

November 2025

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 59: Lack of response, time-bars and deemed acceptances in 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:

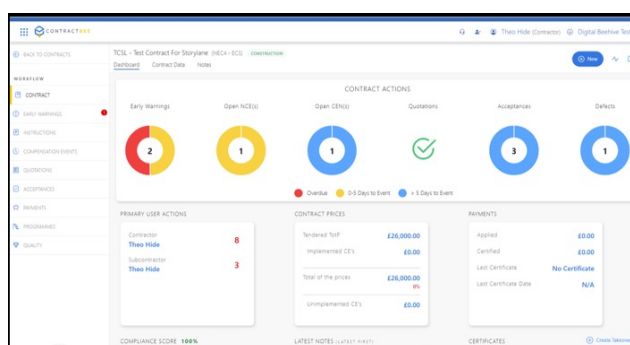
Bulletin Nr 60 - CECA Rates for Equipment

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 59: Lack of response, time-bars and deemed acceptances in NEC contracts

NEC contracts require regular flow of communications between the parties. They will typically be tracked by using one of the established cloud-based administration tools such as Contract Bee or Cemar. The contract includes specific response times for certain communications, whilst for other communications the response period will be the “period for reply” as identified within Contract Data for a particular project. These response times are detailed in full in “CECA Bulletin 34 - Periods for response in contract”.



This bulletin will consider the sanctions within the contract that are in place if either party does not respond or issue a communication within a particular timescale, as well as identifying any specific “time-bars” that may exist.

Contractor notifying a compensation event: The only specific time-bar that exists for the Contractor, in an ECC contract, is the obligation to notify a compensation event within eight weeks of becoming aware, otherwise they lose the right to claim any change to Prices or Completion Date. This notification is however only on the ones that they are obliged to notify. Roughly two thirds of the reasons listed in clause 60.1 are the Contractor’s obligations to notify and to which the time bar would apply. This would include notifying lack of access (clause 60.1.2) and unforeseen physical conditions (clause 60.1.12). For any that the Project Manager is obliged to notify, the time bar would not apply. The time-bar mentioned in clause 61.3 states “unless the event arises from the Project Manager giving an instruction or notification, issuing a certificate or changing an earlier decision”. This covers reasons 1,4, 7, 8, 15 & 17 as listed in clause 60.1 and includes probably the most common reason for a compensation event which is that the Project Manager gives an instruction to change the Scope.

It should be in both Parties’ interest to want to get a compensation event implemented (agreed) as soon as possible so that both understand their respective liabilities. Given that the process starts with notifying a compensation event, it should be equally important therefore for both parties to notify this event as soon as possible.

In the Engineering and Construction Subcontract(ECS) this time-bar is reduced to seven weeks to fit within the ECC timescales. In the Engineering and Construction Short Contract (ECSC) the same principle and process exists, but in that contract the same time-bar upon the Contractor is reduced to four weeks.

Deemed acceptances: There are instances where lack of response could lead to a deemed acceptance, but only for a few specific processes and generally only after a reminder.

1. **Programme:** if the Project Manager does not respond to a programme issued for acceptance within two weeks, the Contractor may notify that lack of response. The clause does say ‘may’ in as much as it is not an obligation, but the response is necessary to trigger the next part of this process. To ‘notify’ is obviously in writing and where the Scope states one, it is issued within the cloud-based system that has been agreed to be used. If the Project Manager does not respond to that notification reminder within a further week, then the programme is treated as being accepted (i.e. deemed accepted).
2. **Compensation event notification:** If the Project Manager does not respond to a notified compensation event within one week, then the Contractor may notify that fact. If they do not respond within a further two weeks from the notification, the principle that the event is a compensation event is treated as having been accepted. The Contractor may now also submit the quotation. There is however a practical problem here, whereby many of the existing cloud-based systems do not automate this process. Even though contractually the event is deemed accepted, the Contractor may still not be able to submit the quotation within that same system as it does not recognise automatically the deemed acceptance. A “super-user” will have to manually adjust this within the system (often not very quickly), once again slowing down a process that neither Party should want to be delaying.

