

ECI Webinar 21 March 2022

Questions from attendees

Questions	Response
<i>My query is, to what level of detail should be provided by the Client within the Clients scope when part of an ECI on to tender stage... I have a scenario whereby a Contractor is issuing a Compensation Event to me as a colour was not specified for the cladding, only the cladding performance standards. Now the Client wants to specify a colour at a later date... is this acceptable due to the maturing of the design at the time?</i>	The Client Scope should only specify its true requirements. If colour is sufficiently important to the Client, include that as a Client requirement, but otherwise it would need to be introduced as a compensation event. That would also change the budget.
<i>How does the Client specify the 'bones' for HOW the Price is to be worked up when Pricing Information is exclusively supplied by the Contractor?</i>	The Client must set out in the invitation to tender the material which the Contractor is required to provide. The Scope should set out how the total of the Prices for Stage 2 is to be prepared using the Pricing Information provided by the Contractor. The Contractor provides further details in the Pricing Information on how the total of the Prices will be prepared using information and methods in addition to the pricing rules specified by the Client.
<i>how does the fee% and rates differ?</i>	Rates are either part of Defined Cost or a forecast of Defined Cost for the work they relate to. Fee is added to Defined Cost as stated in the contract.
<i>Shouldn't inflation be dealt with as a CE?</i>	Inflation can be dealt with by incorporating X1 into the contract. The budget would need to include an allowance for inflation.
<i>What's the incentive of the ECI parties to jointly manage the risk level in the ECI phase if the preselection is already determined by 1 market party committing on a maximum risk allowance? And will such a commitment in the preselection process not reduce the freedom to manage this jointly?</i>	If risk can be reduced during Stage 1 and/or in Stage 2 then the budget incentive provides a financial benefit to both parties. The use of a maximum risk allowance at tender stage carries potential pros and cons, and should be carefully considered as stated in the webinar.
<i>During stage 1 if you have various packages as scope. How do proceed if you want to instruct them separately?</i>	This will need careful drafting in the Scope, and is likely to need an additional provision making allowance for multiple instructions to proceed

<p><i>How do we get contractors into that open-book/free information access mindset? This seems to be a struggle, as it's an overall change in how relationships have worked in the past</i></p>	<p>A valuable part of the selection process can be to assess behaviours. In addition, through the Pricing Information requirements, Client can ask for open book to be utilised and assess whether effective openness is provided.</p>
<p><i>When is the best time in the project lifecycle to go for an ECI contract in your opinion? Could it be linked to a GRIP stage or something like that so that procurement planning can be improved?</i></p>	<p>As explained, the ideal time is when sufficient work has been done to enable a realistic budget to be assessed, but before too much has been done which would limit the Contractor's ability to influence design.</p>
<p><i>Does X22 provide sureties that in the event price / programme isn't agreed, the Client retains ownership of the design? Also, in such a circumstance does this pose a time risk, with the new contractor having to review and warrant the design? How is this best mitigated?</i></p>	<p>The Client is able to use the Contractor's design and appoint another Contractor in certain circumstances. Clearly, having to appoint a new contractor will cause a delay in the work.</p>
<p><i>Why is X22 not standard in other options? Im working on an amended option A contract with X22 added and seems to be working?</i></p>	<p>The Contractor's motivation when operating under an option A contract is different from that in the cost reimbursable option. Additional provisions would be needed if option able used, to recognise this change motivation and make provision for balancing the risk to the Client.</p>
<p><i>-What are the bigger differences between the NEC4 x22 and other type of ECI contract such us Alliance Contracts, Competitive Dialogue or the Dutch Bouwteam? Why is the NEC4-X22 special? Why will you choose it (and not other collaborative contracts)?</i></p>	<p>X 22 has been developed specifically to deal with case where a Client wishes to appoint a contractor early and utilise its experience in developing design. Alternative approaches such as alliancing can be adopted but X22 formed a useful tool for Client wishes to use that route</p>
<p><i>If stage 1 contractor does not move to stage 2 and stage 2 is tendered, who owns the design responsibility for any design produced during stage 1?</i></p>	<p>The Client will be responsible for the design under the new contract.</p>
<p><i>how definitive would a no-go based on performance requirements need to be? Prohibitive cost or programme are relatively clear...</i></p>	<p>Careful drafting of performance provisions will be required to avoid a challenge on the Client's right to award the work to another contractor</p>
<p><i>the ECI practice note mentions option E: cost reimbursable contract. is this just intended for stage 1?</i></p>	<p>Option E could be used throughout the contract.</p>
<p><i>If you can't agree to go to Stage 2 - due to time/costs accumulated by the Contractor to get to stage 2 - is the Contractor contractually compensated for this?</i></p>	<p>The Contractor is fully reimbursed for its cost in reaching that stage. No other compensation is paid if the works do not proceed to stage 2.</p>
<p><i>If we have already signed up to completion dates and CE's have not been awarded in Stage 1 to cover the prolongation of Stage 2, do we</i></p>	<p>Before progressing to stage II, the programme needs to be agreed including access date, key dates and completion date.</p>

