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CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 52: NEC ECC High Level User Guide

Introduction

Training and development support is a key part of CECA's core offer for its membership and working in conjunction with GMH Planning it has delivered a programme of training events around the NEC Form of Contract across several CECA UK regions.

In addition to this training, a series of monthly NEC Contract Bulletins are being produced for both Contractors and Subcontractors to improve practical awareness on key topics within the NEC. The coverage, whilst not exhaustive, is intended as a general overview on some of the contractual principles to increase a wider understanding in support of more sustainable outcomes.

For the purposes of these bulletins a contractual relationship between a "Client" and "Contractor" is assumed. The same rules/principles also apply if the contractual relationship is between a "Contractor" and a "Subcontractor" and so the term "Contractor" will be used to describe both parties.

These bulletins are based on the latest NEC4 family of contracts, but the same principles and rules would apply where parties are engaged under an NEC3 form of contract.

Please respond to Lucy Hudson should you require any further information on the CECA NEC4 Bulletins via e-mail: lucyHUDSON@cecasouth.co.uk.

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk where you will find a wealth of free [NEC Guidance Notes](#), [NEC FAQs](#), and other helpful measures.

NEC ECC High Level User Guide

Introduction

This overview is intended to be a quick reference guide as to where a particular subject matter can be found within the contract. This guide focuses on the most commonly used and relevant day to day clauses likely to be most relevant.

For a specific project, any bespoke clause amendments introduced by a Client would have to be taken into account. Sections 1-8 are the core clauses for every ECC option A-F contract, with option specific clause details starting on page 5:

Section 1 – General

Clause

Actions

- reminder that all Parties are to act as stated in the contract 10.1
- obligation to also act in a spirit of mutual trust and cooperation 10.2

List of defined terms (in alphabetical order) 11.2

Communications

- all communications in a form that can be read, copied and recorded 13.1
- communications are only valid if submitted by the system stated in Scope 13.2
- responses within period for reply or as stated in contract 13.3
- Project Manager may extend period for reply by agreement 13.5
- any notification has to be separate from any other communication 13.7

Project Manager (PM)/Supervisor

- Project Manager acceptance does not transfer liability from Contactor 14.1
- Project Manager/Supervisor must formally delegate actions in writing 14.2
- Project Manager can issue instructions to change the Scope 14.3

Early Warnings

- reasons for which an early warning should be notified 15.1
- either party can instruct the other to an early warning meeting 15.2
- actions expected of all parties at an early warning meeting 15.3
- updating of the Early Warning Register by the Project Manager 15.4

Contractor's Proposals

- Contractor can propose value engineering to reduce Prices 16.1
- Project Manager responds to value engineering proposal within 4 weeks 16.2
- Contractor may propose a change to Working Areas 16.3

Ambiguities

- notifying and resolving of an ambiguity between contract documents 17.1
- notifying and resolving of an illegal or impossible requirement 17.2

Section 2 - Contractors Responsibilities

Providing the Works

- Contractor obligation to Provide the Works in accordance with Scope 20.1

Design

- Contractor design responsibility as stated in Scope 21.1
- Contractor to submit design and Project Manager to accept/not accept 21.2
- design submission can be submitted in parts if suitable 21.3

People

- Contractor to provide key person(s) stated in CD2 or suitable replacement 24.1
- Project Manager can instruct Contractor to remove any person 24.2

Working with Client and Others

- requirement for Contractor to work with Others as instructed/in Scope 25.1
- liable costs if Contractor fails to achieve Key Date in CD1 25.3

Subcontracting

- requirement to submit proposed subcontractor for acceptance by PM 26.2
- reasons under which PM could not accept a subcontractor 26.2
- also have to submit contract terms for subcontractor for acceptance 26.3

Other responsibilities

- Contractor obeys instructions given in accordance with contract by PM 27.3
- Contractor acts in accordance with Health & Safety as stated in Scope 27.4

Disclosure – Contractor may only publicise works with Client’s agreement 29.2

Section 3 - Programme

Starting Date / Completion Date

Contractor does not start work on site until the first access date 30.1

Project Manager certifies date of Completion 30.2

The programme

- requirement for Contractor to submit first programme for acceptance 31.1
- detailed list of what is required to be shown on programme for acceptance 31.2
- reasons for PM not to accept an programme (otherwise should accept) 31.3

