

nec users' group NEWSLETTER

NEC again dominates British Construction Industry Awards

SIMON FULLALOVE EDITOR

NEC3 contracts have again dominated the prestigious British Construction Industry Awards, being used on over half of last year's prize-winning and highly commended projects.

Categories featuring outright NEC winners at the London awards ceremony last October included the Major Building Project of the Year, the Programme Management Award, the Best Practice Award and the Outstanding Contribution Award.

NEC3 contracts delivered a total of 13 of the 23 winning and highly commended projects in the 2014 competition. Of the remainder, four used JCT, two were bespoke and the others used Fidic, PPC2000, IChemE and GC Works.

Major building prize

NEC winners included the £269 million Zaha Hadid designed London Aquatics Centre, which was procured using the NEC3 Engineering and Construction Contract (ECC) option C (target contract with activity schedule) and won the Major Building Project of the Year prize.

The £14.8 billion Crossrail project, which is also being delivered with ECC option C, won the Programme Management Award and was highly commended for the BIM Project Application Award and two temporary works prizes.

Prime Minister's award

The Environment Agency's £28 million Medmerry Managed Realignment scheme in West Sussex, another ECC option C scheme, won both The Prime Minister's Better Public Building Award and the Civil Engineering Project of the Year in the £10–50 million category.

Other NEC winners included Surrey County Council's £32 million A244 Walton Bridge, which won the Best Practice Award, and the Environment Agency's £9 million Godmanchester Flood Risk Management scheme, which won the Outstanding Contribution Award for 'setting a standard to follow in the future'.

Major clients

NEC general manager Rekha Thawrani said, 'It's fantastic to see NEC being recognised for its involvement with major clients including the Environment Agency, Transport for London, London Legacy Development Corporation, Scottish Water and Surrey County Council.

'It was also particularly good to see Crossrail – Europe's largest construction project and the biggest ever to be procured by NEC3 contracts – win four of the awards.

'Since the launch of NEC3 contracts, they have been used globally to successfully deliver some of today's biggest infrastructures and frameworks and we are delighted that we have been able to play a vital role in delivering more than £15 billion worth of award-winning construction projects.'

Project management awards

NEC also fared well in the Association of Project Management's Project Management Awards 2014 ceremony last November, winning two of the four project category awards.

Magnox Ltd won the Programme of the Year Award for its extended generation programme at Wylfa in Anglesey. The nuclear plant's life was extended by 5 years – generating £1 billion of extra electricity – for just over £30 million spent under NEC3 Term Service Contracts.

The Overseas Project of the Year Award went to a £21 million UK-government-sponsored series of water infrastructure projects in southern Africa, which are using ECC and the NEC3 Professional Services Contract where appropriate.

[Details of the new NEC Users' Group awards are on page 8.](#)

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The NEC-procured £269 million London Aquatics Centre won the BCIA 2014 Major Building Project of the Year prize (Hufton + Crow) ▼



NEC: pioneering fair payment



RUDI KLEIN NEC USERS' GROUP PRESIDENT

Last April the UK government's Business Department launched the *Construction Supply Chain Payment Charter* as part of its Construction 2025 initiative. The new charter allows for 60 day payments reducing to 45 days by June 2015 and to 30 days by January 2018.

But those of us with half-decent memories will recall the launch of the *Guide to Best 'Fair Payment' Practices* by the (then) Office of Government Commerce (OGC) in 2007 (see issue 41). This included a non-contractual fair payment charter providing for 30 day payments and recommended that central government clients use project bank accounts.

However, the Cabinet Office (which took over the OGC) eventually abandoned the charter and, instead, requested all government procurers to use project bank accounts, 'unless there were compelling reasons not to do so'.

So, it appears to be another case of, 'two steps backwards, one step forwards.' Furthermore it seems unlikely any steps will be taken to enforce compliance with the new charter. Its provenance is unclear and prospects are far from rosy.

NEC leading the way

In the absence of clear government guidelines, employers wishing to commit to and demonstrate

best fair payment practices need look no further than NEC3 contracts.

NEC responded very quickly to the 2007 fair-payment charter. The charter was referenced into NEC documentation and a project bank account Z clause was introduced (now option Y(UK)1) in the NEC3 Engineering and Construction Contract (ECC).

The project bank account option has already found favour with most public-sector clients because of its simplicity and ease of use. The auditing of payment performance in the supply chain can be facilitated by reliance on ECC core clause 26.3, under which the project manager must accept proposed subcontract conditions before the contractor can appoint the subcontractor.

If, for example, there are amendments diluting the payment provisions in the NEC3 Engineering and Construction Subcontract or such provisions in a bespoke subcontract are unfair, the project manager has some leverage in refusing to accept them.

New public sector regulations

Fortunately matters are more clear-cut in the public sector, with the new Public Contracts Regulations 2015 due to come into force later

this year. These will provide for 30 day payments along the whole of the public-sector supply chain and enable public bodies to have a discretion to make direct payments in the event of non-payment in the supply chain.

Insistence on the use of NEC contracts throughout the supply chain – and without amendment to the payment provisions – will help public-sector employers ensure compliance with the new Regulations.

As for the private sector, the *Construction Supply Chain Payment Charter* will probably limp along but it is unlikely to change anything dramatically. Only by adopting un-amended NEC contracts will private-sector employers really be able to show they are committed to treating their supply chains fairly. ○



▲ The *Construction Supply Chain Payment Charter* puts the clock back on fair payment, unlike NEC

Asia-Pacific conference attracts over 170 delegates



IVAN CHEUNG NEC ASIA-PACIFIC USERS' GROUP SECRETARY

The NEC Asia-Pacific Users' Group held its third annual conference in October in Hong Kong. It was again a sell-out event, with over 170 delegates attending.

