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Jim has 40 years experience in the construction and civil engineering industries. Having held senior positions with major international construction companies, his experience spans the whole spectrum of Building and Civil Engineering contracts. He has held senior commercial roles with three major international contractors, having controlled contracts circa £360 million, and has specialised in associated engineering installations. With his knowledge and experience in the industry Jim is able to offer his expertise and advice in all areas of commercial management.

As well as undertaking general commercial management duties Jim has been involved in numerous commercial disputes and their settlement. In this respect he has been responsible for the preparation and submission of numerous claims for various time and financial entitlements and represented his claimant's entitlement on a variety of Contracts, including his participation in the formal procedures of adjudication, arbitration, mediation and litigation as Claimant and Respondent.

COMPENSATION EVENT MANAGEMENT

When the NEC introduced the concept of compensation events to deal with both the monetary and time effect of change on a project this was seen as being central to the operation of the contract. With time and money being valued collectively by way of a "quotation" this new approach was expected to resolve many of the previous areas of dispute brought about by the traditional separation of time and money in most of the Contracts existing at that time. Unfortunately as with any change there came a series of new problems.

Since its introduction other standard forms of contract have been amended to include this approach; for instance the JCT 98 (Clause 13) now includes for the provision of quotations and with the industry's acceptance of this principle it can be anticipated we shall see further standard forms being amended to incorporate similar requirements. If this is the case and more standard contracts are amended the need to understand and successfully manage compensation events and quotations will grow in the future.

Perhaps the main problem is that whilst a number of Project Managers and Contractors have recognised the advantages to be gained by the introduction of compensation events, there are still those who for one reason or another are unwilling to adopt the principles the authors of the NEC were seeking to introduce. This brief overview limits me to consider only three typical comments which have been raised by different managers when expressing some of their perceptions of compensation events and the provision of quotations. The following views have been expressed by both Project Managers and Contractors and I hope you will see that by adopting such attitudes the opportunity to manage the Contract for the benefit of all parties has been missed. I have sought to respond to these negative perceptions of the NEC and hope my points will identify some ways of overcoming these views and assist in the management of your compensation events. It may be a surprise but one of the first problems we find is:-

"I think it's an NEC form of Contract, but I never read contracts - they are all the same when it comes to administration of the Contract" – a comment from Project Manager's and Contractor's construction teams.

Alan Williams, the regional manager of our Cardiff office, when introducing the NEC says, "this contract is not for a bad day," and when you have worked with this form of Contract you will realise how apt this comment is. The NEC is a working document and something that should be close at hand and constantly referred to; it cannot be put in a drawer and brought out when there is a problem. There are, for example, strict timetables which have to be met and to manage compensation events correctly you must be aware of these periods and regularly monitor your progress. The time limits are set for both the Contractor and

the Project Manager. If the parties, by working together as the Contract envisages, are jointly monitoring and managing the situation, this will allow action to be taken to comply with the Contract timescales and to manage the production of quotations to suit their own agreed timescales. In this way the events with greatest impact can be prioritised to the benefit of the Contract.

In addition, a compensation event quotation does not just consider the time and money, there is also the need to consider progress and “actual cost”. You must identify the NEC option you are working with and make sure you understand the requirements of that option. The core clauses for each of the options should not be assumed to be the same, there are for example three definitions for the term, “actual cost,” and if you are required to prepare, as the contractor, or agree, as the project manager, a quotation, it will be necessary to understand what can be included within the price, not forgetting the previous point that this is to be done within a strict timescale. Failure to perform and communicate the situation means the Project Manager will make his own assessment of the event which then may be the possible catalyst for a breakdown in the relationship between the parties. But knowing what is to be done and when it should be done leads to the next problem.

“We never included people in our price to do that and manage the job” – a comment made by both Project Manager’s and Contractor’s construction teams when dealing with quotations for compensation events.

Perhaps the most common failure in managing compensation events is the lack of resources necessary to carry out the requirements of the Contract within the specified timescales. The NEC sets out the minimum content for a quotation and while the onus to provide this information rests with the Contractor, the Project Manager must then reply. The reply may be the acceptance of the quotation, a requirement for a revised quotation on a different premise, a decision not to go ahead or a notification that he will be making his own assessment. This procedure is part of the NEC and as such both parties must provide sufficient resources to perform these duties in a set timescale.

Unfortunately, this comment seems to be made once again in ignorance of the Contract and the need to understand the terms of your specific Contract. The cost of producing the quotation is included in the quotation for four of the six options available. In addition how many Project Managers and Contractors make a proper allowance within their price for producing and negotiating the “final account” and is this not similar to producing the quotation, only carried out much earlier? So it is money which would have to be spent sooner or later, and which is recoverable, so why is this a problem? Having addressed this problem, the next statement which is commonly made to us is:-

“There are too many changes for us to deal with in the timetable detailed in the Contract” - a comment made by both Project Manager’s and Contractor’s construction teams.

This comment offers a number of reflections on the management of compensation events which it may be helpful to consider.

We have seen that compensation events are key factors on the project and our investigations show that it is a general opinion of Contractors and Project Managers that it is impossible to progress the daily construction and administration duties of the Contract and perform this task at the same time. There is therefore a need for compensation events to be addressed by a separate team of not just quantity surveyors but also programmers who can bring together all the information necessary to fulfil the requirements of a quotation as defined in the NEC. Such a team may be required in this role full time or may be a separate team employed for short periods of time. Whichever it is, this team cannot be totally divorced from site operations and will need to work closely with the site teams managing the Works so that relevant information on cost and progress are exchanged. The team may from time to time need the help of estimators and buyers to gain knowledge of current and future cost.

The provision of a separate team does not only apply to Contractors but Project Managers must also consider that if their compensation event team can be divorced from the daily pressures of maintaining progress they will be provided with key information when they need to make an early assessment of their actions on both time and price. With such an assessment taken in such a timely manner the Project Manager then has the opportunity to investigate possible alternatives with the Contractor's team if necessary to overcome the cost and time effects of the change on the Contract.

On this basis it must then be asked, "If the parties are working together in a spirit of mutual trust and co-operation as required by the Contract, why not just have one combined team?"

We are aware of only one instance where this has been introduced, where the team were reporting directly to the Project Manager and the Contractor's construction director. We were told that in a very short period it was impossible to say which team member worked for the Contractor or the Project Manager. Such a mutual approach can only be achieved if both parties are open and willing to share information. So, for instance, the Project Manager who knows when their design is being revised well in advance of it's issue to the Contractor could in fact issue an early warning and thus allow the team to investigate the change effect on time and price. This may have advantages of, amongst other things, a saving in costs due to extended procurement of materials or time to source key resources so that they are available to meet the new production requirements.

An additional approach when dealing with numerous compensation events, is that it may assist the management of them and the provision of detailed quotations to group a number of similar events into one quotation. BAA has a procedure by which teams working on compensation events take such action. The stages of their procedure follow a similar pattern to the NEC apart from introducing the allowance to make interim payments until the events are finalised and a full quotation submitted and agreed, but more particularly this presents another opportunity for the parties to any contract to agree their own procedure and manage the situation.

As stated these are only three of the many comments made to us relating to the problems of managing compensation events but it is hoped that it can be seen that by understanding the problems and taking positive steps it is possible to successfully deal with such events.