



Technical

NEC4 – Five Key Changes

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Introduction

1. The NEC recently announced that NEC4 will be released on 22 June 2017. NEC4 will be a complete suite of contracts which the NEC states is an “evolution on NEC3”. The NEC has advised that the changes are a direct result of feedback from the industry and provides solutions that Clients are demanding. They have released details about the changes although, as always, the devil will be in the detail. This article summarises five of the key changes that we have identified.

Changes

New Contracts – CHANGE 1

2. The NEC has introduced two new contracts into its suite of contracts.
3. **Design Build and Operate (DBO) Contract** – The DBO combines the functions of design, construction, operation and/or maintenance to enable it to be procured from a single supplier.
4. This new contract allows for a range of different services to be provided before, during and after engineering and construction works are completed (including Facility Management services).
5. **Alliance Contract (ALC)** – This will be published in consultation form and aims to fully integrate the team for large complex projects. This contract is for Clients who wish to enter into a single contract with

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a number of participants in order to deliver a project or programme of work. The focus of the contract will be on collaborative working encouraging all parties to work together in achieving Client objectives, and share in the risks and benefits of doing so.

6. The ALC will be different from other contracts in the NEC suite as it will be a multi-party contract

Review and Acceptance of Defined Cost – CHANGE 2

7. New clauses have been introduced to allow Contractors in cost based contracts (Main Options C, D, E and F) to request a review and acceptance of its Defined Cost during the project and not wait until the end. The Contractor notifies the Project Manager who then has thirteen weeks to review acceptance or advise of any errors. If the Project Manager fails to do this, then the Contractor's Defined Costs and Disallowed Costs will be treated as accepted.
8. The checking of Defined Cost is usually carried out at the end of the project when Contractors and/or Subcontractors' staff have moved on, which makes answering of queries etc. much more difficult and leads to long drawn out arguments. This new provision encourages checking and agreement of Defined Cost and Disallowed Cost as the work progresses.
9. This provision also gives Contractors and Subcontractors the chance to apply pressure to finalise Defined Cost and Disallowed Cost issues. It is a sensible change and will be welcomed by many in the construction industry.

Subcontractor Costs included in Schedules of Cost Components (SCC) – CHANGE 3

10. Subcontractor costs have been included in the SCC and payment is consistent across all options. The Defined Cost will be the cost paid to the Subcontractor.
11. A major issue for Main Contractors under NEC3 has been trying to get Subcontractors to provide information in accordance with the NEC3 Rules. This usually proved to be virtually impossible as Subcontractors did not wish to breakdown their costs in accordance with the schedules and many did not understand the NEC3 mechanisms. The NEC has listened to its users and appears to have removed one of the major headaches associated with NEC3.

Fee Percentages – CHANGE 4

12. Working Area Overheads and People Overheads have been removed. The relevant items are now paid as actual Defined Cost.
13. Design Overheads have been removed.
14. There is now simply only one fee with no separate fee for subcontracted works. The application of the fee is now consistent in all the main options.
15. NEC3, with its numerous percentage additions, was often seen as overly complex with some users of NEC3 not fully understanding how the percentages worked. It is not unusual for Contractors to have fifty or more Subcontractors working on projects and, to ensure that their percentages provided adequate recovery, complex calculations were often required. The removal of these percentages should, in theory at least, simplify the whole process.

Programme Changes – CHANGE 5

16. New provisions for “*Treated Acceptance*” of the Contractor’s programme have been introduced.
17. The opinion of Iain Stackhouse (Senior Consultant – Planning & Delay Analysis at Ramskill Martin) on the “*Treated Acceptance*” is:

“The introduction of Treated Acceptance of a Contractor’s programme under NEC4 will ensure that there is a baseline programme for assessment of compensation events in all cases. This will remove the arguments with regard to what is the starting point, which is occasionally a contentious issue with NEC3 related disputes.”

18. NEC3 relied on the programme being accepted. Ramskill Martin often encounter issues where there is no accepted programme, and this leads to arguments as to which programme should be used. The addition of “*Treated Acceptance*” is a sensible and useful change that NEC4 has introduced.
19. NEC have also addressed the potential misunderstanding surrounding implemented and non-implemented compensation events. This is what they say:

“The requirement to show ‘implemented compensation events’ in the Contractor’s programme has been removed. This is to avoid any

potential misunderstanding that non-implemented compensation events are excluded (which is not the case). The requirement to show ‘the order and timing of the operations which the Contractor plans to do in order to Provide the Works’ remains. It is clear that this includes all works to be provided, whether introduced as compensation events or otherwise.”

20. The opinion of David Tatham (Senior Consultant/Delay Analyst at Ramskill Martin) on not only showing implemented compensation events is:

“The current confusion with regard to whether programmes should only include implemented compensation events has been removed and this can only be a good thing (hopefully) and will lead to more robust programmes covering all events on a project.”

Summary

21. These five key changes made in NEC4 are just a few of the changes made by NEC. They have obviously listened to the feedback received and it appears that NEC4 will be simpler to operate than its predecessor (NEC3). On face value the requirement for Z clauses will hopefully diminish but they are unlikely to disappear altogether. Once the new NEC4 is issued in June 2017 Ramskill Martin will prepare an article on the published NEC4.

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