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What does it take to be an excellent NEC3© Project Manager?

“Tell me and I forget, teach me and I may remember, involve me and I learn.” - Benjamin Franklin

Having fulfilled the role of an NEC3 ECC *Project Manager* on numerous high profile projects, I fully believe that the role of the *Project Manager* is critical to success. However, I’m sure you will all concur that it still raises the question – what does it take to be an excellent ECC *Project Manager*?

In writing this article, I hope to highlight not only the importance of the role but also provide some advice – gleaned from experience - and practical suggestions as to how to carry out the role successfully.

The NEC3 Contract Suite.

The New Engineering Contract (NEC®) is a family of flexible contracts, all of which are written so as to have a common theme in terms of terminology and philosophy.

The latest edition of the family (NEC3) was published in 2005 and updated in April 2013. It is made up of 29 documents, including but not limited to the Engineering and Construction Contract (ECC), Engineering and Construction Subcontract (ECS), Term Services Contract (TSC), Professional Services Contract (PSC) and Supply Contract (SC). As per the NEC website, the contracts can be used to procure any type of project, large or small across the areas of Works, Service and Supply.

ECC – The Role of the *Project Manager*

One of the key principles of the NEC3 contract suite is to promote collaborative and proactive project management practices; the basics of which are generic and well publicised. The ECC provides for each of these principles as follows:

- Clear communications – ECC clause 13,
- Problem resolution – ECC clause 16.3 and Dispute Resolution Options W1 and W2,
- Change control – ECC Section 6,
- Risk management – ECC clause 16,
- Programme management – ECC Section 3,
- Quality Control – ECC Section 4, clauses 24 and 26.



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Where the ECC defines the process, the *Project Manager* is the key player. Essentially, the *Project Manager* is required to administer the contract on behalf of the *Employer* – in the main by communicating with the *Contractor*, giving instructions, administering time and cost aspects of the *works* (ECC section 3 - programme, section 5 - payments and, section 6 - compensation events) and certifying Completion.

ECC Project Manager Actions

ECC clause 10.1 stipulates that the parties “...act as stated in the contract...” and “...in a spirit of mutual trust and co-operation.” In reviewing the ECC, I can count over 50 actions on the *Project Manager*, many of which require actioning within very short time periods:

- Replying to communications within the *period for reply* (usually 2 weeks) – clause 13.3,
- Accepting design submissions (usually within 2 weeks) – clause 21.2,
- Accepting proposed Subcontractors and their proposed conditions of contract (usually within 2 weeks) – clause 26.2 and 26.3,
- Deciding on Completion (within 1 week) – clause 30.2
- Responding to programme submissions (within 2 weeks) – clause 31.3
- Assessing the amount due (payments) and certifying (within 1 week) – clause 50.1 and 51.1
- Responding to notified compensation events (within 1 week) – clause 61.4

Failure to comply

The ECC goes further too by stipulating the consequence for non-compliance with the contract and timescales. For example, clause 21.2 stipulates that “...the *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design”. Read in conjunction with the compensation event (reason for a variation) clause 60.1(6), failure of the *Project Manager* to respond within the 2 week period will trigger a compensation event i.e. it will most likely delay Completion and result in an increase in cost.

A response for non-acceptance to a programme submission must adhere to one of the four reasons stipulated in clause 31.3. Read in conjunction with the compensation event clause 60.1(9), failure of the *Project Manager* to withhold an acceptance for a reason not stated in the contract will also trigger a compensation event. Furthermore, there is no capacity in the contract for the *Project Manager* to remain silent, if they do then that silence would be a reason under 60.1(9) as to being a compensation event.

Similarly, failure of the *Project Manager* to respond to a compensation event notification (clause 61.4) or quotation (62.6) within the stipulated periods may lead to deemed acceptance (if the *Contractor*



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has notified the *Project Manager* accordingly and the subsequent 2 week time period has passed without further response). As stated, silence is not an option – someone will end up footing an unexpected bill.

