

NEC4 IN SPANISH: A NEW HORIZON for Collaborative Contracting IN LATIN AMERICA



On March 6th in Lima, the New Engineering Contracts (NEC) will launch the official translation into Spanish of NEC4 contracts, starting with the Engineering and Construction Contract (ECC), as well as the accompanying guidance notes and training. The President of the Confederation of International Contractors' Associations (CICA), Juan Armando Vicuña from Chile, will attend the event. We spoke with Rekha Thawrani, Global Head of the New Engineering Contracts (NEC), who explained: "Since NEC Contracts highly successful debut on the 2019 Pan American Games, the NEC has been increasingly adopted in public sector procurement in Peru as an alternative to

Since their implementation at the 2019 Pan American Games, NEC contracts have demonstrated their ability to optimize the execution of works, facilitating risk management and promoting communication between the parties involved. Now, with the support of the Ministry of Economy and Finance of Peru, the possibility of extending this model to more projects opens, consolidating an approach based on quality and sustainability.

traditional contracts. To date, this has been limited to major infrastructure programmes carried out under Government to Government arrangements, but the path is now open to use the NEC much

more widely in public sector projects." The Ministry of Economy and Finance of Peru is using NEC standard models of contracts in a context of Peru's new Public Procurement Law. Rekha

Thawrani also underlined that "the translations would help to create consistency and a body of knowledge in Spanish setting the foundations for adoption of NEC in the rest of Latin America".

This major shift in the approach comes with the need to efficiently deliver the construction projects. Álvaro Beckdorf from Grupo Flesan Peru, highlighted that NEC contracts encourage teamwork and open communication. Success lies in understanding that collaboration means meeting contractual obligations together and achieving project objectives, rather than simply following the instructions of one of the parties. Grupo Flesan has an extensive



experience of collaborative contracts in Peru and achieved hydraulic infrastructure work and de-silting in the rivers Chico and Matagente, a tower with a LEED certification but also simpler projects gathered in packages like priority education projects including elementary schools, a college or commercial malls.

There is a broad spectrum with various options for collaborative contracting, from alliancing to partnering. The main providers of contracts like NEC, The American Society of Civil Engineers (ASCE) or lawyers like David Mosey with the FAC-1 UK, or FIDIC have developed or are currently working on standard forms to meet the demand. Among the key features there is an integrated delivery team made of the Client, Project Manager, Contractors, Designers and Specialist Subcontractors to maximize the outcomes and achieve the jointly defined Key Performance Indicators. There is a shared management of risks through early warnings and systems of joint decision-making. Target cost contracts with a pain-and-gain mechanism can be implemented. Transparency and an open-book approach are encouraged. The introduction of an agile on-site dispute resolution mechanism is encouraged even though it is also the case for traditional projects.

One of the most appreciated characteristics is the possibi-



lity of Early Contractor Involvement (ECI) which provides a development phase for complex projects. In Brazil, the 167 million euros EPC contract awarded to improve the existing port infrastructure in the Port of Navegantes follows a period of ECI during which Portonave, BESIX and Empresa Construtora Brasil worked collaboratively to determine the best technical solutions, develop the design and optimized prices by working in an open book. The problem of the client was a technical problem rather than a budget issue and the ECI helped reassure the foreign contractors on the taxes and currency fluctuations risks.

Gabriel Armanet, Senior Director for the construction practice of FTI in Paris underlined that "Achieving an appropriate level of design maturity before launching the ECI tender is essential.

However, if the Client overdevelops the design prematurely it may lead to lost efforts or limit the contractor's ability to improve buildability and cost efficiency." Gabriel Armanet also explained that defining the adequate budget is a crucial step. There are different possibilities in sharing the cost risks. A pain/gain share motivates the contractors to minimise the costs for the Client, while when costs are simply reimbursed there may be more risks of cost slippages.

Collaborative approaches may drive innovation and facilitate compliance with the requirements for the decarbonization of the projects considering the whole life-cycle of the infrastructure as sustainable design relies critically on knowledge found in construction supply chains. The Contractor exceeding the climate targets can be rewarded. Collaboration to

adapt the quantities to the strict needs of the projects can limit wastage significantly.

While the gains from collaboration should also be checked against the costs of initiating and administrating the collaborative framework, it can be demonstrated that collaborative processes can benefit smaller projects by leveraging the multidisciplinary expertise of all the parties involved.

Developing standard forms for collaborative contracting can save time and money and leave less room for disputes if the standard forms are not amended and preserve the initial and fair balance of risks. Moving from the lowest cost approach to quality would be a positive signal. Choosing the right partners with the right skills from the outset remains a key driver of success and shall be a key step to attracting young and diverse talents to the construction industry and recruiting the next generation. **N&C**