

November 2022

# CECA NEC4 Bulletin

CECA Member Briefing:

## Bulletin No. 23 – Payment, Defined Cost and Schedule of Cost Components

### 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 24 – Communication flow

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).

# NEC Contract focus month 23 – Payment, Defined Cost and Schedule of Cost Components

Contractors need to ensure regular cashflow during a project and to ensure that they are getting full entitlement for any compensation event that may have occurred. It is therefore very important that they understand both section 5 of the contract and the relevant schedule of cost components that will be used to build up compensation event quotations. This bulletin sets out to summarise these important parts of the contract.

**Assessing the amount due:** It is the Project Manager that assesses the amount due at each assessment date. The Contractor submits an application for payment before each assessment date setting out what they consider the value should be. The format of the application that the Client is requiring will be identified within the Scope. The assessment interval (normally four weekly or monthly) will be stated in contract data 1. There may also be a reference to a payment calendar that could be an appendix or be included within the Scope, showing the full list of payment application dates for that project. The format and dates of these applications are particularly important as now under NEC4, if the application is not submitted before the assessment date, the Project Manager can assess it at zero or even as a **negative assessment** (if they believe the last period was “overpaid”). It is very important therefore that a Contractor is not late with their application as they cannot rely on the fact that “in a spirit of mutual trust and co-operation” they should still be paid for an assessment that was submitted late. The application is known as the “Price for Work Done to Date”, of which the definition varies for each contract option (A-F). These definitions will be discussed in a future series of bulletins that will cover each specific option scheduled. The Project Manager corrects any wrongly assessed amount due in a later payment. Therefore, a Contractor cannot be assured that payment made in any month previous will not be reduced, as the Project Manager can “un-pay” any amounts in any future assessment.



**First programme:** If no programme is identified in the contract data, 25% of the Price for Work Done to Date is retained in assessments of the amount due until the Contractor has submitted a first programme to the Project Manager for acceptance showing the information the contract requires. The “underlined” words are important as it is not just submitted – it needs to be submitted to a standard that would be good enough to be accepted. It is therefore very important to make sure that either a programme is **referenced in contract data 2 as part of the tender submission**, or that every effort is made to **get the first programme accepted as quickly as possible following contract award**. This should be something that both Parties strive towards, as if it takes several months to accept the first programme, there is no original baseline to be assessing any change against that may already be occurring.

C	Activity Name	Estimated Total Cost	Original Budget	Start	Finish	Final	Final
SP116	Station Landings	45,000.00	2	08 Mar 07	08 May 07	30	0
SP120	Station roofs and tops	217,000.00	6	09 Mar 07	10 May 07	20	1
SP130	Low floor raised - Guard rails area	10,300.00	5	09 Mar 07	09 May 07	30	1
SP140	Low floor ramping	61,900.00	6	09 Dec 06	09 Dec 06	8	1
SP142	Change of floor levels	60.00	20	09 Dec 07	09 Dec 07	20	0
SP143	Access Covers	100,000.00	10	09 Apr 07	09 May 07	3	0
SP145	Low floor raised - Terrace areas	100,000.00	5	03 Apr 07	03 May 07	3	1
SP146	Change of floor levels	40.00	20	09 Apr 07	09 May 07	3	0
SP147	Change of floor levels	200,000.00	10	09 Mar 07	09 May 07	3	0
SP148	Access Covers	10,000.00	3	19 Mar 07	20 May 07	3	0
SP149	Access Covers	10,000.00	3	19 Mar 07	20 May 07	3	1
SP150	Protection	10,000.00	3	19 Mar 07	20 May 07	3	0
SP151	Low floor raised - Terrace areas	100,000.00	5	04 Apr 07	04 May 07	3	1
SP152	Change of floor levels	10,000.00	3	04 Apr 07	04 May 07	3	0
SP143	Access Covers	10,000.00	3	19 Mar 07	20 May 07	3	1
SP146	Change of floor levels	40,000.00	5	09 Apr 07	09 May 07	3	1
SP149	Access Covers	10,000.00	3	19 Mar 07	20 May 07	3	1
SP150	Protection	10,000.00	3	19 Mar 07	20 May 07	3	1

**Payment:** The Project Manager certifies a payment within one week of each assessment date. They should also make it clear the basis on which they have made their assessment, particularly if it is considerably less than the Contractor submitted. The first payment is the amount due, and subsequent payments are the amount due less the previous assessment. Each certified payment is made either within three weeks of the assessment date or within the period stated in contract data. Interest is due (at the rate stated in contract data) on any late payments or previously wrongly assessed amounts by the Client and should be included within the next application.



**Defined Cost:** There are two versions of the cost components, the “Schedule of Cost Components” and the “Short Schedule of Cost Components”. The short schedule as the name suggests is shorter as it is used for options A and B and only to assess compensation events. The full “Schedule of Cost Components” is used for options C, D and E and is used

to form the basis of each application as well as any compensation events. For either schedule, an amount can only be included if it is incurred in order to provide the works, and can only be claimed in one cost component (not in multiple).

### Schedule of Cost Components:

1. People - directly employed by the Contractor and **who are working within the working area** (either full time or proportional to the amount of time they are in the working area) in terms of their wages, overtime, absence due to sickness or holiday, pension, safety training, protective clothing etc (see section 1 of SCC for the full list).
2. Equipment (in simple terms temporary works) – which includes equipment owned or hired by Contractor, purchase price for Equipment that is consumed (such as fuel), transporting to and from the site.
3. Plant and Materials (in simple terms permanent works) – which includes purchasing the materials, delivering to site providing/removing and packaging and any associated samples/tests.
4. Subcontractors – this is a new section to NEC4 that now allows subcontractors costs, as a lump sum, to be included rather than having to build up from first principles.
5. Charges – which includes services such as water/electricity to site offices, leasing land for site offices, consumables for Project Manager/Supervisor's offices, charges (or payments received) for disposal of materials from excavations and demolition.
6. Manufacture and Fabrication – cost of people involved in manufacture and fabrication of Plant and Materials by the Contractor, which are at least partly designed specifically for the works, and that are fabricated outside of the works, at their rate stated in contract data.
7. Design - cost of people involved in design that are outside of the working area at their rate stated in contract data (with an extra allowance for travel expenses when they need to travel to the Working Area).
8. Insurance – practically speaking only reaffirms what the Contractor can not charge for insurable events and insurance premiums rather than stating nothing is claimable in this section.

### Short Schedule of Cost Components:

1-8 Same list of headings but slightly more condensed/simplified as it is only used for assessing compensation events. People for example is much more condensed as option A uses predetermined People Rates included within the tender submission rather than building them up from first principles for an individual compensation event.

**Final Assessment:** NEC4 does now include a whole section on the final assessment which will take place within four weeks after the Supervisor issues the Defect Certificate (or within thirteen weeks on the rare occasion a termination certificate is issued). The final payment is then due within three weeks (or the period stated in contract data). Should the Project Manager not make the assessment within the period, the Contractor can issue to the Client an assessment of the final amount due. The contract intimates this final assessment will be deemed accepted if the Client does not make their own assessment within the timescale.

**Summary:** Important that a Contractor submits applications on time and to the required standard and with at least the first programme submitted showing the information the contract requires, otherwise it could affect the payment due. Understanding the relevant schedule of cost components will again ensure that maximum entitlement can be justified and claimed for building up compensation event quotations. For options C-E the amounts within the schedule of cost components will also form the basis of the applications which in turn is important to maximise for good cashflow.