

July 2025

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 55: Check List Before Signing An NEC Contract

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.

This bulletin has been co-written by Glenn Hide and Neil Earnshaw.

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 56: Programme narrative with issuing a programme for acceptance

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.

NEC Bulletin 55: Check List Before Signing An NEC Contract

Before parties enter any contractual arrangement it is important that they fully understand their rights, obligations, entitlements and liabilities. This bulletin will consider some key elements to check, particularly for a Contractor who is entering into an agreement with a Client under the NEC4 Engineering and Construction Contract (ECC). The same principles are applicable to a Subcontractor entering into a similar agreement with a Contractor under the NEC4 Engineering and Construction Subcontract (ECS). Many of the points discussed below are very simple and may or may not be obvious to all, but if missed, or not fully understood, could be the difference between making or losing money on a contract.

Which version of NEC4 has been chosen? There are currently four revisions of the NEC4 suite of contracts, each with minor amendments, so it is important to know which version you have and which of those amendments are relevant to your contract. The NEC4 contract was first published in 2017, with amendments published in 2019, 2020 and 2023.

Understand the main option selected: The choice of main option (A/B/C/D/E/F) has a significant impact on risk to either party. For example, option A allocates much more risk to the Contractor compared to other options which should be reflected accordingly within the tendered price and programme. An analysis of each main option and their associated risk profiles was discussed in detail in CECA bulletins Nr 26 to Nr 29.

Be aware of secondary options: Secondary options being included or not included will again affect the contract's risk allocation and how the Contractor will need to manage the contract. Some secondary options not being included may prevent the Contractor from being able to tender at all. For example, X18 (limitation of liability) not being included would mean that the Contractor would have unlimited liability, for which they are unlikely to be insured. All of the secondary options are covered in more detail in one of our very first CECA bulletins in the series (Nr 3).

Check Z clauses or amended clauses: Whilst these CECA bulletins give help and advice on understanding the meaning of clauses and processes of the standard NEC contract wording, Clients may add additional clauses or amend existing clauses. If secondary option "Z" has been listed in Contract Data part 1 then there will be amendments to be considered.



However, even if "Z" is not listed it does not mean that there are no other changes. Often a Client may have included within the contract an amended version of the standard contract wording (which may or may not be track-changed). Any such changes need to be fully understood in terms of whether or not they alter the standard risk allocation and therefore may need to be reflected within the Contractor's tender price. A previous CECA bulletin (Nr 38) identifies some Z clause amendments to watch out for and explains how they may alter the risk profile.

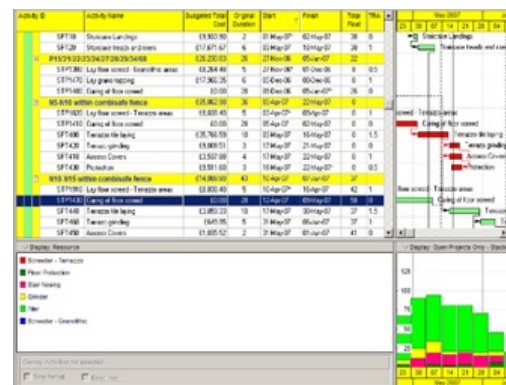
Check Contract Data part 1 and 2 have been completed: The Client completes the entries for Contract Data part 1, and the Contractor completes the entries in Contract Data part 2 (covered in more detail in CECA bulletin Nr 11). It is essential that every element is completed in full otherwise this could lead to disputes and the potential to have to refer to dispute resolution or other legal procedures to determine the correct interpretation of the contract. Particular elements that need to be completed are the contractual dates in section 3, X7 delay damage amounts, the Contractor's fee percentage and the relevant schedule of cost components entries.

Fully understand Scope: The Scope will include all the drawings, specifications, standards and other constraints that the Contractor has to comply with. Only an instruction to change the Scope would lead to a compensation event, and therefore anything that the Contractor has not priced for but is a requirement in the Scope would need to be complied with. The Contractor has no entitlement to additional time or money for having to do work that they have not priced but that was stated in the Scope.

