

Tools for achieving effective collaboration

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What I want and is more useful to talk about ...

Contracts for achieving effective collaboration

A comparison of contractual arrangements and tendering strategies including:

- ❖ JCT/NEC3
- ❖ Single/two stage tendering
- ❖ Which contracts can be best used to incentivise the Parties to collaborate under 2 stage tendering ?

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The JCT Contract family

- ❖ Standard Building Contract²⁰¹⁶
- ❖ Intermediate Building²⁰¹⁶
- ❖ Minor Works Contract²⁰¹⁶
- ❖ Major Project Construction²⁰¹⁶
- ❖ Design and Build Contract²⁰¹⁶
- ❖ Management Building Contract²⁰¹¹

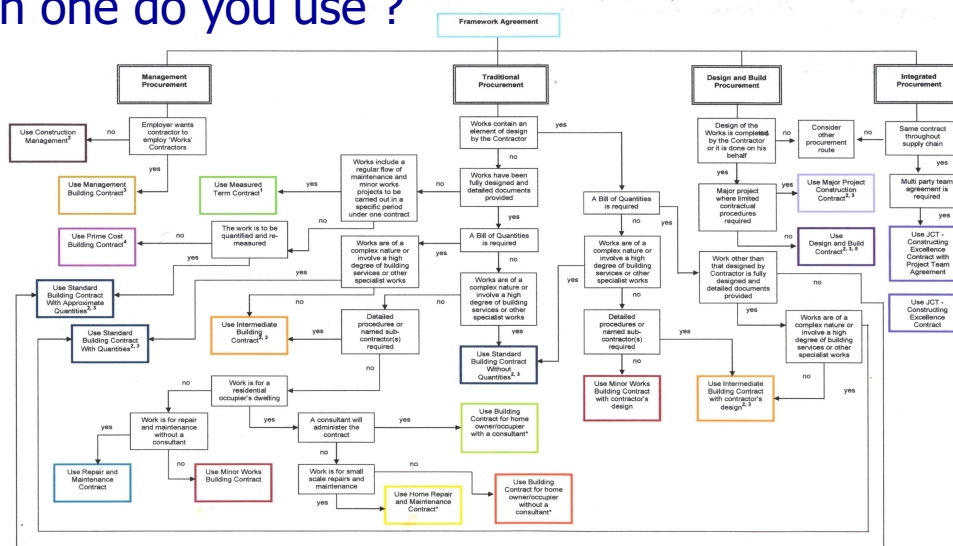


- ❖ Construction Management²⁰¹¹
- ❖ Constructing Excellence²⁰¹⁶
- ❖ Measured Term Contract²⁰¹⁶
- ❖ Prime Cost Building Contract²⁰¹⁶
- ❖ Repair and Maintenance²⁰¹⁶
- ❖ Home Owner Contracts²⁰¹⁵

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Which one do you use ?

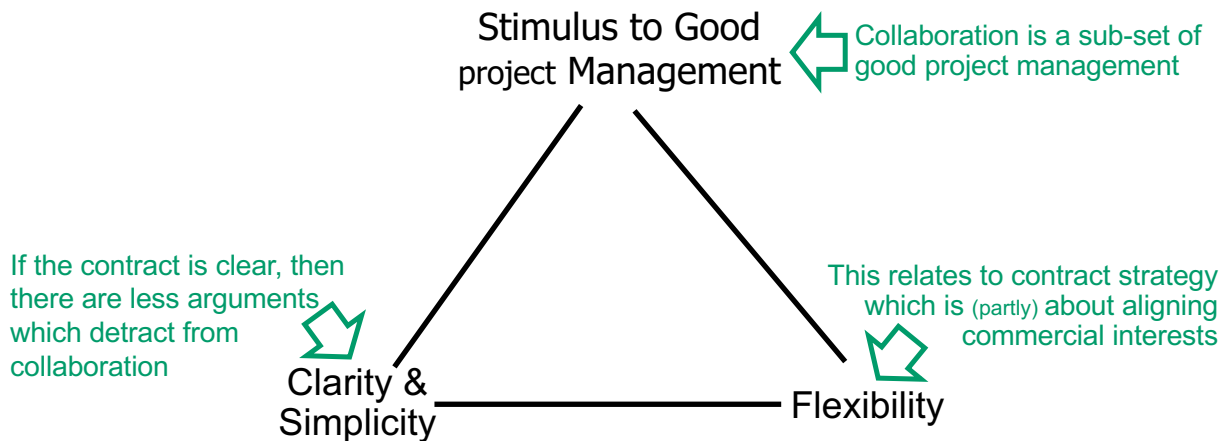
Guide to selecting the appropriate JCT main contract



