Evolution of Partnering Contracts
- NEC Trial in Government Projects

Tendering and Working with Project Team of ECC Option C Contract

Agenda

- Introduction
- Tender Preparation
- Subletting
- Early Warning Notification
- Payment
- Observations
Partnering

ECC Clause 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.”

= REAL PARTNERING
ECC Six types of payment mechanism available in the 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

**Introduction**

Brief description of each is as follows:

- Options A and B
  - priced contracts with the risk of carrying out the work at the agreed prices being largely borne by the Contractor
- Options C and D
  - target cost contracts in which the out-turn financial risks are shared between the Client and the Contractor in an agreed proportion
- Options E and F
  - cost reimbursable types of contract with the financial risk being largely taken the Client
Tendering and Working with Project Team of ECC Option C Contract

Engineering and Construction Contract - Option C

Tender Preparation

Tender Documents consists of:

- Instructions to tenderers (including any instructions for preparing the activity schedule under Options A and C)
- Form of Tender
- Contract Data part one
- Contract Data part two
- Pricing document
  - Activity Schedule (Options A and C)
  - Bill of quantities (Options B and D)
- Work Information
- Site Information
Contract Data part one

- completed by the Employer
Contract Data part two

- Contains a list of data to be supplier of the tenderers as part of their offer
- Tendered total of the Prices must be entered
- Transferred from the grand total of the activity schedule or bill of quantities
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Tender Documents - Contractor Data part two

Work Information

- Specify and describe the works
- States any constraints on how the Contractor Provides the Works (cl 11.2(19))
- Define Completion (cl 11.2(2))
- Define the Contractor design (cl 21.1)
- Define what is Defect (cl 11.2(5))
- Any other requirements
Site Information (cl 11.2(16))

- Describes the Site and its surroundings, e.g.
  - Soils reports
  - Surveys of existing buildings
  - As built drawings for existing structures

- Experienced contractor should expect to find and should allow for in their price (cl 60.2)

Activity Schedule - general use with Option A and C

- prepared and priced by the tenderers
- Used to calculate “target”
- Used at the end of the project to calculate the Contractor’s share
- not form part of the Works Information or site Information
- not be used to describe the works
- prices entered by the tenderers for each activity are lump sums, not unit rates as in bill of quantities
- tenderer decides how to break up his work into activities
Employer wants to specify particular activities which the Contractor is to identify in the activities schedule, may state his requirements in the instructions to tenderers;

not all activities in an activity schedule will be direct construction activities; which may be a design activities, administration activities, testing etc;

tenderers have to measure quantities from the Works Information for estimating the cost of the work
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Tender Preparation

**Tendered total of the Prices**

= Total estimated total cost from Activities Schedule + Fee

**Fee** – tenderer shall be specified fee percentage in the Contract Data part two

The Fee **includes** all the costs of the Contractor that are not included in Defined Cost, together with his profit and any allowance for his risks

**Defined Cost** – ECC Clause 11.2(23)

- payments due to subcontractor
- cost components in ECC including People, Equipment, Plant and Materials
- less Disallowed Cost
Subletting

- *Contractor* shall prepare a *Subletting Procedures* for subletting works
- *Subletting Procedures* shall be commented and accepted by *Project Manager* and ICAC before subcontract tendering process carried out
- The *Contractor* shall propose a subcontract tenderer list and the list shall be approved by the *Project Manager*
Join tender opening will be carried out by Project Manager’s, Supervisor’s and Contractor’s staff.

Project Manager or his representative should attend the Tender Interviews with the potential tenderers.

Recommendation of tenderer should get Project Manager’s approval before awarding to proposed tenderer.

Project Manager, Supervisor, and Contractor involve in the entire subletting process, to urge Contractor to select most competent subcontractor and competitive offer.
The purpose of the Early Warning Notification is to raise the risk at the early stage solving the problems together rather than against each other.
Contractor and the Project Manager can give an Early Warning by notifying the others as soon as either becomes aware of any matter could

- increase the project price
- delay completion
- delay meeting a Key Date or
- affect works quality

Following the Early Warning Notification, a Risk Reduction Meeting amongst Project Manager, Supervisor and Contractor will be conducted. It may be agreed that other people attend according to particular circumstances. All parties will discuss to find out the root problem and solution for eliminating / reducing the risk together.

Risk is owned by All Parties
ECC+ACC

Risk Register (ECC16.1-16.4)

Following the Risk Reduction Meeting, Risk Register shall be revised by Project Manager to record the actions taken for avoiding or reducing the risk.
Payment Amount Due:

- **Price for Work Done to Date (PWDD)**
- plus other amounts to be paid to the *Contractor*
- less amounts to be paid by or retained from the *Contractor*
- **Price for Work Done to Date (PWDD)**

\[ PWDD = \text{total Defined Cost} + \text{Fee} \]

* *Contractor* shall present the proof of the payments which have been paid

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Disallowed Cost – ECC Clause 11.2(25)

- Should not have been paid to a Subcontractor or Supplier in accordance with his contract
- Correcting defects after completion
- Correcting defects caused by the Contractor not complying with constraints in Works Information
- Surplus resources, plant & materials etc
- The cost of preparation for and conduct of an adjudication or proceedings of the tribunal
Assessment of Payment

- **Defined Cost** which the *Contractor* has paid and presented the receipt at each assessment date (such as Subcontractors payments; salary of site personnel, plant and equipment, etc)
- *Project Manager / Supervisor* can access to *Contractor’s* account records (i.e. **Open Account**) which is transparency and subject to audit by *Project Manager* auditor team
- *Project Manager / Supervisor* can monitor the overall financial arrangement of the *Contractor* for the project

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**ECC + ACC**

Pain / Gain Sharing (Option C): -

**Actual Cost < Contract Price (Y)**

→ Contractor and Client share 50% of gain value.

**Actual Cost ≤ 110% Contract Price (Y)**

→ Contractor and Client share 50% of pain value.

  *i.e. The maximum of the Final Amount will be ($Y \times 1.05 = $1.05Y)*

**Actual Cost > 110% Contract Price (Y)**

→ Contractor will share 100% of pain value

  *i.e. the ceiling of the Final Amount is $1.05Y only for Client*
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Observations

• More Target/Project Orientated (Common Goal)
• Real Partnering (trust, collaborative and early risk identification)
• Foresight applied collaboratively mitigates problems and shrinks risk
• Shorter timeframe for making decision
• Fair risk sharing
• Easier and quick settlement due to Open Book Account system
Thank You