

NEC contracts: An introduction - why are they so different?

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Question Asked	Answer Given
I find NEC limitations in relation to project controls performance, e.g. reporting and schedule update frequency - should an appendix be added for this?	Any such additional requirements should be in the Scope. Eg any requirement for a monthly report. Only if they change a requirement in the conditions would a Z clause be required.
Why doesn't the Alliance contract go into the operation area?	Good question. The alliance contract has been conceived for delivery of just a 'project'. I am guessing that was hard enough! Note that, new to NEC4, there is now also a biparty contract for Design Build and Operate.
Do you know of any UK MOD approved cloud management systems	I am aware that on some of my projects with Defence Infrastructure Organisation (DIO) CEMAR is being used.
How is schedule float controlled and allocated under NEC?	Classic question. Clause 63.5 (NEC4) or 63.3 (NEC3) means that terminal float is clearly owned by the supplier (<i>Contractor</i> in ECC or <i>Consultant</i> in PSC). Other float is 'owned by whoever gets to it first!'. A compensation event (CE) is assessed using a mark up of the programme as it was when the CE was notified (called the 'dividing date' in NEC4). It is updated first to the dividing date to show progress and then impacted by the CE. So if the <i>Contractor</i> is behind on an operation it may have used some of the float - before the <i>Client</i> got to it with the CE.
Can any of the NEC contracts merge or cross over at all when in use or are they all completely separate.	The contracts are all separate. But on one project, of course, there may well be several NEC contracts and there may well be important interfaces between them,

<p>Please explain schedule of cost components, and shorter schedule of cost components. What is their purpose?</p>	<p>Big question.</p> <p>In NEC4 we have only the Short Schedule of Cost Components for the priced options (A and B). We have the Schedule of Cost Components for the cost based options (C, D, and E).</p> <p>These schedules set out what is allowed to be included as 'Defined Cost'. (Anything that is not Defined Cost is treated as included in the Fee (based on the tendered <i>fee percentage</i>)). Defined Cost is used for compensation events in all options and for routine payment in the cost based options (C, D, E and F),</p> <p>You need to look at the detail but some parts of the schedules point to rates tendered in the Contract Data part two.</p> <p>Back in ECC3 we had a document called the ShortER Schedule of Cost Components as there were two schedules in options C D and E. The Shorter one was used only for assessing CEs and only by agreement instead of the (main) Schedule of Cost Components. It was a good move in NEC4 to take this out.</p>
<p>what is the reason you can't report on defects in cemar as you can on other items</p>	<p>I do not know CEMAR in detail but I understood one could use it for notification of Defects.</p>
<p>How Alliance Contract differ from the Framework one?</p>	<p>Framework is a contract allowing the <i>Client</i> and the <i>Supplier</i> to enter separate bi-party contracts 'under the Framework' over a set period of time. The Framework can be set up to allow those contracts to be based on any of the other NEC contracts (except the Alliance Contract). The Alliance Contract is a single multiparty contract for (normally) a single project.</p>
<p>Could you use the Alliance contract for a consortium of professional service providers?</p>	<p>The NEC Alliance Contract was designed for works but could in principle be used as the starting point for an alliance of professional service providers</p>
<p>How do you reconcile the Prince2 issue management process with the NEC compensation event process.</p>	<p>NEC is a contract and the process is clear. Prince is a project management process, but if your contract is NEC, you will use NEC!</p>
<p>Hi Richard, do Z clauses now include pandemic protection (taking into account the current climate)</p>	<p>The standard contract does not have a compensation event for a pandemic. That could be added as an additional compensation event. In NEC3 that would have to be as a Z clause. IN NEC4 it could be added in the Contract Data.</p>
<p>ECC4 what in your experience is the most popular (successful) payment option from A-F</p>	<p>Most commonly used are A and C. Option A for simple to manage and clear risk allocation. Option C for target contract which is a pain to audit supplier's real costs but encourages collaboration from the <i>Project Manager</i> (ECC) and <i>Service</i></p>

