

# **UPDATING FROM NEC3 TO NEC4**

## **GUIDELINES & ILLUSTRATIONS**

presented by

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# Updating from NEC3 to NEC4

## Opening Remarks

- » NEC is a radical change in approach to the way contracts are traditionally administered in Hong Kong/Asia
- » Collaborative/Cooperative Approach v Adversarial Approach
- » Not to be confused with Partnering
- » NEC requires professional and proactive approach following the contractual procedures TO THE LETTER
- » NEC promotes efficient and economic working
- » BUT, NEC will only be successful if projects are staffed with experienced and competent resources
- » Investment in sufficient numbers of experienced resources at the front end will avoid wastage of resources at back end of projects in terms of defects, claims and disputes

# Updating from NEC3 to NEC4

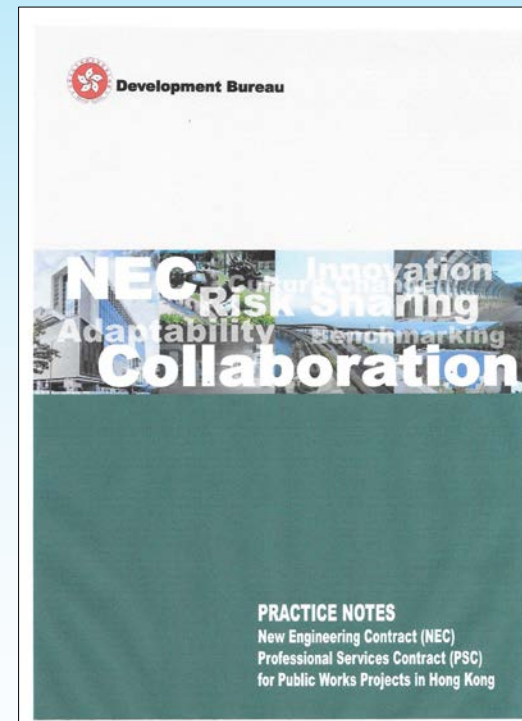
## Opening Remarks

- » Experience on Mass Transit Railway Corporation (“MTRC”)’s Target Cost Contracts used on its underground station and tunneling projects shows that success is based on an approach that:
    - is collaborative
    - provides value for money
    - is non-adversarial but professional
    - requires proactive management
    - requires ownership/resolution of issues, not blame
    - requires prompt solutions to problems/disagreements
    - provides lowest outturn cost to Employer
    - provides profitable outcome for Contractor
- (NEC has these objectives written into Contract whether target cost, remeasurement, lump sum or time charge)

# Updating from NEC3 to NEC4

## NEC Adoption In Hong Kong

- NEC3 Published in June 2005
- First NEC3 Pilot Project 2009 (DSD Sai Kung Nullah)
- First NEC3 Private Project 2012 (HK Academy School)
- First MTRC NEC3 Project 2014 (Kennedy Town Pool)
- HK Government Pilot Scheme Programme 2009-2015
- HK Government Approval for Future projects 2016
- HK Government Practice Notes NEC3 (March 2017)
- **NEC4 Published in June 2017**
- First Airport Authority NEC4 Project 2019 (Third Runway)



## Glossary of NEC4 Terms

NEC 3	NEC4
<i>Employer</i>	<i>Client</i>
Works Information	<b>Scope</b>
Risk Register	<b>Early Warning</b> Register
Risk Reduction Meeting	<b>Early Warning</b> Meeting
notifies (all)	<b>informs</b> (some)

## Gender/Redrafting

### » NEC3 Core Clause 61.6:

"If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations."

"If the effects of a compensation event are too uncertain to be forecast reasonably, the *Project Manager* states assumptions about the compensation event in the instruction to the *Contractor* to submit quotations."

# Updating from NEC3 to NEC4

## NEC4 Suite of Contracts





## NEC4 Suite of Contracts

- ❖ Engineering and Construction Contract (ECC)
- ❖ Engineering and Construction Short Contract (ECSC)
- ❖ Engineering and Construction Subcontract (ECS)
- ❖ Engineering and Construction Short Subcontract (ECSS)
- ❖ Professional Services Contract (PSC)
- ❖ Professional Services Short Contract (PSSC)
- ❖ **Professional Services Subcontract (PSS) - New**



## NEC4 Suite of Contracts

- ❖ Term Service Contract (TSC)
- ❖ Term Service Short Contract (TSSC)
- ❖ **Term Service Subcontract (TSS) - New**
- ❖ **Design, Built and Operate Contract (DBOC) - New**
- ❖ Supply Contract (SC)
- ❖ Supply Short Contract (SSC)
- ❖ Framework Contract (FC)
- ❖ **Dispute Resolution Service Contract (DRSC) -New**

