

The JCT Target Cost Contract 2024

25 September 2025

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Introduction

1. What is a target cost contract?
2. Key features of the JCT Target Cost Contract
3. Setting your contract up for success
4. Avoiding potential traps
5. How does it compare to the NEC ECC Options C & D?



What is a target cost contract?



What is a target cost contract?

- Form of costs reimbursable contract
- What is reimbursable is subject to strict rules
- Pain gain share mechanism
 - If the costs are below the target, the contractor is rewarded by a share of the gain
 - If the costs are above the target, the contractor and the employer share the pain
- Risk sharing and encourages collaboration



The JCT Target Cost Contract 2024

- Published in June 2025 as part of the JCT 2024 suite
- First target cost contract in the JCT suite
 - Not an evolution from a 2016 equivalent
- Recognisable structure and language for those familiar with JCT contracts
- Heavily based on the JCT's most popular contract form: the Design and Build
- BUT:
 - Noticeable overlap with the Prime Cost Contract 2024

The JCT Target Cost Contract 2024

- Authors aiming to foster a more balanced risk profile than often seen

“What’s changed since 2016 [the last JCT Edition] is the level of risk in the industry. It’s prevalent in terms of the number of bankruptcies, and some people are just taking too much risk. So, we thought we would try to find a way to balance the risk across the contract.

We’ve also had demand from law firms and the like because there are versions of Target Cost in the market place which are different ours [...] we think the industry is ready to move from other systems of Target Cost or Cost Plus, and we hope that we have pitched it right and are in the right place in the market at the right time.”

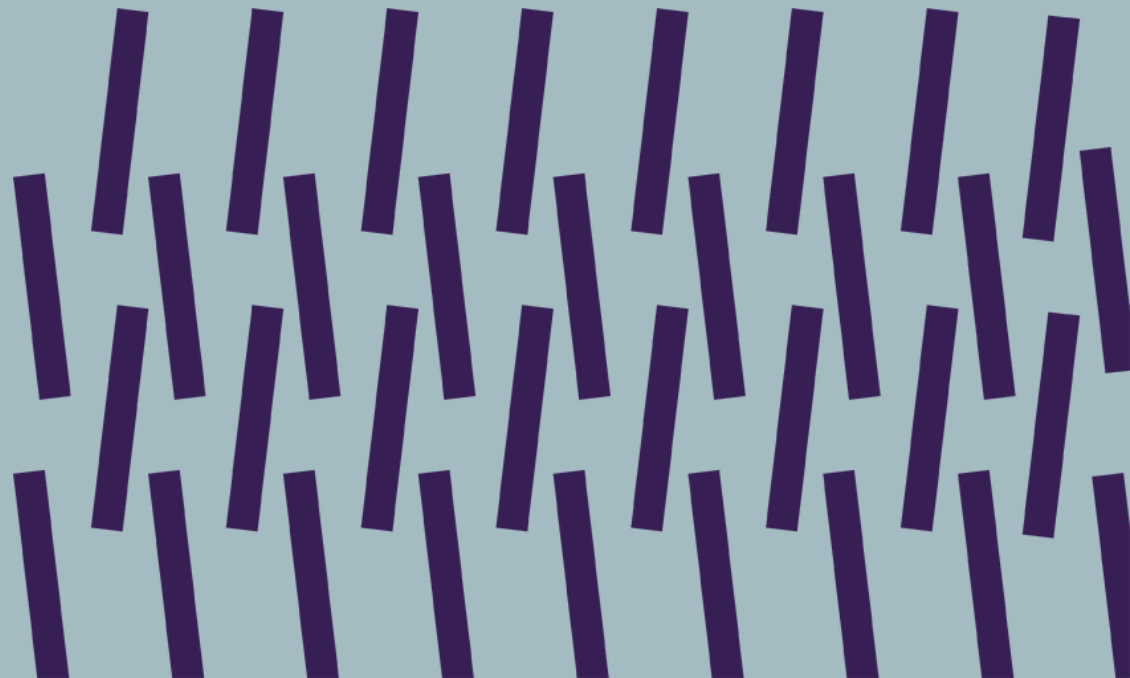
- John Riches during the JCT Launch Webinar



