



Project Controls Expo – 18th Nov 2014

Emirates Stadium, London

NEC3 Contracts – Managing Risk and Change

About the Speaker



- **Director of BuiltIntelligence**
- **BI provide training, consultancy, resources to the construction industry**
- **Presented at various national conferences**
- **Number of industry published articles on NEC3 and programme management**

Risk at tender stage

Risk at tender stage takes various forms - Contractor needs to ascertain their risks by reading the contract that they are signing up to:

- Contract makes it clear what risks are the Employers under the contract
 - Clause 80.1 Employers risks
 - clause 60.1 – 19 items that would be compensation events
 - Additional Employer's risks identified in contract data part 1
- Z clause amendments could alter risk profile
- 2ndry options that have/have not been included
- Contract data includes a place to identify risks to be included in the Risk Register, but these do not (and should not) allocate who's risk they are

NEC Risk Register is not same as traditional “risk registers”

- often see “risk registers” included within a tender document or signed contract
- these (attempt) to allocate “risk”, often contrary to what the contract says.
 - e.g. state weather is Contractor risk, yet they leave in 60.1(13), or say ground conditions are Contractor risk and yet leave in 60.1(12)
- the contract should identify whose risks are whose either by the wording of the contract or by the content of the Works Information

- NEC3 Risk Register is different from other traditional risk registers you may have used
- Not produced until post contract award
- Traditional risk registers included within the contract attempt to allocate risk – which potentially creates ambiguities

Early Warnings

16.1

Contractor and *Project Manager* have a duty to notify each other as soon as they become aware of a matter which could

- increase the total of the Prices
- delay Completion,
- delay meeting a Key Date or
- impair the performance of the *works* in use

16.2

potential instruction to attend risk reduction meeting

Intent of Risk Reduction meeting is for all those who attend to :

- consider if the risk(s) is really likely to happen
- if the risk(s) can be avoided altogether or at least minimised
- come up with solutions to the problem without worrying/focusing upon about associated liability
- deciding actions as to who/when will move the matter(s) forward
- *Project Manager* responsibility to update and re-issue the Risk Register in terms of items closed out, and who's required to take what action

This should be considered a collaborative operational tool, not a commercial tool

Risk Register is a defined term:

- Risk Register is a register of the risks which are listed in the contract data, and
- risks which the Project Manager or Contractor has notified as an early warning matter.
- It should include a description of the risk and a description of the action to be taken to avoid or reduce the risk.

NEC3 Risk Register

EWN No.	Date of Issue	Description of the risk	Actions to be taken to avoid/reduce risk	Action/response by when/who	Status (open/closed)
001	12/03	Not convinced that the Employers lighting scheme will give sufficient lux levels expected	Additional design check to be carried out by designer	Designer checked and confirms is (just) sufficient	Closed
002	15/03	Suspicion of additional asbestos behind main cladding	Remove high level panels to investigate (with out disturbing)	No asbestos found	Closed
003	23/03	Concern main control room is not big enough to house all of the electrical kit that is needed	Designers still finalising electrical design but to consider this	designers due to report back findings end of month	Open
004	02/04	May be additional cables in way of footprint of new building	Trial hole to be dug adjacent to existing manhole to see if exist	Contractor to carry out trial hole by end of week	Open
005	12/04	Contractor currently finding it difficult to procure quickly the specification of cladding panels identified	Continue to explore market, but also to consider an alternative material suggested	Contractor to continue to source, designer to consider alternative	Open



