

Compensation Event Guidance Document

This guidance document has been collated following a break out session from the 2016 BuiltIntelligence NEC People Conference. The table below is split into five categories: General, Notification, Quotation, Assessment and Implementation. Each section considers a common issue, how that might be overcome and then the behaviours that will encourage the desired outcome. Each section also considers specific contract amendments that would be useful to overcome some of the issues raised.

General

| Fact/Issue/Problem | How to Overcome | Behaviours that will encourage desired outcome |
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| Lack of understanding or immaturity from people involved in the administration of the contract as to what the contract says in terms of CE process. | Run workshop at project inception to make sure everyone understands process. Have flowcharts available – or use something like the BuiltIntelligence mouse mat/fact pad for people to have on their desks to refer to. Joint desire to run workshop at project commencement to get the level of understanding and the processes working well | Define the actions, the things that we would hear or see people say and do that would indicate a full understanding and mature administration of the CE process. Also identify the things that would indicate an immature and lack of understanding. Agree to reinforce the stuff you want and to call out the stuff you don't want. |
| Lack of authority for team members to make decisions and/or to follow contractual processes | Ensure delegated powers allocated from project outset so individuals are empowered to make the decisions they are responsible for | Have an educated Employer to allow Project Manager to follow contract as intended. Can the PM get feedback from the employer and the contractor asking if they think that they are meeting their delegated powers? |
| Lack of early warnings leading to increased number of notified compensation events | Good proactive efficient use of the early warning process will head off some issues from ever becoming compensation events in the first place. Understand the difference between EW and CE processes. | Project Manager encouraging Contractor to raise early warnings and managing Risk Register effectively. Set up schedule of regular risk reduction meetings and agree format/discussions to be held at those meetings. |
| Inconsistency as to how compensation events are communicated and to what level of detail. Communications not addressing all the aspects of the contract e.g. for which contractual reason within 60.19 is it being raised as a compensation event. | Agree at project inception the systems/pro-forma that will be utilised for communicating the distinct compensation event phases (i.e. notification, quotation, assessment and implementation) so that all the contractual aspects are prompted on the relevant form/notification. E.g. when requesting a quote are their Project Manager assumptions to be taken into account? Ensure all understand the four distinct phases to the CE process. Work together at beginning of project to ensure elements are addressed to prompt people along the way. | Ensure the pro-forma details actual, objective actions that are measureable. Set expectations to those involved. Measure a sample of communications against pro-forma monthly and publish to all involved. Discuss ways to which improve or maintain performance. |
| Lack of resources from either Party to be able to maintain compensation event process. | Resources in place needed to manage process from both sides – which in long run should be more efficient, as much more time consuming to be trying to agree things subjectively at the end of the project. Communication between both Parties to understand likely level of change and how Parties can administer effectively. Discuss and anticipate resource demand openly. | Streamline CE process. Agree fastest, least bureaucratic route from the outset. Although the language of the contract is writing, have a forum that discusses and agrees CE in conversations and then capture output in writing within the forums. Measure the ability to agree things early. |

