Application of New Engineering Contract (NEC) - Joy and Tears from a Main Contractor's Perspective
Participate on 3 NEC EEC Option C Contracts:

1. DC/2008/02 Improvement of Fuk Man Road Nullah in Sai Kung

2. HY/2009/04 Noise Barriers on Fanling Highway between MTR Fanling Station and Wo Hing Road

3. DC/2012/03 Happy Valley Underground Stormwater Storage Scheme
DC/2008/02: Improvement of Fuk Man Road Nullah in Sai Kung
HY/2009/04: Noise Barriers on Fanling Highway between MTR Fanling Station and Wo Hing Road
DC/2012/03: Happy Valley Underground Stormwater Storage Scheme
NEC Spirit
“10.1 - The Employer, the Contractor, the Project Manager and the Supervisor shall act as stated in this contract and in a spirit of mutual trust and co-operation”
NEC (New Engineering Contract)

- Engineering & Construction Contract
  - Employer
  - Contractor
  - Subcontractor

- Engineering & Construction Subcontract
  - Employer/Contractor

- Professional Services Contract
  - Consultant
  - Between two contracting parties
  - Adjudicator

- Adjudicator's Contract
  - for "simple" work (not necessarily low value)

- Engineering & Construction Short Contract
  - for use with the ECC or ED Short Contract

- Engineering & Construction Short Subcontract
  - where the contract is for a period of time rather than a single project

- Term Services Contract

- Framework Contract
Six types of payment mechanism available in the NEC ECC3 main Options:

Main Option Clauses
Option A - Priced Contract with Activity Schedule
Option B - Priced Contract with Bill of Quantities
Option C - Target Contract with Activity Schedule
Option D - Target Contract with Bill of Quantities
Option E - Cost Reimbursable Contract
Option F - Management Contract
Risk allocate to *Employer* and *Contractor*

**Option A and B:**
- extreme cases of risk allocation to *Contractor*
- *Contractor* carry all risks other than *Employer’s* risks

**Option C and D:**
- risks to be shared between *Employer* and *Contractor*

**Option E:**
- most of the risks are allocated to *Employer*

**Option F:**
- Cost reimbursable but risk allocation can be varied by choosing appropriate main Option in the subcontracts
A New Relationship
We share
• Profit
• Loss
• Risk
• Problem
• Office

We are on the same boat!
Does NEC Help?

- **NEC** – Promote a “New” relationship

<table>
<thead>
<tr>
<th>Cultural Change</th>
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</thead>
<tbody>
<tr>
<td>“Contractor to bear risk”, “Employer to pay for this!”</td>
<td>Fairer risk sharing</td>
</tr>
<tr>
<td>“Contractor to resolve!”</td>
<td>Joint problem solving</td>
</tr>
<tr>
<td>Mis-trust, suspicious</td>
<td>Trust, co-operate</td>
</tr>
<tr>
<td>Leave the problem</td>
<td>Resolve as matter arises, within time frame</td>
</tr>
<tr>
<td>SMM</td>
<td>No SMM or item coverage</td>
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Does NEC Help?

Risk Management
  • Early Warning
  • Risk reduction meeting

NEC - **Proactive** risk management
  • Joint, and prompt resolution
Does NEC Help?

- Risk Sharing
  - Unforeseen physical conditions
  - Inclement weather
  - As compensation events
- TIME and COST
- Equitable risk sharing
What is NEC?

NEC is a tool
Why do use NEC?

• Do project make more profit?
• Do clients save costs?
What don’t Contractor like about NEC?

Reasons for Shortcomings:
1. Not everybody has skin in the game
2. Monetary issues need to be handled with care
3. Program and Cost related information need to be prepared timely
What don’t Contractor like about (HK) NEC?

- Options A & B
- Some of the Z clauses
- Stringent subletting procedures
- Tedious proof of purchase records for payments
- Heavy cash flow burden
- Heavy workload for QS and Programmer
- Roles and responsibilities of PM and Supervisor
What do Contractor like about NEC?

Benefits:
- Everybody has skin in the game
- Better communications + Trust
- Synergy
What do Contractor like about NEC?

- Options C & D
- More trust from subcontractors
- Early Warning Notifications
- Reduction of some administrative and works resources
- Better safety & quality performance
- Better stakeholder relationships
- Faster to reach solutions
Observation

- More Engineering and Project Orientated
- Real Partnering
- Foresight applied collaboratively mitigates problems and shrinks risk
- Stipulated timeframe makes agreement process start when things are still fresh
Observation

- Collaborative working at managerial level
- Quick and joint resolution of problems
- Culture and Mindset change
- Training and team building at the beginning
Observation

Compensation Event (Variations)
- Fair risk sharing
- Easier settlement due to Open Book Account system
- Quick settlement allows focus on factual issue and less on guessing tactics
- Better decision making on project management (Contractor, Client & Consultant views taken)
Thank You