Appendix 18 – NEC3 Options
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NEC3 Main Options

There are six main options as set out below. The Contractor carries the greatest risk under options A and B, and least risk under options E and F.

Option A: Lump Sum priced contract with activity schedule

The Contractor offers to provide the works described in the contract for a sum of money. The contract provides for certain risks to be carried by the Employer which will result in the lump sum being adjusted if the compensation events occur.

The activity schedule is normally written by the Contractor since he is the one who knows what activities will be carried out. Each activity is priced as a lump sum by the Contractor which is the amount paid when he has completed the activity. In pricing an activity, the Contractor takes responsibility for estimating quantities and resources, and assessing and pricing risks that are his.

Option B: Remeasurement priced contract with bill of quantities

The Employer provides a bill of quantities which is priced by the Contractor. The contract price is the sum of prices for all items in the bill which may include lump sums for certain items. When the work is done, if it is found by remeasurement that the estimated quantity is not correct, it is corrected and payment is made to the Contractor to reflect the actual work carried out. Under this option, unlike Option A, the Employer takes the risk of the correctness of the quantities.

Option B would normally be used where the risk of change in quantities is relatively high. It is not appropriate for design and build contracts since the Contractor is responsible who designs and prepares the detailed design and plans.

Option C: Target Cost contract with activity schedule

In this option the Contractor tenders (or negotiates) a target price using an activity schedule. Each activity is priced as a lump sum and a Fee is also tendered as a percentage for subcontract work and for the Contractor’s own direct work. The initial target price is the sum of the activity prices and the fee. During the course of the contract, the target price is adjusted to cater for compensation events that are set out in the contract.

Payment is made on the basis of actual costs with an incentive mechanism for the Contractor to minimise costs. Savings and over-runs are shared between the parties. The sharing of risk in the target cost approach is likely to reduce the occurrence of disputes.

Option D: Target Cost contract with bill of quantities

This is similar to Option C except that the target price is established by means of a bill of quantities rather than an activity schedule. During the course of the contract, the target price is adjusted to allow for changes of quantities as well as for compensation events.

Thus, the Employer carries a rather greater risk than is the case with Option C.

Option E: Cost Reimbursable contract

Under this option the Contractor takes a very small risk since he is paid his actual cost plus the Fee with only a small number of constraints to protect the Employer from inefficient working or incompetence by the Contractor. It is used when the work to be carried out cannot be defined at the outset and the risks are high. It may also be used for emergency work.

Option F: Management Contract

This option is suitable for management contracts in which all or most of the work is done by sub-contractors, and the Contractor manages the procurement and the work undertaken by the sub-
contractors. Payment is made to the Contractor for the cost of the sub-contracts plus a management fee. The Employer carries most of the risk.

**NEC3 Compensation Events**

Clause 60.1 lists nineteen compensation events, it states that:

1. 'The following are compensation events.

2. (1) The Project Manager given an instruction changing the Works Information except
   - a change made in order to accept a Defect or
   - a change to the Works Information provided by the Contractor for his design which is made either at his request or to comply with other Works Information provided by the Employer

3. (2) The Employer does not allow access to and use of a part of the Site by the later of its access date and the date shown on the Accepted Programme.

4. (3) The Employer does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.

5. (4) The Project Manager gives an instruction to stop or not to start any work or to change a Key Date.

6. (5) The Employer or Others
   - do not work within the times shown on the Accepted Programme
   - do not work within the conditions stated in the Works Information or
   - carry out work on the Site that is not stated in the Works Information.

7. (6) The Project Manager or the Supervisor does not reply to a communication from the Contractor within the period required by this contract.

8. (7) The Project Manager gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

9. (8) The Project Manager or Supervisor changes a decision which he has previously communicated to the Contractor.

10. (9) The Project Manager withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a defect) for a reason not stated in the contract.

11. (10) The Supervisor instructs the Contractor to search for a Defect and no Defect is found unless the search is needed only because the Contractor gave insufficient notice of doing work obstructing a required test or inspection.

12. (11) A test or inspection done by the Supervisor causes unnecessary delay.

13. (12) The Contractor encounters physical conditions which
   - are within the Site
   - are not weather conditions and
   - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

   Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

14. (13) A weather measurement is recorded
• within a calendar month
• before the Completion Date for the whole of the works and
• at the place stated in the Contract Data

the value of which, by comparison with the weather data, is shown to occur on average less frequently than once in ten years.

Only the difference between the weather measurement and the weather which the weather data show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.

(14) An event which is an Employer’s risk stated in the contract.
(15) The Project Manager certifies take over of a part of the works before both Completion and the Completion date.

(16) The Employer does not provide materials, facilities and samples for tests and inspections as stated in the works information.

(17) The Project Manager notifies a correction to an assumption which he has stated about a compensation event.

(18) A breach of contract by the Employer which is not one of the other compensation events in the contract.

(19) An event which
• stops the Contractor completing the works or
• stops the Contractor completing the works by the date shown on the Accepted Programme,

and which

• neither party could prevent
• an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
• is not one of the other compensation events stated in this contract.’

**NEC Secondary Option Clauses covering other risks**

X1 – Price adjustment for inflation.
X2 – Changes in law.
X3 – Multiple currencies (used only with options A & B)
X4 – Parent company guarantee.
X5 – Sectional completion.
X6 – Bonus for early completion.
X7 – Delay damages.
X12 – Partnering
X13 – Performance bond.
X14 – Advanced payment to the Contractor.
X15 – Limitation of the Contractor’s design liability to reasonable skill and care.
X16 – Retention.
X17 – Low performance damages.
X18 – Limitation of liability.
X20 – Key Performance Indicators (not used with option X12).
Scheme Drawings and
Non-technical Summary of the Environmental Statement