

Good Tendering Practice Under the NEC

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Contract Data Part 2

Fee Percentages

- The fee percentages are to cover for all costs for which there are no cost components in the schedule of cost components.

For Example:

- ◆ Profit
- ◆ Overheads
- ◆ Insurance
- ◆ Bonds
- ◆ Guarantees
- ◆ Corporation Tax
- ◆ Other

Contract Data Part 2

Fee Percentages

- NEC 2 provides for only one fee percentage.
- NEC 3 provides for two fee percentages.
 - ◆ Direct fee percentage.
 - ◆ Subcontracted fee percentage

Contract Data Part 2

Fee Percentages

- The direct fee percentage is applied to the Defined Cost of the Contractor's direct (i.e. in-house) resources.
- The subcontracted fee percentage is applied to the Defined Cost of subcontracted work.

Contract Data Part 2

Fee Percentages

- The reason for the inclusion of a separate subcontracted fee percentage is to remove an anomaly (or at least go some way to removing an anomaly) relating to NEC 2 Option A where Defined Cost is the cost of the components in the Shorter Schedule of Cost Components **whether work is subcontracted or not**. The anomaly was that for compensation events the cost of which was subcontract cost, the Contractor was often faced with paying a higher subcontract fee to the subcontractor than his own fee percentage which he could recover from the Employer. The Contractor can now include a higher fee percentage to help off set this potential short fall.

NB: This is only relevant to Options A and B. Under Options C, D and E Defined Cost includes subcontractor

Contract Data Part 2

The Working Areas

- It is important that the Contractor fully describes the Working Areas to include not just the Site (the boundaries of which are defined by the Employer in Contract Data Part 1) but **all** areas where work connected with the contract is to be performed.

Contract Data Part 2

The Working Areas

- With the exception of manufacture, fabrication and design work, which maybe performed outside the working areas and paid as such, only the cost of resources working **within** the Working Areas qualify as Defined Cost for payment purposes. Hence the importance of fully describing the Working Areas in Contract Data Part 2.

Contract Data Part 2

The Risk Register

- There is a provision for the Contractor to include matters to be included in the Risk Register.
- The Risk Register, unless expressly incorporated in some way, is not a Contract Document.
- The listing of risks on the Risk Register does not have the effect of fixing either of the parties with any particular risk

Contract Data Part 2

The Risk Register

- Clause 80 lists all the risks which are Employer's risks. The last bullet point refers to "Additional *Employer's* risks stated in the Contract Data".
- Clause 81 provides:
 - ◆ "81.1 *From the starting date until the Defects Certificate has been issued, the risks which are not carried by the Employer are carried by the Contractor.*"

Contract Data Part 2

The Risk Register

- Unless there are additional Employer's risks listed in Contract Data Part 1, the effect of clause 81 is to fix the Contractor with all risks other than those listed in clause 80, regardless of any purported risk allocation on the Risk Register.

Contract Data Part 2

The Risk Register

- If the Risk Register allocates certain risks to the Employer, the Contractor should seek to have a statement included in the appropriate part of Contract Data Part 1 as follows:-
 - ◆ *“The risks allocated as Employer’s risks on the Risk Register reference...”*

Contract Data Part 2

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Contract Data Part 2

The Works Information

- Where the Contractor has design responsibility, the Contractor must identify the documents in which the Works Information for his design is to be found.
- Care should be taken to provide as full and comprehensive Works Information as is possible.

Contract Data Part 2

The Works Information

- If the Works Information is deficient or incomplete, any addition necessary will not qualify as a compensation event.

Contract Data Part 2

The Works Information

- Clause 60.1 (1) provides:

“60.1 The following are compensation events.

(1) The Project Manager gives an instruction changing the Works Information except

- *a change made in order to accept a Defect or*
- *a change to the Works Information provided by the Contractor for his design which is made either at his request or to comply with other Works Information provided by the Employer.”*

Contract Data Part 2

The Programme

- The Contractor should provide a programme with its tender and identify the programme by reference number and date.
- Clause 31.4 provides:
 - ◆ *“31.4 The Contractor provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.”*

Contract Data Part 2

The Programme

- The relationship can be shown by adding a column to the activity schedule listing the programme activity/activities identification numbers which relate to each activity on the activity schedule.
- The Prices on the activity schedule should relate to the estimated cost of performing the related programme activity/activities.

