings reinforce this observation, with project delays again identified as the leading factor driving escalation to formal dispute resolution processes, cited by 33% of respondents who had referred disputes to formal procedures.

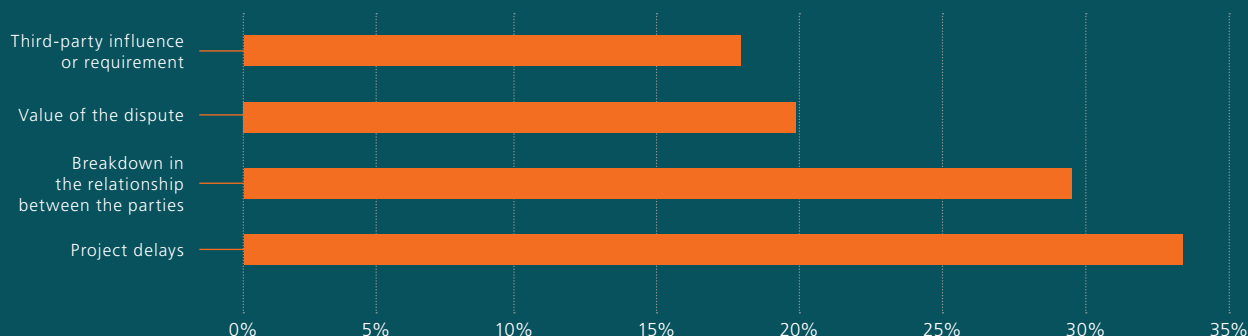
Whilst the cause of delay remains the biggest single issue, the data also suggest that disputes often develop where several interconnected risks converge and begin to reinforce one another. These include:

Environmental Constraints – these constraints represent another significant source of pressure. Data centre developments often involve demanding planning requirements, sustainability obligations and site-specific environmental considerations. These constraints can affect programme certainty, procurement strategies and construction methodologies. When environmental challenges arise unexpectedly, they frequently interact with other project risks, contributing to delay, additional cost and disputes over contractual responsibility.

Price Inflation – similarly, price inflation continues to exert considerable influence on project delivery. Volatile market conditions can erode budgets and place strain on commercial relationships. Where contracts do not adequately allocate inflation risk, disagreements may emerge regarding compensation, variations or the allocation of unforeseen costs.

Project and Scope Management – The importance of co-ordination and scope management should not be overlooked. Data centres involve numerous specialist contractors and highly integrated systems. Poor co-ordination between packages can lead to inefficiencies, rework and programme disruption. Equally, uncertainty regarding scope can create differing interpretations of contractual obligations, often becoming a source of contention as projects progress.

Main driver for escalation



Taken together, the findings indicate that risk crystallisation in data centre projects is typically a cumulative process. Disputes are less likely to result from a single event and more likely to emerge when multiple pressures – delay, environmental challenges, inflation, co-ordination failures and scope uncertainty – combine and compound one another. Understanding these interdependencies is therefore critical to effective risk management and dispute avoidance in the sector.

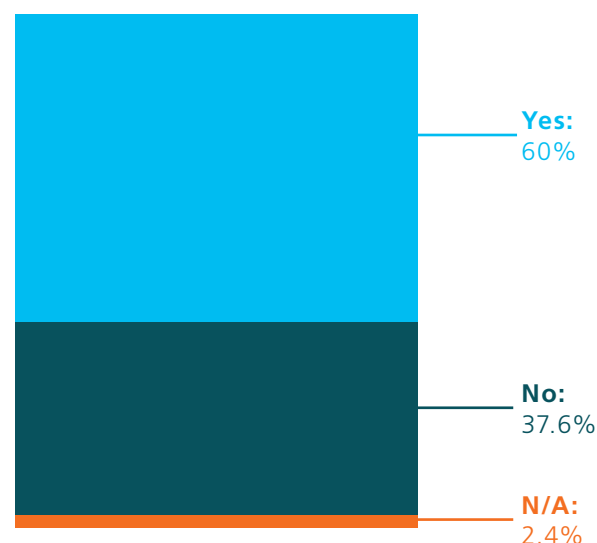
Finally, some interesting observations can be made in respect of the type of contract used on a project and the nature of the disputes that have arisen. For example, NEC users report distinctively high concern about lack of co-ordination and scope of work (both 38.64% vs 27% overall). We also note that bespoke contract users report elevated payment disputes (37.29% vs 21.95% overall) and the highest defects figure (33.90%). Finally, JCT users cite the highest project delays (38.89%) but lowest defects (16.67%).

Dispute resolution

The survey findings indicate a relatively contentious landscape with 60% of respondents confirming that they had referred a dispute to a formal dispute resolution process.

This indicates that dispute referral has been experienced by a majority of respondents involved in data centre projects. How many of these disputes have been resolved formally rather than informally is unclear.

Have you referred a dispute?

