

ENGINEER TO THE CONTRACT ROLE AND RESPONSIBILITY GUIDELINES EXPLANATORY NOTE

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**engineering
new zealand**
te ao rangahau

INTRODUCTION

This guideline was established to assist Principals (clients) with the successful appointment of an Engineer to the Contract (EtC).

As part of defining the specific roles and responsibilities the Principal wishes the EtC to undertake, the guideline provides a wider view of what the other key parties to the projects management structure may take.

By allocating the roles and responsibilities across these respective parties, and with the addition of any specific roles and responsibilities your project requires, the likelihood of an effective management team will be increased.

WHAT DOES THE ENGINEER TO THE CONTRACT DO?

In short, what they are engaged to do.

Notwithstanding the non-delegable tasks assigned to the EtC within whatever Contract form is being used for the project (e.g., NZS 3910), the EtC's roles and responsibilities are contractually defined via their scope of engagement with their client.

As an experienced project and contract practitioner, the EtC may also be able to offer additional guidance to the Principal outside of the core contract administration duties of the role and at an early stage of the pre-contract project set-up phase to assist with achieving better project outcomes.

It is also noted that many of the EtC's roles and responsibilities can be delegated to the Engineer's Representative (ER) on a project when appropriate.

Hence clarity of expectation is best developed during the preparation of the EtC's scope of engagement, and this is where the guideline aims to assist development of an appropriate scope.

Included with the written scope of engagement, or inherent within the use of an EtC, the EtC is also likely to provide additional benefits and leadership to a project through their experience, use of effective collaboration and facilitation techniques, communication skills, principal advisory skills, availability as a sounding board, and knowing when to inform, direct, check, report, investigate, assess and make formal determinations on Contract matters.

WHAT CAN'T THE ENGINEER TO THE CONTRACT DO?

As noted above, the EtC will do what they are engaged to do. It is important to note though that the EtC cannot:

Deliver a fair outcome to both the Principal and Contractor

This is not the EtC's responsibility. The EtC shall assess what the signed Contract between the parties entitles each party to. If a fair outcome is desired, this must be reflected via the Contract that is signed between the parties. The EtC can assist the Principal in the development of the Contract clauses to achieve this, but once the Contract is executed, they must independently and fairly assess entitlement against the Contract as it is written.

Ensure the Client gets built what they want

This is not the EtC's responsibility. What the Principal wants to get built is defined by the Contract, the scope of works, and the drawings and specifications that accompany these. If the requirements are not accurately or fully defined within these documents, then disappointment may occur. It is the responsibility of the wider design and project management team to understand the Principals' requirements and help communicate them successfully through the development of the project documentation.

Devolve the Principal's Health and Safety Obligations

The Principal cannot delegate out of their H&S obligations under the Health & Safety at Work Act 2015. The EtC can assist with ensuring the site is managed safely through their engagement, however this does not extend to replacing the Principal's PCBU responsibilities or conducting safety audits (which are best undertaken by a qualified professional).

BASIS OF THE GUIDELINE

The editable guideline document has been prepopulated as an example of how the roles and responsibilities could be allocated amongst project participants.

This example allocation is based on a NZS 3910 form of contract for a moderately sized project, with all the noted parties engaged to provide a service.

USING THE GUIDELINE

The guideline format is loosely based on the NZ CIC design guidelines format in that various items are listed in tabular format, whilst responsibilities for those items is indicated by selection of the appropriate bullet point within the column of the organisation/role best placed to manage it.

The item responsibility options are defined as:

- Deliverable required and party or parties responsible.
- Party or parties required to input, assist and coordinate.

To use the guideline first populate or amend the list of items within the table as required for your specific project, and then allocate the bullet points as desired across the project participants, using the drop-down menus in each cell.

While an item might identify several parties needing to input, assist, coordinate, only one party should be identified as responsible for the deliverable if possible. An exception to this might arise if you wish two roles to be completed by one party (e.g., the Project Manager is to also act as the ER), or multiple parties have respective duties under the Contract (e.g., advance notifications).

It is recommended that a copy of the completed guideline that you have created for your specific project is appended to the scope of engagement documents issued to your EtC and other consultant partners at the time of their procurement.

WHEN SHOULD THE ETC BE APPOINTED ON TO A PROJECT?

Opinion differs on this topic even amongst the EtC fraternity. This is predominantly due to the fact the EtC role, by definition, technically can't exist until a contract has been executed.

However, the EtC fraternity, and arguably the wider construction industry, are consistent in acknowledging that 80% (Pareto 80:20 rule) of a project's/contract's success is in the successful set up of the project and the development of the contract/procurement approach.

As an experienced project and contract practitioner, potentially the most widely experienced on the project, and with no inherent conflict of interest other than to ensure a successful project/contract, it is logical to engage with the potential EtC at the earliest opportunity to tap into their experience and knowledge.

Therefore, it is recommended that the Principal carefully assess their own capabilities and level of experience with the endeavour they are embarking on, and the various risks that the project may encounter. If these risks are minor, then delaying the involvement of the EtC until the last moment may be appropriate. However, if the risks are such that you can't afford to have the project go awry, then it is strongly recommended that you engage an EtC as early as possible (i.e., at project inception) to act as your independent advisor on the set up of the key project, procurement, and contract parameters.

THE NZS 3910 REVIEW

The publication of this document coincides with the issuing for public consultation of DZ 3910, the draft revision of the NZS 3910:2013 standard.

In DZ 3910, the terms "Engineer to Contract" and "Engineer's Representative" are replaced by "Independent Certifier" and "Contract Administrator". Note that the roles and responsibilities proposed for these two new positions do not exactly match those of the EtC and ER described in this document. Once the draft DZ3910 is finalised, this document will be updated accordingly.

CREDITS

This document and associated spreadsheet template were originated by Craig Byers, and developed with the assistance of Lawrie Saegers, Kerry Newell, and the EtC Panel.

TERMINOLOGY

CAN = Consultants Advice Notice

EMP = Environmental Management Plan

O&M = Operations & Maintenance

PCBU = Person Conducting Business or Undertaking

PCG = Parent Company Guarantee

PS3/PS4 = Producer Statement

QMP = Quality Management Plan

RFI = Request For Information

SID = Structural Interior Design

SSSP = Site Specific Safety Plan