

SNAPSHOT

GETTING TO KNOW THE SUITE

Some key FAQs

3.3

INSIDER
INSIGHTS

Solomons Europe.

Since 1998

NEC3 v NEC4 – contract evolution at its finest!

Here, we provide a short and sharp summary of our prior article ([see original article published back in 2017](#)) that focused on some of the key changes introduced in the Engineering and Construction Contract (ECC) on publication of NEC4[®] (June 2017) compared to NEC3[®].

A Chartered Quantity Surveying Practice.

Layout and Structure

- Nine core clauses remain, but some titles have changed (i.e., Clause 4 is now “Quality Management” rather than “Testing and Defects”)
- Same main (A to F) and secondary option clauses, with six additional options being added to reduce reliance on Z clauses

Clause 10 - Actions

- Clause 10.1 (NEC3) is now split into two parts to emphasise both strands: 10.1 (what the Parties must do) and 10.2 (how they must act), but no major impact

Definitions

- Fee (Clause 11.2(10)): Only a single fee percentage now (no subcontract fee)
- “Works Information” (NEC3 11.2(19)) becomes “Scope” (11.2(16)): to align with wider industry terminology
- Subcontractor (Clause 11.2(19)):
Now explicitly excludes labour only subcontractors which fall under a People cost under Defined Cost. No change but much clearer

Early Warning

- Early warning provisions moved to Clause 15 (formerly Clause 16)
- *Project Manager* must produce the early warning register within one week (Clause 15.2)
- “Early warning register” (Clause 11.2(8)) replaces “risk register” to clarify differences
- Early warning meetings must occur at regular intervals. We suggest that this interval be no longer than four weeks

Contractor's Proposals (Clause 16)

- Focus on cost implications, with a new value engineering incentive for main Options A & B (Clause 63.12)
- *Contractor* can now propose acceleration (Clause 36) too, not just the *Project Manager*

Programme

- Programme submission must be presented in a specific format (i.e., Microsoft Project, or Primavera) as stated in the Scope
- Deemed acceptance for the programme if the Project Manager does not respond within one week of a reminder notification (Clause 31.3)
- Clarification of how to show implemented compensation events (Clause 32.1)

Payment

- *Contractor* must now submit a payment application for *Project Manager's* assessment (Clause 50.4). Following a best practice approach!
- Review and acceptance of Defined Cost is now mandatory upon instigation by the *Contractor* (Clause 50.9) for cost-based contracts (main Options C, D, E, F)
- Final account concept introduced (Clause 53) by means of a final assessment process.=

Schedules of Cost Components / Defined Cost

- Simplified Schedules of Cost Components with a focus on clarity
- Removal of overhead percentages (i.e., people overheads, design area overheads)
- Inclusion of 'Subcontractors' cost component (No. 4)
- Defined Cost can now be assessed using pre-agreed People Rates under fixed-price contracts (Options A and B)

Compensation Events:

- Two new compensation events:
 1. Recovering costs for preparing proposed change quotations that are not accepted / progressed (Clause 60.1(20))
 2. Allowing the *Client* to add additional compensation events via Contract Data Part One (Clause 60.1(21))
- Clarification of "*Client* liability" (formerly "*Employer's* risks") (Clause 60.1(14) and 80.1)
- Defined Cost of preparing quotations is now recoverable under main Options A & B (Clause 11.2(23)). Good news for the *Contractor*!
- Clause 61.2 allows (the only instance of this and in stark contrast to Clause 11.2(23)) for the notification of a compensation event and request for a quotation in the same communication
- Clearer approach to assessing compensation events based on the latest accepted programme at the dividing date (Clause 63.5)
- New core clause (63.2) allows for compensation events to be assessed by lump sums or rates instead of Defined Cost

Overall:

NEC4 addresses feedback from users, simplifies processes, and makes contract administration clearer and more streamlined compared to NEC3.

Reduces reliance on Z clauses and improves transparency and governance in terms of payment and cost management.

For further expert advice and support, please contact Ian Hedley,
our in-house NEC Lead at Solomons Europe.

07584 966 786

ian.hedley@solomonseurope.co.uk

**Solomons
Europe.**

Since 1998

Head Office

Centrix House, Crow Lane East
Newton-le-Willows
Merseyside WA12 9UY

01925 273 330