

NEC Engineering and Construction Short Contract (ECSC), 1 June 2022

Webinar presented by Richard Patterson

Question Asked	Question Answered
For a fit-out project do you recommend NEC (from Client POV)	Yes, if low risk and if client wants to pay by quantities and/or lump sums then no reason why ECSC can not be used.
who is responsible to decide on the assessment dates?	The Clients sets the 'assessment day' in the Contract Data. That will usually be a stated date in the month.
If I get this correctly, the client can request the contractor to make designs, if that is the case, how/when will the cost for the requested design be agreed?	The ECSC can be used where there is some design by the Contractor. But the provisions are limited. If there is significant design it may be sensible to copy across some of the provisions for design from the ECC to the ECSC. I might be better to use the ECC instead.
Where Client obliged to accept Contractor's Risk allowances ?	The Client can choose to take the risk of quantities for a certain item by stating a quantity and asking for a rate rather than pricing as a lump sum. Then for specific events there is a list of 'compensation events' for which the Contractor may get time and/or cost. The Contractor takes the risk of all events that are not compensation events. The Contractor will have to include for all its risks in the items in the Price List.
Should the default liability for design be reduced to reasonable skill and care? Would any insurer cover for fitness for purpose for design?	<p>I think that the ECSC is wrong in giving the Contractor fit for purpose liability for any design that it is required to do. This can be reduced to due skill and care in an additional condition, logically using some of the language from ECC option X15.</p> <p>Professional indemnity insurance is very expensive and very difficult to get for 'fit for purpose' liability.</p>

<p>The short contract appears to be refreshingly truly easier to grasp compared to the NEC4. Would you agree it could be used on projects valued at even tens of millions of pounds?</p>	<p>Yes, the ECSC is simpler than the ECC. It can be used for high value contracts but is officially recommended for 'low risk' contracts. Best to check if you need any of the options in the ECC. If so, likely to be best to use the ECC.</p>
<p>So what about Subcontractor warranties? So there is no link between client and Subcontractor?</p>	<p>The ECC4 now includes option X8 'Undertakings to the Client and Others' (known in the UK as 'collateral warranties'). This is NOT in the ECSC. It could be added in as additional conditions is required.</p>
<p>How should delay (Prelims) be assessed if the People / Equipment cost is a lump sum in the Price List, i.e. not broken down into specific People and / or Equipment?</p>	<p>63.1 'For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.' So if there are items in the Price List for prelims they may be used for agreeing any change to the Prices for a delay. For other compensation events the forecast 'Defined Cost' is used.</p> <p>Building time-related charges into NEC lump-sum and short contracts, Richard Patterson, Rob Horne, NEC Newsletter, November 2018</p>
<p>What if there is no change in the quantity and unit rate but economical status of the site is fluctuated by the change in the currency and forecasts shows that there is no more chance to finish the work ? Will that be a compensation event raises or this is sole responsibility of the contractor to maintain ?</p>	<p>There is no provision on the ECSC to protect the Contractor from inflation. It could be added if required.</p>
<p>Can you provide some project examples where ECSC can be used?</p>	<p>Too many - all sectors!</p>
<p>Plus, is ECSC advised to be used for public funded (e.g local councils) projects?</p>	<p>Yes it can be and is used by many public sector organisations.</p>
<p>Thanks. Presume CEMAR/Sypro will allow use of ECSC contracts?</p>	<p>Yes, most of the organisations that sell in the cloud management systems for ECC have developed systems also for the ECSC.</p>

<p>Would it be too complex to try and add Option C (rewards) to a ECSC contract. Have you ever seen this being done?</p>	<p>Yes, it would be difficult and I would not recommend it. I would not doubt that it has been done=ne!</p>
<p>Is there an alternative to a 'Letter of intent' under NEC?</p>	<p>A Letter of Intent is effectively a short duration contract. Not recommended. The ECSC includes simple forms for 'offer' and 'acceptance' but many clients will prefer a simple form of agreement.</p>
<p>Great Presentation! How common is it for more substantive Programme provisions to be included in the ECSC Contract Scope? Thank you.</p>	<p>Thanks. Sometimes Client try to copy in the programme requirements from the ECC into the Scope in the ECSC. If they think that is required they might be better using the ECC.</p>
<p>What's the link between Defined Cost and working areas.?</p>	<p>There is no concept of 'Working Areas' in the ECSC.</p>
<p>Assessment of Complexity and size of a contract can be rather subjective. Is there a simple guideline as to when the ECC should be used rather than the ECSC? Thanks</p>	<p>Not really - the guidance just suggest the ECSC is appropriate for 'lower risk' contracts.</p>
<p>This question is in regard to NEC3 in general, is it used in PPP projects?</p>	<p>If by PPP (Public Private Partnership) you are meaning DFBO (Design Build Finance and Operate) (typical for many PPP contracts) then no. But the Project Company for a DFBO contract might choose to use the ECSS (the subcontract version of the ECSC) for simple subcontracts.</p>