

Assuring People Costs Under NEC4 Contracts

Q&A

1 Under NEC4 ECC people costs component 1 second bullet point would you be able to explain what is meant by 'proportionate' to the time spent, proportionate to what and how is the proportion actually calculated?

Proportionate to the time they incur as a whole that day, week, month etc, typically captured via a time recording mechanism, for example a time sheet.

2 Can you please post a link for the Past Event section, thanks

A recording and slides can be found at: <https://www.neccontract.com/resources/past-events>

3 Is there a 'standard' schedule or list detailing exactly what costs have to be recorded and what actual supporting documentation should be provided also some contractors are using the GDPR regulations as an excuse for refusing to provide access/sight of what might be classed as confidential e.g. employment contracts and payrolls

The Schedule of Cost Components, and in particular cost component 1, is a list of what can be claimed as Defined Cost for people. This is the list of what a contractor can “record” as a cost and present for payment.

There is not a list of what actual types of document might support these costs (and the payment of these costs) – these will and can take many forms; timesheets, payslips, invoices, bank statements, expense claim form, journal voucher, petty cash voucher, employment contracts etc.

They should ultimately be recognised accounts and records for the country in which the cost is incurred e.g. HMRC rules of what are recognised forms of accounts and records.

If required, a client can identify specific records they want the *Contractor* to keep and allow the *Project Manager* access to in the Scope.

4 How do we agree or substantiate the fee?

Fee is normally considered/reviewed as part of the pre-contract phase, often via a competitive tender process. As such it will be pre-agreed in the Contract Data Part 2 and not subject to future review/inspection. Some clients may require bidders to provide calculations as to how the fee has been calculated to enable benchmarking and assessment of whether reasonable. Post contract the Fee is fixed percentage and anything not in Defined Cost is deemed to be part of the Fee.

5 Looking at your subconsultant example. In what circumstances would it be acceptable for this to be treated as a subcontract rather than People cost under the SCC?

The term Subcontractor is defined in clause 11.2(19) and any entity that falls within this definition will be Subcontractor. There is an exception stated in clause 11.2(19) for the “supply of people paid for by the *Contractor* according to the time worked”. The cost of such people would be recovered under cost component 14 in the Schedule of Cost Components. It should

also be noted that a contractor cannot recover the same cost twice as Defined Cost and whether costs are paid under cost component 14 or 41, they will both be subject to the addition of the Fee.

6 If there is not a rate in Contract Data Part 2 and it is to be assessed as market rate during the agreeing compensation events - how is this justified and agreed, does the subjectivity of this cause issues?

In most cases where there is not a rate in Contract Data Part 2 the cost will be recovered based on the actual cost incurred as evidenced by the *Contractor's* accounts and records. In some cases, such as cost component 22, an open market rate will need to be determined. The *Contractor* will have to justify the market rate they are applying for and may provide data to support the rate such as a comparison to rates for similar Equipment hired or rented from an external company. The *Project Manager* may also choose to undertake some form of benchmarking exercise to confirm the rate represents an open market value.

7 I'm assuming the forecast included in the assessment, doesn't apply to Option A & B?

Yes, there is no forecasting of the Price for Work Done to Date for Options A and B.

8 Interesting chat this week re Disallowed Cost - not 'justified'. A timesheet showing hours is not enough. Needs to state what was being done to show it was 'Providing the Works'. Agree?

If this addition is added within the Scope or via a Z clause, then yes. This additional narrative is often considered on larger projects and may be pragmatic where time needs to be captured against a level below project costing i.e. work breakdown structure. A basic timesheet allocating time to the project only, is still valid evidence of Defined Cost. If a client is concerned that time on a timesheet isn't Providing the Works (whether the timesheet is detailed or not) then this could be challenged and additional evidence of what was actually done in terms of outputs could be sought.

9 Can people's homes be classed as Working Areas?

No, but people costs can be recovered as Defined Cost if working from home in accordance with cost component 1, as updated in the January 2023 amendments. This introduced an additional bullet point that allows for people whose normal place of working is not within the Working Areas but who have been identified in the Contract Data to be recoverable as part of Defined Cost wherever they work as long as they are working on the contract – so working from home or head office etc.

