PRACTICE

Using X24 to align accounting periods in NEC4 service contracts

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KEY POINTS

- Parties to an NEC4 service contract are often UK registered companies, which must prepare and file accounts for a particular financial year.
- Option X24 allows NEC users to align NEC4 TSC, TSS, FMC and FMS contracts with the accounting periods within their financial year.
- NEC users need to be aware the procedure varies depending upon which main option is chosen.

In the UK many NEC clients, contractors and service providers are registered as incorporated companies with Companies House, with an associated legal obligation to prepare and file accounts with both Companies House and HM Revenue and Customs.

Each company has an 'accounting reference date', which is the last day of the month 12 months after its incorporation date. This repeats annually and determines the corresponding 'accounting reference period', also referred to as a financial year, which in turn determines the deadline for submitting accounts and any related tax.

Many companies further divide their financial year into accounting periods or trading periods. This may be done for numerous reasons, including aligning with common accounting standards such as those developed by the International Financial Reporting Standards Foundation.

Some companies, especially within manufacturing and retail, prefer their accounting periods to end on the same day of the week, which has given rise to a 52-week instead of a 12-month accounting period. This is possible as the Companies Act 2006 allows a company's financial year to end within 7 days of its accounting reference date, which means adding an extra week to the financial year every few years to remain compliant.

Option X24

Option X24 is an optional procedure in NEC4 term service and facilities management contracts which enables parties to align the contracts with their accounting periods. It comprises two clauses, X24.1 and X24.2, and applies to the NEC4 Term Service Contract (TSC), NEC4 Term Service Subcontract (TSS), NEC4 Facilities Management Contract (FMC) and NEC4 Facilities Management Subcontract (FMS).

For ease of reference, option X24 within the TSC is referred to in this article. The wording within the other contracts is the same except for the different parties and named roles.

Assessment for an accounting period

Clause X24.1 starts: 'Within thirteen weeks after the end of each *accounting period* the *Service Manager*' followed by two bullet points (see below). The '*accounting period*' is an identified term and is detailed in the contract data under the entry for X24.

The accounting periods should individually state both a start and end date and be contiguous, that is cumulatively cover the entire period from the contract start date to the end of the service period. Where option X23 on extending the service period is also selected (see Issue 129), then the accounting periods would also need to align with each period for extension up to the maximum service period.

Where main option C is selected, the contract data states: 'The *accounting periods* are the dates stated in the Contract Data of assessment of the *Contractor's* share'. Unlike other NEC4 'target' contracts, the share assessment is made at dates stated in section 5 of the contract data on payment. Where option X24 applies, these dates should align with the accounting period dates, although the clause wording could be clearer as a single reference date does not determine whether this is the start or end of an accounting period.

The first bullet point of X24.1 is: 'makes an assessment of the final amount due for the *service* provided during the *accounting period* and'. This process imitates the final assessment procedure at clause 53 (TSC, TSS) and clause 54 (FMC, FMS) as an interim final assessment. An assessment may be complicated, however, where the relevant payment dates do not correspond with the accounting period dates.

Under main options C and E, the contractor may notify at clause 50.9 where a part of defined cost has been finalised, with a continued, incremental application of this right mitigating against the potential for dispute under option X24.

The second bullet point of X24.1 is: 'notifies the *Contractor* of the assessment and provides details of how the assessment has been made.' The service manager is required to provide details, which would essentially include any variance from previously agreed or assessed amounts, with these details required to facilitate any consequent dispute procedure. Note that the service manager is not obliged to notify the client, which is unusual, although this would not be an issue under the subcontract forms.

Determination and dispute resolution

Subclause X24.2 starts with: 'The *Service Manager's* assessments at the end of each *accounting period* are conclusive evidence of the final amount due for the *service* provided during the *accounting period* unless a Party take the following actions'. The remainder of X24.2 sets out the dispute resolution procedure in relation to either option W1 or W2.

The wording is identical to that in relation to the final assessment procedure at clause 53.3 (TSC, TSS) and clause 54.3 (FMC, FMS). Note that the consistency of the wording between the NEC forms also means that the contractor (TSS, FMS) can dispute their own assessment. But unlike the final assessment procedure at clause 53.4 (TSC, TSS) or 54.4 (FMC, FMS), option X24 does not contain provisions in relation to the amendment of an assessment.

Conclusions and recommendations

Accounting periods should cover a continuous period from the starting date to the end of the service period. If option X23 also applies, these periods would need to span any possible period for extension up to the maximum service period end date.

NEC users should note the difference in the practical application of option X24 depending upon which main option is chosen. There is a clear variance with option C, although an option A (priced contract with price list) would be approached differently to an option E (cost reimbursable contract).

There is a potential difficulty with the assessed valuation of compensation events, especially where they are formally accepted but not implemented. Users should also be aware that if the resource making the assessment – either a service manager, contractor's project manager or service provider's project manager – is replaced during an accounting period, this may lead to a difference of opinion in relation to costs that are considered to be historic or 'sunk'.