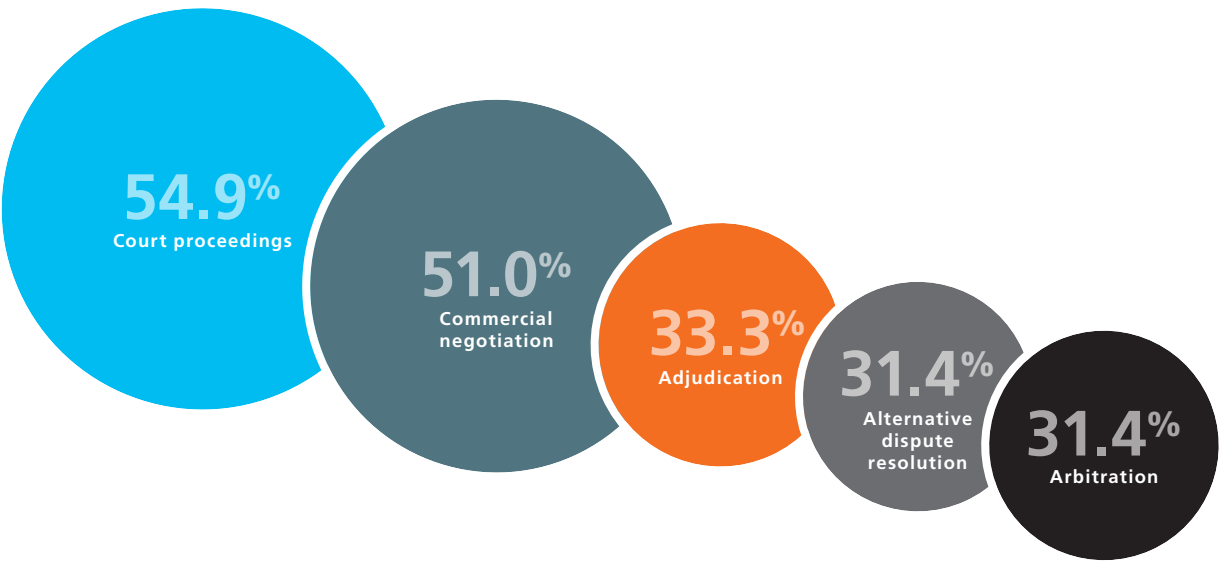


However, the survey also indicates that developers are the group most likely to identify project delays as a dispute cause yet the least likely to have escalated a dispute formally. This may indicate that developers tend to manage delay-related friction through commercial or contractual mechanisms short of formal referral, or that they are more insulated from the formal referral process because it is initiated further down the contractual chain. Contractors and suppliers, who are more likely to sit at the sharp end of multi-party co-ordination and payment chains, show notably higher referral rates (76.47% and 56.25% respectively).

The survey also indicates a market that utilises a broad range of tools to resolve disputes. Whilst court proceedings were the most commonly cited route (54.9% of respondents), commercial negotiations followed closely, with adjudication and ADR being used much less often.

Interestingly, given the highly sensitive nature of the sector, the data indicates that arbitration was also used infrequently. Whilst this might change as the market matures, one explanation might be that arbitration doesn't easily lend itself to multi-party dispute resolution (compared with court proceedings).

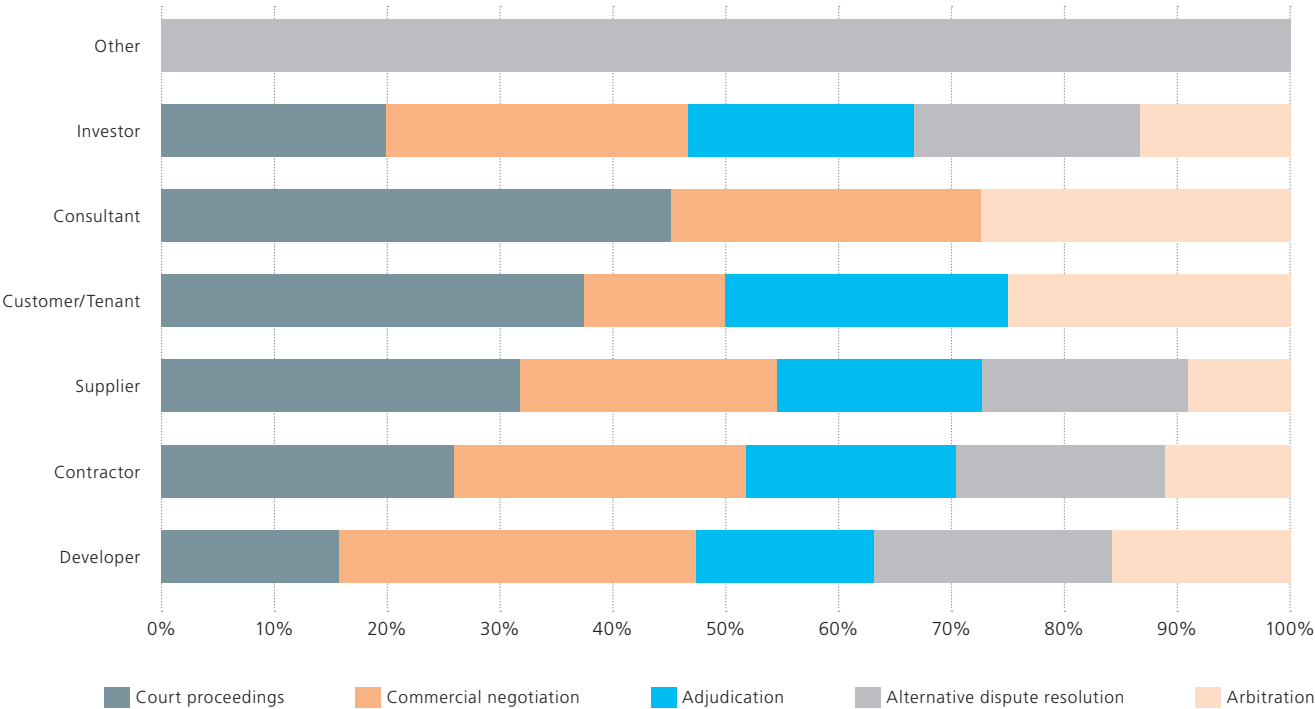
How was the dispute resolved?



In terms of identifying any patterns between preferences amongst stakeholders, the data suggests that developers have the lowest formal referral rate of any business type, suggesting that

when developers do escalate disputes, they tend to resolve them commercially rather than via prescribed formal mechanisms.