3. **Compensation event quotation:** If the Project Manager does not respond to a quotation within two weeks, then again, the Contractor can notify that fact. If they do not respond within a further two weeks, the quotation (i.e. cost and time) is deemed accepted. Again, many existing cloud-based systems will not show this automatically and eventually it would have to be corrected to reflect the true contractual position. The same processes exist within the ECS but the deemed acceptance timescale is extended to three weeks to fit within the ECC timescales. In the ECSC if there is no response to a Contractor's quotation within the contractual timescale, the quotation is instantly deemed accepted without a reminder.
4. **Compensation event assessment:** If the Project Manager has not accepted a Contractor's quotation and stated they will make their own assessment, they have the same time that the Contractor had initially for their quote to make that assessment. If they do not issue their assessment within the time allowed, the Contractor can once again notify a reminder. If the Project Manager does not respond within a further two weeks of the reminder, then the original Contractor quotation that had been rejected is now contractually "deemed accepted".
5. **Clause 50.9 Assessing the amount due:** ECC options C/D/E/F allow the finalisation of elements of Defined Cost for part of the works. The Project Manager reviews the records submitted by the Contractor within thirteen weeks of the notification. The Contractor provides any further records/clarifications within four weeks if the Project Manager notifies such requirement within that period. The Project Manager reviews those records within a further four weeks and responds with their acceptance or with their own assessment. If they do not respond within this final four-week period, then the records of the Contractor's Defined Costs are treated as accepted at this point.

As already mentioned, many of the existing cloud-based systems will not automate any such deemed acceptances and therefore not reflect the true contractual position. A "super-user" will then have to manually adjust the system (but there is no certainty as to when this may happen). Hopefully in time all these cloud-based systems will recognise the need to automate this to reflect the correct contractual position.

Other non-responses: For any other cases where the Project Manager does not respond to a communication within the contractual timescale there are no instant deemed acceptances. In these instances, it will simply be a compensation event under clause 60.1(6), and any implications that this brings to the Contractor will be recoverable as a compensation event. The Contractor cannot simply assume or treat silence as "deemed acceptance" and proceed anyway. An example of this would be the lack of response to a design issued for acceptance. The Contractor cannot proceed until the Project Manager has responded with acceptance of that design.



Other instances where the Project Manager does not respond to an instruction to provide a quotation would just mean that the element would not proceed, which may then cost the Client more money/time impact if they subsequently resurrect that issue at a later date. Examples where this could occur would be lack of response to acceleration (clause 36.1), Contractor's proposals (clause 16.2), proposed instruction quotations (clause 65.2) and Whole Life Cost saving (clause X21.3).

Contractor not issuing compensation event quotation on time: If the Contractor does not produce a compensation event within three weeks of being instructed to do so (or as extended by agreement under clause 62.5), then the Project Manager simply makes their own assessment (clause 64.1). This quotation is unlikely to be as informed, or higher than the Contractor would have assessed it to be, so it is very much in their interest to make sure that they do submit a quotation on time.

Uncorrected defects: Following the certification of Completion, if the Contractor does not correct a notified defect within the defect correction period, then the Project Manager assesses the cost of having someone else correcting the defect and the Contractor will pay that amount (which will be assessed/deducted in the next application). It is therefore in the Contractor's interest to ensure that they do correct any such defects, as anyone else correcting that defect is likely to charge more than the Contractor will probably think it should have been. At that point there is not a lot practically that the Contractor can do, as they are unlikely to take such an issue to dispute process.

Lack of response to Contractor application: The Project Manager should certify a payment within one week of the assessment date. In the UK where Y(UK)2 applies, the Contractor's application for payment would become the Payment Notice if the Project Manager does not respond to the Contractor's application. The Client would therefore become legally bound to pay the amount due assessed by the Contractor. This is based on the UK, but other jurisdictions may have their own rules governing construction contracts that would need to be checked.

Summary: There are different sanctions to lack of response throughout the contract. It is important for both Parties to know their obligations and understand the contractual consequences for not responding or not doing something within the period stated in the contract.