10 Does the Contractor have to complete a forecast with its application for payment?

Under main Options C, D, E and F, a forecast of Defined Cost is required under clause 20.4 to be submitted at intervals stated in the Contract Data.

This is for a forecast of the total Defined Cost i.e. out-turn.

The *Contractor* would be required to provide a forecast in their application for payment covering what will be “paid” before next assessment date, not merely what costs are expected to be incurred by that date. This can be tested under inspection/follow up (the month after). This will

typically be labour (paid weekly) and salary (paid monthly). It could relate to party third costs if payment terms are less than 30 days, assuming monthly intervals.

11 Costs incurred to provide the works, would a table-top football game/machine fall into this category as it could be argued it is necessary to promote an esprit de corps i.e. trust and collaboration and an effective efficient office /environment

It may have benefit to the working environment but isn't necessary to Provide the Works.

12 Do we need a Z clause so an area set up to service different contracts under the same Framework can be called a 'Working Area' under each contract?

The definition of Working Areas (clause 11.2(20)) requires that the areas are used only for work in the contract. Therefore, a facility that is being used across multiple contracts cannot be identified as Working Areas. To change this a Z clause would be required.

13 What if the person is working on the site, is their travel and hotel recoverable?

Entitlement relates to what is in the persons employment contract and their normal place of work. These costs could potentially be recoverable under cost components 13(a) & (b).

14 When it comes to a labour or security subcontractor as an example, would you see these falling under People Costs as they are indirectly employed by the Contractor?

Please see the response to question 5 above.

15 For Option C or D - You indicate the difference between Defined Cost and Fee but how do you more specifically deal with what is in the Defined Cost or Fee as the SCC/SSCC is very broad (vague definitions in my opinion, and has led to a number of differences or disputes) and is not specific without terms defined i.e. both NEC schedules leave a lot to be debated as to what is payable or what should be treated as in the Fee.? How do you suggest users work together to avoid these differences?

In accordance with clause 52.1 any costs that do not fall within the definition of Defined Cost as deemed to be in the Fee. Defined Cost is calculated by the relevant schedule of cost components for the main Option selected. The schedule of cost components try to provide clarity over what costs form part of Defined Cost by identifying what will be paid for as costs incurred in order to Provide the Works, within the Working Areas etc. The intention is to allow the Contractor to recover the direct costs associated with Providing the Works within the Working Areas. Anything else should be recovered by the Fee. The list of components is detailed and should cover the vast majority of all genuine project cost scenarios. There may be items that don't quite meet a definition or are very specific to that contractor. These should be marginal. Any contractor bidding for a contract should make themselves fully familiar with the relevant schedule of cost components, the cost types likely to be incurred on the project and how all this aligns to its internal cost capture and allocation.

Tender fees may need to be adjusted accordingly to reflect known items that could be classified as Fee under the contract yet are recognised internally as a contract cost or actual cost by a contractor in its accounting ledgers. In such cases, a contractor should have a process to self-disallow such costs included in the accounting ledger, but not to be included in reimbursable costs in the application for payment.

16 Question for the panel: You may cover this, but one of the biggest headaches is getting the Contractor to provide evidence of the incurred costs, such as providing timesheets or Subcontractor quotes/invoices/applications for payments. They often state "show me where in the contract it says I need to provide evidence." What are your thoughts?

An application for payment under main Options C, D or E supported by thousands of excel lines of project cost data isn't accounts and records as referenced in the contract. It may show the value of individual transactions claimed that roll up to Defined Cost and ultimately the Price for Work Done to Date in an application for payment, but it isn't the actual formal document that supports an account of that record or payment of that cost component. The *Contractor* must allow the *Project Manager* to inspect the accounts and records which it is required to keep.

Contractors are sometime resistant to requests for a wide range of records, which aren't core and those that they are required to keep. A good example of this might be Plant and Materials where an invoice and proof of payment is the standard "go to" account and record. However, the *Project Manager* then starts to widen requests to delivery note, purchase order, requisition etc. Much of which isn't needed if a visual inspection of the works can show the Plant and Material physically incorporated!!!!

Also, some of these frustrations come when inspections are left until the end of the project and the *Project Manager* often thinks they are being clever by requesting inspections of everything they can think of.

