NEC4 Alliance Contract: Increasing collaboration and integration

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Speakers

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Agenda

• Why an Alliance contract?
• NEC approach to alliancing
• NEC4 Alliance Contract
  • Main and secondary options
  • Liabilities and insurance
  • Alliance structure
  • Payment and incentives
  • Compensation events / dispute avoidance
• Consultation process
• Questions and answers
Why an alliance contract?

• The construction industry is continually challenged to deliver improvements in the outcome of projects and programmes of work

• Collaboration and better integration of the client and the delivery team are seen as ways of achieving this

• Remove barriers to collaboration – individual company drivers
  • Reduce or share risks & liabilities
  • Alignment of commercial drivers – turnover, profit
  • Shared incentives, performance driven
NEC approach to alliencing

• Clause 10.1 now 10.2
• NEC suite - engaging the entire supply chain on a collaborative basis
• X12 multiparty collaboration – creating greater alignment and co-operation to achieve shared objectives
• UK Infrastructure Client Group (ICG) – Alliancing Code of Practice 2015
• UK ICG and NEC - Guidance on implementing Alliancing using NEC contracts, 2016
• Increasing use of Alliance arrangements due to the benefits achieved
• User demand for fully integrated NEC contract - a “true” Alliance contract
NEC4 Alliance Contract

• Follows the principles and structure of NEC4 contracts, where appropriate

• Multiparty contract – all members of the Alliance engaged on a single set of terms and conditions

• Performance based contract – risk / reward for achievement of Alliance Objectives, set by the Client

• Major projects or programmes of work

• Single or two stage basis

• Two stage - optional clauses for early involvement - Alliance develops Stage Two proposals and Budget, time, and performance targets are agreed
Main and secondary options

• Single main option based on option E
• Limited secondary options
  • X2 Changes in the law
  • X4 Ultimate holding company guarantee
  • X9 Transfer of rights
  • X10 Information modelling
  • X18 Limitation of liability (of all Partners cumulatively)
  • Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996
  • Y(UK)3 Contracts (Rights of Third Parties) Act 1999
Main and secondary options

• Secondary options brought into core
  • X12 Multiparty collaboration
  • X15 The Contractor’s design
  • X17 Low performance damages
  • X20 Key Performance Indicators
  • X22 Early Contractor involvement

• Single Contract Data – creation of the Alliance by mutual agreement

• Partners can be added / changed or removed

Performance Table
Liabilities and insurance

• The Alliance is the Client and the Partners
• All liabilities shared and managed by the Alliance except
  • Wilful default of the Partners
  • Third party claims – Client risk, but can be a Client Cost

• Joint name insurances provided by Client including PII, except
  • Employer's liability insurance by each member of the Alliance
Alliance structure

• Alliance Provides the Works in accordance with the Scope and the Alliance Objectives
• Members of the Alliance work together as an integrated team
• Selection of people / organisations / work allocation on a best for project basis
• Use of integrated systems and processes
  • early warning register, information modelling, etc.
• Alliance Board manages the Alliance on behalf of the members
• Decisions of the Alliance Board need to be unanimous – made on a collaborative, best for Alliance basis – and bind all members of the Alliance
Alliance structure

- Alliance Manager leads the Alliance Delivery Team and undertakes many of activities of the Contractor and Project Manager under the ECC
  - Programme, quality, assessing the amount due
- Alliance Manager reports to the Alliance Board
- Limited matter reserved for the Client and managed by the Client’s Representative
  - Changing the Scope, certification of payment, acceptance of design, quality assurance
Payment

• Cost reimbursable contract – Defined Cost plus Fee
• Schedule of Cost Components similar to ECC – based on co-location of teams
• Limited grounds for Disallowed Costs
• Payment made via a Project Bank Account
• Option to have Named Suppliers
• Alliance Manager assess the amount due, Client’s Representative checks and certifies
Incentives

• Performance Table based on Alliance Objectives and set by the Client
• Financial incentive = Budget v Total Price for Work Done to Date
• Client Costs form part of the Budget and Total Price for Work Done To Date
• Performance Table impacts on any saving or overspend and / or allows additional amounts to be paid or retained from the Partners
Compensation events

- Alliance Board develops the Scope
- Changes made to the Scope by the Alliance Board are not a compensation event
  - Except a change made to avoid or reduce the effect of an event that would otherwise be a compensation event
- Client changes to the Scope are compensation events
- Compensation event process managed by the Alliance Manager
- Acceptance of quotations by the Alliance Board
- Compensation events can effect the Budget, Completion Date and the Performance Table
Dispute Avoidance

• No blame / no claim – disputes resolved by
  • Senior Representatives or
  • Alliance Board
  • Can use third party support

• Failure to resolve dispute – could bring Alliance or Partner’s involvement to an end

• No provisions for adjudication or other dispute resolution process
Consultation process

• ALC and accompanying guidance notes available for download from www.neccontract.com/ALC
• Consultative edition – not to be used for projects
• Users to shape the final contract
  • Too restrictive / too flexible
  • Provisions to be added / removed / amended
  • Another comments / improvements
• Maximum engagement, Clients and organisations with an interest in alliancing
• Formal publication during 2018
Questions?
NEC4 transition webinar: how to move from NEC3 to NEC4

14 July 2017 – 13:00 BST

Matthew Garratt
NEC4 Drafter and Commercial Director at Costain

Robert Gerrard
NEC4 Drafter and NEC Users’ Group Secretary

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NEC3 and CCS webinars
Public Sector Procurement

Crown Commercial Service and NEC3 for Public Sector buyers
20 July 2017 – 12:30 BST

Crown Commercial Service and NEC3 for suppliers to the Public Sector
20 July 2017 – 14:00 BST

Barry Trebes
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