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| Elements of the compensation event process only ever communicated verbally!!! | Follow the contract – 13.1 states that all communications have to be in writing – no such thing as a verbal communication. Neither Party expecting the other to act on verbal communication. Both need to understand the clarity/transparency the contract is encouraging and how this is best done by following the contract (i.e. in writing). | Make it easy to happen, i.e. delegated powers, easy format, forums where they are written at the time of discussion, record pads/eForms. Measure the amount of time there is conformance and non-conformance to the process. Publish results. |
| Either Party not sticking to the contractual timescales to nudge the CE along its timeline to becoming agreed. | Follow the contract!! Parties need to understand that it is in both their interests that liability for such events is understood as timely as possible, and that this is only achieved by following the contractual processes/timescales. Joint review from project outset reminding both Parties of the timescales and have a joint approach to wanting to follow them. | Measure the number of things that are agreed early, set targets on the % of things that you want to agree early. Make it easier to agree things early. Work out what obstacles are preventing early agreement. Publish graphs on main monthly report, have this as the main indicator of collaboration. |
| Lack of regular Accepted Programme running in background – which then makes it more difficult/subjective to be assessing change against | Ensure programme is accepted every period – that Contractor understands contractual obligations and Project Manager understands benefits of having an Accepted Programme. Agree to strive to maintain cl 31 momentum and not to fall behind. Joint programme reviews to ascertain if programme can be accepted, or If not what needs to be turned around to make it accepted within the period. | Agree what an ‘accepted programme’ would look like. Run through the check list together, PM and contractor and discuss what each expects. Accepted programme is all about an expectation being met. If the PM’s expectation is met, the programme will be accepted. |
| Lack of face to face discussions about compensation events – leading to email quotation “ping-pong” to and fro | Schedule regular compensation event meeting (like the contract already encourages for Risk Reduction meetings to formally discuss early warnings). If all compensation events are maintained on a single schedule then they can be reviewed and nudged forward to the next part of the process. | Encourage open dialogue to get joint quick agreement as to what is a CE, and then work on the quotation/assessment process together to move forward. Meeting, discussing and measuring the agreement of CE’s. Right people in meeting, agreeing before writing, writing just confirmation of agreement. |
| Mismatch between the Employer’s own internal governance and the contractual requirements of the ECC contract | Flush out what internal governance could cause issues/conflict and ascertain if this is real or merely perceived! Understand that internal governance or no internal governance – if something is a compensation event under the contract – it is a compensation event! | Governance may need to be followed but should not affect the management of the contract itself. Map out the governance issues that could be a problem, review in line with the contract and agree a way forward to ensure that the Contract is not compromised. |
| Historic behaviours from industry/other forms of contract creating negative views of CE process. | Education from project outset. Everyone should understand the contractual processes and the benefits they are looking to achieve by managing these in timely and diligent manner. The real answer to this one is to have the best works info, design and budget in the first place. | Understand that CE’s will most always cause pain to someone. Help to counter the pain by offering the best solutions that will minimise pain to the Employer or Contractor. Pain can be embarrassment as well as stakeholder issues, money or programme issues |
| Understand which NEC3 contract/option you are working under as to what it means to CE evaluation. | If option C, Contractor paid actual costs anyway but you are just arguing/discussing the target movement – which is potentially half the argument (if split is 50/50). Joint education from outset as to what the option means, and reaffirming at CE discussions to avoid arguments on evaluation methods. | Test for knowledge. Give examples Continue the education throughout the start of the job using real things that come up, not just 1 day workshops. |

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| Sheer volume of CE's to quote/assess. | Employer to spend time and effort making sure the Works Information is as clear and concise as possible, as this otherwise often leads to the lion's share of the amount of compensation events. Either way, however many there are, they need to be addressed at the time as they will only become more subjective the longer they are left. | Ensure contract is carefully put together, and clear – check for clashes between operative provisions and WI Regular compensation event meetings and a joint attitude to want to close out quickly and timely. Establish how the Contractor can minimise the impact of this upon the Employer. |
| Lack of ability of Project Manager to act independently. | Employer to empower Project Manager and that PM should understand key duties and responsibilities. Project Manager to act proactively but not over-zealously – should have a combination of technical competence, ability to operate commercially and understanding of legal framework/ parameters. | Training for Parties and PM on role and responsibility – legal framework within which he/she operates and importance of independence function. Employer (PM's boss) specifically to create an environment that allows the PM to act independently. Employer gets feedback from the contractor asking if the PM is acting independently. Feedback loop established to the PM |

Potential improvements/enhancements to contract needed - General

- Formalise a “compensation event review meeting” so that compensation events are talked about and nudged forward along the process timeline. This could mirror the early warning process as a simple set of steps (plus flowchart?) for the Parties to take.
- Suggest a project workshop for all Parties to attend early in the project so everyone understands the key NEC3 processes and also the specifics/nuances of any amendments or specific contract data

Notification Phase

| Fact/Issue/Problem | How to Overcome | Behaviours that will encourage desired outcome |
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| Appropriateness of compensation events being raised – some are merely speculative at best from the Contractor. | Contractor to ensure that they can identify/prove why an individual event is one. There will be occasions where it may be grey – so neither side should get too upset, and remember the PM can say “No” and the process stops (there unless the Contractor wants to take to adjudication!) Education to encourage how process works. | Clear communication stating why it is a CE with the clearest back up proving the point so that the PM can make a quick clear decision. Set expectations of what is required. Measure those that are and those that aren't – give feedback about performance and agree how to improve. |
| Timeliness of notifying compensation events – not retrospective where possible | Contract states Contractor has to notify within 8 weeks of becoming aware. This was made quite lengthy to act as a legally enforceable time bar. However, should be treated as 8 hours (or at the very least 8 days) where ever possible – so they are on the table early and everyone understands what they are (avoiding the issues of hindsight). | Regular meetings and dialogue to get all such events on a register to ascertain perceived liability. Agree the advantages of early notification. Set and agreed timescale. Measure / Feedback / Discuss. |

