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ALLIANCING USING NEC3 CONTRACTS

- In November 2016 the NEC published its guidance on implementing alliancing using NEC3 contracts entitled "Improving infrastructure delivery: Alliancing code of practice" (**NEC Guidance**).
- The NEC Guidance has been prepared in collaboration with the Infrastructure Client Group (**ICG**) - a group set up under the guidance of the Institution of Civil Engineers (ICE) to improve the efficiency of the construction sector and help deliver major cost savings.
- The NEC Guidance seeks to demonstrate how best practice through alliancing can be achieved by adopting the NEC conditions of contract.

First, what is alliancing?

Alliancing is essentially a form of collaborative working. Whilst "partnering" principles are not new to the construction industry (Lathem and Egan identified how efficiencies could be achieved through their adoption back in the 1990s), alliancing focusses on creating a collaborative and integrated team of partners in order to deliver a project. In order for an alliance to be truly effective – and aligned with a project's desired outcomes - the partners should have shared commercial goals and commit to embrace an agreed set of behaviours.

Importantly (for industry participants) alliancing sits high on the government's agenda. The Government Construction Strategy and the IUK Cost Review championed efficiency savings through the adoption of collaborative approaches – ultimately culminating in the publication of Alliancing Best Practice in Infrastructure Delivery (in 2014) and an Alliancing Code of Practice produced by the ICG.

This Alliancing Code of Practice sets out its best practice for alliancing under four limbs – "deciding", "creating", "delivering" and "sustaining". The NEC Guidance concentrates on the "creating" – providing guidance as to how the NEC3 conditions of contract can be utilised to create alliancing contracts.

What does NEC3 Guidance say?

The NEC3 Guidance comprises a detailed narrative together with worked examples and:

- provides that an alliance can be created by an employer entering into separate NEC3 contracts with each partner – the NEC3 suite of contracts providing a consistency of terms across the professional team (whether with the contractor, professional team or suppliers) – without the need for separate overarching agreements;
- suggests that the selection of secondary Option X12 (Partnering) enables the creation of multiple partnering arrangements on a project and is "ideal to support the creation of an alliance." The Partnering Information (which forms part of Option X12) sets out the detailed arrangements including the management of any alliance and the NEC3 Guidance provides suggestions as to its content (given its importance to the model);
- includes sample (essential) Contract Data entries required to create alliancing contracts; provides guidance on the measurement of costs (a key principle of alliancing being open book accounting – achieved through the NEC3's cost reimbursable Option E); highlights the importance of analysing the parameters under which overhead and profit can be recovered (to drive performance); considers how any incentivisation model will work (sharing "gain") – linked to savings through achieving stated project outcomes; and suggests that risk should (where possible) be shared across all partners to drive the correct behaviors.

Now what?

Time will tell how the industry will embrace the NEC3's alliancing model. The industry is certainly adopting alliancing – the ICE showcases a number of case-study projects as examples of successful alliancing in practice on its website. It is acknowledged however, that alliancing is less likely to succeed on more "traditional" construction projects – particularly those which require the risk of cost and time certainty to be passed on to the contracting supply chain.

Who to contact

The team at Addleshaw Goddard LLP will be happy to discuss the above with you. Please contact Joe Wilkinson or Mark Broomfield.

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