

How are we managing compensation events on our project?

1.1 Introduction

This document came out of a workshop facilitated by Barry Trebes and Richard Patterson, both of Mott MacDonald, at the 'Linked-in' NEC conference on 25 June 2013. The ideas for good practice came from a group of approx. 60 attendees. The ideas as recorded on flip charts are presented for the record at the end of this document. The ideas are collated and presented as a check list that could be used to review how well your project team is managing its compensation event process. Other key ideas from Barry and Richard, included in their 'background presentation' shared with participants are also included.

We hope this if use. Please share any feedback to richard.patterson@mottmac.com .

1.2 Checklist for how compensation events are managed on the project

Ref	Item	Yes / No	Comments
A	GENERAL		
1	The team (<i>Employer/Project Manager/Supervisor/Contractor</i>) has had joint training on NEC and how the Parties are to implement it for this contract		
2	The <i>Contractor</i> and <i>Project Manager</i> have assigned an appropriate level of resources to managing the compensation event process		
3	The planning and commercial staff responsible for preparing and assessing compensation events from <i>Contractor</i> and <i>Project Manager</i> work alongside each other.		
4	The <i>Contractor</i> and <i>Project Manager</i> regularly review the level of resources they have assigned to managing compensation events and make changes as required		
5	The <i>Project Manager</i> is properly empowered to make decisions on behalf of the <i>Employer</i> . The <i>Contractor</i> is made aware of any requirements for the <i>Project Manager</i> to consult with the <i>Employer</i> before acting under the contract.		
6	The delegation of the <i>Project Manager's</i> actions with regard to all actions (including those related to compensation events) is clear.		
7	The <i>Contractor</i> and the <i>Project Manager</i> recognise that early warnings, changes to the Works Information and compensation events are different and sometimes related processes.		
8	Risk reduction meetings are routine, regular and in the diary		
9	Compensation event meetings are routine, regular and in the diary		
10	The <i>Contractor</i> and <i>Project Manager</i> maintain a joint register of compensation events and the progress if dealing with them		
11	An Accepted Programme was in place at the Contract Date and so is pointed to from the Contract Data part two		

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12	The programme includes the required statements of resources.		
13	The programme is 'resource-loaded' in the base software used for planning (ideal)		
14	The routine programme is submitted for acceptance after a routine meeting with the <i>Project Manager</i> which includes a detailed review and written narrative which provides an explanation of changes to the Accepted Programme.		
15	The planning resource (that person who develops and updating the programme) is trusted as the custodian of the project plan		
16	The revised programme includes progress to date, which is agreed between <i>Contractor</i> and <i>Project Manager</i> , in advance of formal submission of the programme.		
17	The planning resource was recognised as important and included as a one of the 'key people' in the Contract Data part two.		
18	The <i>Project Manager</i> and the <i>Contractor</i> prioritise the agreement of compensation events with an effect on time and the programme.		
19	The Parties have discussed the possible need for adjudication and have agreed that adjudication is better than stalemate – and have agreed an informal route to 'escalate' compensation events which have not been agreed to a higher level within their organisations.		
20	The <i>Contractor</i> and <i>Project Manager</i> keep to (and try to beat) the maximum times required for replies under the compensation event process and request and agree an extension to the time (Clause 13.5 and 62.5) where required. (Extensions of the time should be used sparingly as the overuse extends the time for resolution and therefore the greater certainty of outcome.)		
B	NOTIFYING COMPENSATION EVENTS (Clause 61)		
1	The <i>Project Manager</i> and the <i>Contractor</i> use the early warning process in advance of notifying a compensation event, where possible.		
2	The <i>Project Manager</i> understands that a change to the Works Information normally leads to a compensation event and issues a compensation event notification immediately after a Clause 14.3 change to the Works Information.		
3	The <i>Contractor</i> does not 'waste time' with notifying compensation events that the <i>Project Manager</i> will clearly 'cut off' with one of the reasons in Clause 61.4.		
4	The <i>Contractor</i> and <i>Project Manager</i> 'discuss different ways of dealing with the compensation event which are practicable' (62.1) before the <i>Project Manager</i> instructs the quotation		
5	The <i>Contractor</i> and <i>Project Manager</i> refer in their notification to the specific clause under which they believe a compensation event is due.		
6	The <i>Project Manager</i> does not abuse his power to ask for quotations for proposed instructions (Clause 61.2). If those involve any significant design, the <i>Project Manager</i> instructs the requirement for the design as a separate compensation event.		
7	The <i>Project Manager's</i> instructions including those changing the Works Information are clear and complete.		

