

NEC4: enhance trust and collaboration through effective assurance#

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Q&A session

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Q: In ECC, a Contractor's cost saving proposal may mean increased work/costs for the Client (e.g. by the PM to review/accept alternative design or method statements etc on D&B, or by the Designer if Employer designed). Would these costs be considered when working out the saving?

A: Yes, definitely. Consider all time/cost/quality/safety implications of an alternative design - some ideas may be good on paper but will take too long to get through various processes. Be open, honest and realistic.

Q: In ECC Option C clause 50.9, does the contract mean 'total Defined Cost' as reference to a final account figure, or on interim basis, i.e the 13 week period starts from an items inclusion within the application for payment?

A: The contract actually doesn't use the word 'total' in 50.9, our mistake on slide, but it allows for any part of Defined Cost to be put forward by the Contractor to the PM for acceptance. It's not necessarily related to assessments.

Q: You mentioned academic studies earlier and another comment mentioned the results of a Texan study. Can you tell us the extent to which academic research concerning collaborative working principles was considered in the production of the draft NEC4?

A: The drafters of the Alliance Contract were fully aware of the benefits of collaborative working, and aimed to incorporate those principles into the contract. Research into the use of alliancing, including identifying the benefits found both by users and in research, was undertaken during the early stages of deciding whether to create this contract.

Q: Is trust and goodwill enough to make both parties want to collaborate, when it's performance and cost that ultimately drives behaviours?

A: We do not see the two as being mutually exclusive. Working in collaboration could help to drive the required performance and cost, particularly on riskier and more complex contracts.

Q: Perhaps a good way to build trust as a project manager is to announce at the pre-start meeting that the PM is here to see that the Contractor walks away with its correct profit, whilst the PM will see that such profit is correct in regard to the Client's interest?

A: This is a good statement of the PM's role in many respects. If both parties believe that their respective objectives in entering into the contract are achievable and aligned, it would create the basis for a collaborative approach.

Q: Trust on a contract does not always start at the high shown on the graph? Those that award the contract may start at a higher level but if those that administer the contract only start at a neutral position trust can degrade faster when on day 1 a contract doesn't perform. From experience under NEC3, all contracts I have worked on dip initially on site or the office until trust is built at a base level.

A: Yes, we agree. That was part of the discussion we were having during the webinar.

Q: Where the Contractor proposes a change to the Scope which changes a design, who then does the design liability lie with if the proposal fails to work?

A: Whoever is the designer. A part of the process is deciding the merits of the proposal in term of time, cost, quality, design etc.

Q: A lot of what you have said about building trust centres around "getting parties to do what they said they would do in the contract". Where complexity and unpredictability make it difficult (or impossible) to define contractual contingencies for probable future events, activity must occur in a commercial environment of incomplete contracts. How does NEC4 manage the myriad of elements that are not written down in the contract? How does this affect trust?

A: In our experience those contracts (non-NEC) which seek to cover all eventualities become cumbersome and unworkable and are a recipe for dispute. The use of the appropriate contract form will help to deal with uncertainties to some extent. For example, the use of an ECC Option E contract where the brief and design is not fully mature. NEC seeks to promote good project management and in particular under NEC4 for the parties to work together to manage risk through an early warning process. This emphasis on the management and mitigation of risk deals with uncertainties regarding the works. Although, therefore contracts cannot hope to define contractual contingencies, the use of the mechanisms within the existing terms should provide a basis for their resolution. Where uncertainty exists, collaborative working is a good basis to come to a sustainable solution.

Q: Do you think collaborative contracts work for small price contracts (<£100,000) for example?

A: Complexity drives the need for collaboration rather than price. A large construction project to build a standard retail store type may be less complex than a small job where there is no design fixity or the Client's needs are unclear.

Q: If a contract isn't working out and all early interventions haven't produced a mutual result, are there any new measures before parties end up at arbitration?

A: New measures in W1/W2 include disputes to go to Senior Representatives before adjudication which is before litigation or arbitration. W3 provides for a Dispute Avoidance Board to help the parties sort problems out before formalising.

Q: When the ALC is completed - and assuming it is fit for purpose - what ongoing role do you see in the ECC? Given the claimed benefits of collaboration and multi-party contracts, why would anyone not use the ALC? Why would you deliberately choose a less collaborative procurement strategy? (PS I disagree strongly with the ALC Draft suggestion that Project Alliances are for big/complex projects. They have been used successfully from a few million up).

A: A good point well-made and how nice this would be for industry if that were the case. Let's see first how well the ALC is taken up and the results it yields.

Q: How and where we will draw line for mutual trust, as each party is acting in the best interest of its organisation?

A: We would draw the line where it becomes obvious that one party is not acting in mutual trust. Working in mutual trust does not mean sacrificing the best interest of an organisation, it is instead a mechanism for achieving its objectives.

Q: In terms of cost certainty, is it not putting pressure on the PM?

A: The PM will need sufficient resources to undertake all of the tasks the PM has to do. The time limits to do this are entirely reasonable.

Q: You said that failure of a client organisation to have a consistent set of behaviors damages collaboration. Does NEC4 do anything to support a good and consistent set of behaviors?

A: The Project Manager administers the contract and performs two distinct roles

- To act as an agent of the Client, for example issuing instructions.
- To act as a decision maker, for example assessing a compensation event.

When acting as a decision maker, the PM should act honestly, impartially, fairly and in an unbiased manner so as not to show favour either to the Client or to the Contractor.

Answers by **Robert Gerrard** and [Phil Joyce](#).