If required, a client can identify specific records they want the contractor to keep and allow the *Project Manager* access to in the Scope. In addition, the Scope can be changed by the *Project Manager* after the Contract Date to require additional records to be made available. However, as noted above such records need to be considered and appropriate.

17 Remote workers identified in Contract Data Part 2 - Who identifies the categories of people because if 6 tenderers list different categories of people this will affect the contractors fee percentage which may give the appearance of a lower price when infact it may not be because costs of those categories of people will be recovered as a Defined Cost. Is it the Client who identifies the categories of people working remotely it is prepared to pay???

A client will need to determine how this issue is addressed as part of the tender process. It would be sensible for a client to identify the people, particularly if the selection process involves tendering, so the categories are the same for all tenderers.

18 How do you approach pushback from the contractor/consultant with regards to GDPR?

Ask them what assurances or understanding they need from your inspection/audit approach to enable the review to take place. Show them how you will be GDPR compliant as a Data Processor.

Sometimes resistance can happen if the inspector is carried out by a company on behalf of a client who is a competitor of the *Contractor*. Here the issue is one of commercial sensitivity perhaps in addition to GDPR.

19 Where does the contract tell users about inspections, what is to be done, what can be looked at and how frequently etc.... if it's left to the Scope what happens if drafters fail to include terms does that mean that there is no right to inspect.?

The right to inspect is always there in clause 52.4. Yes, you can add to in terms of type of inspection, regularity etc in Scope.

Good practice would suggest the *Project Manager* develops a pragmatic and regular inspection plan at contract commencement.

Also noted, the Scope can be changed by the *Project Manager* after the Contract Date to require additional records to be made available.

20 Should Clients be expected to audit Subcontractor accounts, as well as the Main Contractor account?

That is the main contractor's responsibility as part of their assessment/inspection requirements under the subcontract. Many main contractors are wary of this responsibility due to the risk of Disallowed Cost (11.2(26)) in relation to "costs which should not have been paid to a Subcontractor or supplier in accordance with its contract". This means the *Project Manager* may end up reviewing the inspecting work done by the *Contractor* over the Subcontractor, but the doing part should sit with the *Contractor*.

21 Where there are multiple work faces, and the Scope does not prescribe a time record system, what is the minimum acceptable standard of record a contractor should produce for the client to demonstrate time allocation / compliance against SoCC?

The *Client* should state any particular requirements it has around record keeping in relation to multiple work faces in the Scope. The basic contractual requirements are set out in clause 52.2. Ultimately the *Contractor* will have to demonstrate that any Defined Cost was incurred in Providing the Works.

Please also see answer to question 8 also which capturing against works carried out.

23 Not sure agree with IH as the accounts and records are what are provided by the Contractor there is no gap analysis to be done unless the contract is amended to include provisions for what should be provided and how it is presented by the Contractor , which needs to be stated in the contract. The core terms do not cover this in any detail and that can be an issue when it comes to inspections

The *Contractor* will be required to keep records as required in clause 52.2 and this includes any requirements stated in the Scope. A contractor's account system should be reviewed in line with these requirements and any gaps in the information the contractor's accounts and records provides and those required by the contract identified and addressed.

24 "If a resource, undertaking a function identified in a fee table item, is brought from the head office (not identified as a Working Area) to the Site (Working Area), does the cost of that person become Defined Cost?

Is this function recovered in the fee

or

Defined Cost as in WA and Providing the Works?"

This would suggest you have an amended contract if you have fee table items. Answer would be dependant on the wording and preamble of fee item table.

25 Is it reasonable for Scope to require Contractor to provide e-access to PM for inspection of costs?

Depends on what you mean by e-access. It is reasonable, cost effective and beneficial to all parties to share records via electronic means, for example via secured file transfer vehicle.

In terms of a *Project Manager* being given access to a *Contractor's* ERP/Accounting system to access and inspect records this is a rare request, albeit we do see it occasionally added to the Scope on mega projects. The *Contractor* will often need to invest in IT costs to make this possible, so that the *Project Manager* only has read only access to certain parts of the ERP/Accounting system.

26 I have been refused access to the swipe system for on-site labour on the grounds of GDPR. How do you answer such a blanket refusal?

