

# NEC and the Construction Playbook

Briefing note

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The government's Construction Playbook was issued in December 2020, with the aim of changing how construction projects get delivered and getting it right from the start. It provides principles and policies which are intended to transform how public works projects and programmes are procured and managed, in order to achieve a transformational change by systematically approaching risk, sustainability and innovation across portfolios of projects and programmes.

The Playbook therefore addresses a wide range of areas, from preparation and planning to selection and project delivery. It looks at topics such as commercial pipelines, digital technology, benchmarking and cost models, risk allocation and successful relationships.

## The key policies

The Playbook identifies 14 key policies which form the basis for the Playbook. These include the following which are particularly relevant to NEC:

- **KP5 - Further embed digital technologies contracting.** This encourages the use of the use of the UK BIM Framework and development of a national digital twin. That approach is supported by the Information Modelling provisions in Option X10. Digital contract administration systems already support the operation of NEC contracts currently being used. These provide structured communications, robust records, visibility and traceability of communications, summary reports, assurance, security of data throughout the life of the contract and make contract management easier and more efficient.
- **KP6 - Early supply chain involvement.** This is to be used in developing the business case for projects and programmes, to reduce downstream issues and to develop a clear outcome based design and specification. NEC provides for the early appointment of the supply chain under Option X22 which is highly suitable for achieving these aims.
- **KP7 - Outcome based approach.** The aim is to use a project score card and KPIs to ensure desired outcomes are delivered. This is consistent with the use of KPIs under Option X20 as well as low performance damages under Option X17, both helping to achieve specific outcomes. The Design-Build-Operate (DBO) contract can also be used to support the use of outcome-based specifications and procurement on a whole life value basis.
- **KP8 - Benchmarking and should cost models.** The Playbook proposes use of data from past projects to develop benchmarking as well as developing a Should Cost Model (SCM) to better understand whole life costs and value. NEC recognises the importance of whole life cost in Option X21 and provides a mechanism that promotes the identification of whole life savings.
- **KP10 - Effective contracting** is one of the key policies and is covered in Section 6 of the Playbook, as part of the overall section dealing with preparation and planning. This reflects the recognition that contracts need to be set up at an early stage as part of the planning process and not be left to a later stage. The suite of NEC contracts offers flexibility and many provisions to support this section of the Construction Playbook (KP10). For example:
  - Collaboration is at the heart of all the NEC contracts. The parties are obliged to act in a spirit of mutual trust and co-operation and the contracts encourage early identification and resolution of any issues that can affect the project.
  - Secondary option X20 allows clients to introduce KPIs with associated incentive payments to help drive desired outcomes. These can be used to embed the measures contained in the Project Scorecard.
  - Features which encourage and reward contractors to make alternative proposals to create efficiencies including on a whole life basis, under option X21.
  - There is an Alliance Contract and a Framework Contract that are particularly suitable for achieving long term collaborative relationships between the parties.

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- The Construction Playbook acknowledges that NEC contracts are an appropriate choice of contract for construction projects.
- All NEC contracts contain provisions to promote conflict avoidance, for example, the requirement to initially refer a dispute to senior representatives of the parties named in the contract and it is open to parties to also choose to use a Dispute Avoidance Board which can be a better way to resolve disputes than statutory adjudication.
- KP11 - Risk allocation. The Playbook is keen to avoid inappropriate risk allocation, identifying it as a concern for suppliers, by relying on market engagement. NEC has developed a risk allocation balance which is fair to all parties based on who is best placed to manage risk. The range of Options in NEC gives flexibility in tailoring the risk allocation – for example in relation to responsibility for design and the appropriate design standard – to the requirements of the project. It is also suggested that parties should develop early risk work and compile a risk allocation matrix to consider who in the supply chain is best placed to manage risk. The NEC early warning system provides for the joint identification of risks at tender, and regular reviews of risk during the contract to identify options for avoiding or reducing risks where possible and which party should take the necessary steps.
- KP12 - Payment mechanism and pricing approach. This is designed to work together with risk allocation so it incentivises desired behaviours or outcomes. NEC provides flexible and various different models in Options A to F which can be used as required and, in particular through the use of target contracts, provide incentives for better behaviours and collaboration.
- KP14 - Resolution planning and ongoing financial monitoring. that policy aims at preventing and planning for insolvency risk. The options provided in NEC for mitigating that risk are performance bonds, ultimate holding company guarantees and project bank accounts.

The Playbook states that standard contracts should be chosen. When looking at the key policies identified by the Playbook, it becomes clear that the NEC form is particularly suitable for achieving the aims of the Playbook.