



All Change in the Change Clause

NEC3 to NEC4 Comparison of Core Clause 6
Compensation Events

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About us

We provide:

- Quantity surveying and cost management
- Commercial management and contract administration
- Dispute resolution, consultancy and management services
- Expert advice on civil engineering and construction contracts
- Training on NEC and JCT contracts for staff and graduates

We are:

Professional: Qualified at degree and equivalent levels

Experienced: Serving large and small contractors for over 30 years

Successful: A track record of high levels of success for clients



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- This comparison is based on the Engineering and Construction Contract but many of the changes will be applicable to other forms within the suite of documents
- In the following table not all clauses are listed. If a clause is not noted then there are no changes between NEC3 and NEC4
- Each change has been allocated a change rating from '1' being highly significant to '3' being of low significance

1

More significant/important changes with potential commercial implications

2

Clause changes but no significant shift in risk. Just need to be aware

3

Minor grammatical changes, gender neutrality, amendments such as 'Works Information' to 'Scope', 'Employer' to 'Client' etc

Note: this rating is purely subjective and for the purpose of this document only and should not be relied upon.

- Four main general changes:
 - Employer → Client
 - Works Information → Scope
 - Risk Register → Early Warning Register
 - Gender neutral
- Users should ensure they are aware of any project specific amendments or changes to the contract
- Any views or interpretation are those of GVE Commercial Solutions Limited

NEC3 - Compensation events - 60

NEC4 - Compensation events - 60

Change Comments

60.1	The following are compensation events.	60.1	The following events are compensation events.
60.1 (1)	The <i>Project Manager</i> gives an instruction changing the Works Information except: <ul style="list-style-type: none"> a change made in order to accept a Defect or a change to the Works Information provided by the <i>Contractor</i> for his design which is made either at his request or to comply with other Works Information provided by the <i>Employer</i>. 	60.1 (1)	The <i>Project Manager</i> gives an instruction changing the Scope except: <ul style="list-style-type: none"> a change made in order to accept a Defect or a change to the Scope provided by the <i>Contractor</i> for its design which is made <ul style="list-style-type: none"> at the <i>Contractor's</i> request or in order to comply with the Scope provided by the <i>Client</i>.
60.1 (2)	The <i>Employer</i> does not allow access to and use of a part of the Site by the later of its <i>access date</i> and the date shown on the Accepted Programme.	60.1 (2)	The <i>Client</i> does not allow access to and use of a part of the Site by the later of its <i>access date</i> and the date for access shown on the Accepted Programme.
60.1 (3)	The <i>Employer</i> does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.	60.1 (3)	The <i>Client</i> does not provide something which it is to provide by the date shown in the Accepted Programme.
60.1 (5)	' <i>Employer</i> ' and 'Works Information'.	60.1 (5)	' <i>Client</i> ' and 'Scope'.

- 3** The word 'events' added. Possibly to provide a stronger link to 'becoming aware that the event has happened' in clause 61.3 or possibly for clarification in the absence of a definition of compensation event.
- 3** 'Works Information' becomes 'Scope', '*Employer*' becomes '*Client*' and male pronouns removed. Minor rewording for clarity.
- 3** '*Employer*' becomes '*Client*' and 'date' becomes 'date for access' thereby providing clarity as to which date.
- 3** '*Employer*' becomes '*Client*' and male pronouns removed. Also 'on' the Accepted Programme has been changed to 'in'.
- 3** '*Employer*' becomes '*Client*' and 'Works Information' becomes 'Scope'.

NEC3 - Compensation events - 60

NEC4 - Compensation events - 60

Change Comments

60.1 (6)	'this' contract.	60.1 (6)	'the' contract.
60.1 (8)	-	60.1 (8)	Gender neutral.
60.1 (9)	'this' contract.	60.1 (9)	'the' contract.
60.1 (12)	'him'.	60.1 (12)	-
60.1 (14)	An event which is an <i>Employer's</i> risk stated in this contract.	60.1 (14)	An event which is the <i>Client's</i> liability stated in these <i>conditions of contract</i> .
60.1 (16)	' <i>Employer</i> ' and 'Works Information'.	60.1 (16)	' <i>Client</i> ' and 'Scope'.
60.1 (17)	The <i>Project Manager</i> notifies a correction to an assumption which he has stated about a compensation event.	60.1 (17)	The <i>Project Manager</i> notifies the <i>Contractor</i> of a correction to an assumption which the <i>Project Manager</i> stated about a compensation event.
60.1 (18)	' <i>Employer</i> ' and 'this' contract.	60.1 (18)	' <i>Client</i> ' and 'the' contract.

- 3** Administration change - 'this' becomes 'the' contract.
- 3** Administration change - gender neutral.
- 3** Administration change - 'this' becomes 'the' contract.
- 3** Male pronouns removed - gender neutral.
- 1** '*Employer*' becomes '*Client*', 'risk' becomes 'liability' and 'this contract' becomes 'these conditions of contract'. Insurance/indemnity issues vs compensation events? Beware the inclusion of 'risk registers'.
- 3** '*Employer*' becomes '*Client*' and 'Works Information' becomes 'Scope'.
- 3** Male pronouns removed.
- 3** '*Employer*' becomes '*Client*' and 'this' become 'the' contract.