Ref	Item	Yes / No	Comments
8	The notification of a compensation event includes the root cause of the event, the dates of occurrence and the date that the Party became aware of the event and other relevant and useful information (e.g. photos/site diaries, etc)		
9	The <i>Project Manager</i> and <i>Contractor</i> comply with the requirements for notice under the contract.		
10	The <i>Contractor</i> aims to notify compensation events as soon as possible rather than 'use' the 8 week limiting period.		
11	Compensation event notifications are generally discussed between <i>Project Manager</i> and <i>Contractor</i> before their formal submission.		
12	The <i>Project Manager</i> and <i>Contractor</i> meet to discuss appropriate <i>Project Manager</i> assumptions under Clause 61.6, ideally before the compensation event is notified and definitely before a quotation is submitted.		
13	The <i>Contractor</i> and the <i>Project Manager</i> agree an informal lower limit on the value of individual compensation events and agree to 'bundle' small scale events and notify together e.g. weekly.		
C	PREPARING QUOTATIONS FOR COMPENSATION EVENTS (Clause 62)		
1	Quotations are discussed (e.g. at routine compensation event meetings) prior to formal submission.		
2	The <i>Contractor</i> and <i>Project Manager</i> discuss possible changes to <i>Project Manager's</i> assumptions during the preparation of a quotation.		
3	Quotations are complete and are accompanied by all necessary detailed information required to enable the <i>Project Manager</i> to assess the quotation.		
4	The <i>Contractor</i> should identify the time risk allowances, production rates, unit costs, and time-related costs included in his assessments. (Some <i>Employers</i> may wish or require the <i>Contractor</i> to benchmark these against previous projects. This is quite a common requirement in framework contracts.)		
5	The <i>Contractor</i> and the <i>Project Manager</i> agree 'proxy' daily and/or hourly rates for staff and labour based on details of payments to staff and the definition of 'Defined Cost' under the contract.		
6	The <i>Contractor</i> and the <i>Project Manager</i> endeavour to agree in advance where rates and lump sums may be used instead of Defined Cost.		
7	All quotations include alterations to the programme to show proposed delay to the Completion Date or expressly state that there is none.		
8	The <i>Contractor</i> and <i>Project Manager</i> have an agreed format for compensation event quotations		
9	The build-up to quotations is clear, complete and transparent and the basis of <i>Contractor</i> quotation is transparent.		
10	The <i>Contractor</i> recognises the '80/20' rule (the Pareto principle) and does not unnecessarily overload the quotation with unnecessary detail.		
11	Quotations are submitted within the allowed period and the <i>Contractor</i> attempts to submit quotations earlier.		
12	The response time for the submission of quotations is monitored.		

Ref	Item	Yes / No	Comments
D	ASSESSING QUOTATIONS FOR COMPENSATION EVENTS (Clause 63)		
1	The <i>Project Manager</i> and <i>Contractor</i> talk to each other to explain any issues the <i>Project Manager</i> may have with the quotation.		
2	The <i>Project Manager</i> has a clear process to involve in the assessment all those in his team who are well placed to contribute.		
3	The <i>Project Manager</i> understands (and is given training in) the <i>Contractor's</i> management systems for reporting Defined Cost.		
4	The <i>Project Manager</i> assesses quotations in accordance with the contract and without prejudice		
5	The <i>Project Manager</i> recognises the '80/20' rule (the Pareto principle) and focuses (first) on the key amounts in the quotation.		
6	The <i>Project Manager</i> discusses any proposed non-acceptance of a quotation with the <i>Contractor</i> before its formal notification.		
7	The <i>Project Manager</i> gives detailed comments on any assessment to back up any contractually stated 'reasons' for not accepting.		
8	The <i>Project Manager</i> keeps within the allowed 2 weeks to assess compensation events quotations.		
9	The response time for assessments of <i>Contractor's</i> quotations is monitored.		
E	PROJECT MANAGER'S ASSESSMENTS (Clause 64)		
1	The <i>Project Manager</i> and the <i>Contractor</i> track the timescales so that all are aware when a <i>Project Manager's</i> assessment will be required. This is discussed in routine compensation event meetings.		
2	The <i>Project Manager</i> recognises his obligation (not option) to assess in the circumstances listed in clause 64.1 and acts accordingly.		
3	The <i>Project Manager</i> allows for risk in his <i>Project Manager's</i> assessments		
4	The <i>Project Manager</i> , when required to do so, makes a <i>Project Manager's</i> Assessments in the timescales required by the contract.		
5	The <i>Project Manager</i> recognises the need to be able to justify and explain his assessment (e.g. at adjudication) and acts accordingly.		
6	If there is a <i>Contractor's</i> quotation in place, the <i>Project Manager</i> uses this as a starting point for his <i>Project Manager's</i> assessment.		
7	The <i>Project Manager</i> invites the <i>Contractor</i> to informally assist with the development of the <i>Project Manager</i> assessment.		
8	The fact that <i>Project Manager</i> assessments are made and why is routinely reported to the next tier of management of both the <i>Contractor</i> and the <i>Project Manager</i> .		
F	IMPLEMENTATION OF COMPENSATION EVENTS		

