Improving service delivery

Neil Earnshaw explains how facilities managers can use the NEC3 Term Service Contract to incentivise their service providers, raise performance levels and cut costs.

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Contracts may not be the top priority for facilities managers but if I told you that I knew a way of saving money, and improving timeliness and predictability, while driving up service quality, would that persuade you to read on?

The NEC3 Term Service Contract (TSC) and Term Service Short Contract (TSSC) are part of a family of contracts that are suitable for procuring a diverse range of works, services and supply, spanning major framework projects through to minor works, FM and maintenance services, and purchasing of supplies and goods. NEC3 contracts facilitate the implementation of good management principles and practices as well as defining legal relationships. They are suitable for procuring any contracted-out service such as hard or soft FM work. The implementation of the TSC and TSSC has resulted in major benefits being delivered both nationally and internationally.

KEY CHARACTERISTICS

NEC3 contracts are written in plain English and are clear and simple documents using language and a structure which are straightforward and easily understood. They are robust in both legal terms and methodology yet flexible in terms of the type of service that can be procured, the pricing and payment mechanism used, and allocation of risk between the parties. Use of NEC3 contracts stimulates good, proactive management of the relationship between the parties to the contract and, hence, of the work included in the contract.

> *"The low-service damages clause imposes a financial deduction on the contractor for failing to achieve stated service levels."*

TSC AND TSSC

The TSC and TSSC have been designed for use in a wide variety of situations and are not restricted to construction- or maintenance-related works. Each is essentially a contract to provide a service to an employer from a starting date and throughout a service period. The service may be provided continuously over the period of the contract – as in the case of a contract for the routine cleaning of office buildings – or on a task-by-task call-off basis, as with a contract for the repair and maintenance of highways in a particular area.

The TSC and TSSC are flexible enough to be used for procuring services in both the public and private sectors, whether your requirement is related to housing, office buildings or more specialist facilities such as scientific laboratories or hospitals.

TSC option structure

The TSC offers a range of options so that facilities managers can build up the contract terms to suit the service. At the heart of the contract conditions are the core clauses, which contain the essential common terms. To these must be added a main option, which will determine payment mechanism. Finally, the selected secondary options are combined with the core and main option clauses to provide a complete contract.

The TSC main options are:

- Option A: priced contract with price list – the risks of being able to provide the service at the agreed prices are largely borne by the contractor.
- Option C: target contract with price list – the financial risks are shared by the employer and contractor in an agreed proportion.
- Option E: cost-reimbursable contract – the financial risk is largely borne by the employer.

(Options B, D and F are available in other NEC3 contracts but are not relevant to the TSC.)

There are 10 secondary options prefixed with an X, any of which may be incorporated into the contract according to the circumstances and the way the parties wish to allocate certain risks. There are a few restrictions on use of some of the secondary options.

There are two secondary options prefixed with a Y, which relate to UK legislation.

All of the main options can be used where work is specified either by outputs (performance-based requirements), which leave the contractor to decide how to provide the service, or inputs (such as prescriptive technical or operational requirements), or a combination of both. In the TSC the specification is termed service information and there are several references to the service information in the conditions of contract, which require certain specification items to be to be covered.

TSSC option

The TSSC is intended for use in exactly the same way as the TSC and is just as robust. However, it is intended for contracts which pose a low risk to both client and contractor and do not require sophisticated management techniques. Examples could be individual service contracts for catering, maintenance of air-conditioning systems, portable-appliance testing, snow and ice clearance or window cleaning.

EARLY WARNINGS

The early-warning process is a vital part of the TSC. It demands that the service manager and the contractor warn each other as soon as possible of anything which may affect the cost and proper performance of the service or its timing and effectiveness. A risk-reduction meeting is convened to discuss problems or potential problems so that they can be considered and dealt with in good time. The focus is on solving the problem irrespective of where financial liability may rest.

COMPENSATION EVENTS

Another key element of the TSC is the compensation-event procedure. Compensation events are events which are not the contractor's fault and entitle it to be compensated for the event's effect on its prices. The core clauses include 14 compensation events, with further ones appearing in various secondary options. They deal with changes that may be required or may occur during the service period such as changing the service information, failure to provide access and changes to the estate. There is a process for notifying, providing quotations for, assessing and implementing compensation events, plus sanctions on both parties for non-compliance with the process. The procedure is designed to enable the consequences of change to be considered and dealt with, if possible, in advance of the change being implemented. This should improve both financial and time predictability.

REACTIVE AND MINOR WORKS

Where some or all of the service is reactive in nature or where minor works projects need to be completed, then there has to be a procedure to instruct the contractor to carry out these works. In the TSC this is achieved through incorporating secondary option X19: task order. A task order includes a description of the work to be done, the dates within which it is to be done and either the price the contractor is to be paid, the target price or the forecast price for the work depending on which main option is chosen. The contractor is required to submit a programme to demonstrate how it proposes to carry out the work, which enables proper monitoring and management of the work. Should the employer require the scope or timing of the work to change, there are specific compensation events to deal with this.

INCENTIVISATION – CARROTS AND STICKS

So how can the TSC help to improve service delivery? For starters, you could choose to use main Option C – target contract with price list. This provides for an employer to agree a target cost with the contractor at the outset of the contract and for the contractor to be paid its defined cost (or actual cost) plus a fee percentage to cover overheads and profit. If, over the service period, the contractor makes savings against the target cost then the employer agrees to share these with it. Conversely, if the contractor exceeds the target cost then it shares a proportion of the additional cost with the employer. This incentivises the contractor to control costs, suggest changes to the service to make it more efficient and outperform the target.

How, though, can you prevent the contractor from making savings at the expense of its performance? This is where you could choose to use secondary Option 17: low-service damages and/or X20: key performance indicators (KPIs) to great effect.

With KPIs, you identify the most important aspects of the service, set targets and then measure the contractor's performance against them. The TSC does not prescribe the indicators or targets; these will, after all, be specific to individual services. The vehicle for this in the TSC is called the incentive schedule, which provides for a financial incentive to be paid to the contractor for achieving or improving on a target.

The low-service damages clause imposes a financial deduction on the contractor for failing to achieve stated service levels.

An example may explain this concept better. Let us say the contract is for providing a lift-maintenance service. In the incentive schedule one of the KPIs is to achieve a 30-minute response time for emergency call-outs and there is a target to achieve this 95% of the time. Targets are then set for all other KPIs and each indicator is then weighted out of 100% so you can establish the contractor's overall level of performance. The incentive schedule then states that if the contractor achieves an overall performance level of 95%, it will be rewarded with an additional 5% of any savings made against the target cost. For underperformance, a low-service damage payment of £50 is imposed for each failure to achieve the emergency response time.

So if there were 100 emergency call-outs in the period and the contractor responded to 95 of these within 30 minutes, 5 x £50, ie £250, would be deducted from its next payment. Meanwhile, because overall it achieved the 95% performance level, it would still be entitled to the additional 5% of any target cost savings.

By using a target cost, carefully deciding what you want to measure, offering rewards for good performance and imposing damages for poor performance, you really can incentivise the contractor to provide consistently high levels of service and achieve savings. FM

TSC AND TSSC IN USE

Some recent examples of the TSC and TSSC in use include:

- The Department of Finance and Personnel in Northern Ireland awarded a four-year, £70 million property-management contract based on the TSC to provide planned maintenance, reactive repairs and minor works to approximately 2,000 government properties across Northern Ireland; and
- West London Mental Health NHS Trust awarded a two-year, £80,000 cleaning contract based on the TSSC to provide cleaning services to the non-secure office, training and residential properties at Broadmoor Hospital, Berkshire.