

# Experience Sharing in the use of the NEC3 Contracts

## Working with Employer under NEC3 Contract Arrangement



Technical Forum on NEC3 Collaborative Contracts  
7 March 2012  
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## Working with Employer under NEC3 Contract Arrangement

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### Agenda

- Subletting
- Early Warning Notification
- Compensation Event
- Payment



## Working with Employer under NEC3 Contract Arrangement

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# Spirit of the NEC Contract



Working with Employer under NEC3 Contract Arrangement

Partnering

# Partnering

ECC Clause 10.1

***“The Employer, the Contractor, the Project Manager and the Supervisor shall act as stated in this contract and in a spirit of mutual trust and co-operation.”***

**= REAL PARTNERING**



## Working with Employer under NEC3 Contract Arrangement

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# Subletting



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## Working with Employer under NEC3 Contract Arrangement

### Subletting (1/3)

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- **Contractor** shall prepare a **Subletting Procedures** for subletting works
- **Subletting Procedures** shall be commented and accepted by **Project Manager** and **ICAC** before subcontract tendering process carried out
- The **Contractor** shall propose a subcontractor tenderer list and the list shall be approved by the **Project Manager**

## Working with Employer under NEC3 Contract Arrangement

### Subletting (2/3)

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- Join tender opening will be carried out by **Project Manager's, Supervisor's** and **Contractor's** staff
- **Project Manager** or his representative should attend the Tender Interviews with the potential tenderers
- Recommendation of tenderer should get **Project Manager's** approval before awarding to proposed tenderer

## Working with Employer under NEC3 Contract Arrangement **Subletting (3/3)**

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***Project Manager, Supervisor, and Contractor*** involve in the entire subletting process, to urge ***Contractor*** to select most competent subcontractor and competitive offer





## Working with Employer under NEC3 Contract Arrangement

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# Early Warning Notification



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### Early Warning Notification (1/4)

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The purpose of the **Early Warning Notification** is to raise the risk at the early stage solving the problems together rather than against each other



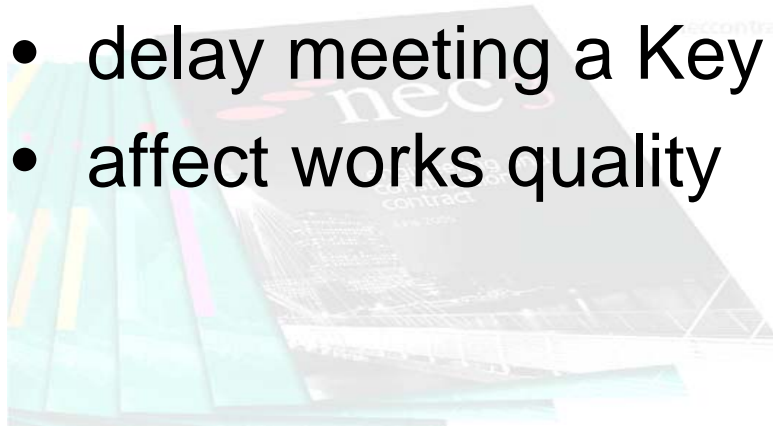
## Working with Employer under NEC3 Contract Arrangement

### Early Warning Notification (2/4)

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**Contractor** and the **Project Manager** can give an **Early Warning** by notifying the others as soon as either becomes aware of any matter could

- increase the project price
- delay completion
- delay meeting a Key Date or
- affect works quality



## Working with Employer under NEC3 Contract Arrangement

### Early Warning Notification (3/4)

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Following the **Early Warning Notification**, a **Risk Reduction Meeting** amongst **Project Manager**, **Supervisor** and **Contractor** will be conducted. It may be agreed that other people attend according to particular circumstances. All parties will discuss to find out the root problem and solution for eliminating / reducing the risk together.

**Risk is owned by All Parties**

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## Early Warning Notification (4/4)

### ECC+ACC

#### Risk Register (ECC16.1-16.4)

Following the Risk Reduction Meeting, Risk Register shall be revised by **Project Manager** to record the actions taken for avoiding or reducing the risk.

Risk ID	Identified Risk Item				Existing Control Measures (ECMs)		Initial Risk Analysis				Risk Treatment Plan						Residual Risk Analysis					Close Out
	Risk Item	Source of risk Identification & Date of Issue	Consequences & Additional Comments / Notes	Risk Owner	ECMs Already in Place	ECM Owner	Consequence of risk rating	Likelihood of Risk rating	Risk Rating	Date of risk reduction meeting	Possible Treatments (Additional Risk Control Measures RCMS)	Approved for Implementation	Risk Treatment Action Plan Ref. No.	Treatment Owner	Timeframe for Implementation	Consequence of Risk rating	Likelihood of Risk rating	Risk Rating	Predicted risk expiry date	Actual risk expiry date	Comment/ Status	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	
1	Changes to Works information during the construction stage	CD I 1.1 / CD II S2		C																		
2	A degree of variation in actual ground conditions including utilities and sub-soil information currently available	CD I 1.2 / CD II S2		C																		
3	Insufficient number of access points to site	CD I 1.3 / CD II S2		C																		
4	Accident caused by improper design or construction of temporary works	CD I 1.4 / CD II S2		C																		



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# Compensation Event



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## Working with Employer under NEC3 Contract Arrangement

### Compensation Event (1/3)

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- An event to be a **Compensation Event**, it must be specifically listed
  - Core Clause 60.1
  - Events added by Secondary Options
  - Additional events included in Contract Data part 1
- Fair risk sharing: Any variation works and unforeseen matters will be covered by **Compensation Event**
- Time and cost will be dealt together