# Updating from NEC3 to NEC4

## NEC3 Suite of Contracts includes..

- » Procurement and Contract Strategies
- » Guidance Notes
- » Flow Charts
- » How To Guides



## NEC4 – New Guidance Notes

- » NEC4 now includes 2 volumes (numbered 2 and 4) of Guidance Notes for each contract type. These are
  - Volume 2 - Preparing a Contract
  - Volume 4 - Managing a Contract
- » NEC4 also has a generic Volume 1 – Establishing a Procurement and Contract Strategy
- » NEC4 also has a generic Volume 3 – Selecting a Supplier
- » NEC4 also has flow charts for ECC available for download from NEC website.

# Updating from NEC3 to NEC4

## NEC4 Suite of Contracts includes..

- » Volume 1 - Establishing a Procurement and Contract Strategy
- » Volume 2 – Preparing an Engineering and Construction Contract
- » Volume 3 – Selecting a Supplier
- » Volume 4 – Managing an Engineering and Construction Contract
- » Flow Charts (Website Download)

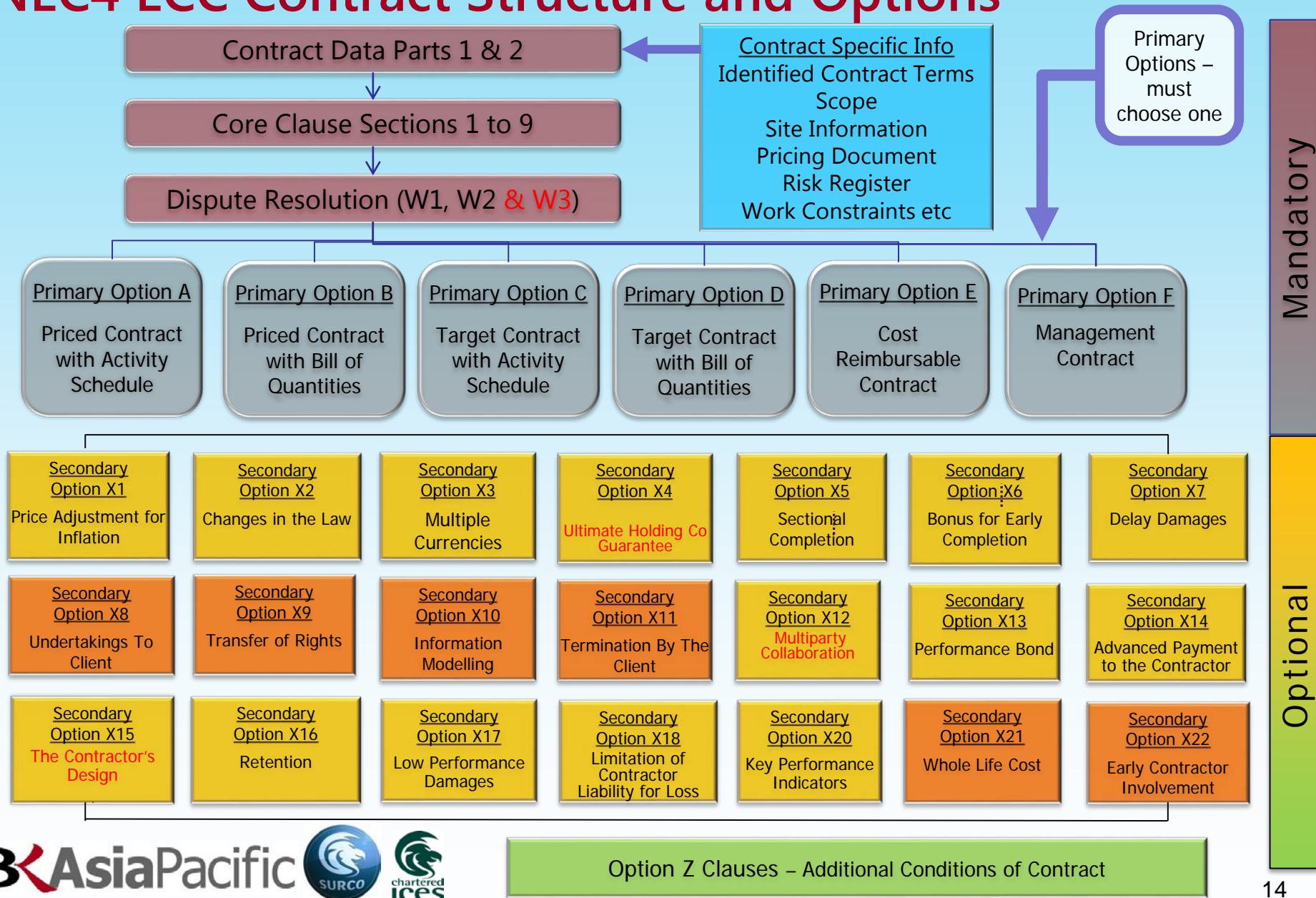


## 4. NEC4 ECC Structure

- » Nine mandatory Core Clauses
- » Six Main Contract Options
- » **Three** Dispute Resolution Options (**NEC3 – Two only**)
- » **Twenty one** pre-drafted Secondary Clause Options (**NEC3 – Fifteen only**)
- » Client-drafted Z Clauses
- » Two Schedules of Cost Components
- » Contract Data

# Updating from NEC3 to NEC4

## NEC4 ECC Contract Structure and Options



## NEC4 ECC Core Clauses

1. General
2. The *Contractor's* Main Responsibilities
3. Time
- 4. Quality Management (NEC3-Testing and Defects)**
5. Payment
6. Compensation events
7. Title
- 8. Liabilities and insurance (NEC3-Risks and insurance)**
9. Termination



# Updating from NEC3 to NEC4

## Clause 10 -NEC Collaborative Philosophy

» Clause 10 of all NEC3 Works Contracts states

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.**"

» Clause 10 of all NEC4 Works Contracts states

10.1 The Parties, the *Project Manager* and the *Supervisor* **shall act as stated in this contract**

10.2 The Parties, the *Project Manager* and the *Supervisor* **act in a spirit of mutual trust and co-operation.**"

## Clause 11 – Identified and Defined Terms

### » 11.2(5) – **Corrupt Act** (see also Clauses 18 and 91.8)

- The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or
- Abusing any entrusted power for private gain

in connection with this contract or any other contract with the *Client*. This includes any commission paid as an inducement which was not declared to the *Client* before the Contact Date.

## Clause 11 – Identified and Defined Terms

- » 11.2(8) – **Early Warning** Register (NEC3 – Risk Register)
