

NEC LAUNCHES NEW NEC4 SUITE OF CONTRACTS

BY JOHN GREEN

NEC4 has now been launched and the authors have promised "evolution not revolution". The criteria for changes introduced in NEC4 contracts are:

- To support the changing requirements of users
- Stimulate good project management
- Improve clarity and simplicity

Many of the new features added to the existing contracts are optional, allowing flexibility in the procurement choice, for example it still remains possible to create very simple short contracts using NEC4.

It has been 12 years since NEC3 was published, and the authors says the publication of NEC4 responds to demand from users to continually improve the way that their projects and work programmes are delivered. There are a lot of cosmetic changes to the main Engineering and Construction Contract, designed to clarify the terms (ie 'Employer' becomes 'Client'), provide consistency across the suite of contracts ('Works Information' and 'Service Information' become 'Scope') and reduce reliance on Z clauses (BIM, collateral warranties and the Bribery Act). However, there are also some fundamental points that will require thought when adopting the new form including:

A new final accounting procedure (clause 53) is introduced, acknowledging that matters remain outstanding at the end of the contract. It introduces rigorous timescales. The Project Manager must issue his assessment within four weeks of the Defects Certificate. If he fails to do so, the Contractor may submit his version which the Client pays if he agrees with it. If he does not, this quickly escalates into discussions with senior representatives, adjudication and then the courts. The detailed dispute provisions in this clause do not

mention the need for a pay less notice as they rely on Option Y(UK)2 for Construction Act matters, but if the Client wants to avoid paying the Contractor's assessment it should serve a notice.

- Contractors will not be entitled to an assessment unless they submit an application for payment. This is achieved in a new clause 50.4, which states that the Project Manager may issue an interim assessment, but if not, the amount due is the same amount due at the previous assessment date. Again, my initial view is that the way this interacts with the Construction Act requires some careful thought.

- A deemed acceptance of the programmes is introduced. If the Project Manager does not reply within two weeks, the Contractor informs the Project Manager of his failure, and the Project Manager does not reply, the programme is deemed to be the Accepted Programme.

Two new compensation events are introduced to clause 60.1:

- The first is a compensation event which compensates the Contractor for the costs of preparing quotations for changes to the Scope which are not adopted by the Project Manager (clause 60.1(20))

- The second is a DIY compensation event, where parties can introduce new compensation events themselves in the Contract Data (clause 60.1(21)). This sounds like a dangerous concept, and could cause disputes if the wording is not clearly worded. Section 8 of the contract has been amended to try to deal with insurers' concerns about the insurability of section 8 in NEC3.

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The Schedules of Cost Components have both been revised and the different fees have been simplified into one. There are new People Rates in options A and B, and people overheads and Working Area overheads have been deleted. The view from the speakers was that Quantity Surveyors will need to work through these changes carefully to avoid being caught out, but that it should reduce the

impression of double dipping taking place.

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