The JCT Target Cost Contract 2024

- JCT describe it as:
 - *“designed for construction projects where the Employer wishes to incentivise the Contractor, and which is achieved through the setting of a Target Cost and the provision of sharing arrangements (a pain and gain mechanism) in relation to actual allowable costs incurred. Parties are encouraged to **foster collaboration and working practices that maximise opportunities to make gain savings, thereby reducing the overall costs of a project.**”*
- Administrative burden is likely to mean projects must be over a certain value
- Need to buy into the ethos of incentivising a contractor to act efficiently and cost effectively

Key Features



TCC2024 Article 4: Collaborative Working

“The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each support collaborative behaviour and address behaviour which is not collaborative.”



Nature of the TCC2024

- Essentially a design and build contract, and heavily based on that form with elements of Prime Cost Contract as well as unique aspects
- Main difference from DB2024 is the basis of payment entitlement
- Unique pricing structure with potential for bespoke amendments
- Brings in concepts aligned across JCT 2024 suite: new Article 4, Collaborative Working

Critical Defined Terms

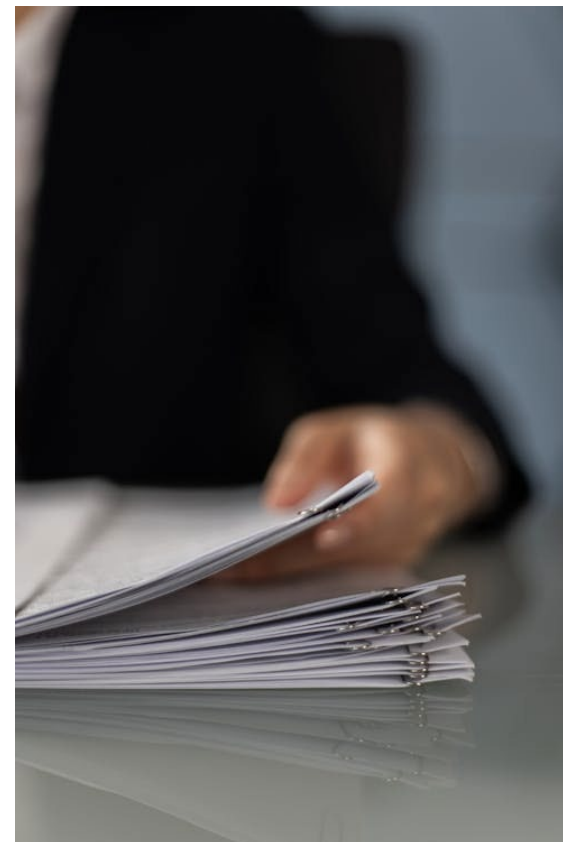
- “*Target Cost*” and “*Adjusted Target Cost*”: basis of incentive for Works pricing, sets out the target cost from the outset and adjusts pursuant to contract
- “*Allowable Cost*”: costs incurred by Contractor on Works, for which it is entitled to reimbursement and against which % Contract Fee is calculated
- “*Contract Fee*”: fixed sum or percentage covering Contractor’s costs and expenses which are not Allowable Cost
- “*Difference Share*”: the allocation of the liability for costs overrun and entitlement for costs savings when the actual Works cost is calculated against the (Adjusted) Target Cost



Structure of the TCC2024

- Typical JCT contract structure:
 - Agreement:
 - Recitals
 - Articles
 - Contract Particulars
 - Conditions
 - Schedules

- But some crucial differences (particularly from DB2024)



