

Insights

NEC4 PROFESSIONAL SERVICE CONTRACT – AN INTRODUCTION AND OVERVIEW

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SUMMARY

Lucy Hawley takes a look at the NEC Professional Service Contract, considering the features of the form and what projects are particularly well suited to it.

NEC4 PROFESSIONAL SERVICE CONTRACT – WHAT IS IT?

As you will be aware, the NEC4 suite offers a wide range of contract types, including the Professional Service Contract (the PSC).

The PSC provides a different approach to other more traditional appointment standard forms and its drafting will be very familiar to anyone who has used the suite of NEC4 contracts (or indeed NEC3). As expected, it embodies the ethos of “mutual trust and co-operation” and has a strong emphasis on the programme and contract management in dealing with extensions of time, additional costs and risk. As these reflect the benefits of using the NEC4 form, it is not surprising that they also apply to the delivery of professional services, and the PSC can therefore be used as an effective project management tool, encouraging dialogue and collaboration between all parties involved in a project.

STRUCTURE

The PSC is structured broadly in the same way as the rest of the NEC4 suite of contracts. It is comprised of:

- **Core clauses:** these set out each party’s general obligations and their rights in relation to works, the programme, insurance and termination etc.
- **Primary option clauses:** there are three main payment options: lump sum (Option A), target cost (Option C) and time based (Option E). Notably, under options C and E, consultants are paid the real cost of employing their staff rather than the rates they tendered.

- **Dispute avoidance W clauses:** these set out the standard NEC dispute resolution procedures the choice of which will depend on the jurisdiction the parties are operating in and also of course the parties' preference.
- **Secondary option X and Y clauses:** including the option to incorporate provisions dealing with collateral warranties (unlike the NEC Engineering and Construction Contract ("the **ECC**")), BIM, limitation of liability, delay damages, project bank accounts, value engineering and third party rights etc.
- **Project specific details:** Contract Data Part 1 and Part 2, which are compiled by the client and the consultant respectively. The Contract Data also includes details of the Scope, which is the key document that identifies exactly what the consultant is required to do.

THE BENEFITS OF USING THE PSC

Parties can use the PSC to appoint any professional consultant such as the project manager, engineers, architects and supervisors.

The PSC is commonly used to engage consultants on large and complex construction projects where detailed terms are required and the contractor is to be engaged under an ECC (so as to ensure cultural consistency throughout the delivery team and a common approach to risk and project management). If all other parties are using the NEC4 and its terminology, as well as applying its project management principles, it is difficult to see why the NEC4 PSC would not be used and there may be less certainty with using other forms of professions appointments.

The PSC can also be rolled out in a variety of other situations. For example, the PSC can be used for contractor pre-construction services followed by a separate ECC, with any NEC4 main contract (again, ensuring cultural consistency throughout the delivery team), but also for appointing consultants on non-NEC construction projects so as still to get the benefits of the NEC collaborative ethos and project management processes.

Essentially, the PSC is flexible: it can be used on any aspect of a project, for any service or any supply, it can accommodate a number of procurement strategies and it provides a range of payment options.

With the characteristic NEC clarity and simplicity, the PSC is easy to use and understand. It emphasises proactive project and risk management and clearly allocates risk between the parties. In doing so, it stimulates enhanced collaboration between the parties, reduces uncertainty and delivers good project management. This ultimately improves the outcome of projects. Certainly, the likelihood of confrontation and disputes is reduced when parties are clear on their role and the associated risks and liabilities.

The key NEC4 features are all apparent in the PSC, including communications and early warning, programming and compensation events. Particular prominence is given to the programme as a contract management tool. It should be obvious, but the services provided by consultants benefit from a comprehensive programme just like the main works and help ensure an overall project programme can be prepared. Similarly, professional consultants are often best placed to give early warnings in certain circumstances and to suggest how such risks can be managed in a collaborative manner. These proactive communication mechanisms not only facilitate complex projects, but they can help prevent programme delays and keep the project within budget, bearing in mind the important role consultants play.

For these reasons, the PSC has been endorsed by the Government Construction Board, Cabinet Office and is widely used by the UK public sector. However, it should not be forgotten that the PSC can be used on an international basis and is an effective private sector option for developers.

RELATED PRACTICE AREAS

- Commercial Construction & Engineering

MEET THE TEAM



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