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| Immediate resistance from Project Manager from something notified as a compensation event | Project Manager to take these on face value. They will consider if it is a CE, and if so request a quotation, and if it isn't one reject it! PM needs good understanding of contract and CE process to guide Parties through. Recognise that immediate resistance is quite natural until a level of trust is built up. | Project Manager demonstrating by actions how this process is intended to work. Have an internal validation process of CE before it is raised to PM. Agree the internal validation process with the PM. |
| Useful to relate event being notified as a compensation event to the relevant/applicable early warning(s) initially raised | As with any notified compensation event it is useful to "prove" that it is one, and to that end useful to refer to any associated early warning that had previously been raised and/or reference any relevant PM Instructions that had been communicated. | Set up from outset expectation as to what a notification should include and the format it should take. |
| Lack of detail provided – proving that it is a nailed on Compensation event. | Confirm which of the 19 reasons makes it a compensation event, and that it is within 8 weeks of becoming aware. | Agree format of notified compensation event and what it should include. Then Measure/ Feedback / Discuss. |
| Lack of Project Manager willingness to notify a compensation event. Too often only raised by Contractor – client only remembers/raises for the negative ones! | In Project Manager's interest to speed up the CE process so both Parties know where they stand in terms of liability. If something is a CE the PM might as well notify and get it moving – the Contractor is very unlikely to forget! Amend an "Instruction" pro-forma to prompt the PM to state where relevant that "this is a compensation event and quotation is requested under clause ..." | Education of the process and following of that process (so for example the PM will notify compensation events instantly for all instructions that change Works Information). This is potentially more about the relationship and tightness of the tender. |
| Good diary records can help process | Well, it won't do any harm so keep good diary records! Record keeping should be made as easy as possible to encourage people to do it (properly). A key PM activity so that Parties have docs to hand – cost-efficient and minimise arguments | Set up an easy to maintain project database, train Parties on using it, and the benefits to all of good record-keeping. Set expectations, sample and review, give feedback, discuss improvements. |
| Emphasis that notification is only the principle, not the quantum – if accepted PM has not agreed any money yet | Follow the contract. If it is one state so and request the quotation. If the PM does not agree with the quotation then they can assess (in accordance with the contract) themselves | Education to PM of the process and the understanding of the liability of accepting that something is a CE. Have this discussion up front, then as things occur also. Good relationship and confident PM are key here. |
| Notification should not include quote – need agreement it is one before moving on to quotation | Contractor needs to get agreement that it is a compensation event before going ahead and putting forward the cost/time implications. Keep the notification process and quotation process separate as the contract intends. | Education and agreement that this phase of the CE process is a two stage approach not a combined notify/quotation. Set expectation / Measure / Feedback. |

Quotation Phase

| Fact/Issue/Problem | How to Overcome | Behaviours that will encourage desired outcome |
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| Lack of use of the proposed CE (61.2) or alternative quotes (62.1) | If Project manager does not definitely want the additional works to proceed, they can use the "what if" scenario process of alternative quotes or potential events – to which they can get a quote to assess before they decide whether to go forward with. | Sit down from outset to understand process, ensure pro-forma include a prompt as to whether it is a 61.1/61.2/62.1 quotation. Discuss, agree when this should happen, set expectation measure? |