- » 11.2(13) – The Parties are the **Client** and the *Contractor* (NEC3 – Employer)
- » 11.2(16) – **Scope** (NEC3 – Works Information)
- » 11.2(19) – **Subcontractor** is a person or organisation who has a contract with the *Contractor* to .....design all or part of works ..... or provide a service in the Working Areas which is necessary to Provide the Works except for the hire of Equipment or supply of people paid for by the *Contractor* according to the time they work.

## Clause 13 – Communications

13.2 - If the Scope specifies the use of communication system, a communication has effect when it is communicated through the communication system specified in the Scope.

[Modern contracting often involves digital contract management and the changes to clause 13.2 provide for that.]

## Clause 15 – Early Warning

15.1 - The **Project Manager** or the *Contractor* may give an early warning by notifying **the other** of any other matter which could increase the **Contractor's** total cost. The *Project Manager* enters early warning matters in the **Early Warning** Register.

## Clause 15 – Early Warning

15.2 (New) - The *Project Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Project Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*.

## Clause 15 – Early Warning

### 15.2 (New) Cont'd

- » Later early warning meetings are held
  - if either the *Project Manager* or the *Contractor* instructs the other to attend an early warning meeting, and in any case,
  - at **no longer interval** stated in the Contract Data until Completion of the whole of the works.



## Clause 16 – Contractor's Proposals (New)

- » 16.1 - The *Contractor* may propose to the *Project Manager* that the Scope provided by the *Client* is changed in order to **reduce** the amount the *Client* pays to the *Contractor* for Providing the Works. The *Project Manager* consults with the *Client* and the *Contractor* about the change.

## Clause 16 – Contractor's Proposals (New)

- » 16.2 – Within four weeks of the *Contractor* making the proposal the *Project Manager*
  - accepts the *Contractor's* proposal and issues an instruction changing the Scope,
  - informs the *Contractor* that the *Client* is considering the proposal and instructs the *Contractor* to submit a quotation or
  - Informs the *Contractor* that the proposal is not accepted. (The *Project Manager* may give any reason for not accepting the proposal.)

The *Project Manager* may give any reason for not accepting the proposal.