NEC3 - Compensation events - 60

60.1 (19)	<p>An event which</p> <ul style="list-style-type: none"> • stops the <i>Contractor</i> completing the <i>works</i> or • stops the <i>Contractor</i> completing the <i>works</i> by the date shown on the Accepted Programme, <p>and which</p> <ul style="list-style-type: none"> • neither Party could prevent, • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and • is not one of the other compensation events stated in this contract.
N/A	N/A

NEC4 - Compensation events - 60

60.1 (19)	<p>An event which</p> <ul style="list-style-type: none"> • stops the <i>Contractor</i> completing the whole of the <i>works</i> or • stops the <i>Contractor</i> completing the whole of the <i>works</i> by the date for planned Completion shown on the Accepted Programme, <p>and which</p> <ul style="list-style-type: none"> • neither Party could prevent, • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and • is not one of the other compensation events stated in the contract.
60.1 (20)	<p>The <i>Project Manager</i> notifies the <i>Contractor</i> that a quotation for a proposed instruction is not accepted.</p>

Change Comments

- 3 'this contract' becomes 'the contract' and 'the works' becomes 'whole of the works', 'planned Completion' added.
- 2 Not included in NEC3 - A route to be paid for preparing quotes that are proposed under new clause 65 and not accepted. A new notice under clause 60.1 (20) would need to be raised when the proposed change is not instructed. As the notification is by the *Project Manager* then the time-bar in clause 61.3 would not apply.

NEC3 - Compensation events - 60

N/A	N/A
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NEC4 - Compensation events - 60

60.1 (21)	<p>Additional compensation events stated in Contract Data part one.</p>
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Change Comments

- 1 Not included in NEC3. This now reverts back to the principle of NEC2. Needs to be read in conjunction with Contract Data part one. *Contractor* to identify any additional compensation events and promote their inclusion in Contract Data part one rather than attempting to use risk registers, qualifications, tender clarifications etc.

NEC3 - Notifying compensation events - 61

61.1	For compensation events which arise from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the <i>Project Manager</i> notifies the <i>Contractor</i> of the compensation event at the time of that communication. He also instructs the <i>Contractor</i> to submit quotations, unless the event arises from a fault of the <i>Contractor</i> or quotations have already been submitted. The <i>Contractor</i> puts the instruction or changed decision into effect.
N/A	N/A

NEC4 - Notifying compensation events - 61

61.1	For a compensation event which arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision, the <i>Project Manager</i> notifies the <i>Contractor</i> of the compensation event at the time of that communication.
61.2	The <i>Project Manager</i> includes in the notification of a compensation event an instruction to the <i>Contractor</i> to submit quotations unless <ul style="list-style-type: none"> the event arises from a fault of the <i>Contractor</i> or the event has no effect upon Defined Cost, Completion or meeting a Key Date.

Change Comments

- 2** Clause 61.1 in NEC3 is now split into clause 61.1 and 61.2 in NEC4. The words 'correcting an assumption' removed from clause 61.1 presumably because correcting an assumption already falls under a notification from the *Project Manager*. The words 'puts the instruction or changed decision into effect' removed. Presumably because this requirement is covered by cl 14.3, 20.1, 27.3. In new clause 65.1 the words 'The *Contractor* does not put a proposed instruction into effect' are used so does this imply that for any other instruction that the *Contractor* must put the instruction into effect?
- 2** Clause 61.2 dealt with 'proposed' instructions in NEC3 but these are now covered in clause 65. Some concern as to how the notice and instruction are issued to the *Contractor* - 'includes in'? (seems to conflict with Clause 13.7). This revised wording also affects how/when the 'discussion' in clause 62.1 is supposed to take place.

NEC3 - Notifying compensation events - 61

61.2	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit quotations for a proposed instruction or a proposed changed decision. The <i>Contractor</i> does not put a proposed instruction or a proposed changed decision into effect.
61.3	The <i>Contractor</i> notifies the <i>Project Manager</i> of an event which has happened or which he expects to happen as a compensation event if <ul style="list-style-type: none"> the <i>Contractor</i> believes that the event is a compensation event and the <i>Project Manager</i> has not notified the event to the <i>Contractor</i>. <p>If the <i>Contractor</i> does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.</p>

NEC4 - Notifying compensation events - 61

N/A	Moved to clause 65.
61.3	The <i>Contractor</i> notifies the <i>Project Manager</i> of an event which has happened or which is expected to happen as a compensation event if <ul style="list-style-type: none"> the <i>Contractor</i> believes that the event is a compensation event and the <i>Project Manager</i> has not notified the event to the <i>Contractor</i>. <p>If the <i>Contractor</i> does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date or a Key Date are not changed unless the event arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision.</p>

Change Comments

- 1** The original clause 61.2 in NEC3 is now included in clause 65 within NEC4. See clause 65 for comment.
- 1** The 8 week time bar commencement date has changed. Formerly it was when the *Contractor* became aware of an event. It is now when the *Contractor* is aware that the event has happened. See J Brown / S Goodwin articles on clause 61.3 and the time bar.