See answer to Question 18. It could of course be that the swipe system records are site records (for H&S) specific to the *Contractor* and aren't referenced as being required in the Scope to demonstrate time.

27 What detail do you expect to see on timesheets to give comfort that time is defined cost? is daily time (Hrs) and booked code enough?

See answer to Question 8 and 22

28 How do you deal with the monthly paid staff with incomplete clock-in/clock-out records?

Depends on how incomplete they are and the types of inconsistencies you are seeing. Even though they are monthly paid, the charge to your contract should be proportionate to the time spent in the month on your contract (whichever Working Areas location). If clock-in/out records show patterns of short days this needs to be assessed initially against contract of employment for work hours/rules i.e. there may be flexitime. Further requests of the contractor beyond this should then be made to explain what might be causing the apparent shortfalls.

29 If the Contractor take no action/monies deductions for any staff late for work, and those concerned staff are still got full wages. Subsequently, Contractor apply payment based on actual payroll (full wages), should the Employer pay with full payment or assessing payment just according to handkey records?"

If the handkey or swipe records are robust and the Scope clearly states they will be used to verify or reconcile timekeeping it would be sensible to assess against the actual hours worked, as it is only these hours that are Providing the Works. These inspections and subsequent deductions need to be pragmatic, as challenges can often result in a contractor showing extra end of shift hours not claimed and overall may have charged for less hours than those actually incurred in Providing the Works. Try to avoid isolated challenges on individuals. Much better to look at workforces as a whole e.g. what do handkey records show for 100 or so labourers going in and out of canteens. All compliant to a 20 minute tea break for example?

Also note there is a Disallowed Cost (clause 11.2(26)) for resources not used to Provide the Works after allowing for reasonable availability and utilisation.

30 What are your thoughts on receiving unsigned timesheet records? Is this sufficient? It feels at times when asking for this Contractors kick-back and feel it isn't required.

Traditional timesheets (hand written/signed at the end of each week/month) are relatively rare these days. Most timesheets are web-based/electronic.

For staff, most organisations tend to authorise workers to charge to a project i.e. an allowable person for that contract. This stops just anyone within the organisation charging time. However weekly checks/sign offs are rare and each worker just fills in their own timesheet as a matter of course. At month end most contractors will do some reasonableness checks of roles or hours charged against the contract whilst producing their applications for payment, prior to onward transmission to the *Project Manager*.

Labour sign offs each week are still fairly common, due to the implications of the sign off generating additional extra payments e.g. overtime.

It is very rare to see contract amendments where the *Client/Project Manager* counter signs timesheets. Occasionally pre-authorisation for overtime but not for routine weekly or monthly time.

A signed timesheet or a detailed timesheet provides some extra comfort to the accuracy of hours worked and the relevance of works performed, but are not essential.

Please also see the response to question 8.

31 Do you have any suggestions when the Client disallows cost for under utilization of people or equipment. For instance, we have a client disallowing 25% of a tower crane because it wasn't operating 100% of the time. Even though the works don't require the crane operating at 100%

Something as significant as a tower crane is often better captured as special equipment with a rate per week or month to prevent challenges on down time. In this situation however it is about agreeing what is reasonable availability and utilisation (clause 11.2(26)). Also, it is often the dismantling, removal and re-mobilisation of an asset like a tower crane which means it is more pragmatic and cost effective to actually keep on hire.

32 Do you agree that Scope should require Contractor to give training to PM (PM delegate) on the Contractor's cost management system?

This is an interesting subject. Many contracting staff need training themselves in the capability of their own cost management or accounting system. *Contractors* do not support site commercial teams (predominantly quantity surveyors) with back office systems training particularly well. Back office finance experts will understand the system well and typically support site teams. The requirement to train the *Project Manager* could be included in the Scope or may be offered if it will help both parties in the accurate verification of Defined Cost. In many cases it will depend on the size of the project and the complexity of the systems and records of Defined Cost that are routinely made available by the *Contractor*.

In general, an educated *Contractor* and *Project Manager* team is key though!