	<p><i>Manager</i> (PSC4) as suddenly the <i>Employer</i> (NEC3)/ <i>Client</i> (NEC4) is interested in the real costs.</p>
<p>Are the contracts linked to particular procurement routes?</p>	<p>No. See NEC's document on procurement strategies. NEC3 version (a freebie) here: https://www.neccontract.com/getmedia/adfd00c6-50da-4a86-962b-3d3f26de758f/Procurement-and-Contract-Strategies-2013.pdf.aspx NEC4 version - for a price, here: https://www.neccontract.com/NEC4-Products/NEC4-Contracts/NEC4-Guidance-Notes-Flow-Charts/NEC4-Establishing-Procurement-and-Contract-Strate</p>
<p>Can you have a framework or a particular option where you mix JCT and NEC?</p>	<p>Yes and some UK government frameworks allow this. Under the NEC Framework Contract you can only use NEC contracts.</p>
<p>Do you have also some documents about NEC vs JCT? Would you please be able to do the same, a quick brief summary?</p>	<p>See NEC's document here: https://www.neccontract.com/getmedia/3d1b7c3f-097d-4504-8b1f-5a944dbc19dc/A-comparison-of-NEC-and-JCT.pdf.aspx</p>
<p>have straight D&B contracts been removed from NEC4 then?</p>	<p>No. Clause 21.1 is still: S21 21.1 'The <i>Contractor</i> designs the parts of the works which the Scope states the <i>Contractor</i> is to design.'</p> <p>So the <i>Client</i> can get the <i>Contractor</i> to design the whole of the works based on high level performance requirements . Or the Client can require certain elements to be designed by the <i>Contractor</i>. Or the <i>Client</i> can choose to have the contractor only constructing to the Client's design.</p> <p>See also NEC's document on procurement strategies. NEC3 version (a freebie) here: https://www.neccontract.com/getmedia/adfd00c6-50da-4a86-962b-3d3f26de758f/Procurement-and-Contract-Strategies-2013.pdf.aspx NEC4 version - for a price, here: https://www.neccontract.com/NEC4-Products/NEC4-Contracts/NEC4-Guidance-Notes-Flow-Charts/NEC4-Establishing-Procurement-and-Contract-Strate</p>
<p>what is the best in NEC not in FIDIC?</p>	<p>I am biased but NEC is just a lot better - see here: NEC Compared with FIDIC Richard Patterson 90 mins. Recording: https://www.youtube.com/watch?v=POVDd8CW_gA&feature=youtu.be</p>

<p>Is force majeure covered and therefore covid or a change in circumstances</p>	<p>Force majeure as a term is not used. The nearest to it is the compensation event 60.1(19): (19) An event which</p> <ul style="list-style-type: none"> • stops the Contractor completing the whole of the works or • stops the Contractor completing the whole of the works by the date for planned Completion shown on the Accepted Programme, <p>and which</p> <ul style="list-style-type: none"> • neither Party could prevent, • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and • is not one of the other compensation events stated in the contract.
<p>If you're comparing standard forms, how about MF/1?</p>	<p>I know little about MF/1, only that it is a 'traditional contract' and NEC can be used where MF/1 might be used.</p>
<p>What makes the CW on ECC different from CDP on JCT</p>	<p>Too many CMAs (completely meaningless abbreviations! But if we are talking about compensation events in ECC they are:</p> <ul style="list-style-type: none"> - mostly listed in one place (60,1) - all evaluated in the same way - all assessed based on a forecast - all assessed based on clear rules for time and money - all subject to the same time limited procedure
<p>Are there any clauses protecting the client in case the construction regulation changes? E.g. building fire safety</p>	<p>Option X2 is the change in law option that gives a compensation event for a change in law.</p>
<p>Who are the people that resolve disputes? independent groups?</p>	<p>In NEC (as in any construction contract under the Housing Grants Act) the first person to resolve a dispute is the '<i>Adjudicator</i>'. These can be appointed by an '<i>adjudicator nominating body</i>'.</p>

