

Introducing the FAC-1 webinar – Q&A and useful links!

Q&A

Will the slides be provided after the session?

A: The slides will not be shared separately but a recording of the webinar is available on the [NEC website](#).

Is there any value associated with the FAC-1 contract form? Or is the 'value' associated to each standalone NEC contract with FAC-1 being the wraparound. Under UCR/PA23 (regulated utilities) would this therefore not require a formal tender if used to combine existing compliant agreements?

A: The total value of all potential call-offs comprising a framework procured under FAC-1 would be the basis for a formal tender under the Procurement Act. For example, the CCS tender for the FAC-1 governing Construction Works and Services was notified as having a £30bn value.

What is the purpose of the letter of Intent to request a guarantor at the tender stage and risk please?

A: A letter of intent is a means to authorise early works/services/supplies in advance of the award of a project contract. Because there is no standard form letter of intent and because a letter of intent is not always governed by the project contract conditions, its impact can be unpredictable.

To remove the uncertainties of a letter of intent, FAC-1 provides a 'Form of Order' governed by the FAC-1 terms that enables the authorisation of early works/services/supplies in advance of awarding a project contract for part of a complex project or for one of a programme of multiple projects.

How can a contract improve health and safety in isolation?

A: The FAC-1 Alliance Activities can help to improve health and safety if these improvements are included in FAC-1 Schedule 1 as part of the agreed Objectives, Success Measures and Targets for Improved Value. To encourage this, 'improved health and safety' is included in the FAC-1 definition of Improved Value.

At the moment I believe that in the domestic market, JCT is used more than NEC despite the huge benefits of NEC as a philosophy as much as a family of contracts. Is there any work being done to have the same level of integration between JCT and FAC-1 as exists between NEC and FAC-1

A: FAC-1 can be used with JCT and there are examples of this in practice.

As a FIDIC adjudicator I think there could be great synergy between FAC and TAC and the FIDIC family. Any work on this?

A: FAC-1 can be used with FIDIC and there are examples of this in practice.

The NEC Alliance Contract holds all the alliance members responsible for failures of other Alliance members - in the sense that they all "sink or swim" together. Does the FAC-1 do this if a project under the FAC-1 between the client and FAC-1 contractor member fails?

A: The starting point under FAC-1 is a duty of reasonable skill and care in clause 10 that is owed between stated Alliance Members according to their respective roles, expertise and responsibilities.

Shared responsibility can be agreed under clause 10.2 and through Incentives under clause 2.4.

Early works or service done at Framework Alliance Contract. Payment will be at the above level?

A: Payment will be in accordance with agreed Framework Prices, with detailed costs stated in the relevant Form of Order.

Can multiple client organisations join the alliance if they have standalone framework agreements or contracting arrangements?

A: Yes.

In the market, it is common to see FAC-1 be heavily amended by clients to make it less collaborative, how can this be protected against?

A: We have seen very few amendments to FAC-1 but this is always a risk. One way to combat amendments is to invoke the UK government's commitment to an unamended standard form of framework alliance contract as expressed in the 'Construction Playbook' and 'Constructing the Gold Standard'.

We're currently bidding on the Crown Commercial Services Construction Professional Services 2 (CPS2). The three Environment Agency Lots of CPS2 have a very heavily modified the FAC-1. This seems to negate the advantages of a standard and well understood form of contract. Any thoughts on that?

A: We are not aware of Crown Commercial Services making heavy amendments to FAC-1.

Can the FAC-1 work in a French environment or is it more for common law systems? What about the compatibility with French Civil Code system for public contracts?

A: FAC-1 has been used successfully on a variety of projects in civil law jurisdictions such as Italy, Spain and Brazil. It can certainly be used in a French environment.

How easy/ beneficial is it to enter into FAC-1 with existing signed contracts if we wanted to create an alliance with new contracts yet to be agreed & signed?

A: FAC-1 can be used to integrate existing contracts and also contracts that are yet to be agreed and signed.

Interested in an FAC-1 to support a new highways contract for a Local Authority. Could further details of the FAC-1 for both the Surrey CC and Oxfordshire CC case studies be provided.

A: The Surrey and Oxfordshire case studies are examined in more detail in the FAC-1 Handbook.

Is the FAC-1 predicated on guaranteed pipelines of work provided by prospective clients?

A: A guaranteed pipeline of work is not required but a credible planned pipeline will incentivise the FAC-1 commitments.

how challenging can be the communication matrix? can you supply a standard/suggested one?

A: Communications through FAC-1 have not been challenging in practice but this depends in part on effective leadership by the FAC-1 Alliance Manager and engagement by the members of the FAC-1 Core Group.

NEC training on the role of the Alliance Manager will examine how to get the best out of the FAC-1 communication systems.

The FAC caused problems, there was a case about Scottish water in relation to battle of the forms. Is there any method to prevent?

A: We are not aware of Scottish Water experiencing any problems in the use of FAC-1. Please provide further details.

The interfaces and priorities between FAC-1 and the agreed Project Contracts are made clear in clause 1.5.

Useful links

‘Guidance on using NEC4 contracts with the FAC-1 Framework Alliance Contract’

<https://www.google.com/search?client=firefox-b-d&channel=entpr&q=NEC+and+FAC-1+guidance>

‘The FAC-1 Framework Alliance Contract: A Handbook’ (LPP, 2023)

‘Construction Playbook’

https://assets.publishing.service.gov.uk/media/6312222de90e075880923330/14.116_CO_Construction_Playbook_Web.pdf

‘Constructing the Gold Standard’

https://assets.publishing.service.gov.uk/media/61b9cb41e90e07043e8ff5cc/Constructing_The_Gold_Standard_Final.pdf