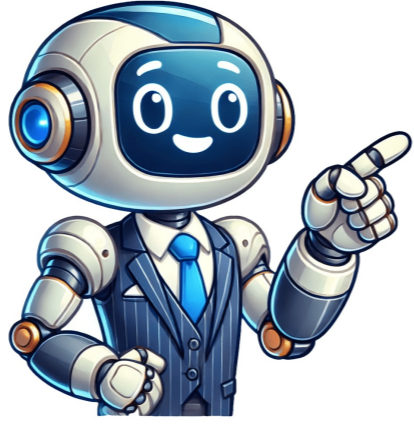


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NEC Guidance Notes The NEC suite of contracts puts far greater contractual requirements upon the Contractor to produce and manage a detailed programme than other forms of contract currently in existence within the construction industry. The contract requires this programme to be regularly updated and re-submitted for acceptance by the Project Manager (who acts on behalf of the Client), and thus becoming the new accepted programme under the contract, superseding any previously accepted programmes. When administered properly this should lead to both parties having a clear understanding of how the Contractor plans to carry out the works in accordance with the Scope and any associated liabilities in relation to the movement of the completion milestones.It is probably fair to say that the construction programme is under-utilised and under-valued on many if not most construction projects and rarely used to its full potential. The benefits of an up-to-date programme reflecting where the Contractor is and how they plan to complete the remaining works is fundamental to the team working efficiently and effectively to achieve success on any project. The NEC form of contract has recognised this and translated this into firm contractual obligations rather than just hoping or assuming that the parties will manage such a process.Whilst this now means that the ECC contract requires the Contractor to manage the programme, there is in fact nothing that the contract is asking for that the Contractor should not be doing for themselves to efficiently manage their works. The resultant bi-product is that there is a clear contractual mechanism for agreeing change between the parties as it happens and not waiting for the traditional end of project report where both Parties spend time/effort/resources in trying to agree the entitlement to any extensions of time and the resultant final account figure. The NEC has not particularly created any fundamentally new rocket science procedures with regards to programme. What the contract asks the Contractor to do is to produce an programme a good level of detail over the Project Manager recognises and regularly update the contract as a regular activity where they are any other form of contract probably assumes this process of using and updating the programme will just happen. In many the NEC clauses, programme aspects are just good practice project management with the contract simply formalising the fact that these process must take place.Was this article helpful?Subscribe to the GMH Newsletter for updates.notification_addNEC FAQs Tip: Press Control-F (Command+Mac) to search this FAQ page and use the Enter key to cycle through results.Frequently asked questions around section five of the contract and payments.Yes, in ECC4. Under clause 50.4 the amount due will not go up from its previous assessment and could go down if the Contractor does not submit an application within the period. The assessment interval is stated by the Client in Contract Data part 1 and is most commonly either monthly or four-weekly. No, any fact which the law requires a Party to pay to the other Party is added to any payment made under the contract (clause 51.5) Clause 50.5 requires the Project Manager to retain one quarter of the PWDD only if: there is no programme referenced in Contract Data Part two and the Contractor had not submitted its first programme or; the Contractor has submitted first programme but it has been not accepted (31.3) for the reason that it does not show the information which the contract requires.Purpose: To help parties (Clients, Project Managers, Contractors, Supervisors) using NEC3 or NEC4 contracts follow the Early Warning (EW) process correctly to foster collaboration and mitigate risks proactively.Key Areas:1. Identifying Early Warnings (Clause 15.16)/(Project Manager & Contractor): Are you actively considering matters that could potentially:Increase the total Prices?Delay Completion or meeting a Key Date?mpair the performance of the works in use?(NEC4 only) Impair the performance of the Client's works (if applicable)?Are both parties aware of their mutual obligation to raise EWs?2. Notifying Early Warnings:(PM & Contractor): When an EW matter is identified, is an Early Warning Notice issued as soon as reasonably possible?Is the EW Notice communicated in writing in a form that can be read, copied, and recorded (Clause 13)?Does the notice clearly describe the risk/matter?3. Managing the Early Warning (Risk Register in NEC3)/is an Early Warning Register being maintained by the Project Manager (Clause 15.2/16.2)?Does the Register include the notified Early Warning matters?Decisions on actions to be taken?Who is responsible for taking those actions?Is the Register kept up-to-date following EW meetings?Is the Register available/issued to relevant parties?4. Early Warning Meetings:Does the Project Manager instruct Early Warning meetings?Was the first EW meeting held within the contractually required timeframe (e.g., two weeks of Starting Date in NEC4)?Are further EW meetings held regularly (as needed, or at intervals stated in Contract Data)?Do notified attendees (PM, Contractor) attend? Are others invited if needed to address specific risks?Does the meeting focus on:Considering proposals to avoid or reduce the impact of notified EW matters?Seeking solutions that benefit all parties?Deciding on actions to be taken and who will take them?Reviewing previously agreed actions?Are decisions and actions clearly recorded in the Early Warning Register?5. Link to Compensation Events:Are parties aware that failure to give an Early Warning (which could have mitigated an issue) can lead to the assessed value of a related Compensation Event being reduced (Clause 63.7 / 63.5)?Disclaimer: This checklist is for general guidance on NEC Early Warning procedures and is not a substitute for reading the specific NEC contract clauses or obtaining professional advice. Procedures may vary based on the specific NEC version (NEC3/NEC4) and any Z clauses.NEC Guidance Notes The early warning process is a mechanism for both parties to identify potential problems to the project. The contract emphasises that both Parties are obliged to notify the other as soon as they become aware of a matter that could affect time, cost or quality.Traditionally it is the Contractor that tends to raise more early warnings, largely because they are the ones doing the work and more likely to identify the issues first. However, the