## Clause 18 – Corrupt Acts (New)

- » 18.1 – The *Contractor* does not do a Corrupt Act.
- » 18.2 – The *Contractor* takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware.
- » 18.3 – The *Contractor* includes equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment.

## Clause 22 – Using the Contractor's Design

- » 22.1 – The *Client* may use the copy the *Contractor's* design for any purpose connected with construction, use, alteration or demolition of the *works* unless otherwise stated in the Scope and for other purposes as stated in the contract. **The Contractor obtains from a Subcontractor equivalent rights for the Client to use material prepared by the Subcontractor. (New)**

## Clause 28 – Assignment (New)

- » 28.1 – Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. **The Client does not transfer a benefit or rights if the party receiving the benefit or rights does not intend to act in a spirit of mutual trust and co-operation.**

## Clause 29 – Disclosure (New)

- » 29.1 – The Parties do not disclose information obtained in connection with the works except when necessary to carry out their duties under the contract.
- » 29.2 – The *Contractor* may publicise the works only with the *Client's* agreement.

## Clause 31 – The programme

31.2 – an additional sentence is added at the end:

- » A programme issued for acceptance is in the form stated in Scope.
- » [e.g. Gantt chart]



## Clause 31 – The programme

31.3 – an additional sentence is added at the end:

- » If the *Project Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Project Manager* of the programming.

[This change is made to encourage the Project Manager to act in a timely fashion.]

## Clause 36 – Acceleration

- » 36.1 – **The Contractor** and the *Project Manager* may propose to the other an acceleration to achieve Completion before the Completion Date. If the *Project Manager* and the *Contractor* are prepared to consider the proposed change, the *Project Manager* instructs the *Contractor* to provide a quotation. The instruction stated changes to the key Dates to be included in the quotation. The *Contractor* provides a quotation within three weeks of the instruction to do so. The *Project Manager* replies to the quotation within three weeks.

## Clause 36 – Acceleration

### 36.1 Cont'd

» The reply is:

- a notification that the quotation is accepted or
- a notification that the quotation is not accepted and that the Completion Date and Key Dates are not changed.

## Clause 40 – Quality Management (Renamed)

- » 40.1 (New) – The *Contractor* operates a quality management system which complies with the requirements stated in the Scope.
- » 40.2 (New) – Within the period stated in the Contract Data, the *Contractor* provides the *Project Manager* with a quality policy statement or quality plan is that it does not allow the *Contractor* to Provide the Works. If any changes are made to the quality plan, the *Contractor* provides the *Project Manager* with the changed quality plan for acceptance.

## Clause 40 – Quality Management (Renamed)

- » 40.3 (New) – The *Project Manager* may instruct the *Contractor* to correct a failure to comply with the quality plan. This instruction is not a compensation event.
- » 43.2 – Until the defects date **the *Supervisor* and the *Contractor* notifies the other as soon as they become aware of a Defect.** (fine tuning)
- » 44.3 – The supervisor issues the Defects Certificate at the **defect date if there are no notified Defects, or otherwise at the earlier of**
  - **the end of the last defect correction period and**
  - **the date when all notified Defects have been corrected.** (minor change)

## Clause 50 – Payment

50.2 (new) – The *Contractor* submits an application for payment to the *Project Manager* before each assessment date setting out the amount the *Contractor* considers is due at the assessment date. The *Contractor's* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.

[The Contractor is now obliged to submit an application for payment before each assessment date, not on the date.]

## Clause 50 – Payment

- » 50.4 (new) – If the *Contractor* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of
  - the amount the *Project Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application before the assessment date, and
  - the amount due at the previous assessment date.

[If the Contractor does not submit an application for payment, it is unlikely that anything will be paid.]



## Clause 53 – Final Assessment (New)

- » 53.1 – The *Project Manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than
  - four weeks after the *Supervisor* issues the Defects Certificate or
  - thirteen weeks after the *Project Manager* issues a termination certificate.

The *Project Manager* gives the *Contractor* details of how the amount due has been assessed. The final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.

## Clause 53 – Final Assessment (New)

- » 53.2 – If the *Project Manager* does not make this assessment within the time allowed, the *Contractor* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, a final payment is made within two weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.

## Clause 53 – Final Assessment (New)

- » 53.3 – An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions:
  - If the contract includes Option W1, a Party .....
  - If the contract includes Option W2, a Party .....
  - If the contract includes Option W3, a Party .....