<p><i>get the option at Stage 2 NTP to re-baseline the dates and adjust Completion Dates to suit the updated programme</i></p>	
<p><i>I think it's important to define the set of activities that will take place during the ECI period - key milestones, interfaces, consents, a list of 'give gets', when the Contractor provides key information etc, progressive assurance</i></p>	<p>Agreed, but it is always open to the parties to agree to additional work being done in stage I.</p>
<p><i>How do we make sure that the contractor does not design something that is unaffordable in phase 2? Is there something we could write into the ECI to cover this off?</i></p>	<p>The contract already requires that the Contractor must set out the work it intends to do in stage I this has to be agreed by the Project Manager. If the Contractor does work which is not so agreed, it is not paid for the work. The Budget incentive should motivate the Contractor to design the most efficient solution for Stage 2.</p>
<p><i>Does the Scope for Stage 1 (including the overall project constraints/requirements) fall away after completion of Stage 1, or does it remain live with the Contractor further developing it during Stage 1 design ready for Stage 2 construction? In other words, is it 2 separate documents or an ongoing "live" document for both stages?</i></p>	<p>The Scope for the contract remains in force for the entire contract. Unless the Project Manager instruct for a change, the Scope remains as at the contract date. The Contractor is required to carry out stage II works in accordance with the design agreed by the Project Manager, unless the Project Manager agrees to a change.</p>
<p><i>How do you promote competitiveness at NEC4 as it is a bilateral contract? Is it possible to have an ace up your sleeve meaning another contractor awaiting if the main contractor continues with the project or not?</i></p>	<p>The Pricing Information is used to give confidence that a competitive price is agreed for stage II. This will include approach to identifying costs of the Contractor and of identifying and pricing subcontract work. It is difficult to see how either contractor would be happy with the approach of having a standby contractor.</p>
<p><i>How does the Pricing Information relate to the Scope if in case of ambiguity or inconsistency then? And a reason for not accepting a proposal does not include 'does not comply with the PI?'</i></p>	<p>It is difficult to see how there would be an ambiguity or inconsistency between Pricing Information and Scope, but if there is this should ideally be checked and resolved before the contract is entered into. However, if an ambiguity exists in the signed contract the Project Manager would state how it should be resolved.</p>
<p><i>Do you commonly see X20 KPI's as well as the pain/gain approach?</i></p>	<p>Many Clients have used X 20 KPIs as well as X 22, sometimes also including an incentive payment.</p>
<p><i>In terms of assessing the budget incentive at the end of a project - how come the budget not updated for compensation events which happen throughout the works?</i></p>	<p>The budget is only adjusted if the Client changes its requirements. The budget should include an allowance for other compensation events. The budget is meant to be an all-inclusive number, different to the total of the Prices.</p>

<i>What are the key benefits to using X22 compared to using a two-phased work order approach without the clause enacted?</i>	If X 22 was not used, an alternative clause would be needed to define the conditions for moving between phases and the consequences of not completing the 2 nd phase
<i>If the Client has better subcontractor rates - to reduce the risk of going over budget is it within NEC ethos to get Contractor to use your contractor</i>	Nominated subcontracting is not provided for in NEC contracts, but the Client should make available information concerning its own subcontractors to allow the Contractor to assess whether they would provide better value.