

The Other Side of Contracting Understanding your Contractor



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Introductions

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Dispelling Two Myths

1. Contractors will readily compete for anything going
 - Selective
 - Formal & detailed bid no bid process
 - Tender document & proposed contract evaluation
 - Time / resource evaluation
 - Review process (mid & final)
 - Risk Review
 - Management sign-off
2. Risk can be shared

What is the Best Contract for FM?

- NZS3910 - Conditions of Contract for Building & Civil Engineering Construction
- NEC3 – New Engineering Contract
- FIDIC - International Federation of Consulting Engineers
- Alliance contract model
- Masterspec
- Straight schedule of rates – e.g. HNZ
- Easy DIY Contractor Agreement – www.lawlive.co.nz
- Agreement specific - lawyers

Downer FM Contracts



- 10 x Agreement Specific
- 3 x Straight Schedule of Rates
- 1 x NEC3
- 2 x Consultants

One contract has been rolled 3 times in 10yrs with complete re-writes each time

A recent contract took 10months post start date to execute

Horowhenua District Council Network Contracts

HDC Contracts

- 5 Network Contracts
 - Water
 - Roading
 - Parks
 - Cleansing
 - Property
- 10 Service Contracts

Choosing an appropriate contact model was vitally important to meet Council objectives

New Engineering Contract

What is it?

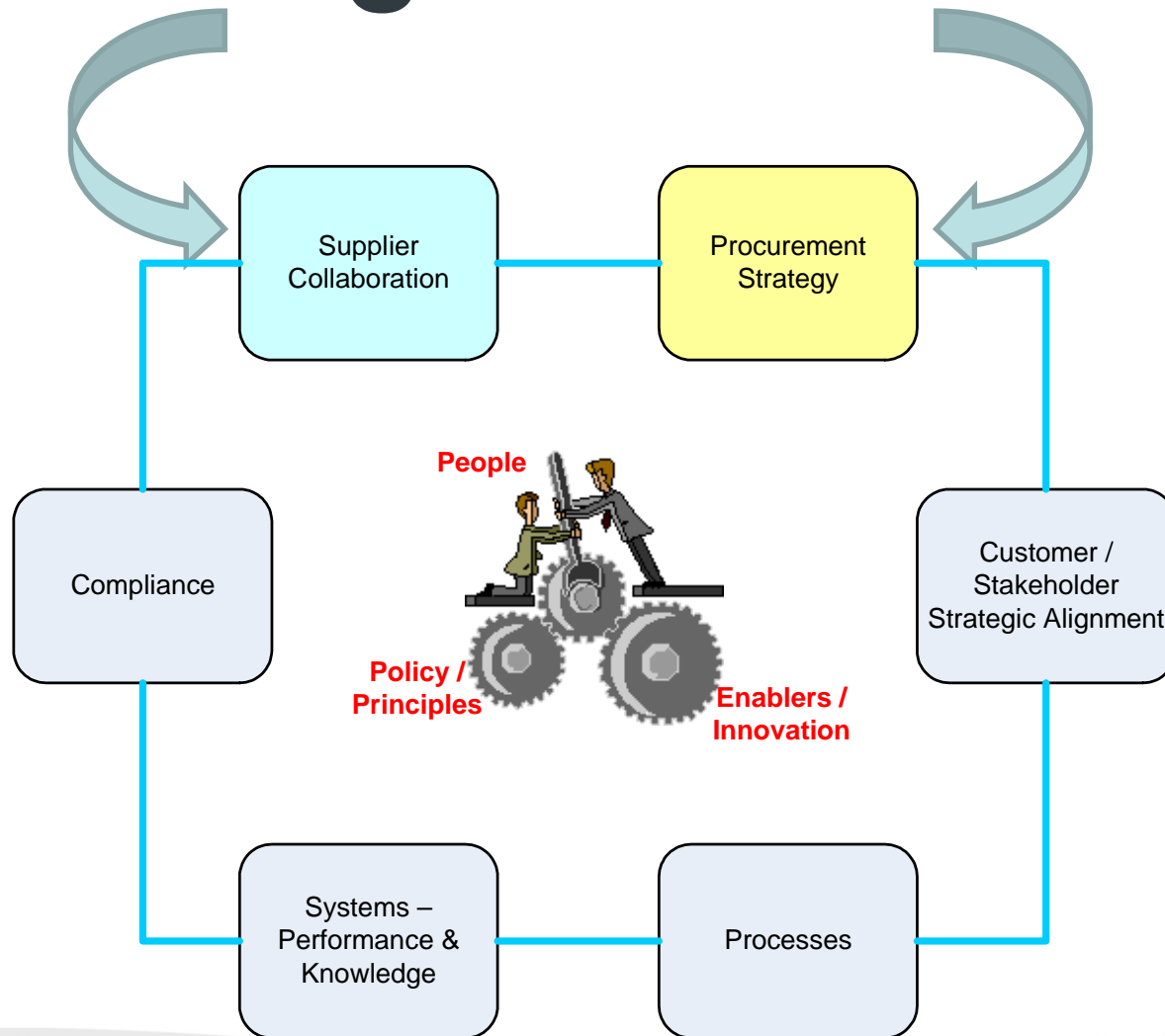
NEC3 is a family of contracts that facilitates the implementation of sound project management principles and practices as well as defining legal relationships.