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NEC3 Overview



Members of the NEC3 family :

- ❖ **Engineering & Construction Contract**
 - ❖ **Engineering & Construction Subcontract**
 - ❖ **Engineering & Construction Short Contract**
 - ❖ **Engineering & Construction Short Subcontract**
 - ❖ **Professional Services Contract**
 - ❖ **Professional Services Short Contract**
 - ❖ **The Adjudicator's Contract**
 - ❖ **Framework Contract**
 - ❖ **Term Services Contract**
 - ❖ **Term Services Short Contract**
 - ❖ **Supply Contract**
 - ❖ **Supply Short Contract**
- Allows for any extent of Contractor design.



Contracting strategy at main payment option level

	ECC	EC-SubC	PSC	TSC	Supply Contract	Short Contracts (not Supply)
A : Priced Contract with Activity Schedules (AS)	✓	✓	✓	✓ ↑	✓	✓
B : Priced Contract with Bill of Quantities	✓	✓				✓
C : Target Contract with AS / Price List	✓	✓	✓	✓		
D : Target Contract with Bill of Quantities	✓	✓				
E : Cost Reimbursable/ Time Based contract	✓	✓	✓	✓		✓
F : Management Contract	✓					
G : Term Contract			✓			
X12 : Partnering (project alliancing) option	✓	✓	✓	✓	✓	✓
X19 : Task Order				✓		

Secondary Option Selection

	ECC	EC SubC	TSC	PSC	Supply Contract
X1 : Price Adjustment for Inflation	✓	✓	✓	✓	✓
X2 : Changes in the Law	✓	✓	✓	✓	✓
X3 : Multiple Currencies	✓	✓	✓	✓	✓
X4 : Parent Company Guarantee	✓	✓	✓	✓	✓
X5 : Sectional Completion	✓	✓		✓	
X6 : Bonus for early Completion	✓	✓		✓	
X7 : Delay Damages	✓	✓		✓	✓
X8 : Collateral Warranty Agreements				✓	
X9 : Transfer of Rights				✓	
X10 : <i>Employer's Agent</i>				✓	
X11 : Termination by <i>Employer</i>				✓	
X12 : Partnering	✓	✓	✓	✓	✓

Secondary Option Selection

	ECC	EC SubC	TSC	PSC	Supply Contract
X13 : Performance Bond	✓	✓	✓	✓	✓
X14 : Advanced Payment	✓	✓			✓
X15 : Limitation of <i>Contractor's</i> liability to reasonable skill & care	✓	✓			
X16 : Retention	✓	✓			
X17 : Low Performance Damages	✓	✓	✓		✓
X18 : Limitation of Liability	✓	✓	✓	✓	
X19 : Task Order			✓		
X20 : Key Performance Indicators	✓	✓	✓	✓	✓
Y(UK)1 : Project Bank Account	✓	✓	✓	✓	✓
Y(UK)2 : H, G, C & R Act	✓	✓	✓	✓	
Y(UK)3 : Rights of 3 rd Parties	✓	✓	✓	✓	✓
Z : Additional Conditions of Contract	✓	✓	✓	✓	✓

NEC4 is coming on 22nd June 2017

Changes include :

- ❖ A Design Build Operate Contract (DBO) Contract
- ❖ An Alliance Contract (consultative version) { equivalent to the JCT Constructing Excellence Contract
- ❖ X12 is changed from 'Partnering' to 'Multi-Party Collaboration'
- ❖ *Contractor* proposals (for opportunities inc. whole life costs)
- ❖ Consensual dispute resolution & avoidance board clauses
- ❖ Early Contractor Involvement (ECI) clauses
- ❖ Building Information Modelling (BIM) clauses

Single Stage vs Two Stage for collaboration ?

If you want quality responses / proposals,
why on earth would you single stage tender
to the whole market ?

You would be

setting the *project up for* **FAILURE**

Which contracts be used to incentivise the Parties to collaborate under two stage tendering ?