NEC3 - Notifying compensation events - 61

61.4	<p>If the <i>Project Manager</i> decides that an event notified by the <i>Contractor</i></p> <ul style="list-style-type: none"> • arises from a fault of the <i>Contractor</i>, • has not happened and is not expected to happen, • has no effect upon Defined Cost, Completion or meeting a Key Date or • is not one of the compensation events stated in this contract <p>he notifies the <i>Contractor</i> of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the <i>Project Manager</i> decides otherwise, he notifies the <i>Contractor</i> accordingly and instructs him to submit quotations.</p> <p>The <i>Project Manager</i> notifies his decision to the <i>Contractor</i> and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either</p> <ul style="list-style-type: none"> • one week after the <i>Contractor's</i> notification or • a longer period to which the <i>Contractor</i> has agreed. <p>If the <i>Project Manager</i> does not notify his decision, the <i>Contractor</i> may notify the <i>Project Manager</i> of his failure. A failure by the <i>Project Manager</i> to reply within two weeks of this notification is treated as acceptance by the <i>Project Manager</i> that the event is a compensation event and an instruction to submit quotations.</p>
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NEC4 - Notifying compensation events - 61

61.4	<p>The <i>Project Manager</i> replies to the <i>Contractor's</i> notification of a compensation event within</p> <ul style="list-style-type: none"> • one week after the <i>Contractor's</i> notification or • a longer period to which the <i>Contractor</i> has agreed. <p>If the event</p> <ul style="list-style-type: none"> • arises from a fault of the <i>Contractor</i>, • has not happened and is not expected to happen, • has not been notified within the timescales set out in these conditions of contract, • has no effect on Defined Cost, completion or meeting a Key Date or • is not one of the compensation events stated in the contract <p>the <i>Project Manager</i> notifies the <i>Contractor</i> that the Prices, the Completion Date and the Key Dates are not to be changed and states the reasons in the notification. Otherwise the <i>Project Manager</i> notifies the <i>Contractor</i> that the event is a compensation event and includes in the notification an instruction to the <i>Contractor</i> to submit quotations.</p> <p>If the <i>Project Manager</i> fails to reply to the <i>Contractor's</i> notification of a compensation event within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the failure continues for a further two weeks after the <i>Contractor's</i> notification it is treated as acceptance by the <i>Project Manager</i> that the event is a compensation event and an instruction to submit quotations.</p>
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Change Comments

2 The words 'decision' and 'decides' have been removed presumably in an attempt to limit the *Project Manager's* ability to change a decision once the *Contractor* has been instructed to provide a quotation. For the same reason, the *Project Manager* is also now required to notify positively that the event is a compensation event. The provision of the *Contractor* not notifying in time (the time bar) has been formalised as a reason in the *Project Manager's* reply for the event not being a compensation event. Requirement for an instruction within a notice - how does this sit with clause 13.7?

NEC3 - Notifying compensation events - 61

61.5	<p>If the <i>Project Manager</i> decides that the <i>Contractor</i> did not give an early warning of the event which an experienced <i>Contractor</i> could have given, he notifies this decision to the <i>Contractor</i> when he instructs him to submit quotations.</p>
61.6	<p>If the <i>Project Manager</i> decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the <i>Contractor</i> to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the <i>Project Manager</i> notifies a correction.</p>
61.7	<p>A compensation event is not notified after the <i>defects date</i>.</p>

NEC4 - Notifying compensation events - 61

61.5	<p>If the <i>Project Manager</i> decides that the <i>Contractor</i> did not give an early warning of the event which an experienced <i>Contractor</i> could have given, the <i>Project Manager</i> states this in the instruction to the <i>Contractor</i> to submit quotations.</p>
61.6	<p>If the effects of a compensation event are too uncertain to be forecast reasonably, the <i>Project Manager</i> states assumptions about the compensation event in the instruction to the <i>Contractor</i> to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the <i>Project Manager</i> notifies a correction.</p>
61.7	<p>A compensation event is not notified by the <i>Project Manager</i> or the <i>Contractor</i> after the issue of the <i>Defects Certificate</i>.</p>

Change Comments

3 Male pronouns removed and slight rewording in clause. Requirement for notice removed although with new clause 61.2 it should now be included in the instruction which is now included within the compensation event notice

3 Male pronouns removed and slight rewording in clause.

2 The backstop date for notifying a compensation event is reliant upon an action that the *Supervisor* is obliged to do being done i.e. issuing a list of Defects that the *Contractor* has not completed or a statement there are no Defects. If this is not done it could be argued that compensation events could be notified after the *defects date*. In NEC3 it was simply a date in Contract Data. The defects date becomes the *Defects Certificate*. Beware of timing of compensation notices near the end of the project.