- Underpinned by a non-adversarial philosophy
- Stimulates good relationship management between the parties
- Flexible use
- Clear and simple document
- Widely used in the UK and growing in popularity throughout the world

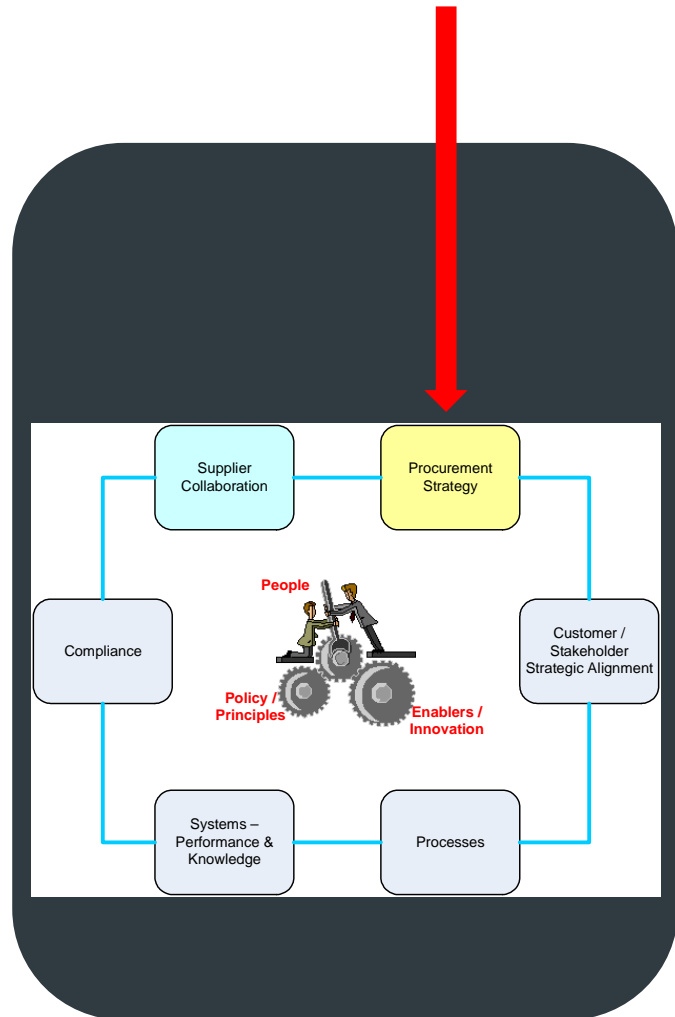
Why Did HDC Choose NEC3

- HDC sought a contract model that supported a collaborative working relationship
- Frustration with the current contract model – NZS3910
- A desire to get better value for money from a holistic network vision
- Multiple services under a single document
- Short version for service contracts
- Stronger management of collaborative disciplines (e.g. early warning & risk register)

