

# NEC Secondary Option X22 Early Contractor / Alliance Involvement

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## About Us




GVE Commercial Solutions Ltd are a commercial management consultancy providing quantity surveying and programming services. Our consultants specialise in the NEC forms of contract.

Our NEC capability has principally been acquired through practical application and experience within 'live' project environments assisting both contractors and subcontractors.

Our specialist NEC services include;

- Commercial and contract management of projects,
- Bespoke training,
- Project health check reviews,
- Contract reviews,
- Programme management,
- Dispute avoidance and/or resolution.

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## Early Contractor Involvement

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### Definition

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*'Early contractor involvement (ECI) is where a contractor is formally engaged in the pre-construction stages of a project to assist with the development of the project.'*

There are many reasons why a Client may wish to use ECI, including;

- establish collaborative working relationships,
- early risk management,
- design optimisation,
- construction planning.

ECI is better suited to large, complex projects with a technically challenging design or uncertain construction risks.

ECI contrasts with the 'traditional' procurement model whereby the principal contractor is engaged on a 'lump sum' basis and is required to accept global responsibility for project risks.

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## ECI Approach – Stage One



An ECI procurement model is usually based upon a Two Stage approach.

### Stage One

This is the 'pre-construction' phase where a contractor is selected via a competitive procedure that focuses on technical and commercial criteria.

The contractor usually provides the following information with their bid;

- Stage one price,
- Pricing data to facilitate construction stage pricing,
- Specified technical information.

Once appointed the contractor will either develop the design or contribute towards this to produce a cost effective and compliant solution.

The Contractor is either engaged via a single contract with an ECI procedure or a pre-construction service agreement specific to this stage.

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## ECI Approach – Stage Two



### Stage Two

This is the 'construction' phase which follows a submission proposal by the Contractor that is accepted by the Client.

There is a 'break point' between the Stages to enable the Client to decide on how they wish to proceed.

Where the Stage One Contractor does not perform as required, the Client retains the right to appoint another Contractor.

The appointed Contractor would adopt responsibility for the design, completing any outstanding detailed design activities, before undertaking the construction works.

The Contractor is usually incentivised to achieve specified targets.

The Contractor either continues to be engaged via a single contract with an ECI procedure or via a design and build works contract.

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## ECI Benefits



- Reduction in construction time.
- Reduction in costs.
- Promotes a more collaborative relationship.
- Improved integration between design and construction.
- Earlier procurement of long lead items.
- Good understanding and management of the associated risks.
- Enhanced opportunity for innovation.
- Earlier commitment of construction resources.

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## ECI Considerations



- Strong leadership and support is required from the Client.
- Possible disruption and expense where the Stage One Contractor does not proceed to Stage Two.
- Intellectual Property Rights.
- Ensuring 'value engineering' proposals are thoroughly considered and reviewed prior to Stage Two.
- Transparency and trust is key to success.
- Careful consideration of Stage One requirements to ensure that a 'competitive price' is established for Stage Two.
- Retention of Stage One resources to ensure continuity.

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**NEC and ECI**

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**NEC and ECI**

On 27 November 2015, NEC published an additional ECI clause for use with the NEC3 ECC form of contract with main option C and E.

The additional ECI clause closely followed the ECI model adopted by the Highways Agency in the early 2000's.

When NEC4 was published in 2017, the ECI clause was included as secondary option X22 in the NEC ECC form.

The main difference was that 'use of material' (IPR) was not included as this requirement was addressed via a new ECC secondary option X9.

When the NEC4 ALC contract was published in 2018, the ECI clause was included as an X22 option.

This option X22 clause was revised as part of the October 2020 amendments to the NEC forms.

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## NEC Suite



Secondary option X22 can be found in the following NEC forms of contract:

- Engineering and Construction Contract (ECC),
- Alliance Contract (ALC).

For the ECC form this secondary option specifically applies to Main Options C and E.

Although the principal intent of the option is the same, the ECC form contains significantly more detail due to the difference in the way the forms of contract operate.

## ECC X22.1



### Identified and defined terms

This introduces the defined terms of;

- Access Dates (*access dates*),
- Budget,
- Project Cost,
- Stage One,
- Stage Two,
- Pricing Information.

These terms are supplementary to those stated elsewhere in the conditions of contract and are used to administer the obligations and requirements under option X22.

The ALC form only includes; Access Dates, Stage One and Stage Two under X22.

