

## Issues and Areas for Improvement for the NEC4 – Generated from LinkedIn Group Members.

As part of the LinkedIn group “Project planning and management under the NEC form of contract” a conference/workshop was held May 2011 for members to review a number of issues that commonly come up in discussions within the group. There were about 85 attendees, of which were mostly senior commercial/project managers/planning managers. One breakout session we had in the afternoon was “what would you want to see in NEC4”. Whilst there are no definitive plans to release a new version, but just as when we went from NEC2 to NEC3, the NEC contract is an excellent product that can be made even better/clearer/even less ambiguous with a few more enhancements.

The break out session was run in three groups, with Jon Broome, John Rayner and Glenn Hide facilitating a group of Commercial/operational/planners and letting them voice/share their issues as to what they would like to see different. These were then all shared with the other groups on the day, and we gave a commitment to summarise the findings and forward them to the NEC panel for consideration.

On the day several of the items were dismissed as not being required or viable, or not suitable or even required industry wide. That left a list of “stuff” that over the months have been reviewed and significantly reduced the list to form a consensus as to what would be truly beneficial industry wide, rather than just nice to have’s. The resultant list is the one below – which if adopted by the NEC panel as areas that can further enhance the product and make this an even better/tighter contract. Some of the items are amendments to existing clauses, some are additional clauses, some could be additional secondary options and some are simply extra guidance material.

Key to 'Type' column:

Am = Amendment to existing clauses   AdC = Additional clauses in the core text   AdO = Additional optional clauses   GN = More guidance notes

No	Type	Clause	Issue and, ideally, suggested Solution
1	Am	11.2(14)	Change name of "Risk Register" to "Early Warning Register" to avoid confusion. Projects are now confusing a "Risk Register" with a traditional "risk register", which is a different tool for a different purpose. Call it an "Early Warning Register" and you lose the confusion that these are absolute separate processes and need to be.
2	Am	11.2(22) + (23)	Under options A & B, delete "the cost of preparing quotations" as a disallowed cost as (a) CE's are employer's risks (b) how can the contractor price for these and (c) really unfair when asked to do multiple quotations. Extend the option C/D guidance notes to make it clear that whilst the cost of preparing a quote is not a disallowed cost, does it increase the target cost?
3	Am/ GN	31.2	Method statements: Re-label as 'programme narrative' or 'plans for doing the work' and define content or delete altogether. Statement is simply not used in the industry in the way the authors intended. Some more guidance notes on this would be useful to. Consider making resource levels a requirement along with principle equipment.
4	AdC	31.3	Close out the process for no response to programmes by having 'deemed acceptance' as per for non-response to CE notifications and quotations. Absolutely a requirement. In the same way that deemed acceptances rarely happen with the CE process as it forces the PM to respond, it will now force them to respond to programmes. The deemed acceptance of a programme will never be the movement of the Completion Date, but it will be accepting the sequence and flow of activities. Assess the impact, especially if there is no AP in the first place. Therefore, not a true remedy.
5	Am/GN	31.3	More definition on the reasons for non-acceptance – possibly in guidance notes. More guidance to PM's when they do not accept a programme – i.e. giving specific not generic reasons. Also define or explain "realistic". More guidance as to what the acceptance of a programme actually means – and confirming that planned Completion being beyond Completion Date is not a reason for not accepting the programme.
6	GN	31.4	More guidance on importance of linking activity schedules into Work Breakdown Structure of the programme.
7	Am	32.1	32.1 needs more clarity on what to show in terms of non-implemented compensation events. State that you show the "agreed effects of all Notified Compensation Events as agreed at the Risk Reduction Meeting must be shown on revised programmes", or simply delete the word "implemented",
8	AdC/ GN	32.1	More clarity on how to deal with multiple compensation events, and which programme to feed them into. A bit could go in the contract and then more in the guidance notes. Maybe include a provision in the contract itself to give the PM an option to roll up a number of small CE's to make the assessments more workable - this happens in practice in any event - e.g. BAA.