Contract Data Part 2

The Programme

- Clause 50.3 provides:
*“50.3 If no programme is 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 to the Project Manager for acceptance showing the information which this contract requires.”*
- Hence the importance of providing and identifying a programme in Contract Data Part 2

Contract Data Part 2

The Activity Schedule

- Under Option A, the Activity Schedule goes to payment. The Contractor is paid the lump sum price for each activity or group of activities upon **completion** of the activity or group of activities.
- For cash flow purposes, it is therefore desirable to have a comprehensive list of activities. The more activities listed with a price, the more often activities will be completed and therefore paid.

Contract Data Part 2

The Activity Schedule

- Contractors should be careful not to fall into the trap of having a single activity for Site establishment, Site management and other preliminaries items. On a strict interpretation of the Contract, payment for those items would only be received at the end of the Contract.
- The Activity Schedule does not go to payment under Option C, therefore it need not be as comprehensive a list of activities.

Contract Data Part 2

Data for Schedule of Cost Components

- Where Equipment is to be purchased specifically for the Contract, the Contractor must identify the items of Equipment and insert a time related charge e.g. £100 per day, for the purposes of the 'change in value' calculation under item 23 of the Schedule of Cost Components.

Contract Data Part 2

Data for Schedule of Cost Components

- Assume purchase price of €50,000, notional sale price of €40,000, time-related on cost of €50 per day and a requirement period of 50 days, mid March to mid May

Example 1:

- ◆ first interim assessment at end March

Change in value = £10,000 + time related on cost for 10 days at £50 per day = £500. Total payment £10,500

- ◆ second interim assessment at end April

Change in value = £10,000 + time related on cost for 40 days at £50 per day = £2,000. Total payment £12,000 (less previously paid)

Contract Data Part 2

Data for Schedule of Cost Components

- Item 23 of the SCC provides:
 - ◆ “Payments for equipment purchased for the work included in the Contract and listed with a time-related on cost charge in the Contract Data Part 2, of
 - the change in value over the period for which the equipment is required and
 - the time-related on cost charge stated in the Contract Data Part 2 multiplied by the period for which the equipment is required
 - The change in value is the difference between the purchase price of the Equipment and the sale price or open market sale price of the Equipment at the end of the period for which it was required

Contract Data Part 2

Data for Schedule of Cost Components

- Example 1 continued:
 - ◆ final assessment at end May (when actual sale price determined)
 - ◆ Determined change in value = £10,000 + time related on cost for 50 days at £50 per day = £2,500. Total payment £12,500 (less previously paid)

Contract Data Part 2

Data for Schedule of Cost Components

- Example 2:
 - ◆ final assessment at end May (when actual sale price determined)
 - ◆ Determined change in value = £6,000 + time related on cost for 50 days at £50 per day = £2,500. Total payment £8,500 (less previously paid)
- If the *Project Manager* agrees these items of equipment may be assessed as if listed in Contract Data Part 2

Contract Data Part 2

Data for Schedule of Cost Components

- Percentage for Working Areas overheads
 - ◆ This percentage is to cover the cost of items attendant upon employing People. The items are listed under item 44 of the SCC. The percentage is applied to the Defined Cost of People.
 - ◆ Under NEC 2, accommodation was included in the list of items to be covered by the percentage.
 - ◆ Under NEC 3, accommodation is not included as part of the percentage but is paid as Equipment.

Contract Data Part 2

Data for Schedule of Cost Components

- Percentage for Working Areas overheads
 - ◆ The Contractor can arrive at the appropriate percentage by calculating the cost of providing the items listed at item 44 of the SCC, calculating the total cost of People and expressing the former as a percentage of the latter.

Contract Data Part 2

Data for Schedule of Cost Components

- Percentage for People overheads
 - ◆ This has the same purpose as the percentage for Working Area overheads but is for use only when the Shorter Schedule of Cost Components is used.
 - ◆ The Shorter Schedule is used with Options A and B for the purposes of assessing compensation events and, by agreement only for assessing compensation events under Options C, D and E.
 - ◆ The Shorter Schedule is not used for assessing payments under Options C, D and E.

Contract Data Part 2

Data for Schedule of Cost Components

- Percentage for People overheads
 - ◆ Under NEC 2 the list of items to be covered by the People overhead percentage is far greater than under NEC 3.
 - ◆ This is because under NEC 3 certain items have been separated out to be paid as Defined Cost rather than as part of a percentage.

Contract Data Part 2

Data for Schedule of Cost Components

- The Contractor can include percentages to cover the overhead costs in relation to.
 - ◆ Manufacture and fabrication outside the Working Areas.
 - ◆ Design outside the Working Areas.

Any questions?