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NEC 4 CONTRACT: EARLY CONTRACTOR INVOLVEMENT (ECI)

This article provides an update on advice and best practice for implementing Early Contractor Involvement (ECI) on an NEC4 Engineering and Construction Contract, and accordingly draws on NEC's first published drafting for ECI in November 2015 and the latest NEC Practice Note¹.

INTRODUCTION

NEC 4 PRACTICE NOTE

The NEC's decision to publish further guidance recognises the growing popularity and maturity of two-stage tendering in the UK construction market.

The guidance considers:

- The characteristics and potential benefits of ECI.
- Key success factors.
- Advice on procurement best practice and setting the target price for stage two of the contract.

BACKGROUND

In most standard building contracts, the contractor is procured relatively late in the process (RIBA Stage 4) when key decisions on design and construction methodology have already been taken by the employer and design team.

ECI is an alternative procurement strategy that introduces the contractor at an earlier stage (RIBA Stage 3) to utilise the skills of contractor and its supply chain and help drive greater efficiencies.

ECI has long been recognised as a method for reducing risk and increasing buildability through collaborative working, pre-construction planning, design scrutiny, and true value engineering to deliver optimal value for money.

With continued ongoing and future impacts from Covid-19, Brexit and climate change to the availability and costs of materials, resources and energy, the need for careful pre-planning of all construction projects has never been more relevant.

ECI is a secondary option (X22) available for use with the NEC4 Contract (Options C or E). The parties enter into a single two-stage cost reimbursable contract to collaborate in developing the project, including design and planning for construction (Stage One), before progressing to the main construction phase (Stage Two).

The NEC Practice Note assumes the Contractor being responsible for the design and the use of an ECC Option C Contract.

¹ Link to NEC Practice Note - [NEC4 ECI Practice Note](#)

CHARACTERISTICS AND POTENTIAL BENEFITS

ECI is appropriate for all types of construction projects but complex projects involving challenging construction methodologies, where a dedicated pre-planning phase is crucial, offer the greatest benefits.

The use of ECI contracts assists in delivering better value for money for clients by:

- Focusing the delivery team on the client's objectives and business case benefits from the outset.
- Achieving improved safety, quality, and environmental performance and developing more robust and reliable programmes and budgets.
- ECI contracts provide a dedicated design and construction planning stage that allows the contractor to consider the integration of designs to optimise buildability, manage construction risks, and to test proposed construction methodologies with its supply chain.

KEY SUCCESS FACTORS (KSF)

KSF 1 Client Capability – the client needs to have access to the expert resources required to procure and manage an ECI contract, including appropriate commercial expertise to support the client team.

KSF 2 Design Strategy – the design strategy needs to identify the optimum design maturity level required for tender purposes.

KSF 3 Adequate Budget – An ECI contract with secondary option X22 requires the client to set the budget, including an adequate allowance to cover both client and contractor risks (potential compensation events). See KSF 1 above.

PROCUREMENT OF AN ECI CONTRACT

The NEC Practice Note sets out advice on procurement best practice and setting the target price for Stage Two of the contract. The advice, consistent across all NEC forms of contract, focuses on developing integrated collaborative teams and processes to best deliver the client's requirements.

The NEC recommends the client considers the timing of the ECI contractor appointment before a planning application is made. Not all clients will have pockets deep enough to consider appointment of the contractor during the pre-planning phase (RIBA Stage 2), so it comes down to a balance of risk and opportunity.

The client will need to determine the percentage that will be paid to the contractor of any savings

made against the budget. The percentage should be sufficient to incentivise provision of the contractor's best team, through construction planning during Stage One, and efficient and effective risk management.

At the end of Stage Two, the project manager issues a notice to proceed when the requirements set out in X22.5 have been achieved.

If Stage Two is not to proceed, the Project Manager must issue an instruction removing that work from the Scope. If the prices for Stage Two cannot be agreed upon, the client can use the Stage One information to retender for the remaining Stage Two work.

The NEC Practice Note provides additional details to the overview provided here. It is a practical, useful, and timely update for any client, contractor, or project manager considering using an NEC4 ECI contract.

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