Dispute route by business type

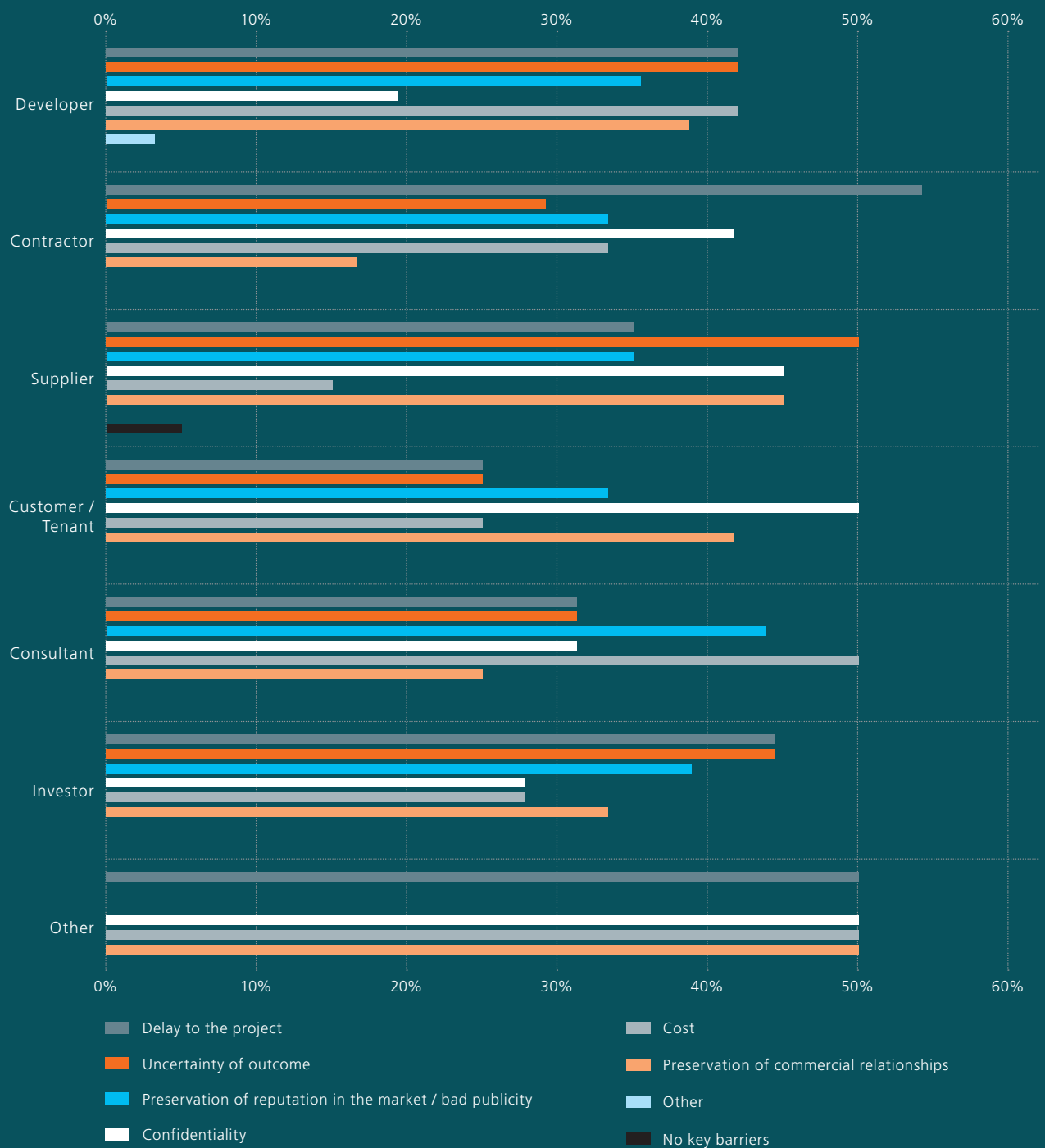


What are the barriers to formal dispute resolution?

The evidence indicates that:

- Contractors mainly cite project delay (54%) as a barrier to formal dispute resolution, followed by confidentiality (41.67%).
- Suppliers cite uncertainty of outcome (50%), confidentiality and commercial relationships (45% each), while cost is least significant (15%).
- Developers cite delay, cost and outcome uncertainty equally (41.94%), with confidentiality lowest.
- Consultants are most concerned about cost (50%) and market reputation (43.75%).
- Investors cite outcome uncertainty and delay (44.44% each), followed by reputation in the market / bad publicity (38.89%).

Barriers to formal dispute resolution – by business type





Mark Breslin
Partner, CMS

"In a market built on speed, certainty belongs to those who confront uncertainty early. In my experience, by the time a dispute is escalated formally, the project is usually already two steps behind. As the data centre market matures and projects grow in scale and complexity, parties will need to manage risk earlier, faster and more collaboratively. If they do not, today's unresolved risks will become tomorrow's formal disputes."

Exploring some of these barriers further, in addition to project delay, some interesting themes appear:

Confidentiality – at 34.15% overall, and elevated among bespoke contract users (40.68%) and suppliers (45.00%), confidentiality ranks higher than might be expected in general construction disputes. This likely reflects the highly sensitive nature of data centre infrastructure – involving hyperscalers, classified facility specifications, and proprietary technology.

Relationships – preservation of commercial relationships at 33.33% overall – and elevated among NEC (43.18%) and bespoke (40.68%) users – suggests that the concentrated, repeat-player

nature of the data centre market creates structural disincentives to formal escalation. This has implications for whether disputes are genuinely resolved or merely deferred.