Strategic Framework

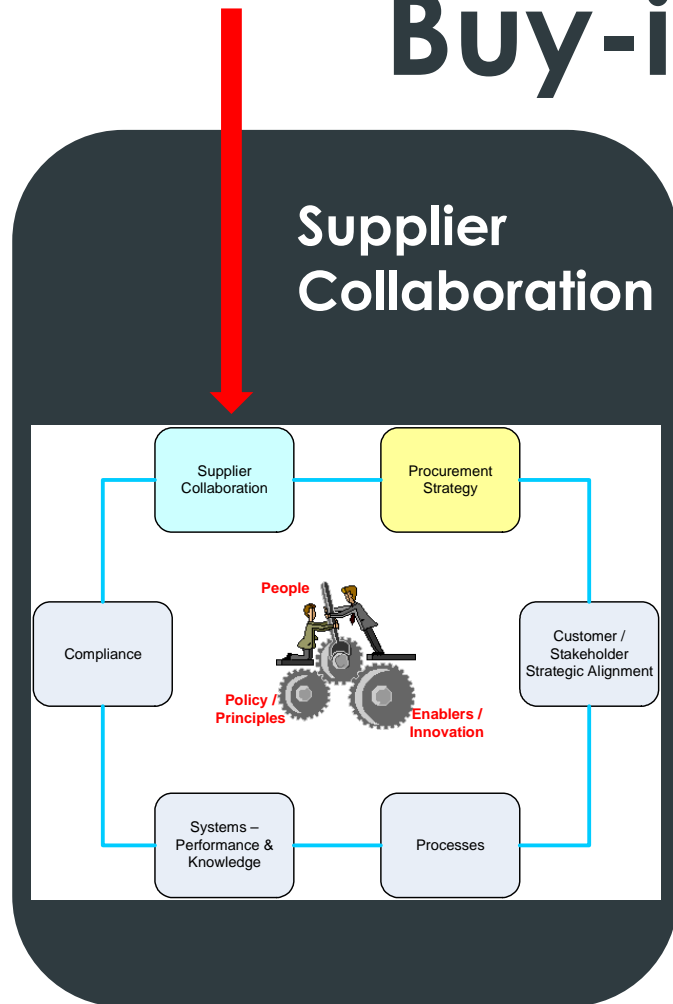


The Process of Going to the Market



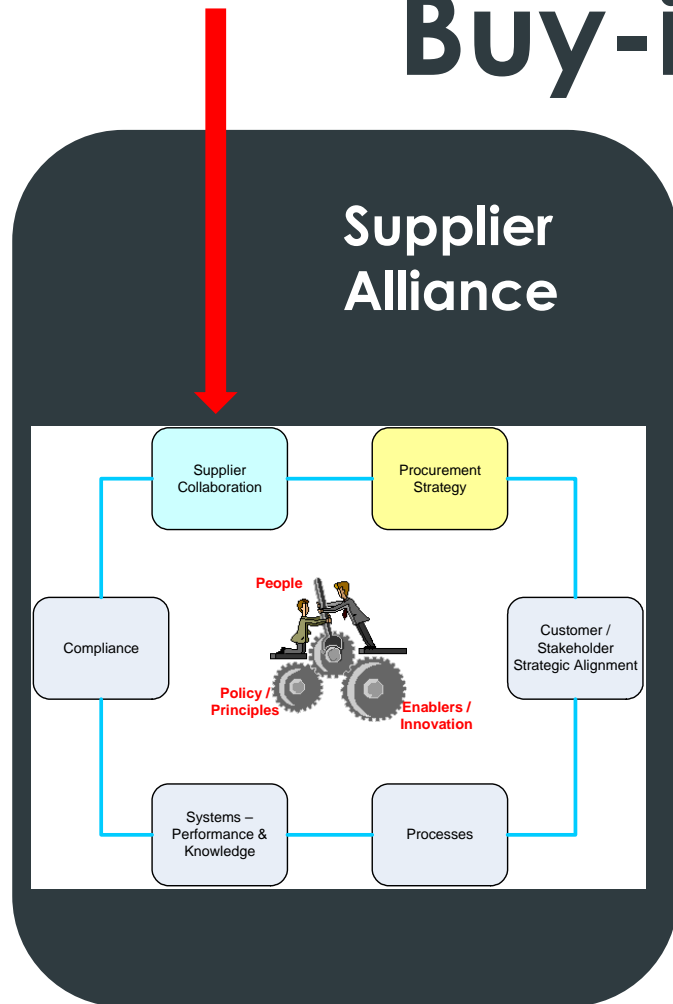
1. Draft strategy prepared
2. Engagement of a Facilitator
3. Feedback from interested parties
4. Open forum presentations
5. Formal & informal submissions
6. Final Strategy
7. Sanctioned by Council