Key speakers included Chew Tai-chong, outgoing projects director of MTR Corporation and chairman of the NEC Asia-Pacific Users' Group, and Hon Chi-keung, director of the Hong Kong government Civil Engineering and Development Department.

Hon said his department's experiences of using NEC had all been positive and urged the Hong Kong construction industry as a whole to take full advantage of NEC's benefits.

NEC3 FAQs

Vincent Connor, partner of Pinsent Masons and a member of the Construction Industry Council NEC3 task force, told delegates that a booklet of NEC3 FAQs would be available from the Council in early 2015. He also announced that the Council will be the official re-seller of NEC contracts in Hong Kong and regulate NEC-accredited training.

Other speakers at the event included Rex Wong of Kum Shing Group, Peter Clayton of Pinsent Masons, Ronnie Thomson of URS and Luk Wai-hung and Ricky Li of the Drainage

Services Department.

The afternoon consisted of a series of expert-led workshops on compensation events, contract responsibilities, target-cost contracts and communications. The event concluded with an expert panel discussion on risk management in the supply chain.

Z clause briefing

The conference was followed in November by the second NEC Asia-Pacific Users' Group

breakfast briefing hosted by Hogan Lovells, this time focusing on Z clauses.

The again well-attended event discussed the current heavy reliance on Z clauses in Hong Kong government contracts and discussed how their use can be refined in the future.

A further breakfast briefing will take place next month, which also sees the launch of the ECC project manager accreditation programme in Hong Kong. See the NEC website for further details. ○



◀ Panel discussion at the third NEC Asia-Pacific Users' Group conference at Langham Place Hotel in Hong Kong

Australasian workshops deliver hands-on learning



MATT FREEMAN NEC AUSTRALASIA CONSULTANT

NEC Australasia Users' Group members benefited from some 'hands-on' learning in November at a couple of one-day workshops in New Zealand.

The events in Auckland and Christchurch were a response to regional NEC users, who said they wanted to be walked through practical application of NEC in the workplace.

Both workshops focused on defined cost and use of the programme, which Australasian users have flagged as needing further clarification.

Auckland super city

Auckland provided an apt backdrop for the first workshop, given that infrastructure investment

is at unprecedented levels as this new 'super city' strives to meet the needs of a growing population.

It is also the home of Watercare, one of NEC's biggest supporters in the region. The organisation is currently delivering the NZ\$400 million (£200 million) Hunua 4 watermain project using the NEC3 Engineering and Construction Contract.

Christchurch too was a fitting venue, with many of the post-earthquake reconstruction projects being delivered by Christchurch City Council using NEC.

Sharing experiences

Once again, the workshops proved a great opportunity for the NEC community in the region to learn together and share experiences of using NEC contracts in various local sectors and disciplines.

The presentations, discussions and networking ensured two enjoyable days of learning and a valuable contribution to the NEC Australasia Users' Group as a whole. ○

Over 140 ECC project managers accredited in first year

SIMON FULLALOVE EDITOR

A total of 141 UK construction professionals have qualified as Accredited NEC3 Engineering and Construction Contract (ECC) Project Managers in the 12 months since the popular accreditation programme was launched in November 2013.

By successfully completing a blended learning syllabus of online training, interactive classroom training and post-teaching assessment, the newly qualified individuals have proved they have the necessary skills and competencies to fulfil the vital role of project managers on ECC projects.

Gold standard

According to NEC general manager Rekha Thawrani, 'We congratulate all those who have achieved what is now internationally recognised as the gold standard for ECC project managers.'

'By taking this bold step in their careers they will significantly benefit both themselves and the international construction industry, having the skills and tools to drive every NEC project they work on to a successful outcome.'

'Judging by the programme's popularity I am confident that both public and private sector NEC employers will continue to seek and appoint our Accredited ECC Project Managers on their future NEC projects.'

ICE register

The Institution of Civil Engineers (ICE) formally recognises the new qualification and there is now an online register of Accredited NEC3 ECC Project Managers on the ICE website. The register provides full contact and experience details for successfully qualified managers.

Barry Drewett, technical director of Mouchel in Manchester and currently ECC project manager for five ECC motorway contracts worth over £300 million, was one of the first to be accredited and registered.

'The accreditation programme really opened my eyes to the thinking behind ECC and how it is meant to work. The things I learned on the programme have proved invaluable, for both me and others, in helping successfully manage our present contracts.'

First class

Robert Meaney of P Meaney Management in Kent, who has so far achieved the highest pass mark in the programme, says, 'I think it is aptly named the gold standard — everything about it was first class. I truly believe that all key people in the future should be strongly encouraged to enrol on it.'

A further six classroom-style programmes for 16 delegates each have been run since the first was held in Birmingham in November 2013. In addition there have been 18 bespoke in-house programmes for employers such as Magnox, Sellafield, Network Rail, United Utilities, States of Jersey and Severn Trent Water.

A total of 305 people have now sat the accreditation, with the pass rate for the written assessments currently standing at 78%.

Going international

'The success of the UK accreditation programmes has attracted significant international interest,' says Thawrani. 'We will be launching our first event in Hong Kong in February 2015 with New Zealand likely to follow later in the year.'

The next two UK classroom sessions are scheduled for 23 March in London and 18 May in Birmingham. ○

For further information please call +44 20 7665 2446, email info@necontract.com or visit www.necontract.com/pma.