## ECC X22.2



### Forecasts

The *Contractor* provides detailed forecasts of the total Defined Cost for Stage One to the *Project Manager*, which;

- are prepared at the intervals stated in Contract Data,
- comply with the requirements in the Scope,
- are subject to an acceptance procedure by the *Project Manager*,
- determine the work that is treated as Defined Cost.

The *Contractor* also prepares forecasts of the Project Cost in consultation with the *Project Manager*, which are;

- prepared at the intervals stated in Contract Data,
- accompanied by an explanation of the changes since the previous forecast.

There are no corresponding requirements within the ALC form.

## ECC X22.3



### Proposals for Stage Two

At the end of Stage One, the *Contractor* prepares and submits its proposals for Stage Two, in consultation with the *Project Manager*, which;

- are submitted in accordance with the submission procedure in the Scope,
- include a forecast of the effect on the Project Cost,
- comply with the requirements in the Scope,
- include a forecast of the effect on the Accepted Programme,

In addition the *Contractor* submits to the *Project Manager*;

- a revised programme,
- any changes to the Access Dates, Key Dates and Completion Date,
- the total of the Prices, assessed using the Pricing Information.

The *Contractor* obtains approvals and consents from Others.

The ALC form contains a procedure which is similar in principle.

## ECC X22.4



### Key persons

The *Contractor* may not replace any *key person* during Stage One unless;

- the *Project Manager* instructs so,
- the *key person* is unable to continue to act.

The *Client* may have placed importance upon the proposed *key persons* as part of the tender evaluation criteria.

The *Contractor* may not change any *key person* to suit their own purpose, although it doesn't state within X22 what could happen if this did occur.

There are no corresponding requirements within the ALC form.

## ECC X22.5



### Notice to proceed to Stage Two

The *Project Manager* issues a notice where;

- the *Contractor* has obtained approvals and consents from Others,
- changes to the Budget have been determined,
- the total of the Prices for Stage Two is agreed,
- any changes to the Access Dates, Key Dates and Completion Date are agreed,
- the *Client* has confirmed the works are to proceed.

Where a notice is not given, the *Project Manager* issues an instruction to remove Stage Two from the Scope.

Where a notice is not given for one of the reasons specified, the *Client* may appoint another contractor to complete the Stage Two works.

The ALC form contains a procedure which is similar in principle.



## ECC X22.6



### Changes to the Budget

Changes may occur for the following reasons;

- the *Project Manager* gives an instruction,
- an event stated in Contract Data.

Any instructed changes would relate to a change to the *Client's* requirements stated in the Scope.

Additional 'events' may include;

- budgeted cost where an accurate forecast could not be made,
- *Client* risks which the *Contractor* has no control or influence over.

The *Project Manager* and *Contractor* either agree the changes to the Budget or, if unable to agree, they are determined by the *Project Manager*.

There are no corresponding requirements within the ALC form.

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## ECC X22.7



### Incentive payment

Where the final Project Cost is less than the Budget, the *Contractor* is paid the *budget incentive*, which is stated in Contract Data.

The *budget incentive* is the stated percentage multiplied by the difference between the final Project Cost and the Budget.

Where main option C is selected, the *Contractor* retains the share calculation for the 'construction costs', which should be considered when assessing the *budget incentive*.

The *Contractor* is not required to contribute to any Budget overspend.

There are no corresponding requirements within the ALC form.

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## Oct 2020 Amendments



The differences from the ECC 2017 to the 2020 version are as follows;

- Access Dates is a new defined term,
- Proposals for Stage Two are prepared in consultation with the *PM*,
- Information submitted at the end of Stage One is now defined,
- A new reason for not accepting a submission is that it will cause unnecessary delay to Access Dates, Key Dates or the Completion Date,
- The *Contractor* can propose changes to the Access Dates, Key Dates and / or Completion Date.

The differences from the ALC 2018 to the 2020 version are as follows;

- Access Dates is a new defined term,
- Proposal for Stage Two includes the effect on Access Dates,
- New requirement added to formally oblige the *Alliance Manager* to make certain changes where a notice to proceed to Stage Two is issued.

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## Things to Consider ...

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## Things to Consider ...



Is ECI under X22 appropriate for your project?

Commit appropriate resources to manage the entire procedure.

At what point in the project development phase would it be most appropriate to enter into a contract with ECI?

How do you prevent the *Contractor* from retaining good 'value engineering' ideas for Stage Two?

Careful consideration of the percentage for *budget incentive*.

Which Budget 'change events' should be included in Contract Data.

What about use of Main Option A for the 'construction works'?

Use of some form of mediation to 'agree' the required contractual information for Stage 2.

Use of other secondary options in conjunction with X22.

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