33 How to you get Contractor to share its annual discounts with suppliers – which should be deducted from Defined Cost?

Escalate within the contracting organisation to its Head of Procurement (HoP) and/or Finance Director (FD). Often discounts / rebates are not visible / credited to the project and the project commercial team themselves may not know they exist. The HoP or FD should provide formal confirmation of relevant suppliers / rates / values relevant to the project. Although rebates are normally associated with Plant and Materials and Equipment they can relate to sizeable contracts with agency suppliers providing people. Prebates exist too, relating to credits given when agency workers leave early on, just after being mobilised to a new assignment.

34 For a company that has a SIP (share scheme) where an employer matches shares purchased by the employee, would the cost of shares matched by the employer qualify as an allowable cost under defined costs contracts? Essentially this isn't a physical cost to the employer. Is this a cost that must be incurred in order to provide the works?

For a cost to form part of Defined Cost it would need to fall under one of the cost components in the Schedule of Cost Components. It would also have to be a cost paid in accordance with a person's employment contract and incurred in order to Provide the Works. These tests would have to be applied to the specific facts of the issue.

35 If a project exceeds the original programme by 2 years and the Contractor wants to increase people rates due to inflation, what is the PM's duty/response?

The risk of inflation is addressed through the selection or not of secondary Option X1.

36 Are you a GDPR data 'processor' if you are just 'inspecting'?

Our view is yes as you are processing for a "purpose", which is to validate Defined Cost accuracy.

37 Under Defined Cost contracts is the subcontractor entitled to accrue/be paid for severance pay which may or may not occur during the course of the contract?

Accrued cost or provisions no. Paid cost yes, proportionate to time worked on the contract. Evidence of payment is key.

38 How would you typically treat costs of equipment specifically issued to people, such as mobile phones/laptops? Often presented as included in the CTE but not in the typical SCC list (such as a vehicle). Should they be treated as a people cost or equipment or deemed included in the fee?

They are Equipment. However, there are of course similarities to vehicles and hence why they often they get included in people within CTE or pre-agreed rates.

Often time consuming to inspect and many arguments on the intricacies of IT costs and what elements sit within Defined Cost and Fee. Can become more complex when project specific software is purchased. Simplest solution is to have IT at an equipment rate listed in Contract Data.

39 I'm a PM/Client on an unamended NEC4 framework. On Option C projects (without the EEC update or any relevant Z Clauses) we have started to permit costs for staff (Contracts Manager, QS etc) for time working outside of the working areas, trying to take a

fair/pragmatic approach for the current times with people working from home. However, we are seeing the Main Contractors starting to now include more staff who are fully "head office" staff within their applications (for example commercial admin assistants) that the Main Contractor are stating internally are fully costed to schemes and so they deem as a defined cost and was priced within their Target but who we feel we wouldn't have seen onsite in previous years. How can we determine as client what is a fair to accept as a correct defined cost for people working outside of the working areas?

As these persons normal place of work is not the Working Areas and they are not visiting the Working Areas to conduct their work, then they should be part of the Fee. If you choose to relax the rules of the contract, then this is a commercial decision for you to make and to then determine which people you are prepared to pay for as part of Defined Cost. We would suggest you agree a definitive list of people who can be recovered as Defined Cost when working outside the Working Areas. The *Contractor* will learn from this for the next time they price a project.

40 What are your thoughts regarding Maximum Rates Tables that are commonly used by National Highways?

We cannot comment on specific contracts.

41 What can we do when contractor is not providing the backup or their detailed assessment when requested over a couple of months? As it is not listed in the contract that contractor is obliged to provide that, will we be able to disallow cost on this basis?

The *Contractor* should provide basic accounts and records to support that their Defined Costs related to the *works* and proof they have been paid etc . The type of accounts and records may be enhanced via the Scope.

The Scope can be changed by the *Project Manager* after the Contract Date to require additional records to be made available. However, as noted above such records need to be considered and appropriate.

The *Contractor* should want to prove its Defined Cost as the first Disallowed Cost in clause 11.2(26) is amounts not justified by the *Contractor's* accounts and records.

42 When working with rates, do you pay when the person is on holiday? I don't think you would, since the contractor should have deducted that from the time worked before producing the rate so that the holiday time is split over the time that is worked (however, the Contractor on my project thinks otherwise, and I don't have a view of how the rates were built up since it's a framework....)