UK Highways Agency to spend £5 billion via ECC

SIMON FULLALOVE EDITOR



Smart motorways will be delivered by the new £5 billion ECC-based collaborative programme

The UK Highways Agency is using the NEC3 Engineering and Construction Contract (ECC) to deliver up to £5 billion of improvements to England's motorways and major A roads over the next 5 years.

In November last year the Agency appointed 26 consultants and contractors across four lots to the new ECC-based 'collaborative delivery framework' — its largest ever framework.

Large collaborative team

Chief executive Graham Dalton said, 'It is not just the scale of this framework that is important, but the way it is designed to bring the Agency, designers and contractors together in one large collaborative team.'

'We expect to deliver this major investment programme efficiently, speedily, and with real effort to minimise disruption to road users while we build.'

Major schemes will include the A14 upgrade in Cambridgeshire and the 'smart motorways' programme across the country. ○

Hong Kong landslip consultancy trial for PSC option C



KEN HO AND Y LAM CIVIL ENGINEERING AND DEVELOPMENT DEPARTMENT

The Hong Kong government's Civil Engineering and Development Department (CEDD) is trialling the NEC3 Professional Services Contract (PSC) for one of its landslip prevention and mitigation programme consultancy contracts.

It is the first use of the PSC option C (target contract) for public works projects in Hong Kong. CEDD's geotechnical engineering office awarded the 5 year, HK\$16 million (£1.3 million) contract to Aecom Asia in April 2014.

Consultancy scope

The rolling landslip prevention and mitigation programme deals systematically with landslide risks arising from both substandard man-made slopes and vulnerable natural hillside catchments.

Under the pilot PSC contract, Aecom is required to carry out natural terrain hazard studies for one hillside study area.

It will then undertake detailed design, supervision and contract administration of landslip prevention and mitigation works for the hillside catchments and 25 substandard man-made slopes and retaining walls.

The landslip prevention and mitigation works will be procured under an NEC3 Term Service Contract, tentatively scheduled for mid-2015.

Pain/gain share

Under PSC option C the consultant is generally paid based on a time charge. This option provides a mechanism for pain/gain share in respect of the consultancy fee, under which the employer and the consultant share the difference between the actual price and the final target price.

For the pilot project, a pain cap corresponding to 110% of the target price has been adopted for CEDD, that is the pain/gain is equally shared between the employer and Aecom unless the

actual price is higher than the above pain cap, in which case the consultant bears all the pain beyond the pain cap.

Special provisions for interim assessment of Aecom's pain share have also been incorporated in the contract to avoid over-payment and undue front-loading.

The pain/gain share mechanism should, in principle, drive the contracting parties to a common goal of completing the services more efficiently in terms of cost and time – this will be carefully reviewed at the end of the pilot scheme.

Good progress

So far, the contract is proceeding smoothly and the consultant is able to achieve all key dates stipulated in the scope. CEDD is partnering with Aecom as a team and the working relationship has been very good. ○

NEC teams up with Met Office to offer 1-in-10 year weather data



JOHN FARAGHER MET OFFICE

A problem with many construction contracts is the inherent subjectivity in judging to what extent a weather event is 'exceptionally adverse' or 'exceptionally inclement' to justify additional time and money for contractors and subcontractors.

Clause 60.1(13) of the NEC3 Engineering and Construction Contract (ECC) removes this uncertainty by stating that a compensation event is only due if an agreed locally recorded weather measurement exceeds an agreed 1-in-10 year value for that month based on local weather data.

NEC has teamed up with the Met Office to ensure accurate monthly 1-in-10 year weather values are available to NEC users throughout the UK. By specifying Met Office weather stations and data in their NEC contract data, users can be assured of the most precise definition of when an exceptional weather event has occurred in any given month.

Over 160 years of data

The Met Office has over 160 years' experience in observing and recording weather, both in Britain and internationally. In the UK it runs a network of more than 300 weather stations, with 1-in-10 year data now available for over 100 stations for NEC users.

In addition, the Met Office maintains and operates the UK's radar network and is party to international agreements to operate meteorological satellites. The organisation is thus ideally placed to deliver, and make comparisons between, historical and current weather data.

There are rigorous global standards for all

weather observations and the Met Office is diligent in checking its measurements and calibrating its instruments. For instance, cup anemometers are calibrated in wind tunnels at least every 5 years and rain gauges are routinely cleaned and checked by network managers.

Most of the UK's extensive network of land surface weather observation stations are long-established and provide automatic, frequent and accurate readings for weather elements such as rainfall and temperature.

Long-term averages

When the Met Office builds up a long record of observations from a location it is able to analyse them and generate long-term averages (LTAs). These LTAs are the best measure of what the average or normal climate looks like and are generated using observations for a 30 year period, spanning 1981 to 2010.

Crucially, the baseline is periodically updated to ensure that the averages that are generated from it are representative of the changing climate. It can be quickly seen if conditions were above, below or as expected by comparing the recorded monthly observations against the LTA.

1-in-10 year values

In association with NEC, the Met Office has also devised a system of 1-in-10 year values to determine the rarity or exceptionality of particular weather events, especially rain, frost, snow and wind speed. The values are calculated on the basis of 30 years of monthly data for all the main weather stations.

The totals for a particular month, for every year from 1981 to 2010, are laid out in order from the most extreme to the least extreme – either in terms of recorded value (e.g. daily rainfall total) or days of occurrence (e.g. snow lying at 9 a.m.). The third most-extreme value is then used as the 1-in-10 year value. Although the value is really the third most extreme in 30 years, it is simpler to consider it the highest in 10 years.

