Cite this article

Gilmour J (2019)

Book review.

Proceedings of the Institution of Civil Engineers – Management, Procurement and Law **172**(6): 264, <https://doi.org/10.1680/jmapl.19.00042>

Book Review

Paper 1900042

Received 26/09/2019; Accepted 26/09/2019

Published online 07/11/2019

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Book review

NEC4 Resolving and Avoiding Disputes

Robert Alan Gerrard and Patrick Waterhouse. ICE Publishing, London, UK, 2019, ISBN 978-0-7277-6404-1, £49-00, 160 pp.

In keeping with other commentary or companion texts published by ICE Publishing to assist users of the NEC Engineering and Construction Contract (ECC) contracts, this book is presented in a conversational style, which makes it easy to dip in and out of, whether reading it cover to cover or researching specific areas of NEC4. Roughly speaking, the book is split into three main areas: (a) day-to-day contract administration, (b) dispute administration and resolution options under NEC4 and (c) secondary options.

Contract formation and day-to-day contract administration provide the most fertile ground for dispute avoidance, whether by incorporating an equitable risk allocation or diligent administration of contract clauses accompanied by orthodox interpretation and application of clauses to events. Unsurprisingly, for a book focused on avoiding disputes, the majority of the ink is spent in contemplation of these matters. Following a refresher on the NEC philosophy, the authors turn to consider six primary areas: communications, early warnings, programme, payments, compensation events and termination. Key clauses from the NEC4 ECC are repeated within the text, which greatly assists in the flow of the text, and cross-referencing of related clauses is provided. Both authors are seasoned NEC trainers and are involved in dispute resolution; this insight is used to provide guidance concerning clauses, areas or behaviours that have become the 'usual suspects' in contract disputes. As appropriate for a complete discussion on a given theme, the authors refer to matters arising from main option clauses, secondary option clauses and Z clauses. While this works well for the main and secondary option clauses of the native contract, discussion concerning Z clauses is light, as is perhaps typical of NEC-branded commentaries.

Having spent around two-thirds of the page count considering how to avoid a dispute, attention now turns to what to do if a dispute arises and the dispute resolution options available in NEC4 contracts. Chapter 8, while continuing to focus on ECC, does summarise the dispute resolution procedures provided for in each contract within the NEC4 family of contracts. In chapter 9, the authors challenge the wisdom of the parties rushing to a tribunal, cautioning that once the tribunal machinery has been put in motion, events then take on a life of their own and parties can quickly become passengers in their own dispute. The authors counsel the parties to value remaining in control of a dispute and not to give that up lightly, and certainly not to jump straight from the site office to the courtroom without contemplating the alternatives, such as mediation or senior representative review. The discussion returns to NEC4 dispute resolution procedures, considering senior representatives; adjudication under Option W1; adjudication under Option W2; dispute avoidance boards under Option W3; and a brief look at the NEC4 Dispute Resolution Services Contract. The discussion is presented in a briefing style, suitable to introduce the subject and promote awareness of the main elements and considerations.

The book concludes with a review of secondary option clauses and how these may assist or detract from the goal of dispute avoidance.

Overall, the book is a useful addition to an NEC4 ECC user's library. It is thorough, but not always in-depth, and perhaps seeks to improve the practice of novice or intermediate users rather than add significantly to the knowledge of an advanced user, although any user of the NEC3 ECC would find it of value in transitioning to the NEC4 ECC.

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