



NEC3 – latent promise?

INTRODUCTION

Since Sir Michael Latham commended the NEC contracts as a “genuine tool for best contractual practice” for both clients and supply chain alike, much has been expected of projects managed on NEC contracts.

The NEC3 form of contract is widely used on privately funded as well as publicly funded projects, across many sectors and from simple construction projects to the most sophisticated and technically complex projects. It has been used (or is being used) on high profile projects such as the Olympics, Heathrow Terminal 5 and the Channel Tunnel Rail Link.

Has it been the success it was expected to be? Has it promoted a change in the way projects are managed? Does it result in reduced scope for disputes?

PROBLEMS ON THE HORIZON

A successful project is usually considered to be one that is high quality, completed on time and on budget. If a project programme and budget changes, success is often measured on how this change is managed. NEC contracts are designed to ensure change management is a smooth process and there are no “surprises” upon completion.

All forms of contract have processes and procedures for dealing with change. Success is, in reality, dependent upon the commitment, experience and skill of the project team in addressing change. NEC contracts haven’t changed this, they simply provide more structure and more detailed processes for dealing with change (with a view to stimulating good management). However, under NEC contracts the failings of project teams can be considerably magnified. Without the necessary experience, skill and commitment the positives of NEC contracts – flexibility, simplicity, stimulating good management – of NEC contracts can quickly become negatives.

We have recently begun to see increased problems with projects on the NEC3 form of contract. What explains this increase in problems?

- The change in mindset required in complying with NEC3 weighed against the appearance of being “contractual”.
- Inexperience of managing a project on NEC3 terms.
- The credit crunch and liquidity problems in the construction sector (the increased likelihood of cash flow problems arising).
- The legal uncertainties and ambiguities inherent in NEC3.
- Reduced and stretched workforces having to deal with an administratively burdensome contract.
- The increased use of NEC3 by both the public and private sector.

Are you paying more for a project to be delivered than you should be?

Are you receiving your full entitlement under your contract?

THE CURRENT ECONOMIC CLIMATE

In times of economic growth and stability it may have been acceptable to compromise the risks and issues arising on NEC3 projects. Indeed, the lack of legal certainty and clarity in NEC3 may well explain why interpretation of some of the more ambiguous terms in NEC3 have not yet been tested in the Courts. In the current economic climate this is likely to change.

HOW HAMMONDS CAN HELP YOU

- We are expert in advising upon the NEC3 form of contract and upon the risks, issues and liabilities arising under it.
- Advising on the contract strategy according to the client's pricing arrangement.
- Drafting bespoke Option Z clauses for any of the NEC contract forms.
- We have advised upon NEC3 forms of contract in the water, chemical, pharmaceutical, healthcare and infrastructure sectors.

Should you be concerned about any live projects you may be involved in, we would be happy to discuss those projects with you with no charge for any initial consultation.

BESPOKE TRAINING ON THE NEC3 FORM OF CONTRACT

Alternatively, we can design for you bespoke training on the NEC3 form of contract, addressing the operation of the NEC3 form of contract and highlighting to you and to your project management/delivery teams the risks inherent in this form of contract. We will also point out the "loopholes" and issues to be wary of when using the NEC3.



We are
experienced
advisers upon
NEC3 forms of
contract



FURTHER INFORMATION

For more information relating to this article, please contact:

Paul Giles
Partner
T: +44 (0) 161 830 5007
E: paul.giles@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2009.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.