



PROCURE. MANAGE. DELIVER

# Using NEC4 contracts with FAC-1

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# AGENDA



## **Professor David Mosey:**

Background to FAC-1 and purpose of the Guidance

Why use an FAC-1 Framework Alliance Contract with NEC Project Contracts?

## **Peter Higgins:**

What is in the guidance?

Structure and terminology

Preparing NEC Project Contract documents

## **Professor David Mosey:**

Managing the Project Contract and the interfaces with the FAC-1

Case studies

## **Questions**

- The FAC-1 Framework Alliance Contract (FAC-1) creates and implements collaborative framework and alliance arrangements and is recommended by the UK Government
- The NEC (NEC4) contracts are also recommended by the UK Government and stimulate good management of relationships which create the environment for successful project delivery
- FAC-1 is a multi-party contractual integrator which can be applied alongside NEC4 contracts to establish practical collaboration across a number of projects or across the different parts of a complex project
- FAC-1 has been used successfully in conjunction with NEC contracts and can create relationships that support the enterprise approach promoted by 'Project 13'

## WHAT IS THE PURPOSE OF THE GUIDANCE?

- The purpose of the Guidance is to assist users in combining the FAC-1 Framework Alliance Contract with NEC4 contracts by:
  - Identifying the links between the provisions in FAC-1 and NEC
  - Setting out how clauses in NEC contracts can be used to support the objectives of FAC-1 and how provisions in FAC-1 can support the use of the NEC contracts
  - Providing guidance on material that needs to be incorporated in preparing the FAC-1 for use with an NEC contract
  - Identifying where material in the FAC-1 contract can influence the preparation of an NEC contract and its management after award.
- The Guidance should be read alongside FAC-1 guidance in *'The FAC-1 Framework Alliance Contract: A Handbook'* (LPP, 2023) and the NEC4 user guides.

## WHY SHOULD NEC4 BE USED WITH FAC-1?



- FAC-1 and NEC4 work effectively together, so no point in NEC preparing an additional collaborative framework contract
- FAC-1 describes activities that can govern the award of NEC4 contracts, that can integrate NEC4 contracts and that can enhance the implementation of NEC4 contracts
- FAC-1 features which fit with NEC4 contracts include:
  - Procedures for award of contracts for any types of works, services and supplies
  - Framework- level early supply chain involvement
  - Framework-level performance measurement and incentives
  - Option to create a digital information management integrator
  - Framework-level early warning and risk management

## WHY SHOULD FAC-1 BE USED WITH NEC4?

- NEC4 contracts encourage cooperation, they can complement FAC-1 and they can enhance the implementation of the FAC-1 relationships and systems
- NEC4 features which fit with FAC-1 include:
  - Consistent contracts for any types of works, services and supplies
  - Project- level early supply chain involvement
  - Project-level performance measurement and incentives
  - Option to use digital information management
  - Project-level early warning and risk management

## HOW DO FAC-1 AND NEC TREAT COLLABORATION?

- FAC-1 and NEC4 contracts both require the parties to the contracts to work in a collaborative and cooperative way.

- FAC-1 states

“The *Alliance Members* shall work together and individually in the spirit of mutual trust, fairness and collaboration .....

- NEC4 states

“The Parties, the *Project Manager* and the *Supervisor* act in a spirit of mutual trust and co-operation.”

## WHAT IS IN THE GUIDANCE?

- Structure of contracts
- Terminology
- Preparing the Project Contract Documents
- Managing the Project Contract
- Case studies
- Appendices
  - Terminology
  - Mapping NEC and FAC-1



- FAC-1 provides for various activities being carried out under the Framework Alliance Contract
  - In advance of and in parallel with the performance of multiple NEC4 Project Contracts
- A Project is carried out under an NEC4 Project Contract:
  - An agreement between the Client and one of the parties to FAC-1.
  - Any of the NEC4 full or short contract forms
  - Construction works, providing design or other consultancy services or supplying goods and services
  - NEC4 subcontracts can be used to engage the wider Supply Chain

- Appendix 1 of guidance - a comparison of similar terminology:
  - Relationship between the terms in FAC-1 and in the NEC4 Engineering and Construction Contract
  - Similar relationships in the Professional Service and Supply Contracts, subcontracts and short contract forms

- Template Project Documents - Schedule 5 of FAC-1
  - Project Contract Conditions
  - Project Brief
  - Agreed Prices

## PREPARING THE PROJECT CONTRACT DOCUMENTS

- Use of Pre-Contract Activities and Alliance Activities
- Mapping FAC-1 and NEC contract processes – Appendix 2 of guidance
- Z clause drafting

## PREPARING THE PROJECT CONTRACT DOCUMENTS

- Project Bank Accounts Y(UK)1
- Security of Payment Y(UK)2
- Third Party Rights
- Resolving and avoiding disputes
- Assessment of cost

# MANAGING THE PROJECT CONTRACT AND THE INTERFACES WITH THE FAC-1



- Collaboration under multi- party relationships and Supply Chain support
- Sustainability, Climate Change, Whole Life Cost and BIM
- Time management under FAC-1 Timetable and NEC4 Programme
- Commitments to Improved Value