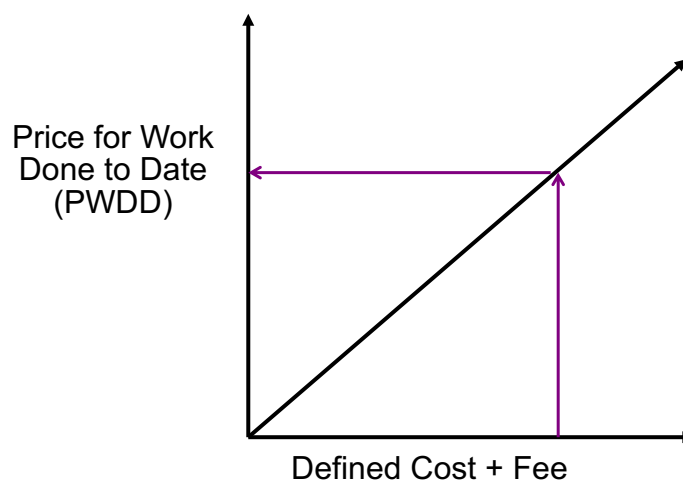
Yes, on Priced contracts :

- ❖ VE/opportunity clauses can be used to incentivise Contractor suggestions
- ❖ Bonuses for early Completion and KPIs with incentives attached can be used to incentivise performance which exceeds the contractual minimum i.e. superior performance.

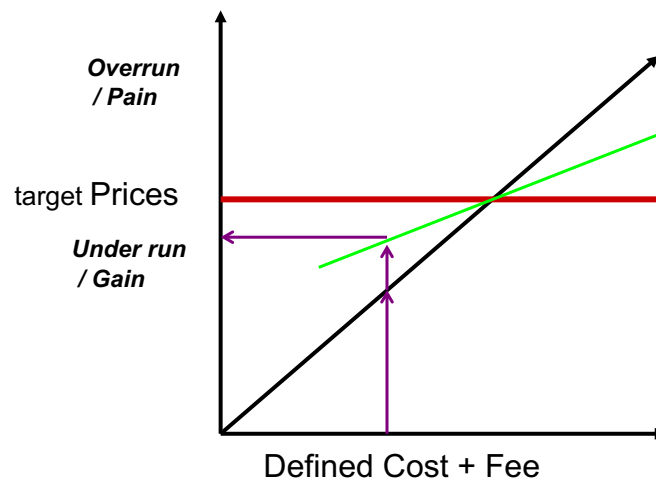
Which contracts be used to incentivise the Parties to collaborate under two stage tendering ?

- ❖ Target cost contracts share pain / gain and provide transparency of cost for Employer/Contractor collaboration.

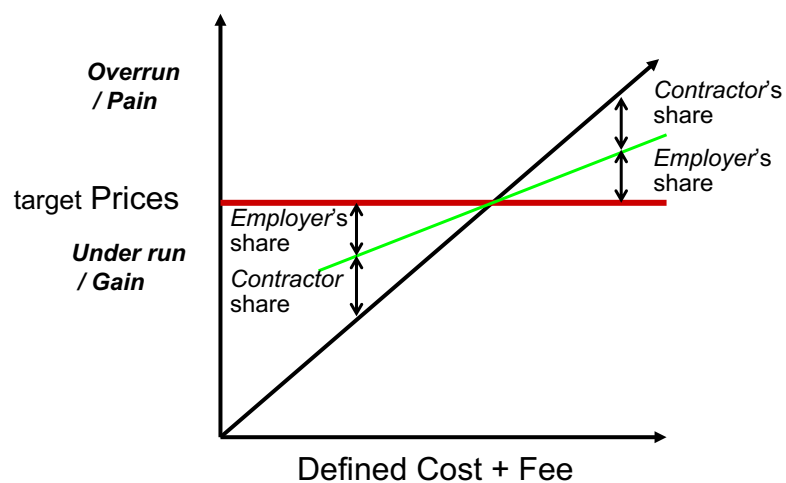
ECC Option E : Cost Reimbursable contract



ECC options C&D : Target contracts



ECC Options C&D : Target contracts



Which contracts be used to incentivise the Parties to collaborate under two stage tendering ?

- ❖ Target cost contracts share pain / gain and provide transparency of cost for Employer/Contractor collaboration.
- ❖ ECI clauses do what they say on the tin and under NEC ECI, the pain/gain can be around the *Employer's* budget.
- ❖ Alliancing arrangements incentivise the core team of suppliers to work together for mutual benefit.

Summary

- ❖ JCT vs. NEC3 ?

NEC3 has a bit more than a bit of an edge.

NEC4 will have definite edge.

- ❖ Single/two stage tendering ?

Two stage hands down.

- ❖ Which contracts can be best used to incentivise the Parties to collaborate under 2 stage tendering ?

Depends on contract circumstances and 'best fit' contracting strategy. NEC3 has more flexibility and NEC4 even more so.

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