Project Manager should be equally motivated to notify early warnings in order to maximise the time available to consider the problem with the Contractor, to increase the likelihood of finding the best solution to meet the Client's interests in a given situation. The Project Manager could for example notify an early warning if they feel the contractor is not resourced sufficiently to complete the works by the Completion Date. Once notified, these are discussed at an early warning meeting, and the matters recorded onto an Early Warning Register. These matters are then subsequently discussed at each early warning meeting until they are closed out, with each meeting recording the current action/progress regarding each matter.It is worth noting that NEC4 has introduced some subtle changes compared to that of NEC3. This simple table shows some of the key changes which is more about terminology change rather than process change.NEC4 NEC3Section 15 of contract Section 16 of contractEarly warning meetings Risk reduction meetings/Early Warning Register Risk RegisterNEC4 also specifically introduces an early warning interval into contract data 1. This is where the Client will be stating the interval that they are proposing to have early warning meetings for the duration of the project. This is encouraging the regular occurrence of these meetings which should be beneficial to both Parties for the reasons explained below.The early warning system is a very simple yet very important aspect of the contract. In simple terms it places a requirement on both parties to notify the other if they become aware of any matter that could affect time, cost or quality. Once formally notified, the Parties can review firstly if it is an issue or not, and if it is an issue then how it can be managed in order to avoid or minimise its effect on the project.It is essential to understand that the early warning process is about issues that could affect the project but as a process does not concern itself whose fault those problems are. The main premise of the system is for the Parties to notify early warnings where there is a potential issue. The Parties can then talk about the problem and collectively minimise (or eradicate altogether) the effects that this event could have. Only when all that is done is it necessary to consider who is liable under the contract for this event. The NEC4 Early Warning Register (replacing the NEC3 Risk Register), is then a summary of all early warnings raised on the project. The definition of this register states that it only strictly speaking requires two pieces of information a description of the risk, and the actions to be taken to avoid or reduce the risk. In practice there would be other administration matters such as EW number, date notified etc but specifically does NOT require any consideration as to who is liable for the event should it occur. The Parties need to understand that the early warning should NOT be considered as a commercial tool. These matters are things that MIGHT or COULD be an issue and are not a certainty. The Early Warning Register does not require to know how much this event might cost if it occurs. Occasionally this will be useful information on which to base a decision, but having cost on an early warning should be considered an exception rather than the rule. If you have a potential issue on a project then the Parties should be looking to make a decision that will minimise the effects, and should arrive at the optimum solution whether that will cost 10 or 100,000. Too many projects historically have seemed to think that the early warnings are a commercial process, or are really notifications of compensation events but under another name. This is one key area that we focus on when we run our NEC Project Workshop to both Parties at the start of a project to instill this process for their mutual benefit.The contract makes it clear that the Early Warning Register is the responsibility of the Project Manager to maintain and distribute to the relevant parties. NEC4 confirms that the register should be issued within one week of the meeting being held. We have worked on some projects where Contractor has maintained and issued this register by agreement with the Project Manager. We actually find this works quite well, as firstly it is often the Contractor raising most of the early warnings, and secondly the Contractor will only close out issues when they know they are closed out. We have seen many instances where the Project Manager issues a response to an early warning and closes it on the Register. As far as the Contractor is concerned the response has prompted more questions than answers, which then means the matter has to be re-opened on the Register (messy) or a new early warning notified (cumbersome). The Parties need to manage this process as effectively and efficiently as possible, not making it more cumbersome or provocative than it needs to be. Whoever manages this process, it is just important that it is done and maintained effectively, but to emphasise the contract intends/expects this to be updates and maintained by the Project Manager. Request an early warning meeting where the issues are discussed thoroughly and actions issued and recorded on a well maintained Early Warning Register will significantly increase the chance of that being a successful project to both Parties. In some cases we have experienced a project where the Project Manager has been heard to say that they no longer wanted early warnings on their project. Unfortunately these people have rather missed the point and is certainly not what should happen on a project. They have not understood contractually what these are really intended for in the first place. The perception may be that are only a money making scheme, with the Contractor only raising issues that will cost the Client time or money (or both). However, better that they are raised as soon as possible so that the Parties have a chance to review and manage events rather than stick their head in the sand and hope the issues go away. It is very important to understand that no early warning process is not where the Contractor can claim any entitlement in terms of time/cost impact on a project. If the early warning leads to a change in the Prices or planned Completion and is not something the Contractor could/should have allowed for, then the mechanism to assess this change/entitlement will be assessed through the compensation event process.A common question asked associated with managing ECC contracts is what should be shown on the programme