

STAFF COSTS INCLUDED IN COMPENSATION EVENT QUOTATIONS UNDER NEC3 CONDITIONS OF CONTRACT

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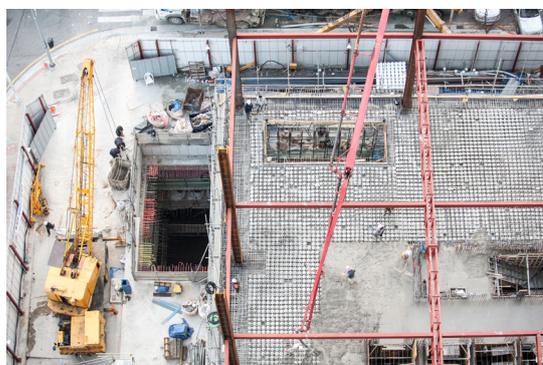
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Within the industry, there still appears to be some confusion over which staff costs can and cannot be included within Compensation Event Quotations. It is important that parties understand early in a project the items to be reimbursed in compensation event quotations otherwise it will be an obstacle to agreement throughout the project. This confusion can lead to protracted negotiations that delays the final account agreement, which conflicts with the ethos of NEC i.e. timely agreement of quotations for contract changes in advance of the work.

STAFF COSTS IN COMPENSATION EVENT PREPARATION

As a general rule, the costs of preparing quotations are excluded from compensation events priced under the Lump Sum priced Options i.e. Options A (Activity Schedule) and Option B (Bill of Quantities) together with the Defined Cost. The intention was to retain the certainty of the Prices, as quotations would be priced by existing staff and thus reimbursed within the original Contract Sum; this was due to the understanding that these Options would only be used on contracts where the design was complete with minimal change.

For Target Cost Options, Options C (Activity Schedule) and Option D (Bill of Quantities) the situation is ambiguous. While the cost of quotation preparation is fully recoverable under Defined Cost, both the Contract and Notes for Guidance are silent with regard to the recovery of Target adjustment. The question revolves around Clause 63.1 and how the changes to the Prices are assessed as the "effect" of the Compensation Event on Defined Cost.



On larger projects with multiple Compensation Events, this can be easier to demonstrate due to additional staff being deployed solely on change, however, advice would be to raise an Early Warning advising the Project Manager that additional staff are being brought onto the project as a result of his instructions.

With the Lump Sum Options, if the scope of change is extensive, or the employer is asking for multiple options, the cost of preparing quotations should be sought from the Project Manager in advance.

RECOVERY OF STAFF COSTS IN A COMPENSATION EVENT

Contractors are entitled to recover the cost of managing additional works within a Quotation. Recovery generally ensures that the Contractor is no worse off as a result of the Compensation Event. Reimbursement should be via increased Defined Cost of the staff required as a result of the change, either through prolongation of existing staff (increased duration) or thickening (additional staff brought on to site).

Clause 63.1 states that the quotation should assess the "effect of the compensation event". This is further reaching than traditional contracts, in that, not only direct costs are contemplated within the quotation but delay and prolongation costs need to be considered. Eggleston states in his commentary on the NEC 3 contract:

"To determine the effect of a compensation event as required by clause 63.1 a comparison has to be made between the cost to the contractor of completing the work with the compensation event included and the cost without."

Therefore, any increase in core staff costs associated with the effect of a change on the Planned Completion Date should also be priced in the Compensation Event which gave rise to the programme delay. This can lead to the situation where a relatively minor Compensation Event issued which directly impacts the critical path results in the cost associated with prolongation far outweighing the cost associated with the work itself.

STAFF RATES USED IN COMPENSATION EVENTS

With agreement, the Shorter Schedule of Cost Components can be used to assess Defined Cost in Compensation Event quotations. This is an opportunity for the contractor to maximise his gain by inserting robust staff rates (as well as other cost's mainly for People and Equipment) in the Contract Data: Part 2. These rates can then be used in quotations for compensation events without contest from the Project Manager's team which could enhance recovery.

An added bonus would be the saving in time during the contract of agreeing staff rates via multiple audits of Defined Cost. This can be time consuming particularly where staffs are concerned due to confidentiality issues. Therefore, it is important that this is completed at tender and inserted into the Contract Data.

In conclusion, it is important that both parties in a contract understand and agree the inclusions and exclusions in relation to staff costs within compensation event quotations prior to pricing the first event. Otherwise, it could result in abortive time and costs being incurred by both parties throughout the contract and is very often the main cause of quotations not being agreed during the course of the construction operations.



MORE 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

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