## Clause 53 – Final Assessment (New)

- » 53.4 – The assessment of the final amount due is changed to include
  - any agreement the Parties reach and
  - a decision of the *Adjudicator* or recommendation of the Dispute Avoidance Board which has not been referred to the *tribunal* within four weeks of that decision or recommendation.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

## Clause 60 – Compensation Events

Two Additional Compensation Events:

- » 60.1(20) – The *Project Manager* notifies the *Contractor* that a quotation for a proposed instruction is not accepted.
- » 60.1(21) – Additional compensation events stated in Contract Data part one.

## Clause 60 – Compensation Events

63.1 – The change to the Prices is assessed as the effect of the compensation event upon

- the actual Defined Cost of the work done by the **dividing date**,
- The forecast Defined Cost of the work not done by the **dividing date** and
- the resulting Fee.

## Clause 60 – Compensation Events

### 63.1 (Cont'd)

- For a compensation event that arises from the *Project Manager* or the Supervisor giving an instruction or notification, issuing a certificate or changing an earlier decision, the **dividing date** is the **date of that communication**.
- For other compensation events, the **dividing date** is the **date of the notification of the compensation event**.

## Clause 60 – Compensation Events

63.4 (new) – If the effect of a compensation event is to reduce the total Defined Cost and the event is

- a change to the Scope other than a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted or
- a correction to an assumption stated by the *Project Manager* for assessing an earlier compensation event

the Prices are reduced.



## Clause 60 – Compensation Events

### Clause 65 – Proposed instructions (new clause)

- » 65.1 – The *Project Manager* may instruct the *Contractor* to submit a quotation for a proposed instruction. The *Project Manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect.

## Clause 60 – Compensation Events

- » 65.2 – The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Project Manager*. The quotation is assessed as a compensation event. The *Project Manager* replies to the *Contractor's* quotation by the date when the proposed instruction may be given.

## Clause 60 – Compensation Events

### » 65.2 Cont'd

The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
- a notification that the quotation is not accepted.

If the *Project Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.

## Clause 60 – Compensation Events

- » 65.3 – If the quotation is not accepted, the *Project Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Contractor* to submit a quotation.

## Clause 8 – Liabilities and Insurance (Renamed)

81.1 -The following are *Contractor's* liabilities unless they are stated as being *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Contractor* Providing the Works.
- Loss of or damage to the works, Plant and Materials and Equipment.
- Loss of damage to property owned or occupied by the *Client* other than the works, which arises from or in connection with the *Contractor* Providing the Works.
- Death or bodily injury to the employees of the *Contractor*.

## Clause 9 – Termination

- » NEC3 - 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The Employer may be terminated for any reason.
- » NEC4 - 90.2 The Party may terminate for a reason identified in the Termination table.

## Clause 9 – Termination

- » NEC3 – 91.4 The *Contractor* may terminate if the *Client* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).
- » NEC4 – 91.4 The *Contractor* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Contractor* should have been paid (R16).

## Clause 9 – Termination

91.8 (new) – The *Client* may terminate if the *Contractor* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Contractor*

- was not and should not have been aware of the Corrupt Act or
- informed the *Project Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it.



## Main Option A

- » NEC3 - 11.2 (22) Defined Cost is the cost of the components in the **Shorter** Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations for compensation events.
- » NEC4 – 11.2 (23) Defined Cost is the cost of the components in the **Short** Schedule of Cost Components.

## Main Option A

- » NEC3 - 11.2 (27) A completed activity is one which is without Defects which would either delay or be covered by immediately following work.
- » NEC4 – 11.2 (29) A completed activity is one without notified Defects the correction of which will delay following work.

## Main Option A

- » 55.1 (a new sentence added) - If the activities on the Activity Schedule do not relate to the Scope, the *Contractor* corrects the Activity Schedule.
- » 55.3 (a new condition added) – If the *Contractor*
  - corrects the Activity Schedule so that the activities on the Activity Schedule relate to the Scopethe *Contractor* submits a revision of the Activity Schedule to the *Project Manager* for acceptance.

## Main Option A

### Clause 63 – Assessing compensation events

- » 63.12 - If the effect of a compensation event is to reduce the total Defined cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manger* accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the value engineering percentage.

## Main Option A

### Clause 63 – Assessing compensation events

- » 63.16 (new clause) – If, when assessing a compensation events the People Rates do not include a rate for a category of person required, *the Project Manager* and *Contractor* may agree a new rate. If they do not agree the *Project Manager* assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.

## Main Option B

- » NEC3 - 11.2 (22) Define Cost is the cost of the components in the **Shorter** Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations for compensation events.
- » NEC4 – 11.3 (23) Defined Cost is the cost of the components in the **Short** Schedule of Cost Components.