in terms of early warnings. Previously NEC2 and the first edition of NEC3 stated that as part of a revised programme the Contractor should show the effects of notified early warning matters. This was subsequently removed in the NEC3 June 2006 amendments. The reason that this was removed is that many Contractors were showing possible effects of matters that were not certain to happen, and in some cases changing planned Completion accordingly. The result was that planned Completion was moving in and out in time with events and durations that were potential effects rather than certain ones. The main premise of an early warning is that it is an event that could affect time or cost, not that it will. The programme requirements under clause 31.2 are the minimum required on a programme issued for acceptance and you can always show more. The programme becomes a key tool to aid parties to make decisions, often as a result of notified early warnings. Whether the contract formally asks for them or not, it is practical to show early warnings that are yet to be resolved and could affect the remaining work on the programme. They should be linked into the items that could be affected by the subject of the early warning. Once re-scheduled the programme will give an indication as to the amount of float that this early warning has at that point (float being the amount of time that any given activity can be delayed before affecting the critical path). This is however, purely dependant upon how the early warning may be dealt with, as the response to the early warning could be to change the specification of a material, which may or may not add additional procurement time to the programme. The float on an early warning does give at least some indication as to how urgent a response is. Should it have negative float, then this would suggest that by default this item is already impacting the project and now should be notified as a compensation event (if it is not something that was not at the Contractors risk under the contract). Was this article helpful?Subscribe to the GMH Newsletter for updates.notification_addNEC Downloads & Publications May 3, 2024Under the Engineering and Construction contract (and indeed other contracts within the NEC family), X20 Key Performance Indicators (KPIs) allow a Client to create performance measurements to encourage a Contractor to act or perform in a certain way to help achieve wider Client objectives. In a competitive procurement process a Contractor is required to consider their obligations and potential entitlement in accordance with the contractual rules. Therefore, KPIs if chosen carefully could tailor the nature of these rules to achieve a wider overall value and benefit to the Client. They can encourage a Contractor to perform in a way that they may not otherwise be incentivised to do if they were purely following the rules and risk profile of standard contract wording. Generally, they will be determined by the Client at tender stage but sometimes the Contractor can be invited to suggest some during the tender process to be included within the contract.If a Client wishes to include KPIs then they will state X20 as one of the secondary options. It is also then a requirement to include an Incentive Schedule that will be included in the tender documents and whoselocation will be identified within specified set of post codes when the availability of resource within that catchment, or the nature of the skill sets required, or the duration of the project may realistically make this KPI unachievable.Any Key Performance Indicator should be carefully considered to ensure it encourages the right behaviours. There is little value to a Client in including a set of KPIs that will incur additional cost that do not add the value they are looking for.The Contractor should be paid the amount due against each KPI the following month after it has been achieved. These payments are not part of Defined Cost or the Price for Work Done to Date, so should not be included in the calculation for share percentage under option C/D target cost options.Practically speaking (rather than contractual) there should be engagement between the Parties as to whether the Key Performance Indicators are achieving their objectives. Like anything in the contract and by agreement elements can be changed when it is confirmed in writing and signed by both Parties. A Client may add a Key Performance Indicator during the life of a project and an associated payment to the incentive Schedule but may not delete or reduce a payment already stated. There are no specific KPIs included in the standard contract wording for a Client to choose from, so these will be bespoke for each project/Client. They can be based upon more specific contractual aspects, or more general issues such as quality or safety.The assessment process to determine whether a KPI has been achieved and the mechanisms to be used to allow the management or mitigation of the outcomes will need to be clearly identified. Some will be straight forward to assess but others may involve a degree of subjectivity and failing to initiate a consistent, fair and robust culture around this process will lessen the effectiveness of the KPI. It would be beneficial for the Client to consider initiating their own set of 360-degree KPIs around some aspects of the contract that might impact on the specified KPI outcomes that the Contractor is being assessed on. Listed below are some examples or themes that could be considered that might arise under the Programme. A cumulative score being given for having an Accepted Programme over period with the score relating to the achievement of certain programme milestones that are important to the project. This would need the proactive support of the Project Manager to achieve, where they make clear the reasons if they are rejecting, so that the Contractor knows exactly what they need to do in order to resubmit and get it accepted within that same period/Early Warnings: Here is a topic where there is probably not a useful KPI. There should not be one for simply how many early warnings are notified as that could encourage irrelevant or futile ones. There is no relevant correlation for the number of early warnings and compensation events. For example, there have been KPIs on projects where a high number of early warnings compared to compensation events was scored negatively as they were viewed as a waste of time (missing the point they could have avoided a resultant compensation event). 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