

January 2025

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 49: Programme at Tender Stage

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 50 - Assessing Compensation Events - Forecast or Actual Cost?

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

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

Bulletin Nr 49: Programme at Tender Stage

NEC contracts have always elevated the importance and contractual significance of a programme for any project. The first programme can either be produced at tender stage and referenced in Contract Data part 2 to be included within the signed contract or can be produced and issued post contract award. This bulletin will consider the benefits or otherwise of ensuring that a programme is produced and issued as part of the tender submission to be included within a signed contract.

Is it mandatory to provide a programme at tender stage to be included within a signed contract? No, not contractually. By signing the contract, the Contractor is committing to the contractual dates stated in Contract Data part 1. In particular the Contractor is committing to achieve the Completion Date by the date stated and if they fail to achieve that date will be liable for X7 delay damages as stated.

However, most tenders will give a scoring matrix for a tender submission and some elements may be a pass/fail if included or not. Although price will often be a big proportion of the tender score, the programme element may have a significant percentage score and make it difficult to win the tender if significant effort is not put into a good quality programme. Even if one is not specifically requested by the Client at tender stage, submitting a good quality detailed programme could set a Contractor apart from other tenderers.

If a programme is not included in contract data part 2, how soon does the first programme have to be issued? The Client will state in Contract Data part 1 the period after the Contract Date within which the Contractor is to submit a first programme for acceptance. This is typically within a few weeks of the Contract Date.

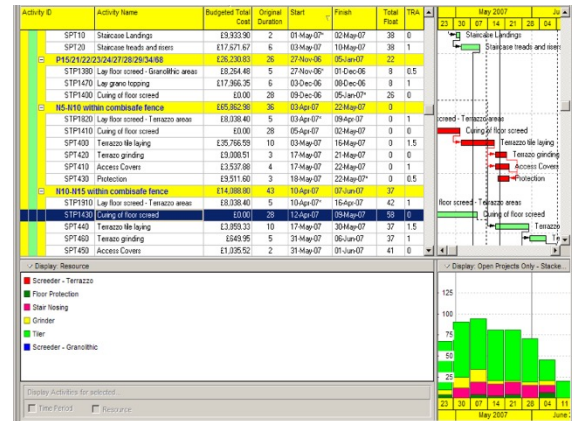
If a programme is included in Contract Data part 1, is that automatically the first Accepted Programme? Yes, this does contractually become the first accepted programme. Clause 11.2(1) clearly states that “the Accepted Programme is the programme stated in Contract Data or latest programme accepted by the Project Manager”.

Are there consequences to not including a programme and refencing within contract data part 2? Other than the lost opportunity of demonstrating quality and competence as already highlighted, the first programme would need to be prepared and issued by the Contractor at a very busy period at the start of the project where there are lots of other things to do. Submitting the programme as part of the tender therefore will mean one less thing to worry about at the commencement of the project.

It also means that clause 50.5 will never come into play where 25% of the Price for Work Done to Date can be withheld from a Contractor’s application if they have not submitted a programme showing the information the contract requires.

The first programme can notoriously also take a while to agree, and in the meantime, there might be early compensation events that now become more difficult to objectively assess. It may then also put further concerns on a Project Manager to accept a programme knowing with hindsight the impact early compensation events may have on the programmed works that may cloud their judgement (even though it shouldn’t contractually).

Are there other benefits to submitting a programme as part of the tender? There are numerous other elements that can only benefit a Contractor’s ability to demonstrate quality and competence. It is the chance for a Contractor to demonstrate they fully understand the extent and the scope of the project. It shows that they can produce a good programme in recognised planning software. They can show the quality and logic on how they plan to successfully achieve the project by the Client’s dates. It could increase Client confidence in the ability of the Contractor. It is also the chance for the Contractor to demonstrate their understanding of the NEC contract by submitting a programme that fully complies with clause 31.2.



Are there any disadvantages for the Contractor in submitting a programme as part of the tender submission? It does take time and effort to produce such a programme and obviously there are typically only a short number of weeks the Contractor has in which to compile and submit their submission. Regardless of how much time there is at tender stage, it should invariably be a good investment to put the effort in to produce a thorough meaningful programme that could help a Contractor to win the tender in the first place. It will then also be an effective management tool that can be utilised from day one.

From a Client point of view are there any negatives in a Contractor including a programme within Contract Data part 2? The only negative would be if the Contractor has issued a programme that is not very good quality or fully compliant to clause 31.2. Even that would not change the Contractor's obligation to submit a revised programme within the period stated in Contract Data part 1 so they would have to 'up the quality' very quickly. However, the Client's ability to withhold 25% until the Contractor does submit a revised programme that does meet the contractual requirements would be taken away. This may mean the Contractor would be a little less incentivised to correct this situation quickly (even though there could be other consequences to the Contractor in terms of assessing the impact of any compensation events).

If the Client is not happy with the quality of the programme submitted by the Contractor as part of the tender, they could still award the contract but first insist on the removal of the reference to the programme in Contract Data part 2 before the contract is signed. That will then mean the Contractor will be obliged to submit an improved quality programme within a few weeks of the Contract Date. The Client can withhold 25% of the Contractor's applications until such time that a programme is submitted showing the information the contract requires.

Summary: It is well worth a Contractor spending time and effort to submit a quality programme that complies with the NEC contractual requirements. It will improve the chance of being awarded the contract and also mean they will hit the ground running at a crucial and busy stage of the project following contract award. It also sets the standard for compliant revised programmes to be submitted throughout the life of the project and increase confidence all round.