NEC3 - Quotations for compensation events - 62

NEC4 - Quotations for compensation events - 62

Change Comments

62.1	'he'	62.1	'it'	3	Male pronouns removed. Clause 61.1/61.4 notice/instruction appears to affect the timing of the discussion under this clause.
62.2	'his'	62.2	'the'	3	Male pronouns removed.
62.3	The <i>Contractor</i> submits quotations within three weeks of being instructed to do so by the <i>Project Manager</i> . The <i>Project Manager</i> replies within two weeks of the submission. His reply is <ul style="list-style-type: none"> • an instruction to submit a revised quotation, • an acceptance of a quotation, • a notification that a proposed instruction will not be given or a proposed changed decision will not be made or • a notification that he will be making his own assessment. 	62.3	The <i>Contractor</i> submits quotations within three weeks of being instructed to do so by the <i>Project Manager</i> . The <i>Project Manager</i> replies within two weeks of the submission. The reply is <ul style="list-style-type: none"> • a notification of acceptance of the quotation, • an instruction to submit a revised quotation or • that the <i>Project Manager</i> will be making the assessment. 	3	The clause has been made gender neutral. The bullet point in NEC3 stating "a notification that a proposed instruction will not be given or a proposed changed decision will not be made" has been removed. This is because the 'proposed instruction' provision has moved to clause 65.
62.4	'his'	62.4	Gender neutral.	3	Male pronouns removed.
62.5	The <i>Project Manager</i> extends the time allowed for <ul style="list-style-type: none"> • the <i>Contractor</i> to submit quotations for a compensation event and • the <i>Project Manager</i> to reply to a quotation if the <i>Project Manager</i> and the <i>Contractor</i> agree to the extension before the submission is due. The <i>Project Manager</i> notifies the extension that has been agreed to the <i>Contractor</i>. 	62.5	The <i>Project Manager</i> extends the time allowed for <ul style="list-style-type: none"> • the <i>Contractor</i> to submit quotations for a compensation event or • the <i>Project Manager</i> to reply to a quotation if the <i>Project Manager</i> and the <i>Contractor</i> agree to the extension before the submission is due. The <i>Project Manager</i> informs the <i>Contractor</i> of the extension which has been agreed. 	2	'notifies' becomes 'informs' The change removes the obligation of the <i>Project Manager</i> having to satisfy the notifying provisions of clause 13.7. The risk is the <i>Contractor</i> could be 'informed' within meeting minutes and the like but shouldn't cause problems on the basis that any extension is supposed to be by agreement anyway.

NEC3 - Quotations for compensation events - 62

NEC4 - Quotations for compensation events - 62

Change Comments

62.6	If the <i>Project Manager</i> does not reply to a quotation within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of his failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the <i>Project Manager</i> does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the <i>Contractor's</i> notification is treated as acceptance of the quotation by the <i>Project Manager</i> .	62.6	If the <i>Project Manager</i> does not reply to a quotation within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event, the notification states which quotation the <i>Contractor</i> proposes is to be used. If the failure continues for a further two weeks after the <i>Contractor's</i> notification it is treated as acceptance by the <i>Project Manager</i> of the quotation.	3	Male pronouns removed and 'unless the quotation is for a proposed instruction or a proposed changed decision' removed from NEC4 due to clause 65 now dealing with 'proposed instructions'.
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NEC3 - Assessing compensation events - 63

NEC4 - Assessing compensation events - 63

Change Comments

63.1	<p>The changes to the Prices is assessed as the effect of the compensation event upon</p> <ul style="list-style-type: none"> • the actual Defined Cost of the work done, • the forecast Defined Cost of the work not yet done and • the resulting Fee. <p>If the compensation event arose from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.</p>	<p>63.1 The changes to the Prices is assessed as the effect of the compensation event upon</p> <ul style="list-style-type: none"> • the actual Defined Cost of the work done by the dividing date, • the forecast Defined Cost of the work not done by the dividing date and • the resulting Fee. <p>For a compensation event that arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision, the dividing date is the date of that communication.</p> <p>For other compensation events, the dividing date is the date of the notification of the compensation event.</p>	<p>2 'Dividing date' added to provide clarity regarding the use of forecast and actual cost but does not change the clause meaning. Regardless of the Northern Ireland Housing Executive case (2017) the parties are still required to assess compensation events as per clause 63.1. In this case the Tribunal considered that in the specific circumstances where the parties had failed to administer the contract correctly it was right that the <i>Consultant</i> should make available (in discovery) actual records for consideration in the assessment of compensation events.</p>
N/A	N/A	<p>63.2 The <i>Project Manager</i> and the <i>Contractor</i> may agree rates or lump sums to assess the change to the Prices.</p>	<p>2 This clause has been introduced into the core clauses for every option. Originally this was only applicable to Options A&B. Note the word 'agree'.</p>
63.2	<p>If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.</p>	<p>63.3 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these <i>conditions of contract</i>.</p>	<p>3 'this contract' becomes 'these <i>conditions of contract</i>'.</p>

NEC3 - Assessing compensation events - 63

NEC4 - Assessing compensation events - 63

Change Comments

N/A	N/A	<p>63.4 If the effect of a compensation event is to reduce the total Defined Cost and the event is</p> <ul style="list-style-type: none"> • a change to the Scope other than a change to the Scope provided by the <i>Client</i>, which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted or • a correction to an assumption stated by the <i>Project Manager</i> for assessing an earlier compensation event <p>the Prices are reduced.</p>	<p>2 Used to be option specific but now added to the core clauses. However, the wording has been amended to add "other than a change to the Scope provided by the <i>Client</i>, which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted." See also NEC4 Main Option clause amendments 63.12 (Options A & B - value engineering) and 63.13 (Options C & D).</p>
63.3	<p>A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme.</p>	<p>63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.</p> <p>A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.</p> <p>When assessing delay only those operations which the <i>Contractor</i> has not completed and which are affected by the compensation event are changed.</p>	<p>1 Significant change in the wording within NEC4. There is now reference to the Accepted Programme current at the dividing date. Clause 63.1 explains the dividing date. In the case of a compensation event notified by the <i>Contractor</i> the notice becomes the dividing date. Under clause 61.3 the <i>Contractor</i> has up to 8 weeks to issue this notice. On the occasions where the <i>Contractor</i> does expend a proportion of this 8 weeks it is highly likely that a new Accepted Programme will be in place. The <i>Contractor</i> could find themselves foregoing time and cost entitlement if the possible interpretation of the wording of clause 63.5 is applied.</p>