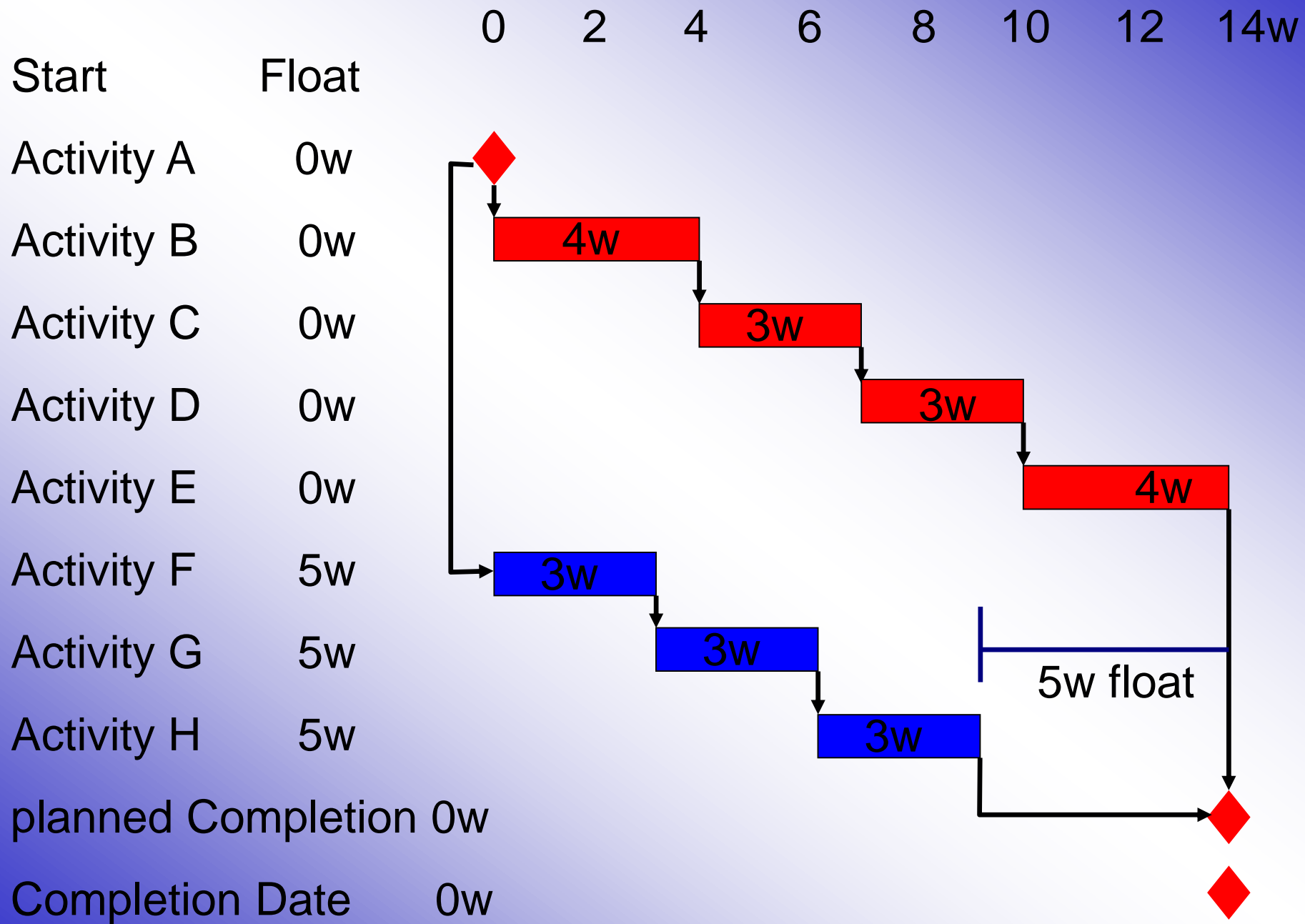
Programme

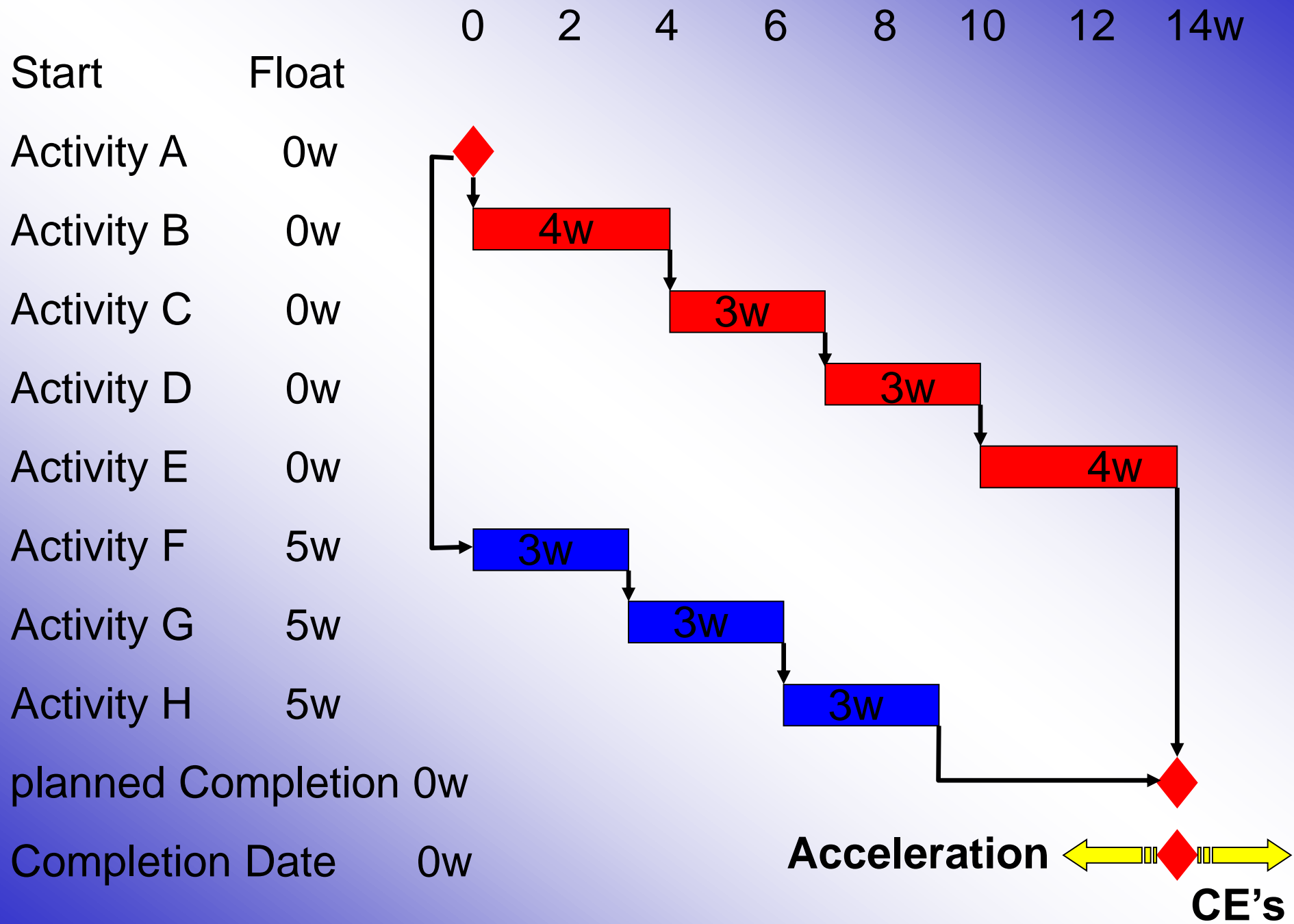
ECC Section 3 – Time

Clause 31 – The programme

31.2 - Items to be shown on the programme include:

