

Fresh perspective

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Shy Jackson reviews the changes made in the fourth edition of the NEC suite of contracts

The [NEC4 suite of contracts](#) was launched at the annual conference at the County Hall, London in June ? 12 years after the third edition was published ? with the tagline "improvement through collaboration". The suite has become the go-to form of contract for publicly procured construction projects, and the new edition will therefore generate a substantial amount of interest, with users already being encouraged to adopt it.

In addition to changes to the current forms, NEC4 introduces two brand new forms of contract. The first is a [design, build and operate version](#) , to be used where the client wants a service to be provided but there is also a need for construction works. The second new form is a [multiparty alliancing form of contract](#) ; this is currently out for consultation until 30 November, with the final version expected in January 2018. In addition, two new subcontracts have been produced: a [professional services subcontract](#) and a [term service subcontract](#) .

Finality of assessment

NEC4 introduces two significant changes that are intended to add certainty to the assessment process. The first measure appears in Options C, D, E and F under clause 50.9, and allows the contractor to notify the project manager when part of the defined cost has been finalised, making the relevant records available. The project manager has 13 weeks to accept that the defined cost is correct, to ask for additional records, or to notify the contractor of errors.

The contractor provides the records requested or corrects the errors within four weeks. The project manager then has the same amount of time to accept the costs as correct or notify the contractor of the correct assessment. Where the project manager does not notify the contractor of their decision within this time, the contractor's own assessment is treated as correct.

This process operates during the works but is separate from the assessment cycle under clause 5, and there is now a new obligation to submit applications under clause 50.2. The other new measure, clause 53, introduces the concept of a final assessment.

Within four weeks of the defects certificate being issued, the project manager provides their final assessment to the contractor. If they fail to do so, the contractor may submit their final assessment to the client. The project manager's assessment becomes conclusive unless a party takes certain steps, which can include starting an adjudication within four weeks of the assessment being issued and referring their dissatisfaction to a court or to arbitration within four weeks of the adjudication decision. These are short time frames in which to consider whether to take further steps, but the assumption is that by that stage there will be a limited number of issues to resolve.

Programme management

A common issue under the NEC is the programme not being accepted by the project manager, which then affects the overall management of the works and assessment of compensation events. Under the amended clause 31.3, if the project manager does not respond then the contractor may issue a notice. If the project manager still fails to respond, the programme is treated as accepted. Clause 36 has also been amended so both parties can suggest acceleration, and it is then discussed before a quotation is produced.

More generally, the terminology in NEC has changed to ensure consistency across the suite of contracts: the term "employer" used in NEC3 has now changed to "client" and the term "works information", used to set out the works, has been changed to the term "scope". A more substantive change has been renaming the "risk register" as the "early warning register", while clause 8 ? previously "risks and insurance" ? is now "liabilities and insurance". This is aimed at avoiding the confusion previously caused by the word "risk" and making it clear that the early warning register is a project management tool rather than a means of dealing with contractual liabilities or risks.

Option W, previously "dispute resolution", has been renamed "resolving and avoiding disputes". A new procedure has been added, providing for a meeting of senior representatives at the first stage. This takes place within a three-week period, and is based on parties submitting not more than 10 pages explaining their position and providing supporting information. This process is optional under clause W2, to be used where the [Housing Grants, Construction and Regeneration Act 1996](#) applies.

There is also a new Option W3, where parties choose to use dispute avoidance boards (DABs). The board is appointed at the start of the project, and its members visit the site at regular intervals to speak to the parties so that disputes can be avoided. A potential dispute is referred to the DAB, which aims to help the parties settle their issues. However, if the dispute is not settled the DAB can provide a recommendation.

Finally, the contract data has been simplified so there is now just a single fee percentage, without a separate one for subcontracts. The schedule of cost components has also been amended, and one of the changes is the deletion of the overheads percentages for working area and design.

Drawing conclusions

In making these amendments, NEC has sought to address some of the issues that have arisen in the management of contracts under their current form. Many of the substantive changes are aimed at encouraging better management, and it is hoped that project managers will take this on board and implement such changes as intended.

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Further information

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