NEC3 - Assessing compensation events - 63

NEC4 - Assessing compensation events - 63

Change Comments

63.4	'Employer'.	63.6	'Client'.	3	'Employer' becomes 'Client'.
63.5	If the <i>Project Manager</i> has notified the <i>Contractor</i> of his decision that the <i>Contractor</i> did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the <i>Contractor</i> had given early warning.	63.7	If the <i>Project Manager</i> has stated in the instruction to submit quotations that the <i>Contractor</i> did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the <i>Contractor</i> had given an early warning.	3	'notified' becomes 'stated in the instruction'. The onus is on the <i>Project Manager</i> to make the statement at the time of issuing instructions for a quotation. See clause 61.5.
63.6	Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the <i>Contractor's</i> risk under this contract.	63.8	The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.	3	Slight rewording of clause. It may become difficult to separate out liabilities that could perhaps be other compensation events in their own right.
63.7	Assessments are based upon the assumption that the <i>Contractor</i> reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.	63.9	The assessment of the effect of a compensation event is based upon the assumptions that the <i>Contractor</i> reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred.	2	'compensation event' becomes just 'event' and 'the Accepted Programme can be changed' removed from NEC4. User Guide says <i>Client</i> is protected from 'inefficiency' but this has to be questioned as the very nature of change is that it can introduce inefficiency.

NEC3 - Assessing compensation events - 63

NEC4 - Assessing compensation events - 63

Change Comments

63.8	A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.	63.10	A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.	3	'Works Information' becomes 'Scope'.
63.9	If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the <i>Project Manager</i> corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.	63.11	If a change to the Scope makes the description of the Condition for a Key Date incorrect, the <i>Project Manager</i> corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.	3	'Works Information' becomes 'Scope'.

NEC3 - The Project Manager's assessments - 64

NEC4 - The Project Manager's assessments - 64

Change Comments

64.1	'this' contract.	64.1	'the' contract.
64.2	The <i>Project Manager</i> assesses a compensation event using his own assessment of the programme for the remaining work if <ul style="list-style-type: none"> • there is no Accepted Programme or • the <i>Contractor</i> has not submitted a programme or alterations to a programme for acceptance as required by this contract. 	64.2	The <i>Project Manager</i> assesses the programme for the remaining work and uses it in the assessment of a compensation event if <ul style="list-style-type: none"> • there is no Accepted Programme, • the <i>Contractor</i> has not submitted a programme or alterations to a programme for acceptance as required by the contract or • the <i>Project Manager</i> has not accepted the <i>Contractor's</i> latest programme for one of the reasons stated in the contract.
64.3	The <i>Project Manager</i> notifies the <i>Contractor</i> of his assessment of a compensation event and gives him details of it within the period allowed for the <i>Contractor's</i> submission of his quotation for the same event. This period starts when the need for the <i>Project Manager's</i> assessment becomes apparent.	64.3	The <i>Project Manager</i> notifies the <i>Contractor</i> of the assessment of a compensation event and gives details of the assessment within the period allowed for the <i>Contractor's</i> submission of its quotation for the same compensation event. This period starts when the need for the <i>Project Manager's</i> assessment becomes apparent.
64.4	If the Project Manger does not assess a compensation event within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of his failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event he states in his notification which quotation he proposes is to be accepted. If the <i>Project Manager</i> does not reply within two weeks of this notification the notification is treated as acceptance of the <i>Contractor's</i> quotation by the <i>Project Manager</i> .	64.4	If the <i>Project Manager</i> does not assess a compensation event within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event, the notification states which quotation the <i>Contractor</i> proposes is to be used. If the failure continues for a further two weeks after the <i>Contractor's</i> notification it is treated as acceptance by the <i>Project Manager</i> of the quotation.

- 3** Minor change - 'this' and 'the' contract.
- 2** Bullet point added - 'the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract' added in NEC4. This should clarify that if the *Project Manager* has not accepted the *Contractor's* latest programme then there is still an obligation to make an assessment.
- 3** Male pronouns removed and 'event' becomes 'compensation event'.
- 3** Male pronouns removed and slight clause rewording. The clause still does not introduce any time limit on when the *Contractor* has to notify of the *Project Manager's* failure.