Should the readings for a particular weather element in one month be more exceptional than the highest value in a 10 year period, then an NEC contractor will have a case for a compensation event should the weather event impinge on the contractor's ability to carry out the work. In this way a clear-cut standard for NEC compensation events related to weather events can be agreed to by both the client and contractor.

Contract weather station

NEC contracts should include reference to a suitable weather station in their contract data to be used for current observations and as a data source for LTAs and 1-in-10 year values. If this station closes, or becomes inoperative for some reason, both parties need to agree on the next nearest suitable station.

Met Office LTAs and monthly 1-in-10 values are vital tools for creating and managing successful NEC contracts. ○

For further information including costs of LTAs and monthly 1-in-10 year values please call +44 1392 885680, email construction@metoffice.gov.uk or visit www.metoffice.gov.uk/construction/projectplanning

Getting your project set up for ECC



BARRY TREBES AND RICHARD PATTERSON MOTT MACDONALD

Getting your NEC3 Engineering and Construction Contract (ECC) off on the right foot is critical and requires the ECC project manager to show leadership from the start. This is a focus of the NEC course prior to ECC project manager accreditation, which both authors deliver.

Project-specific requirements

The works information may contain numerous project-specific requirements and obligations

on the parties, often scattered throughout the works information. When setting up a project it is useful to identify and schedule out these key processes and actions required by the parties.

There may be requirements on or before the starting date, on a routine basis throughout the contract, or at or prior to completion. However, the standard ECC itself is a series of processes that you need to be ready for.

ECC set up checklist

The following is a checklist for the employer (E), ECC project manager (PM), ECC supervisor (S) and contractor (C) for getting set up to manage an ECC successfully.

The actions are tabulated and based on the structure of the core and main option clauses. Many are best done jointly by the project manager and the contractor.

ECC set up checklist Responsibility Key: employer (E), ECC project manager (PM), ECC supervisor (S), contractor (C)

Ref	ECC part	ECC clause	Responsibility	Action	Comment
0	INTRODUCTION AND GENERAL	-	All	Review and understand requirements of the contract	All need to review all the documents that make up the contract including the all-important works information.
		-	E	Identify training needs and arrange joint workshop with PM, S and C (and possibly key subcontractors on NEC terms)	Training can be an effective part of arrangements to promote collaborative working. It should aim to help the E, PM, S and C understand the requirements of the contract and how they will work together to meet them. Do it even if all think they know the ECC.
		-	All	Collaborative working	Identify and implement appropriate interventions to support collaborative working.
		-	PM	ECC 'health checks'	Establish simple set of measures to report monthly trends on how the contract is being managed.
1	GENERAL	11.2(14)	PM	Issue the ECC 'Risk Register'	Suggest simple spreadsheet starting with the risks identified in the contract data. Note that this is not the same as any other project risk register that might be being used.
		13	E	Establish system for communications under contract	For example, profomas and tracking spreadsheets or 'in the cloud' proprietary system. Ideally this will have been set out in the works information.
		13.2	E	Confirm address for notices under contract	Needs an exchange of notices between the parties to the addresses in the contract data.
		14.2	PM and S	Appoint delegates (if required)	PM should also make clear where others (including S) are required to advise PM regarding PM's actions.
		16	PM	Establish timing for routine risk reduction meetings	There is no prescriptive timescale for early warning or risk reduction meetings in the contract. However, it is useful to establish a regular routine. These may be weekly and may be carried out as part of what might otherwise be called a progress meeting.
		17	PM and C	Ambiguities and inconsistencies	Familiarise yourself with the contract and notify any ambiguities and inconsistencies as soon as you become aware.
		18	PM and C	Illegal or impossible requirements	Familiarise yourself with the contract and notify any illegal or impossible requirements as soon as you become aware.
2	THE CONTRACTOR'S MAIN RESPONSIBILITIES	21.2	PM	Establish C's plan for submission of 'particulars of his design' taking note of 21.3, which requires that each part submitted can be assessed fully	Requirements should be set out in the works information and shown on C's programme.
		23.1	PM	Review requirements for C's submission of design of 'Equipment' method statements	Requirements should be set out in works information and shown on C's programme. PM can request other items that are not in the works information.
		24.1	PM	The key persons	C to provide key persons in contract data or propose replacements.
		26.1	PM	Invite C to submit overall plan for subcontracting	This is not explicitly required by the conditions but makes sense for all. Requirements and constraints may be in the works information.
Options C, D, E, F					
		20.3	C and PM	C advises PM on practical implications of the design of the works and on subcontracting arrangements	Link with action under clause 26.1, as above.
		20.4	C and PM	Forecasts of total defined cost	Agree dates for meetings for consultation prior to C's submission of forecasts of defined cost at the intervals stated in the contract data. Agree model reporting format.
	PM		Audit	Establish audit plan for defined cost.	

ECC set up checklist Responsibility Key: employer (E), ECC project manager (PM), ECC supervisor (S), contractor (C)