Summary

The survey points to a maturing but increasingly contentious data centre market, where disputes are rarely caused by a single failure. Instead, delay, inflation, environmental constraints, co-ordination issues and scope uncertainty often combine to crystallise risk. While formal dispute resolution is now already common and likely to increase, commercial relationships, confidentiality and the risk of further delay continue to shape how disputes are managed.

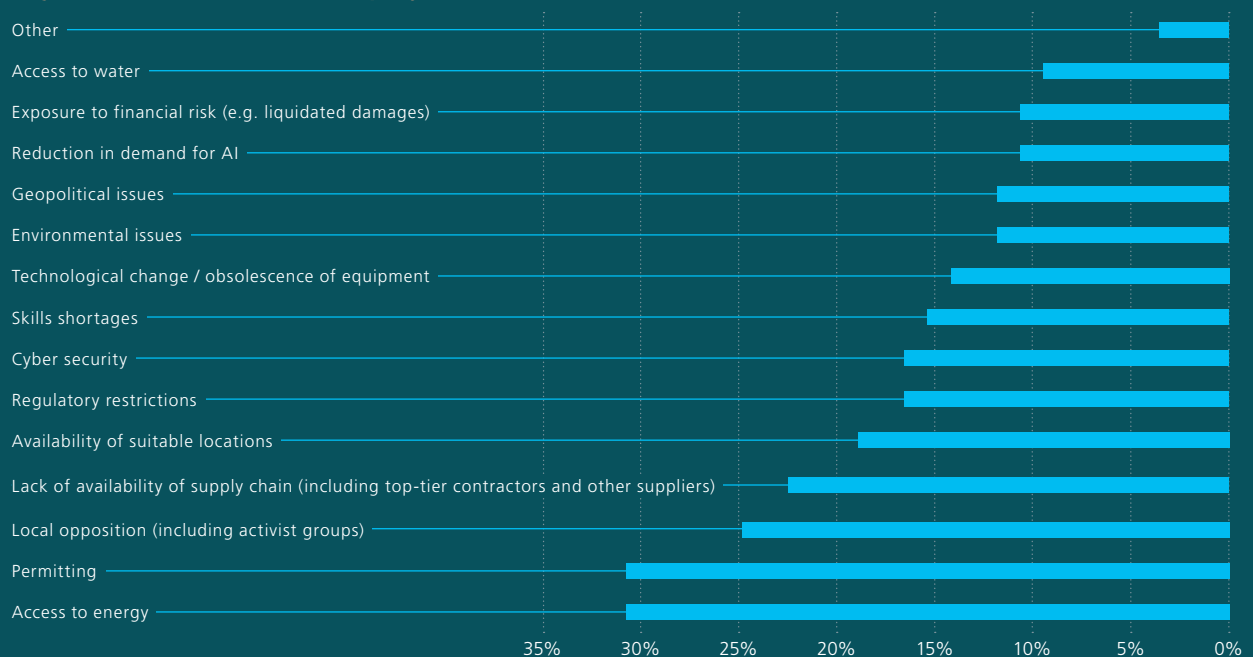
Theme 5

How can risk best be managed?

Risk is best proactively managed when it is identified before it has arisen. We asked respondents involved in the development, delivery or management of data centre projects to identify the key risks and challenges to new projects. Perhaps unsurprisingly, the most

significant risks arose prior to construction, with access to energy and permitting being the joint leading risks, each selected by 30.59% of relevant respondents. Local opposition (an increasingly prevalent trend) was close behind at 24.71%.

Key risks to new data centre projects



Construction risks can be managed by allocating risk at contract drafting stage, for example by the addition of float into a programme to address the delays that often arise during commissioning. By contrast, many of the risks identified by survey respondents are structural, and arise prior to and outside the negotiation of contracts.

The selection of local opposition by 24.71% of relevant respondents is a useful reminder that risk avoidance is not confined to technical diligence. Public affairs strategy, planning narrative, environmental evidence, traffic and construction logistics, community benefit and communications governance may be as important to the viability of a project as the drafting of delay machinery. Once opposition has crystallised into organised resistance, the problem may already have moved from avoidance to mitigation.

In relation to the most cited risk, access to energy, projects cannot proceed on untested assumptions about energisation. Grid connection status, energisation dates, off-site infrastructure dependencies and responsibility for delay need to be interrogated before the parties debate caps, exclusions or liquidated damages. Compounding this finding, power arrangements were identified as a principal driver of difficulty in obtaining adequate and affordable insurance cover by 40% of those who had experienced such difficulty, and power or grid-connection failure outside the insured site was identified as a significant residual or uninsured risk.

On permitting, the UK government has taken steps to address planning delays, by introducing legislation bringing data centres into the Nationally Significant Infrastructure Projects (NSIP) regime in January 2026. It is too early to tell whether this will ameliorate the challenges caused by the planning regime.

Main concern by market participant

The data therefore supports a practical conclusion. For the risks respondents selected most frequently, the legally significant work starts before formal allocation. Whilst the same headline concerns are common, the data shows that risk perception is not evenly distributed across the data centre market. As the heat chart below indicates, developers show the strongest concern around permitting at 50.00% and access to energy at 45.83%, which is consistent with their role in site origination and early project viability.

By contrast, customer and tenant respondents cited local opposition as the key risk or challenge, at 57.14%,

suggesting that occupiers may be especially sensitive to planning, reputational and community acceptance concerns that sit outside delivery risk. Contractors and suppliers also show above-average concern with local opposition, at 35.29% and 37.50% respectively.