NEC3 - N/A - Proposed Instructions Previously in Clause 61.2

NEC4 - Proposed Instructions - 65

Change Comments

61.2	In NEC3 clause 61.2 was for proposed instructions and clause 65.1 was implementing compensation events (now clause 66).	65.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit a quotation for a proposed instruction. The <i>Project Manager</i> states in the instruction the date by which the proposed instruction may be given. The <i>Contractor</i> does not put a proposed instruction into effect.
N/A	N/A	65.2	The <i>Contractor</i> submits quotations for a proposed instruction within three weeks of being instructed to do so by the <i>Project Manager</i> . The quotation is assessed as a compensation event. The <i>Project Manager</i> replies to the <i>Contractor's</i> quotation by the date when the proposed instruction may be given. The reply is <ul style="list-style-type: none"> • an instruction to submit a revised quotation including the reasons for doing so, • the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or • a notification that the quotation is not accepted If the <i>Project Manager</i> does not reply to the quotation within the time allowed, the quotation is not accepted.
N/A	N/A	65.3	If the quotation is not accepted, the <i>Project Manager</i> may issue the instruction, notify the instruction as a compensation event and instruct the <i>Contractor</i> to submit a quotation.

- I** Introduces a time period in respect of the proposed instruction. This could be a minimum of 3 weeks given the time allowed to prepare a quotation under clause 65.2.
- I** Clarification of the process. The last sentence limits the period in which the quotation remains valid.
- I** i.e. the process starts again.

NEC3 - Implementing compensation events - 65 NEC4 - Implementing compensation events - 66 Change Comments

NEC3	NEC4	Change Comments
65.1 'his'.	66.1 A compensation event is implemented when <ul style="list-style-type: none"> the <i>Project Manager</i> notifies acceptance of the <i>Contractor's</i> quotation, the <i>Project Manager</i> notifies the <i>Contractor</i> of an assessment made by the <i>Project Manager</i> or a <i>Contractor's</i> quotation is treated as having been accepted by the <i>Project Manager</i>. 	3 Gender neutral - male pronouns removed.
N/A N/A	66.2 When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.	3 Added wording in NEC4 are for completeness. Option statements moved to core clauses.
65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.	66.3 The assessment of an implemented compensation event is not revised except as stated in these <i>conditions of contract</i> .	1 'implemented' added before compensation events and the word 'forecast' has been removed. Implemented compensation events not revised except as stated in 'these <i>conditions of contract</i> ' i.e. via dispute clause W2.3(4). In NEC3 it could be argued that compensation events could be revisited for things other than a 'forecast' being wrong.

Main Option A - Specific Changes

NEC3	NEC4	Change Comments
63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is <ul style="list-style-type: none"> a change to the Works Information or a correction of an assumption stated by the <i>Project Manager</i> for assessing an earlier compensation event, the Prices are reduced.	63.4 Now core clause 63.4 above.	2 NEC4 core clause 63.4 but with amended wording. Also NEC4 Main Option A specific clause 63.12.
N/A N/A	63.12 If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i> , which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the <i>value engineering percentage</i> .	2 No previous value engineering clause in Option A. The <i>value engineering percentage</i> is 50% by default unless an alternative is inserted in Contract Data part one. Note core clauses 16.1 and 63.4.
63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.	63.14 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.	3 No changes, just a different clause number.
63.14 If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess a compensation event.	63.2 The <i>Project Manager</i> and the <i>Contractor</i> may agree rates or lump sums to assess the change to the Prices.	3 Provision is now available with every option so has been moved to the core clauses.

NEC3 - Main Option A - Specific Changes

N/A	N/A
65.4	The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.

NEC4 - Main Option A - Specific Changes

63.16	If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the <i>Project Manager</i> and <i>Contractor</i> may agree a new rate. If they do not agree the <i>Project Manager</i> assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.
66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.

Change Comments

- 2** New clause to deal with the fact that the Short Schedule of Cost Components now uses 'People Rates'. *Contractors* need to give careful consideration to the People Rates which must now be stated in the Contract Data.
- 3** Main Option specific clause in NEC3 has now become core clause for all options with slight rearrangement of wording in NEC4.

Main Option B - Specific Changes

NEC3

60.4	'Works Information'.
60.6	The <i>Project Manager</i> corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the <i>method of measurement</i> or are due to ambiguities or inconsistencies. Each correction is a compensation event which may lead to reduced Prices.

NEC4

60.4	'Scope'.
60.6	The <i>Project Manager</i> gives an instruction to correct a mistake in the Bill of Quantities which is <ul style="list-style-type: none"> • a departure from the rules for item descriptions or division of the work into items in the <i>method of measurement</i> • due to an ambiguity or inconsistency Each such correction is a compensation event which may lead to reduced Prices.

Change Comments

- 3** 'Works Information' becomes 'Scope'.
- 2** Now a requirement for the *Project Manager* to give an instruction correcting a mistake.

NEC3 - Main Option B - Specific Changes

63.10	If the effect of a compensation event is to reduce the total Defined Cost and the event is <ul style="list-style-type: none"> • a change to the Works Information or • a correction of an assumption stated by the <i>Project Manager</i> for assessing an earlier compensation event, the Prices are reduced.
N/A	N/A
63.13	Last paragraph only: If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess compensation events.
N/A	N/A

NEC4 - Main Option B - Specific Changes

63.4	Now core clause 63.4 above.
63.12	If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i> , which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the <i>value engineering percentage</i> .
63.15	Last paragraph only: Deleted as now covered by core clause 63.2
63.16	If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the <i>Project Manager</i> and <i>Contractor</i> may agree a new rate. If they do not agree the <i>Project Manager</i> assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.