- Contract Documents:
 - Similar to DB2024, with Target Cost Analysis replacing Contract Sum Analysis
 - Agreement, Conditions, Employer's Requirements, Contractor's Proposals, and BIM Protocol (if applicable)
- Key Concepts:
 - Target cost incentive: gain share if under target, pain share if over
 - Importance of setting a realistic target cost to incentivise efficiency

Payment under TCC2024

- Entitlement for Contractor:
 - Allowable Cost – everything assessed against the itemised sections of Schedule 2;
 - Contract Fee – the fixed sum or percentage fee ... covering all costs and expenses ... other than Allowable Cost; and
 - any sum payable in respect of the Difference Share



- Under 4.7.1, “*where the Contract Particulars state this clause applies, in relation to each Interim Payment*”:
 - 4.7.1.1 if the total of Allowable Cost and Contract fee is less than Adjusted Target Cost Value of Work Completed, difference is shared between the Parties
 - 4.7.1.2 if the total exceeds, the difference is shared.
- Always the case with the final payment (or Termination Payment);
- Always by reference to the percentages specified in the Contract Particulars.

Agreement and Contract Particulars Content and Unique Elements

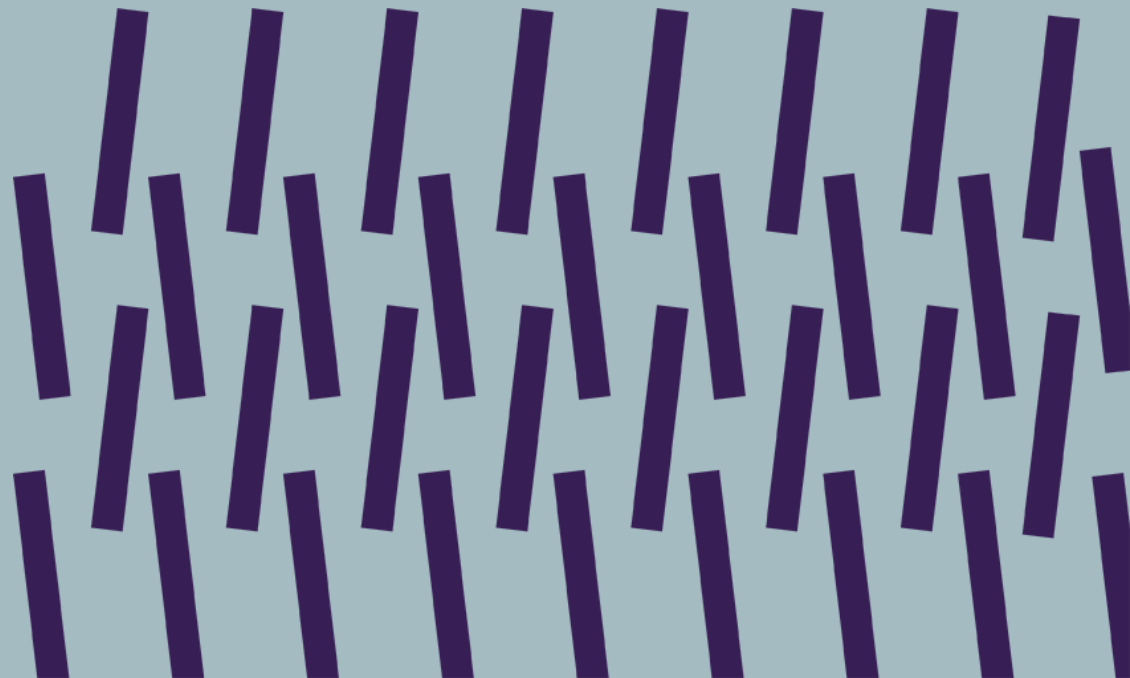
- Agreement Content:
 - Key differences in remuneration method and implementation – Employer pays the Contractor Allowable Cost, Contract Fee and amounts payable for the Difference Share
 - Target Cost replaces Contract Sum in the DB2024, consequential adjustments e.g. Target Cost Analysis
- Contract Particulars:
 - Largely reflects DB2024 but with crucial differences in payment and pricing provisions – extensive detail setting out aspects of adjustments to the Target Cost and elements of Allowable Cost
 - Fundamental aspects: adjustment to Contract Fee, percentage bands of Difference Share