Investors display a broader spread of moderate-to-high concerns, including access to energy, suitable locations, regulatory restrictions, cyber security and geopolitical issues, each at 37.50%, which reflect their portfolio-level view of development risk rather than a focus on individual projects.

Risk	Developer	Contractor	Supplier	Customer/ Tenant	Consultant	Investor	Other (n=2)
Access to energy	45.83%	11.76%	37.50%	14.29%	18.18%	37.50%	50.00%
Permitting	50.00%	29.41%	18.75%	14.29%	27.27%	12.50%	50.00%
Local opposition (including activist groups)	12.50%	35.29%	37.50%	57.14%	18.18%	0.00%	0.00%
Lack of availability of supply chain (including top-tier contractors and other suppliers)	29.17%	23.53%	12.50%	0.00%	36.36%	25.00%	0.00%
Availability of suitable locations	20.83%	0.00%	18.75%	42.86%	18.18%	37.50%	0.00%
Regulatory restrictions	12.50%	23.53%	6.25%	0.00%	27.27%	37.50%	0.00%
Cyber security	12.50%	11.76%	25.00%	28.57%	0.00%	37.50%	0.00%
Skills shortages	8.33%	29.41%	25.00%	0.00%	0.00%	12.50%	50.00%
Technological change / obsolescence of equipment	8.33%	23.53%	12.50%	0.00%	27.27%	0.00%	50.00%
Environmental issues	0.00%	11.76%	31.25%	0.00%	9.09%	12.50%	50.00%
Geopolitical issues	8.33%	11.76%	12.50%	14.29%	0.00%	37.50%	0.00%
Reduction in demand for AI	8.33%	5.88%	6.25%	28.57%	27.27%	0.00%	0.00%
Exposure to financial risk (for example, liquidated damages)	8.33%	11.76%	12.50%	14.29%	9.09%	12.50%	0.00%
Access to water	12.50%	23.53%	0.00%	0.00%	0.00%	12.50%	0.00%
Other, please specify	8.33%	0.00%	0.00%	0.00%	0.00%	12.50%	0.00%
I do not think there are any key risks and/or challenges	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Future outlook

For the projects which successfully navigate delivery, the opportunities are significant. Despite the challenges identified, confidence in future activity remains remarkably strong, with 93% of respondents expecting to be

involved in a new data centre project within the next 12 months and no respondents expressing a negative outlook. This suggests that market participants view the current risks as obstacles to be navigated, rather than barriers to growth.

Expected involvement in new data centre projects: next 12 months

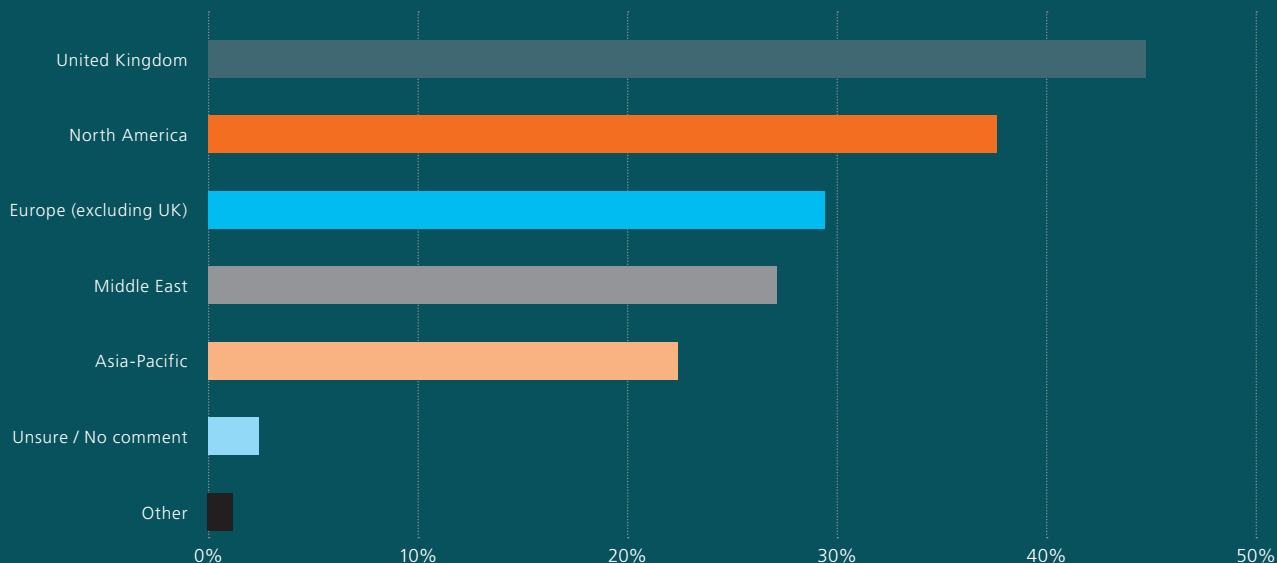


Opportunities by market

The geographical data reinforces that optimism. Respondents identified opportunities across every major market, including the UK. Importantly, the spread of responses indicates that growth opportunities are not concentrated in one region alone.

Instead, the industry appears to be entering a period where multiple markets offer viable pathways for expansion, provided that developers, investors, contractors and occupiers can successfully navigate local energy, planning and stakeholder challenges.

Greatest geographic opportunities for data centre development



The survey also highlights a potential co-ordination opportunity. Several stakeholder groups appear to be focused on different risks and different geographies. Developers, for example, place greater emphasis on permitting and energy access, while other market participants are more concerned with community opposition, supply chain constraints or established occupier markets. The most successful projects will therefore be those that align these perspectives early, ensuring that those best placed to influence a risk are actively

engaged in managing it. Risk avoidance is not simply about identifying threats; it is about ensuring that responsibility, awareness and decision-making sit with the right stakeholders at the right stage of the project lifecycle.

