NEC4 - the Contractor’s friend?

NEC4 will be published in June and it includes some good news for Contractors. Jason Palmer explains why.

It is 12 years since NEC3 was first published. Now NEC4, comprising a whole suite of updated and new contracts, is due to be released on 22 June 2017.

During the twenty-five years since its first introduction, the NEC form has become popular due to its flexibility and clarity and, from the Employer’s perspective, its underlying focus on the achievement of best value.

Consequently, it has become the favoured contract of the UK public sector having been chosen for use on many of the largest infrastructure projects undertaken in recent years including the Channel Tunnel Rail Link, Heathrow Terminal 5, 2012 London Olympics, Crossrail and HS2. It is also becoming more widely used for international projects as an alternative to FIDIC.

Further to updating the current suite of contract options, two brand-new contracts have been added; the NEC4 Design Build Operate Contract (DBO) that allows clients to procure an integrated whole-life delivery solution, and an Alliance Contract for clients wishing to appoint a fully integrated, multi-party team for the delivery of large complex projects.

NEC4 is intended to support the ongoing drive for further collaboration and integration of teams, use of modern work methods, avoidance of disputes, and to identify and manage both risk and opportunity for a successful project outcome.

Clearly those drafting NEC4 have listened to the feedback from the industry.

Read on for five examples of changes that should please Contractors.

1. Payment for preparing quotations
A new compensation event has been introduced that will be welcomed by Contractors in relation to the application of Option A or B. It provides for the Contractor to be reimbursed for the cost of preparing quotations, and is intended to ensure full compensation in circumstances where the Project Manager requests quotations for numerous proposed instructions which are subsequently neither accepted nor instructed. This is particularly beneficial in circumstances where the full evaluation of those proposed changes requires significant additional design input, and addresses the somewhat inequitable position where the recovery of such costs is specifically excluded under NEC3.

2. Early agreement of Defined Cost
The cost based contracts (main options C, D, E and F) now include provisions that enable the Contractor
NEC4 requirement for the Contractor’s programme is expressed more clearly in that it must show ‘the order and timing of the operations which the Contractor plans to do in order to Provide the Works’. Plainly, this must include all works to be provided including those which arise under compensation events.

4. Simpler Schedules of Cost Components and Fees
To make things simpler, the Short Schedule of Cost Components (SSCC) has been removed from the NEC4 main options C, D and E.

The remaining Schedule of Cost Components (SCC) has also been simplified and made consistent across all options such that it now includes Subcontractor costs. This addresses the Contractor’s existing problem under NEC3 where Subcontractors often fail to provide their costs in a format consistent with the SCC. Under NEC4, the Defined Cost will simply be the cost paid to the Subcontractor.

Working Areas Overhead and People Overhead have also been removed and are now simply paid as actual Defined Cost. In addition, these people costs are no longer limited to those working exclusively within the Working Areas. The new criteria is intended to accommodate ‘more flexible and efficient work patterns’ and allows for the costs of people working in different locations to be included according to their time ‘worked on this contract’.

NEC4 only has one fee and there is no longer a separate fee to be applied to subcontracted works. The NEC3 requirement for different percentage additions has been removed. This must benefit those working on complex projects with multiple subcontractors where it will no longer be necessary to undertake significant analysis and calculations to arrive at a single percentage to provide the Contractor’s required level of recovery.

5. Early Warning Register
The ‘Risk Register’ will now be known as the ‘Early Warning Register’. This not only improves the positive connotations of the language used, but also actively encourages positive events and opportunities to be included in this section. This allows the Contractor’s early involvement advisory proposals, value engineering and opportunities to be registered, along with the risks, through the early warning process.

This article is intended to provide general information about legal topics. Nothing in this article or in the documents available through it, is intended to provide legal advice. You should not rely on any information contained in this article, or in the documents available through it, as if it were legal advice. Systech International is not responsible for the operation or content of any external website or hyperlink referred to in this article.