Ref	ECC part	ECC clause	Responsibility	Action	Comment		
3	TIME	11.2(2)	PM	Check and review the definition of completion in the works information	<i>If not clear and sufficient, PM should change the works information as soon as possible to make it so.</i>		
		30.1	PM and C	The access dates	<i>Familiarise yourself with this information in the contract data. Ensure E can make site available on the access date(s).</i>		
		30.3	PM and C	The key dates (if any)	<i>Familiarise yourself with this information in the contract data.</i>		
		31.1	PM and C	PM to work with C to get first programme submitted and accepted	<i>Programme may be referenced from contract data part two or required to be submitted with a stated period from the contract data. Having an acceptable programme in place is critical for the successful management of ECC.</i>		
		32.2	PM	Establish routine (usually monthly) for programme meetings for C to explain revised programme prior to formal submission.	<i>Establish practices to keep the programme up to date and to agree progress.</i>		
4	TESTING AND DEFECTS	40.1, 40.3	S and C	Tests and inspections required by the works information	<i>S should work with C's quality control manager to develop regime to be compliant with requirements of contract and C's own quality management system.</i>		
		41.1	S and C	Tests and inspections before delivery to working areas	<i>Develop testing plan for these items (if any).</i>		
		42.2	S	Establish format for list of defects			
5	PAYMENT	50.1	PM	Decide first assessment date (to suit the procedures of the parties)			
		50.2	PM	Set up process to determine the amount due	<i>On an option C, D, E or F contract this will be a significant exercise requiring, for example, an audit plan from PM and developing an understanding of C's cost management system. Seek guidance.</i>		
		51.1	PM	Develop form of payment certificate	<i>This will be impacted by the options included in the contract.</i>		
		51.2	PM and C	Certified payment	<i>Ensure E's finance department is aware of the payment terms and dates for payment.</i>		
		52.1	PM and C	Defined cost	<i>Decide how discounts, rebates and taxes are to be identified by C.</i>		
		Option A					
		11.2 (27)	PM and C	Completion of activities	<i>Establish process to agree completion or otherwise of activities in the activity schedule.</i>		
		Options C, D, E, F					
		52.2, 52.3	E, PM and C	Defined cost	<i>C to develop systems for records of all defined cost. E to put in place plans for audit.</i>		
		Options B and D					
		PM and C	Quantities	<i>Establish procedures for measuring the quantities of works done.</i>			
6	COMPENSATION EVENTS	6	PM	Develop process for managing compensation events	<i>Seek detailed guidance on best practice for compensation event management.</i>		
		6	PM	Establish routine for compensation event meetings to review compensation event process and acceptance	<i>The appropriate frequency will depend on the project and will change but it is essential to start with routine meetings.</i>		
		Options C, D, E, F					
		PM and C	Compensation events which arise from the use of bills of quantities	<i>Processes to re-measure the works to be established.</i>			
7	TITLE	71.1	S	Establish any need for the S to mark plant and materials outside the working areas			
		72.1	S	Removing equipment from site	<i>Establish appropriate procedures.</i>		
8	RISKS AND INSURANCE	85.1	PM and C	C to submit certificates confirming that insurances are in place	<i>These are required to be submitted prior to the starting date.</i>		
		87.1	PM and C	Encourage E to submit certificates confirming that any insurances to be provided by E are in place			
9	TERMINATION	-	-	No initial actions required			

FAQs



ROBERT GERRARD
NEC USERS' GROUP
SECRETARY

This is a follow up to the recent NEC Users' Group Z-clause webinar, providing answers to additional questions posed on the day. The recorded webinar can be viewed on the NEC website.

Complying with the law

Question

I have previously been advised by lawyers that a Z clause requiring the contractor to comply with the law is necessary. Have I been wrongly advised?

Answer

There is nothing that says you cannot do this, but it is hard to see the justification for it or how the parties might suffer if such a clause were not present.

As an example, say there is a Z clause stating that contractor's staff shall not exceed highway speed limits. If one of the contractor's operatives speeds on the way to work, what are you going to do within the contract given that the contractor has breached both the contract and the law?

The only justification for requiring compliance with the law as a contract term is that a breach of the law would also be a breach of contract. If some aspect of the law is so critical that you want to recover damages for the consequences of a failure to comply, that needs to be spelt out in the Z clause so people understand what is intended.

Adding other contract terms

Question

I have noticed a tendency among employer's lawyers to cut and paste JCT contract wording into NEC Z clauses, which do not really work. Has anyone else?

Answer

We have seen examples of this: suddenly in a contract you are using different words and terms to that within the particular NEC3 contract you are using and there will at least be ambiguity or inconsistency. It is also quite likely that the JCT requirements will be in conflict with the NEC requirements. This is not a well-thought-through approach and such clauses should not be accepted.

Stepping down Z clauses

Question

Are Z clauses the correct location for 'step down' clauses from a main contract (e.g. IChemE) to a subcontract (e.g. NEC3 Professional Services Contract)?

Answer

Yes, that would be the correct location. However, for the examples given, you would need to decide carefully which process-related clauses from the main contract would be appropriate for the professional services appointment.

You can potentially mix and match NEC

contracts with others but you will need to take great care they fit together as intended. The simplest approach would be to use, say, the NEC3 Engineering and Construction (ECC) as the head contract (which of course can be used for all process contracts).

Even after your best efforts when using a mix of contracts, you may still end up with one part of the supply chain using NEC language and processes (early warnings, compensation events, accepted programme) and another using entirely different language covering entirely different matters.

Combating Z clauses

Question

We see many badly drafted Z clauses that are affecting the administration and operation of NEC3 contracts and that also go against many of the contract principles. Is NEC contemplating a way of combating this other than through education and training?

Answer

People are entitled to change standard contracts if they so wish — that has been and likely always will be the case. We consider much of this is done through ignorance and bad practice so education and training is just one of the ways we are tackling this.

We endeavour to explain to users the significant risks of introducing ill-thought-out Z clauses. We appreciate that on many projects there will be a good case for a Z clause, which is why the secondary option is available in the first place. If we removed the option people would just amend the conditions in some other way. We could indeed look at helping people draft good quality Z clauses in time.

Some organisations purchase a copyright licence for NEC3 contracts as they wish to add Z clauses within the standard conditions. The copyright comes with a condition that demands the organisation clearly shows the changes to the standard contract. The tenderer at least then can see the changes and can act accordingly at bid stage.