Change Comments

- 2** NEC4 core clause 63.4 but with amended wording. Also NEC4 Main Option B specific clause 63.12.
- 2** No previous value engineering clause in Option A. The *value engineering percentage* is 50% by default unless an alternative is inserted in Contract Data part one. Note core clauses 16.1 and 63.4.
- 3** Clause renumbered but unchanged with the exception of the last paragraph which is deleted as it is covered by core clause 63.2.
- 2** New clause to deal with the fact that the Short Schedule of Cost Components now uses 'People Rates'. *Contractors* need to give careful consideration to the People Rates which must now be stated in the Contract Data.

NEC3 - Main Option B - Specific Changes

65.4	The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.
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NEC4 - Main Option B - Specific Changes

66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.
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Change Comments

- 3 Main Option specific clause in NEC3 has now become core clause for all options with slight rearrangement of wording in NEC4.

Main Option C - Specific Changes

NEC3	NEC4	Change	Comments		
63.11	Moved to core clauses.	63.4	Now core clause 63.4 above.	3	NEC4 core clause 63.4 - 'Works Information' becomes 'Scope'. Also see NEC4 Main Option C specific clause 63.13
63.12	Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.	63.14	Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.	3	No changes, just a different clause number.
63.14	If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess a compensation event.	63.2	The <i>Project Manager</i> and the <i>Contractor</i> may agree rates or lump sums to assess the change to the Prices.	3	Provision is now available with every option so has been moved to the core clauses (63.2).
N/A	N/A	63.13	If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i> , which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted, the Prices are not reduced.	3	New clause 63.13 seems to repeat what new clause 63.4 says only in a positive way.

NEC3 - Main Option C - Specific Changes

63.15	If the <i>Project Manager</i> and the <i>Contractor</i> agree, the <i>Contractor</i> assesses a compensation event using the Shorter Schedule of Cost Components. The <i>Project Manager</i> may make his own assessments using the Shorter Schedule of Cost Components.
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NEC4 - Main Option C - Specific Changes

N/A	Option clause removed.
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Change Comments

- 3 The option clause has been removed. Possibly because The Short Schedule of Cost Components (SSCC) now requires People Rates to be included in the Contract Data therefore an agreement to use the SSCC would also require the agreement of People Rates.

65.4	The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.
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66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.
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- 3 Main Option specific clause has now become core clause for all options with slight rearrangement of wording.

Main Option D - Specific Changes

NEC3	NEC4	Change	Comments		
60.4	'Works Information'.	60.4	'Scope'.	3	'Works Information' becomes 'Scope'.
60.6	The <i>Project Manager</i> corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the <i>method of measurement</i> or are due to ambiguities or inconsistencies. Each correction is a compensation event which may lead to reduced Prices.	60.6	The <i>Project Manager</i> gives an instruction to correct a mistake in the Bill of Quantities which is <ul style="list-style-type: none"> a departure from the rules for item descriptions or division of the work into items in the <i>method of measurement</i> due to an ambiguity or inconsistency. Each such correction is a compensation event which may lead to reduced Prices.	2	Now a requirement for the <i>Project Manager</i> to give an instruction.

NEC3 - Main Option D- Specific Changes

NEC4 - Main Option D - Specific Changes

Change Comments

63.11	Moved to core clauses.	63.4	Now core clause 63.4 above.	3	NEC4 core clause 63.4 - 'Works Information' becomes 'Scope'. Also see NEC4 Main Option C specific clause 63.13.
N/A	N/A	63.13	If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i> , which the <i>Contractor</i> proposed and the <i>Project Manager</i> accepted, the Prices are not reduced.	3	New clause 63.13 seems to repeat what new clause 63.4 says only in a positive way.
63.13	Last paragraph only: If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess compensation events.	63.15	Last paragraph only: Deleted as now covered by core clause 63.2	3	Clause renumbered but unchanged with the exception of the last paragraph which is deleted as it is covered by core clause 63.2.
63.15	If the <i>Project Manager</i> and the <i>Contractor</i> agree, the <i>Contractor</i> assesses a compensation event using the Shorter Schedule of Cost Components. The <i>Project Manager</i> may make his own assessments using the Shorter Schedule of Cost Components.	N/A	Option clause removed.	3	The option clause has been removed. Possibly because The Short Schedule of Cost Components (SSCC) now requires People Rates to be included in the Contract Data therefore an agreement to use the SSCC would also require the agreement of People Rates.
65.4	The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.	66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.	3	Main Option specific clause has now become core clause for all options with slight rearrangement of wording.

Main Option E - Specific Changes

NEC3

NEC4

Change Comments

63.14	If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess a compensation event.	63.2	The <i>Project Manager</i> and the <i>Contractor</i> may agree rates or lump sums to assess the change to the Prices.	3	Provision is now available with every option so has been moved to the core clauses (63.2).
63.15	If the <i>Project Manager</i> and the <i>Contractor</i> agree, the <i>Contractor</i> assesses a compensation event using the Shorter Schedule of Cost Components. The <i>Project Manager</i> may make his own assessments using the Shorter Schedule of Cost Components.	N/A	Option clause removed.	3	The option clause has been removed. Possibly because the Short Schedule of Cost Components (SSCC) now requires People Rates to be included in the Contract Data therefore an agreement to use the SSCC would also require the agreement of People Rates.
65.3	The changes to the forecast Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.	66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.	3	Main Option specific clause has now become core clause for all options with slight rearrangement of wording. The word "forecast" has been dropped.