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| Timing – Contractor is often late in producing a quotation. | Ask for extension if absolutely necessary well in advance of due date (but don't unless absolutely necessary as it will only slow process down). Contractor to understand PM assesses if quote not submitted on time. | Education, PM to step in and assess first time Contractor is late which will encourage correct Contractor behaviours to put quotes in on time! Set expectation, measure, feedback |
| Quality/level of detail – clear how built up (in accordance with SCC?) Try to have nothing vague/subjective | Contractor to prove at first attempt what the quotation is made up of and why the PM should be agreeing with the quotation being put forward. Follow layout of SCC to ensure all relevant items covered within quote and in a format that can be understood | Contractor to be straight and transparent with their quotation showing clearly how it has been built up – anything vague or subjective is unlikely to be agreed/accepted. Use employers QS's in the process too – so no surprises. |
| Sensible risk applied to a quote – not the kitchen sink! Biggest area of contention in quotes is how much risk has been allowed for. | Temptation for Contractor to add everything they can think of and then some more, which is very unlikely to be accepted and will slow the agreement process down. Contractor to identify clearly within quote what element of risk(s) have been allowed for so PM can review objectively. | Communication - Establish common ground as to what is acceptable. Accept a healthy challenge from PM as to what is a reasonable risk. Build quote together. Sit down with each other and discuss the outline of what should be included in quote. |
| Relate back to quotation to Accepted Programme. | Contract requires a programme with the quotation if the remaining work has been affected. Contractor to show a filtered programme as to what elements have changed to help explain/justify the quotation. | Education how important a programme with every quotation is – both practically and contractually. Contractor submitting relevant extract of programme with each quote. Set expectation, measure, and feedback. |
| Project Manager providing assumptions is not utilised enough. | These should be agreed jointly and there be a push for Contractor to recommend (and the Project Manager to agree) before the quotation goes in. This will speed up the process of understanding. | Communication. The more agreement there is up front as to how the CE should be assessed, the more likely/quicker it will be agreed/accepted timely. PM to lead by example. |
| Contractor should not make own assumptions within a quotation – these are not necessarily contractually deemed accepted by accepting the quote. | Contract calls for Project Manager assumptions, not Contractor assumptions that the Contractor assumes accepted if the PM accepts the quote. Any assumptions the Contractor is going to use should be accepted/played back during the quotation phase so in effect they all become recognised Project manager assumption. | Communication/education – regular CE meeting can pick up on these elements so both Parties clear on the basis for quotation/assessment. Set expectation, measure, and feedback. |
| Issues with quoting overlapping interrelated events. Review in line with other agreed quotes that have already captured time/cost (so no overlap). | Provide a clear programme as to how the first CE has affected the last Accepted Programme, and then use that programme to demonstrate the further effect (if any) of subsequent events. | Clear transparent programme from Contractor. Willingness by both Parties to sit down and discuss how this has been generated. Jointly agree process/expectations. |
| Discuss with Project Manager contents/build-up of quotation before submitting. | Not essential if the quotation is a clear standalone transparent document but a good idea if time/logistics permits. | Detailed clearly laid out quotation from Contractor. Discuss and agree prior to submission, or at least agree to disagree. |
| Contractor to manage mirrored quotation process down the line with their supply chain. | Ensure that any subcontracted elements have followed the same rules that are then incorporated within the Contractors quotation | Contractor to communicate with Subcontractor expectations/contractual obligations of subcontractor. Set expectation, measure, and feedback. |

Potential improvements/enhancements to contract – Quotation Phase

- Formalise somehow the requirement for Project Manager to state assumptions for a compensation event or for the Contractor to suggest ones for the Project Manager to agree (before the quotation is submitted).
- More clarity within contract as to how multiple quotations should be assessed – i.e. use the last Accepted Programme but taking into account progress and other things (e.g. other assessed CE's that may not yet be implemented) that have happened up to the point the compensation event became apparent.
- Clarity on how a 61.2 proposed quotation becomes implemented i.e. timings and PM making own assessment.

