

## Comparison of the Engineering and Construction Short Contract (ECSC) with the Engineering and Construction Contract (ECC)

### Subcontracts

The NEC family includes subcontracts: the Engineering and Construction Short Subcontract (ECSS) and the Engineering and Construction Subcontract (ECS). The ECSS follows the wording of the ECSC; the ECS follows the wording of the ECC. This comparison also applies to the comparison between the ECSS and the ECS.

### General

The convention of using italics for terms which are identified the Contract Data and capital initials for terms defined in the relevant NEC4 contracts has been used in the section of the guidance.

The ECSC is a simplified and shortened version of the ECC. It includes procedures which are simpler to manage and is appropriate for priced contracts of low risk and low complexity. It has forms for Contract Data, Price List, Scope, Site Information, *Contractor's Offer* and *Client's Acceptance*, integrated into a single document. If required, they can be developed as separate documents, but in that case the Price List, Scope and Site Information would need to be identified within the Contract Data.

The ECC allows a choice of payment options; prices for activities, measured quantities and cost reimbursable, plus target cost arrangements and management contracting. There are no payment 'options' in the ECSC: instead there is a 'Price List' which can be mix of lump sums and quantities multiplied by rates.

As is the case with the measured quantities options in the ECC, the risk of any quantities in the Price List of the ECSC lies with the *Client*. The Price List is required to include the 'rules used to compile the Price List', and an instruction to correct a mistake in the Price List is a compensation event (clause 60.1(12)).

Whilst the ECC has a number of secondary Options, there are none in the ECSC. Additional conditions can be included by an entry in the Contract Data.

### Main differences in approach:

#### 1 General

- There is no *Project Manager* or *Supervisor* in ECSC. All management roles are undertaken directly by the *Client*. The *Client* may appoint others to assist and delegate actions to them or to its own people.
- The ECSC has a simpler definition of 'Defined Cost' (used only for compensation events) – there is no Schedule of Cost Components.
- There is no formal 'Early Warning Register' or 'early warning meetings', but clause 15.2 requires cooperation in considering proposals and for creating a record of 'actions to be taken'. This could be recorded in a register like the ECC's Early Warning Register' and regular early warning meetings could be held to review the register.

## 2 The *Contractor's* main responsibilities

- The ECSC recognises that the *Contractor* may carry out design but does not include any procedure for its submission. If required, this should be included in the Scope.
- There is no explicit control over subcontracting by the *Client* and no requirement for the *Contractor* to seek acceptance of a Subcontractor from the *Client*.
- The ECSC does not have any restrictions on disclosure or publicity. If required, this could be included in the Scope.

## 3 Time

- The ECSC does not include provisions for Key Dates or sectional Completion.
- The requirements for a programme and the amount of detail it is to include should be stated in the Scope (clause 31.1). There is no provision for accepting programmes.
- There is no direct reference to a programme in the assessment of delays to the Completion Date caused by a compensation event.
- For simpler contracts a programme may not be needed, as the *Contractor* is required to provide a forecast of the date of Completion weekly (clause 30.2).
- There is no provision for take-over or acceleration in the ECSC.

## 4 Defects

- The ECSC does not include a requirement for a quality management system.
- As there is no *Supervisor*, Defects are notified by the *Client*.
- Provisions for testing or inspections, if required, should be included in the Scope.

## 5 Payment

- The *Contractor* assesses the amount due (rather than the *Project Manager* under the ECC). The *Client* corrects the amount due if it has been incorrectly assessed.
- Retention and delay damages are part of the contract and not options. If not wanted, the Contract Data entries are set to 'nil'.
- The ECSC has no provision for a final assessment; the last assessment made under clause 50.1 becomes the final assessment.
- An additional clause provides payment provisions in contracts subject to the UK Housing Grants, Construction and Regeneration Act (1996).

## 6 Compensation events

- The ECSC has a shorter list of compensation events, and the process is simpler than that in ECC.
  - If the *Contractor* notifies a compensation event it is required to include its quotation with the notification. There is no separate stage of accepting the event as a compensation event before instructing a quotation.
  - The *Contractor* can include assumptions in its quotation, which if corrected prompts another compensation event. (In the ECC assumptions can only be stated by the *Project Manager*).
  - There is no revised quotation. The *Client* has to accept the quotation, including the *Contractor's* assumptions, or make its own assessment. It is

expected that the Parties will collaborate over a quotation so that the *Contractor's* assessment can be accepted.

- If the *Client* does not respond to a quotation in two weeks, the quotation is 'treated as accepted'. There is no need for a prompt from the *Contractor* as is the case in the ECC.

## **7 Title**

- ECSC does not include provisions for transferring title to Plant and Materials to the *Client*.

## **8 Liabilities and insurance**

- The approach to allocating liabilities and the requirements for insurance in the ECSC are broadly the same as in the ECC.
- The ECSC allows the client to
  - state in the Contract Data that the '*Contractor's* obligation for design is to use the skill and care normally used by professionals designing works similar to the *works*'
  - require professional indemnity insurance and
  - set an overall limit on liability.
- There are no provisions for submitting certificates of insurance or for dealing with failure to provide insurance.

## **9 Termination and resolving disputes**

- There is no termination certificate; either Party notifies the other of terminating the *Contractor's* obligation to Provide the Works and states the reason.
- Dispute resolution is by adjudication using a simplified version of Option W1 from ECC.
- An additional clause is provided for adjudication in contracts subject to the UK Housing Grants, Construction and Regeneration Act (1996), affecting payment and provisions.

### **Acknowledgements:**

#### **NEC Contract Board**

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