

December 2022

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 24 - Communication Flow

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 25 - Secondary option X1 Price Adjustment for Inflation

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.

NEC Contract focus month 24 - Communication Flow

Good communication is at the heart of any well managed project and NEC contracts have always looked to promote this within their contractual processes. Section 13 of the contract covers the specific rules around communication. These are some of the key pro-active management processes the contract encourages and a fundamental requirement for a successful project.

No verbal Instructions: Clause 13.1 leads the way with a simple yet essential contractual understanding that there should be no such thing as a verbal instruction given and expected to be followed. Each communication that the contract requires must be in a form that can be read, copied and recorded. With current technology this should not be an issue, as it is possible to quickly communicate any such requirements in writing. In the past Contractors may have used "confirmation of verbal instruction" forms (CVI) to confirm what they have been told to do, but these do not give the contractual protection that people may have previously thought. Rather than a Contractor confirming what the Project Manager has verbally told them, the Project Manager should be telling the Contractor, in writing, what they want them to do, particularly when this is a change to the Scope. (A Project Manager's instruction!)



Using a cloud-based communication system: Thankfully more and more projects now use a cloud-based system (such as Cemar) to manage the flow of communications within a project. (See CECA bulletin 12 for more specific detail on the reasons and benefits of such systems). Clause 13.2 makes it clear that if the Scope specifies the use of such a system, the communication only takes effect when it is communicated through that system. Therefore, emails would not be a valid form of communication. The whole point about such a cloud-based system is that everyone can see everything, and it is fully auditable, rather than an email where only certain people copied in get to see that communication.

Response times: A majority of response times are included within the contract e.g. response to a notified compensation event is one week, response to a programme issued for acceptance is two weeks. Any other communication that does not have a response time specified will revert to the "period for reply", which will be project specific and found in contract data 1. This means that all communications have to be responded to in a set timescale. The use of cloud-based systems helps this by making it clear when a party has to respond to any specific communication, helping contractual responses to be in a timely manner. It should be noted that the response times are the maximum time to respond, not the optimum! Wherever possible people should be responding quicker than the times stated, to ensure the mutual understanding of all submissions, which should lead to overall efficiencies that will benefit all Parties.



Reasons for non-acceptance: Where the Contractor is issuing something for acceptance, clause 13.4 now clarifies in NEC4 that the Project Manager has to state the reasons why they are not accepting a submission "in sufficient detail to allow the Contractor to correct the matter". This will ensure that the Contractor knows what they need to do to be able to resubmit that element, with a view of being able to get the revised submission accepted as quickly as possible.

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Extensions to deadlines for response: The contract does allow this if the Project Manager and the Contractor agree to the extension before the reply is due. This principle should however be used sparingly, as it is in both Parties' interest to be getting agreements on any such submissions as soon as possible for the effective and efficient management of that project.

Separate communications: Clause 13.7 clarifies that any notification or certificate (and this practically speaking should be extended to instructions) which the contract requires, needs to be communicated separately from other forms of communication. This means that general "minutes of meetings" are not a document to rely on, but any specific elements should be abstracted from minutes of meetings and communicated separately. This is not to unnecessarily increase workload or to waste paper, but to ensure transparency and clarity around the key issues between the Parties.

Instructions from authorised people: Clause 14.3 clarifies that the Project Manager is the only person who has authority to instruct a change to the Scope. The Contractor needs to ensure therefore that they only ever take instruction from the named Project Manager (as stated in contract data 1) for any such instructions. The contract does enable the Project Manager to delegate any authority to someone else, but that delegation would also need to be in writing and separate from other forms of communication. Once more the cloud-based systems help with this, as only someone authorised within the system will be able to send such communications.

Summary: Good communication should be at the heart of any well-run project. Ensuring all elements are communicated clearly, concisely, and being responded to in a timely manner, should mean that both Parties are clear on their actions required and provide efficiencies in delivering that project. No one should be looking to hide behind communications, but simply ensuring good clear understanding at any point in time.