

NEC101 - Compensation Events, an introduction

30th Oct 2024

Agenda

Compensation events - what common mistakes people make, general advice and best practice...mainly talking about the NEC4 Engineering and Construction Contract (ECC)

Speakers



Laura Campbell

Senior Associate

Sharpe Pritchard



Robert Gerrard

Consultant

NEC

What is a compensation event? (The principle)

- It is simply something the contract refers to as being a compensation event
- Such as 60.1(3) ‘The *Client* does not provide something which it is to provide by the date shown on the Accepted Programme’
- You find a list in core clause 60.1, some main and secondary Options
- This can be modified by a Z clause or added to in the Contract Data

Mistakes, advice, best practice....

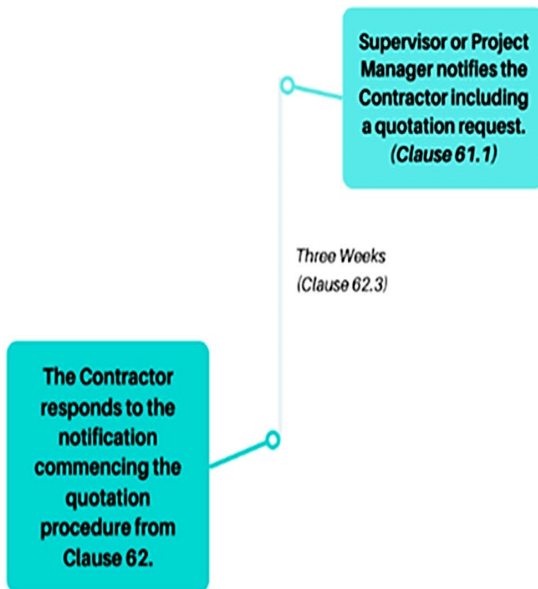
- Setting up risk allocation (that impacts upon compensation events) needs to be carefully thought through and lined up with your project risk register – this impacts compensation events
- Needs to be specific to your project and *Client*

How is it notified? (The principle)

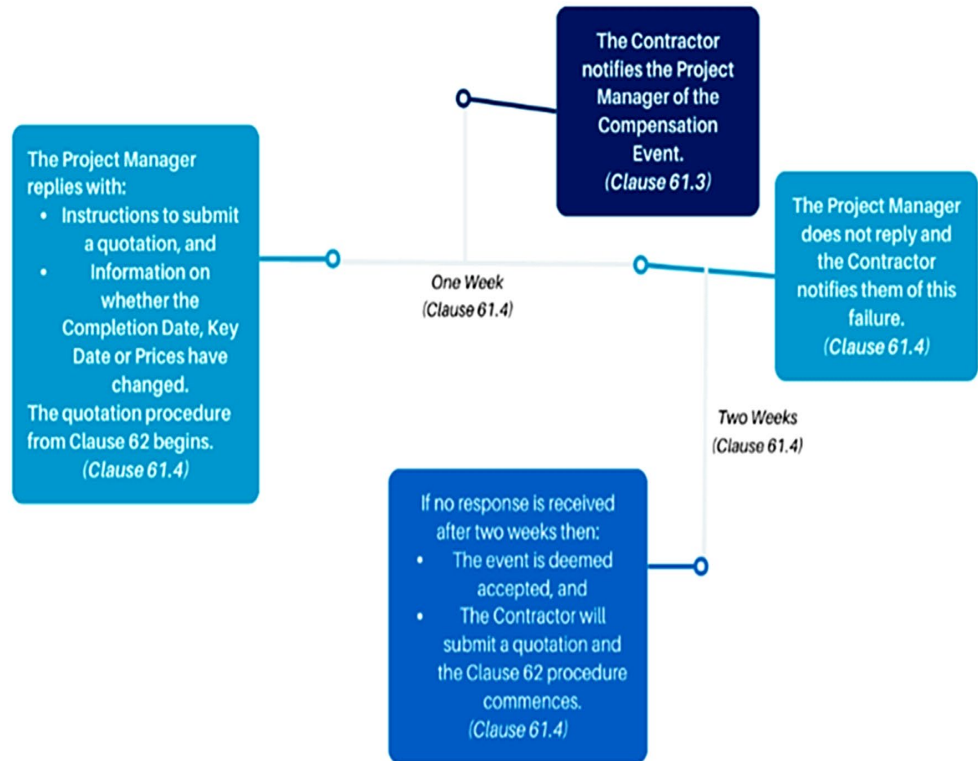
- If you consider around 90% of compensation events will be due to clause 14.3, ‘*The Project Manager* may give an instruction to the *Contractor* which changes the Scope or a Key Date’ then most compensation events should be notified by the *Project Manager*
- The remaining 10% or so fall exclusively to the *Contractor* to notify the *Project Manager* under clause 61.3, which comes with an 8 week time bar

