

August 2021

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 8 – Programmes submitted with compensation event quotations

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 9: New NEC4 Contractor proposals and X20 Whole Life Cost Savings

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 focus month - Programmes submitted with compensation event quotations

It is rarely straightforward or a quick process for a compensation event quotation from a Contractor to be accepted by the Project Manager. Often a prolonged period of assessment and/or requote(s) will ensue. One way that this process could be sped up is for the Contractor to make sure they submit a programme with the compensation event quotation demonstrating more clearly any delay that the compensation event has created.

Is it a requirement to submit a programme with a quotation? Clause 62.2 states that “if the programme for remaining work is altered by the compensation event, the Contractor includes alterations to the Accepted Programme in the quotation”. Whilst the contract does not specifically state that a programme must be submitted, the NEC3 guidance notes give a much stronger indication that it is a requirement, by stating in relation to this clause that “If re-programming of remaining work is affected, the quotation should include a revised programme, showing, amongst other things, any change to planned Completion or a Key Date”. It is in the Contractor’s interest to present the quotation in a way that speeds up the understanding as to whether it should be accepted or not, so that both Parties understand their respective liabilities. If a compensation event only has a cost impact but no effect on the remaining works then there is obviously no need to include such a programme within the quotation.

What are the benefits of including a programme with a quotation? A programme should help demonstrate more clearly how the quotation has been built up, particularly in the instances where a Contractor is trying to show that planned Completion has been affected by the compensation event. As soon as there is a programme delay to planned Completion this will mean the Contractor will be including “preliminary” type costs which will increase the value of the compensation event quotation. It would be much better therefore to have a programme clearly substantiating the basis for the quotation submitted.

Would a programme submitted with a quotation become the Accepted Programme if the quote is accepted? No, it would not. The programme is only issued to help the Project Manager understand the quotation and get to a quicker decision as to whether the quotation should be accepted or rejected (or to use as the basis to make their own assessment). Any programme issued with a quotation will NOT become the new Accepted Programme. It is more of a “mark-up” of the last Accepted Programme showing the effects that this compensation event will have, and the resultant effect on subsequent activities, including the overall planned Completion (if any).

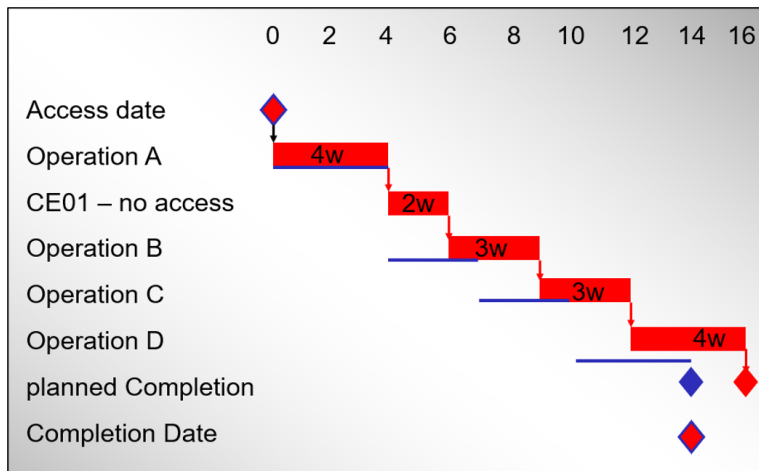
There could be several compensation events in a single period that each need their own programmes to demonstrate how each has affected the remaining works. The next programme issued for acceptance will include the cumulative affect of the individual compensation events issued within the period, and it is that programme that will become the next Accepted Programme (once formally accepted by the Project Manager).

What level of detail should such a CE quotation programme contain? It should show the additional activities that have been added to the programme due to this new compensation event. Once the programme is rescheduled it should also then demonstrate which, and by how much, the previously existing activities have been affected, particularly if these are impacting any Key Date, Sectional Completion Date or the overall planned Completion.

The direct effect of the compensation event can be demonstrated quite simply by baselining the programme before the compensation activities are added to show where all the activities were, then adding in the compensation event activities and linking/rescheduling to identify which items have subsequently changed. It is then possible to run a filter of the programme just showing those new activities along with anything that has changed from the baseline. This should make it much easier to understand and hopefully help justify the quotation being put forward. The new amendment to NEC4 clause 63.5 makes it clearer that any progress or other compensation events that have happened between the last Accepted Programme and the date of the notification/instruction of the compensation event should be considered BEFORE impacting the new compensation event.

It is also important that the Contractor clearly identifies the new activities added to the programme specific to that compensation event. Let’s consider an example where say planned Completion has moved by two weeks as a result of

a compensation event. There should be activities on the critical path that are “tagged” within their activity description as a CE, of which the durations add up to two weeks, in order to justify the inclusion of preliminary type costs and the subsequent movement of the Completion Date (once the compensation event is implemented)



In the example above, the Client has imposed a new two-week access restriction upon the Contractor, delaying operation B by two weeks. This has been notified and accepted that it is a compensation event and the Project Manager has instructed the Contractor to submit a quotation. The Contractor is showing here on the compensation event quotation programme the new CE01 activity of two weeks duration, and that subsequent activities have been delayed as a result.

The solid blue lines show the baseline position of the activities from the last Accepted Programme (CE01 is a new activity so has no baseline to compare to). It clearly shows which activities have been delayed as a result, which in this scenario includes a delay to planned Completion.

At this stage planned Completion has moved beyond the Completion Date by two weeks. Assuming the compensation event is subsequently agreed and implemented, the Completion Date can be moved by two weeks on the next programme issued for acceptance.

Summary – ensure that where a compensation event affects the remaining works, a clear filtered programme showing which activities have been affected is submitted as part of the quotation to speed up the assessment/acceptance of the quotation. This type of “programme” being submitted with a quotation is different to the programmes being issued to become the new Accepted Programme.

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