

Design and Build the NEC3 Way Getting the right results



Interactive

Collaborative

Informative

Useful

What is “Design and Build”?

What is it good for?

What is NEC3?

What is it good for?

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.

2 The *Contractor's* main responsibilities

20 Providing the Works

20.1 The *Contractor* Provides the Works in accordance with the Works Information.

21 The *Contractor's* design

21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design.

21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with the Works Information or the applicable law. The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.

21.3 The *Contractor* may submit his design in parts if the design of each part can be assessed fully.

Contractor's Design

What the contract says...



2 The *Contractor's* main responsibilities

22 Using the *Contractor's* design

23 Design of Equipment

27 Approval from Others

27.1 The Contractor obtains approval of his design from Others where necessary.

X15 Limitation of the *Contractor's* liability for his design to reasonable skill and care

What is the Works Information?

11.2 (19) Works Information is information which either

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is either

- in the documents the Contract Data states it is in or
- in an instruction given in accordance with this contract.

Works Information may also be provided by the *Contractor* for his design in Contract Data Part 2 at tender stage.

Role of the WI: Some key principles:

- Works Information prepared by the *Employer* is separated from Works Information prepared by the *Contractor* relating to his design.
- The *Employer's* Works Information is prepared first, and the *Contractor* uses this to prepare the information relating to his design.

Contractor design: How to compile:



If the *Contractor* is required to design parts of the *works*:

- Clearly identify which parts of the design the *Contractor* is responsible for
- Define which parts of the design are required to be submitted to the *Project Manager* or Others for acceptance. If none are mentioned then the *Contractor* does not have to submit details of design
- Define the procedures the *Contractor* is to follow in carrying out his design and procedures for the submission of design for acceptance by the *Project Manager* and Others

Contractor design: How to compile:



- The ECC is flexible – the contracts do not state ‘*Employer*’ or ‘*Contractor*’ design on the front cover. Instead the *Employer* defines and bespokes for each project. Projects typically contain a mixture of the two so this approach is more practical
- Clause 21.1 states
“The *Contractor* designs those parts of the *works* which the *Works Information* states he is to design”
- If the *Employer* carries out most of the design, a list of items designed by the *Contractor* may be stated. “The *Contractor* designs the following
- If, conversely, the *Contractor* carries out most of the design, a list of items designed by the *Employer* may be stated. “The *Contractor* designs all of the *works* with the exception of the following”

Contractor design: Acceptance notices:



- Clause 14.1:
- The *Project Manager's* or the *Supervisor's* acceptance of a communication from the Contractor or of his design does not change the *Contractor's* responsibility to Provide the Works or his liability for his design

This is an important clause within the ECC.

Note the term 'acceptance'.

Role of the WI: Some key principles:

“60.1 The following are compensation events.

(1) The *Project Manager* gives an instruction changing the Works Information except

- a change made in order to accept a Defect
- 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*”

Contractor design: Dealing with alternative proposals/ negotiations at tender stage:



- As clause 60.1 is treated as having priority over the *Contractor's* WI then any alternative proposals or negotiations at tender stage need to be properly incorporated
- Two options exist to deal with this:
 - 1) The *Employer's* WI is changed to incorporate the *Contractor's* proposal. However, this means that the *Employer* then takes responsibility
 - 2) If the *Employer* wishes the *Contractor* to retain responsibility then any conflicting content needs to be removed from the *Employer's* WI

How to... write the ECC Works Information:



Chapter 1: Introduction

Chapter 2: The status of Works Information

The function of Works Information

The relationship between Works Information and Contract Data

The relationship between Works Information and Site Information

The relationship between Works Information and pricing documents

Works Information as a contract document

Chapter 3: Drafting Works Information

Incorporation of standard specifications

Examination of a typical traditional specification

Health and safety information

General drafting advice

Chapter 4: ECC references to Works Information

Chapter 5: *Employer's* Works Information content

Example Works Information Structure

Guidance and checklist

Chapter 6: Works Information provided by the *Contractor* for his design

Contractor design: How to compile:



WI ref	ECC Clause	Description
WI 305	21.1	Design responsibility
WI 310	21.2	Design submission procedures
WI 315	27.1	Design approvals from Others
WI 320		<i>Employer's</i> requirements (e.g. loading requirements, design guidance)
WI 325		Design co-ordination
WI 330		Requirements of Others (e.g. planning officials or government departments)
WI 335	22.1	Copyright/ licence
WI 340		Access to information following Completion

Refer to page 25/25 of the Guidance for further details