



STEEL INDUSTRY
GUIDANCE NOTES

Modern standard forms of contract for modern, collaborative styles of procurement?

Standard forms of contract have been around for a long time. Many become so familiar that they are still routinely used even when they are no longer being updated (the DOM/1/2 system, for instance, still seems to be used more regularly than any other form of subcontract, although it has not been updated for some years now). It is not uncommon to hear that one system of contracts is used between client and lead contractor and another system altogether between lead and specialist contractors, leading to problems throughout the course of the contract.

The construction industry has historically had very adversarial relationships but thankfully now there is a move towards more collaborative forms of working and forms of contract are being developed to reflect that.

The three forms discussed here are all associated with collaborative styles of working: PPC 2000, JCT CE 2006 and NEC3.

The Association of Consultant Architects Standard Form of Contract/Standard Form of Specialist Contract for Project Partnering (PPC/SPC 2000)

This is the earliest well-known form of contract for collaborative working, drafted by Trowers & Hamblins for ACE, it allows for a team based multi-party approach to procurement. It was developed to address the recommendations in 'Rethinking Construction'.

All parties sign one agreement – although the drafters did find it necessary to produce a Specialist Contract as well, SPC 2000. SPC 2000 follows the format of PPC 2000 throughout and is designed so that specialist contractors contract on terms that are consistent with PPC 2000. The forms encourage open-book accounting and contain a specific duty for the parties to deal fairly with each other.

As with most of the modern forms of contract, PPC/SPC 2000 is written in easily comprehensible english; this has its detractors as well as its defenders.

It has been suggested as well that some may find the procedures in PPC 2000 offputting.

JCT Constructing Excellence Contract (JCT CE)

This contract is the newest of the three forms of contract discussed in this article. As its name suggests, it was developed in conjunction with Constructing Excellence and is specifically designed to encourage integration of the project team; the overriding principle is collaboration. In fact, according to Professor Peter Hibberd, secretary-general of JCT, the strength of the documentation is that it brings together "the concepts of collaboration and partnership ...within a rigorous legal framework."

The contract was only launched in March 2007 and so there is little experience of its use yet but it will be interesting to see whether these very different concepts have been successfully merged.

The approach is to use a series of bilateral contracts each made between the 'Purchaser' and the 'Supplier' – the wording chosen to be neutral so that it does not matter what role each is taking within the project. All sign the same contract – albeit with some differences.

There are two payment options for the project (target cost and contract sum) and the form can be used for design and build and for sectional work.

There is an optional 'Project Team Agreement' which is called an overarching multi-party pain/gain arrangement.

NEC3 Engineering and Construction Contract

NEC is the granddaddy of all the modern forms of contract, first printed in 1993, before the Latham review, 'Constructing the Team' was published. The current version is NEC3 2005. It complies with the government's Achieving Excellence principles and is the form of contract that has been chosen for the procurement of facilities for the Olympic Games.

In fact, NEC is not in itself a multiparty team contract, although its provisions do promote collaboration. NEC3 has a series of core terms which can be added to by way of a series of Options – very much pick and mix. This allows a fair degree of flexibility in procurement. Option X12 is a partnering Option.

NEC has a considerable and increasing fanbase. It is however a very process based form of contract. Good management is crucial and management costs can be heavy: so the contract needs to be such as to justify them. Attention to detail is vital from the start – the Contract Data sheets need to be read and completed very carefully.

NEC3 provides for an early warning system for matters that may affect time, cost or quality. It also has a risk register – matters can be included by either party and a risk reduction meeting can be called to deal with any particular matters. Openness is crucial and, used properly, NEC3 encourages early and fair resolution of problems.

Key Points

1. Many modern forms of contract actively seek to get away from the old adversarial arrangements that have dogged the construction industry for so long.
2. There are a number of collaborative forms of contract in existence, including PPC 2000, JCT CE and NEC3.
3. They are all written in comprehensible English and put obligations on the parties to deal fairly with each other.
4. They each have their strengths and weaknesses but all encourage collaboration.

Further sources of Information

Further information can be found at:

1. www.ppc2000.co.uk
2. www.jctltd.co.uk
3. www.neccontract.co.uk