

You are the Project Manager under an NEC3 Engineering and Construction Contract. Does your acceptance of a programme change the Completion Date?

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1. Yes
2. No
3. *Maybe - best reject the programme*

The Accepted Programme is one of the key foundations of the NEC contract and both the Project Manager and the Contractor have a role to play:

- The Contractor must submit a programme which complies with all the requirements listed in Clause 31.2; the importance of the programme to NEC being reflected in the fact Clause 31.2 is one of the longest clauses in NEC.
- Under Clause 31.3 the Project Manager is then required to either accept the programme or notify the Contractor of their reasons for not accepting the programme, within two weeks of it being submitted.

Fear of what acceptance means for the Completion Date can, however, sometimes lead to reluctance on the part

of the Project Manager to accept a programme which shows delay to planned Completion. They worry that acceptance of the programme in some way implies that they are accepting the cause and responsibility for the delays shown in it. This is not the case.

As a start point it is important to appreciate that when a Contractor submits a programme for acceptance, that Programme will (and must under Clause 31.2), show two dates – the current "Completion Date" and the Contractor's "planned Completion" date.

The "planned Completion" is the date the Contractor plans to complete the works based on his critical path, reflecting the specific activities shown on the programme. Whereas the "Completion Date" is the contractually agreed date for completion of the works, with Clause 30.1 obliging the Contractor to Complete on or before this date.

Whilst this Completion Date can change, it can only be changed "in accordance with the contract" (Clause 11.2(3)) and the NEC contract does not allow for the Completion Date to be changed simply through the acceptance of a programme by the Project Manager. This is made clear in Clause 14.1, which states that the

Project Manager's acceptance of a communication, does not change the Contractor's responsibility to provide the Works.

If the parties agree that the planned Completion has been delayed by a compensation event, the Completion Date can be changed in accordance with the contract. However, this change to the Completion Date occurs only when the compensation event is implemented under the contract, not when a programme showing a delayed planned Completion is accepted.

Indeed, the fact the submitted programme shows a delay to planned Completion is not, by itself, a reason for not accepting the programme. Clause 31.3 sets out that the four valid reasons a Project Manager may not accept a programme are that: it is not practicable, it does not show the information contractually required; it is not realistic, or it does not comply with the Works Information. Any failure by the Project Manager to accept a programme, other than for these four reasons, will itself be a compensation event.

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