

Singapore: Launch of NEC4 Contract for Construction and Engineering Projects and Adoption of Collaborative Contract

Construction / Infrastructure Newsletter

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1. Introduction

In addition to its efforts to encourage adoption of “collaborative contracting” in Singapore, on 29 April 2024 Singapore’s Building and Construction Authority (“**BCA**”) announced¹ the launch of the NEC4 contract for construction and engineering projects in Singapore, by way of a set of additional contract clauses (“**Y (SG) Clauses**”)² to align the NEC4 contract with Singaporean law.

This newsletter explores the features of the NEC4 contract, as well as the concept of collaborative contracting generally. In particular, we consider how the adoption of these concepts may result in better outcomes for all parties to a project.

2. Collaborative Contracting

The concept of collaborative contracting was introduced as a response to the adversarial approach adopted in conventional construction projects.

In conventional construction projects, parties’ interests usually are diametrically opposed. This results in little incentive to perform additional work or to assist another party with separate sphere of responsibility. For instance, a contractor under a “*build-only*” contract generally is not inclined to engage in productive problem-solving when a design issue occurs in the course of a project, and typically will absolve itself of any time and cost overruns arising from such design issues.

By contrast, collaborative contracting establishes a contractual framework that fosters teamwork, open communication, and mutual trust among stakeholders, including the owner, designer, and contractors, through the sharing of risks and rewards. Instead of the fault-finding approach prevalent in conventional construction projects, collaborative contracting aims to create a working environment that prioritizes constructive approaches to solving problems.

Some of the hallmarks of collaborative contracting include:

¹ <https://www1.bca.gov.sg/about-us/news-and-publications/media-releases/2024/04/29/launch-of-nec4-contract-for-construction-and-engineering-projects-in-singapore>

² <https://www.neccontract.com/news/nec-releases-singapore-y-clauses>

- (a) Contract structure comprised of multilateral contract involving various stakeholders such as an owner, contractor, subcontractors, and so on;
- (b) References to the use of best efforts and good faith;
- (c) Mechanisms for profit and loss sharing (e.g., target cost options to share in cost savings or overruns);
- (d) Early involvement of contractor and other key players;
- (e) Early warning mechanisms; and/or
- (f) Certain limitations on or waivers of liabilities.

The BCA is broadening the adoption of collaborative contracting in Singapore. In addition to the NEC4 Contract, the BCA also has identified pilot projects in which to introduce Option Module E to the Public Sector Standard Conditions of Contract, which adopts features of collaborative contracting³.

3. NEC4

The UK Institution of Civil Engineers has published standard contract forms called the “New Engineering Contract (NEC)”. The NEC4 is a new suite of standard contract forms that was published in 2017. NEC4 was prepared for international use and aims for fair risk allocation. Since its publication in 2017, NEC4 has been adopted in other jurisdictions, such as Hong Kong, with considerable success.

(1) Features and Benefits

The NEC4 contract applies the principles of collaborative contracting and is designed to facilitate good risk management through mutual trust between and cooperation by the parties to a project. Some key features and benefits of the NEC4 contract include:

- (a) **Emphasis on Programme:** The contractor is to submit a programme to the Project Manager within a specified period and keep it updated. If the Contractor fails to submit the first programme, the Employer is entitled to withhold 25% of progress payments until the first programming is submitted. Maintaining an up-to-date programme facilitates effective time management and ensures smooth project execution.
- (b) **Early warning register:** An early warning register is a register of matters the Project Manager or the Contractor identifies, through proper notice, as early warning matters. It is to be prepared within one week of the starting date and then updated based on notices from the Project Manager and Contractor. An early warning notice must be issued promptly when a party becomes aware of any issue that could impact the total cost, delay completion or key dates, or hinder the performance of the work. This identifies project-specific risks early and allows for proactive management. Any party can request a risk reduction meeting to discuss whether steps can be taken to mitigate a risk of which notice has been given.
- (c) **Key Performance Indicators:** Key Performance Indicator (“KPI”) targets (such as productivity, quality, health & safety, efficiency, etc.) are set forth in a schedule, and payments in addition to the contract

³ https://www1.bca.gov.sg/docs/default-source/docs-corp-procurement/option-module-e-on-collaborative-contracting---sent.pdf?sfvrsn=3191bf46_2

sum become payable if the Contractor meets or exceeds the KPI. No penalties are involved if the Contractor does not meet the KPI.

