

June 2026

CECA NEC4 Bulletin

CECA Member Briefing:

Bulletin Nr 66: X22 - Early Contractor Involvement

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 67 - Start up guide/early stages for an NEC contract

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 66: X22 - Early Contractor Involvement

Secondary option X22 allows a Client to choose “Early Contractor involvement” as an inclusion into an ECC contract. This creates a two-stage single contract with Stage 1 and Stage 2 being separate elements. Stage One will generally involve developing an outline design into a more detail design, before Stage Two involving the Contractor in going on to build the developed Stage 1 design. This brings procurement benefits, as there is no need for a separate tender for the equivalent of Stage Two which could otherwise cost significant time and money.

ECI defined terms: There are a few additional defined terms specific to X22:

- Access Dates
- Budget (the maximum amount the Client wishes to spend on the project overall)
- Project Cost
- Stage One / Stage Two
- Pricing Information.

Forecasts under X22.2: During Stage 1 the Contractor is required to provide forecasts of the total Defined Cost of the work to be done in Stage One at the interval stated in the Contract Data. This is to ensure that there is constant dialogue and understanding between the Parties and that the Contractor does not commit the Client to unnecessary costs. Within one week the Project Manager will accept/not accept the forecast (and the Contractor resubmits as necessary). The cost of any work not included in the accepted forecast will be treated as a disallowed cost.



The Contractor will also prepare regular forecasts of the overall Project Costs at the interval stated in the Contract Data. These are submitted to the Project Manager but do not require acceptance.

Proposals for Stage 2 (X22.3): Towards the end of Stage 1 the Contractor will prepare its proposals for Stage 2 and submit them to the Project Manager in accordance with the submission procedure stated in the Scope. This submission will include the Contractor’s forecast of the effect of the proposals on the Project Cost and Accepted Programme. For option C the Contractor will also need to produce a priced Activity Schedule.

At the end of Stage 1 the Contractor will submit the proposals to the Project Manager for acceptance in line with the submission process stated in the Scope:

- proposals for Stage 2
- revised programme
- any revisions to Access Dates, Key Dates and the Completion Date
- total of Prices/change to total of Prices.

The submission is either accepted or not accepted by the Project Manager, and the clauses allow for a resubmission if the proposals for Stage 2 are not accepted.

Key Persons during Stage 1: There is an obligation for the Contractor to provide the key persons for Stage 1 stated in Contract Data part 2. Contractor should not replace any such named key person unless the Project Manager instructs the Contractor to do so, or unless they are unable to continue to act in connection with the contract.

Notice to proceed to Stage 2: The Project Manager at the end of Stage 1 will issue either a notice to proceed to stage 2 or a notice that the works will not proceed to Stage 2. The notice will be issued to proceed to Stage 2 once:

- any approvals and consents from Others have been obtained as stated in Scope
- changes to Budget have been agreed by the Project Manager
- total of Prices for Stage 2 has been agreed together with any change to Access Dates, Key Dates and the Completion Date
- Client has confirmed works are to proceed



At the point of issuing the notice to proceed to Stage 2 the Project Manager will change the Prices, Access Date, Key Dates and Completion Date accordingly and accept the revised programme.

It is important that any compensation events that had occurred prior to the notice to proceed to Stage 2 are included in any Contractor's proposals for Stage 2, as the "Contract Date" is in effect 'reset' at this point. There will be no further opportunity to notify a compensation event for anything that occurred during Stage 1 beyond this point.

What happens if the proposals for Stage 2 are not accepted? If the Contractor is issued a notice that the works will not proceed to Stage 2, then the Project Manager will:

- issue an instruction to remove Stage 2 from the Scope
- change the Completion Date to the date of Completion of Stage 1
- for option C, change the Prices to match the Price for Work Done to Date at the end of Stage 1.

The instruction to remove the Scope for Stage 2 is not a compensation event, and there is no entitlement to any loss of fee for Stage 2 that the Contractor will not now achieve. For option C there is also no gain/pain share calculation carried out at the end of Stage 1, and in effect Stage 1 will be assessed as though it was an option E. The Client may then appoint another Contractor to complete the Stage 2 works.

What if the Contractor is terminated at any point? If the Contractor is given an instruction not to proceed to Stage 2 this is not treated as 'termination' under the contract. This is a natural 'breakpoint' of the contract, and the Contractor will not benefit financially for any loss of earnings or fee that they could have made. The Client is under no obligation to award Stage 2 to the Contractor, but obviously it will be in both Parties' interest to proceed with the same Contractor for Stage 2 given the knowledge, understanding and relationships that should have been developed during Stage 1.

If the Client decides to go back out to the market for Stage 2, the procurement process will delay the start of Stage 2, and any new Contractor will have to get up to speed with the details of the project and potentially redo work already done, which could increase the overall project cost for the Client.

If there is the need for termination during Stage 1 or Stage 2 that is not the Contractor's fault, then the normal termination clauses will apply. The Contractor will be entitled to their fee percentage under on the work that has been removed from them (see CECA bulletin 54: Termination for more specific details) that will now not be completed under that stage. For the avoidance of doubt, the Contractor will NOT be entitled to any lost fee for Stage 2 if they are terminated during Stage 1, only for the lost fee for the remainder of Stage 1.

Changes to the Budget and incentive payment: If the Project Manager gives an instruction changing the Client's requirements stated in the Scope, or an additional event stated in Contract Data occurs, then the Project Manager and Contractor agree within four weeks of the event occurring the changes to the Budget. If the Project Manager and Contractor cannot agree the changes to the Budget, the Project Manager assesses the change and notifies the Contractor of their assessment. Much like a compensation event, the only way the Contractor can then challenge that assessment would be through the dispute process under the contract.



If at the end of Stage 2 the final Project Cost is less than the Budget, the Contractor is paid the budget incentive (as stated in Contract Data). This would be calculated by applying the 'budget incentive percentage' to the difference between the Budget and the final Project Cost. This ensures that the Contractor is always incentivised to keep project costs down to maximise their share of helping the Client come under their budget. The Contractor would not need to contribute towards any overspend should the budget be exceeded.

Like a pain/gain calculation under option C, the Project Manager makes an initial assessment of the budget incentive at Completion, and then a final assessment in their final amount due at the *defect date*.

Which main ECC options is ECI applicable to? The intended use from the authors of the contract is that it is only intended to be used with option C or E , i.e. a cost reimbursable type contract. Presumably this is because the project at tender stage is unlikely to be very well developed and therefore unsuitable for a fixed price type project. However, there have been Clients that, through Z clauses, have made the Stage 1 process a cost reimbursable arrangement and then the Stage 2 construction phase an option A fixed price element. This seems a sensible and achievable amendment provided the Contractor has been able to develop a fully informed stage 2 construction proposal in stage 1 to mitigate against unforeseen risk. For instance, having been able to determine ground conditions through their site investigation that are on the site to be developed rather from those that will require a further interpretation. This approach may be one the authors of the contract could consider for future editions of the NEC ECC contract.

Summary: Early Contractor Involvement creates a two-stage single contract where the Contractor will develop the design during Stage 1 and submit their proposals for Stage 2 for acceptance at the end of Stage 1. The Contractor is not guaranteed Stage 2, however, being able to engage with the Client, interested parties and the likely issues in a collaborative and engaged manner at this stage, will invariably unlock better outcomes. This should lead to an agreeable proposal, whereby the Contractor is likely to be given the Notice to Proceed to Stage 2. The Contractor is subsequently incentivised to keep overall project costs under the Client's Budget to share in a saving at the end of Stage 2 if they help achieve this.