

October 2023

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 34 – Periods for response in 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 35 – Common misconceptions associated when administering NEC contracts

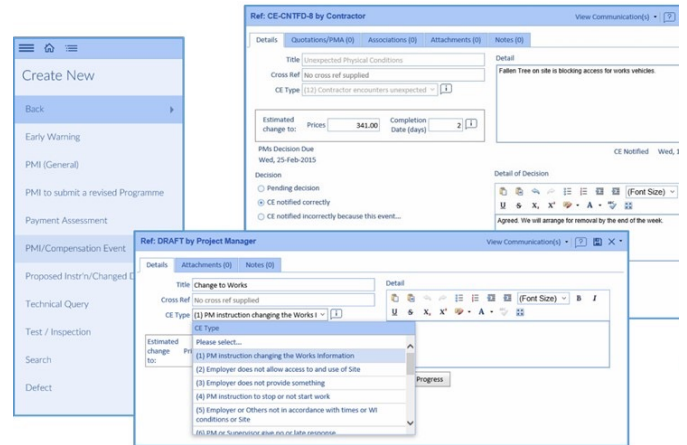
Please respond to Leone Donnelly should you require any further information on the CECA NEC4 Bulletins via e-mail: leonedonnelly@cecasouth.co.uk.

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 34 – Periods for response in NEC contracts

Good communication flow, transparency and auditability should be key features when administering any construction contract.

NEC4 deliberately puts processes in place during the life of the project to ensure good practice project management. Adhering to the contractual processes and having a full audit trail of what was issued, when, and what the response was, should be key for both Parties. It is strongly advised that for any project this should be managed through a cloud-based system (which is discussed in detail in previous CECA bulletin 12), to help both Parties follow the correct contractual processes and response times. Where the Scope states the use of such a communication system, clause 13.2 makes it clear that the communication only takes effect when it is communicated through that tool.



This bulletin identifies the key processes within the Engineering and Construction Contract (ECC), Engineering and Construction Subcontract (ECS) and Professional Services Contract (PSC). The table refers to Party A and Party B, which for each contract the Parties would be as follows:

ECC – Party A: Client/Project Manager, Party B: Contractor

ECS – Party A: Contractor, Party B: Subcontractor

PSC – Party A: Client/Service Manager, Party B: Consultant

The table included below lists the communications that could be issued, and the response times within which they should be responded to. Responses can not be a “holding response”, i.e., a response to a compensation event quotation must be either acceptance or non-acceptance within two weeks, not a response within two weeks to state “we will get back to you in due course”. Response times can be extended on a case-by-case basis but only by agreement with both Parties (i.e., not Party A simply telling Party B they will take longer).

It is also important to remember that the response times are the longest time that should be taken. They should not intentionally be responded to at the latest possible time that the contract allows. For a well-run, efficient project, the Parties should try to respond to each other well inside the stated contractual timescales. Where there is no specific timescale stated to respond for a particular type of communication, the response period will default to the “period for reply”, which is specific and identified for a project in Contract Data Part 1. Where something is issued for acceptance and the response is non-acceptance, clause 13.4 makes it clear that Party A has to state the reasons why they are not accepting in sufficient detail that allows Party B to correct the submission and be able to resubmit.

Unless otherwise stated the documents listed in the table will be issued by Party B and need to be responded to within the stated timescale by Party A.

Communication type	ECC	ECS	PSC
15.1 notified early warning	There is no requirement to respond to an early warning. Actions should be discussed and recorded in the Early Warning Register		
16.2 Contractor's proposal	4 weeks	5 weeksN/A.....
16.3 Proposal to add to Working Area	<i>period for reply</i>	N/A.....
21.2 Issue of design for acceptance	<i>period for reply</i>	N/A.....
23.1 Issue of design of Equipment	<i>period for reply</i>	N/A.....
24.1 Alternative Key Person	<i>period for reply</i>		
26.2 Proposed Subcontractor	<i>period for reply</i>		
26.3 Proposed Subcontract conditions	<i>period for reply</i>		
31.3 Programme issued for acceptance	2 weeks	3 weeks	2 weeks
31.3 Party B reminder of non-response to programme issued for acceptance	1 week	2 weeks	1 week
36.1 Acceleration quotation	3 weeks	4 weeks	3 weeks
40.2 Quality plan issued for acceptance	<i>period for reply</i>		
45.2 Quotation to accept a defect	<i>period for reply</i>		
51.1 Payment application	1 week	2 weeks	1 week
61.3 Notified compensation event	1 week	2 weeks	1 week
62.1 Quotations for alternative quote	<i>period for reply</i>		
62.3 Response by Party B to instruction to provide CE quotation	3 weeks	2 weeks	3 weeks
62.3 Response to Party B CE quotation	2 weeks	4 weeks	2 weeks
62.4 Request for revised CE quotations	3 weeks	2 weeks	3 weeks
61.4/62.6/64.4 – Response to Party B reminder of Party A non-response to CE	2 weeks	3 weeks	2 weeks
65.1 Party B provision of quotation for proposed instruction	3 weeks	2 weeks	3 weeks
65.1 Party A response to proposed quotation	Response by date stated in instruction		
55.4 Revised option A activity schedule	<i>period for reply</i>		
50.9 Issue of Defined Costs for acceptance for part of the works	13 weeks	14 weeks	13 weeks
50.9 Party B response to request for further records by Party A	4 weeks	3 weeks	4 weeks
50.9 Final review of further records and final assessment	4 weeks	5 weeks	13 weeks
X10.4 – Response to Information Execution Plan	2 weeks	2 weeks	2 weeks

Summary: Timescales need to be adhered to and could lead to a compensation event if not responded to on time. A number of specific timescales are stated in the contract, and all other communications that require a response will default to the "period for reply" to ensure every communication is responded to.