
NEC4: The Role of the *Service Manager*

A practical guide for the Term Service Contract

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ISBN 978-0-7277-6446-1

<http://dx.doi.org/10.1680/nectsm.64461.002>

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Introduction

This book is part of a series of books that provide guidance about specific roles in the fourth edition of the New Engineering Contract (NEC4). The purpose of this book is to provide information about the role of the *Service Manager* in the NEC4 Term Service Contract (TSC) of June 2017 with January 2019 amendments by describing the obligations, activities and culture to fulfil the role effectively. This book is not a guide on how the *Client* should draft a contract using the TSC, but rather how to manage a contract that has already been drafted.

The book describes the technical and behavioural traits that will be of use to the *Service Manager*, and is divided into a chronological set of learning outcomes as shown in Figure 1.1 that mirror the order in which a *service* can be established and implemented.

This book does not explain all the terms used in the TSC, as it concentrates on the role of the *Service Manager*. However, readers are encouraged to refer to the authors' *Managing Reality* series, which explains aspects of the NEC that are common across NEC contracts, such as the Schedule of Cost Components, and how to use the *Contractor's share percentages* and the *share ranges*. Although *Managing Reality* refers to the NEC4 Engineering and Construction Contract (ECC), where terms are the same as the TSC, the series of books provides explanations of those terms and how to use them in managing the contract.

The scenario on which this book is based is as follows.

You're told that you have been allocated the *Service Manager* role for the organisation's facilities management contract. Your boss points you to a pile of paperwork on a desk in the office. As you flick through this, you find documents that refer to the tender, something that looks like it might be an offer from a tenderer, and a page with lists of prices.

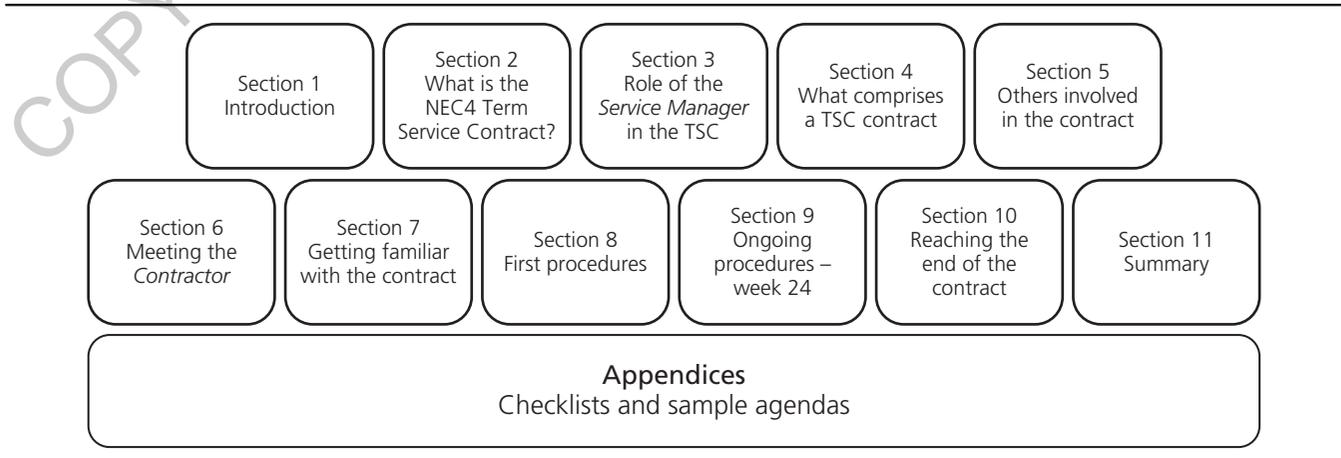
Where's the contract?

What do you look at first?

How do you find out what the *Service Manager* does?

And what exactly is the NEC4 Term Service Contract?

Figure 1.1 Book structure



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ISBN 978-0-7277-6446-1

<http://dx.doi.org/10.1680/necrsm.64461.008>

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Role of the *Service Manager* in the TSC

You know what the TSC is now, but what does the *Service Manager* do?

