

## **Comparison: The Engineering and Construction Contract (ECC4) and the Engineering and Construction Short Contract (ECSC4)**

### **General**

The ECSCS is simpler to manage and appropriate for priced contracts of low complexity. Clauses can be added, but once one starts adding in additional conditions – e.g. for design by the Contractor - there is a danger that the simplicity is lost

Training material is available in Mott MacDonald for both ECC and ECSC. See the NEC Bitesize material – linked from the NEC Yammer Group.

### **Main issues:**

#### **1 General**

- There is no *Project Manager* or *Supervisor* in ECSC. All management roles are undertaken directly by the *Client*.
- There are no secondary options: but delay damages and retention included as standard.
- There is no option Z – but an entry in the Contract Data:
  - ‘The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 (with amendments January 2019 and October 2020) and the following additional conditions: [ ]
- The ECSC has simple forms for Contract Data, Scope (ECSC3 Works Information), Site Information, *Contractor’s Offer* and *Client’s Acceptance*. These are integrated into a standard single document. Mott MacDonald has a starter document (see the PPCM Practice site). However, it will often be sensible to have the Scope developed as a separate document.
- There is no ‘Early Warning Register’ in the ECSC, but CI 16.2 requires consideration and an updated record of ‘actions to be taken’ and it will be logical to maintain a register.

#### **2 The *Contractor’s* main responsibilities**

- The ECSC does not explicitly require a statement of what the *Contractor* is required to design or provide for submission of ‘particulars of the design for acceptance’.
- The ECSC is not recommended if there are significant or complex design obligations on the *Contractor*.
- In ECSC there is no explicit control over subcontracting by the *Client*.

### **3 Time**

- The ECSC has reduced requirements for a programme and one is only required if and as stated in the Scope (ECSC3 Works Information).
- However, the *Contractor* (CI 30.2) is required to provide a forecast of the date of Completion weekly.
- There is no formal 'Accepted Programme' and no obligation on the *Client* to accept programmes.
- There is no concept of take-over or acceleration in the ECSC.

### **4 Defects**

- There is no *Supervisor*, so Defects are notified by the *Client*.
- There is no explicit provision for testing or inspections: this could be included in the Scope (ECSC3 Works Information).

### **5 Payment**

- There are no payment 'options' in the ECSC: there is a priced 'Price List' which can be mix of lump sums and/or quantities times rates. ie the ECSC is a 'priced' contract.
- The Price List may need to include a 'method of measurement'.
- The risk of any quantities in the Price List is clearly with the *Client*.
- But the *Contractor* is only paid for the items listed the Price List for delivering whatever is set out in the Scope and so takes the risk of the 'coverage' of the items (that are usually provided by the *Client*).
- Retention and delay damages are part of the contract and not options. If not wanted, the Contract Data entries can be set to 'nil'.
- The ECSC has a simpler definition of 'Defined Cost' (used only for compensation events) – There is no Schedule(s) of Cost Components
- The *Contractor* assesses the amount due (rather than the *Project Manager*, under the ECC).
- There is no Fee in ECSC: instead there are tendered:
  - percentage for overheads and profit added to Defined Cost for people and
  - percentage for overheads and profile added to other Defined Cost

### **6 Compensation events**

- The basic compensation event process is very similar in ECC and ECSC.
- The *Contractor* has only two weeks to provide a quotation (compared with three weeks in the ECC)
- If the Contractor notifies a compensation event it is required to include its quotation with the notification (ECC has a first step for the PM to accept that the event is a compensation event.)

- 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 only one chance for a revised quotation, after which *Client* has to accept or make their own assessment.
- If the *Client* does not respond to a quotation in two weeks, the quotation is ‘treated as accepted’.
- The weather compensation event is simpler but less precise than in the ECSC.

## **8 Liabilities and insurance**

- It is odd that ECSC has no overall limit on liability – easily added if required as an ‘additional condition’
- In the ECSC Client liabilities are not listed as compensation events – so the Contractor has the time risk for the events. This is odd. It can easily be changed if required via an additional condition.

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