

## Webinar - NEC4 Alliance Contract: Increasing collaboration and integration

28<sup>th</sup> June 2017

### Q&A session

Please download your NEC4 Alliance Contract (ALC) consultation draft here:

[www.neccontract.com/ALC](http://www.neccontract.com/ALC)

Further information on how to submit your comments will be sent directly to you via email.

**Q: Are costs of remedying design defects treated as a Client Cost even although those may be covered by the joint PII cover?**

**A:** The cost of correcting Defects is recovered as part of the Defined Cost paid to the Partners, if the Partners correct it, and may also be part of the Client Costs if the Client corrects the Defect. In either case it will become a cost to the Alliance, however, if a payment is covered by the PII policy, that will be credited against Defined Cost and / or the cost of the Alliance.

**Q: Can the Alliance contract ever be used for framework procurement to set precedent for the supplier relationship across all projects within a client's portfolio? Or does the sharing and managing of liabilities prevent this where the portfolio consists of fairly bespoke projects? How do the contractual arrangements allow an Alliance contract to be used for this purpose?**

**A:** The Alliance is provided as an alternative to a framework contract, but is a single contract in which all the rights and obligations of the members of the Alliance are determined at contract formation. The Alliance will carry out all work and there should be no further selection process.

**Q: Can the Alliance Manager come from the Client side?**

**A:** The Alliance Manager will be the most appropriate person for the job, whether from the Client side, one of the suppliers or an external third-party.

**Q: Do reimbursed costs exclude overhead and profit recovery - ie are they true cost = cash expended by the supply member? They should have no/minimal markup**

**A:** The contract provides for a fee percentage to be added to Defined Cost. This should be restricted to unavoidable overheads only and exclude any profit; this will need to be controlled by the Client at the time of creating the Alliance.

**Q: Does it relate to both Construction as well as Service contracts?**

**A:** The contract has been designed for construction but may be used for service contracts and we are seeking feedback on its suitability for service contracts as part of the consultation process.

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**Q: Does the ALC set out Alliancing Principles for the parties to operate under (i.e. behaviours / conduct, etc.)**

**A:** The contract sets out some basic alliance principles in clause 20.1. but these may need to be expanded as part of the Scope to match the specific requirements of the Client for the Alliance.

**Q: Has Option C been considered for alliancing?**

**A:** The contract is based on Option E, but as the members of the Alliance will be seeking to meet the Client set Alliance Objectives, one of which will be cost, they will share in the success or failure to do so as part of the performance measurement regime. It therefore replaces option C.

**Q: Hi, does NEC4 advocate the setting up of Alliance as a Limited company or JANE (Joint Arrangement Non Entity)? What are the pros and cons of either approach?**

**A:** The Alliance is intended to be a single contract, under which multiple parties will be appointed each of which will share in the liabilities and benefits of the contract. On this basis it is not seen as necessary to set up the Alliance as a limited company or JANE as this will increase complexity for what is perceived to be limited benefit. However, we welcome feedback on this as part of the consultation process.

**Q: How are CDM responsibilities intended to be divided up?**

**A:** CDM is not specifically addressed in the contract as it is designed for international use. In the UK the Alliance Board will decide how to handle CDM and which members of the Alliance will undertake which duties.

**Q: How are consultants included in the pain-gain mechanism of the alliance?**

**A:** Consultants as members of the Alliance will share in the performance measurement regime including any savings or overspend made against the Budget. The Consultants share will be determined by the Client / Alliance at the point the Contract Data is finalized.

**Q: How do call offs for individual projects occur if this is treated as a programme level agreement?**

**A:** The Client will set a base level of work for the Alliance, which will form the Stage One work, and this will involve the activities required to develop each of the individual projects to point where an instruction to proceed to Stage Two for each of them can be given. This is one area where feedback is sought on whether further provisions should be included in the contract.

**Q: How do incentives work with alliance partners that come or go at different time horizons during the programme?**

**A:** There is flexibility in how the incentives are structured by the Client, but the intent is that at all incentives will be linked to the achievement of Client set Alliance Objectives. The Client will need to consider if and how a member of the Alliance who leaves before an objective has been achieved should be rewarded and what proportion of any benefit or loss a new member of the Alliance should be exposed to.

**Q: How does the procurement process comply with public procurement regulations?**

**A:** The contract has been designed for international application and, as with any contract only governs post contract activities. The procurement process will need to be determined by the Client who will have to take into account the requirements of any applicable laws.

**Q: How does the programming works? In NEC3 program is usually issued by sub-contractor & from main-contractor to client... so what's the change here who drafts the programme & who checks & accepts/non-acceptance of it?**

**A:** The Alliance Manager produces the programme and the members of the Alliance coordinate their work programmes for the benefit of the project and to support the creation and updating of the programme produced by the Alliance Manager. The Alliance Board accepts the programme.

**Q: How does this stack up with statute under HGCRA, LDEDCA, arbitration act etc. for adjudication/arbitration?**

**A:** Arbitration and adjudication have been intentionally excluded from this contract. If parties are unable to resolve their differences internally, the Alliance is failing and remedial action is needed rather than formal dispute resolution. The Alliance Board can seek an opinion / recommendation from a third party on how to resolve disputes but if a member of the Alliance is not prepared to accept this then the Alliance will cease to operate effectively. The fact that the decision could be made to be contractually binding, and supported by the Courts in some jurisdictions, does not alter this fact.