<p>Is the NEC4 suited to Agile method?</p>	<p>Your own Contracts & Procurement SIG wrote a white paper titled 'Procuring for Agile projects' which I would thoroughly recommend you read. It had no mention of NEC in it, but the lead author of it was Dr Jon Broome, who happens to be a well-known name in the NEC world. I asked him.</p> <p>He responded that agile lends itself to a term service contract where the programme management aspects – i.e. those which sit above individual sprints – are included as base services, but each sprint is instructed as a Task. This avoids the need for a separate contract to be signed each time.</p> <p>In selecting the individual contract, you would firstly have to differentiate between agile:</p> <ul style="list-style-type: none"> - for professional services (which would include software only), for which either the NEC3 Professional Services Contract (PSC) or NEC3 or NEC4 Professional Services Short Contract would be suitable. Unfortunately, when they updated the PSC to the 4th edition, they deleted the task order option; and - agile for delivering tangible stuff for which I would start with either the NEC4 Term Services Contract or NEC4 Term Services Short Contract. <p>The choice of whether to use a 'long' or short form would depend upon the complexity of the arrangements being procured and the corresponding extent of adaptation from the unamended contract that would be needed."</p>
<p>I would like Richard's view on whether the NEC contracts are suitable for EPCM type projects ie where a consultant is managing and coordinating a number of contractors on a project?</p>	<p>Yes . NEC can be used for EPCM = 'construction management'. The separate construction contracts can be under any option of the ECC or the ECSC (the short contract). The role of the construction manager is to help the Client put the contract in place and then management them (in ECC that is acting as the ECC Project Manager and the ECC Supervisor). The construction manager can be appointed under the PSC or PSSC (the short version).</p>
<p>Thank you for the answer re suitability for EPCM type projects (what Richard referred to as Construction Management). The challenge I find is managing the interfaces between the contractors (particularly time), which becomes a contractual item to manage. Can you elaborate more on how NEC can support and/or navigate this, and perhaps where it might be better than FIDIC?</p>	<p>Interfaces are, of course, critical.</p> <p>ECC has two options for setting time requirements of a supplier in a contract.</p> <ul style="list-style-type: none"> - section completion (option X5) or - key dates. <p>See ' NEC: how to require something is done by a certain date', Richard Patterson Mott MacDonald, NEC Newsletter No 86, July 2017 https://www.neccontract.com/About-NEC/News-and-Media/NEC-how-to-require-something-is-done-by-a-certain</p>
<p>Please provide some examples of the "in the</p>	<p>Suppliers include CCM, CEMAR, Sypro, FastDraft and many others.</p>

cloud" systems for managing NEC	
Do you have a list of all different options, e.g payment, secondary etc	<p>From the contents list of ECC4:</p> <p>MAIN OPTIONS</p> <p>Option A Priced contract with activity schedule</p> <p>Option B Priced contract with bill of quantities</p> <p>Option C Target contract with activity schedule</p> <p>Option D Target contract with bill of quantities</p> <p>Option E Cost reimbursable contract</p> <p>Option F Management contract</p>
	<p>RESOLVING AND AVOIDING DISPUTES</p> <p>Option W1 Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply</p> <p>Option W2 Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies</p> <p>Option W3 Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply</p>
	<p>SECONDARY OPTIONS</p> <p>Any combination other than those stated may be used.</p> <p>Option X1 Price adjustment for inflation (used only with Options A, B, C and D)</p> <p>Option X2 Changes in the law</p> <p>Option X3 Multiple currencies (used only with Options A and B)</p> <p>Option X4 Ultimate holding company guarantee</p> <p>Option X5 Sectional Completion</p> <p>Option X6 Bonus for early Completion</p> <p>Option X7 Delay damages</p> <p>Option X8 Undertakings to the Client or Others</p> <p>Option X9 Transfer of rights</p> <p>Option X10 Information modelling</p> <p>Option X11 Termination by the Client</p> <p>Option X12 Multiparty collaboration (not used with Option X20)</p> <p>Option X13 Performance bond</p> <p>Option X14 Advanced payment to the Contractor</p> <p>Option X15 The Contractor's design</p> <p>Option X16 Retention (not used with Option F)</p> <p>Option X17 Low performance damages</p> <p>Option X18 Limitation of liability</p> <p>Option X20 Key Performance Indicators (not used with Option X12)</p> <p>Option X21 Whole life cost</p> <p>Option X22 Early Contractor involvement (used only with Options C and E)</p>

	What I call 'Jurisdiction-specific 'secondary options. Option Y(UK)1 Project Bank Account Option Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996 Option Y(UK)3 The Contracts (Rights of Third Parties) Act 1999
	Option Z Additional conditions of contract