

## NEC 4 AND THE UNACCEPTED PROGRAMME



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Everyone who has ever been on a NEC course will no doubt have been told that the Accepted Programme sits at the heart of the NEC form of Contract. The purpose of this is to encourage good project management, by not only ensuring that all parties to the project know what they have to do and when, but its intention is to assist the change control process.

From experience, though, we have all probably been on projects where there is either no accepted programme or the programme is not accepted for a number of months. The NEC uses the carrot and stick approach when encouraging the production and updating of the programme to gain acceptance on a monthly basis – the stick is most definitely aimed at the Contractor.



Most people know about NEC4 ECC Clause 50.5, which states that if there is no programme identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the Contractor has submitted a first programme (showing the information which the contract requires) to the Project Manager for acceptance.

However, Clauses 64.1 and 64.2 are not so well known and also impact the Contractor and provide strong incentives to keep the accepted programme up to date. For if there is not an Accepted Programme in place, the Contractor loses control of the compensation event process.

Clause 64.1 states *“The Project Manager assess a compensation event ...*

- *If, when the Contractor submits a quotation for the Compensation Event, it has not submitted a programme or alterations to a programme which the contract requires it to submit, or*
- *if, when the Contractor submits a quotation for the compensation event, the Project Manager has not accepted the Contractors latest programme for one of the reasons stated in the Contract”.*

Clause 64.2 states *“The Project Manager assesses the programme for the remaining work and uses it in the assessment of a compensation event if...*

- *There is no Accepted Programme,*
- *The Contractor has not submitted a programme or alterations to a programme for acceptance as required by the contract, or*
- *the Project Manager has not accepted the Contractor’s latest programme for one of the reasons stated in the Contract”.*

Clauses 64.1 and 64.2 gives the Project Manager full control of both the quantum and time effect of any compensation event if there is no accepted programme, the Project Manager makes his own assessment of the Target Adjustment and uses his own programme to assess the impact of the compensation event on the Key Dates and Completion Date.

The Project Manager needs to notify the Contractor of his assessment and give him details of it within the period allowed for the Contractors submission of his quotation for the same event (Clause 64.3). Only if the Project Manager fails to assess a compensation event within the time allowed, the Contractor may notify the Project Manager of that failure. If the failure of the Project Manager continues for a further two weeks after the Contractors notification, then the Contractors initial quotation is treated as accepted (clause 64.4).

Important elements to note here is that in order to protect themselves, a Contractor should always ensure they have an accepted programme in place. If it does have a programme rejected, it should quickly take measures to get a programme accepted. I know this is sometimes easier said than done.

To achieve this, I would recommend:

- **A pre submission meeting in which all Parties review the programme prior to submission, the Contractor talks to the Project Manager through the submission, and they can discuss any areas of concern and gain agreement to ensure acceptance.**
- **I would also recommend that any narrative which accompanies the programme submission identifies the key elements such as change from the last submission, details of the critical path and any movement of Key Dates or the Completion Date, with an explanation as to why.**



This will hopefully reduce the grounds for non-acceptance of the programme and serve as a record of the Contractor’s and the Project Manager’s conduct and position.

## DGA CONTACT INFORMATION

If you would like to find out more details about any of the subjects covered in this Ebriefing please contact DGA Group through the contact details below or at [DGAGroup@dga-group.com](mailto:DGAGroup@dga-group.com)

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