

# Construction contracts operation and administration construction essay



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The Engineering and Construction Contract (ECC) is the third edition published by the Institution of Civil Engineers, also referred to as the NEC3, it was first called the New Engineering Contract (NEC). Sir Michael Latham paid tribute to the original NEC in his 1994 report 'Constructing the Team', stating " the approach of the New Engineering Contract is extremely attractive"; he went on to list key features which should be present in modern construction contracts saying that the NEC contains " virtually all these assumptions of best practice". Since its introduction the NEC is widely used by employers, consultants and contractors wishing to embrace the philosophy of partnering advocated in 'Constructing the Team'.

NEC3 offers an all-in-one document appropriate for traditional procurement, design and build, or management contracts, suited to most types of civil engineering and building work, from large scale projects to minor works. The flexibility of the contract allows for all traditional disciplines to be included, whether the contractor has design responsibility or not and it provides numerous tender options i. e. lump sum, target, cost reimbursable and management contracts.

The contract is designed with clarity and simplicity, and is written in ordinary language with relatively short clauses. This allows it to be exportable and understandable, which leads to fewer disputes. NEC3 emphasises the need for all parties to participate in a contractual spirit of mutual trust and co-operation ensuring adversarial relationships are not created. This introduces a responsibility for honest and open discussion of problems as they happen, thereby reducing the risk of disputes which lead to project delays and subsequent increases in cost.

A significant accomplishment for NEC3 is the endorsement from the Office of Government Commerce (OGC), " 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." OGC also makes reference to NEC3 in the opening paragraph of their Procurement and Contract Strategies document, " NEC is a modern day family of contracts that facilitates the implementation of sound project management principles and practices as well as defining legal relationships. Key to the successful use of NEC is users adopting the desired cultural transition. The main aspect of this transition is moving away from a reactive and hindsight-based decision-making and management approach to one that is foresight based, encouraging a creative environment with pro-active and collaborative relationships."

The contract data is in two parts containing information specific to the contract; part one prepared by the employer and part two by the contractor. Some information in the contract data takes the form of reference to other documents, which are then incorporated into the contract, for example the works information documents are very important as they describe what the contractor is required to undertake. These documents normally comprise drawings and specifications; these cannot be changed once the contract has been entered into (unless a change is instructed). There are no fixed limitations on the use of NEC3, but the law of the contract, the language of the contract and the currency of the contract are entered in part one of the

contract data. The prevention and resolution of problems is catered for by an early warning system; contract conditions provide clauses to stimulate good management in dealing with issues such as changes, extensions of time and defects. There is an emphasis on effective programming and management so that matters which have implications on progress and cost can be properly considered at the earliest possible time by the project manager or contractor. As already stated a co-operative and non-adversarial ethos by all parties is the essential ingredient in managing a successful NEC3 contract.

The Latham Report (1994) held " A set of basic principles is required on which modern contracts can be based. A complete family of interlocking documents is also required. The New Engineering Contract (NEC) fulfils many of these principles and requirements"; and crucially, The Egan Report (1998) stressed that competitive tendering should be replaced with long term relationships complete with performance measurement, and sustained improvements in quality and efficiency. IKB Plc must take a policy decision to endorse advice from these reports.

The NEC3 suite of contracts is comprehensive and effective; there is a version suitable for each procurement route, each work package, design package and consultancy necessary for a project. A consistent approach and contractual synergy is therefore possible in compliance with Latham's " Interrelated package of contract documents". Contractual synergy will reduce transaction costs by following a consistent approach to the basic contractual terms. The NEC3 Professional Services Contract can be used to engage the designers, construction manager, or in fact any/all consultants on a variety of risk apportionment, managerial and reimbursement bases.

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Correspondingly, NEC3 has a full range of procurement route cover and capability using six main options A to F as already outlined. These main options cover essential obligations and procedures, and are then expanded by secondary option clauses including " Z" Clauses which can be selected to cover any site specific needs or client requested inclusions. Scope is included within the works information and specification sections as well as main requirements being formalised in the employers and contractors data sections of the contract document. In terms of partnering, the secondary option clauses can be " cherry picked" for suitability. The " Z" clauses provide scope for incorporation of partnering initiatives, and even the ability to introduce innovations from other standard forms of contract. For example, open book cash neutral payment methods and incentive clauses can be introduced, delay damages suspended, etc.

Incentives are introduced using KPI's as a method of measuring and benchmarking against 'Critical Success Factors', which in turn can be rewarded / penalised against the gain / pain share pot created from the financial driver of incentivised target cost performance. Alternative dispute resolution processes are catered for within the contract conditions with provision for adjudication. An adjudicator's contract is included within the suite, but use is not mandatory. Partnering and trust based cash-neutral certification can be introduced to obviate contractor finance charges, hence reduce project costs.

The NEC is 'as much a manual of project management as a set of conditions of contract' -Eggleston. B (2006). As such partnering is a natural part of their use, as involvement by all parties and the application of common sense in <https://assignbuster.com/construction-contracts-operation-and-administration-construction-essay/>

contract interpretation is an assumed necessity. Guidance notes and procedures follow a system of flow charts for ease of use. The contract can be used for both design & build or sequential contract formats, or hybrids thereof and the inherent flexibility allows inclusion of almost any other reasonable requirement associated with procurement route or partnering approach.

Cost control and monitoring on cost and price based projects is achieved by incorporation of a strictly controlled priced activity schedule. This schedule will incorporate the included financial agreements regarding apportionment of risk between the parties from the integral risk register. The incumbent NEC3 early warning procedure provides visibility of potential delays, disruption and additional costs, providing the project manager with an opportunity to act to overcome problems or adjust budget accordingly, under appropriate change control mechanisms, rather than the traditional post notification and claim contracts.