- NEC Option X12 (Multiparty Collaboration) should **not** need to be used under an FAC-1 Framework Alliance Contract, because multi-party collaboration is addressed in FAC-1, for example through the requirement for a *Core Group* to be created to manage interfaces under the *Alliance*
- FAC-1 provides important multi-party collaboration opportunities through its clause 6.3 *Supply Chain Collaboration* process which describes how a *Client* (and any *Additional Clients*) can work with one or more consultants and contractors to review, improve and integrate the appointments of Subcontractors who are tier 2 *Supply Chain* members
- The FAC-1 *Supply Chain Collaboration* processes may create outputs that need to be recognised in the relevant NEC4 contract Scope:
  - creating an obligation to engage Subcontractors who demonstrate best value through the joint FAC-1 process
  - with a failure to do so being a reason to not accept another proposed Subcontractor under the NEC4 contract.

- FAC-1 provides for consistent processes to be incorporated into each *Project Contract* so that issues related to *Sustainability*, climate change, whole life cost and *BIM* are addressed, measured and incentivised at the framework level, with these requirements then flowed down into each relevant *Project Contract*
- To ensure this happens successfully the correct secondary Options need to be included in the NEC *Project Contracts* , with requirements that are consistent with the overall *Objectives* and *Success Measures and Targets* in FAC-1
- Relevant secondary Options in NEC4 contracts include X10 information modelling, X21 whole life cost and X29 climate change.
- In relation to BIM , a consistent information protocol can be included in the *Project Template Documents* and applied to each *Project Contract*. FAC-1 enables the efficient integration of *BIM* contributions consistent with the agreed *Objectives* and *Success Measures*, supported by mutual direct protections and licences in respect of *Intellectual Property Rights*. NEC4 contracts support the use of a consistent information protocol via secondary Option X10 Information Modelling and the use of consistent Information Model Requirements in the Scope



- FAC-1 has a multi-party *Timetable* to drive achievement of deadlines, milestones and gateways in the *Framework Programme*, achievement of *Objectives* and the timescales for *Alliance Activities*
- In NEC4 main contracts there is requirement for a detailed Accepted Programme to be put in place to achieve delivery of the works in the *Project Contract* to time and to deal with any failure to do so
- As *Project Contracts* will involve delivery of elements of the *Framework Programme*, there is a need for the timescales in the FAC-1 and the NEC *Project Contracts* to align and drive consistent objectives
- There will be a need for Accepted Programmes and the *Timetable* to feed into each other
- In addition, issues identified in respect of delivery of timeframes in the *Timetable* and / or the Accepted Programme could lead to the requirement to notify early warning under each contract

- Under FAC-1 clauses 2.2 and 6.1, the *Alliance Members* propose and undertake *Alliance Activities* to achieve *Improved Value* consistent with the *Objectives, Success Measures and Targets*
- The FAC-1 definition of *Improved Value* includes improved cost and /or time certainty, cost and /or time savings, improved ‘*Operation*’, improved staff and other resources, improved health and safety and other working procedures, improved ‘*Sustainability*’, improved efficiency and improved profitability
- NEC4 contracts contain provisions to drive savings to the *Client* in respect of the cost of the work itself, under core clause 16, as well as a secondary Option X21 to drive savings in whole life cost
- In addition, NEC4 secondary Option X29 can be used to drive improvements in relation to climate change related matters
- These processes operate independently but need to be coordinated to ensure that they contribute consistently to objectives at a *Project Contract* and *Framework Alliance Contract* level

## HOW CAN FAC-1 AND NEC HELP TO DELIVER IMPROVED OUTCOMES?



- An example of the FAC-1 Framework Alliance Contract being used successfully with NEC Project Contracts comes from the Crown Commercial Service FAC-1 construction framework alliance where:
  - The Ministry of Justice created an FAC-1 ‘Sub-Alliance’ using Project Contracts based on the NEC4 standard form building contract to procure the four prisons comprising their £1.2 billion New Prisons Programme
  - The FAC-1 Sub-Alliance supports the use of BIM and MMC, using ‘Supply Chain Collaboration’ to agree optimum designs and strategic relationships with key tier 2 Supply Chain members
- This model has been replicated on other Ministry of Justice programmes of work and by other clients such as Defence Infrastructure Organisation

## HOW CAN FAC-1 AND NEC HELP TO DELIVER NET ZERO CARBON?



- Oxfordshire County Council and Skanska supplemented their £40 million per annum contract for highways and infrastructure with a net zero carbon action plan using an FAC-1 transitional framework alliance contract linked to extension of an underlying NEC term call-off contract, through which to capture improved environmental value
- The team identified significant opportunities, including carbon consumption reductions and financial savings including:
  - A suite of low carbon design solutions and associated action plans
  - Development of a Partnership Carbon Reduction Strategy and associated action plan
  - Creation of a Whole Life Cost & Carbon tool
  - Focused training on lower carbon alternative materials
  - Trials of new lower carbon materials

**QUESTIONS?**

# NEC Community App



Online space to  
bring together  
the NEC user  
community



Connect, share  
expertise and  
best practice



[community.neccontract.com](https://community.neccontract.com)



Access to NEC  
Spotlight  
podcasts



Dedicated hubs  
for particular  
NEC topics

neec4 | **Delivering**  
*real value*

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