



This short guide explains the decision making powers available to a Project Manager under and NEC 3 contract. The Project Manager (PM) in the NEC 3 Contract documents is frequently caught in a real bind. Among the large number of functions both great and small are those, which call upon him to decide matters of opinion and do so founded on independence of mind. Tony Bingham takes a look at some of the options available to the parties involved to avoid tricky issues of bias and conflicts of interest.

NEC 3 Project Manager's Decision Making Role

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Introduction

The Project Manager (PM) in the NEC 3 Contract documents is frequently caught in a real bind. Among the large number of functions both great and small are those, which call upon him to decide matters of opinion and do so founded on independence of mind. But he easily finds himself having to decide issues which his client, the Employer may dislike. He easily finds himself having to decide issues, which he, the PM, may dislike. He easily finds himself having to decide issues, which the contractor may dislike. The PM is supposedly there to "hold the ring" between Employer and Contractor. That's the bind; there is serious conflict of interest. If it were not for the context in which this contract document is set, the PM's decisions would be worthless and void. He is in law wholly biased.

NEC 3 Contracts anticipate bias and sensitivities

The NEC3 Contract anticipates all this. The Employer and Contractor under the Contract know full well that whomever the Employer appoints to be the PM, he will be in a sensitive position. Conflict of interest is inherent in the PM's task. The opening promise in the PM's Professional Services Contract [clause 10.1] expressly says that the Employer and Consultant (the PM) shall act as stated in the Contract and in a spirit of mutual trust and co-operation. Then, the NEC3 Building Contract between Employer and Contractor says that the Employer and Contractor and PM and Supervisor shall act as stated under the Contract and in a spirit of mutual trust and co-operation. It must be fair to suggest that the intention here is for example, that the Employer is to be trusted not to influence, lean on the PM to be partisan. The Contractor will trust the PM to be non-partisan, to be independent in thought, to objectively consider acts and omissions (even his own) notwithstanding conflict of interest. In other words the Contractor and Employer surrender to a person who can be said to have a real possibility of being actually or unwillingly influenced by all the circumstances when carrying out his role, which has a contradiction of independence.

Even IF the clause 10.1 "spirit" was unexpressed it is nevertheless fair to say that the two parties to the building contract have elected to have a PM who falls short of satisfying the test for bias. Indeed none of this is any different to decisions made by the architect or engineer or contract administrator under other forms of contract. The common thread is that the Employer and Contractor have agreed when they accept these standard forms that these folk together with whatever self interest is reasonably to be expected will make decisions, sometimes controversial decisions, as between these two parties.

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