The *Service Manager* should be proactive in the management of their actions so that they bring the role to life and put in place working practices to undertake successfully this role in the contract. They interact with other people every day, such as the *Contractor*, subcontractors, the *Client*, the *Client's* numerous stakeholders, external regulators/auditors and inspectors. Good interpersonal skills are required to be a success in the role of *Service Manager*.

Most *Clients* know that successful services don't just happen; they are reliant on the people carrying out the contractual roles and the procedures required by the contract. The TSC describes the procedures but people make the difference, and the *Service Manager* plays a key role in providing leadership, encouraging a collaborative culture and working collaboratively with the wider *service* team (Table 3.1).

The *Service Manager* is responsible for all aspects of the contract.

The TSC describes procedures that the *Service Manager* and others can use to manage the contract effectively, but the management of an FM contract can be more complex than project management such as that for a works contract using the ECC. Time, cost and quality are just as important, of course, but the relationship between the three elements is more intertwined and less defined, so that the service management triangle tends to look more rounded, demonstrating that the *Service Manager's* chosen place in the circle and the relationship between time, cost and quality can differ according to the day, the asset, the building, and the *Client's* long term strategy for the estate (Figure 3.1).

Table 3.1 Main duties of the *Service Manager*

General duties	Plan	Quality	Change management	Payment	Risk management
Act as stated in the contract and in a spirit of mutual trust and cooperation	Monitor the <i>Contractor's</i> plan	Undertake and watch tests and inspections	Manage the compensation event process so that the <i>Contractor</i> is fairly compensated for any <i>Client</i> -initiated change about the <i>service</i>	Assess payment after each <i>assessment interval</i>	Use and encourage the <i>Contractor</i> to use the early warning procedure to help identify and manage risk
Communicate and issue documents as required by the TSC	Review and accept plan submissions	Notify and manage Defects	Ensure that the <i>Contractor</i> notifies compensation events timeously so that the <i>Client</i> is not disadvantaged	Assess and certify the final amount due	Use Task Orders to allocate specific work
Administer Task Orders	Review and accept the Task Order programme	Monitor Task Order requirements for quality	Manage the compensation event procedure	Assess payment for Task Orders	Work with risks identified in Task Orders

A communication system described in the Scope could cover areas such as

- the language to be used (as a reiteration of the *language of the contract* identified in Contract Data part one)
- how contractual communications will take place so that all parties know when their communication will take effect (e.g. email or using a software system that automatically submits the communication to the addressee)
- basic information to include in each communication, for example from whom, to whom, date, clause reference and what type of communication (e.g. notification, certificate or reply)
- a set distribution list for all communications to ensure that all parties are aware of contractual events
- practical solutions to managing contractually required communications, for example specific days for communications (e.g. all notifications are to be issued at the weekly site meeting on Monday mornings).

In any case, the *Client* should ensure that the relevant communications protocol is included in the contractual scope of services for the *Service Manager* (whether outsourced or not) and, more importantly for the purposes of this book, in the Scope of the *services* so that all parties are using the same protocol.

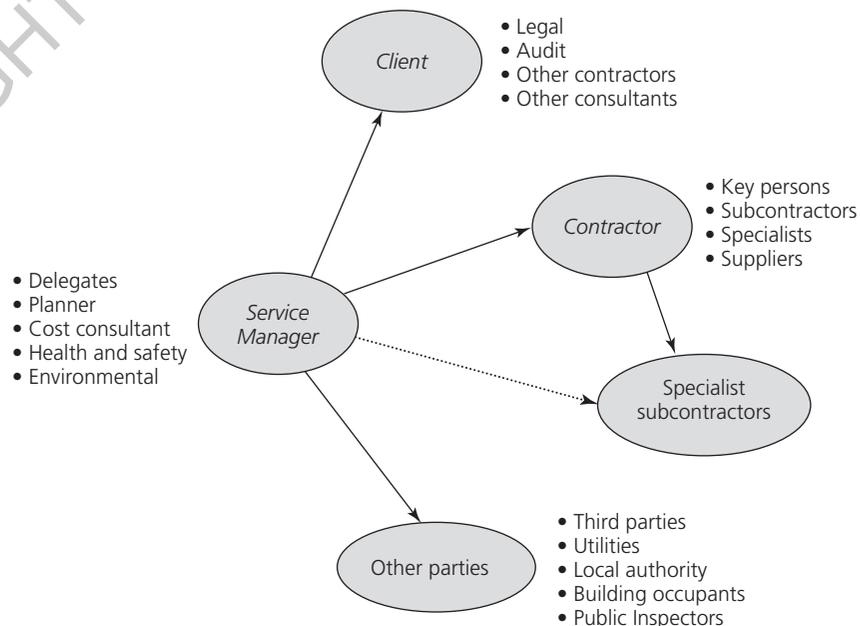
The following lists the communication requirements of the TSC:

