

**National Housing Maintenance Forum
Conference 2011**

NHF Schedule of Rates Contract Documents – updated for the 21st century

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Coverage

- Objectives of the contract & why it was updated
- Contract documents & main provisions
 - Contract management
 - Service Provider obligations
 - Payment
- Performance management and termination
- Brief comparison with other standard form contracts JCT MTC, TPC & NEC TSC

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Objectives

- Comprehensive contract
- Traditional Schedule of Rates approach
- Modular documentation
- As straightforward as possible to administer
- Reasonably balanced but Client biased in some areas

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Why was it updated

- Time for a thorough review
- Minor inconsistencies
- Some procedures did not always follow through into enforceable consequences
- Style “archaic”
- Connaught & Rok experiences
- Outdated statutory references
- New Construction Act

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Contract documents (1)

- Invitation to Tender
 - governs tender stage only
 - includes award criteria & processes
- Articles of Agreement
 - list the contract documents
 - formally executed
 - amendments to standard documents listed in Articles

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Contract documents (2)

- Conditions & Contract Details
- Preliminaries & Contract Details
- Specification of Workmanship and Materials
- Price Framework
- Schedule of Rates
- KPI Framework

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Workstreams

- Responsive Repairs
- Out of Hours Emergency Works
- Call Handling (within or Out of Hours)
- Void Property Works
- Major Works
- Other contracts for other workstreams

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Contract management - people

- Client Representative
 - speaks for Client
 - fairness obligations when valuing etc
- CDM Co-ordinator (where required)
- Service Provider's Contract Manager
- Core Group – optional
- Collaborative working obligations

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Service Provider obligations

- Preliminaries
 - Order procedures & IT links
 - Staff (training, CRB, vehicles)
 - Health and safety
 - Working hours, Response Periods, appointments
 - requirements during the works, utilities, completions
 - reports & liaison
- Specification of Workmanship & Materials
- Contract Conditions

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Payment (1)

- Contract works with SoR 4.2, 5.1, 6.0 and 6.1
- Always price based
- Rates pre-priced in Schedule of Rates
 - tenderers price an adjustment for each Workstream
 - Facility to pay Overheads and Profit separately
- Lump sum/hourly rates for Out of Hours Emergencies
- Daywork hourly rates
- Price per Void and Client Technical Inspection
- Monthly/Annual price for Call Handling

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Payment (2)

- Scaffolding – included in prices for up to 2 stories and tendered for above this
- Prices for TUPE and Mobilisation costs (where payable separately)
- Central Overheads and Profit can be made dependent on achieving KPI targets
- Payment based on application for payment or invoice
- Approved by Client Representative
- Pay less notice

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KPIs

- Monitoring
- Incentivisation – proportion of Central Overheads/Profit can be linked to achieving KPI targets
- Failure to meet targets for 3 months
 - Remedial Plan
 - Default Notice for failing to implement
- Minimum Acceptable Performance
 - opportunity to put right
 - termination for Service Provider Default

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Performance management (1)

- Reports and meetings
- Late completions or Defects
 - ability to divert Order at Service Provider's expense
 - Instruction to complete and Default Notice for failure
- 3 month suspension of Orders pending investigation into breach
 - “no fault” so no compensation
- Withdrawal of Workstream as alternative to termination
 - no compensation payable by Service Provider

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Performance management (2)

- Default Notice
 - not responding to an instruction to complete/rectify
 - breaches not put right following notice
 - repeat breaches
 - Minimum Acceptable Performance level
- Client step-in – breach or no breach
- Remedial plan
 - 3 failures to achieve Performance Target
 - breach of contract

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Termination for Service Provider Default

- Insolvency etc
 - can terminate at earliest opportunity
 - Client choice
- Default
 - fraud, bribery, regulator suspension
 - assignment, novation, agency without consent
 - Material Breach not put right following notice
- Bribery and corruption – Probity Policy
- Compensation for Service Provider Default
 - deferred until Expiry date

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Termination - other

- Client Default
 - non payment
 - Material Breach that prevents the Service Provider complying with the Contract
 - no compensation beyond breakage costs
- Force Majeure
- Break clause
- Expiry

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Comparison with other contracts – JCT MTC (1)

- Format
 - Articles, Particulars, Conditions – similar structure
 - Prelims, Specification, Schedule of Rates & Price Framework, KPI Framework - all additional
- MTC Conditions need to be amended
(eg Order processes, customer damage, access, on site variations, specialist works – asbestos, gas, extensions of time)
- MTC payment
 - is by “application” only
 - will need to be amended for Construction Act

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Comparison with other contracts – JCT MTC (2)

- MTC does not deal at all with some key areas (so they need to be added in)
(eg TUPE, confidentiality, data protection etc, termination for corruption, audit,)
- MTC does not contain the performance management techniques in the NHF SoR
- MTC less “comprehensive” – intended for a wide range of activity, not just maintenance – more “high level”

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TPC (1)

- TPC also more “high level” - most of the detail left to Partnering Documents – these need to be drafted
- Format
 - Term Partnering Agreement includes Articles and Contract Particulars but otherwise similar structure
 - Prelims, Specification, Schedule of Rates & Price Framework, KPI Framework - all Partnering Documents
- Basis of payment left to a bespoke “Price Framework” so a wide range of payment arrangements is possible – TPC envisages “open book” - but payment clause will still need to be amended for Construction Act

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TPC (2)

- TPC does not deal with some key areas
eg data protection, freedom of information, probity (post Schedule 1), access for auditors, on site variations etc
- TPC deals partly with some areas but not in enough detail
eg TUPE clause is 4 lines in the Partnering Term Agreement, CDM clause contains principal contractor appointment but no warranty of competence
- Some TPC processes are unhelpful
eg - automatic termination on insolvency;
-paid extensions of time for all “events outside the Service Provider’s reasonable control”
- No performance management techniques equivalent to those in the NHF SoR

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Comparison with other contracts – NEC TSC (1)

- Format
 - Contract, Contract Data, Conditions– similar structure
 - some renaming - KPI Framework (incentive schedule), Schedule of Rates & Price Framework (price list), Prelims & Specification (Service Information)
- Philosophy – very different
 - role of Service Manager
 - programme and planning
 - risk identification and clear allocation – intended to be reflected in pricing
 - wide range of pricing strategy options

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Comparison with other contracts – NEC TSC (2)

- Z clauses needed to deal with
 - eg TUPE, confidentiality, data protection etc, termination for corruption, audit, some specific areas
 - similar areas to MTC & TPC amendments are needed eg Order processes, customer damage, access, on site variations, specialist works – asbestos, gas, extensions of time
- Payment options – appropriate for “actual cost” contract - target and cost reimbursable as well as priced Schedule of Rates
- Assumes an “intelligent” client and contractor (impact on pricing)
- Best form of contract if effectively project managed – worst if not
- Recommended by OGC

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Conclusion

- Other 3 contracts more high level
 - not specifically for housing maintenance/refurbishment
 - more needs to be added/amended
 - NEC TSC and TPC drafted for alternative payment strategies
- NHF SoR
 - designed specifically for housing maintenance & refurbishment
 - detailed and comprehensive – full suite of documents
 - traditional SoR approach & “Client biased”
 - performance management provisions – with teeth
- No need to use anything else unless using a different payment strategy

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Questions

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