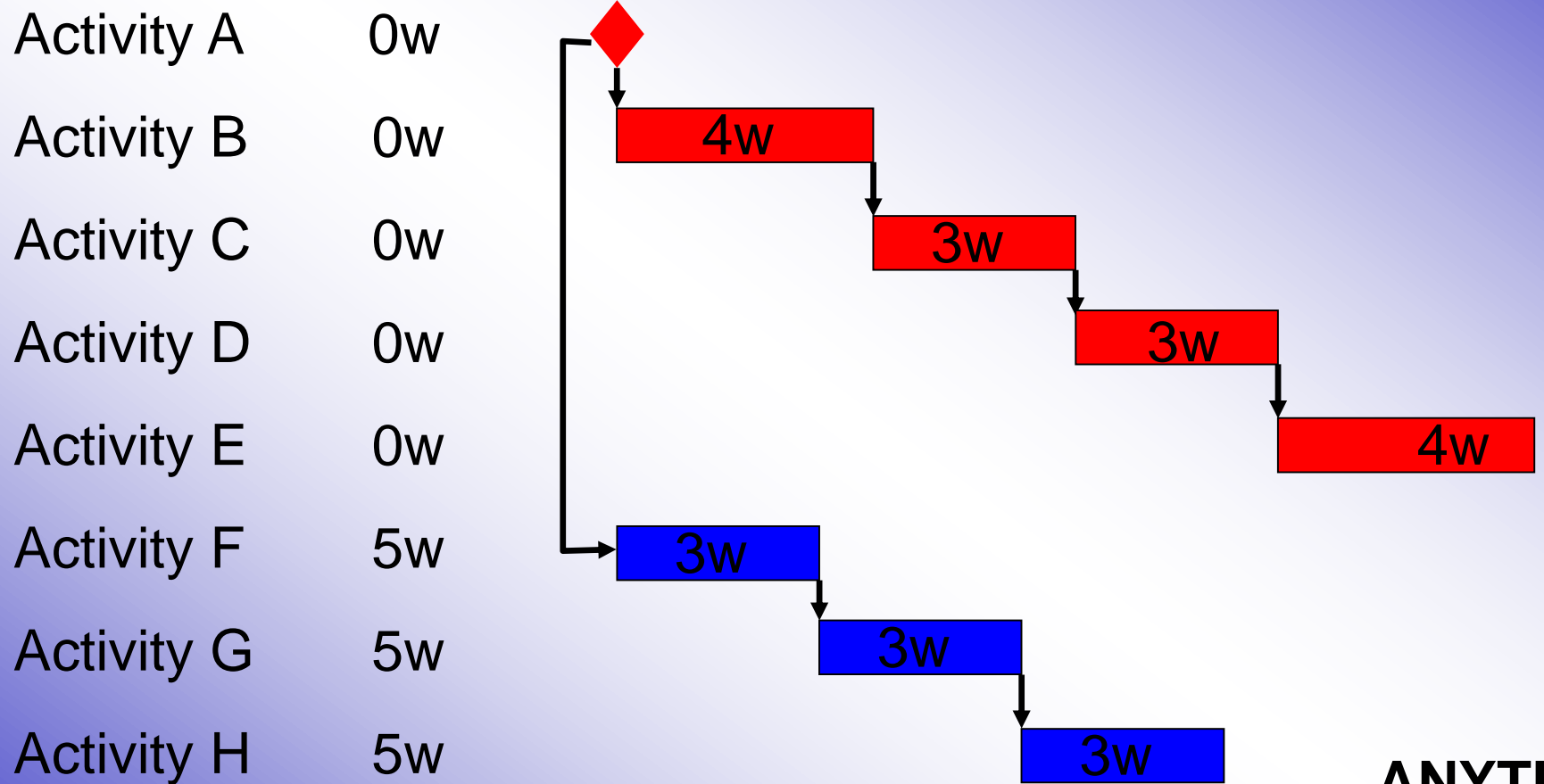
- *starting date/ access dates/ Completion Date/ Key Dates (sectional completion)*
- planned Completion





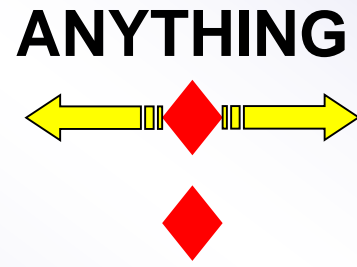
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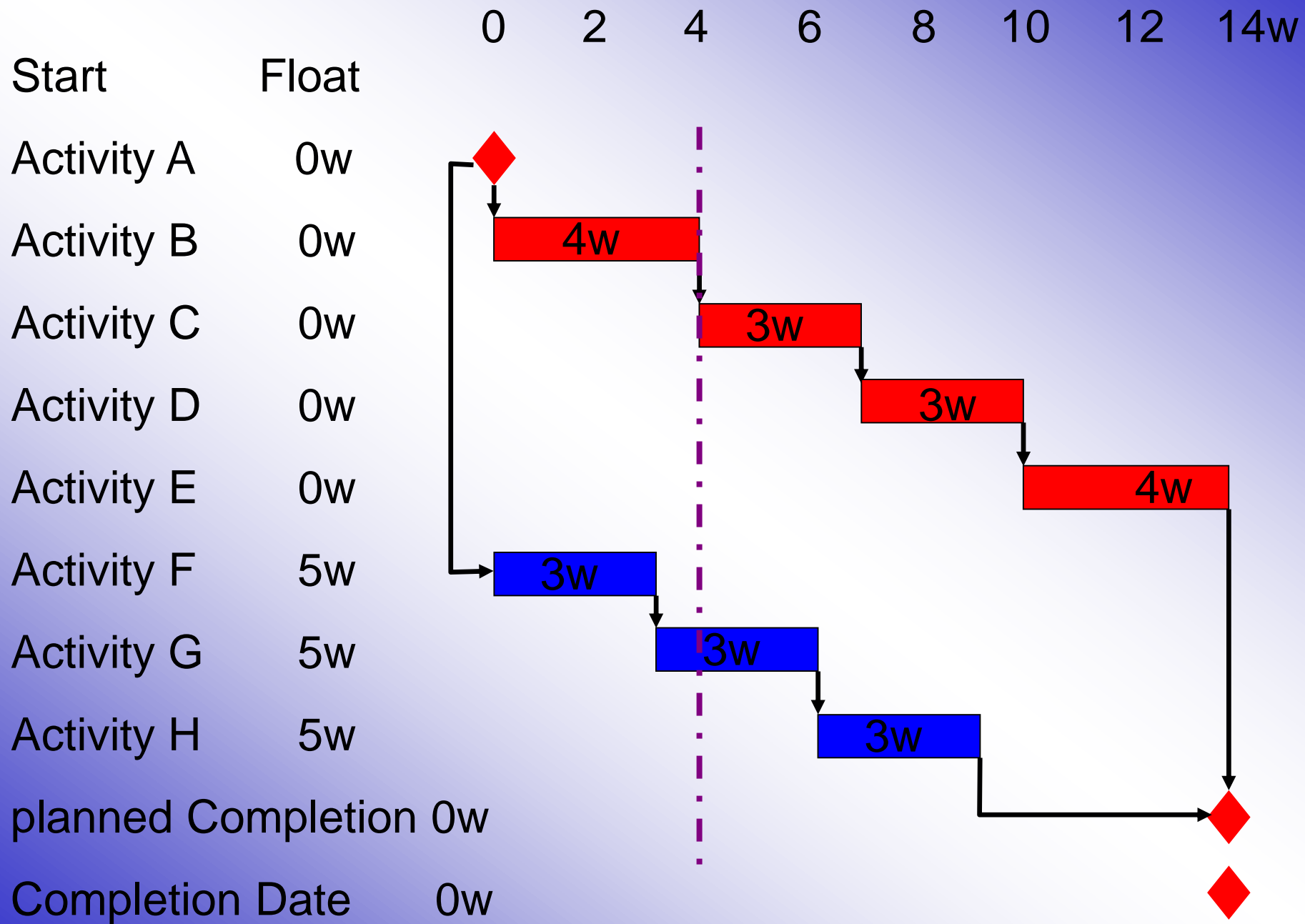
Start Float