## Main Option B

- » NEC3 - 11.2 (27) A completed work is one which is without Defects which would either delay or be covered by immediately following work.
- » NEC4 – 11.2 (29) A completed work is one without notified Defects the correction of which will delay following work.

## Main Option B

### Clause 63 – Assessing compensation events

- » 63.12 - If the effect of a compensation event is to reduce the total Defined cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manger* accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the value engineering percentage.



## Main Option B

### Clause 63 – Assessing compensation events

- » 63.16 (new clause) – If, when assessing a compensation events the People Rates do not include a rate for a category of person required, the *Project Manager* and *Contractor* may agree a new rate. If they do not agree the *Project Manager* assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.

## Main Option C

### Clause 11 – Identified and defined terms

- » 11.2(24) Defined Cost is the cost of the components in the Schedule of Cost Component less Disallowed Cost.
- » 11.2(26) Disallowed Cost is cost which -
- » was incurred only because the *Contractor* did not -
  - give notification to the Project Manager of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier (new)

## Main Option C

### Clause 26 – Subcontracting

- » 26.4 – The *Contractor* submits the pricing information in the proposed subcontract documents for each subcontract to the *Project Manager* unless the *Project Manager* has agreed that no submission is required.

## Main Option C

### Clause 50 – Assessing the amount due

- » 50.9 (new) – The *Contractor* notifies the *Project Manager* when a part of Defined Cost has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Project Manager* reviews the records made available, and no later than thirteen weeks after the *Contractor's* notification
  - accepts that part of Defined Cost as correct,
  - notifies the *Contractor* that further records are needed or
  - notifies the *Contractor* of errors in its assessment.

## Main Option C

- » 50.9 con't – The *Contractor* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Project Manager's* notification. The *Project Manager* reviews the records provided, and within four weeks
- accepts the cost as correct or
  - notifies the *Contractor* of the correct assessment of that part of Defined Cost.

If the *Project Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Contractor's* assessment is treated as correct.

## Main Option C

### Clause 63 – Assessing compensation events

- » 63.13 – If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted, the Prices are not reduced.

## Main Option D

### Clause 11 – Identified and defined terms

- » 11.2(24) Defined Cost is the cost of the components in the Schedule of Cost Component less Disallowed Cost.
- » 11.2(26) Disallowed Cost is cost which
  - give notification to the Project Manager of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier (new)

## Main Option D

- » NEC3 - 11.2 (33) Completed work is work without Defects which would either delay or be covered by immediately following work.
- » NEC4 – 11.2 (35) Completed work is work which is without notified Defects the correction of which will delay following work.



## Main Option D

### Clause 26 – Subcontracting

- » 26.4 – The *Contractor* submits the pricing information in the proposed subcontract documents for each subcontract to the *Project Manager* unless the *Project Manager* has agreed that no submission is required.

## Main Option D

### Clause 50 – Assessing the amount due

- » 50.9 – The *Contractor* notifies the *Project Manager* when a part of Defined Cost has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Project Manager* reviews the records made available, and no later than thirteen weeks after the *Contractor's* notification
  - accepts that part of Defined Cost as correct,
  - notifies the *Contractor* that further records are needed or
  - notifies the Contractor of errors in its assessment.

## Main Option D

- » 50.9 – The *Contractor* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Project Manager's* notification. The *Project Manager* reviews the records provided, and within four weeks
- accepts the cost as correct or
  - notifies the *Contractor* of the correct assessment of that part of Defined Cost.

If the *Project Manger* does not notify a decision on that part of Defined Cost within the time stated, the *Contractor's* assessment is treated as correct.

## Main Option D

### Clause 63 – Assessing compensation events

- » 63.13 – If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted, the Prices are not reduced.

## Resolving and Avoiding Disputes Options

Three option clauses which concern rules and procedures for Adjudication and review by tribunal :

- » W1 – Used where Adjudication is the method of DR and where HGCR Act\* does **not** apply
- » W2 – Used where Adjudication is the method of DR and where the HGCR Act\* applies
- » W3 – Used where Dispute Avoidance Board is the method of DR and the HGCR Act\* does not apply

*\*UK Housing Grants, Construction and Regeneration Act (1996)*

## Option W1 - Adjudication

- » W1.1 – Resolving disputes
- » A dispute may be referred to the Senior Representatives by a party within the period stated in the Dispute Reference Table.
- » Each party submits no more than ten sheets of A4 paper together with supporting evidence, within one week.
- » The *Senior Representatives* attend as many meetings and use any procedure to try to resolve the dispute within three weeks.
- » If the dispute is not resolved, it is referred to and decided by the *Adjudicator*.