Those organisations that take a holistic approach to risk, combining legal, technical, regulatory and stakeholder strategies, are likely to be best placed to capture the significant opportunities that this survey suggests remain available across global data centre markets.

Takeaway

The data shows that project fundamentals need to be examined in detail at the outset, with particular emphasis on matters which may have traditionally fallen outside the remit of the legal team.

As regards contractual matters, given the substantial (and growing) scale of the data centre projects coming through, the availability of an appropriate supply chain is a prominent concern. Parties may wish to consider whether conventional procurement routes

are appropriate, or whether their interests are better served by adopting the type of alliancing / JV arrangements more typically seen in the nuclear sector – spreading risk across balance sheets and facilitating a more joined up approach in construction. They could also consider a refreshed approach to incentivisation, for example pain / gain share mechanisms, or bonuses rather than relying exclusively on liquidated damages. This is particularly relevant given the prevalence of delay-related disputes.



Jack Deung

Senior Associate, CMS Infrastructure, Construction and Engineering Disputes

"Whilst our survey shows optimism in relation to the continued build out of data centres worldwide, and with particular enthusiasm regarding the UK market, the challenges to a successful project are material. Alongside well-known power and permitting limitations, local opposition (a particular concern to customers / tenants) appears to be growing."

Questions

Project Delivery and Contracting

1. What pricing structure do you see used most often on projects?

- Lump Sum / Fixed Price
- Target Cost / Guaranteed Maximum Price
- Cost Plus / Cost Reimbursable
- Remeasurable / Schedule of Rates
- Other (please specify)
- No single pricing structure is used most often

2. Which contract delivery model do you see used most often?

- Design / Bid / Build
- Design & Build
- Contractor's Designed Portion (CDP)
- Engineering, Procurement and Construction (EPC)
- Engineering, Procurement and Construction Management (EPCM)
- Other (please specify)
- No single model is used most often

3. Which forms of construction contract does your organisation currently use? Please select all that apply.

- FIDIC
- JCT
- NEC
- Bespoke contracts
- Other (please specify)

4. Do you believe there would be a benefit in having a standard suite of construction contracts specifically developed for the data centre industry?

- Yes, a significant benefit
- Yes, a slight benefit
- No, it would make no material difference
- No, it would make matters more difficult
- Unsure

5. Which of the following statements do you agree with in relation to Owner-Furnished / Contractor-Installed (OFCI) procurement? Please select all that apply.

- OFCI procurement provides certainty for project programmes and reduces risk
- OFCI procurement introduces programme uncertainty and increases risk
- OFCI procurement delivers cost savings
- OFCI procurement increases overall project costs
- None of the above

6. What do you consider to be the most contentious areas of construction contract negotiation?

Please select up to three.

- Contract price
- Design responsibility and liability
- Delay liability
- Ground risk
- Liability caps
- Exclusion of consequential loss
- Other (please specify)
- None of the above

Disputes and Claims

7. In your experience, what are the main causes of disputes on data centre projects? Please select up to three.

- Payment issues
- Scope of work
- Lack of coordination between work packages
- Defects following completion
- Environmental issues
- Labour issues
- Project delays
- Health and safety
- Permitting issues
- Price inflation
- Other (please specify)
- None of the above

8. Have you referred a dispute on a data centre project to a formal dispute resolution process?

- Yes
- No
- Not applicable

9. How was the dispute ultimately resolved? If you have been involved in more than one dispute, please think about the most recent. Select all that apply.

- Adjudication
- Arbitration
- Court proceedings
- Alternative dispute resolution
- Commercial negotiation
- Other (please specify)
- Unsure
- The dispute remains ongoing

10. What was the principal reason for escalation to a formal dispute resolution process? If you have been involved in more than one dispute, please think about the most recent.

- Project delays
- Value of the dispute
- Breakdown in the relationship between the parties
- Third-party influence or requirements
- Other (please specify)
- No single principal reason

11. Which parties do you most commonly see disputes arising with? Please select up to two.

- Developers
- Contractors
- Suppliers
- Consultants
- Sub-contractors
- Customers / Tenants
- Other (please specify)
- No single party

12. What do you see as the key barriers to pursuing formal dispute resolution? Please select up to three.

- Cost
- Uncertainty of outcome
- Preserving commercial relationships
- Project delay
- Confidentiality concerns
- Reputational considerations
- Other (please specify)
- None of the above

Insurance and Risk Management

13. How many insurance claims have you made in relation to data centre projects?

- None
- 1–2
- 3–5
- 6 or more

14. If you have made an insurance claim, which types of policy were involved? If you have made more than one claim, please consider the most recent. Select all that apply.

- Construction All Risks (CAR)
- Owner-Controlled Insurance Programme (OCIP)
- Contractor's Annual Policy
- Developer's Annual Policy
- Delay in Start-Up (DSU)
- Property and Business Interruption
- Professional Indemnity
- Public Liability
- Other (please specify)
- Unsure / cannot remember

15. Have you experienced difficulty obtaining adequate and affordable insurance cover for data centre developments?

- Yes
- No
- Not applicable

16. What have been the principal drivers of those difficulties? Please select up to two.

- Project size
- Power arrangements
- Location
- Aggregation of risk
- Insurer exclusions
- Other (please specify)
- None of the above

17. What do you consider to be the most significant residual or uninsured risks on data centre projects? Please select up to three.