Mutual trust and cooperation

Question

Surely some Z clauses are not compliant with ECC clause 10.1 requiring the parties to act in a spirit of mutual trust and cooperation?

Answer

Some badly drafted or inappropriate Z clauses may indeed compromise the mutual trust and co-operation requirement, such that an inconsistency or ambiguity might arise. However, not all Z clauses will introduce inconsistency or ambiguity, nor will they compromise clause 10.1. Z clauses should only be included by an employer if they are considered absolutely necessary, and then they should be well thought out and well drafted to avoid compromising standard NEC terms.

Spirit of the contract

Question

What is the status of Z clauses that break the spirit of the contract? Case law is against a party that badly amends a contract. From the contractor's point of view, is it a risk worth signing up to?

Answer

There is a point at which the spirit of the contract may indeed be broken by Z clauses.

We would question why any employer would choose a standard form of contract and then decimate it. Tenderers should carefully consider whether Z clauses are acceptable to them and act accordingly. Ambiguities and inconsistencies may well be resolved by those who created them — it is far better to sort such matters out before rather than after bidding.

Accrediting Z clause drafting

Question

You have recently introduced ECC project manager accreditation — could you do the same for people drafting Z clauses?

Answer

If drafting Z clauses is a precious skill that employers think would be of benefit to them, then accreditation is definitely something worthy of consideration. It is actually on our list of possible initiatives and we would be interested to hear the demand for this.

Amending a core clause

Question

Would it be correct to say that an amendment of a core clause is actually a Z clause?

Answer

That would be correct. Any amendment, addition or deletion of any core clause should be contained in a Z clause.

When is NEC not NEC

Question

In 2005, the UK government's Office of Government Commerce (OGC) endorsed unamended NEC3 contracts for use in the public sector. Since then it has been used by government bodies but amended by to transfer risk. At what point does NEC cease to be NEC because of the huge amount of Z clauses changing risk?

Answer

At some point the contract intent will be lost, then the clarity, and then it will be unrecognisable from a standard NEC3 contract. Creators of such documents should write their own bespoke conditions and not pretend to use NEC. OGC did indeed endorse unamended NEC3 contracts so that is the starting point and surely the expectation of the government. If there is a good justification then some risk re-allocation may be entirely proper on a project-by-project basis. If not, eventually you will have created your own bespoke conditions anyway as the only thing resembling NEC might be the reference to it.

Protecting clients

Question

For UK government contracts, project managers are prone to add Z clauses which are too protective for their clients. How do we balance such a tendency?

Answer

The best way for project managers to protect their clients is to use contracts with a balanced risk allocation, with each party retaining the risks they can manage and allow for. Project managers who tend to add Z clauses which result in an unbalanced risk allocation should be encouraged to focus instead on what is best for the project, which might help to balance such tendencies. The supply chain has a voice, and this should be used at the latest at tender stage to offer an alternative view where risk allocation appears to be unbalanced by Z clauses. ○

New NEC Users' Group Awards 2015

ROBERT GERRARD
NEC USERS' GROUP SECRETARY

NEC is inviting Users' Group members to share their stories of successful collaboration at the inaugural NEC Users' Group Awards later this year. The new awards will be presented at the NEC annual seminar on 20 April 2015 in London, UK.

Four new awards

Following the success of last year's NEC Project Manager of the Year competition, submissions are now being invited for the following awards

- NEC Small Project of the Year
- NEC Large Project of the Year
- NEC Client of the Year
- NEC Contractor of the Year
- NEC Project Manager of the Year

The theme for all the awards is collaboration using NEC3 contracts with particular emphasis on clause 10.1. For each award the judges are looking to identify those innovative projects and organisations that can demonstrate good practice through collaboration.

Applications are welcome from all NEC users world-wide.

More details of the NEC Users' Group awards can be found at www.necontract.com/awards.

Delegate registration is also open for the seminar, with places booking fast. Secure your place and find out more at www.necontract.com/seminar15.

NEC Users' Group members

A warm welcome is extended to all new members, highlighted in bold in the membership category lists below.

PLATINUM

Amey Inter Urban
AVE Plc
Dounreay Site Restoration Ltd
High Speed Two (HS2)
Highways Agency
Lafarge Tarmac
Pinsent Masons LLP
RVE Innogy UK Ltd
RVE Technology UK Limited
Sellafield Ltd
Southend Borough Council
Transport for London
West Yorkshire Councils

GOLD

AECOM Professional Services LLP
Aggregate Industries UK
AMEC Power & Process UK & Europe
Amey Local Government
Areva S.A
Atkins UK
Babcock International Group
Surrey County Council
Balfour Beatty Major Civil Engineering
Balfour Beatty Regional
Balfour Beatty Utility Solutions
BAM Nuttall Ltd
Bechtel Ltd
Belfast City Council
Bolton Metropolitan Borough Council
Bracknell Forest Borough Council
Bristol City Council
Carillion Plc
CCS Group PLC
Central Procurement Directorate
City of Edinburgh Council
CNS Planning Ltd
Construction Efficiency & Reform Group, Cabinet Office
Costain Limited
Defence Infrastructure Organisation
Department of Health ProCure21
Doncaster Metropolitan Borough Council
Driving Standards Agency
Dundee City Council
EDF Energy Nuclear Generation Limited
Eurovia Management Limited
Farrans (Construction) Ltd
Fife Council
Foreign and Commonwealth Office
Galliford Try
Government Procurement Services
Government Property Unit
Guys and St Thomas NHS Trust
Hanson Contracting
Hertfordshire County Council
Horizon Nuclear Power Services Ltd
Hugh LS McConnell Ltd
Hyder Consulting UK Ltd
Interseve (Facilities Management) Ltd
Interseve Construction Ltd
J Murphy & Sons Ltd
Jackson Civil Engineering Group Ltd
Kier Infrastructure and Overseas Ltd
Lagan Construction Ltd
Laing O'Rourke
Land Engineering (Scotland)
Lend Lease Consulting (EMEA) Limited
Lincolnshire County Council
LLW Repository Ltd
London Legacy Development Corporation
Mace Limited (London)
Magnox Limited
Miller Construction (UK) Ltd.