## Working with Employer under NEC3 Contract Arrangement

### Compensation Event (2/3)

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- Typically each compensation event is dealt with independently
- Ideally the **Compensation Event** estimation shall be agreed prior to work (*avoid future dispute*)
- Once **Compensation Event** has been agreed by **Project Manager** for the cost, the Target Price will be adjusted and it will not be reassessed on the actual expenses

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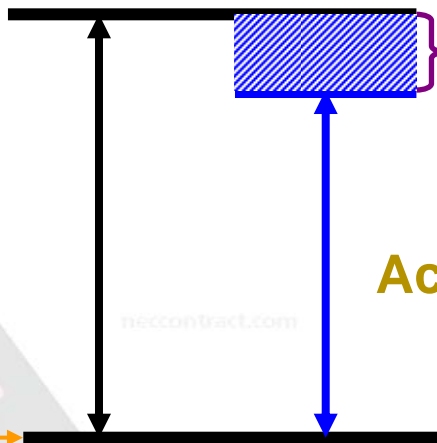
## Compensation Event (3/3)

### Key Points:

CE Quotation = **Estimated Cost** + Fee

Agreed price for Compensation Events based on agreed Quotation

Target Price (Tender Price)



50% Client  
50% Contractor

**Actual Final Cost**



# Working with Employer under NEC3 Contract Arrangement

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## Payment

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## Working with Employer under NEC3 Contract Arrangement

### Payment (1/7)

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## Payment Amount Due:

- **Price for Work Done to Date (PWDD)**
- plus other amounts to be paid to the **Contractor**
- less amounts to be paid by or retained from the **Contractor**

\* **Contractor** shall present the proof of the payments which have been paid

## Working with Employer under NEC3 Contract Arrangement

### Payment (2/7)

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#### Price for Work Done to Date (PWDD)

$$\text{PWDD} = \text{total Defined Cost} + \text{Fee}$$

#### Defined Cost – ECC Clause 11.2(23)

- payments due to subcontractor
- cost components in ECC including People, Equipment, Plant and Materials
- less Disallowed Cost

**Fee** – fee percentage tenderer shall be specified in the Contract Data

The Fee includes all the costs of the **Contractor** that are not included in Defined Cost, together with his profit and any allowance for his risks.

## Working with Employer under NEC3 Contract Arrangement

### Payment (3/7)

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## ECC+ACC

### Disallowed Cost – ECC Clause 11.2(25)

- Should not have been paid to a Subcontractor or Supplier in accordance with his contract
- Correcting defects after completion
- Correcting defects caused by the Contractor not complying with constraints in Works Information
- Surplus resources, plant & materials etc
- The cost of preparation for and conduct of an adjudication or proceedings of the tribunal

## Working with Employer under NEC3 Contract Arrangement

### Payment (4/7)

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## Assessment of Payment

- **Project Manager / Supervisor** can access to **Contractor's** account records (i.e. **Open Account**) which is transparency and subject to audit by **Project Manager** auditor team
- **Project Manager / Supervisor** can monitor the overall financial arrangement of the **Contractor** for the project

## Working with Employer under NEC3 Contract Arrangement

### Payment (5/7)

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### ECC + ACC

Pain / Gain Sharing (Option C): -

**Actual Cost < Contract Price (Y)**

→ Contractor and Client share 50% of gain value.

**Actual Cost ≤ 110% Contract Price (Y)**

→ Contractor and Client share 50% of pain value.

*i.e. The maximum of the Final Amount will be  $(\$Y \times 1.05 = \$1.05Y)$*

**Actual Cost > 110% Contract Price (Y)**

→ Contractor will share 100% of pain value

*i.e. the ceiling of the Final Amount is  $\$1.05Y$  only for **Client***



## Working with Employer under NEC3 Contract Arrangement

### Payment (6/7)

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## Pain / Gain Sharing (ECC Option C):

- Encourage joint problem solving
- Incentive to *Contractor* to save Cost
- Gain – 50% / 50% share saved Cost

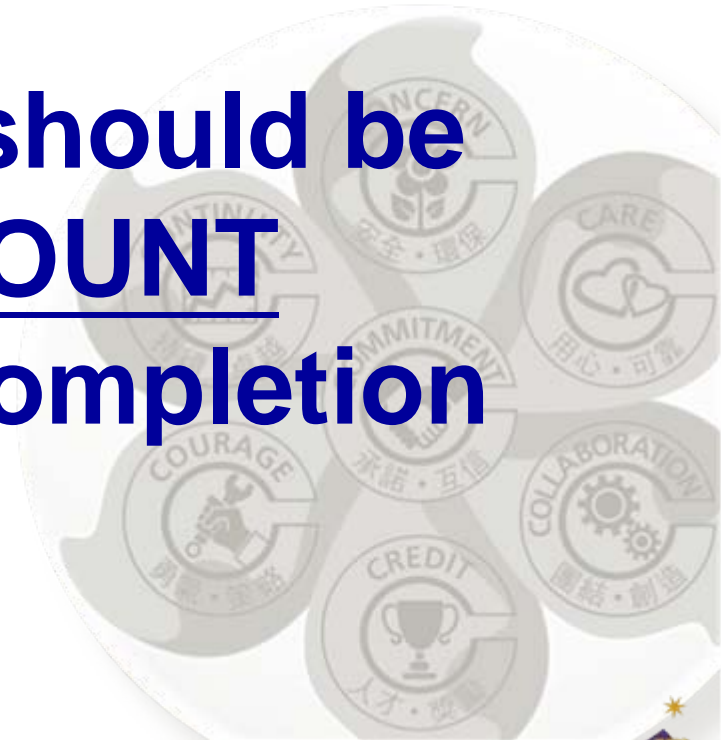


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# Target

The final payment should be  
the FINAL ACCOUNT  
once the contract completion



# Working with Employer under NEC3 Contract Arrangement

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**END**



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