

## Insights

# INTRODUCING BRITAIN'S THE CONSTRUCTION PLAYBOOK: A GUIDE FOR NEC USERS

IN THIS ARTICLE, FIRST PUBLISHED IN THE JULY EDITION OF THE NEC NEWSLETTER, SHY JACKSON TAKES A LOOK THE UK GOVERNMENT'S THE CONSTRUCTION PLAYBOOK IN THE CONTEXT OF NEC CONTRACTS.

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The UK government's The Construction Playbook (HM Government, 2020) was issued in December 2020 with the aims of changing how public construction projects are delivered and getting them right from the start (see Issue 111). While it directly affects many NEC users, it will be familiar territory for most.

The 80-page guide provides principles and policies which are intended to transform how public works projects and programmes are procured and managed. The aim is to achieve this change by systematically approaching risk, sustainability and innovation across portfolios of projects and programmes.

The guide addresses a wide range of areas, from preparation and planning to selection and project delivery. It looks at topics such as commercial pipelines, digital technology, benchmarking and cost models, risk allocation and successful relationships.

## Key policies

The guide identifies 14 key policies for sourcing and contracting public works projects and programmes. The following will be familiar to NEC users and are already provided for in NEC contracts.

- Further embed digital technologies in contracting – this encourages the use of the UK BIM Framework and development of a national digital twin. This approach is supported by the NEC information modelling provisions in option X10.
- Early supply chain involvement – this is to be used in developing the business case for projects and programmes to reduce downstream issues and to develop a clear outcome-based design and specification. NEC provides for this under option X22, which is highly suitable for achieving these aims. Alternatively, the NEC Professional Service Contract (PSC) can be used

for the pre-construction services followed by the NEC Engineering and Construction Contract (ECC).

- Outcome-based approach – the aim is to use a project score card and key performance indicators to ensure desired outcomes are delivered. This is consistent with using key performance indicators in NEC under option X20 as well as low-performance damages under option X17, both of which help to achieve specific outcomes.
- Benchmarking and should-cost models – the use of data from past projects to develop benchmarking is encouraged as well as developing a should-cost model to improve understanding of whole-life costs and value. NEC contracts recognise the importance of whole-life cost in option X21, which provides a mechanism that promotes identification of whole-life savings.
- Risk allocation – inappropriate risk allocation is identified it as a concern for suppliers and can be avoided by better market engagement. NEC has developed a risk-allocation balance which is fair to all parties based on how well placed they are to manage risk. The modular form of NEC contracts, with the selection of main and secondary options, also allows risk allocation between parties to be changed to reflect the risk profile of the project and market sentiment. The guide also suggests that parties should develop early risk work and compile a risk-allocation matrix to consider which parts of the supply chain are best placed to manage risk. This is the same approach as the NEC early warning system.
- Payment mechanism and pricing approach – this is designed to work together with risk allocation so it incentivises desired behaviours or outcomes. NEC provides a wide range of flexible payment models in options A to F and, in particular through use of target contracts, provides incentives for better behaviours and collaboration.
- Resolution planning and ongoing financial monitoring – this aims at preventing and planning for insolvency risk. The options identified for mitigating risk are bonds, guarantees and project bank accounts, all of which appear in NEC in options X4, X13 and Y(UK)1.

## **Effective contracting**

Effective contracting is one of the key policies in the guide, covered as part of an overall section dealing with preparation and planning. This reflects the recognition that contracts need to be set up at an early stage as part of the planning process and not be left to a later stage.

When it comes to effective contracting, the government's plan is to create a contracting environment that delivers a sustainable, resilient and effective relationship between contracting authorities and the supply chain, which is focused on outcomes and creating long-term value for all. Its position is that standardised contract terms can simplify and speed up procurement processes and improve transparency of expectations.

In relation to the use of standard forms of contract, the guide makes the following points.

- A common approach across the public sector means best practice is more easily embedded and suppliers are more likely to experience a consistent application of policies and practice.
- Contracting authorities should ensure that they have appropriate resources to manage contracts effectively.
- Standard construction contracts with appropriate options should be selected, save where the project or programme justifies a bespoke approach. Should different forms of contracts be used for specific reasons, compliance with the guide should be addressed explicitly in relevant governance and approvals processes.
- Before issuing a tender, stress testing and peer reviewing the draft contract against the above elements can be helpful, particularly to check for unintended consequences. In doing so, it is important to ensure the contract terms are not unintentionally limiting innovation, sustainable supply chains or investment in modern methods of construction.

The guide states that standard contracts should be chosen from NEC3 or NEC4 as well as JCT 2016 and PPC2000/TAC-1 and FAC-1. These are standard forms that are currently being used and, when looking at the key policies identified by the guide, it becomes clear that NEC is particularly suitable for achieving the publication's aims.

It also states that contracting authorities should adopt a conflict avoidance pledge and put appropriate provisions as a standard clause in all public works contracts, so this can be used to resolve problems before they escalate into disputes. The use of such a pledge to obtain non-binding recommendations is reflected in NEC dispute resolution options W1 and W2, which allow for disputes to be referred to senior representatives of the parties for a negotiated resolution prior to referral to adjudication, and in NEC option W3 by using a dispute avoidance board. NEC has produced a guidance note on how this latter procedure can be used in contracts subject to the UK Construction Act.

## **Conclusions**

The use of NEC contracts will enable parties to achieve the aims of The Construction Playbook. It is designed to be flexible and allows risks to be allocated to reflect the specific requirements of a project, for example by allocating the design responsibility in the most appropriate way and allows for a clear performance-based scope to be created, with guidance on how to achieve this provided by NEC in user guides.

NEC also encourages cooperation in project delivery through the requirement in every NEC contract for parties to operate in a 'spirit of mutual trust and co-operation'. This requirement to collaborate

can be extended throughout the supply chain, either by using option X12 for multiparty collaboration or the NEC Alliance Contract (ALC).

That greater collaboration reflects the stated aims of the guide in changing how projects are being delivered.

Reference: HM Government (2020) The Construction Playbook, Government Guidance on sourcing and contracting public works, Cabinet Office, <https://www.gov.uk/government/publications/the-construction-playbook>.

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- Commercial Construction & Engineering

## MEET THE TEAM



### Shy Jackson

London

[shy.jackson@bclplaw.com](mailto:shy.jackson@bclplaw.com)

[+44 \(0\) 20 3400 4998](tel:+442034004998)

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