

PART 2: PRICING DATA
ECC3 Option C

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C2.1 Pricing assumptions: Option C

1. The *conditions of contract*

1.1. How work is priced and assessed for payment

1.1.1. Clause 11 in NEC3 Engineering and Construction Contract, April 2013 (ECC3) Option C states:

Identified and defined terms	11 11.2	(29) The Price for Work Done to Date is the total Defined Cost which the <i>Project Manager</i> forecasts will have been paid by the <i>Contractor</i> before the next assessment date plus the Fee.
		<p>(23) Defined Cost is</p> <ul style="list-style-type: none"> the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for <ul style="list-style-type: none"> retention, payment to the <i>Employer</i> as a result of the Subcontractor failing to meet a Key Date, the correction of Defects after Completion, payments to Others and the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract <p>and</p> <ul style="list-style-type: none"> the cost of components in the Schedule of Cost Components for other work <p>less Disallowed Cost.</p>
		<p>(25) Disallowed Cost is cost which the Project Manager decides</p> <ul style="list-style-type: none"> is not justified by the Contractor's accounts and records should not have been paid to a Subcontractor or supplier in accordance with his contract was incurred only because the Contractor did not <ul style="list-style-type: none"> follow an acceptance or procurement procedure stated in the Works Information or give an early warning which this contract required him to give and the cost of correcting Defects after Completion. Correcting Defects caused by the Contractor not complying with a constraint on how he is to Provide the Works stated in the Works Information Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information Resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the Project Manager requested and Preparation for and conduct of an adjudication or proceedings of the tribunal
		(29) The Price for Work Done to Date is the total Defined Cost which the

		Project Manager <i>forecasts</i> will have been paid by the Contractor before the next assessment date plus the Fee.
		(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.
		(20) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract.

- 1.1.2. This confirms that Option C is a target contract, with an Activity Schedule. The *Project Manager* has to forecast what the *Contractor* will have paid (NOTE, “paid”) with the two amounts due for payment being
- 1.1.2.1. payments due to Subcontractors, uplifted by the subcontracted fee percentage plus
 - 1.1.2.2. the sum of the components in the (full) Schedule of Cost Components for all other work which the Contractor does, uplifted by the direct fee percentage.
- 1.1.3. Payments due to Subcontractors by the *Contractor* will also be Defined Cost plus Fee in terms of the NEC3 Engineering and Construction Subcontract (ECS3) which the *Contractor* will have with his Subcontractors. This will be “open book” assessment in terms of clause 52.2 which the *Project Manager* has to inspect as part of his assessment of amounts due to the *Contractor*

1.2. Function of the Activity Schedule

In Option C the Activity Schedule is only used as a means of arriving at the total of the Prices which becomes the ‘target’. Clause 53 requires that a comparison is then made between this total of the Prices and the total amounts paid at Defined Cost plus Fee. The difference is then shared between the Parties in the manner stated in clause 53. (This is the “gain” for being under the target and the “pain” for being over the target). This arrangement incentivises the *Contractor* to perform better than he tendered to do when formulating his *activity schedule* at the time of tender.

The target is adjusted by compensation events in order to keep an equitable share arrangement.

1.3. Compiling the activity schedule

Clause 54.1 in Option C states: “Information in the Activity Schedule is not Works Information or Site Information”. This confirms that instructions to do work or how it is to be done are not included in the Activity Schedule but in the Works Information. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Works in accordance with the Works Information”. Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. The Activity Schedule is only a means of arriving at the target.

1.4. Link between programme and activity schedule

Clause 31.4 states that “The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance”. Hence when compiling the *activity schedule*, the tendering contractor needs to show each activity on the programme he submits with his tender.

1.5. Preparing the activity schedule

The tendering contractor prepares the *activity schedule* and should study the ECC3 Guidance Notes pages 19 and 20 before doing so. The *Employer* may have instructed the tendering contractor to include particular activities which he has specified and requires the *Contractor* to identify them in his *activity schedule*.

1 Generally it is the *Contractor* who prepares the Activity Schedule as part of his tender by breaking down the work described within the Works Information into suitable activities which can be well defined, priced as a lump sum and shown on the programme. The *Employer*, in his Conditions of Tender or in a

Tender Schedule, may have listed some items that he requires the *Contractor* to include in his activity schedule and be priced accordingly.

2 If the *Contractor* has decided not to identify a particular activity, the cost to the *Contractor* of doing the tendered work is assumed to be included in, or spread across, the other Prices.

3 There is no adjustment to the lump sum activity schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the contractor estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices tendered by the Contractor in the *activity schedule* are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk.

5 However, the Contractor does not have to allow in his Prices for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

C2.2 the *activity schedule*

Item No.	Programme Reference	Activity description	Price