Revising the programme

- list of what should be shown on a revised programme 32.1
- intervals for programme submissions to Project Manager 32.2

Acceleration

- either party can propose acceleration which PM can then instruct quote 36.1
- Contractor issues acceleration quote which PM accepts/does not accept 36.2

Section 4 – Quality Management

Quality Management System

- Contractor operates a quality management system in line with Scope 40.1

- quality policy statement and plan issued for Project Manager acceptance 40.2

Tests and Inspections

- requirement to carry out tests and inspections as per Scope/applicable law 41.1
 - requirement to notify Supervisor prior to tests being carried out 41.3
 - requirement for Supervisor to carry out tests/inspections 41.5
- Requirement to carry out tests prior to delivery where required 42.1

Searching/notifying defects

- Supervisor can instruct Contractor to search for a defect 43.1
- requirement Supervisor/Contractor to make each other aware of defects 43.2

Correcting defects

- requirement to correct a defect within the defect correction period 44.2
- Supervisor to issue defects certificate at end of defects date 44.3

Accepting defects

- can propose for defect to not be corrected and Scope changed accordingly 45.1
 - Contractor to submit resultant quotation saving to PM to accept/not accept 45.2
- Project Manager can assess costs of uncorrected defects and charge Contractor 46.1

Section 5 – Payment

Assessing the amount due

- Project Manager to assess the amount due at each assessment date 50.1
- definition of the amount due for each application 50.2
- if Contractor not submit application on time PM will assess at zero 50.4
- 25% PWDD can be withheld if no 1st accepted programme 50.5

Payment

- Project Manager to certify payment within 1week of assessment date 51.1
- confirmation of period within which payment should be made 51.2
- interest recoverable on items corrected on a later certificate 51.3
- interest recoverable on late payments 51.4

Defined Cost

- any Contractors costs not identified in Defined Cost are in the Fee 52.1
- Final Assessment – section on how/when final assessment is made at end 53

Section 6 - Compensation Events

Compensation events

- list of what events would be valid compensation events (21 reasons) 60.1
- ambiguity in Site Information favours Contractor 60.3

Notification

- PM can notify compensation event at time of issuing instruction 61.1

- PM instructs Contractor to produce quotation (and proceed in meantime) 61.2
- Contractor can notify a CE and can be time barred after a period if late 61.3
- PM to accept or not accept if Contractor has notified a CE 61.4
- deemed acceptance if the PM does not respond to reminder 61.4
- PM can advise that an early warning could have been given which wasn't 61.5
- PM can state assumptions for Contractor to base the quote upon 61.6
- no compensation events can be issued after Completion 61.7

Quotations

- PM can request alternative quotations for dealing with a CE 62.1
- Contractor to provide a quote and alterations to programme (if relevant) 62.2
- Contractor to provide quote within 3 weeks, PM response within 2 weeks 62.3
- Project Manager can instruct a revised quote (after explaining why) 62.4
- Project Manager can extend period for Contractor to produce quote 62.5
- Contractor's quote deemed accepted if no response to reminder 62.6

Assessment

- basis of quotes in relation to if should be actual or forecast defined cost 63.1
- only reasons stated for which Prices can be reduced 63.4
- definition of reasons for contractual movement in Completion Date 63.5
- PM may assess as though early warning had been given if it wasn't 63.7
- rules for allocation of risk within a compensation event quotation 63.8
- requires Contractor to act promptly and competently to a CE 63.9
- how ambiguities will be assessed in terms of a compensation event 63.10

Project Manager's Assessments

- reasons under which PM can make own assessment of a CE 64.1
- PM to notify Contractor of their own assessment of a CE 64.3
- deemed acceptance if PM no response to a notification of no assessment 64.4

Proposed instructions

- PM can instruct a quotation for proposed instruction 65.1
- Contractor submits quotation within 3 weeks and PM to respond 65.2
- if quotation not accepted PM can still instruct (and then assessed as CE) 65.3

Implementation

- implemented when CE accepted/assessed/deemed accepted 66.1
- Prices/Completion Date changed accordingly following agreement 66.2
- compensation event quote is not changed if later found to be wrong 66.3