- Cyber-related delay or business interruption without physical damage
- External power or grid connection failures
- Performance, testing or commissioning failures
- Aggregation risk arising from shared infrastructure
- Damage to tenant-owned equipment where responsibility is unclear
- Environmental or sustainability-related risks
- Interface risk between construction and operational insurance programmes
- Other (please specify)
- None of the above

Questions (continued)

Future Outlook

18. How likely are you to be involved in a new data centre project within the next 12 months?

- Very likely
- Somewhat likely
- Neither likely nor unlikely
- Somewhat unlikely
- Very unlikely
- Don't know

19. If unlikely, what is the main reason?
Open text response.

20. What do you consider to be the key risks and challenges facing new data centre projects?
Please select up to three.

- Geopolitical issues
- Regulatory restrictions
- Access to energy
- Access to water
- Permitting challenges
- Availability of suitable sites
- Environmental issues
- Reduction in AI-related demand
- Technological change and equipment obsolescence
- Skills shortages
- Cyber security
- Local opposition
- Supply chain constraints
- Exposure to financial risk
- Other (please specify)
- None of the above

Organisation Profile

21. What type of organisation do you work for?

- Developer
- Contractor
- Supplier to construction, real estate or data centre projects
- Customer / Tenant
- Consultant
- Investor
- Other (please specify)

22. In which regions does your organisation operate?
Please select all that apply.

- United Kingdom
- Europe (excluding UK)
- Middle East
- North America
- Asia-Pacific
- Other (please specify)

23. Where do you see the greatest opportunities for future data centre development?
Please select up to two.

- United Kingdom
- Europe (excluding UK)
- Middle East
- North America
- Asia-Pacific
- Other (please specify)
- Unsure / no view

Methodology

This appendix explains the methodology used to analyse the survey results underpinning the findings and conclusions in the CMS report on risks in data centre construction.

Survey source and sample

The analysis was based on survey data collected by Censuswide between 3 June 2026 and 2 July 2026. The total sample comprised 123 respondents, made up of 100 respondents working in organisations involved in the development, delivery or management of construction, real estate projects and data centres, together with 23 respondents from the CMS client database, mostly in the UK.

Survey topics covered

The survey explored respondents' views across a number of issues relevant to data centre construction. These included pricing structures, contract models, standardisation of contract forms, OFCI procurement, causes of disputes, use of formal dispute resolution, insurance claims and coverage issues, residual or uninsured risks, future project challenges and geographic opportunities for development.

Analysis of responses

The analysis was primarily descriptive. For each question, responses were reviewed by count and percentage of the relevant respondent base. The analysis identified the most selected answers, the relative ranking of response options, and notable differences between respondent groups where these were apparent from the dataset.

Analysis by respondent characteristics

Where relevant, responses were considered by reference to the respondent characteristics recorded in the survey tables. These included form of construction used, type of business, operating location and job title. Segmented analysis was used to identify whether themes were more prominent among particular respondent groups, while recognising that some sub-samples were small and therefore results should be interpreted with caution.

Multiple-response and filtered questions

Several questions permitted respondents to select more than one answer, including questions framed as "select all that apply" or "select up to" a stated number of options. For those questions, percentages represent the proportion of the relevant respondent base selecting each option and therefore may total more than 100%. Some questions were asked only of filtered respondent groups, such as respondents involved in data centre projects, respondents who

had referred disputes to a formal dispute resolution process, respondents who had made an insurance claim, or respondents who had had trouble obtaining adequate and affordable insurance cover.

Treatment of base sizes and percentages

Base sizes vary between questions depending on whether the question was asked of the full sample or a filtered subset. Findings in the report should therefore be read by reference to the applicable base for each question. Percentages have been interpreted as directional indicators of respondent views and, where used in the report, may be rounded for readability. As a result, rounded figures may not always total exactly 100%.

Quality assurance and consistency checks

The survey tables were reviewed for internal consistency, including checking the relevant base sizes, comparing counts and percentages, and ensuring that the interpretation of single-response, multiple-response and filtered questions was consistent across the analysis. Care was taken not to overstate differences between respondent groups where the underlying sub-sample was limited.

Assumptions and limitations

The findings are based on the responses provided by survey participants predominantly in the UK (but not exclusively) and are subject to the usual limitations of survey research, including sample composition, respondent interpretation of questions and the potential for variation in market experience across roles, geographies, and project types. The survey captures perceptions and reported experience rather than independently verified project outcomes. Unless expressly stated, the analysis does not constitute an audit, technical assessment, actuarial review or legal analysis of individual projects or claims.

Reporting of findings

The report presents the survey findings using narrative explanation, selected percentages, comparative observations and supporting tables or visuals where appropriate. The analysis distinguishes between survey results, interpretation of those results and broader commentary on market practice or risk allocation. Findings have been framed to reflect the strength of the underlying data and to avoid treating survey perceptions as determinative conclusions.

Glossary

CAR: Construction All Risks – a comprehensive insurance policy that covers the insured for damage to construction works, plant and equipment, as well as third party liabilities. CAR policies are usually held by the contractor or the project owner and renewed annually. They generally operate on a claims occurring basis.

CDP: Contractor's Designed Portion – a contractual arrangement in which the contractor takes legal responsibility for the design of defined elements of a project, with the owner's consultant team retaining responsibility for the rest of the design. The JCT suite of building contracts contain CDPs.

Cost Plus/Cost reimbursable – a procurement model in which the contractor is paid for all its construction costs, properly incurred, plus a mark-up for profit.

Design & Build – an alternative method of project delivery, where a single entity, a design/builder takes responsibility for all the work on the project.

Design/Bid/Build – a traditional method of procurement, in which there are three procurement stages, design, bidding and construction. The owner contracts with different entities for the design and the construction of a project. It is common in the United States.

