

# CONSTRUCTION : BULLETIN

## Managing Compensation Events – Practical Tips

Although the NEC3 suite of contracts is pitched as being simple and easy to understand, the NEC3 compensation event process is detailed, procedurally complex and full of potential traps for unwary Contractors.

Properly managing the compensation event process requires considerable forward planning and a good understanding of the terms of the contract. In our experience, Contractors who implement the following measures are much more likely to remain in control of the compensation event process.

### Ensure the relevant people understand the process

We are well aware that it is rare for anyone other than a lawyer to take the time to actually read a construction contract. However, the importance of reading through the compensation event provisions, contained in section 6 of the NEC3 Engineering & Construction Contract, cannot be overstated. It is essential for the people who will be administering compensation events on a day to day basis to understand basic issues such as:

- what the compensation events in the contract are;
- the difference between an early warning and a compensation event; and
- the difference between notifying and submitting a quotation for a compensation event.

Without this knowledge, it is almost inevitable that mistakes will be made which could result in lost entitlement to additional time and money, or even spark a dispute with the Employer.

On significant projects, it can be well worth investing in some specialist NEC3 training to aid understanding. Consideration should also be given to holding a joint workshop with the Employer, Project Manager and even Subcontractors; this will help to ensure all parties have the same understanding of how the contract should be administered.

### Allocate adequate resources

A common theme amongst Contractors who end up in dispute about compensation events is a failure to allocate adequate resources to compensation event administration.

The process of identifying, notifying and quoting for a compensation event seems easy to follow when you are considering just one compensation event. However, the process becomes significantly more complicated in a live construction environment where there are tens or even hundreds of compensation events at different stages of the process.

The difficulty of keeping on top of large numbers of compensation events can be so great that it causes many Contractors, and sometimes even Project Managers, to throw in the towel, abandoning the proper contractual procedure in favour of trying to sort out everything at the end of the project instead. Unfortunately, this can cause even more problems because NEC3 contracts are geared towards prospective, rather than retrospective, assessment of change.

On a big project, it is entirely reasonable to assume that administering the compensation event process could be a full time job for at



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least one person. Allowance should be made for the cost of having a planning and programming resource dedicated to dealing with compensation events.

The level of resources that has been allocated to compensation event administration should also be reviewed regularly to ensure it remains appropriate to the number of compensation events that are occurring.

### Get organised

It is good practice to agree template documents with the Project Manager which can be used when notifying and submitting quotations for compensation events. The use of templates ensures that all necessary information is provided. Contract administration is also made easier if documents are easily recognisable.

When a compensation event is notified, it is good practice to identify the specific compensation event by its clause number. This avoids any potential confusion about what relief the Contractor is claiming.

Once notified, it is a good idea to record each compensation event in a spreadsheet so that its progress through the contractual process can easily be monitored. Important dates, namely the deadlines for each action the Contractor is to take, should be diarised and checked regularly.

### Don't delay

Notwithstanding the fact that there is an 8 week time limit for notification of compensation events under the NEC3 Engineering and Construction Contract, any compensation event that occurs should be notified as soon as possible. The same goes for quotations; aim to submit them as soon as possible. Allowing deadlines to get too close can increase risk unnecessarily. There may not be time to correct a mistake in a compensation event notification or quotation if it has been submitted at the last minute.

### Maintain your programme

Contractors must not allow the Accepted Programme to become out of date. Assessing a compensation event can be extremely difficult if the

current Accepted Programme no longer represents a realistic picture of the progress of the works. If the Accepted Programme is not up to date, it is far more likely that the Project Manager will decide to make his own assessment of the compensation event.

### Be pro-active

There is often reluctance amongst Contractors to take ownership of the compensation event process if the Project Manager is not complying. This seemingly stems from a fear of annoying the Project Manager. However, in our experience, it is usually better to flag up issues with the Project Manager at an early stage than to sit back and do nothing.

Contractors can help to keep the compensation event process on track by:

- Asking the Project Manager to notify compensation events arising from changes to the Works Information if he has not done so when instructing the change.
- Asking the Project Manager to instruct assumptions under clause 61.6 if it is proving difficult to quote for a particular compensation event.
- Invoking the default mechanisms in clauses 61.4, 62.6 and 64.4 (as appropriate) if the Project Manager does not comply with contractual time limits. Contractors should bear in mind that these clauses were drafted specifically to give the Contractor some control over the compensation event process.

### Talk to the Project Manager

A surprising amount of compensation event problems can be avoided or resolved simply by engaging with the Project Manager.

There is nothing to stop the Contractor and Project Manager from making mutually beneficial arrangements to ease the administrative burden, such as rolling up multiple minor compensation events into a single notification, or agreeing that

compensation events will only be notified on a fortnightly basis. However, remember that any such agreement should be confirmed in writing, just in case one party later tries to deny its existence.

The Contractor and the Project Manager can make it easier to keep on top of things by maintaining a joint register of notified compensation events and their status.

It is a good idea to informally discuss pending compensation event notifications and quotations with the Project Manager before they are submitted, so that the Project Manager does not get any nasty surprises.

To reduce the chance of compensation event quotations being rejected, it is also sensible to offer to attend a meeting with the Project Manager to discuss your quotations.

Contractors should also bear in mind that the Project Manager has the power under clause 62.5 to grant more time for the submission of quotations. If you are likely to need more time to deal with a particular quotation, remember that an extension can only be granted before the original time limit for submitting the quotation has expired, so the request should be made in good time. This is another example of the importance of being pro-active.

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