Ministry of Justice
Moreton Howard Limited
Morgan Sindall Group Plc
National Grid Plc
Natural History Museum
NG Bailey
Norfolk County Council
NWSP Specialist Estates Services
Osborne Clarke
Ove Arup & Partners Ltd
Perth & Kinross Council
Plasticon UK Ltd
QinetiQ Ltd
Rider Levett Bucknall
RPS Consulting Engineers
Siemens
Slanska Construction Group
SLR Consulting Ltd
South London & Maudsley NHS Trust
Springfields Fuels Ltd
SSE Plc
States of Jersey
Suffolk County Council
Surrey County Council
The British Museum
The Capita Group PLC
The Coal Authority
UK Power Networks Ltd
United Utilities Supply Chain Management
University Of Cambridge
Vinci Construction UK Limited
Volker Wessels UK Ltd
VPI Immingham
Warwickshire County Council
WSP UK Ltd
WYG Management Services
YGC

SILVER

Aberdeenshire Council
Alan Auld Group Ltd
Anglian Water Services Ltd
Aquila Nuclear Engineering Ltd
Balfour Beatty
BAM Construct UK Ltd
Bezzant Ltd
Borough of Poole
Boskalis Westminster Ltd
Bournemouth Borough Council
Brink Management & Advies
Cambridge City Council
Canal and River Trust
CH2M HILL Halcrow
Colas Ltd
Connect Plus (M25) Ltd
Cornwall Council
Currie & Brown
Deane Public Works Ltd
Dee Valley Water Plc
Defence Science & Technology Laboratory
DLA Piper UK LLP
Dyer & Butler Ltd
East Ayrshire Council
East Dunbartonshire Council
East Riding of Yorkshire Council
East Sussex County Council
Eastern Solent Coastal Partnership
EC Harris LLP
Environment Agency
Eskom
Faithful & Gould
Franklin & Andrews
FTI Consulting
Gleeds
Gve Commercial Solutions
Health Facilities Scotland
Heathrow Airport Holdings Ltd
Imtech Traffic & Infra UK Ltd
IPP Contracting Ltd
J N Bentley Ltd
Jacobs UK Ltd
John Sisk & Son Ltd

John X Birchall
Knowles Ltd
Liverpool Mutual Homes
London Borough Of Hillingdon
London Borough Of Merton
Management Process Systems Ltd
Mott MacDonald Limited
Mouchel Group Plc
MWH UK Ltd
Natural Resources Wales
NBS Services
Neath Port Talbot County Borough Council
Nexus Rail
North Ayrshire Council
Northern Ireland Housing Executive
Northumberland County Council
Northumbrian Water Limited
PD Group Management
Pick Everard
Playe & Partners
Physian Cables & Systems Ltd
R J McLeod (Contractors) Ltd
Ramboll UK
Renfrewshire Council
Resolute Project Services Ltd
Rugby Borough Council
Salvation Army
Scottish Water
Severn Trent Water Ltd
South East Water Ltd
South Lanarkshire Council
South West Water Ltd
Thames Tideway Tunnel
The Orange Partnership
The Royal Parks
The Sheffield College
Thorntask Limited
Turner & Townsend
URS Infrastructure & Environment UK Limited
Veale Wasbrough Vizards LLP
Volker Rail Ltd
Walter Thompson (Contractors) Ltd
Wardell Armstrong LLP
Water Service (NI)
Wheeler Group Consultancy
Worcestershire County Council
Yorkshire Water Services Ltd

BRONZE

4Projects
Allied Infrastructure Management Ltd
AMEC Environment & Infrastructure UK Ltd
Anthony Collins Solicitors LLP
Ardent Consulting Ltd
Argyll and Bute Council
Bann Ltd
Beattie Communications
Bennetts Associates
Bevan Brittan
Billfinger Industrial Services UK Ltd
Black & Veatch Ltd
Blake Newport Associates
Bowdon Consulting Limited
Brodes LLP
C&V Consulting
Caledonian Maritime Assets Limited (CMAL)
Castle Hayes Pursey LLP
Chandler KBS
Client Managers Toolkit
CMToolkit Ltd
Conject
Construction Dispute Resolution Crummock (Scotland) Limited
Cron Construction Consultants Limited
DKB Project Controls Ltd
Docté Consulting
Doig & Co
Doig & Smith Ltd
Dumfries & Galloway Council
East Lothian Council
Engineering Contract Strategies
Fladgate LLP
Fone Alarm Installations Ltd
FP McCann Ltd