## Option W1 - Adjudication

- » W1.3 – The Adjudication
- » A Party disputing any issue not agreed by the *Senior Representatives* issues a notice of adjudication to the other Party and the *Project Manager* within two weeks of the production of the list of agreed and not agreed issues or when it should have been produced. The dispute is referred to the *Adjudicator* within one week of the notice of adjudication.
- » The *Adjudicator* decides the dispute and informs the Parties of the decision and reasons within four weeks.
- » If still disputed then referred to tribunal.

## Option W3 - Dispute Avoidance Board

- » One or three members
- » Assist(s) parties in resolving potential disputes
- » Potential disputes referred to DAB within four weeks
- » DAB reviews and helps parties settle them
- » If unable to promote a settlement makes a recommendation
- » If still disputed then referred to tribunal
- » **Alternative for Hong Kong - DRA**



## The ECC Secondary Options (1)

- » Option X1 – Price Adjustment for Inflation
- » Option X2 – Changes in Law
- » Option X3 – Multiple Currencies
- » Option X4 – **Ultimate Holding Company Guarantee**
- » Option X5 – Sectional Completion
- » Option X6 – Bonus for Early Completion

## The ECC Secondary Options (2)

- » Option X7 – Delay Damages
- » Option X8 – **Undertakings to the *Client* or Others**
- » Option X9 – **Transfer of Rights**
- » Option X10 – **Information Modelling**
- » Option X11 – **Termination By Client**
- » Option X12 – **Multiparty Collaboration**

## The ECC Secondary Options (3)

- » Option X13 – Performance Bond
- » Option X14 – Advanced Payment
- » Option X15 – **Contractor's Design**
- » Option X16 – Retention
- » Option X17 – Low Performance Damages
- » Option X18 – Limitation of Liability

## The ECC Secondary Options (4)

- » Option X20 – Key Performance Indicators
- » Option X21 – **Whole Life Cost**
- » Option X22 – **Early Contractor Involvement**  
(Payment Options C&E)
- » Option Y(UK)1 – Project Bank Account  
Y(UK)2 – HGC&R Act  
Y(UK)3 – Third Party Rights
- » Option Z – Additional Conditions of Contract

## NEC4 - New Secondary Options

- » X8 – Undertakings to the *Client* or Others
  - Provisions relating to Collateral warranties from *Contractor* and Subcontractors
- » X9 – Transfer of Rights
  - Provisions for the Transfer of Rights for designs and other matters to *Client*
- » X10 – Information Modelling
  - Provisions for the introduction of an Information Model of the project and the provision of an Information Execution Plan for the *Contractor* to achieve the Model
  - Changes to the Plan due to CE's are reimbursable

## NEC4 - New Secondary Options

- » X11 – Termination By *Client*
  - Allows *Client* to Terminate for any reason. Previously in Core Clause.
- » X21 – Whole Life Cost
  - Provides for *Contractor* to make Proposals for Reduction of Whole Life Cost in exchange for a change in the Prices and or Completion and Key Dates
- » X22 – Early Contractor Involvement (ECI)
  - Formally published as a separate Guide
  - Allows for ECI to be used with Options C and E

## Two Schedules of Cost Components

### » Schedule of Cost Components (SCC)

- for options C to F to determine Defined Cost, for assessing interim payment (PWDD) and the default method for evaluating Compensation Events

### » Short Schedule of Cost Components (SSCC)

- for options A & B to determine Defined Cost, used as the default method for evaluating Compensation Events

## Schedule of Cost Components

### People

- » 1 – the cost of people who are directly employed by the Contractor and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas.
- » 11 – wages, salaries and amount paid by the Contractor for people paid according to the time worked on the contract. [No longer required to be within the Working Areas]
- » 13 – payment made in relation to people in accordance with their employment contract .....(m) health insurance



## Schedule of Cost Components

### Equipment

- » 2 – The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding ~~Equipment cost covered by the percentage for Working Areas overheads~~).

### Subcontractors (New)

- » 41 – Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Contractors*, which would result in the *Client* paying or retaining the amount twice.

## Schedule of Cost Components

### Manufacture and fabrication

The following clause has been deleted in NEC4:

- » ~~52 – An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.~~

### Design

The following clause has been deleted in NEC4:

- » ~~62 – An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.~~

## Short Schedule of Cost Components

### People

- » 1 – the cost of people who are directly employed by the *Contractor* and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas.
- » 11 – Amount calculated by multiplying each of the People Rates by the total time appropriate to that rate spent within the Working Areas.

