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Ten Top Tips for Managing NEC Contracts Effectively

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Top Tip no1

Always use a NEC contract
management system

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1. Always use a NEC contract management system:

- manual proformas and/or spreadsheets should be a thing of the past
- established cloud-based systems allow transparency, auditability and encourages correct use of processes and timescales
- recent survey showed 72% of main contracts are managed using a system, only 33% of subcontracts use one
- all accessible to everyone in the project team (and senior management)

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Top Tip no2

The importance of good Scope

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2. the importance of good Scope:

- badly drafted, incomplete Scope leads to an increase in the volume of compensation events and is one of the leading causes of disputes in the construction industry
- let's watch a video to see why...
- Need for clear Scope (even when making a sandwich)
- the NEC4 User Guide on producing better Scope within the "Preparing an NEC Contract" is a really useful document to help Clients understand the importance of Scope and how to draft so that it is clear and simple as well as compliant with the contract
- it suggests an index of items to be considered and prompts drafters to include elements that might otherwise have been missed

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Top Tip no3

Hold joint training sessions /
start up workshops

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3. Hold joint training sessions / start up workshops:

- once project team established suggest a joint workshop for people working on the project
- establishes common understanding of how contractual process are intended to operate
- potential to eliminate misunderstandings or misconceptions about aspects of the contract
- these can also be repeated regularly during the life of the project to keep on top of any veering away from correct contractual rules

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Top Tip no4

**Understand any Z clauses/bespoke amendments
(and ensure people have a copy of the contract and the contract documents)**

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4. Understand any Z clauses/bespoke amendments and ensure people have a copy of the contract and the contract documents:

- don't draft or sign-up to onerous Z clauses
- sometimes changes are obvious, and other times less so
- challenge the drafter to justify what benefit they bring or what the perceived problem with the standard drafting they are trying to resolve
- if you've signed-up to Z clauses, it's important that your team understands them
- you can't manage the contract if you don't have a copy of it!!

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Top Tip no5

No verbal instructions!

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5. No verbal instructions:

- Question: would anyone give me £100?
- clause 13.1 requires communications to be in a form which can be read, copied and recorded i.e. in writing
- clause 13.2 where Scope states the use of a communication system it only takes effect when in communicated through that system
- clause 27.3 imposes an obligation on the Contractor to obey and instruction **in accordance with the contract** and be given by the Project Manager or the Supervisor
- no one should think that “in a spirit of mutual trust and co-operation” they should be breaking other contractual rules
- raise your hand if anyone on your project has given or acted on a verbal instruction in the past year?

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Top Tip no6

Aim to have an Accepted Programme every period

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6. Aim to have an Accepted Programme every period:

- often referred to as the “beating heart of the contract”
- many users report problems in getting them accepted
- all parties should understand the benefits of having an accepted programme and should work towards having one every period
- Contractors need to ensure they submit a compliant programme which means that it shows the information required in clauses 31.2 and 32.1
- without it, the Parties (1) lose certainty about when project will complete, (2) are unable to effectively co-ordinate their various activities, and (3) the assessment of delays due to compensation events becomes more difficult and subjective

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Top Tip no7

A positive approach to the early warning process

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7. A positive approach to the early warning process:

- supposed to be a simple post contract (mainly) risk management tool, but all too often misunderstood
- sometimes only seen as the prelude to a compensation event
- this may be true in some instances, but also may prevent a compensation event from happening in others, or at least minimising its impact
- early warnings and the associated register should be treated as a positive operational tool, not a commercial one
- covered in detail in CECA bulletin 42: A positive approach to early warnings

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Top Tip no8

**Progressive and timely
management of compensation
event agreements**

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8. Progressive and timely management of compensation event agreements:

- whether or not we like them or want them, change inevitably happens and they have to be managed
- Contractor can be time-barred for notifying certain compensation events
- some may lead to a deemed acceptance of a quotation if the Client's team does not follow the contractual rules/timescales
- keep an eye on compensation events getting stuck in the procedure i.e. quotations repeatedly not being accepted
- problems don't just go away – they need to be talked about and concluded

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Top Tip no9

Avoid disputes where possible,
but equally bring any that do
exist to a head rather than just
leaving them

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9. Avoid disputes where possible, but equally bring any that do exist to a head rather than just leaving them :

- disputes are a distraction from delivery, fighting them takes time and resources away from more productive tasks – they are a lose / lose for both parties
- good management should help to avoid them, identifying issues early and resolving them progressively is key
- potential disputes should be escalated to senior managers for resolution as early as possible – it is what it was designed for
- many issues can be resolved without formal referral - sometimes a telephone call or Teams meeting is all that's needed to sort things out
- it's better for both Parties to seek a compromise to avoid formal disputes.

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Top Tip no10

Avoid cost reimbursable chaos

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10. Avoid cost reimbursable chaos:

- main ECC options C-F are all essentially forms of cost reimbursable contract, where the Contractor is entitled to be paid forecast Defined Cost plus the Fee
- may be subjected to Disallowed Cost being deducted (so these need to be understood)
- setting things off on the right foot is key to avoiding problems later - Contractors need to ensure that they understand what they are entitled to include in Defined Cost and importantly ensure their accounts and records are in order in anticipation of inspections by the Project Manager
- clause 50.9 allows the Contractor to finalise parts of Defined Cost, it is recommended that this is done at key points during the contract to avoid disputes from happening at the end

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Summary

It is hard to narrow the administration of the contract down to just ten items, but if you were to focus on getting these elements listed right on a project, you will be increasing your chances of a successful project

Leave you with a thought:

what would have made your top ten (and which one of ours would it replace?)

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