- All communication that is required by the contract (e.g. instructions, certificates, replies and notifications) from the *Service Manager*, the *Contractor* and the *Client* must be in a form that can be read, copied and recorded (clause 13.1).
- All communications must be in the *language of the contract* (e.g. English) (clause 13.1).
- The *Service Manager* must issue their certificates to the *Client* and the *Contractor* (clause 13.6).
- *Service Manager* notifications and certificates required by the contract must be communicated separately from other communications (clause 13.7).
- The *Service Manager* must reply to a communication that is submitted to them for acceptance (clause 13.4).
- When the *Service Manager* is required to reply to a communication, they must do so within the *period for reply* (clause 13.3), unless the relevant clause provides another time period, for example clause 31.3 requires the *Service Manager* to communicate within 2 weeks of the *Contractor's* submission.

The *Service Manager* should be aware that notifications required by the contract **must** be communicated separately from other communications. The rules for communications and the list of communications required from the *Service Manager* in a TSC contract are listed in Appendices 1.1 and 1.2, respectively.

Figure 3.3 shows examples of the *Service Manager's* interactions. The relationship between the *Service Manager* and specialist subcontractors is shown as a dotted line, as there is no direct relationship between the two, and any

Figure 3.3 Examples of the *Service Manager's* interactions



FREQUENTLY ASKED QUESTIONS

I haven't given the <i>Contractor</i> a response to their plan. Will my being late slow down progress?	There are two contractual consequences to not responding to the <i>Contractor</i> on time: (a) The <i>Contractor</i> can notify a compensation event under clause 60.1(7). (b) If the <i>Service Manager</i> does not give a reply to the <i>Contractor</i> within 2 weeks of submission, the <i>Contractor</i> can submit to the <i>Service Manager</i> a notification that they have failed to respond on time. And if the <i>Service Manager</i> does not give appropriate communications within the next week, then the plan is treated as having been accepted by the <i>Service Manager</i> . This is generally called 'deemed acceptance'.
What happens if the <i>Contractor</i> notifies a compensation event because I have not responded?	The <i>Service Manager</i> and the <i>Contractor</i> will need to follow the compensation event procedure. The effect on the <i>Contractor</i> is not likely to be significant, as not having an Accepted Plan does not stop the <i>Contractor</i> carrying out the <i>service</i> .
If I am late in giving a response, and so the <i>Contractor</i> can assume that I have accepted the plan, can I choose to not accept the next one?	Yes, if your reason for non-acceptance is one of those stated in the TSC. You can also instruct the <i>Contractor</i> to submit a revised plan (clause 32.2), but you should speak with the <i>Contractor</i> first and explain what you expect the outcome to be.

8.1.1 What are the sources of information for the plan?

The primary sources for the data that are input into the plan are the Contract Data and the Scope. Appendix 8.1 provides a list of the documents that should be consulted prior to checking the plan.

8.1.2 Can I ask for a summary plan?

Given how complicated the plan could be, the *Service Manager* may want to see a summary high-level plan that could be displayed on the wall of the shared office. Figure 8.1 provides an example of a wall chart – a high-level plan that provides only the highlights, so that, at any point in time, the *Service Manager* can see at a glance which services the *Contractor* should be working on and how they plan to do the work.