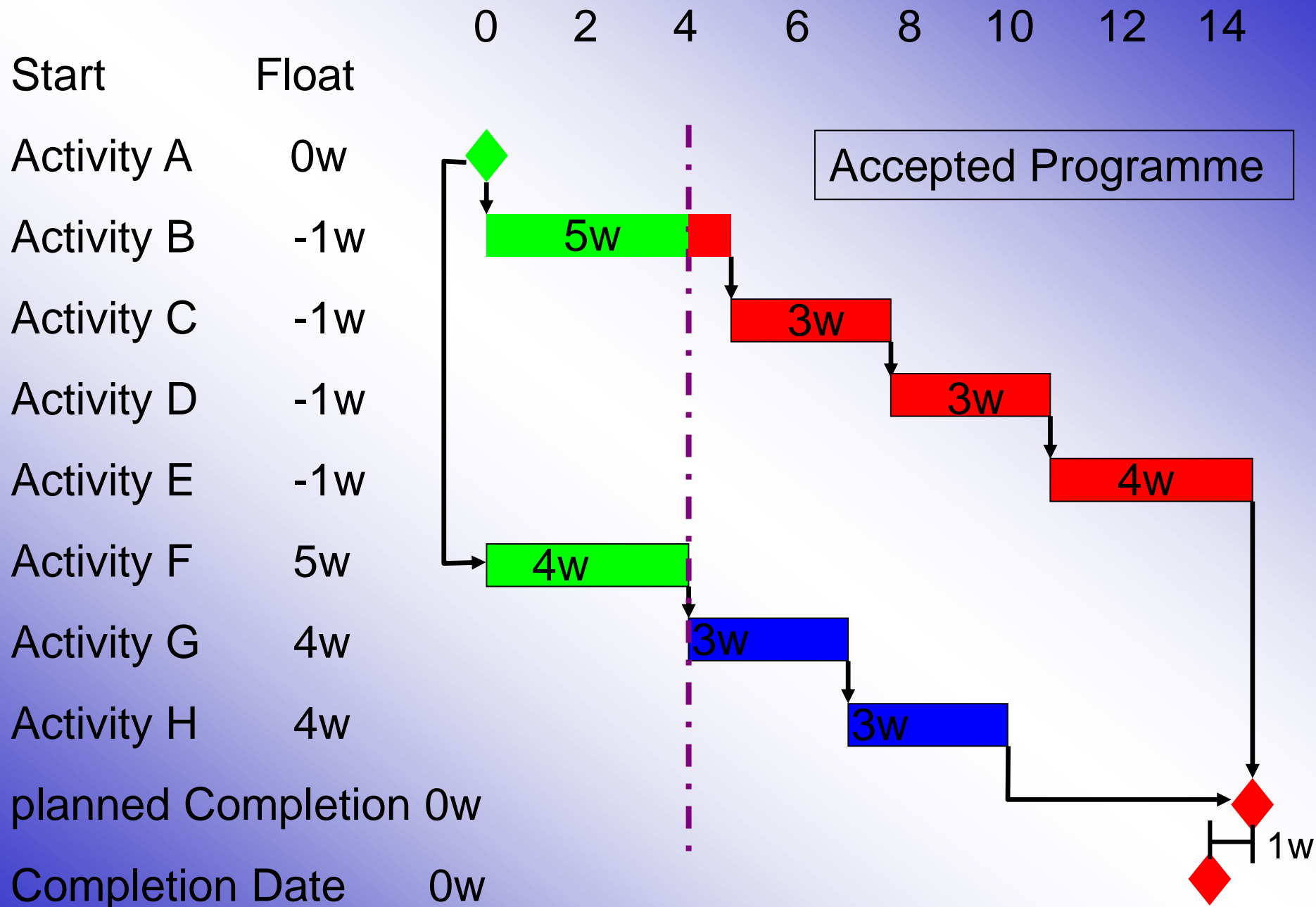


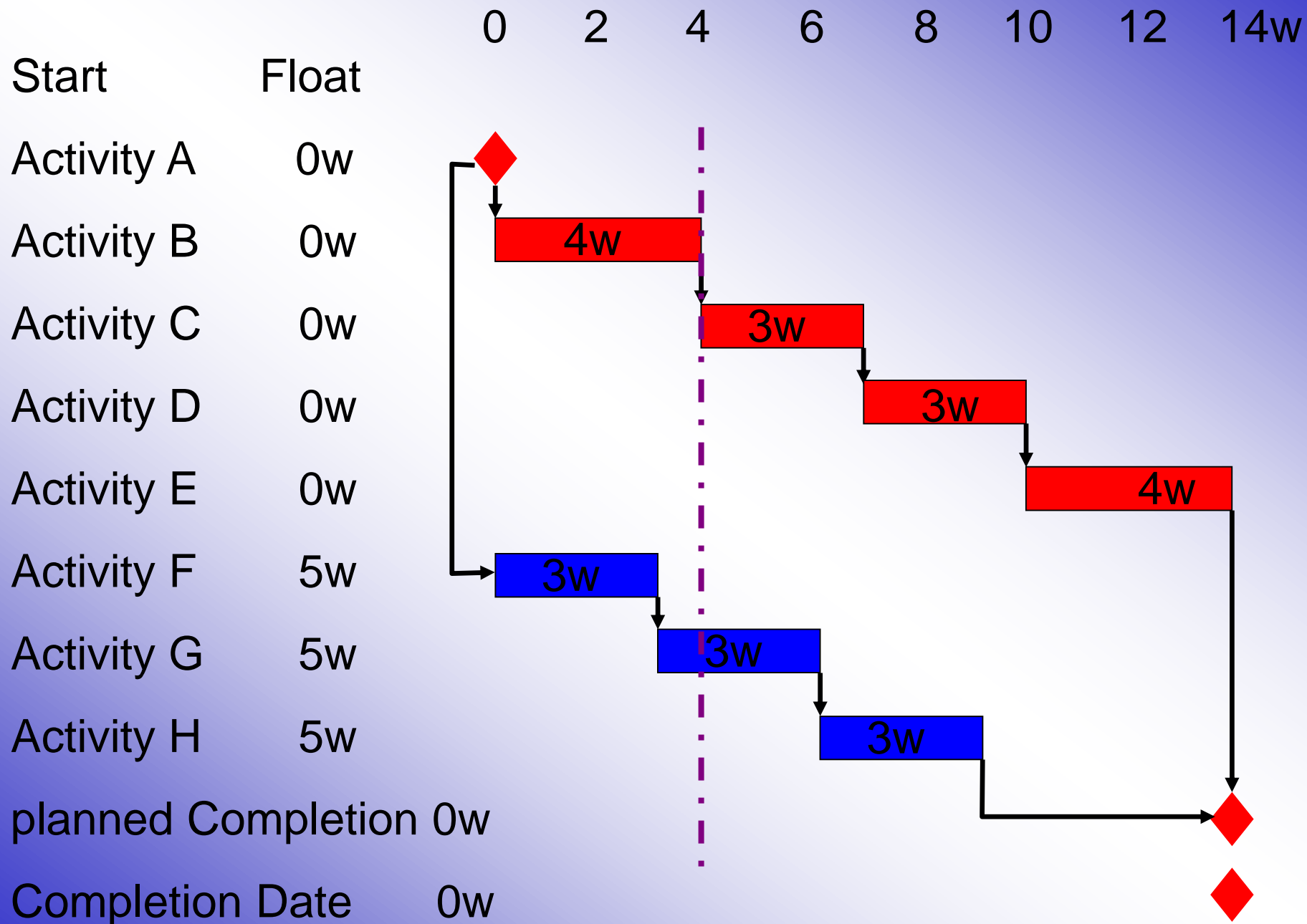
planned Completion 0w

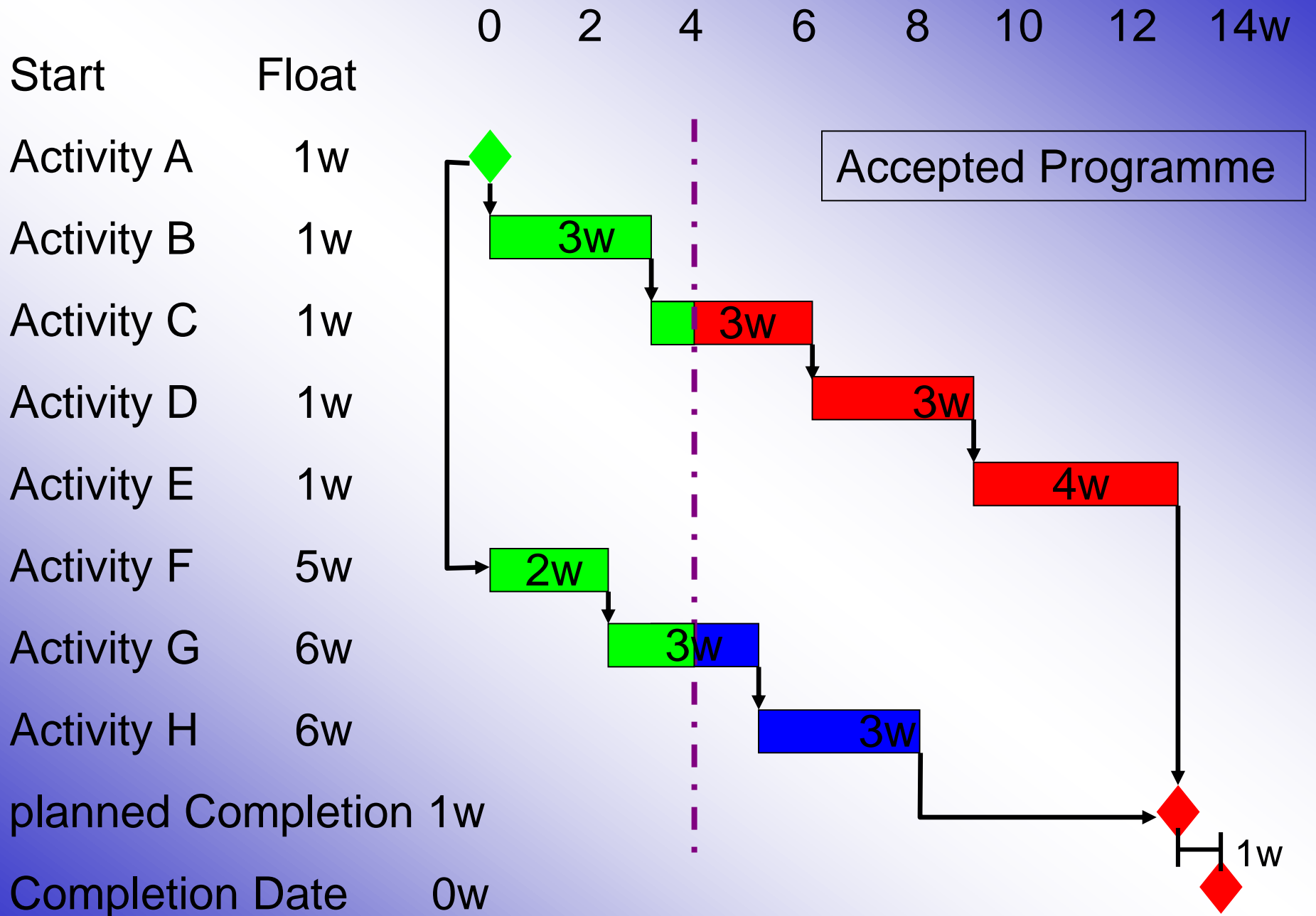
Completion Date 0w











Clause 31 – The programme

31.2 - Items to be shown on the programme include:

- *starting date/access dates/Completion Date/Key Dates*
- planned Completion
- order and timing of operations to Provide the Works
- float
- time risk allowances
- health and safety requirements
- Plant & Materials from *Employer*
- acceptances
- information from Others
- statements of how the *Contractor* plans to do the work
identifying principal equipment and resources

Reasons for not accepting a programme

Under clause 31.3 there are only four reasons not to accept a programme:

- The *Contractor's* plans which it shows are not practicable
- It does not show the information which this contract requires
- It does not represent the *Contractor's* plans realistically or
- It does not comply with the Works Information

Project Manager has up to two weeks in which to accept or not accept the programme.