Amendments and Negotiations

- Early days, limited use and limited examples of the form in practice
- However, assumption based on nature of contract and expectations for usage:
 - Employers will inevitably seek amendments similar to DB2024
 - Contractors likely to resist / push back on amendments which put more risk on to them



Practical Guidance



The Target Cost

- The Target Cost is NOT a fixed price
 - Requires a different way of thinking
 - There must be an incentive built in or the reason for using this form in the first place is lost
 - Think about the pain / gain share (“Difference Share”) carefully
- Adjusting the Target Cost is important where allowed pursuant to the contract
 - Can be forgotten about initially when the Contractor is getting paid
 - Crucial to adjust if applicable in order to keep the chance of a gain
- Clause 4.3: Adjustment immediately factored into the next interim payment (where the Conditions provide for that to be the case)

The Target Cost Analysis

- Detailed Target Cost Analysis crucial for valuing Changes
 - Detailed breakdown of the anticipated costs for the works
 - Provided by the Contractor in response to the Employer's Requirements
 - Prevents disputes and facilitates smooth contract execution
- Put the effort in!!



Adjusting the Target Cost

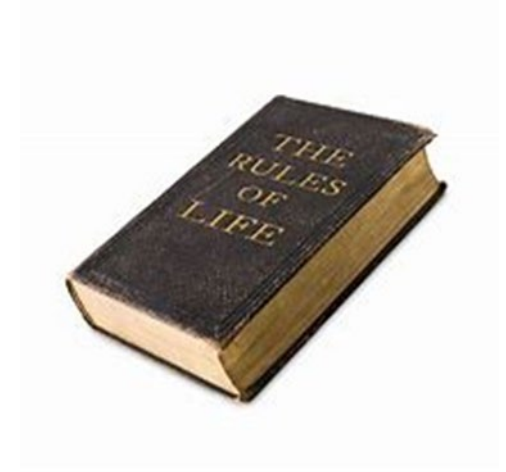
- Schedule 1:
 - Part 1: **Others**
 - Long list!
 - Part 2: **Changes**
 - Normal JCT rules but located in a different part of the Contract
 - Part 3: **Loss and Expense**
 - “*The Contractor **shall notify** the Employer as soon as the likely effect of a Relevant Matter on regular progress is known*”

Adjusting the Target Cost: “Others”

1. Any amount agreed as part of an acceleration of work
2. Any amounts that are to be dealt with as an adjustment of the Target Cost under any applicable Fluctuations Provision (minus any double counting)
3. Payments made by the Contractor in relation to insurance for early use
4. Patent right infringement payments
5. Costs arising from inspections or tests unless provided for within the Contract Documents or where concerning works not in accordance with the Contract
6. Costs relating to Terrorism Cover
7. Costs arising from default insurance under Clause 5.12.2
8. Costs due to changes to the Joint Fire Code
9. Costs incurred as a result of a lawful suspension
10. Where Insurance Option B or C applies or to the extent that the works is under clause 5.13.5.3 to be treated as a Change, any amounts in respect of reinstatement work under clause 5.13.4

Allowable costs

- Crucial to understand what falls within “*Allowable Costs*”
 - Schedule 2
 - Contract Particulars for Clause 4.5 (if filled in)
- The basics:
 - Must be “*reasonably and properly incurred*”
 - No duplication
 - Evidenced by accounts and records
 - Costs re defects before PC or SC are Allowable Costs
 - Rates applicable will not increase when in culpable delay
 - Discounts must be passed on
 - Unit rates / lumps sums agreed are deemed to be the actual costs
 - No costs for legal proceedings etc



