

CONSTRUCTION : BULLETIN

New NEC4 Contracts Announced

The NEC publishers have just announced the publication of the NEC4 suite of contracts in June 2017. NEC have described the new NEC4 suite as building upon the content of NEC3 in a way which can be described as "evolution not revolution".

Details of what the NEC4 contracts will include is quite limited at this stage, but here is what we know so far.

New forms of contract

NEC plan to publish two new forms of contract in addition to new editions of their existing NEC3 suite. The NEC4 Design Build Operate Contract (DBO) is aimed at clients who wish to procure design, construction, operation and/or maintenance from a single contractor. The NEC4 Alliance Contract (ALC) is a revolutionary multi-party contract based upon an integrated risk and reward model. The basis of the contract will be that all parties work together in achieving Client objectives and share risks and benefits. The ALC will initially be published in consultation form.

Changes in terminology

The term 'Employer' is being replaced with 'Client'. The term 'Scope' will replace 'Works Information' 'Subcontract Works Information' and 'Goods Information' in the Engineering and Construction Contract, Subcontract and Supply Contract respectively. The 'Risk Register' is being renamed as the 'Early Warning Register'.

Design and build

The Engineering and Construction Contract and Subcontract will include a new secondary option clause with provisions specifically aimed at design and build contracting. This will include

a requirement for professional indemnity insurance to be maintained, clauses dealing with intellectual property ownership and use of designs and reformulated wording relating to design responsibility.

Payment

Interim payments will now require an application for payment to be made by the Contractor before any payment is made.

In the cost-based contracts (options C, D, E and F), the Contractor will have the ability to instigate a review and acceptance of its total Defined Cost by the Project Manager. Following notification by the Contractor, the Project Manager will have thirteen weeks to review the Contractor's Defined Cost and either accept it or advise of any issues. If the Project Manager fails to respond, the Contractor's Defined Cost will be treated as accepted. This will be an important mechanism for allowing Defined Cost to be agreed as the project progresses, rather than at the end.

There will also be a new provision for the Project Manager to issue a final assessment of payment due to the Contractor within four weeks of the Defects Certificate. The Contractor can then issue its own assessment if the Project Manager fails to do so. The assessment submitted by either party will become conclusive if not challenged by the other party within four weeks.

Programming

Where the Project Manager does not respond to a programme issued by the Contractor for acceptance and does not respond to a reminder, the NEC4

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form will allow for deemed acceptance of the programme to avoid the impasse which would otherwise prevail.

The requirement to show implemented compensation events on programmes is also being removed to avoid any potential misunderstanding that non-implemented compensation events are excluded.

Schedules of Cost Components

Changes are due to be made to simplify the Schedules of Cost Components. The Shorter Schedule of Cost Components is being removed from options C, D and E to make things simpler. There will also be changes to the way in which certain elements of Defined Cost are calculated.

Collateral warranties

A new secondary option clause called 'Undertakings to Others' will be introduced to allow for the grant of collateral warranties to third parties. The required form of warranty will need to be included in the Scope.

Additional compensation events

The NEC4 forms will allow the parties to add their own compensation events, allowing the risk profile of the standard form to be altered without the need for Z clauses.

The Contractor will be able to claim a compensation event for the cost of preparing a quotation for a proposed instruction that is not accepted by the Project Manager.

Confidentiality, publicity, assignment and anti-bribery

NEC4 will include new core clauses restricting the disclosure of project information, allowing the parties to assign their rights under the contract and prohibiting corrupt acts. This change has apparently been introduced in response to the fact that Z clauses are frequently introduced to deal with these points in NEC3.

Dispute resolution

There will be a new four week period for escalation and negotiation of disputes which is intended to take place before formal proceedings are commenced (though this cannot

override the right to adjudicate at any time where the Housing Grants, Construction and Regeneration Act 1996 applies).

There will also be a new dispute avoidance option W3, which will only apply where the Housing Grants, Construction and Regeneration Act 1996 does not apply. This will involve the formation of a dispute avoidance board who can make non-binding recommendations for the resolution of disputes.

Early Contractor Involvement (ECI)

The NEC4 Engineering and Construction Contract will include a secondary option clause for early contractor involvement. This clause wording was previously published by NEC in 2015 as a standalone provision. ECI is a procurement method which involves the Contractor's input to the design at an early stage, allowing for innovation and cost savings.

Building Information Modelling (BIM)

There will be a new secondary option clause specifically to support the use of BIM. This will provide additional wording necessary to support the production of information for BIM, and will also deal with issues such as ownership of information and liability of the parties.

Contractor's proposals

There will be new provisions for the identification of opportunities by either party to improve the outcome of the project. The Contractor will be able to propose changes to the Scope which reduce cost and acceleration to complete the project early. There will also be a secondary option inviting the Contractor to propose changes to the Scope which would reduce the cost of an asset over its whole life, encouraging Contractors to think long term rather than just looking at build cost.

Contract Data

The Contract Data has been reformatted to make it easier to navigate and complete, particularly using computer software.

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