Section 7 – Title

- title of materials transfers from Contractor to Client 70.1/2

- Supervisor marks Equipment, Plant and Materials outside Working Area 71.1
- Contractor has no title to anything found/existing on the site 73.1
- Contractor has title to materials from excavation and demolition 73.2

Section 8 - Risks and Insurance

- list of Client's liabilities 80.1
- list of Contractor's liabilities 81.1
- insurance cover details 83
- insurance policies and who needs to provide what to whom 84/5

Section 9 – Termination

- list of valid reasons for termination 91.1
- procedures to follow upon termination 92

Additional option A clauses

- option A specific identified and defined terms 11.2
- requirement for activity schedule to relate to items on programme 31.4
- clarifies that Activity Schedule is not Scope 55.1
- Contractor may submit revised Activity schedule for acceptance 55.2
- reasons PM has for not accepting a revised Activity Schedule 55.3
- adjustment of Prices in line with value engineering percentage 63.12
- ascertaining a new People Rate where required 63.16

Additional option B clauses

- option B specific identified and defined terms 11.2
- clarifies that Bill of Quantities is not Scope 55.1
- threshold at which a change in quantity is assessed as a CE 60.4
- if any change in quantity affects Completion, then it is a CE 60.5
- reasons to correct a mistake in B of Q which will be a compensation event 60.6
- hierarchy between B of Q and other documents (B of Q takes precedence) 60.7
- adjustment of Prices in line with value engineering percentage 63.12
- adjustment of Bill of Quantities for compensation events 63.15
- ascertaining a new People Rate where required 63.16

Additional option C clauses

- option C specific identified and defined terms 11.2
- Contractor provides forecast of total Defined Cost at contract intervals 20.4
- Contractor to submit pricing information for each subcontractor 26.4
- liability of costs for carrying out repeat test or inspection 41.7
- payments in other currencies 50.7
- opportunity for finalising Defined Costs for part of the works 50.9
- requirement for Contractor to keep records 52.2

- PM assesses Contractor's share of the Prices and actual defined cost 54.1/2
- provisional assessment of Contractor's share following Completion 54.3
- final assessment of Contractor's share following Completion 54.4
- clarifies that information in Activity Schedule is not Scope 55.2
- Prices are not reduced if it was a Contractor idea to reduce defined cost 63.12
- rules on assessing share in event of termination of the contract 93.4

Additional option D clauses

- option D specific identified and defined terms 11.2
- Contractor provides forecast of total Defined cost at contract intervals 20.4
- Contractor to submit pricing information for each subcontractor 26.4
- liability of costs for carrying out repeat test or inspection 41.7
- payments in other currencies 50.7
- opportunity for finalising Defined Costs for part of the works 50.9
- requirement for Contractor to keep records 52.2
- PM assesses Contractor's share of the Prices and actual defined cost 54.5/6
- provisional assessment of Contractor's share following Completion 54.7
- final assessment of Contractor's share following Completion 54.8
- clarifies that information in Bill of Quantities is not Scope 56.1
- threshold at which a change in quantity is assessed as a CE 60.4
- if any change in quantity affects Completion, then it is a CE 60.5
- reasons to correct a mistake in B of Q which will be a compensation event 60.6
- hierarchy between B of Q and other documents (B of Q takes precedence) 60.7
- Prices are not reduced if it was a Contractor idea to reduce defined cost 63.12
- changes to Bill of Quantities for compensation events 63.15
- rules on assessing share in event of termination of the contract 93.5

Additional option E/F clauses

- option E/F specific identified and defined terms 11.2
- Contractor provides forecast of total Defined cost at contract intervals 20.4
- Contractor to submit pricing information for each subcontractor 26.4
- liability of costs for carrying out repeat test or inspection 41.7
- payments in other currencies 50.7
- opportunity for finalising Defined Costs for part of the works 50.9
- requirement for Contractor to keep records 52.2

Secondary Options

X1 Price adjustment for inflation

- defined terms – Base Date Index, Latest Index, Price Adjustment Factor X1.1
- how Price Adjustment Factor is applied X1.2
- Price adjustment for amount due X1.3/4

