



**NEC3 – An Overview**

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**Introduction - History**

- Consultative document published in 1991
- First edition in 1993
- Latham Report published in 1994 – First Edition of the then New Engineering Contract met 11 of the 13 principles that characterised an effective, modern construction contract.
- Second Edition published in 1995 and achieved all 13 principles
- NEC2 became the norm for many central government agencies, including the Environment Agency and NHS Estates 'Procure 21'
- NEC3 published in 2005 (and re-issued 2006)

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**Introduction – objectives**

**Three principal objectives:**

- **Flexibility** – a multi disciplined approach with different payment options
- **Clarity** – a simple structure, present tense, non-legalistic language that should be understandable and should lead to fewer disputes
- **Good Management** – every procedure should contribute to good management rather than detract from the effectiveness of management of the work

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Introduction - objectives

Clause 10.1 requires all those involved in operating the contract to act "in the spirit of mutual trust and co-operation"

- Use as a management tool which is process driven and demands proactive continuous intervention from the parties
- Parties must 'buy in' to the philosophy of the contract and be prepared to adhere to the processes and procedures
- Collaborative approach will lead to issues being dealt with as they occur, leading to successful completion of the project and cement future relationships

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NEC3 – Contract Structure

NEC3 Family includes:

- Engineering & Construction contract
- Engineering & Construction subcontract
- Professional Services Contract

Option Structure

- Price Mechanism – 6 main options
- Factors – Design Change? Certain final cost or lowest?
- 9 Core clause
- Select secondary options if required
- Include additional 'Z' clauses required or agreed

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NEC3 – Contract Structure

There are six types of payment mechanism available in the main options:

- Option A - Priced contract with activity schedule
  - Lump sum prices for completed works
  - Best option for certainty of price
  - Price risk transferred to contractor
  - Design needs to be sufficiently progressed
- Option B - Priced contract with bill of quantities
- Option C - Target contract with activity schedule
  - Time charged for completed works
  - Pain/gain share mechanism
  - Incentive to minimise costs

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NEC3 – Contract Structure

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- Option D - Target contract with bill of quantities
- Option E - Costs reimbursable contract
  - Actual costs plus percentage fee
  - Least financial risk on contractor
  - Least certainty of price
- Option F - Management contract

Payment procedure:

- PM assesses payment at Assessment Date
- Intervals until four weeks after the issue of the defects certificate
- Certify within one week. Pay within 3 weeks

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The NEC in use

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- Olympic Delivery Authority (ODA) has chosen the NEC3 suite of contracts to procure all fixed assets and infrastructure for the London 2012 Olympic Games
- NEC3 has also been used to construct the innovative Halley 6 Research Station – a project being constructed on a moving ice shelf in Antarctica
- NEC3 has been used on High Speed 1 (formerly known as the Channel Tunnel Rail Link) which completed on time and in budget
- In 2008, Arup was commissioned by the Office of Government Commerce (OGC) to undertake a review
- Following the survey, OGC has endorsed NEC3: the contract can therefore be selected as a procurement pathway to meet the requirements of Achieving Excellence in Construction
- Crossrail project in London – 118km railway, the biggest construction project in Europe, is due to start next year for completion in 2017

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NEC3 in Principle

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- Proactivity
- Attacking the problem, not the party
- Collaboration
- A simple, straightforward, user-friendly contract
- Good Management?

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### NEC3 in Practice

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- A demanding onerous contract
- Increased Employer Involvement
- Too simple? Large scope for disputes?

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### The Works Information/Scope

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- Fail to prepare -- prepare to fail
- THE MOST IMPORTANT DOCUMENT OF THE CONTRACT
- Clarity, certainty and DETAIL
- What are you doing? How are you doing it? Could a (reasonably bright) stranger understand exactly what you are doing? If not how can anyone else?
- Invest the time ( and money) at the outset
- Key for the client is cost visibility -- what is he getting for his money?

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### Change Management

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- A significant burden
- Elements:
  - Early warnings
  - Risk register
  - Risk review meetings
  - Quotations
  - Revised quotation
  - Compensation event?

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### Early Warning Notices

- In writing
- Separate to other communication
- Precedent required?
- Failure to provide

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### Compensation Events

- Compensation Events are the only way to more time and/or money
- Clause 60 – Learn to love it
  - Only 18 reasons to change CC
  - Only 12 reasons to change PSC
- Quotation – get it right at the start and avoid any problems later on
- Not an appointment to start work on a nod and a wink!
- Notices, Notices, Notices

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### Notifying Compensation Events

- An onerous, administratively burdensome process
- Early Warnings, Risk Register, Risk Review Meetings, Quotation, Revised Quotation, Compensation Event
- Time limits – 8 week 'longstop' date for Compensation Event Notices
- No notice, no entitlement
- Case law on conditions precedent to payment
  - Not settled law
  - Gaymark (Australian) – no notice, should not prevent entitlement provided a client caused change;
  - Steria Systems: Multiplex v Honeywell (English) - the provisions have a valuable purpose (cost and time certainty) No notice, no entitlement

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Managing Change: Compensation Events – Practical Guidance

- A change in mindset?
- "Administrative" Vs "Contractual"
- Notices, Notices, Notices
- Standard form of notices? Administrative assistants? Irrecoverable cost?
- Collaborative working..., until it's not

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Programming under the NEC3

- The Contract Data – understand what it requires
- 31.1 - The first programme
- 31.2 – What the programme requires
  - Completion date/planned completion
  - Provision for float
  - A statement of how the contractor plans to do the work (including equipment and other resources)
- 31.3 – PM either accepts or refuses to accept

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Programming under the NEC3

- 32.1 – Revised programmes required
    - Within a period for reply by the PM
    - At no longer interval than prescribed in the Contract Data
- Payment
- 50.3 – 25% of the price for work done to date is retained until the Contractor has submitted a first programme to PM approval

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