The Process of Gaining Mutual Buy-in – Phase One



- Open communication
- No hidden agendas
- Early consultation with HDC tenders subcommittee
- Early supplier (contractor) involvement
- Draft documents widely distributed
- Engagement of an impartial facilitator (although funded by HDC)

The Process of Gaining Mutual Buy-in – Phase Two

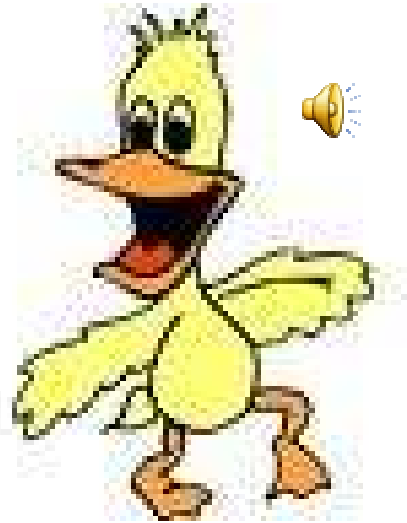


- Kept to timetable
- Supplier Workshops
- Open schedule reviews
- Give & take

Underpinned by a comprehensive but concise Relationship Manual

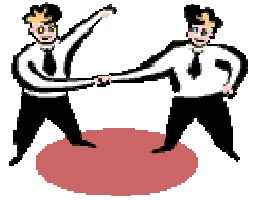
“Contractually there isn’t anything that you can do with NEC that you can’t do with NZS3910 but looking and quacking like a duck helps”

Tim Munroe – Infracure Ltd



Risk

Business Relationships



Collaborative

Co-operate

Accord

Congruent

ALLIANCE

Team Work

Affiliation

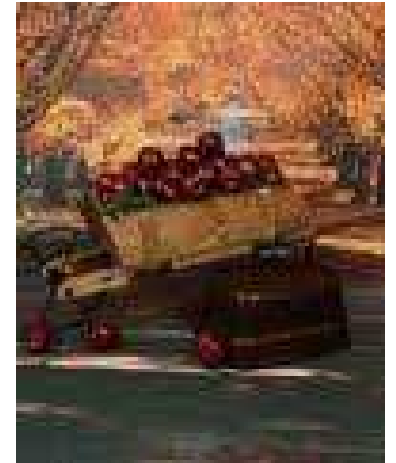
Bipartisan

Synergy

PARTNERSHIP

What Upsets The Apple Cart?

- Expectations are not aligned
- Poor performance
- Lack of people, plant, processes or systems
- Financial issues
- Risk



RISK

Contractors View of Risk

- Competent contractors will conduct a risk review at time of tender
- Increased risk = increased price
- Cost of risk is defined as risk premium or risk contingency
- If a tender is silent on risk the cost will be 'buried' in the tenderer's submission
- A tool to manage risk (such as a **risk register**) will:
 - Draw fair bids without risk loading
 - Ensure risk is assigned
 - Remove confrontation

Can Risk be Shared?

Is it safer for one person to take full control of and drive a car

or

For one person to steer and another to operate the pedals?

NO

- A bundle of risks can be shared
- Each risk in the bundle must be owned
- *It might be sensible for one person to be responsible for driving the car and another responsible for navigating*



Risk Management

- Be clear about which party is to bear the risk
- Document the arrangement clearly
- Manage the risks you are responsible for
- Distinguish the line between monitoring & managing the risk
- Do not purport to share an individual risk
- Align expectations
- Precisely specify outputs

Questions