- (d) Target cost payment options: Parties agree on a target cost at the tender stage, plus an allowance for profit and overhead. During the work, the Contractor is paid its actual costs, while the target is adjusted for employer risk events. Upon completion, the actual costs are compared with the adjusted target costs, with the parties sharing any savings or overages based on the pre-agreed percentages in the contract. This provides for robust cost monitoring and incentivises parties to reduce costs incurred.
- (e) Contractual notices: Clear timelines for notification of compensation events and responses. This encourages effective project management and quick resolution of disputes.

The NEC4 contract offers 6 pricing options, A to F, with different risk distributions. There are conventional lump sum contracts that provide employers with maximum price certainty. Conversely, there is a cost reimbursable contract that places the greatest risk on the client.

Adoption of the NEC4 contract has been shown to improve time and cost controls and lead to effective project management. In particular, a 2021 review by the Hong Kong government found that NEC projects achieved 10% time savings and 2% cost savings compared with conventional construction projects.

(2) Key clauses for collaborative contracting in the NEC4

The NEC4 suite of contracts includes specific provisions that parties should ensure are incorporated into their contracts if the goal is to ensure a collaborative contracting model, for example:

- (a) Core Clauses (Clause 10.2) - Mutual Trust and Cooperation: This clause requires the parties, the Project Manager, and the Supervisor to act in a spirit of mutual trust and cooperation throughout the project.
- (b) Core Clauses (Clause 15) - Early Warning Mechanism: This clause encourages the Contractor and the Project Manager to notify one another of potential problems early, fostering joint problem-solving.
- (c) Option X22 - Early Contractor Involvement: These clauses facilitate contractor input during the project's early design and planning stages, enhancing collaboration and innovation. It should be noted that Option X22 is for use with the Option C (target price with activity schedule) and Option E (cost-reimbursable contract)

These provisions specifically aim to create a cooperative environment for the parties, reduce potential disputes, and enhance project delivery by encouraging transparency, joint risk management, and early issue resolution.

(3) Implementation for Singapore Projects

The BCA introduced the Y (SG) Clauses to align the NEC4 contract with Singaporean law, such as the Building and Construction Industry Security of Payment Act 2004, the Contracts (rights of Third Parties) Act 2001 and the Insolvency, Restructuring and Dissolution Act 2018. The Y (SG) Clauses allow parties contracting for projects in Singapore to have the necessary provisions to implement the NEC4 contract and achieve the full benefit of collaborative contracting. Other Y clauses previously were drafted to ensure that NEC4 contracts complied with local legislation, for example, in jurisdictions such as the UK, Northern Ireland, Ireland, and

Australia.

BCA will work with industry partners to facilitate the adoption of the NEC4 contract for suitable projects. Thus far, public sector developers such as the Housing and Development Board, JTC Corporation, and Land Transport Authority will be piloting the use of NEC4 contracts in their upcoming projects.

At the same time, the BCA recognizes that successful implementation requires skilled project teams familiar with the NEC4 contract and, ultimately, a shift in mindset from the adversarial approach adopted in conventional construction projects. To this end, the BCA Academy, Singapore Academy of Law, universities, industry associations, and other firms will be introducing courses to raise competencies in collaborative contracting.

4. Conclusion

The introduction of the Y (SG) Clauses and the NEC4 contract is timely and will pave the way for the eventual adoption of collaborative contracting principles in Singapore. However, successful implementation of the NEC4 contract requires parties to be aware of the objectives of NEC4 and to move away from the adversarial approaches typically adopted in conventional construction projects.

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