DSU: Delay in start-up – an insurance policy, taken out by a project owner, for delays to completion of an infrastructure project, which impact on the start of the income stream that the asset would have generated. Also known as Advanced Loss of Profits insurance, or Advanced Business Interruption insurance.

EPC: Engineering, Procurement and Construction is a procurement method in which a single contractor assumes responsibility for design, procurement, construction, commissioning and handover to the owner. Commonly used on large infrastructure and oil and gas projects.

EPCM: Engineering, Procurement and Construction Management is a procurement method in which a contractor provides engineering, procurement and construction management services. However, the owner engages trade contractors to construct the project. The EPCM contractor manages the trade contractors, and therefore is somewhat like a consultant rather than a contractor, providing only consultancy services rather than doing any of the construction.

FIDIC – Suite of international construction and engineering contracts developed by the International Federation of Consulting Engineers. The first editions of the suite were published in 1999, and the second editions in 2017. There were a number of amendments made to the 2017 suite in 2022.

JCT – Joint Contracts Tribunal, publisher of a suite of standard form building contracts, mainly used in the UK for construction of domestic building work. The most recent suite of contracts was produced in 2024.

Lump Sum/Fixed price – a procurement model in which the contractor agrees to deliver the project for a fixed price. The contractor assumes most, but not all, of the risk of delay and defects. Note that the price of the project is still subject to change, for example through changes in scope.

NEC: New Engineering Contract – produces standard forms of construction and engineering contract. The contracts were first published in 1993, with the latest iteration, NEC4, being published in 2017, with amendments in 2019, 2020 and 2023.

OCIP: Owner Controlled Insurance Programme – a wrap-up insurance policy, a single insurance programme which is purchased by the project owner to cover general liability. Avoids the need for individual contractors and subcontractors to obtain individual, overlapping policies.

OFCI: Owner-Furnished, Contractor-Installed procurement model – a delivery model in which the project owner procures specific equipment or materials directly. The contractor remains responsible for installation and commissioning.

Professional Indemnity – an insurance policy that covers providers of professional services in case of claims for negligence, errors or omissions in their work. In a data centre context this includes designers and other consultants.

Property and business interruption – a type of insurance policy held by an owner which covers the risk of destruction or damage to property, occurring as a result of a defined event. Property insurance typically responds to the cost of rebuilding or repair caused by an insured peril, while business interruption insurance is forward facing and covers the income stream that would have been earned during the period of restoration.

Public Liability Insurance – an insurance policy that is held to protect against claims by third parties for personal injury and property damage occurring at the site.

Remeasurable/Schedule of Rates – a model of construction procurement. The contractor provides rates in its tender. Once the works are completed they are measured, and the contractor is paid for the actual quantity of works done, rather than the initial estimate. JCT Standard Building Contract with approximate quantities, FIDIC Red Book and NEC ECC Option B all provide for remeasurement.

Target cost/Guaranteed Maximum Price – a guaranteed maximum price is a procurement method in which the contractor agrees to provide the project for a stated maximum amount, or ceiling (absent scope changes). A target cost contract is a type of cost reimbursable contract in which the contractor is incentivised to carry out the design and construction work as economically as possible, in order to take advantage of cost sharing (painshare/gainshare) arrangements.



Editorial team

Infrastructure, Constructing and Engineering Disputes

**Steven Williams**

Partner
Co-head of the Infrastructure,
Construction and Energy Disputes Group
T +44 20 7524 6713
E steven.williams@cms-cmno.com

**Mark Breslin**

Partner
Infrastructure, Construction and Energy Disputes
T +44 20 7524 6870
E mark.breslin@cms-cmno.com

**Matthew Taylor**

Partner
Energy, Projects and Construction
T +44 20 7524 6341
E matthew.taylor@cms-cmno.com

**Aileen Brown**

Partner
Infrastructure, Construction and Energy Disputes
T +44 20 7367 2486
E aileen.brown@cms-cmno.com

**Leah Horn**

Partner
Infrastructure, Construction & Energy Disputes
T +44 20 7524 6359
E leah.horn@cms-cmno.com

**Karen Arch**

Of Counsel
Infrastructure, Construction and Energy Disputes
T +44 20 7367 2338
E karen.arch@cms-cmno.com

**Jack Deung**

Senior Associate
Infrastructure, Construction and Energy Disputes
T +44 20 7524 6604
E jack.deung@cms-cmno.com

**Melissa Moriarty**

Senior Knowledge Counsel
T +44 20 7367 2668
E melissa.moriarty@cms-cmno.com

Construction and Engineering

**David Parton**

Partner, Head of Construction & Engineering
T +44 20 7524 6873
E david.parton@cms-cmno.com

**Alistair McGrigor**

Partner
Construction and Engineering
T +44 20 7524 6945
E alistair.mcgrigor@cms-cmno.com

Insurance

**Kevin O'Shea**

Partner
Co-head of the Infrastructure,
Construction and Energy Disputes Group
T +44 20 7367 2963
E kevin.o'shea@cms-cmno.com



CMS Legal Updates subscription service

Sign up now for the free online email alert service delivering commentary, analyses and insights from CMS experts on the legal issues affecting your business, directly to your inbox.

cms.law/subscription

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word “partner” to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS LTF Limited (CMS LTF), a company limited by guarantee incorporated in England & Wales (no. 15367752) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF United Kingdom. CMS LTF coordinates the CMS organisation of independent law firms. CMS LTF provides no client services. Such services are solely provided by CMS LTF’s member firms in their respective jurisdictions. CMS LTF and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS LTF and each member firm are liable only for their own acts or omissions and not those of each other. The brand name “CMS” and the term “firm” are used to refer to some or all of the member firms or their offices.