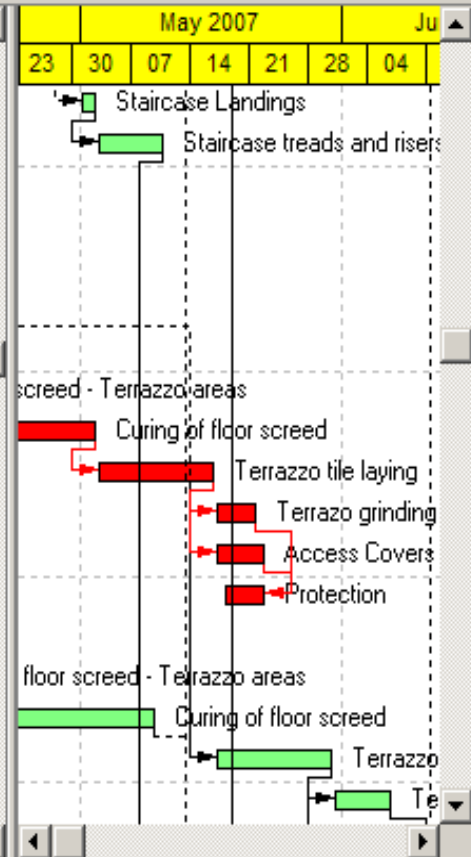
If the *Project Manager* fails to respond it is a CE under 60.1(6), or if does not accept for reason stated in contract is a CE under 60.1(9)

Acceptance of a programme by the *Project Manager* is not a pre-condition to the *Contractor* proceeding with the work

Revised programme (32)

- Shows
 - the actual progress achieved on each operation and its effect upon the timing of the remaining work
 - implemented compensation events
 - how the Contractor plans to deal with any delays
 - other changes the Contractor proposes to make
- How frequent?
 - on instruction by *Project Manager*
 - when *Contractor* chooses
 - interval stated in Contract Data (32.2)

Activity ID	Activity Name	Budgeted Total Cost	Original Duration	Start	Finish	Total Float	TRA
SPT10	Staircase Landings	£9,933.90	2	01-May-07*	02-May-07	38	0
SPT20	Staircase treads and risers	£17,671.67	6	03-May-07	10-May-07	38	1
P15/21/22/23/24/27/28/29/34/68		£26,230.83	26	27-Nov-06	05-Jan-07	22	
