

NEC Introduces Early Contractor Involvement (ECI) Clauses



Sapna Tota-Maharaj

Junior Associate

E: Sapna.tota-maharaj@QuiggGolden.com

T: +44 (0)20 7022 2192

In November 2015, the NEC published their Early Contractor Involvement [ECI] clauses. ECI allows a Contractor to be involved in the decision-making process early in the lifetime of the project. A contractor can be engaged as early as the feasibility stage with a separate consultant. The Contractor will then assist with a number of key decisions ranging from planning to design but also throughout the project such as in logistics, programming and the usual constructing works.

Early users of ECI say that ECI tends to improve the quality, constructability and robustness of designs, speed of delivery of projects, working relationships across the project and management of costs. Additionally, ECI improves the trust and understanding between the parties. This avoids expensive negotiations and high settlements should disputes occur. The Contractor and Employer should ensure that their work ethos is compatible to maximise the advantages of ECI.

The NEC ECI clause covers Contractor involvement in two instances when:

1. the Employer appoints a consultant to carry out design and the Contractor assists the consultant, then the Employer instructs the Contractor to deliver the works (including any outstanding design under standard ECC Option C following agreement of Prices for Stage 2); or
2. the Employer appoints the Contractor to carry out the design with the Employer's consultant, and then the Contractor can then be instructed to deliver the works.

The new NEC ECI clauses provide an *incentive* clause when using Option E whereby this allows the Contractor to share in any savings made in the final project Cost less the Budget. This works in a similar manner to the incentive clause already under the Option C.

Previously, the design and construction stage of a project would require separate NEC contracts if the same Contractor was chosen. The new ECI clause removes the need to do this by working in two distinct project stages:

London

Quigg Golden Limited
Central Court
25 Southampton Buildings
Chancery Lane,
London WC2A 1AL

Tel: +44 (0)20 7022 2192
London@QuiggGolden.com

Dublin

Quigg Golden Limited
31 Waterloo Road
Ballsbridge Dublin 4

Tel: +353 (0)1 676 6744
Dublin@QuiggGolden.com

Belfast

Quigg Golden Limited
18-22 Hill Street
Cathedral Quarter
Belfast BT1 2LA

Tel: +44 (0)28 9032 1022
Belfast@QuiggGolden.com

Jeddah

Quigg Golden Limited
P.O. Box 18623
Jeddah 21425
Saudi Arabia

Tel: +966 (0)2 651 82 22
Jeddah@QuiggGolden.com

1) Stage 1-

Design and Construction Development: The Project Manager requires detailed and regular Forecasts of work to be prepared at the intervals stated in the Contract Data and each submission must be accepted before Stage 1 can be finalised. The forecasts show total expenditure against the Budget or the Project Cost. Only when the Prices are fixed, will a notice to commence Stage 2 given. The Accepted Programme will develop as Stage 1 progresses.

2) Stage 2-

Design Proposals and Construction: Depends on the Contractor's appointment, if it is to assist the consultant then none or very few submissions will be required. The design proposals must be in accordance with the Works Information and include the anticipated effect on project cost and the Accepted Programme. After completion of designs, if using Option C, the Contractor will need to provide a priced Activity Schedule for Stage 2. It is important to note that if the Contractor's design is used, he should obtain professional indemnity insurance for design liability and cannot claim a compensation event later on if any changes are required in design.

Though very rare, issues may occur when the Employer wishes to remove the Contractor. These issues arise because the Contractor is entrenched into the project from the beginning. The NEC ECI clause allows the Employer to appoint a different Contractor in Stage 2 should agreement not be reached at Stage 1 or the Contractor's performance is unsatisfactory. Intellectual Property rights in the design should be agreed, as issues would occur should the original Contractor be removed.

Additional entries are made to Contract Data Part One to deal with the budget, intervals and insurance; and in Contract Data Part Two to state Key Persons (who cannot be removed by the Contractor) recommended by the Employer.

The HS2 is a planned high-speed rail project which will connect London, Birmingham, the East Midlands, Leeds, Sheffield and Manchester. HS2 uses ECI in its civil engineering contracts and agree that it "*is in line with recognised best practice*", stating that ECI '*supports improved team working, innovation and planning to deliver value for money*'.

Naturally, the NEC was bound to adopt ECI clauses as the NEC is all about collaboration. ECI is useful in major and complex projects at procurement stage as shown by the HS2 project but would not be beneficial in others such as maintenance contracts.

We await further details of the NEC ECI application in their "How To" guide due for release soon. It is most likely at this time, the ECI clause would be included in the contract through the Z clause.

A copy of the ECI clauses is available free from the NEC website and will shortly be on the Quigg Golden website.



INVESTORS
IN PEOPLE

