

January 2024

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin No. 37 - Top ten most important NEC4 ECC/ECS clauses

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 38 - Z clauses that could significantly alter risk profile.

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.

NEC Contract focus month 37 - Top ten most important NEC4 ECC/ECS clauses

For many people trying to understand a contract can appear to be a bit daunting and even unnerving given some of the unfamiliar language that is often used. NEC contracts have tried to change that perception by using plain English with no legal phrases. They are intended to be a management tool to help deliver the project rather than just a claims tool used by commercial and legal people within the team.

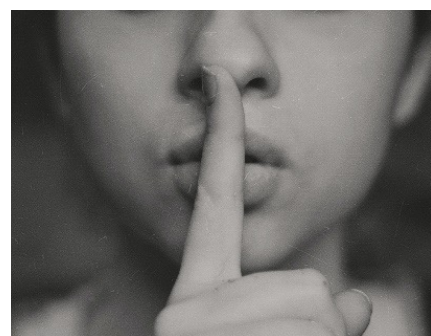
People need to be familiar with the whole contract (and you need to read all of it to then know which elements are relevant to your particular role and also those obligations and duties imposed on other parties to the contract). In this bulletin we have picked out what we consider to be the ten most important standard ECC clauses (and also applicable to ECS) that need to be understood and the reasons why. They are shown in chronological order as they appear in the contract numbering.



1. Clause 10.1: "the Parties, Project Manager and the Supervisor shall act as stated in this contract". This simply means that everyone should do what the contract says, an important reminder in the very first clause of the contract which sets the tone. Sounds simple, but you would be amazed how often people forget to apply that very simple yet fundamental principle. Notice clause 10.2 has not featured within our top ten, which is the obligation to act in "a spirit of mutual trust and cooperation". Whilst an important underlying principle, it is the 10.1 obligation that first and foremost needs to be followed.

2. Clause 11.2(26): "Disallowed Costs". Whilst only relevant for ECC options C/D/E/F, it is very important for Contractors to understand that whilst they will be paid each period their Defined Cost (in simple terms actual cost), there are certain elements that if incurred would be disallowable. This clause lists costs that the Project Manager could disallow from any assessment. Falling foul of anything listed within this list is probably the biggest risk to a Contractor (that in essence is otherwise a cost reimbursable contract).

3. Clause 13.1: "each communication the contract requires is communicated in a form which can be read, copied and recorded". This means that verbal instructions are not valid and should not be followed. People may feel pressured to act on a verbal instruction and think that "in a spirit of mutual trust and cooperation" they must follow any such verbal instruction. However, once again in accordance with clause 10.1 all Parties should do what the contract says, and clause 13.1 states any such instruction has to be in writing. In this age of technology, it should be very quick and easy to give such a written instruction, with clause 13.2 also emphasising any such communication should be issued within the system stated in the Scope (e.g. CEMAR).



4. Clause 14.3: "the Project Manager may give an instruction which changes the Scope". Not the Supervisor, not someone senior from the Client's team, only the Project Manager (or anyone they have formally delegated powers to and communicated that fact in writing in accordance with clause 13.1). It confirms that Scope can be changed during the life of the project, but only ever instructed by the Project Manager named in contract data part 1 (or any delegate that has been confirmed in writing).

5. Clause 15.1: "Contractor and the Project Manager give an early warning by notifying each other as soon as either becomes aware". These are for elements that could impact (in simple terms) time, cost or quality. The principal is to get potential issues on the table early so they can be talked about, allowing an opportunity to avoid or at least mitigate the potential impacts (for all of the parties involved, including the Contractor). This should all be without needing to focus on whose liability that particular issue is.

