

November 2021

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 11 - Contract Data Parts 1 & 2

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.

Coming next month:

Bulletin Nr 12: Use of cloud-based systems to manage NEC contacts

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

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk or contact GMH Planning Ltd by e-mail glenn@gmhplanning.co.uk.

NEC4 Contract Bulletin Nr 11 - Contract Data Parts 1&2

NEC Contract focus month – ECC Contract Data parts 1 & 2

Contract data parts 1 & 2 are both very important documents that form part of the signed contract between two parties. Contract data part 1 is completed by the Client and included within the tender documents and contains information which the Contractor will base their price and programme upon. Contract data part 2 is completed by the Contractor and submitted as part of their tender return.

An example of completed contract data parts 1 & 2 with guidance/commentary against each entry is included at the back of the “preparing an ECC Contract” book within the NEC4 contract suite.

Contract data 1: This needs to be completed in full by the Client, as any gaps could lead to ambiguity or uncertainty as to what the Contractor’s price and programme and associated risk would be. Any perceived gaps should be questioned/challenged at tender stage to ensure that all tenderers see the Client’s response and are all therefore pricing on a level playing field.

Section 1: The very first entry states which ECC contract option has been chosen. This should straight away reveal a lot about the risk profile that the Contractor is signing up to in terms of being a lump sum price, target price or cost reimbursable type contract. It also lists which secondary options have been included (such as X5 sectional completions, X7 delay damages, X16 retention) and by omission and equally importantly, which ones have NOT been included. A previous bulletin (No 3: Secondary Options) covers this in detail but certain options not being included could create increased risk e.g. no X18 means unlimited liability to a Contractor. Section 1 also states who the Project Manager is (the only person who can issue an instruction to change the Scope). It will also confirm which tender documents form the Scope and the Site Information, upon which the Contractor’s price should be based upon. Any instructed change to the Scope will be a compensation event, and any elements of Scope that the Contractor has not priced for would be the Contractor’s liability.



Sections 2 and 3: These sections will identify the programme information upon which the Contractor’s price and programme should be based. It will state if there are any Key Dates (where the Client requires a certain condition fulfilled by a certain date). It will also confirm here any sectional completions (if X5 has been chosen) and very importantly the overall starting date, access date(s) and Completion Date. If any of these dates are missing, it can make it harder for the Contractor to appropriately consider risk allocation when developing the price and programme.

Sections 4 and 5: States when the quality plan should be submitted and what is the defect date (period for which the Contractor will be liable for defects after Completion) and the defect correction period (period which Contractor is obligated to correct defects within). It also confirms payment intervals and period within which payments will be made by the Client following certification for each application. It will also state for options C&D what the share percentage would be for coming under/over the target price and a big factor in determining the Contractor’s risk profile (and hence price).

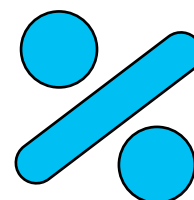
Section 6: This section has information related to compensation events, including weather data and any additional compensation events that the Client is not requiring the Contractor to price risk for. It also includes the value engineering ratio (for options A&B) which demonstrates the share that the Contractor will receive for suggesting value engineering ideas to change Client Scope and reduce cost.

Section 8: This section needs to be reviewed thoroughly to ensure that the Contractor will be able to satisfy the required insurance levels that the Client is requesting. It will also identify any additional Client liabilities and insurances the Client intends to provide that the Contractor would not need to price for.

Secondary options: Depending on which secondary options have been chosen there is further detail to be aware of such as X5 sectional completion dates, X7 delay damages liability per day, X8 collateral warranties to be provided, X16 retention percentage amount, X18 limits on liability, X20 key performance indicators.

Contract Data 2: Very important that everything in this section is completed in full by the Contractor to make their bid complete. Section 1 requires the following elements to be completed:

- Contractor is: name and (electronic) address of the person who will be the equivalent of the Client's Project Manager for the Contractor
- Fee percentage: the fee that will be applied to Defined Cost for compensation events (for all options) and applied to Defined Cost when assessing the Price for Work Done to Date each period (for options C-F). Note that under NEC4 this single fee percentage replaces the multiple fee percentages (subcontract fee, direct fee, working area /people overhead percentages) from NEC3.
- Working areas: to identify what areas form the working area, which then comes into play when assessing compensation events, with costs for people outside the working area not being recoverable and deemed to be included within the fee percentage. It would typically be stated as the boundaries of the site, and any other locations outside the boundaries of the site necessary to provide the works. It should be noted that further areas to be added to the working areas can be proposed by the Contractor for acceptance during the life of the project under clause 16.3. Note: With the expanding industry focus on a Design for Manufacture and Assembly (DfMA) the Contractor should consider what will need to be considered as a working area.
- Key persons: identifying who the Contractor is proposing to put into pivotal roles on the project. These people would then be expected to be provided upon contract award, or if not that person, an equal qualified/experienced person, who would first need to be accepted by the Project Manager.
- Matters for early warning register: chance for the Contractor to identify potential issues that they foresee that would be advantageous to discuss early in the project to minimise any potential impact they might have. Any item listed here does not change or identify whose liability that matter would be (which should already be clear elsewhere within the contract).



Section 3: Allows the Contractor to reference a programme as part of the contract. Although not compulsory to reference one it is highly recommended for a number of reasons. It gives the Contractor the chance to demonstrate that they can produce a quality programme in a recognised planning software package, that they have understood the Scope as to what and how they will construct the works, and that they also understand the NEC requirements as to what should be shown on a programme. Occasionally (although very rare in practice) the Client will have left Completion Date blank in Contract Data 1 and expects the Contractor to identify the Completion Date here as part of their contract offer. If this has already been completed in Contract Data 1 there is no need to restate it here and can be left blank (or for the avoidance of doubt, simply repeat the date stated in CD1 by the Client).

Section 5: Requires the Contractor to reference where within their submission they have included their activity schedule (for options A&C) or bill of quantities (for options B&D) and also confirming their total of the Prices (i.e. tender price) for options A-D.

Resolving and avoiding disputes: NEC4 requires a Contractor to reference senior representatives who will get involved with the equivalent Client's senior representatives in the event of any disputes. There needs to be at least an attempt for senior representatives to resolve before any matter can be referred to adjudication. This would seem to be a worthy initiative to attempt to resolve disputes which is new to NEC4.

Data for schedule of cost components (for options C/D/E): Contractor can identify rates for Equipment along with rates for people working outside the working area for manufacture or design (and any associated travel expenses). These rates along with other more obvious factors such as the Price and fee percentage will be considered as part of the tender evaluation, so therefore need to be competitive.

Data for short schedule of cost components (for options A&B): NEC4 requires a Contractor to list people rates for every type of person they are planning to engage on that project, which will then come into play when assessing compensation events. The Contractor will reference a published list of Equipment, which will be the rates used when assessing any elements of a compensation event quotation. There is the potential to include an adjustment (positive or negative) to those rates as a standard percentage. These rates will also be considered in a tender evaluation, so a lower tender price but with higher people or equipment rates may not be successful if it is considered that there is likely to be numerous compensation events on that project.

Summary – At tender stage the Contractor needs to understand in full the implications of everything the Client is stating in contract data 1 in terms of their risk, and ensure that everything in contract data 2 is completed in full to reflect the Contractor's tender offer. These two documents form an integral part of the signed contract between the Parties.

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk or contact GMH Planning Ltd by e-mail glenn@gmhplanning.co.uk.