George Corderoy & Co
George Leslie Ltd
GHA Luivunn Ltd
Glasgow City Council
H A Goddard & Sons
Hannah Reed & Associates Ltd
Hanover Housing Association
Harrow Council
HLS Associates Limited
Hydro International (Wastewater) Limited
Ironsides Farrar Ltd
J Brehehy Contractors Ltd
JLL Consultancy Ltd
John F Hunt Demolition
John Papworth Ltd
Keegans Ltd
Lancaster City Council
Land & Water Group
Leicestershire County Council
Lindford Consulting Ltd
MacKenzie Construction Limited
McAdam Design
Met Office
Mon-Arch
Muckle LLP
Navigator Consulting (Europe) Ltd
Newcastle City Council
North Yorkshire County Council
Nottingham Trent University
Nottinghamshire County Council
Novi Projects
Nuclear Decommissioning Authority
Nuvia Limited
Oxand Limited
Pat Munro (Ainess) Ltd
Patronus Consulting Ltd
pdConsult
Pellings LLP
Peter Brett Associates
Peter Cousins & Associates
Plan Ahead
Portsmouth City Council
Procom-IM Ltd
Project Enquirer Ltd
Pyments Ltd
Quintan Diar
Quest Interiors Ltd
Quigg Golden Ltd
R A Gerrard Ltd
Ramsden Enterprises Ltd
Ramskill Martin
Rex Procter & Partners
Ridge & Partners
Royal Holloway DHV Ltd
Royal Haskoning, University of London
Selwood Limited
Sheffield City Council
Shropshire County Council
SIMS Ltd
Solomons Europe Ltd
South Ayrshire Council
Specialist Engineering Contractor's Group
States Property Services
Synergie Training
Sypro Management Ltd
T & N Gilmartin
Taylor Wessing LLP
Jeffrey & Wrekin Council
The Big Red Apple Company Ltd
The Clarkson Alliance
The Highland Council
Trowers & Hamlin
VHE Construction Plc
Viridor Waste Management Ltd
Walker Sime Ltd
Wallace Stone LLP
WDR & RT Taggart
West Power & Industrial
Wilshire County Council

ASIA-PACIFIC

Advisian Limited
Airport Authority Hong Kong
APM (HK)
Bena Consultants Ltd
BK Surco Ltd
Chinese University of Hong Kong

Civil Engineering & Development Department HKSAR Government
CLP Power Hong Kong Ltd
Construction Industry Council

Continental Engineering Corporation

Development Bureau, the Government of the Hong Kong Special Administrative Region
Drainage Services Department
Driver Trett (Hong Kong) Ltd
EC Harris (Hong Kong) Ltd
Fugro (Hong Kong) Ltd
Gammon Construction Ltd
Highways Department HKSARG
Hogan Lovells (Hong Kong)
Hsin Chong Construction Group Ltd
Institution of Civil Engineers (Hong Kong)
Kum Shing (KF) Construction Co Ltd
Langdon & Seah Hong Kong Limited
Mace Limited (Hong Kong)
Maka Consulting Company Ltd
Mayer Brown JSM
Meinhardt Infrastructure & Environment Ltd
Mott MacDonald Hong Kong Ltd
MTR Corporation
Navigator Consulting (Hong Kong) Ltd
Pinsent Masons
Paul Y Construction Ltd
Shun Yuen Construction Co. Ltd
Sum Kee Construction Ltd
The Contracts Group Ltd
The Hong Kong Construction Association Ltd
Turner & Townsend (HK)
URS Hong Kong Ltd
VSL Intrafor (HK)

AUSTRALASIA

Christchurch City Council
City Care Limited
Dow Airen
Evans & Peck Pty Ltd
InfraSol Group Pty Ltd
Meridian Energy Limited
PBA Ltd
RICS Oceania
Watercare Services Limited

REST OF WORLD

Aquaterra Consultants Ltd
Cementation Canada Inc
Contract Communicator
Fulton Hogan Limited
Kentz (Pty) Ltd
Nuclear Consultants International
Simpson Grierson
Thurlow Associates
Transfield Services (New Zealand) Ltd
VGI Consulting Inc
Worley Parsons
Yared Yahouni

ACADEMIA

Anglia Ruskin University
Glasgow Caledonian University
Kingston University School Of Engineering & Construction
Leeds Metropolitan University
Loughborough University
University of Birmingham
University of Central Lancashire
University of Greenwich
University Of Northumbria
University Of Portsmouth
University Of Salford
University Of The West Of England
University Of Ulster
University Of Wolverhampton

necontract DIARY

22 January	Introduction to the TSC	West Midlands
25 January	ICE alternative dispute resolution workshop	London
29 January	Introduction to the ECC	London
04 February	Introduction to the ECSC	London
10 February	Preparing and managing ECCs	West Midlands
12 February	ECC compensation events workshop	West Midlands
18 February	Introduction to the PSC	West Midlands
26 February	Introduction to the ECC	West Midlands
04 March	Managing risk under the ECC	London
19 March	Introduction to the ECC	South West
19 March	ECC programming workshop	London
23 March	ECC project manager accreditation	London
26 March	Practical application of the ECC	London
08 April	Preparing and managing ECCs	Scotland
20 April	NEC Users' Group annual seminar	London
22 April	ECC project managers' workshop	West Midlands

Key: **Bold** - NEC Users' Group events, **ECC** - Engineering and Construction Contract, **ECSC** - Engineering and Construction Short Contract, **PSC** - Professional Services Contract, **TSC** - Term Service Contract.

All articles in this newsletter are the opinions of the authors and do not necessarily reflect the views of the NEC.

For ease of reading, all NEC contract terms are set in lower-case, non-italic type and their meanings (unless stated otherwise) are intended to be as defined and/or identified in the relevant NEC3 contract.

Constructive contributions to the newsletter are always welcomed and should be emailed to the editor Simon Fullalove at simon@fullalove.com (telephone +44 20 8744 2028).

Current and past issues of the newsletter are also available in the MyNEC area of the NEC website at www.necontract.com.

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