

February 2022

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 14 - Spirit of Mutual Trust & Co-Operation

Introduction

Training and development support is a key part of CECA's core offer for its membership and working in conjunction with GMH Planning it has delivered a programme of training events around the NEC Form of Contract across several CECA UK regions.

In addition to this training, a series of monthly NEC Contract Bulletins are being produced for both Contractors and Subcontractors to improve practical awareness on key topics within the NEC. The coverage, whilst not exhaustive, is intended as a general overview on some of the contractual principles to increase a wider understanding in support of more sustainable outcomes.

For the purposes of these bulletins a contractual relationship between a "Client" and "Contractor" is assumed. The same rules/principles also apply if the contractual relationship is between a "Contractor" and a "Subcontractor" and so the term "Contractor" will be used to describe both parties.

These bulletins are based on the latest NEC4 family of contracts, but the same principles and rules would apply where parties are engaged under an NEC3 form of contract.

Coming next month:

Bulletin Nr 15: Getting compensation events implemented (i.e. accepted)

Please respond to Leone Donnelly should you require any further information on the CECA NEC4 Bulletins via e-mail: leonedonnelly@cecasouth.co.uk.

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk or contact GMH Planning Ltd by e-mail glenn@gmhplanning.co.uk.

NEC4 Contract Bulletin Nr 14 - Spirit of Mutual Trust & Co-Operation

One of the more infamous clauses within the NEC contracts is the obligation to “act in a spirit of mutual trust and cooperation”. It was introduced into the NEC2 version of the contracts back in 1995 following recommendations from the Latham report. It was brought in to try to encourage a culture and an obligation to act in this way, but what does it really mean?

The NEC2 and NEC3 revision of the contracts used to have a single clause 10.1 that stated the Parties “acted as stated in the contract and in a spirit of mutual trust and cooperation”. The underlined “and” always made it clear that the intent was an obligation to do both, rather than a choice of doing one or the other. NEC4 versions of the contract now make it even clearer that these are separate obligations to be followed, by splitting these two elements into separate clauses. Clause 10.1 states the obligation to “act as stated in the contract” (i.e. do what the contract says), and clause 10.2 has the separate obligation to act in this “spirit of mutual trust and cooperation”. Both elements should work in unison rather than think it is a choice of doing one or the other.



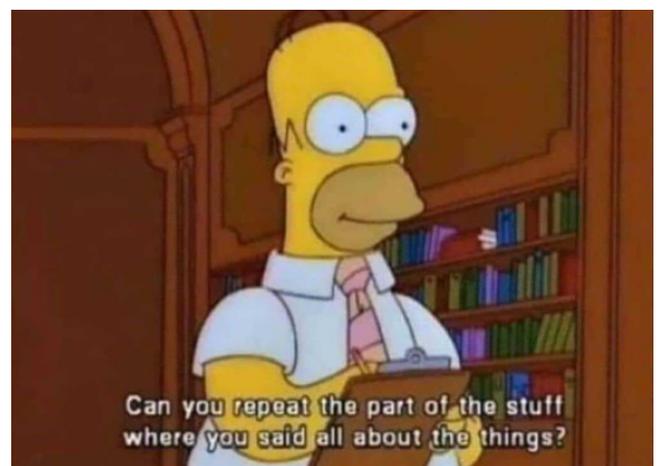
Working in a spirit of mutual trust and cooperation IS: about being helpful, considerate, constructive, and truthful for the benefit of the project. It is about responding to communications, wherever possible, quicker than the contract states, rather than take the full timescale the contract permits to respond. It is about Contractors submitting quotations that are sensible and realistic rather than opportunistic, and equally for Project Managers to assess them in a fair way, not trying to undervalue them or abuse their power in anyway. It is about creating a culture on the project where people are encouraged to follow processes within the contract, recognising that “contractual” simply means “following the rules of the contract” rather than considering contractual as someone being aggressive or adversarial. It is about submitting clear communications with good explanations and back up as to what is being communicated and why, to ensure the other party understands without the need to ask for further explanation. It is about being open to talking and discussing, rather than thinking issues are someone else’s problem or liability.

Working in a spirit of mutual trust and cooperation IS: about remaining realistic. It is a commercial world and the Contractor is in business to make money, but at the same time forge good relationships to increase the likelihood of repeat work with their Clients. Any Client is equally looking to get value for money and not have to pay anymore that they think they should be. Both Parties should be looking to strike a balance between commercial advantage and true entitlement, whilst forging a healthy and constructive relationship to allow the project to be delivered effectively and efficiently.

Working in a spirit of mutual trust and cooperation IS NOT about: relying on relationships and trust at the expense of following the contract. NEC4 has now made it even clearer that the obligation to act in a spirit of mutual trust and cooperation is as well as complying with rules of the contract. It is not (and never was) a choice between one or the other.

Working in a spirit of mutual trust and cooperation IS NOT: about holding back on communications for fear the other party may not like the amount of paperwork or the workload that is being generated.

Working in a spirit of mutual trust and cooperation IS NOT about: acting on a verbal instruction without it being confirmed in writing. Clause 13.1 states that any communication that this contract requires has to be in a form which is read, copied and recorded. Therefore, if there is a verbal instruction given that changes the Scope, it should not be acted upon until it has been communicated in writing. In these times of technology and communication systems, it should take no time



in writing. Clause 13.1 states that any communication that this contract requires has to be in a form which is read, copied and recorded. Therefore, if there is a verbal instruction given that changes the Scope, it should not be acted upon until it has been communicated in writing. In these times of technology and communication systems, it should take no time

at all to put such an instruction in writing and therefore should not need to delay the works whilst it is being waited for. It could equally be argued that a Client expecting a Contractor to act upon a verbal instruction is NOT acting in a spirit of mutual trust and cooperation!

Working in a spirit of mutual trust and cooperation IS NOT: a Contractor giving up true entitlement for cost and/or time just to try to appease a Client. Equally, it is not about a Client proffering the potential for further future projects, in the expectation that the Contractor should give up on anything they are contractually entitled to on that contract simply for the lure of future work.

Summary – Spirit of mutual trust and cooperation should be considered as a way of being, rather than focusing on relationships at the expense of following the rules of the contract. The two should be considered and followed together, which should lead to a greater level of transparency and understanding between the Parties on the project. This will in turn will lead to more sustainable outcomes.

For further advice or guidance on the NEC details please visit www.gmhplanning.co.uk or contact GMH Planning Ltd by e-mail glenn@gmhplanning.co.uk.