

December 2021

# CECA NEC4 Bulletin

CECA Member Briefing:

## Bulletin No. 12 - Use of cloud-based systems to manage NEC contracts

### 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 13: Notifying early warnings and notifying compensation events

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

For further advice or guidance on the NEC details please visit [www.gmhplanning.co.uk](http://www.gmhplanning.co.uk) or contact GMH Planning Ltd by e-mail [glenn@gmhplanning.co.uk](mailto:glenn@gmhplanning.co.uk).

# NEC4 Contract Bulletin Nr 12 - Use of cloud-based systems to manage NEC contracts

NEC contracts are written with a view of promoting good practice project management. The processes within the contract are trying to create clarity and transparency between the Parties and a clear understanding of each other's liabilities under the contract.

Section 13 of the NEC contracts includes some clear and important rules around communication flow. Clause 13.1 clarifies that all communications that the contract requires must be in a form that can be read, copied and recorded. This highlights that there is no place for verbal instructions under the contract and they must be in writing before they should be followed. Clause 13.4 also clarifies that where something is being issued for acceptance, the Project Manager, if not accepting, needs to state the reasons why in sufficient detail to allow the Contractor to correct the submission (the underlined words being the new words to NEC4). This should prevent submissions being rejected for high level reasons, and the Contractor not being clear on what they need to do to correct them.

Going back several years before the use of a cloud-based contract management system, such flow of project communications would have been managed through manual proforma and registers that were emailed or posted to each other. This proved very inefficient and did lead to instances where one or other of the parties would claim they had not received communications or were unaware of the latest version of a particular document.



**Why use a cloud-based contract management system?** The increasing use of a cloud-based NEC communication system is revolutionary for the successful and sustainable administration of an NEC contract. It allows a very clear auditable system as to exactly what has been communicated by whom and when. NEC4 clause 13.2 states that where the Scope specifies the use of a communication system, it takes effect when it is communicated through that system. All communications therefore must be communicated within that platform to be contractually valid and for everyone associated with the project to be able to see. These systems also help resolve a previous issue where an unauthorised person from the Client team may attempt to give instructions which the Contractor is then unsure whether they should follow. Within a cloud-based system, for someone to give an instruction on the named person's behalf they would already have been given administration rights in the system to do so. Any formal delegation of actions from the Project manager or Supervisor as per the contract should also be very clear with such a system. This is important for situations such as giving an instruction that changes the Scope, which can only be instructed by the named Project Manager (in contract data part 1).

Clause 13.3 states that where the contract requires a reply to a communication, the reply should be within the *period for reply* unless otherwise stated within the conditions of contract. The cloud-based system will have the correct timescales already built in and show at any point in time what communications either party has yet to respond to, and even how many days they have remaining before they would be exceeding the contractual timescales for response. These systems can be set up by the software providers to reflect bespoke Z clauses for that project that may change standard NEC processes or timescales.

The systems ensure that all Parties are using the correct contractual language and terminology. A fair proportion of the system's forms are pre-written with correct contract wording and clause reference numbers within each communication format. The systems show at any one point in time how many actions are outstanding. There are a variety of reports that can be created from the system which can be very useful to identify trends, and also identify behaviours that may need to be improved. Through a combination of the dashboard and reports, it will give live information on the state of the project in terms of agreement of change, what the current Prices and Completion Date is, which is the latest accepted programme, amount cumulatively paid, etc. This all forces (or at the very least encourages) each Party to make sure they are following the correct processes within the contract.

A visual example of such a contract management system dashboard:

**Are there any disadvantages of using such a system?** A new system or way of working will take a little bit of getting used to. However, these systems, with a little bit of training and practice, should be intuitive and quick to learn how to use and navigate around. It provides a platform where communications are transparent and auditable so that each party can comply with their obligations under the contract.

**Which system should you use?** Many Clients will already have a preferred system that they are familiar with and have decided to use on their schemes. A Contractor should quickly get up to speed with any system even if it is unfamiliar and take the training that is normally available from the software provider. Where a Client has not indicated within the Scope or contract documents for a project that they plan to use such a management system, Contractors could suggest the use of a system as part of their bid explaining the benefits to both Parties that it would bring.

The purpose of this bulletin is not to tell you which one to use, but to encourage you to research and trial a few of them and come to your own conclusion (where you have a choice of a system) which one gives you the best balance of functionality, usability, contractual thoroughness, and value for money.

**Contractors using systems with Subcontractors:** Whilst it is fairly commonplace now that such a management system is adopted between the Client and Contractor, it is less common that a similar system is set up to be used between a Contractor and Subcontractor on that same project. It should be equally important and beneficial that the systems are used to manage this contractual relationship as well, with Contractors taking the lead on initiating this for their subcontracts. Supporting their own Subcontractors to sustainably manage the contractual process and help them to follow the correct contractual processes should very much be in the Contractor's own interest.

**Summary** – In this day and age of technology the adoption of one of these systems will improve the management of the contract for all parties. The systems are relatively inexpensive in comparison to the benefit and clarity that they should bring. It will make clear what communications have been issued and when, as well as highlighting the outstanding actions either team has, helping to reflect a true and accurate picture of the project at any one point in time.

For further advice or guidance on the NEC details please visit [www.gmhplanning.co.uk](http://www.gmhplanning.co.uk) or contact GMH Planning Ltd by e-mail [glenn@gmhplanning.co.uk](mailto:glenn@gmhplanning.co.uk).