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# NEC4 ECC: Key changes affecting the management of the contract

*Speaker: Ben Walker*

*NEC4 Contract Drafter, CEO CEMAR*

## NEC4

- The following is a summary of the key operational changes from ECC3 and ECC4
- It does not cover all the changes made – mainly the ones affecting practitioners and how the contract is administered on a day-to-day basis



## General

- Minimise differences between the various NEC contracts
- *'Employer'* becomes *'Client'*
- Gender neutral drafting

## Core clauses: 1 General

- Clause 10.1 has been split to reinforce the need to do both!
  - follow the contract (10.1)
  - work in collaboration (10.2)
- Defined terms:
  - Inclusion of a Corrupt Act as a defined term (alleviating the need for a Z clause) (11.2(5))
  - Early Warning Register (11.28)) better reflects what it is in the ECC
  - Works Information is now Scope (11.2(16)) – generic term now used across NEC
  - Clearer definition of Subcontractor (11.2(19))

## Core clauses: 1 General

- Clause 13.2 now prompts the Scope to specify a communication system e.g. cloud based

## Core clauses: 1 General: Clause 15, early warnings

- Now clause **15** and reflects what should have happened anyway!:
  - *Project Manager* prepares a first Early Warning Register within one week of the *starting date*
  - First ‘early warning meeting’ held within two weeks of the *starting date*
  - Later early warning meetings held when required and, in any case, no longer than the interval stated in the Contract Data
  - Express mention of a Subcontractor potentially needing to attend

## Core clauses: 1 General: Clause 16, *Contractor's proposals*

- Express provision for the *Contractor* to propose changes to the *Client's* Scope (16.1)
- The timescale (4 weeks) and response criteria are defined (16.2)
- The *Project Manager* does not have to accept the proposal (16.3)
- Under A & B 'the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the *value engineering percentage*'
  - So the ***Client*** gets the '*value engineering percentage*' of the saving
- Under C & D, the benefit is shared as in ECC3 due to 63.11

## Core clauses: 3 Time

- Clause 31.2 – format of programme to be stated in Scope
- 'Deemed acceptance' protocol built into clause 31.3.
  - If the *Project Manager* does not respond to a submitted programme within the two weeks
  - the *Contractor* **may** prompt re that failure to respond
  - If no response in a further week, the programme is 'treated as accepted'



## Core clauses: 4 'Quality management'

- The *Contractor* submits (within the period stated in the Contract Data) a quality policy statement and quality plan for acceptance (40.2) by the *Project Manager*
- If changes are made it needs to be resubmitted
- 41.3 – tests and inspections are 'informed' as opposed to 'notified' (this is much more practical)

## Core clauses: 5 Payment – application for payment now a must!

- Payment is now conditional upon the *Contractor* submitting an application for payment (clause 50.4)
- If no application the amount due is the lesser of the amount due at the previous assessment date and the amount the *Project Manager* assesses (e.g. to account for delay damages)

## Core clauses: 6 Compensation events

- Clause 60.1(14) (and 80.1) : ECC3 '*Employer's risk*' is now ECC4 '*Client's liability*'
- Additional compensation events:
  - 60.1(20) – Quotation for a proposed instruction is not accepted
  - 60.1(21) – Additional compensation events stated in the Contract Data

## Core clauses: 6 Compensation events

- Clause 63.1 introduces a ‘dividing date’
  - For events arising from the *Project Manager* and *Supervisor* it is the original communication
  - For other compensation events the ‘dividing date’ is the date of the notification of the compensation event

## Core clauses: 6 Compensation events

63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.

A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.

When assessing delay only those operations which the *Contractor* has not completed and which are affected by the compensation event are changed.

## Core clauses: 6 Compensation events

- Proposed instructions are dealt with under clause 65 – clearly differentiating these from compensation events
- Costs of preparing the quotation is no longer excluded in Options A and B

## Main Options: Options A & B

- Defined Cost is the cost of components in the **Short** Schedule of Cost Components (11.2(23))
- Inclusion of People Rates (11.2(28)), new rates may be agreed (63.16)
- Short Schedule of Cost Components (only for A & B)
  - Subcontractors included as part of schedule
  - No people overhead
  - No overhead on rates for manufacture and design (5 & 6 in SSCC)
- Single *fee percentage*

## Main Options: Options C, D, E & F

- The *Contractor* notifies the *Project Manager* when part of the Defined Cost has been finalised. The *Project Manager* reviews no later than 13 weeks (50.9)
- If the *Project Manager* does not, the Defined Cost is treated as accepted (50.9)
- Schedule of Cost Components
  - Subcontractors included in schedule
  - No Working Areas overhead
  - No overhead on rates for manufacture and design (5 & 6 in SCC)
- Single *fee percentage*



## Secondary Options and Options for resolving and avoiding disputes

Ref	Title	Description
W1 & W2	Resolving and avoiding disputes	Used when Adjudication is method of dispute resolution - includes an initial referral to <i>Senior Representative's</i>
W3	Resolving and avoiding disputes	Used when Dispute Avoidance Board is method of dispute resolution – not used where HGCRAs apply
X4	Ultimate holding company guarantee	
X8	Undertaking to the <i>Client</i> or <i>Others</i>	Effectively collateral warranties
X9	Transfer of rights	Transfer of rights over material prepared for the design
X10	Information modelling	'BIM'

## Secondary Options and Options for resolving and avoiding disputes

Ref	Title	Description
X11	Termination by the <i>Client</i>	Ability to terminate for any reason
X12	Multiparty collaboration	Collaboration of multiple parties as ECC3, just renamed
X15	The <i>Contractor's</i> design	Similar to ECC3, limits liability to "skill and care". Also includes use of material, retention of documents and requirement for PII
X21	Whole life cost	Allows a 'deal' for considering a change to the Scope for a betterment in whole life cost
X22	Early <i>Contractor</i> involvement (C & E)	Enables a two stage process – stage one being ECI, as previously published

## Summary

- In our view:
  - Evolution, not revolution
  - ECC4 is a **better reflection of how effective teams applied ECC3** (e.g. *Project Manager* instigated risk management, responded to the programme and undertook timely Defined Cost audit under C, D, E & F)
  - **It is more practical** – People Rates under A & B, Subcontractors now part of the Schedules of Cost Components, no people overhead or Working Areas overhead
  - **Provides greater clarity** on use of programme for compensation events & ‘dividing date’
  - **Facilitates more proactive management of projects** – *Contractor’s* proposals, whole life costing proposals

# Questions?

Clause 73.2  
reverses title  
to excavated  
materials?

