

NEC4 Design Build and Operate contract may have limited use in SA

NEC4 Design Build and Operate (DBO) is the latest addition to the international NEC suite of contracts. It was developed to cater for contracts where there is a single point of responsibility for the development and construction of an asset. But it is unlikely to pioneer a new direction for NEC contracts, says construction specialist MDA Consulting director Euan Massey.



© seoterra – 123RF.com

Instead, he believes that its use will be limited in the South African context and that using the new contract will require extensive work by legal experts with a specialised understanding of the DBO contracts in the construction sector.

“The NEC, which strives to achieve simplicity and flexibility with each new version of its suite of contracts, leaves the document sparse on details of how to structure the relationship between phases crucial to DBO contracts: the design-build phase and the operations phase. It envisages that important aspects of the financing of the project are covered in the scope of works and therefore does not cover maintenance management nor the replacement of key assets. Payment options are also not included in the NEC4 DBO contract,” says Massey.

Ownership not retained

In a significant departure from other DBO contracts, contractors do not retain ownership of the works until full payment has been made. “Once the works have been completed, ownership of the works transfers to the commissioning party, commonly known as the employer. As a result, NEC4 DBO is likely to only be used where the employer finances the works,” he says.

New concepts in the NEC4 DBO are operational requirements and a performance table. These allow the parties to agree on performance targets and an associated pain/gain share and may include timeous completion of the works, throughput and maintenance. The assessment of change is carried out with reference to defined cost and the performance table.

Overall, Massey says that while the NEC4 DBO aligns with the other NEC contracts, its use will be limited in South Africa given that most DBO contracts are contractor financed and relate to works with significant design obligations. "As a result, the NEC4 DBO contract will require extensive work in adequately defining the scope," he says.

For more, visit: <https://www.bizcommunity.com>