• Defined cost for compensation events	X1.5
X2 Changes in law – CE if occurs after the Contract Date	X2.1
X3 Multiple currencies – payment and exchange rates	X3.1/2
X4 Ultimate Company Guarantee – given within 4 weeks of Contract Date	X4.1/2
X5 Sectional Completion – Completion/Completion Date apply to sectional	X5.1
X6 Bonus for Early Completion – paid per day at rate in CD1	X6.1
X7 Delay Damages	
• charged at rate stated in CD1 until Completion or take over	X7.1
• Client repays overpayment of damages with interest	X7.2
• delay damages are reduced with partial take over	X7.3
• X8 Undertaking to Client or Others – as stated in CD1	X8.1-5
X9 Transfer of Rights – Client owns the Contractor’s rights over materials	X9.1
X10 Information Modelling	
• defined terms	X10.1
• Contractor collaborates with other Information Providers	X10.2
• early warning requirement for anything could impact Information Model	X10.3
• submission of Information Execution Plan	X10.4
• compensation events	X10.6
• Client and Contractor liabilities	X10.7
X11 Termination by Client – procedures and amount due to be paid	X11.2
X12 Multiparty Collaboration	
• identified and defined terms	X12.1
• actions to be taken by Partners and Core Group	X12.2
• collaboration by all Parties	X12.3
• incentives – amounts paid to Partner if KPI(s) achieved	X12.4
X13 Performance Bond – required as stated in CD1	X13.1
X14 Advanced Payment to Contractor	
• advanced payment made as stated in CD1 at the first assessment date	X14.1
• potential for advanced payment bond that may be required	X14.2
• advanced payment repaid to Client in instalments as stated in CD1	X14.3
X15 Contractor’s Design – liabilities and ownership of materials	X15.1-6
X16 Retention	
• amounts retained in amounts due until Completion/take over	X16.1
• amount retained is halved in the next assessment after Completion	X16.2

• potential for an alternative retention bond if agreed by Client	X16.3
X17 Low Performance Damages – for defects that miss performance levels	X17.1
X18 Limitation of Liability	
• limits of liability as stated in Contract Data part 1	X18.1-4
• excluded matters that remain unlimited liability	X18.5
• Contractor only liable for matters notified before end of liability period	X18.6
X20 Key Performance indicators and reporting requirements as per CD1	X20.1-5
X21 Whole Life Cost	
• Contractor can propose Scope change to reduce life cost of an asset	X21.1
• Contractor to submit quotation if PM prepared to consider change	X21.2
• Project Manager responds to quotation within period for reply	X21.3
• Project Manager changes Scope/Prices/Completion Date accordingly	X21.5
X22 Early Contractor Involvement	
• defined terms	X22.1
• requirements for forecasts of Defined Costs for stage 1	X22.2
• proposals for Stage 2 and revisions to programme/dates/Prices	X22.3
• key persons not replaced during Stage 1 unless instructed by PM	X22.4
• notice to proceed (or to not to proceed) to Stage 2	X22.5
• changes to budget – situations and timescales	X22.6
• incentive payment if final Project Cost is less than the Budget	X22.7
X29 Climate Change	
• defined terms	X29.1
• requirement to notify early warning if could impact Climate Change	X29.3
• details of issue/acceptance/changes to Climate Change Plan	X29.4
• compensation events process associated with Performance Table	X29.7-11
• Contractor’s proposals to impact on climate change	X29.11
• performance against targets in Performance Table	X29.12
Schedule of Cost Components (for use with options C/D/E)	
• payments applicable for people	11-14
• payments applicable for Equipment	21-28
• payments applicable for Plant and Materials	31/32
• payments applicable for Subcontractors	41
• cost of charges paid or received by the Contractor	51-54
• cost of manufacture of Plant and Materials by Contractor	61
• Contractor cost of design of works and Equipment outside Working Areas	71//72
• insurance premiums and insurable events excluded from cost	8

Short Schedule of Cost Components (for use with options A/B)

• payments applicable for people	11
• payments applicable for Equipment	21-27
• payments applicable for Plant and Materials	31/32
• payments applicable for Subcontractors	41
• cost of charges paid or received by the Contractor	51-54
• cost of manufacture of Plant and Materials by Contractor	61
• contractor cost of design of works and Equipment outside Working Areas	71/72
• insurance premiums and insurable events excluded from cost	8

Abbreviations:

CD1 – Contract Data part 1

CD2 – Contract Data part 2

PM – Project Manager

CE – compensation event-

B of Q – Bill of Quantities