If the rates have been built up in accordance with the Schedule of Cost Components then they should include an allowance for holiday and sickness. So, in that regard your contractor should only charge when they are working. Access and understanding of the wider framework however is key.

43 "Darren talked about the Contractor having to have good processes for recording its costs. Do you agree we should require in the Scope for the Contractor to have subcodes in their cost management system for:

- **costs covered by Fee**

- costs covered by rates in the contract
- Disallowed Cost
- costs to be directly allowed as Defined Cost.

Or is that too much to ask?

Probably too much to ask. However, recording costs (finance) and submitting costs (commercial) is arguably two separate things. It is advisable to review the month end process the *Contractor's* commercial team goes through to produce the AFP. This process should involve a review of the cost captured in the contract or project cost ledger and then a mapping of costs to the items suggested above. This should be visible to the *Project Manager*, so that you see the gross costs including disallowed, and then the relevant identification and deduction, so that checks can be made that month-on-month the process is consistently applied.

44 "Employer's NI and Pensions - If there's an NEC Option C target cost where the Employer is not wanting to pay the contractor's employer's NI contribution or pension.

The Schedule of Cost Components is clear, these items are part of people cost. The Schedule of Cost Components would have to be subject to Z clause amendment to remove these costs.

45 The Schedule of Cost Components only states "all costs in relation to Wages and Salaries" will be paid, and does not specifically state NI and Pension.

Yes, but further on in 13 (i) taxes imposed by the law and 13 (j) pensions this is where an employer's contributions would be covered for NI and pension. Note NI and pension contributed by employees is not needed/referenced as it is within "wages and salaries paid by the *Contractor*" for people – it is part of gross pay. Employee's amounts are deducted such that the person takes home their net pay.

46 Can the Employer avoid having to pay for employer's NI and Pension? As NI and Pensions are standard salary costs."

See answers to Questions 44 and 45 above.

47 Where is the reliance on self assurance and writing scope to drive this. Also acknowledge that below tier 2, most suppliers are not set up to provide the depth of assurance that is being discussed.

Self assurance is part of the first line of defence mentioned in the presentation. Good financial control and self assurance type checks depend heavily on contractor culture and maturity.

This may provide a challenge for tier 2 or below.

Write this into the Scope where sensible, but be pragmatic i.e. size of project, knowledge of supplier etc. Smaller less mature suppliers may struggle with demonstration of best practice process/controls and self assurance checks, however under an open book contract they should always be able to support their costs with a basic level of accounts and records – have to keep HMRC happy for example!

If it is too difficult, then maybe an Option A or B route might be more sensible.

48 Under NEC contract, if the subcontractor has caused some damage to site which has caused rework, can we withhold money or disallow cost? As we only look at defect at the end of the project for NEC contracts

Disallowed Cost is a defined term and only those costs that fall within the definition will be a Disallowed Cost. Consideration should also be given to amounts that have been or should have been recovered from insurers under cost component 8.

49 You can use payroll ID rather than personal details which is what we do

Use of ID numbers is a sensible work around with GDPR. We sometime take further, by for example, adding a random number on to the ID number – works well for sampling and writing up test results. This link then sits solely between the inspector and payroll function of contractor only.

50 What cost control measures would you expect to be in place for 'working from home' people?

How detailed does a timesheet report need to be?

See previous responses 8 and 30 on timesheet detail.

Under Defined Cost reimbursable options any cost growth around people can be concerning to the *Project Manager*. Too often it is at the end of a project that costs are inspected and quality of time recording depth is brought into question, regardless of location. However extra detail on timesheet activities isn't the answer. The *Project Manager* needs a better understanding of how costs are processed and managed from the project start and in our experience need to make much more use of Cl20.4 in and around changes in the forecast. If the project comes in under target, we rarely see *Project Manager's* querying quality of time sheet entries.

51 How can PM/Cost Manager know whether or not an AFP erroneously includes a cost that is disallowed? e.g. 11.2(26) bullet three.

Not easily. These costs are likely to be coded initially in the application for payment, as the *Contractor* will recognise them as being project specific costs. However, the *Project Manager* should liaise with wider colleagues over issues such as non compliance with acceptance/procurement/early warning procedures etc and then assess whether the cost of these have been included and therefore need to be a Disallowed Cost.