STP1380	Lay floor screed - Granolithic areas	£8,264.48	5	27-Nov-06*	01-Dec-06	8	0.5
STP1470	Lay grano topping	£17,966.35	6	03-Dec-06	08-Dec-06	8	1
STP1400	Curing of floor screed	£0.00	28	09-Dec-06	05-Jan-07*	26	0
N5-N10 within combisafe fence		£65,862.98	36	03-Apr-07	22-May-07	0	
STP1820	Lay floor screed - Terrazzo areas	£8,038.40	5	03-Apr-07*	09-Apr-07	0	1
STP1410	Curing of floor screed	£0.00	28	05-Apr-07	02-May-07	0	0
SPT400	Terrazzo tile laying	£35,766.59	10	03-May-07	16-May-07	0	1.5
SPT420	Terrazo grinding	£9,008.51	3	17-May-07	21-May-07	0	0
SPT410	Access Covers	£3,537.88	4	17-May-07	22-May-07	0	1
SPT430	Protection	£9,511.60	3	18-May-07	22-May-07*	0	0.5
N10-N15 within combisafe fence		£14,088.80	43	10-Apr-07	07-Jun-07	37	
STP1910	Lay floor screed - Terrazzo areas	£8,038.40	5	10-Apr-07*	16-Apr-07	42	1
STP1430	Curing of floor screed	£0.00	28	12-Apr-07	09-May-07	58	0
SPT440	Terrazzo tile laying	£3,859.33	10	17-May-07	30-May-07	37	1.5
SPT460	Terrazo grinding	£649.95	5	31-May-07	06-Jun-07	37	1
SPT450	Access Covers	£1,035.52	2	31-May-07	01-Jun-07	41	0

