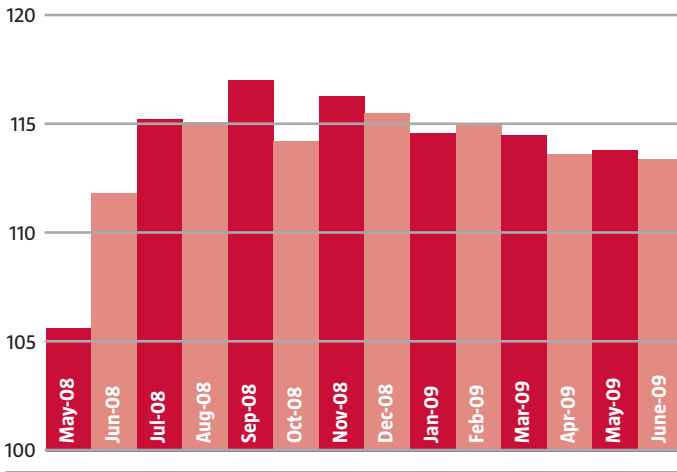


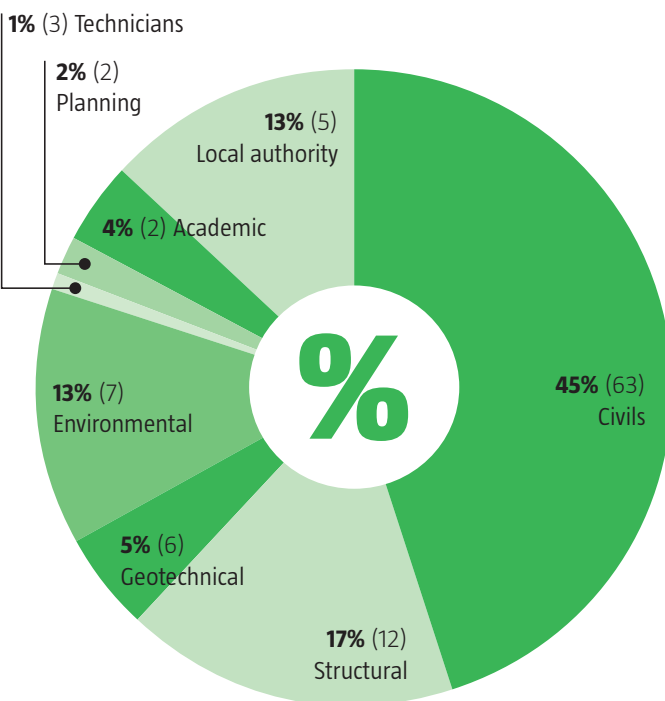
MATERIALS' PRICES

Index price of ready-mixed concrete
(Source: Department of Business Innovation and Skills' monthly statistics)



WHERE ARE THE JOBS?

Breakdown of jobs advertised on nce.co.uk this week (last month in brackets)



OJEU TENDERS

Work currently on offer from major UK clients. More at nce.co.uk/data

Crossrail	Thames Water
Awarded 1	Awarded 0
Bidding 1	Bidding 3
Highways Agency	Transport for London
Awarded 5	Awarded 1
Bidding 0	Bidding 3

Viewpoint

Steve Davis

Dispute potential

NEC3: the importance of the programme

The NEC 3 contract is set up in a way which is alien to the traditional construction establishment. It is a contract which is supposed to be read, understood and followed by the people who do the building.

Paramount to the process is the "Accepted Programme", and the contract is quite explicit in its form and content, going far beyond the requirements of traditional forms. While these might be seen as "best practice" in any event, the NEC 3 difference is that "best practice" is now mandatory.

NEC 3 also requires provisions for float and "time risk allowances", to provide for risks inherent in the work. The contractor's intended method must also be stated.

The amount due for payment is affected if no programme is submitted by the contractor. Also, the programme determines the contractor's entitlement to, and assessment of, certain compensation events.

The programme may be the contractor's tender programme, if incorporated into the contract data. Employers beware, however – the contractor may be able to claim reimbursement for required changes to the programme – see, for example, *Yorkshire Water Authority v Sir Alfred McAlpine Ltd* 32 BLR 114 (1985). Contractors beware also – if the programme results in ambiguity or inconsistency clause 63.8 might be construed against them.

Once the programme is accepted, the contractor's work is not over. It must be updated – normally monthly, showing progress and its effect on the remaining work,

effects of compensation events and notified early warnings (the June 2006 amendment removes this requirement), proposals to deal with delay and correct notified defects, and any other proposed changes to the programme.

There are numerous pitfalls to avoid in the process – most of which involve the failure to implement the process at all.

Many NEC projects are administered as though they were governed by a traditional JCT form. But under NEC 3 the contractor has an eight week window to notify certain compensation events – if not, under cases such as *City Inn Ltd v Shepherd Construction Ltd*, Court of Session 17 July 2001, condition precedent clauses might be enforceable despite apparent waiver of their requirements. Clause 12.3 of NEC 3 most likely closes this argument against the contractor in any event.

This programme is a high maintenance item, requiring the commitment of resources by employer and contractor. For the contractor, at least under NEC Options C-F, the cost of preparing quotations for compensation events will usually be reimbursed by the employer.

So under NEC 3 the programme plays a significant role, and where the process is properly implemented, the effects of delaying events, both in terms of time and money, will be dealt with as they arise. The employer will minimise delays to his project and maintain cost certainty, and the contractor will have a tool by which to manage his entire construction process.

● Steve Davis is a regional director at Trett Consulting