How it is notified - flowcharts

Option One



Option Two



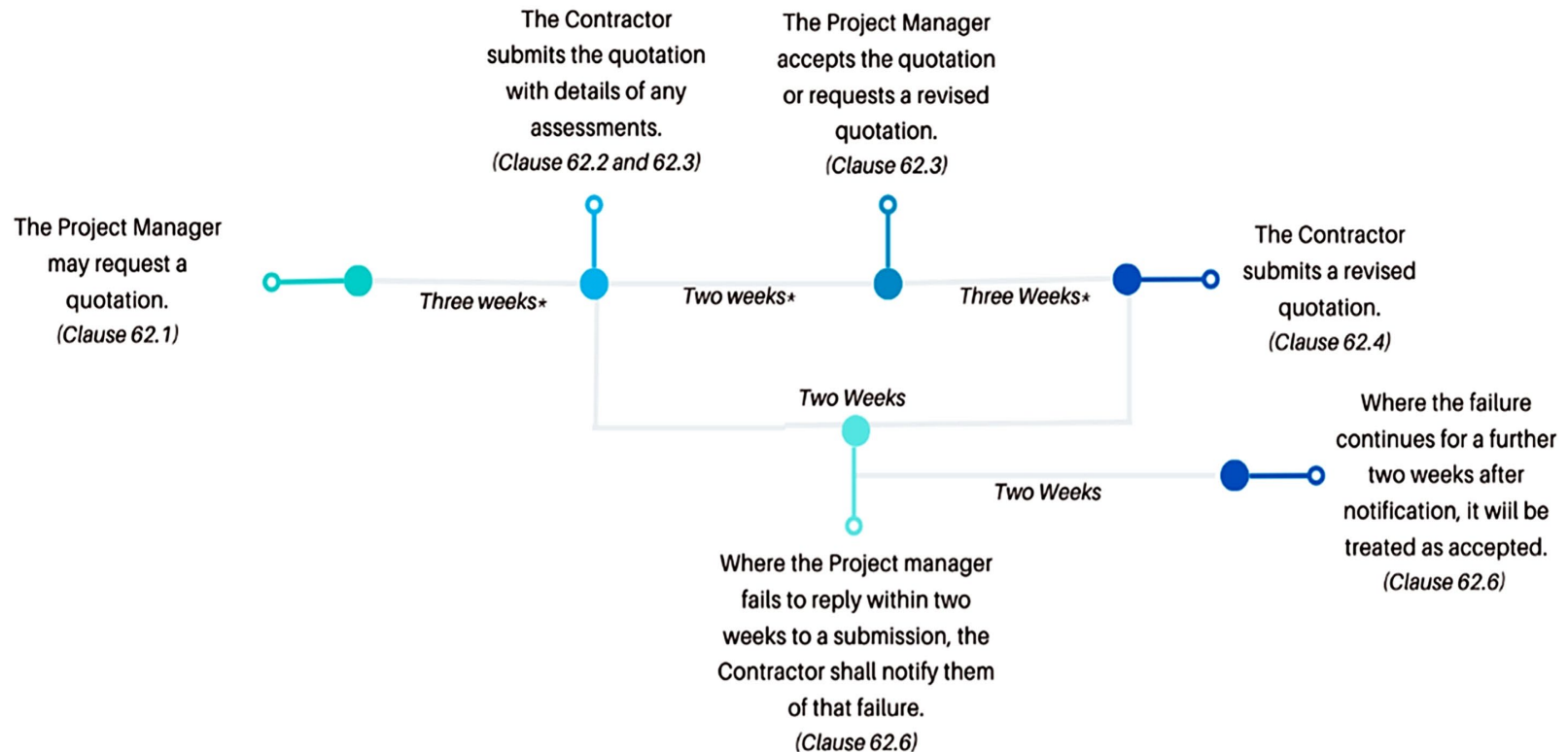
Mistakes, advice, best practice....