Ref	Item	Yes / No	Comments
i	[This was noted as a discussion point. The ECC (Clause 65.1) does not have a specific requirement for a notice of compensation event implementation. But (Clause 65.4) has 'The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.'	-	
ii	The <i>Project Manager</i> and <i>Contractor</i> include on their joint register of compensation events clear identification of those that are 'treated as implemented' through clause 65.1. These are those that are: <ul style="list-style-type: none"> those that have been accepted by the <i>Project Manager</i> (62.3), those that are <i>Project Manager</i> assessments (64.1) and those that are 'treated' as having been accepted (62.6). 	-	
1	The appropriateness of a separate 'implementation notice' for a compensation event is debatable. Under the contract this is not formally required. However, in the case of compensation events implemented through 62.6, 'implementation' will occur by default when the <i>Project Manager</i> has not responded within his two weeks. Some teams as a matter of practice always issue an implementation notice under Clause 65.1 to confirm. Whatever your choice may be the MOST IMPORTANT thing is: There is a clear record of what is being implemented. This mitigates the possibility of arguments arising as to what has been implemented.		
G	SPECIFIC ISSUES		
1	The <i>Contractor</i> and <i>Project Manager</i> agree to 'roll up' the effects of (e.g.) each week's minor changes and treat them as a single compensation event.		
H	MONITORING PROGRESS		
1	The <i>Project Manager</i> and <i>Contractor</i> have a joint system for reporting on the notification of, quotation for and assessment of compensation events.		
2	Number and value of compensation events <i>notified</i> by each of <i>Contractor</i> and <i>Project Manager</i> and the number and value <i>implemented</i> is monitored each month and data and trends are reported to senior management.		
3	The actual reply periods for submission of quotations in response to <i>Project Manager</i> notifications and the response from the <i>Project Manager</i> is monitored and trends are reported to senior management.		

Lines taken direct from the flip charts on the day

Key:

Included in the above.

Not explicitly included in the above.

0 General

- Timely proactive
- Communication
- Behaviours
- Understanding of contracts
- Standard format/layout of compensation assessments
- Monitoring and reporting systems
- Controls
- Correct levels of staffing (both parties)
- Which programme to use?
- Benchmark - TRAs, production, rates, calendars, unit costs, time-related costs.
- Planning resource is trusted and the custodian of the project plan.
- C1 31 – should be in place at award, within the mobilisation period prior to starting on site.
- Willingness to use dispute resolution.
- Planner in CD2
- Routine CE meetings
- Joint CE register

1 Notify

- PM issuing information (without instruction) – full information on change to WI and assumptions (discussed in advance with *Contractor*)
- Encourage the instruction with better quality information.
- Be specific and refer to a number clause.
- Check notice requirements in contract (format etc)
- State the root cause and include the dates of occurrence, method and date of awareness.
- Give an estimate of time and money even if assumptions have to be made – something better than nothing!
- Add as much current information to the notice as possible.
- Help direct the *Project Manager's* thinking!
- Use the EWN in tandem if time is of the essence (i.e. urgent risk meeting – with an explanation as to why it's urgent)
- Set a lower limit of £5k for single items submitted weekly.
- Be timely! - not only within the 8 week period, but as soon as possible.
- Be clear as to current progress of the current programme.
- Regular communication and meetings
- Talk before submission

2 Preparing

- Full answer included.
- Don't waste time.

- Pre-submission meeting
- Dialogue
- Timely submission
- Transparency
- Joint preparation and discussion of *Project Manager* assumptions
- Only ask for quotes for defined scope

3 Assessing

- Talk to each other before and during work on assessment quote
- Remember to assess time! Include programme
- Enough resources on both sides to manage progress
- Use resource loaded programme as a 'starter' for assessment
- Two weeks to assess – reduce it, where possible...
- *Project Manager* - INVOLVE the rest of the team
- Ensure authorised person, assesses.
- Allow and empower *Project Manager* to make the decision
- Agree format of *Contractors* quote (tender)
- *Project Manager* to give detailed response to assessment
- Quantity decision (hours/output)
- *Project Manager* – make decision
- Draft assessment? (time limit)
- Assess without prejudice
- Don't get overwhelmed by the detail
- Work together to assess uncertain issues
- Target – remember paying 50% [MM - ignored and applicable only to target cost contracts and should not really affect the outcome]
- Keep common principles in each event

4 *Project Manager's* Assessment

1. Timescales in contract to be adhered to
2. Use *Contractor* information/quotation
3. Seek collaborative solution
4. *Project Manager* should have courage if No 3 fails, to make his own fair and reasonable assessment
5. Would you (as PM) be prepared to defend the *Project Manager's* assessment?
6. Monitor

5 Implementation

- Deemed implementation? Or 65.1 Notice? (not explicitly required in contract – good idea?)
- No notice – is it agreed?
- Sequence of events – Glenn
- Add note to get *Contractor* agreement that this is full and final settlement of the CE [MM note this should not be required]

6 Specific Issues

- Small CES
- Frustrated access – agree how to deal with each occurrence and then repeat the process
- Out of sequence CEs
- Volume of changes [MM – a problem, not a solution]

- Concurrent delays
- By agreement – consolidated programme
- Prioritise by cost and time
- Apply consistent process in reoccurring events.

7 Monitoring CE's and EW's

- By volume and value
- Last period
- This period
- Movement in period
- Comparative measurement of reply periods
- Implemented/not implemented
- *Project Manager's* (number of)
- Qualification
- Direct costs (and indirect costs)
- % TRA