

August 2022

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 20 – Managing Subcontractors

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 21 - Role of the Supervisor

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 20 – Managing Subcontractors

Whilst it is clear that a Contractor needs to understand the rules and associated risks that come with any NEC Engineering and Construction Contract (ECC) entered into with their Client, it is also important to understand that there is the similar need to manage this contractual relationship with the supply chain and Subcontractors. This bulletin will focus on some of the key points to consider ensuring that this subcontract management is adopted and managed in a similar way to that which the Contractor should be carrying out with their Client.

Which contract to use for a Subcontractor? It is highly recommended to use one of the contracts within the NEC family to manage each subcontract package. This does not need to be the same contract or contract option, but by using one of the NEC contracts will bring key contractual processes to that Contractor/Subcontractor relationship. In addition, it will ensure that similar sanctions are in place for the Contractor that the Client would have with them under their ECC contractor if it is not administered correctly. Some Contractors still seem to use “bespoke” forms of subcontract with their supply chain partly because “that is what we have always done”. These bespoke forms will not pick up all of the sanctions that a Client has with a Contractor and may therefore leave the Contractor exposed. There are clear sanctions against a Contractor if they fail to notify an early warning or a compensation event within a certain timescale. That means that the Contractor could have a compensation event assessed lower or as zero with their Client, and yet without a similar NEC contract being in place with a Subcontractor, they will be unlikely to have the same sanction/recovery mechanism against that Subcontractor. It is also a requirement under clause 26.3 to issue for acceptance any Subcontractor conditions that are not a “back-to-back” NEC contract with the same Z clauses passed down. Therefore, the choice of any such bespoke forms of subcontract just bring another layer of issue/acceptance that could take time and have been avoided.



If a Contractor is engaged under say an NEC4 ECC option C contract, they do not have to choose the Engineering and Construction Subcontract (ECS) option C to adopt with their Subcontractor. When the Contractor tendered under option C there would have been lots of variables and unknowns hence the target cost option was chosen. If the Contractor is now procuring a Subcontractor at the point where there is a more well-defined Scope, there is no reason why they should not choose an option A “lump-sum” subcontract which at that point should be easier to price without excessive risk. This will bring more cost certainty to the Contractor along with less commercial management that comes with option C in proving the cost build up to each application. Alternatively, if it is a very straight forward package of works with little risk or change envisaged, the Engineering and Construction Short Subcontract (ECSS) could be suitable which is even less procedural for both Parties.

Tender stage with a Subcontractor. Make it very clear at tender stage what your expectations are from the Subcontractor in terms of them being managed and following the rules of the contract. Ask for and look for evidence within their tender submission to ensure that they do indeed understand the rules and principles of the contract. Particularly if using the ECS contract they could be asked to provide a good, detailed programme that demonstrates their understanding of the project and also NEC contractual requirements as part of the tender submission.

Cloud-based administration tools. In a previous CECA bulletin (no 12) we considered the benefits of having a cloud-based administration tool (e.g. Cemar, Aconnex) to manage the flow of contractual communications between the Client and Contractor. This is quite widely utilised now on many construction projects to bring clarity and auditability to both Parties in administering the NEC contractual processes. This however does not appear to be adopted anywhere near as much to manage the Contractor/Subcontractor relationship. It would be equally important and beneficial if such a system was used in the same way to help encourage the Subcontractor to manage the flow of communications, using correct contractual language, and working to the prescribed contractual timescales.

Subcontractor Programme. If the Subcontractor are engaged under an ECS contract they have the same contractual obligations to produce a programme to meet the requirements of clause 31.2/32.1 of the contract in the same way that the Contractor has with the Client. The Contractor should remind the Subcontractor from the outset of their expectations in this regard and where possible even offer to help them in the production of their programme. A good, detailed programme from the Subcontractor will help the Contractor with their own obligations and programme with their Client. If a Subcontractor does not issue a programme meeting the requirements of the contract, the Contractor can withhold 25% of their Price for Work Done to Date, until such time that they are able to so. Reinforcing the importance to all of getting the very first programme up to the required standard and formally accepted. Once that level has been reached it should be relatively easy to maintain that level of quality for a regularly revised Subcontractor programme each period.

Activity ID	Activity Name	Budgeted Total Cost	Original Duration	Start	Finish	Total Float
SPT10	Staircase Landings	£5,933.50	2	01.May.07	02.May.07	38
SPT20	Staircase handrails and doors	£17,671.57	6	03.May.07	09.May.07	38
NT19-21,22,23,24,27,28,29,34,39		£35,253.33	76	27.Apr.05	26.Jan.07	32
SPT130	Lay floor screed - General fitment	£6,264.48	6	27.Apr.05	03.May.05	6
SPT140	Lay granitic topping	£17,955.35	6	04.Apr.05	09.May.05	6
SPT1420	Curing of floor screed	£0.00	20	09.Apr.05	05.Jan.07	26
NT19-110 within combisafe fence		£25,812.30	36	03.Apr.07	22.May.07	0
SPT1620	Lay floor screed - Terrazzo base	£3,678.40	5	09.Apr.07	09.Apr.07	0
SPT1470	Curing of floor screed	£0.00	28	09.Apr.07	02.May.07	0
SPT140	Terrazzo tile laying	£30,765.29	10	03.May.07	16.May.07	0
SPT1420	Terrazzo grinding	£5,008.01	3	17.May.07	21.May.07	0
SPT1410	Access Covers	£3,537.88	4	17.May.07	22.May.07	0
SPT1430	Protection	£5,511.50	3	18.May.07	22.May.07	0
NT19-115 within combisafe fence		£14,075.70	43	16.Apr.07	04.Jun.07	37
SPT1620	Lay floor screed - Terrazzo base	£3,073.40	5	16.Apr.07	16.Apr.07	42
SPT1470	Curing of floor screed	£0.00	20	12.Apr.07	03.May.07	50
SPT140	Terrazzo tile laying	£3,853.23	10	17.May.07	30.May.07	37
SPT1420	Terrazzo grinding	£448.25	5	20.May.07	03.Jun.07	37
SPT1430	Access Covers	£1,823.22	2	20.May.07	01.Jun.07	41

Education and encouragement. It is in the Contractor’s interest to proactively support and educate their supply chain throughout the project lifecycle as to their contractual obligations. A project workshop could be run early in the project to allow the Contractor and their supply chain to be reminded of the key contractual processes and how they can be practically administered. The Subcontractor should be encouraged to follow the rules of the contract particularly around early warnings, programme, compensation events and the Contractor can lead by example in terms of administering their side of the administration as the contract intends.

Treat the Subcontractor as the Contractor would be wanted to be treated by the Client! The Contractor should think about the things that they would expect from the Client and treat the Subcontractor in the same way, namely:

- don’t expect the Subcontractor to act on verbal instructions
- respond to submissions well within the contractual timescales
- work to agree change in a timely manner
- don’t let lack of agreement with the Client hold up agreement with the Subcontractor.

Summary – The Contractor’s contractual relationship and rules to follow are just as important to adhere to with a Subcontractor as they are with the Client. Seek demonstration from the Subcontractor at tender stage that they understand their obligations and that they will be able to administer the rules accordingly. The Contractor should lead by example through education and the use of practical administration tools to ensure that all the processes are proactively followed. Ultimately this should benefit both Contractor and Subcontractor in terms of relationship and understanding their respective liabilities at any point in time.

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.