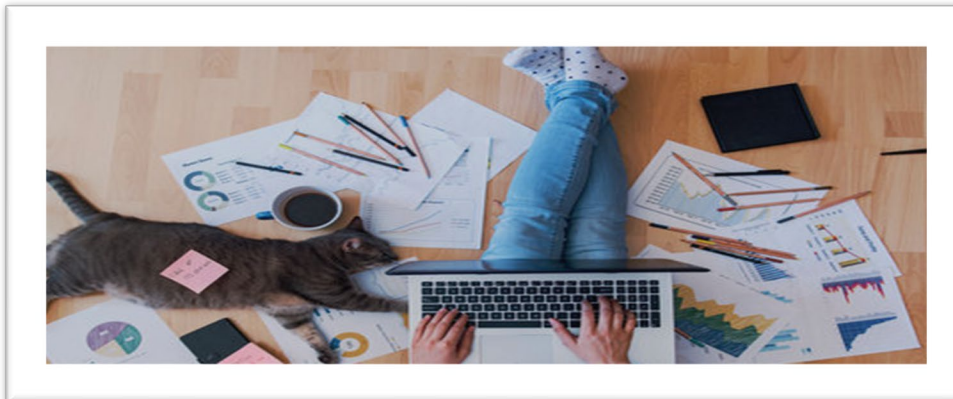
Allowable Costs: Verification!

- Schedule 2, Part 1, Clause 1.3:
- Obligation to keep records of Allowable Costs in form “*specified in the Employer’s Requirements or as the Employer’s Agent may from time to time **reasonably require***”
- Access “*at all reasonable times for the inspection and verification of all such records, measurements, accounts and documentation*”
- Audits permitted “*at any time on the giving of reasonable notice*”
- Obligation to provide further information promptly as representatives may “*reasonably require*”



Allowable Costs: Details

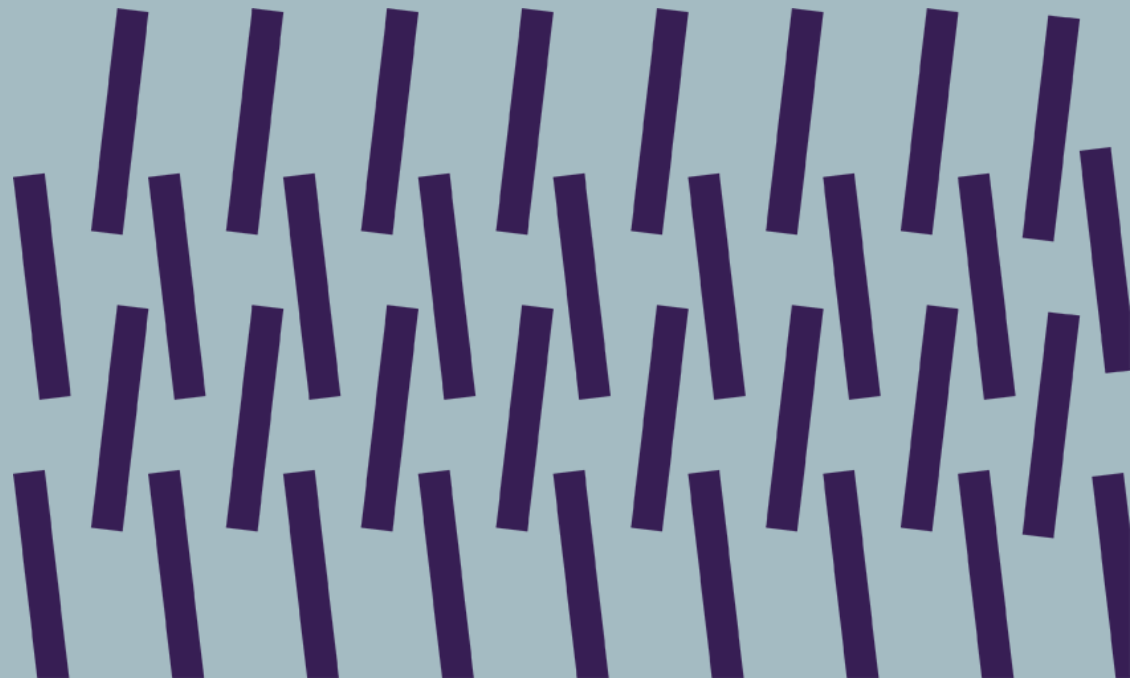
- Detail is key!
 - Part 2: Subcontract Work
 - No payments where due to Contractor default whether by act or omission
 - Room for disagreements between Contractor and the Employer on what has caused a payment to the Subcontractor?
 - Part 3: Contractor's Management and Design Staff **on Site**
 - Staff on site save for *"in the case of design staff, at other premises of the Contractor"*
 - Provision to list specific people in the Contract Particulars
 - Notified to the Employer AND it gives written consent
 - Working from home?
 - Lists payments to staff (eg bonuses, fares and travel, insurance, pension payments)



