

How use of the NEC suite of contracts can help the New South Wales government achieve its 10-point commitment to the construction sector

Government Priority 1 - Procure and manage projects in a more collaborative way

The NEC suite of contracts is founded on collaborative working; not only is the obligation to 'act in a spirit of mutual trust and cooperation' front and centre of its clauses, but the suite contains processes requiring stakeholders to work collaboratively. The newest addition to the suite is a multi-party alliance contract. Using NEC will increase collaborative working with consequential benefits to the project.

Government Priority 2 - Adopt partnership-based approaches to risk allocation

The NEC suite of contracts are even handed when it comes to risk allocation between the parties. During a project, NEC contracts allow stakeholders to flag matters that may impact cost, time or quality managed through an early warning system for discussion and resolution. NEC contains clear dispute resolution processes independent of statutory adjudication to ensure that disputes are resolved quickly and efficiently.

Government Priority 3 - Standardise contracts and procurement methods

NEC contracts are suitable for every contractual arrangement in the supply chain from the head contract through to supply only contracts, and encompass subcontracts, term service contracts and dispute resolution contracts. The contracts are harmonised as they have consistent ethos and drafting across the suite. Sector specific amendments can also be incorporated into a contract.

Government Priority 4 - Develop and promote a transparent pipeline of projects

NEC can assist in the transparency of projects through a variety of sizes and complexity by use of its suite of standard forms for every contractual arrangement in the supply chain. This can reduce the barriers to entry for many contractors as they will already know and understand whichever form of the NEC suite is proposed to be used for the project.

Government Priority 5 - Reduce the cost of bidding

The most effective method of reducing the cost of bidding is to use unamended standard forms of contract to minimise the learning curve. NEC contracts are not only a standard form but are harmonised across the suite: understanding one means understanding of all.

Government Priority 6 - Establish a consistent NSW Government policy on bid cost contributions.

One of the methods by which bid costs can be managed is through using an overarching NEC framework agreement. With a collaborative framework in place, not only are the tendering parties sure that their bids will be properly considered, but the framework can contain provisions for bid cost reimbursement ensuring the tenderers are aware beforehand of their investment.

Government Priority 7 - Monitor and reward high performance

Performance: NEC contracts contain options that allow for the establishment of a tendered target. The Contractor is reimbursed his cost along with a fee percentage. At the end of the project the final cost plus fee is compared to the adjusted target and, if the Contractor has underspent then he received a share of the saving and if he overspends he pays a share of the additional cost. This 'pain/gain' arrangement not only rewards high performance directly, but also holds the Contractor responsible for overspend.

Dispute resolution: NEC contracts have built-in dispute resolution processes designed to quickly and efficiently resolve disputes either by a contractual adjudication process or by a dispute resolution board.

Standardised contract management: As the NEC contracts are standardised across the suite, contract management requirements are similarly standardised. To assist stakeholders in understanding their requirements, the NEC suite is supported by user guides and helplines.

Government Priority 8 - Improve the security and timeliness of contract payments

The NEC suite includes provisions for good payment practices, notices of amounts to be paid and, with only minor amendments, are compliant with the Building and Construction Industry Security of Payment Act 1999. In addition, one of the secondary options that can easily be incorporated into any contract is detailed provision for the operation of a project bank account, protecting the payments and the cash flow of all in the supply chain.

Government Priority 9 - Improve skills and training

Availability of training on the proper use and management of the contracts is widespread and readily available including accredited project management training which is recognised by the Institution of Civil Engineers (ICE).

Government Priority 10 - Increase industry diversity

Additional clauses allow the easy addition of project or client specific requirements to increase diversity such as aboriginal participation. It is also arguable that a collaborative and non-adversarial approach to construction will widen the appeal of a construction career.