



香港建造商會
Hong Kong Construction Association



HKCA International Conference 2024

The Power of Industry-wide Collaboration for NEC

Tracking the Steps of Building Up Collaboration with the Client

Date: 19 April 2024 (Fri)

Time: 12:10pm – 12:30pm

Venue: Grand Ballroom, JW Marriott Hong Kong

Speaker: Ir Edmond Cheng

Executive Director of China Harbour Engineering Company Limited

FHKIE, FHKIoD, FHKIHT, FHKI Arb.

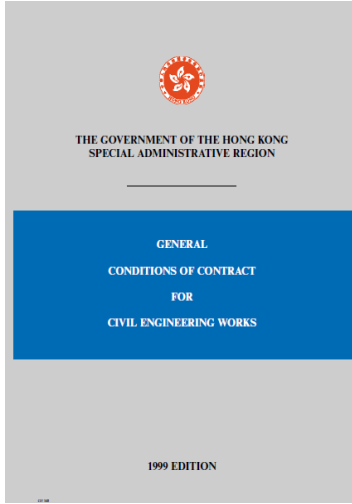
Council Member,

Vice-Chairman of Civil Engineering Committee, and

Leader of NEC Task Force Group

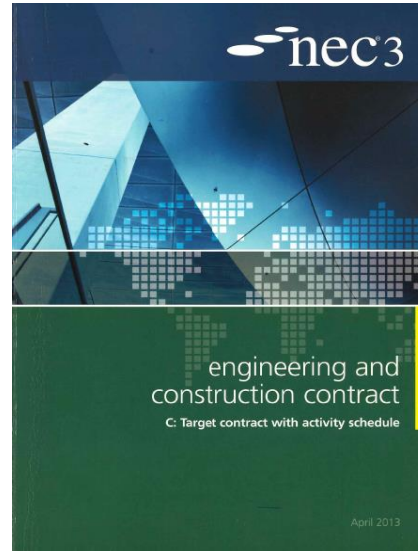
Hong Kong Construction Association

1. Introduction of NEC in Hong Kong



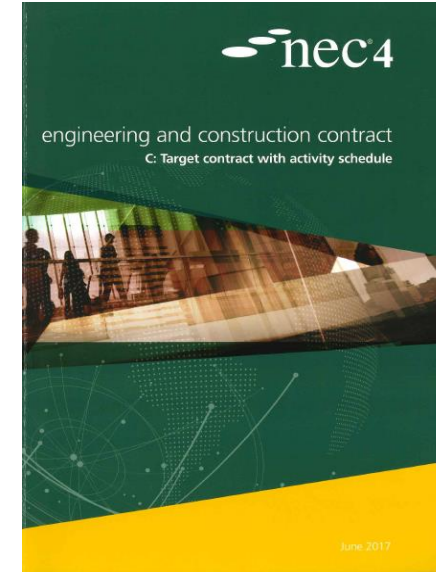
GCC 1999

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Transition



NEC3 in 2009 (Pilot scheme)

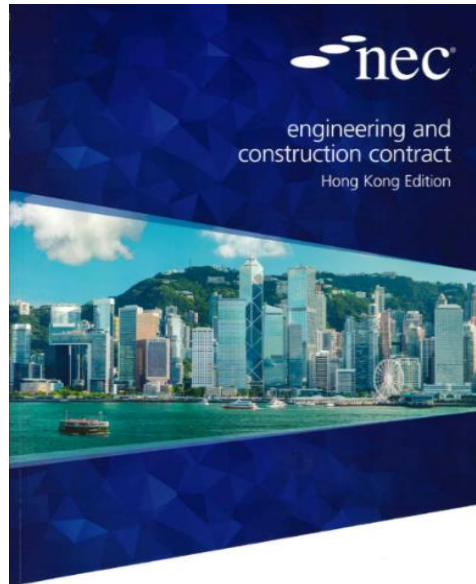
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Transition



NEC 4 launched in 2017

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NEC Hong Kong Edition launched in July 2023



2. Tracking the Steps of Building Up Collaboration with the Client

Following the successful completion of the first NEC pilot project on Fuk Man Road from 2009 to 2012, the Client – the Government of the Hong Kong i.e. the Development Bureau (DEVB) – began implementing a number of small-scale NEC pilot projects across various Public Works Departments.

In 2013, after gaining more experience with NEC adoption, the Client expanded the application of NEC in a progressive manner, including some contracts with larger value.

To align with the Client's strategy for the broader adoption of NEC projects, the Hong Kong Construction Association (HKCA) established regular meetings with DEVB. The goal of these meetings was to voice out the NEC-related issues and concerns collected from HKCA members.

From 2012 to 2023, HKCA highlighted many issues and concerns related to the execution of NEC contracts.