Figure 8.1 Example wall chart

Affected Property	Month 1	Month 2	Month 3	Month 4	Month 5
Bldg 1: fire detection system	■				
Bldg 1: internal call alarm system	■	■			
Bldg 1: intruder detection system	■	■			
Bldg 1: fire-fighting equipment		■	■		
Bldg 2: fire detection system ...	■	■			
Bldg 3: fire detection system ...		■	■		
Bldg 7: lift maintenance				■	■

FREQUENTLY ASKED QUESTIONS

It is 4 weeks after the Contract Date and I should have received the plan, but I can't see it in the pile of contract documents. I am not sure that I would use it anyway. So, should I even bother asking for it?	Yes. You will need to refer to the plan throughout the Service Period to check the impact of early warnings and compensation events and to assess whether tests and inspections are taking place as they should be and even whether the <i>Client</i> has provided access to an Affected Property on time. If the <i>Contractor</i> does not provide a plan within 4 weeks of the date stated in the Contract Data and no plan was submitted with the tender then clause 50.5 will apply. The <i>Service Manager</i> retains 25% of the PWDD until one is submitted showing the information the contract requires.
If I don't like the way the plan is laid out, can I change it?	The plan has to adhere to the requirements of the contract, which are stated in clauses 31 and 32 and in the Scope. If the <i>Contractor</i> has drafted the plan so that it meets the contract requirements, and you still don't like the plan, you might need to think about issuing an instruction changing the Scope so that you can detail what you want of the plan in the amended Scope. This instruction will trigger a compensation event, which could impact on the budget and timing of the activities, and the <i>Client</i> will want to know why.

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ISBN 978-0-7277-6446-1

<http://dx.doi.org/10.1680/necrsm.64461.130>

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Appendix 4

Examples of what the *Service Manager* should look for in the Scope

This table provides the clauses that describe information that the *conditions of contract* call for in the Scope. The *Service Manager* could check that these have been addressed. (CD1, Contract Data part one; CD2, Contract Data part two.)

Clause	Requirement	What to look for in the Scope	✓
11.2(5)	A Defect is a part of the <i>service</i> which is not in accordance with the Scope	<ul style="list-style-type: none"> Does the Scope provide enough detail so that a Defect is easily discernible? 	
11.2(7)	Equipment is items provided and used by the <i>Contractor</i> to Provide the Services and which the Scope does not require the <i>Contractor</i> to include in the Affected Property.	<ul style="list-style-type: none"> Is the Scope clear enough that it provides information about Equipment not to be included in the Affected Property? 	
11.2(14)	Scope is information which specifies and describes the <i>service</i> or states any constraints on how the <i>Contractor</i> Provides the Service.	<ul style="list-style-type: none"> Does the Scope clearly specify and describe the <i>service</i> and state any constraints on how the <i>Contractor</i> Provides the Service? 	
13.2	If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.	<p>The communication to be used by the <i>Service Manager</i> and the Parties is ... [describe].</p> <ul style="list-style-type: none"> Does the Scope specify the use of a communication system (e.g. software, numbering system), and how does this affect the <i>Service Manager</i>? 	
13.3, CD1	The <i>Service Manager</i> or the <i>Contractor</i> to reply to a communication within the <i>period for reply</i> .	<ul style="list-style-type: none"> What difficulties might the <i>period for reply</i> bring? Does CD1 provide different periods for different communications/scenarios? How will the differences impede/enhance the contract? Is the <i>Contractor</i> going to be able to reply within the time allowed by the <i>period for reply</i>? 	
14.3	The <i>Service Manager</i> may give an instruction that changes the Scope.	<ul style="list-style-type: none"> Have all changes to the Scope been recorded? 	
15.1, 15.2 with CD1, CD2	Requirements for managing and contributing to the Early Warning Register.	<ul style="list-style-type: none"> Is the Early Warning Register already in existence, using the information provided in the Contract Data by both Parties? 	
15.4	If a decision [made at an early warning meeting] needs a change to the Scope, the <i>Service Manager</i> instructs the change at the same time as the revised Early Warning Register is issued.	<ul style="list-style-type: none"> Have the necessary changes to the Scope taken place? 	