Assessment Phase

| Fact/Issue/Problem | How to Overcome | Behaviours that will encourage desired outcome |
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| Pressure from PM to remove all Contractor risk allowances | Contract states Contractor should include risk for elements that are theirs and have a <u>significant</u> chance of occurring. If more risk occurs they can't claim extra, but if less occurs the PM is not entitled to take out (hence "kitchen sink" problem – see previous). PM could have stated assumptions to remove such risk, but then these would in effect become Employer risk as they will be assessed as a new CE if they occur. | Communication. Use of PM assumptions to remove elements of risk in first place. Contractor to show clearly what risk has been included within quote. Adult grown up discussions as to what is "reasonable" to have included - remove any subjectivity from the discussion. Test for understanding of each other's position using scenarios. |
| Timing of reviewing quote compared to when site activities are being carried out – i.e. not simply assessing with benefit of hindsight | Contract makes it clear that the switch point between the CE being assessed using actual or forecast cost is when the PM gave the instruction or when the event was notified. Most CE's therefore should be a forecast not based on actuals. | Regular joint CE meetings particularly at this assessment phase to push through the agreement as to what the assessment will be. Agree, Set expectation, measure, feedback |
| Limited perceived incentive for the Project Manager to assess quickly and timely? | It is in the Employers interest to have all compensation events agreed as soon as possible so both Parties are clear on liability in terms of budgets and Completion Date. | PM to act well within timescales and to encourage joint dialogue when it comes to assessing the value (and time). Set expectation, measure, feedback Publish the results, strive for improvement. |
| Could use external facilitator to guide process? | Interesting concept – certainly should not be essential and with sufficient education/common desire should not be necessary but could be an option if Parties are falling into a big hole in terms of getting through the level of change timely. | The right person needs to "chair" CE meetings to keep everyone focused on contractual obligations but also the best practical way of getting CE quotations agreed. Use it as an experience gaining role. |
| Aligning contractual process with own internal company governance – which might not align! | Make sure necessary internal governance is covered within original Works Information, but don't change contract for perceived internal governance! If a CE quotation is correct in accordance with the contract – that is what has to be paid. You do not need internal processes/approval to sanction CE payment. | Understanding that processes and timescales within contract should be followed – and not slowed down by internal governance waiting for authorisation of what is clearly contractually correct. Measure, and feedback. |

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| <p>Try to use pure Project Managers Assessments (PMA) sparingly – but equally do it when required. Reluctance for PM to assess self so the process and understanding of liability just drags on.</p> | <p>Clause 64.1 states when the Project Manager should (not might) make their own assessment of a compensation event (i.e. Contractor does not quote/is late, don't believe assessed correctly, no programme with quotation, or latest programme not accepted/issued). A tool to be used more, and more often, albeit carefully (carrot not stick!). Training for PM on powers and duties.</p> | <p>Parties to understand that Project Manager to follow contract and can (should) make careful use of PMA power, which will in turn encourage the right behaviours – i.e. the Contractor will submit on time/realistic/with programme if they know otherwise PM will assess. Set expectation, measure, and feedback.</p> |
| <p>If PM assessing - make it clear how assessed to full detail so Contractor can make judgement whether to push towards adjudication.</p> | <p>The contract is not as specific upon Project Manager making it clear how they have valued their own assessment, but it should be treated the same principle as the Contractor who is expected to justify their quotation in the first place. PM has to act independently and be able to justify decision – encourage to keep record and give reasons</p> | <p>Agree at outset the value to the Parties of the Project Manager giving full breakdown as to how they arrived at their assessment value i.e. justifiable decision. Set expectation, measure, feedback</p> |
| <p>PM to discuss their proposed assessment prior to implementation.</p> | <p>Whilst there is no obligation to do so, good idea for the PM to present what they have assessed themselves and are about to implement. This gives the Contractor the chance to prove where the PM might be wrong, before he/ she implements a (wrong) decision which in theory can only be overturned via adjudication challenge.</p> | <p>Project Manager to set up meetings to share their assessment with Contractor before and be open to dialogue before they finally implement the value/time effects of that event. Feedback by both Parties on success or otherwise of these meetings.</p> |
| <p>Assessment phase onwards should be done jointly.</p> | <p>Strong recommendation that from once the quotation has been submitted the process leading to implementation is carried out jointly. Any revised quotations or Project Managers assessments are build up together, and the Contractor can at least clearly see where the Project Manager has got their conclusions from.</p> | <p>Set up joint meetings to proactively push forward the quotation process to get to a clearly ascertained answer – even if the Parties do not agree with the answer (and the Contractor can decide what to do about that). Feedback by both Parties on success or otherwise of these meetings.</p> |
| <p>Understand principle of concurrency and what part (if any) it has to play in dealing with delays. Better understanding of concurrency needed.</p> | <p>In simple terms concurrency should not be an issue to have to consider as each delay should be assessed in the order that they have occurred taking into account progress and other events that have already happened, hence there should not be misunderstanding about “concurrency”. It is very rare that you would get true concurrency where two different events occur at exactly the same time.</p> | <p>Open honest frank discussions and regularly accepted programmes to demonstrate progressive delays of multiple events. Training or joint workshop to agree understanding of concurrency or lack of. Get feedback as to whether these forums are working or not.</p> |
| <p>Understand if preparation costs are in or out (depending on contract option).</p> | <p>For option A or B the cost of producing the quotation is expressly excluded within the quotation, whereas for options C onwards it is not excluded and should be included within the quotation.</p> | <p>Education and affirmation that both Parties following this principle! Set expectation and feedback during contract to see if working.</p> |
| <p>Make sure time is considered as well within the quotation.</p> | <p>Contractor to ensure that overall programme effects are included within the quotation showing effect compared to the last Accepted Programme. If the Contractor fails to do this then the Project Manager should take this into account within assessment.</p> | <p>Shared attitude by both Parties to having a regularly accepted programme. Agree what an ‘accepted programme’ would look like. Run through the check list together, PM and contractor and discuss what each expects.</p> |