Practical Suggestions / Tips

From experience, it is vital that the *Project Manager* does not underestimate the administrative burden the ECC places on resources. It is fundamental that adequate levels of support from designers, engineers, quantity surveyors etc. is afforded in order to fulfil the contractual requirements. I often use a project specific ‘health check’ system so as to gauge how the project is going, what areas need focus and whether sufficient levels of support are in place – flagging up any non-compliances / issues as we go (using a traffic light system for clarity).

All communications must be in a form which can be read copied and recorded, meaning that no verbal communications are permitted under the contract. Although emails are permitted, I would strongly recommend, as a *Project Manager*, creating a set of standard templates for communications to cover all of the instructions, acceptances or notifications required under the contract. From experience, this works well and is a particular benefit when online collaborative systems are not deployed by the *Employer*. Setting up communication systems at the outset is key to successfully administering the ECC – specific templates are clear, unambiguous and allow the parties to follow the contract as written.

As a minimum, the parties should agree on a structured report to record compensation event notifications, timescales, due dates for responses / quotations, accepted extensions to the same and even more importantly implementation i.e. the implemented adjustment to time and cost. I am a big advocate that the *Project Manager* should proactively lead this process (as he is required to do so under the contract in terms of the early warning risk register) and share the ‘compensation event register’ with the parties. This is vital if you are to avoid the pitfalls and debates associated with adherence to timescales i.e. time barring, quotation due dates, response due dates, and the implemented impact upon the Prices and Completion Date. I often see two systems being run concurrently – one by the *Project Manager*, the other by the *Contractor* – this cannot and does not work.

Selection & Training

The above examples of failing to comply demonstrate that selection of the *Project Manager* requires considerable thought by the *Employer* at the outset. To appoint a truly effective *Project Manager*, perhaps a rigorous selection process should be applied, maybe one which tests the prospective *Project Manager’s* ability to handle information and their compliance with strict timescales? I have often



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wondered if the appointed person is best sourced from an independent third party rather than coming from within the *Employers* organisation – particularly when you consider the role includes a requirement for the *Project Manager* to act as an independent certifier. Perhaps the appointment (and subsequent payment) of the person could be led by both parties to the contract i.e. *Employer* and *Contractor*, so that no direct correlation to either party is formed? Maybe completion of the new NEC3 ECC *Project Manager* Accreditation qualification should be a pre-requisite? Perhaps these are questions best left for another day!

The practical suggestions / tips provided are done so on the understanding that the appointed *Project Manager* already has inherent skills such as leadership, facilitation, communication, timekeeping, administration, analytical, commercial and people (non-confrontational). However, a person with all of these attributes (if there is such a person?) will still be limited if he does not fully understand the process (the contract).

I have heard of numerous *Project Manager's* (all of whom seemingly honed at least some of the characteristics identified above) who did not fully understand the process. Subsequently, all of the parties suffered.

“You cannot open a book without learning something.” - Confucius.

“There are worse crimes than burning books. One of them is not reading them.” - Ray Bradbury (born 1920); Author

Read and understand. Opening up the contract and the associated guidance notes should be top of every aspiring *Project Manager's* things to do. These documents clarify what the contract requires you to do and how you should do it – they should be well thumbed, not put in a drawer and forgotten about!

Better still, why not insist in a joint training day / kick off session for the *Project Manager* and *Contractor*, so they learn together, so everyone understands and remembers who needs to do what, when and why? Too often the temptation is to stick to doing things the way they've always been done, but surely it's time to bring the buzzwords to life – collaborative working, partnering, mutual trust and co-operation....

One final thought - It's been almost two decades since BT's "It's good to talk" adverts were first aired – a good *Project Manager* would be wise not to ignore this advice. Hiding behind a computer and templates, no matter how easy it may seem is not an option. From experience, the more you can do jointly by sitting down together i.e. programme collation / reviews, interim valuations, compensation event quotes – the better. It's also much easier and certainly more satisfying!

Taking Benjamin Franklin's words verbatim, I am convinced that common training initiatives and working sessions can only bring benefits, enabling the parties to fulfill their obligations, benefit from



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the contract whilst building bridges from the outset. Better still, it should be the catalyst for an excellent *Project Manager* performance!

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