52 How do you reconcile an anonymous person under GDPR rules and ensure that person actually worked on your project and what they did on your project? Thanks

It isn't possible. Somehow the *Contractor* has to provide you a link. People costs may be initially anonymised or journalled, yet the *Contractor* needs to work up a process that provides the visibility. GDPR doesn't mean they can't show you – it is more that it needs to be controlled.

53 Should the contractor be paid based upon actual moneys paid out of the account for staff costs or the defined cost rate as often there is a difference between charge rate and pay rate favourable to the contractor? Backup for staff costs could show a large disparity in moneys being earned on defined cost charge rate and what obligation does the contractor have to show moneys paid out for staff.

If your contract is set up to reimburse Defined Cost against the Schedule of Cost Components you get to inspect actual cost/money out the door. If you have amended the contract, via a Z clause, to allow the use of rate in lieu of actual cost, then you are probably reimbursing against the rate. The exact wording of the amendment is key though, but more than likely the rate is the rate, whether it over or under recovers against the money paid out.

We do see rates being used as a proxy for actual cost to employ in the monthly applications for payment, but the contract states actual cost to employ is the Defined Cost. This requires a periodic actualisation exercise to true-up the costs against the Schedule of Cost Components, and a credit / debit adjustment is then made to future applications for payment.

54 What are your thoughts on enhanced maternity or sabbatical cost through the lens of Defined Cost?

As these payments aren't listed in the Schedule of Cost Components they are deemed to be part of fee.

55 Are consultants advising the Contractor on the correct administration of the contract considered as a cost under the SoCC for Providing the Works, as to provide the works you should administer the contract correctly.

That will be a decision for the *Project Manager* to make based on the specific facts of the matter.

56 For the Shorter Schedule of Cost Components, is it a requirement to have a pre agreed list of People rates?

Yes, a schedule of *people rates* will be included in Contract Data Part 2.

57 Is holiday pay in the defined cost or fee for People in the Working Area?

It is in the Defined Cost. Usually for staff you will see a charge to the contract when people aren't there and on holiday. For labour you often see a labour holiday accrual in the weeks they are there and then no charge when on holiday. It is important these charges are accurate either way.

58 Thank you Darren, am I correct in saying that the people costs under the SSOCC can be audited throughout the contract?

No People Rates in the Short Schedule of Cost Components are not subject to audit.

59 On an unamended NEC4 PSC contract – for application for payment purposes what is the most common approach for demonstrating the Consultant defined cost on a monthly basis

We rarely see full disclosure of people costs against the Schedule of Cost Components as consultants do not want sensitive pay information openly shared and discussed. We usually see an interim rate being charged per person and then a true up by the consultant at some point later. This stand alone true up adjustment might be added monthly to the application for payment or periodically. The main thing here is that the consultants knows it must ultimately allow the *Service Manager* to inspect and verify the actual salary costs etc. back to the SoCC.

60 10% sampling by volume is quite low? What value does this bring to the project?

It can bring a lot of value if the 10% you sample is well considered. If a salaried individual from the *Contractor*, (let's say a Construction Manager,) costs £10k a month and sits opposite the *Project Manager* for 36 months, day in day out, why check 36 payslips (and 100% of records) at £10k a month to assure the Defined Cost is £360k? Hence the importance of thinking about what you will inspect and breaking down the people costs into mini populations; staff located here, staff located there, labour, agency etc.

61 Shall the “people rate” be governed by open market rate? Or just based on Employment contract?

People Rates are only used in the Short Schedule of Cost Components and once included in the contract are not subject to further open market testing.

The open market rate is an acid test for all Defined Cost items (apart from rates and percentages in Contract Data i.e People Rates under main Options A & B). However as explained during the presentation it is highly unlikely that a contractor would actively pay beyond market rates with its directly employed people. This would have to be captured in the employment contract and if their pay levels weren't consistent company wide it could cause all sort of internal HR/IR issues – people want to jump ship and join a project where pay is notably higher. Also, long term the contractor would unlikely survive as they might struggle with future tender bids etc.