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| Project Manager delays/parks process to then (so they think) be able to assess based upon actual cost! | This is not something the PM will necessarily want – as actual cost could be more than forecast. Contract states that the CE should generally be assessed as a forecast, apart from when costs have already been experienced once it became apparent it was a CE. | Education that CE’s should generally be assessed as a forecast rather than waiting for actuals. Measure the agreement of things early. |
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Potential improvements/enhancements to contract – Assessment Phase

- amendment to 63.3 to make it clear that compensation events are assessed against the last Accepted Programme but taking into account progress and other events that have occurred up until the point the compensation event was notified.

Implementation Phase

| Fact/Issue/Problem | How to Overcome | Behaviours that will encourage desired outcome |
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| Internal governance slowing down the agreed final cost/time implications. | Project Manager to follow contractual process which means the assessment and implementation should not need to wait for any internal governance to sign off. If it is a compensation event – it has to be paid whatever governance process the Employer may have to secure the budget. Education that is in both Parties interest to understand liability at earliest opportunity. | Project Manager to take lead to see that the processes are followed in accordance with contract. Check internal processes to ensure governance does not hinder project progress. Regularly measure and feedback as to whether working. |
| Disputes – reluctance to challenge by Contractor if fair/reasonable. Don’t be too scared/defensive to use adjudication. | Bound contractually to decision, so Contractor to use adjudication process if they believe it has been implemented incorrectly – that is what process is there to do. If everything within this guidance document has been followed it should be less likely that this will ever be an issue! | Project Manager to understand adjudication is to challenge a professional difference of opinion – not a question of morals or taking it personally. |
| Try to agree before works done to avoid hindsight cloudiness. | Great if possible but not always practical. Contract allows things to proceed, with agreement running in parallel. Better for everyone if it can be agreed up front before works are done, but should not be stopped or slowed down if it has been instructed but the value not yet agreed. | Education, communication and both Parties demonstrating this principle. Recommend strong commercial function alongside delivery function. Measure and feedback and evaluate actions during lifecycle of project to improve likelihood of this happening. |
| Emphasis PM is to confirm cost and time effects separately to conclude process. | Generate a proforma that ensures that each CE is closed out by confirming the agreed change to the Prices and Completion Date. I.e. “compensation event 32 is implemented at £63,412.48 and a movement of Completion Date of 4 days. This means that the revised total of the Prices is £XX, and the revised Completion Date is Xth Month, 20XX” Change is contractually binding on Parties so in both interests’ to clarify where the CE leaves the contract. | Beginning of project agree how these will be concluded. Clarity avoids misinterpretation and misunderstanding which leads to downward spiral in relationship. Make sure each CE as done as you go along, and then should be able to trace the contract status on time and money. Set expectation, measure, and feedback. |

Potential improvements/enhancements to contract – Implementation Phase

- bring 65.4 wording into core clauses so it is not lost within the option specific clauses – obligating PM to confirm the cost and time agreed to conclude process

Background information to this document

This information was collated from 60 delegates who attended the break-out group: “How to really get Compensation Events Implemented”, at the annual NEC People conference in June 2016. The brief to delegates was to discuss issues they commonly experience and how they could be overcome or at least better understood. We have collated the ideas and tried to put this into a useful concise guide for people to be able to follow.

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