



Thorny NEC Issues

5 Top Tips

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NEC CONTRACT HAS MANY AREAS WHERE DIFFERENCES OF INTERPRETATION CAN ARISE. Unless you have a good working knowledge of the contract then there is potential for your true cost and time entitlement to be lost. MBM has had to deal with many issues where cost entitlement has been subject to argument.

In the latest of its popular top tips articles we look at a number of these issues and provide some ideas to help you protect your commercial position.

1. Working Areas; establish their full extent.

Working Areas – The ‘*site boundaries*’ will be defined within the Contract Data Part 2, these comprise of locations provided by ‘*The Employer*’ for the works. It is essential for ‘*The Contractor*’ to establish within these ‘*site boundaries*’ any other areas, for example temporary work shops, manufacturing depots etc which may be distant from the site. Where such locations are established within the ‘*Site*’ and the areas are specific to the contract and closely associated with the site activities, then the contractor’s costs will be paid under the Schedule of Cost Components rather than within the Contractor’s fee.

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2. Materials – don’t order too much.

Materials – It is essential that the ‘Contractor’ only orders the required quantity of materials required to carry out the works, and not order any additional to cover loss or wastage, as the Contractor could have the appropriate costs disallowed by ‘The Project Manager’.

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3. Recovery of Insurance Premiums

It is argued that insurance premiums are covered in the ‘*Fee*’ percentage and are therefore not payable as ‘*defined cost*’, however there are two exceptions to this that the Contractor needs to be aware of. Firstly the cost of employer’s liability insurance in the UK is a requirement of the law to be taken out, so it should be paid as part of item 13(i) (meeting the requirement of the law) in the schedule of cost components. The second exception is insurance of cars and vans which should be paid as part of item 13(n) (a vehicle) or alternatively item 13(i) for the same reason as before.



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4. Withholding Costs of Programme

Assessing Amount Due (Clause 50.3) – Clause 50.3 is designed to ensure that the Contractor submits a programme as detailed in the Contract Data, otherwise there is a potential to determine whether a quarter of the PWDD should be retained. This clause is however negated if a programme was required to be submitted with the tender and is included in the Contract Data. If a programme is not identified in the contract data it is essential that a programme is submitted within the period stated within the contract data in order to avoid the retention figure being withheld.

5. Consider subcontract option clauses

It is recommended that when issuing a subcontract, the Contractor chooses the main option clause as that chosen within the main contract. The main advantage of this is the Contractor and subcontractor are operating on a 'like for like' basis throughout the duration of the contract works. The Contractor however must ensure the works information issued under the sub contract is comprehensive to cover the works, and not just a copy of the main contract works information.

The above are typical of issues that can arise under NEC contracts. Knowing how to deal with them can make the difference between a commercially successful project and one which isn't. NEC is unlike traditional forms of contract and requires careful administration to ensure you don't unwittingly throw away the right to money you are actually entitled to.

Whilst most of these tips may seem like common sense we find that in practice that they are often not carried out.

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