

November 2024

# CECA NEC4 Bulletin

CECA Member Briefing:

## Bulletin Nr 47: Requests for Information (RFIs) and/or Technical Queries (TQs) in relation to NEC Contracts

### 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 48 - Assessing weather delays under NEC contracts**

Please respond to Lucy Hudson should you require any further information on the CECA NEC4 Bulletins via e-mail: [lucyHUDSON@cecasouth.co.uk](mailto:lucyHUDSON@cecasouth.co.uk).

For further advice or guidance on the NEC details please visit [www.gmhplanning.co.uk](http://www.gmhplanning.co.uk) where you will find a wealth of free [NEC Guidance Notes](#), [NEC FAQs](#), and other helpful measures.

# NEC Contract focus month 47- Requests for Information (RFIs) and/or Technical Queries (TQs) in relation to NEC Contracts

Whilst not referenced in an NEC contract, most construction projects would typically use either an RFI (Request for Information) or a TQ (Technical Query) system on their projects. These would be used to identify elements that need an answer to or resolution in order to progress part of the works. This bulletin will consider what part they can play when administering an NEC contract.

**What is an RFI (Request for Information) or a TQ (Technical Query)?** These processes are both fairly self-explanatory with either one or the other typically adopted on any project. Either of these processes address the fact that information is lacking or needs to be clarified for the Contractor to progress an element of the works. They are often used to clarify aspects of design where the Contractor is seeking clarification of something.



**What is the response time for an RFI/TQ?** As these are not an NEC process there would be no contractual obligation for the Project Manager to reply within the "period for reply", nor would there be any specific NEC contract sanctions if they did not respond. A timescale for response can be requested by the Contractor in the RFI/TQ, and the Project Manager, (in a spirit of mutual trust and cooperation) for the benefit of both Parties, should respond in a timely manner. However, there are no contractual sanctions for not responding although the non-response may have practical problems for the project, which the Project Manager should obviously seek to avoid.

**Do cloud-based NEC administration systems include RFIs/TQs?** Whilst not part of an NEC contract, many of the cloud-based systems do include such a bolt on element. This is quite useful as all communications are in one portal but still needs to be treated with caution. If the response to an RFI or a TQ is an instruction that changes the Scope, this should be communicated separately as a Project Manager Instruction (PMI). If the response to an RFI/TQ is merely a clarification, then it does not require a separate PMI.

## Examples of RFIs could be:

1. What height do you want the main control panel off the floor as the specification states it can be between 1-1.4m from the floor?
2. What RAL colour do you require the main cladding to be as the Scope does not state it?
3. Do you require lighting in the switch room as there is none shown within the Scope (all other switch rooms we have constructed have always had lighting)?

If the answer to RFI no.1 is 1.2m, then that can just be recorded as a response to the RFI. Equally confirmation of the cladding colour in RFI no.2 could just be responded to confirming the colour. If there is no timely response to RFI no.2 and the time is getting nearer to when the Contractor will need to place the order, the Contractor should notify an early warning to state the answer to RFI no.2 is now getting urgent. At the early warning meeting this can be discussed and the urgency recognised, which hopefully would prompt a quick resolution to avoid any procurement delays. RFI no.3 may come back with a response that "yes lighting is required". If this is not in the Scope, then the response should be an instruction to provide lighting. Therefore, a Project Manager Instruction should be issued separately to the response of the RFI to make this point clear.

**Is an RFI not an early warning anyway?** The contract is very specific in that if the Contractor fails to notify an early warning that they could have given, this could be considered in the assessment of any resultant compensation event. If the matter has only been notified as an RFI/TQ then it can be argued that it has not been notified as an early warning

(although the Contractor will clearly feel they have raised the issue) and could therefore impact the Contractor financially in the assessment of the compensation event value. It is therefore good practice to notify any RFI or TQ that are getting to the point that they could impact time or cost as an early warning.

**Why should not all RFIs or TQs be submitted as early warnings?** The main issue is that these minor design queries and issues could swamp the early warning process, and each early warning meeting will become more of a design review meeting losing sight of the potentially important issues that need resolving. RFIs or TQs that are becoming urgent can be individually notified as an early warning to get attention, but all other issues can be managed through the RFI/TQ response process. However, the RFI / TQ schedule could be amended to include a colour coded red/ amber/ green column against each item to identify those items that if not addressed in a timely fashion might potentially otherwise develop their influence on cost or time.



**Can a response to an RFI or TQ be taken as an instruction?** In practical terms it could be, but for completeness and clarity it should be notified separately as a Project Manager's Instruction. Clause 13.4 states "any communication the contract requires must be separate from any other communication". Clause 20.1 states that "the Contractor provides the works in accordance with the Scope". The definition 11.2(16) states that "Scope is either in the documents that the contract states they are in, or an instruction given in accordance with the contract". All of these clauses point to a clear instruction from the Project Manager to change the Scope. It is better to have these all in one place within a cloud based system, which should be "Project Manager Instructions", rather than trawling through the response sections of RFI/TQ's that may have a few instructions intimated.

**Is a separate instruction required to clarify the response to an RFI/TQ?** The practical answer is yes, if the answer is an instruction that changes the Scope.

**Summary:** RFIs or TQs can be a very useful practical process to help flush out information needed to progress the project but should not be used at the expense of following NEC contractual processes, in particular Project Manager instructions and early warnings. They should be used in conjunction with other contractual processes rather than replacing them. Any RFI/TQ that is getting urgent can be notified as an early warning and then discussed at an early warning meeting. Any answer that changes the Scope should be issued under a clear Project Manager Instruction.