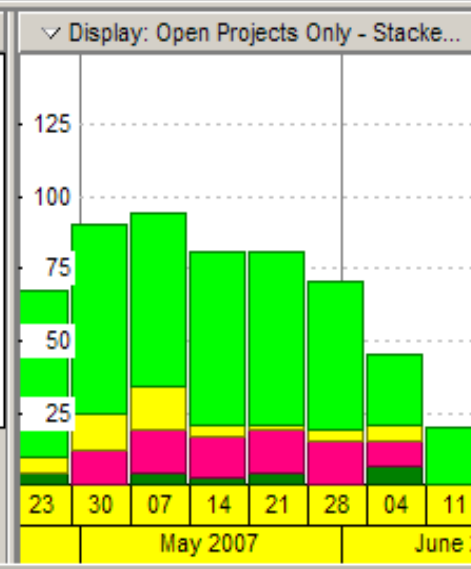


▼ Display: Resource

- Screeder - Terrazzo
- Floor Protection
- Stair Nosing
- Grinder
- Tiler
- Screeder - Granolithic

Display Activities for selected...

Time Period Resource



Sanctions of non-acceptance

Initial Programme Sanction

- 50.3 - 25% of PWDD retained if no 1st accepted programme in place



Subsequent Programme Sanctions

- 64.1 – *Project Manager* can make their own assessment of all compensation events





Programme under the ECC is the
“beating heart of the contract”

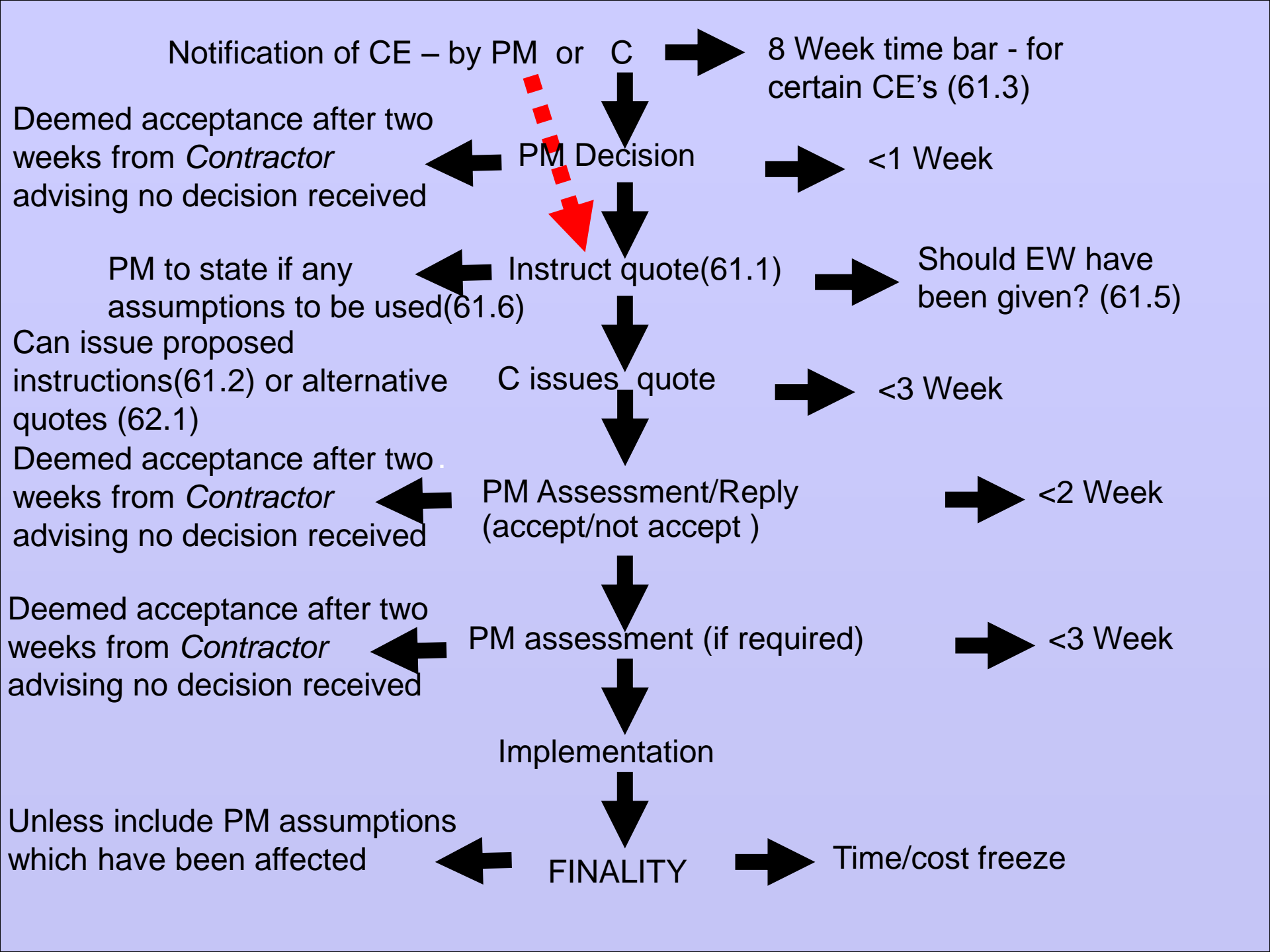
Compensation Events

Compensation Events

- matters that occur that are not the *Contractor's* risk under the contract (and needn't have priced for)
- for it to be a compensation event it has to comply to a reason within the contract i.e. clause 60.1
- assessment should always consider both time and cost but may be neither
- Contractor should include risk for cost and time within their assessment for risk which has a significant chance of occurring and is their risk under the contract (63.6)
- 63.1 emphasises that it should be forecast defined cost when assessing a CE from the point at which the Project Manager requested/should have requested a quotation – i.e. not simply actual cost if you have done the work before quote agreed.