3. From 2012 to 2023, HKCA highlighted 15 major issues and/or concerns:

1. Avoid negative cash flow;
2. Forecast payment for works;
3. Project Manager's authority in compensation event (CE);
4. Standardizing the Z-clauses;
5. Procurement subject to C9 Subcontracting;
6. Pre-bid in tender stage;
7. Incentives to promote cost saving design (CSD);
8. "Reference quantity" for NEC option C tender;

9. *Adverse weather and its consequential effect;*
10. *Percentage limit on cap fee;*
11. *Independence of Project Manager (PM);*
12. *Increase of pain/gain share percentage;*
13. *Mind set of project staff;*
14. *Contractor Performance Report (CPR); and*
15. *Security of Payment Provision.*

Note: Issues 1 to 8 have positive feedback from DEVB (8 items, i.e. 53%)

Issues 9 to 15 are still under discussion between HKCA and DEVB (7 items, i.e 47%)

4. From 2012 to 2023, HKCA highlighted 15 major issues and/or concerns:

Items 1 to 8 have positive feedback from DEVB (8 out of 15 items, i.e. 53%):

2012 to 2023, HKCA raised issues and/or concerns relating to the execution of NEC Contracts				
	Time: NEC Contract: Option:	2012 Pilot Scheme (Option C)	Between 2013 and 2022 NEC Contract 3 or 4 (Option C)	From 2023 NEC Contract 4 (and NEC HK Version) (Option C)
1	Negative cash flow (Solid evidence of payment proof required)	(i) Assessment interval: 6 weeks (ii) No advance payment	(i) Assessment interval: 4 weeks (ii) No advance payment	(i) Assessment interval: 4 weeks; (ii) Advance payment allowed (2% of Contract sum or HK\$30m whichever is the lesser)
2	Forecast Payment (Preliminary, plant & materials and sub-contracts);	No	Yes, in some contracts!	
3	PM's authority in CE	HK\$300,000	HK\$800,000	HK\$1,000,000
4	Standardizing the Z-clauses	No standard library and no practice note for NEC	Standard library and Practice Notes available on DEVB web site with regular update	
5	Procurement subject to Subcontracting (C9)	Exceed HK\$5,000	Exceed HK\$50,000	Exceed HK\$1,000,000
6	Pre-bid agreements in tender stage	Not allowed	Allowed, mostly for works needed in early stage and some specific works.	
7	Incentives to promote cost saving design (CSD)	No, because cost saving from CSD deducted from the target cost immediately before construction		Yes, because cost saving from CSD deducted at the final cost assessment upon completion
8	Provision of "reference quantity" for NEC;	No	Yes/No, depending on Works Department.	Yes. However, there are many error, missing items, and lump sum items that may mislead the tenderers.

5. From 2012 to 2023, HKCA highlighted 15 major issues and/or concerns:

Items 9 to 15 are still under discussion between DEVB and HKCA (7 out of 15 items, i.e. 47%):

2012 to 2023, HKCA raised issues and/or concerns relating to the execution of NEC Contracts				
	Time: NEC Contract: Option:	2012 Pilot Scheme (Option C)	Between 2013 and 2022 NEC Contract 3 or 4 (Option C)	From 2023 NEC Contract 4 and NEC HK Version (Option C)
9	Adverse weather and its consequential effect	Cost payable	Cost not payable	Cost not payable (some weather condition become payable)
10	Percentage limit on cap fee	No cap	Cap at 30%	
11	Independence of Project Manager	Normally, the design consultant is appointed as the PM. There is question of independence and impartiality.		
12	1. Pain share %: (a) less than or equal to 110%: Contractor's share: 50% (b) greater than 110% : Contractor's share:: 100% 2. Gain share %: 50:50	(i) When pain share is observed during the construction, payment will be withhold at the interim stage. (ii) Then, the Contractor will suffer negative cash flow: (iii) HKCA wishes to increase the pain / gain share %.		
13	Mind set of project staff	Very skeptical	Becoming less skeptical but changing of the mind set is still a great challenge	
14	Contractor Performance Report (CPR)	HKCA's view is that CPR is not necessary in all NEC projects		
15	Security of Payment Provision	No	Yes, from 2023	

6. Survey in 2023 on NEC Project Administration Effectiveness for Public Works

In February 2023, HKCA carried out the “*Survey on NEC Project Administration Effectiveness for Public Works*” with HKCA’s members and reported the following findings to DEVB for consideration.

1. *The PM is not always acting in the spirit of mutual trust and co-operation.....;*
2. *The CPR shall not be applicable in the NEC projects.....;*
3. *C9 procedures shall be deleted.....;*
4. *The PM does not always accept revised programme in a timely manner.....*
5. *The PM would not be able to implement CE within a reasonable period of time.....;*
6. *The Employer’s pain share cap at 105 % under the Options C and D is unfair.....;*
7. *The Fee percentage cap of 30 % should be increased.....;*
8. *The NEC adopted in Hong Kong has been deviated from its original NEC intention because of the added ACC & the amended AoA. Some HKCA members commented that “Unless the Government can go back to the original NEC intention, NEC project would not result in lesser disputes when compared to GCC”; and*
9. *It is necessary to change the mindset of all parties to ensure the spirit of mutual trust and cooperation**.....*

7. Survey in 2024 on NEC Project Administration Effectiveness for Public Works

In January 2024, HKCA conducted a follow-up Survey and noted that the findings in 2023 (9 items above) remained unchanged and there are two more suggestion given by HKCA members:

- 1. Increase of the Advance Payment from 2% to 5% with no cap; and*
- 2. Additional payment before Chinese New Year to ease the cash flow.*

HKCA will report the above findings and continuously works with DEVB to explore solutions.

Overall, HKCA and DEVB had frank and open discussions over time. Both parties have collaborated to resolve many issues and/or concerns raised by HKCA members, as shown above.

HKCA is confident and have strong belief that **‘The Power of Industry-Wise Collaboration for NEC’** will benefit all parties involved and foster a change in the management culture of the construction industry.

Wishing a Good Collaboration for Success!