9	AdC	36	Review how Employer can encourage acceleration without simply writing a Z clause that imposes it. Lots of Employers are doing this, so we do need to consider how this might be done better. Loop of "backdoor imposed acceleration" should also be closed, where PM asks for alternative quote to maintain existing Completion Date which will include the equivalent of acceleration costs and risk, and then be able to make his own assessment of that.
10	Am	50.3	Follow up penalties for non-acceptance of programmes during the contract after first one has been accepted – GH not a fan of this at all, as it would be subjective and not very productive. Danger would harm relationships if PM regularly rejecting and withholding something. Consider linking the 25% retention to all occasions where the contractor does not <u>submit</u> a subsequent programme for acceptance. Improved guidance on the use of X20 and a suggested set of KPI's focussing on best practise would help clients to understand how this could be used more effectively.
11	GN	SCC	Greater guidance on approach for 'bean counting' Defined Cost. The application of the SCC/SSCC needs much greater guidance, in particular the coverage of section 4 and the working areas overhead/people percentage. It may also benefit from a simplification with an alignment with how contracts are generally estimated.
13	GN		Clarify further define recoverable items in the schedule of cost components and produce a guide as to its use and coverage. (consider WAO, Fee, Contractor's Plant etc.).
14	GN	60.1(13)	Clarification of how the weather clause works. There are companies out there giving Contractors weather data in relation to the last ten years average as the 1 in 10 figure which is simply not correct. However, the way it is being done seemingly is using old weather data and it is not taking into account more recent weather. Who is actually governing how the 1 in 10 figure is created???
15	AdC	61.4	Real subtle change to 61.4 needed. Currently if he agrees the PM says yes, and asks for a quote. If he does not agree, he does not say no, he just says there is no change to Prices, Key Date or Completion. If he agrees it is a CE but does not believe it will affect time or cost, then he makes this statement to close the matter (off his own back).Change 61.4 to say he either accepts or does not accept that an event raised by a Contractor is a compensation event.
16	Am	63.3	CI 63.3 - should state that "...is later than planned Completion as shown on the Accepted Programme <u>in place on the date when the PM instructed or should have instructed the contractor to submit quotations</u> ". This would bring the programme into line with the assessment of the changes to the prices Also need a similar line added to the end of 62.2 – "includes the alterations to the Accepted Programme, <u>taking into account progress up to the point the PM instructed or should have instructed the Contractor to submit quotations</u> , in his quotation". Assessment should also be on the basis of the forecast impact on planned Completion taking into account progress at that point.

17	Am/ AdC		Clarify rules for assessing time in a compensation event, in particular where there is concurrent delay. Emphasis that you assess events in the order that they occur, and as such concurrency should therefore never (or at least rarely) be an issue. People need help out there with this – better they get it from the actual words of the contract! There is also the issue of contribution. The NEC as drafted tends to be - is it a CE - Yes/No and if no then it's gets evaluated. There is no clear mechanism for dealing with contributory negligence/concurrent delay.
18	Am	91?	Clauses amended to stop PM removing 95% work and assessing as a negative CE and not having to pay any fee that he would have to pay under the termination process. May be this needs to be another reason to terminate – where the value of the works is say less than 25% of the original contract value?
19	AdC		Additional option for Value Engineering clause under options A & B – little incentive for an Employer to agree to a change if any benefit is 100% Contractors. All options should have this clause - maybe as an X option?
20	GN/Am		Clarification required as to whether you price/programme the WI or B of Q at tender stage. If major item was on the drawings but not included within the B of Q are you entitled to time and/or cost? The fact we have knocked this around amongst the experts with no definitive answer confirms it needs clarifying. Probably guidance notes amendments would do it, or amend existing 60.6. All the contract needs is a bit of clarity into 60.6 and 60.7
21	Am		Amend options C&D to avoid Employer's having to pay all of any overrun on target Prices until Completion when they ask for it back.
22	GN AdO		Guidance or additional clauses on use for Early Contractor Involvement. Another potential X clause - we have the BIM (Building Information Management) initiative that's being rolled out by the DfT which we should also consider.
23	GN/ AdO		Direction to use NEC specific IT management systems (not just those accredited by ICE!) Not sure that this NEEDS to be in the contract, but could be a secondary option?
24			Mechanism for confidentially sharing results of Adjudication across whole industry for continuous improvement of contract, guidance etc. Great idea – real requirement although obviously not to be part of the contract.
25	Am		Introduce a Completion process similar to the process for accepting a compensation event - i.e. contractor notifies, statement, PM assessment and decisions, requirement to explain reasons for not deciding on Completion.