- Are people finding the *Project Manager* notifying compensation events under 61.1?
- Slightly contentious is where a compensation event occurs but the *Contractor* does not notify it because it will cause the Prices to decrease (i.e. clause 60.4, Option B/D)
- Notify once the compensation event occurs, not before
- Use the early warning process to notify events that could happen that i.e. could delay Completion

How is it assessed? (time/cost)

- Stand on the dividing date. Look back to see actual time/cost impact and look forward to forecast time/cost impact (clause 63.1/63.5)
- Use the correct Accepted Programme, brought up to the dividing date solely for purposes of assessing the compensation event
- Try to put the *Contractor* in the position they would have been in but for the compensation event
- Get a quotation from the *Contractor* for time and cost, a reasonable one, according to the provisions of the contract
- Use alternative quotations and also proposed instructions (sometimes)

How is it assessed? (time/cost) - flowchart



Mistakes, advice, best practice....

- Be collaborative, do it together
- Use clause 63.2 more
- Can you realistically forecast to 2 decimal places of accuracy?
- Use clause 61.6 *Project Manager* assumptions from time to time
- Try and engender that rolling final account ethos
- But, do your job as *Project Manager* and assess alone if you must

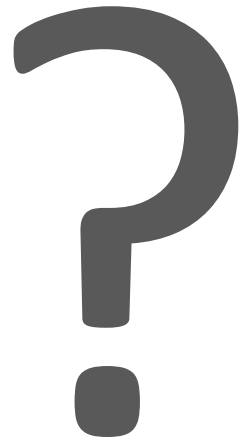
How is it implemented? (time/cost)

- By agreement (acceptance), deemed acceptance or *Project Manager* assessment
- Particularly important for Option A/B (for the *Contractor* to be paid)
- Cannot later change the acceptance (clause 66.3)

Mistakes, advice, best practice....

- Having a ‘wait and see’ approach or thinking it can be left to the end of the project
- Think through payment of this (for Option A/B)
- Proactively manage the risks through the Early Warning Register and CE mechanism
- Record keeping/evidence gathering
- Notification and communication – use the whole contract

Any questions....



NEC Community App



Online space to
bring together
the NEC user
community



Connect, share
expertise and
best practice



community.neccontract.com



Access to NEC
Spotlight
podcasts



Dedicated hubs
for particular
NEC topics

More webinars

- The “NEC101” series will continue, with Sharpe Pritchard
- Confederation of International Contractors' Associations (CICA) webinars – 2pm today!
- Any ideas for future webinars for 2025 and beyond – get in touch!

farhaan.patel@neccontract.com

Contact us

+44 (0)20 7665 2446

info@necontract.com
necontract.com

One Great George Street
London, SW1P 3AA

+44 (0)20 7405 4600

enquiries@sharpepritchard.co.uk
sharpepritchard.co.uk

Elm Yard, 10-16 Elm Street
London, WC1X 0BJ