**Q: Is there a duration for the Alliance board?**

**A:** The Alliance board will last for the duration of the contract and if members of the Alliance change the members of the Alliance Board will change.

**Q: If joint name insurances, is there a chance that a contractor for example is not will to take design liability? How does 12 year liability then take place if Client owns insurance?**

**A:** Feedback on insurance provisions are sought as part of the consultation process. The default position is that the joint names policies are provided by the Client. The Client can choose to take out PII insurance for whatever period they wish after the end of the contract and / or may seek alternatives to PII such as latent defect insurance.

**Q: In a regulated world e.g. Water industry what is the view of how flexible this would be to changing statutory obligations and/or regulator AMP determinations?**

**A:** The contract has not been designed to be sector specific and feedback is sought on whether aspects of the contract need to be made more restrictive or more flexible to meet specific user demands

**Q: In a two-stage procurement process, who sets the performance targets? The Client or the Alliance Board?**

**A:** The Client will set the initial performance targets in the Performance Table. In a two stage process, the Alliance Board, which includes the Client, must agree any changes to the performance targets relating to the work in Stage Two prior to Stage Two being instructed.

**Q: Is it possible for a party to "leave" the contract before it expires, e.g. if their particular role has come to end?**

**A:** If a party has no further work to do, then they would do no further work, but they will remain a member of the Alliance until the conclusion of the Alliance. There is also the option for member of the Alliance to terminate their obligations, but there may be consequences to such an action.

**Q: Is the alliance writing own programme & also accepting it?**

A: Yes, see above.

**Q: Is there anywhere which states the proportion of make up for various parties. I.e. client to provide 30% of capabilities?**

A: This is entirely a matter for the Alliance to decide on a best for project basis.

**Q: Isn't there statutory adjudication terms implied where adjudication provisions are not expressly stated?**

A: There are in certain jurisdictions but not all. Depending on the nature of the work and the governing law statutory provisions may apply but these have not been included in the contract for the reasons given above.

**Q: Suppose the alliance formed at the beginning. How could suppliers and subcontractors join the Alliance when they are only engaged after contract commencement?**

A: The contract allows for Partners to be added or removed at any time.

**Q: The role of the Alliance Manager seems like it could be a lot of work. Do you envisage any problems with how this will work in practice?**

A: The Alliance manager should have assistance where the volume of work is high – much as the Project Manager can under a major construction project

**Q: What are the real benefits for the clients?**

A: Greater collaboration, people and organisations selected to undertake work on a best for project basis, reduced administration costs, reduced potential for disputes, increased efficiencies

**Q: What happened to Z clause in ALC?**

A: Z clauses can be added where necessary

**Q: What if you cannot get a unanimous decision by the Alliance Board?**

A: The Alliance has failed and action needs to be taken to close the Alliance or replace a member who is not prepared to continue

**Q: What Party is expected to be fully responsible for Quality of Works?**

A: The Alliance as a whole is responsible. Their motivation is to provide the appropriate quality in order to receive incentive payments

**Q: What relation does the ALC bear to the Framework Contract?**

A: The Alliance is single, separate stand alone contract and not a Framework Agreement

**Q: Which Party develops the Scope and at what stage in the Contract?**

A: The Client will provide the scope initially and make seek input from the potential members of the Alliance pre-contract. The Scope will then be developed further by the Alliance Board as required during the contract. The Client also retains the ability to unilaterally change the Scope if necessary.

**Q: Who will be the deciding role in Alliance board?**

**A:** Unanimous decision making of all members of the Alliance Board is required

**Q: Who will pay the alliance manager?**

**A:** This forms part of the Alliance cost which will either be paid by the Client as part of Defined Cost, if a Partner provides the Alliance Manager, or directly to the Alliance Manager if they are employed by the Client.

**Q: Why client needs to be on the Alliance Board? How client cover his self?**

**A:** The Client needs to be on the Alliance Board as the Alliance Board is the key decision making body in the Alliance deciding how to allocate work and manage the operation of the Alliance. The Client needs to be involved in the key decision-making processes under the contract which sit with the Alliance Board.

**Q: Why is the ALC targeted on "Major Projects & Programmes"? Alliances don't HAVE to take more time and effort than other contracts (though I know many do). My view is an alliance is perfectly applicable to smaller projects down to £10M or less. I would go further and I see Alliances as a great way to deliver faster and cheaper projects, compared to more 'traditional' approaches.**

**My concern is that the NEC4 ALC might be too focused on big projects - which can cope with a heavy bureaucratic process, and the result might put smaller projects and clients off using it.**

**A:** Feedback will be welcomed on the use of the ALC for smaller projects and what if any amendments would be required to the consultative draft to make it more suitable for this.

**Q: Will this contract work for a multi project alliance, i.e. where several projects will be delivered over a number of years?**

**A:** It is intended that the ALC will be suitable for a programme of work and feedback is sought as to whether the consultative drafts needs further content to accommodate this.

Answers by **Peter Higgins**, Chair of the NEC4 Contract Board, and **Ian Heaphy**, NEC Consultant and member of the NEC4 Contract Board.