Allowable Costs: Details

- Part 4: Contractor's Direct Workforce
 - Labour "*directly employed by the Contractor itself and directly and properly engaged upon the Works either on the site or in the Contractor's workshops, yards or similar premises*"
 - How do you establish their presence in "*similar premises*"?
 - Employer's authorisation required for payment for out of hours work
- Part 5: Materials and Goods provided by the Contractors
 - Familiarise with the list of requirements and records required
- Part 6: Plant
 - Check the list! Is anything missing?
- Part 7: Sundries
 - Again check nothing missing

Potential traps and tips



Traps and issues

- Certifying on account without checking records for the initial period
 - Builds up issues
 - Contractor may struggle to get the records at all / in the right format later on
- Contractor worried about asking for adjustments to the Target Cost early on
- Issues with proving personnel were on site / at the relevant location
- Working from home?
- Audits at the end of the job: no provisions for periodic notifications to finalise portions of Allowable Costs like NEC4
- Amendments re defects before practical completion not being Allowable Costs
- Titles don't match those with rates attached
- Promotions!

Top tips!

- Sufficient resources required to work the contract properly on both sides
- Importance of comprehensive record-keeping from the start
 - Contractor:
 - Collating records
 - Checking the format is correct / what is required
 - Ensuring it applies for adjustments to the Target Cost
 - Invite inspections and audits
 - Employer:
 - Regular audits and inspections
 - What do you want to see? Ask for it don't wait!

How does it compare
to the NEC Option C?



JCT v NEC Target Cost

- Not that different in terms of overall approach to the pain gain share mechanism
 - Collaboration provided for
 - Defects prior to completion to be paid for
 - Detailed rules on records and what is payable / not payable
 - What the target / pain gain share is set at is crucial
- Terminology is superficially different:
 - Allowable Costs v Defined Costs and Disallowed Costs
 - Target Cost v The Prices
- NEC has learnt from past disputes:
 - Options for Working from Home
 - Contractor can invite finalisation of portions of Defined Costs
- JCT v NEC preferences
 - NEC more commonly used for infrastructure projects
- NEC more flexibility re level of design risk



Conclusions?



Conclusion

- The JCT 2024 Target Cost Contract offers:
 - Familiarity of JCT's best-used contract form
 - No reason why types of project for which the JCT is used shouldn't benefit from potential target cost benefits
 - The chance (if used properly) for a fairer risk allocation
 - Motivation for enhanced efficiency and performance
- BUT:
 - The Target Cost level set is pivotal
 - The Difference Share must also provide motivation
 - Employer and Contractor both need to know what they are getting into
 - Resource required!
 - Familiarity with the rules is essential
 - Check if you need to add any Allowable Costs / Rates / working locations
 - No flexibility re level of design risk (and typically the risk re design is increased anyway!)

Questions?



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