NEC3 Contracts explained

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Purpose and development of NEC3 Contracts
State of the Construction Industry

- Client dissatisfaction
- Role of the Engineer challenged
- Existing contracts inflexible
- Disputes the norm
- Proliferation of standard forms
Timetable for the development of the NEC

1993  NEC First Edition published
1994  Latham Report published  “Constructing the Team”
2005  NEC3 family published
Aims of New Contract

- Design a system for managing the interfaces in a construction project
- Get all stakeholders to sign up to the contract
- Collaboration between designers, project managers, contractors, suppliers and the client creates a better product
NEC Objectives

• Flexibility
• Clarity
• Stimulus to good management
Flexibility

- Multi-disciplinary
- Risk allocation
- International application
- Allocation of design responsibility
Clarity

- Ordinary language
- Use of present tense
- Avoids subjective judgements
- Legal jargon minimised
- Use of flow charts
Language

The Employer shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].
Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

From the starting date until the Defects Certificate has been issued, the risks which are not carried by the Employer are carried by the Contractor.

The following are Employer’s risks ………………
Stimulus to good management

- Up-to-date programme
- Early warning procedure
- Compensation events
NEC family of contracts
Performance

- Provide the Works in accordance with Works Information
- Contractor designs parts stated in Works Information
- Subcontracting does not affect Contractor’s responsibilities
Contract Strategy – Payment Options

- Management
- Target
- Cost Plus
- BoQ
- Lump Sum

Employer

FINANCIAL RISK

Contractor

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Programme

- Prepared by Contractor
  - Includes method statements
  - Includes resources
  - Shows time risk allowances and float
- Updated regularly
  - shows progress
  - includes revised plans
Relationships

Clause 10.1 - Parties act in spirit of mutual trust and cooperation
Term Service Contract

• managing and providing a service – not for managing a project
  – not restricted to construction
  – not limited to a professional or construction service
  – from a starting date and throughout a service period.

• uses established NEC procedures and wording as much as possible.
Supply contract

- Supply contract
  - supply of high value goods and related services including design
  - suitable for cross border transactions
- Supply short contract
  - single order or batch order basis
  - supply does not require sophisticated management techniques & imposes only low risks on Purchaser and the Supplier
Framework Contract

- contract between *Employer* and number of *Suppliers* for period of time
- work of any kind under any of the NEC family of contracts
- ad hoc advice as needed on time charge basis
- quotation for Work Package prepared
- Package Order issued if quotation accepted
- contract can be terminated at any time
  - by either Party
  - any work already ordered continues
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OGC endorsement

OGC advises public sector procurers that the form of contract used has to be selected according to the objectives of the project, aiming to satisfy the Achieving Excellence in Construction (AEC) principles.

This edition of the NEC (NEC3) complies fully with the AEC principles. OGC recommends the use of NEC3 by public sector construction procurers on their construction projects.
Roles and duties of participants

- Employer
- Contractor
- Subcontractor
- Supplier
- Project Manager
- Supervisor
- Adjudicator
- (Designer)
NEC family

- Project Manager
  - PSC
- Employer
- Adjudicator
  - AC
- Supervisor
  - PSC
- Contractor
  - ECC
- Typical design & build arrangement
  - Subcontractor
    - ECS or ECSS
  - Designer
    - PSC
  - Supplier
    - SC or SSC

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Managing change under NEC contracts
Basis of change

- Employer initiated change
  - change in requirements for works
  - deal with ambiguity/inconsistency/impossibility
- Failure to perform
  - Employer – failure to provide access
  - Contractor – Defect in work carried out
- Supervening event affects the works
  - unexpected ground conditions
- Contractor initiated change
  - simplify buildability
Tools for managing change

• Programme
• Key Dates
• Early warning
• Project Manager instructions
• Compensation event quotations
• Termination
Early warning procedure

• Early warning notice
  – risk to time, cost, performance
  – Contractor can notify risk to own cost

• Risk reduction meeting
  – consider options
  – seek solutions
  – decide actions

• Record decisions on risk register
Compensation event procedures

- notification of event
  - by PM at the time of the instruction
  - by C within 8 weeks of becoming aware
- PM makes decision on event within 1 week
  - instructs quotation for event at same time
- PM can instruct alternative quotations
  - after discussing with Contractor
- C submits quotation within 3 weeks
  - PM can instruct revised quotation
- PM must reply within 2 weeks
- timescales can be changed by agreement
  - before time expires
Disputes

- Action or inaction of Project Manager
- Other issue
- Adjudication options
- Notifying dispute
- Disputing Adjudicator’s decision
- Tribunal
- Termination
Managing change – key message

- Project Manager must control change process
  - involve Contractor from start
- Use contract tools to achieve best outcome
  - Employer gets solution which
    - meets his needs and
    - has lowest negative impact on cost/time
  - Contractor’s profit level preserved
Case study

Highways Agency
Early Contractor Involvement contract
Contract arrangement

- NEC3 Option E – cost reimbursement
- two phases
  - preliminary design and statutory procedures
  - final design and construct
- self certification process by Contractor
  - backed up by quality management system
Role of Contractor

- appointed before scheme developed
- works to detailed quality plan
- designs scheme
- calculates cost of scheme and programme
- takes through statutory process
- completes designs and constructs
- hands over to Highways Agency
Role of Employer

• work with Contractor in developing design
  – uses consultant to advise
• audits Contractor’s processes
  – reassurance on quality
• cooperates in managing risk
  – to minimise cost
• makes payment
• checks performance of finished work
  – safety audit
Payment

- Contractor paid Defined Cost for work
- Bonus earned for working within Highways Agency budget
- Target share arrangement for final design & construct stage
Clause 10.1

- The parties shall act in a spirit of mutual trust and cooperation
Questions?