Clause 60.1 The following are compensation events

- (1) the *Project Manager* gives an instruction changing the Works Information (except value engineering/accepting a defect)
- (2) the *Employer* does not allow access to and use of part of the Site by the later of its *access date* and the date shown on the Accepted Programme.
- (3) the *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.
- (6) the *Project Manager* does not reply to a communication
- (9) the *Project Manager* withholds acceptance for a reason not stated in the contract
- (12) unforeseen physical conditions
- (13) weather – 1 in 10 year event...
- (19) an event stops the *Contractor* from completing the works...



EW

➔ could/might affect time, cost, quality

--- has/will affect time, cost, quality

if a **CE**

PMI

Notification

Contractor obeys and proceeds (27.3)

61.1

Quotation

61.2

62.1

CE

Assessment

Implementation



Assessing compensation events: which programme do you use?



GLENN HIDE GMH PLANNING

A common question asked by NEC users is, what programme do you use to assess a compensation event and what progress or change (if any) should you first take into account?

Clause 62.2 of the NEC3 Engineering and Construction Contract (ECC) states that, 'If the programme for remaining work is altered by the compensation event, the Contractor includes the alterations to the Accepted Programme in his quotation'. Clause 63.3 also states that, 'A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme'.

What then happens if that accepted programme is several months old and contains logic that is now clearly known to be wrong? Would you really consider that it would be contractually or practically correct blindly to ignore matters that you know have changed by taking the words of that clause so literally?

Unfortunately in my experience some people appear to take that view. They suggest that you assess the compensation event against the last accepted programme without taking into account anything that may have happened since that programme was accepted. In their interpretation, that is what the contract says.

Read the contract as a whole

Whenever I am giving advice about the administration of the contract a simple response is normally, 'just do what the contract says' or 'follow the contract'. For the most part the contract is pretty clear on what should be done and the associated consequence for not doing it. However, there are certain areas in the contract where simply following the precise words of a single sentence or clause in the contract will not give us a concise answer because the contract needs to be read as a whole.

The problem generally comes about when the parties have not been following the contract in the first place. For whatever reason, the programme submission and acceptance process has got out of kilter, either by the contractor not producing compliant programmes, or by the project manager not following the acceptance process in the contract. Following the contract clearly puts both parties in a better place. However, if the parties have got themselves into this situation, then we have to be able to use the contract to try to get back on contractual track.

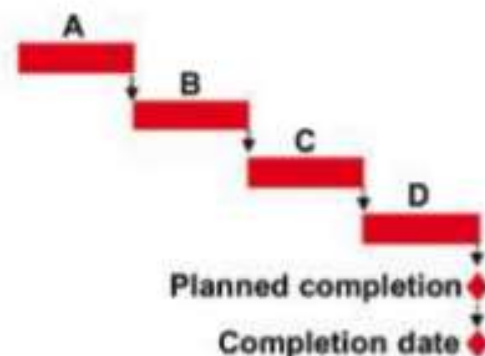
Non-implemented compensation events

I wrote an article in NEC Users' Group newsletter issue 50 which had a similar type of problem. The ECC says you show the effects of implemented compensation events but it does not expressly mention non-implemented compensation events. By non-implemented compensation events I mean those that are currently being quoted or assessed and in the meantime are being carried

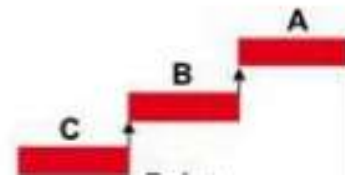
you know for a fact has already changed since it was accepted.

Some examples

Let us look at a simple example. A contractor shows on the original programme that it plans to do activity A then B then C then D. Each activity is 4 weeks long, making a total programme time of 16 weeks. C is critical to the start of D.



The contractor subsequently decides to do C first, effectively creating 8 weeks float on D. But a compensation event then arises that delays the start of D by 4 weeks, reducing the float to 4 weeks.



Sources of help/information:

LinkedIn Group:

Smart Recruit Online - Post your roles onto 450 free job boards in one go.



BuiltIntelligence NEC People - Managing NEC3 Contracts

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Amount Due under the TSC

Mark Darley
Top Contributor

After a good discussion with John Broome at the recent NEC 3 Cambridge event I have decided to post the following to ascertain peoples thoughts.....

ECC 3 Option C

in SALES NAVIGATOR FREE

Introducing: The New LinkedIn Sales Navigator

25 InMails to reach decision makers

- All Activity
- Unanswered
- Tags
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 **+1**
vote

 **1**
answer

M&E Subcontractor issued their NEC3 programme in line with main contractors programme for acceptance

75 views

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answer


Baseline for EVA/EVM purposes

112 views

answered **Sep 10** in **NEC3 Time** by **Glenn Hide** (3,280 points)

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Risk Reduction Meeting



At a risk reduction meeting everyone who attends should co-operate in:

(a) Making and considering proposals for how risks can be avoided or reduced.

(b) Seeking solutions that will bring advantage to all affected.

(c) Deciding who in accordance with the contract will take what action.

(d) Deciding which risks can be removed from the Risk Register.



Any Questions??