Fully understand Site Information: The Site information describes the existing site conditions that the Contractor needs to be aware of. It will include elements such as ground investigation reports, cable survey drawings, asbestos surveys and as-built information. It allows the Contractor to understand the existing site conditions and to be able to price and programme the contract accordingly. If the Contractor encounters conditions which they did not price at tender stage, they will only be able to claim for any associated time and money if they can prove that the conditions encountered were not what was identified at tender stage. It is not about the Contractor being able to prove what they did price for, it is about what they should have priced for.

Contractor design elements: If the Scope identifies elements of Contractor design, check for inclusion of X8 (undertakings to the Client or Others), X9 (transfer of rights), and X15 (the Contractor's design) to again understand the Parties relative rights, obligations and liabilities. If X8 is included the Contractor will have to provide collateral warranties in respect of their work and / or the work of their Subcontractors. If X9 is included the Contractor will have to provide the Client with intellectual property rights in respect of material prepared for the design of the works and similar rights may need to be procured from Subcontractors. If X15 is not included the Contractor will potentially be carrying a "fitness for purpose" obligation. This is not usually a problem if the contract is merely for construction works however, if the contract also includes an obligation to design some or all of the works this will be problematic. It is unlikely that the Contractor's professional indemnity insurance would cover them for a fitness for purpose obligation and as such this would be an uninsured risk.

Programme requirements: Identify in section 2 and section 3 of Contract Data part 1 the programme date constraints which will include the *starting date*, *access date(s)*, *completion date*, any *key dates*, any *completion dates for sections*, and whether or not the Client is willing to take over the works early if the Contractor finishes ahead of schedule. It is also important to check the Scope as there may be additional programme requirements being imposed by the Client such as which planning software should be used, if there are project controls reporting requirements, and any requirements to cost load and/or resource load the programme.



Include programme in Contract Data part 2: It is not mandatory to include a programme at tender stage, but for all sorts of reasons it is highly recommended that one is (for reasons described in more detail in CECA bulletin Nr 49). It helps to demonstrate that the Contractor has understood the contract and demonstrate that they can produce a quality programme in line with NEC contractual requirements. If one is not referenced by the Contractor in Contract Data part 2 then the Client will state in Contract Data part 1 when the Contractor will have to submit the first programme for acceptance.

Check dates in Contract Data are relevant at the point of signing (particularly if awarded late): Often the period between submitting the tender and the Client subsequently awarding the contract is protracted and exceeds the starting date that was stated/intended at tender stage. If this is the case, then all of the dates stated in Contract Data would need to be reconsidered and, if necessary, adjusted by agreement to reflect the delayed start. If the contract is signed by the Contractor after the *starting date*, there is no compensation event for this, and the Contractor may have unwittingly signed up to the original *completion date*, hence reducing the contract period with there being no opportunity to increase their price.

Understand how People are paid and the relevant Schedule of Cost Components: there are two Schedules of Cost Components (long and short) the use of which depends on the main option selected. The Short Schedule of Cost Components is used with the NEC4 ECC options A/B, and the Schedule of Cost Components is used for all other main options (as covered in more detail in CECA bulletin Nr 23). Depending on which schedule is used there are different entries to complete in Contract Data part 2. These entries dictate which rates and percentages are used to compile the Defined Cost. Any entries not completed or identified may lead to subjectivity or dispute particularly when assessing payments and compensation events.

Summary: It is much better for the Parties to understand their rights, obligations, entitlements and liabilities for a contract before signing any agreement. This should limit any subjectivity and potential for disputes which may then detract from the effect delivery of the contract. The overarching objective of NEC contracts was to reduce the incidence of disputes in the construction industry. This objective is more likely to be achieved if Contractors understand the contracts they are signing up to, and if the Contract Data and other documents are fully and correctly completed. Both Parties need to understand exactly what they are agreeing to at the point of signing the contract, doing this significantly increases the chances of securing a positive outcome from the contract for all.