## Short Schedule of Cost Components

### Subcontractors (New)

- » 41 – Payments to Subcontractors for work which is subcontracted.

### Charges

- » 5 - Considerable changes are made in this section, including the removal of the percentage for people overheads. This clause now line up those of the Schedule of Cost Components.

## Short Schedule of Cost Components

### Manufacture and fabrication

- » 61 – The total of the hours worked by people multiplied by the hourly rates stated in the Contract Data for the categories of people listed.

### Design

The following clause has been deleted in NEC4:

- ~~» An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.~~

## Contract Data

CD Part 1 - completed by *Client* for tender documents:

- » 1 - Period for reply
- » 1 - Early warning meeting are to be held at intervals no longer than .....
- » 4 - Quality plan
- » 5 - Period within which payments are made
- » 6 – Value engineering percentage (if Option A or B is used)
- » 6 – Additional compensation events
- » Senior representatives of the *Client*
- » Dispute Avoidance Board

## Contract Data

CD Part 2 - completed by *Contractor* for tender submission:

NEC3 -

- » Direct fee percentage
- » Subcontracted fee percentage

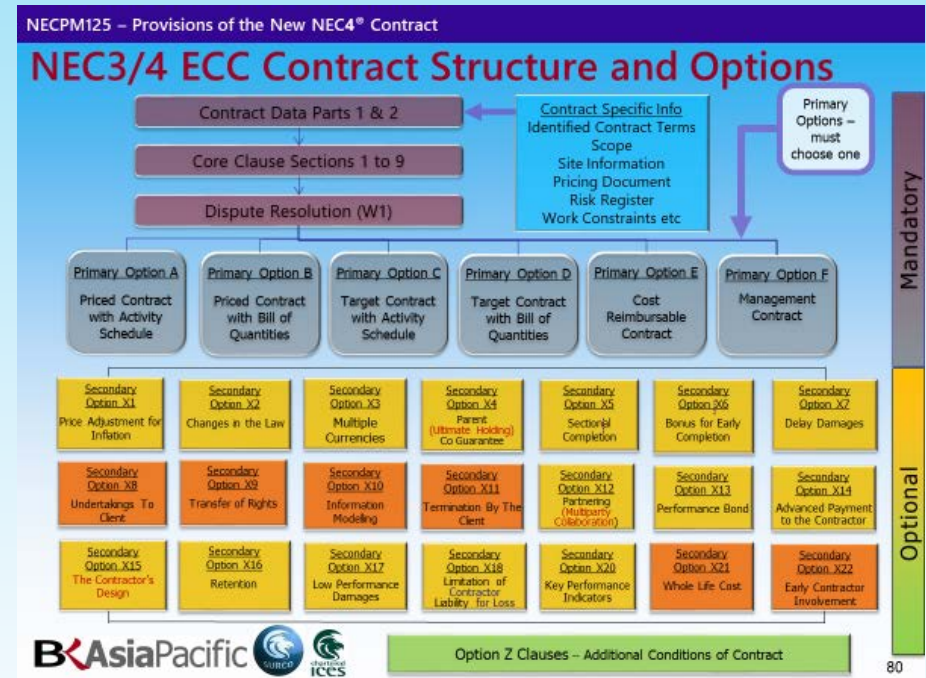
NEC4 -

- » Fee percentage

# Updating from NEC3 to NEC4

## Evolution not Revolution

- » Basic Framework is the same
- Still have 9 core clauses with similar provisions
- Still have 6 main payment/admin options
- Modular format and documents remain largely the same
- Same requirement of collaborative philosophy





## Summary of Differences between NEC3 & NEC4

- » Language, glossary of terms
- » Communications – time bar, reasons
- » Early warning procedure, time frame (15.2)
- » *Contractor's* proposal (16.1)
- » Programme acceptance (31.2)
- » Acceleration (36.1)
- » Application for payment (50.2)
- » Final assessment with time frame (53)

## Summary of Differences between NEC3 & NEC4

- » Compensation events (60.1)
- » Value Engineering (63.4) & VE percentage for A&B (63.12)
- » Subcontracting for C&D (26.4)
- » Secondary options (X8, X9, X10, X11, X21 & X22)
- » Resolving and avoiding disputes (W1 & W3)
- » Define Cost (Schedules of Cost Components)
- » Fee

**Thank You**