Main Option F - Specific Changes

NEC3

NEC4

Change Comments

63.14	If the <i>Project Manager</i> and the <i>Contractor</i> agree, rates and lump sums may be used to assess a compensation event.	63.2	The <i>Project Manager</i> and the <i>Contractor</i> may agree rates or lump sums to assess the change to the Prices.	<p>3 Provision is now available with every option so has been moved to the core clauses.</p>
N/A	N/A	63.17	If work which the <i>Contractor</i> is to do is affected by a compensation event, the <i>Project Manager</i> and the <i>Contractor</i> agree the change to the price for the work and any change to the Completion Date and Key Dates. If they do not agree, the <i>Project Manager</i> decides the change.	<p>2 NEC4 clause added for clarity where work by the <i>Contractor</i> is affected by a compensation event (bearing in mind that Option F is a 'management contract').</p>
65.3	The changes to the forecast Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.	66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.	<p>3 Main Option specific clause has now become core clause for all options with slight rearrangement of wording. The word 'forecast' has been dropped.</p>

A sample of clients

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Balfour Beatty International
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Balfour Beatty Utility Solutions
Balfour Beatty Mott MacDonald
Birse Civils
Birse Rail
Byrne Bros (Formwork)
Carillion
CB&I UK
Chorus
Chunnel Group
Costain
DockGuard
East Sussex County Council
F B Ellmer Construction
Four-Delivery
Galliard Construction
Galliard Homes
Galliford Try
GSE Civil Engineering
High-Point Rendel
Hochtief (UK) Construction
Hochtief/Taylor Woodrow JV
Jacobs Group
J Murphy & Sons
Kier Construction

Kier Infrastructure and Overseas
Laing O'Rourke
Lockmetal
Mansell Construction Services
Mowlem
Network Rail
Oakes Specialist Excavation
O'Keefe Construction (Greenwich)
O'Rourke Contracting
Owen Building Contractors
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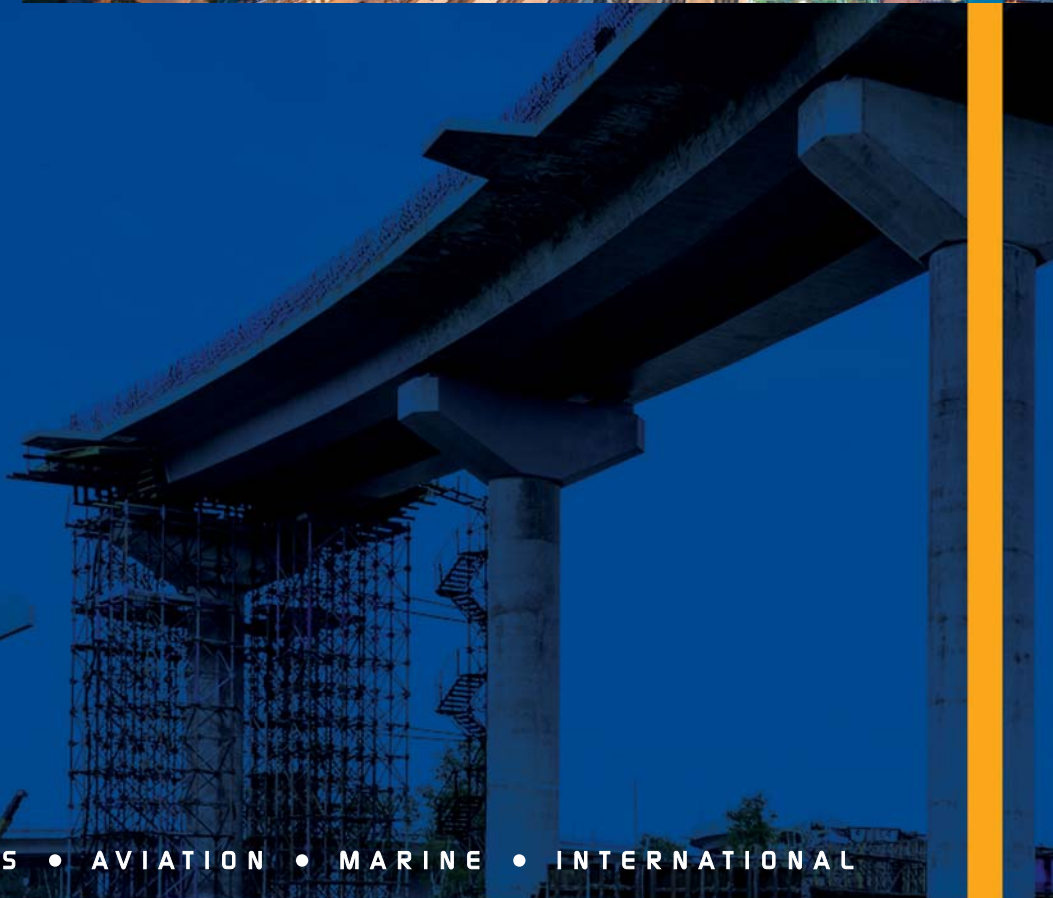
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Who would benefit?

Anyone involved in running or administrating a construction project





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