

NEC Secondary Option X23 Extending the Service Period

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GVE Commercial Solutions Ltd are a commercial management consultancy providing quantity surveying and programming services. Our consultants specialise in the NEC forms of contract.

Our NEC capability has principally been acquired through practical application and experience within 'live' project environments assisting both contractors and subcontractors.

Our specialist NEC services include;

- Commercial and contract management of projects,
- Bespoke training,
- Project health check reviews,
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Service Contract Duration

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Contract Term

Where a client is looking to award a contract for services, the initial term of the contract is an important consideration.

The contract duration is determined by a number of factors, including the following;

- the type and range of services provided,
- the associated cost of tendering,
- the transfer of resources,
- the level of risk,
- the role of the service provider.

If the contract term is too short then bidders will price high to address the short term nature of the service provision.

If the contract term is too long then the client may end up tied to a contract that no longer meets their intended requirements.

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Increased Duration



The contract duration should allow sufficient time to realise continuous improvement leading to a 'value for money' outcome.

An increased duration is commonly required to achieve a return on an investment for high value and complex contracts, for the following reasons;

- supplier investment costs can be high,
- service performance fluctuations during the 'changeover' period,
- to acquire familiarity of services,
- to build collaborative relationships.

In the public sector it is important to establish the contract duration at an early stage as it may not be possible to change this once the procurement process has been enabled.

In the private sector this may not be an issue and contract length often becomes a matter for commercial negotiation.

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Time Management



Contracts frequently provide mechanisms that affect contract duration, including the following;

- termination for convenience,
- contract extension as a 'right',
- contract extension as a 'performance reward',
- contract 'break' clause.

Services contracts operate in a different way to other forms in that the 'completion date' is not directly altered by 'contract variations'.

Contract time is managed differently and is not directly linked with either the scope of works being delivered or how the works are being undertaken.

An extension of time may be required to complete certain services, where 'contract variations' have created inefficiencies to the delivery.

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NEC Suite

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NEC Suite



Secondary option X23 can be found in the following NEC forms of contract;

- Term Service Contract (TSC),
- Term Service Subcontract (TSS),
- Facilities Management Contract (FMC),
- Facilities Management Subcontract (FMS),
- Design Build and Operate (DBOC).

The DBOC form includes this option as the Scope would typically include the provision of services during the 'operation' phase.

Option X23 was introduced with the publication of NEC4 and did not exist under the NEC3 forms.

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TSC X23.1



'The Client may, with the agreement of the Contractor, extend the Service Period by a period for extension up to the maximum service period. ...'

The Service Period is stated in Contract Data as a specified period of time, as follows;

The service period is

A period for extension is stated in Contract Data in months.

The maximum service period is stated in Contract Data as a specified period of time, as follows;

The maximum service period is years after the starting date

All the NEC forms are consistent with the above requirements.

TSC X23.1



'... The Client notifies the Contractor and the Service Manager of each agreed period for extension before its notice date. ...'

The contract communication requirements are to be complied with;

- '... in a form which can be read, copied and recorded ...' (clause 13.1),
- '... notification ... communicated separately ...' (clause 13.7),

The notice date is the latest date by which a notice may be given, which is stated against each period for extension in Contract Data, as follows;

period for extension (months)

notice date

The subcontract versions of the NEC forms require the 'higher' party to notify themselves, which appears to be an inconsistency.

TSC X23.1



' ... Each *period for extension* is agreed and applied separately and in the order set out in the Contract Data.'

There is a specified order as set out in Contract Data, shown as follows;

Order	<i>period for extension</i> (months)	<i>notice date</i>
First	<input type="text"/>	<input type="text"/>
Second	<input type="text"/>	<input type="text"/>
Third	<input type="text"/>	<input type="text"/>
Fourth	<input type="text"/>	<input type="text"/>

As this creates an 'order of precedence' it is important to consider the timescales for each *period for extension* in chronological order.

Each *notice date* should sufficiently consider the effect of each extension and the timescales required to implement the necessary arrangements.

TSC X23.2



' If there are *criteria for extension*, the Service Period is not extended unless those *criteria for extension* are met on or before the *notice date* for the relevant *period for extension*.'

The *criteria for extension* are 'optional' measures and where they apply are set out in Contract Data, as follows;

The *criteria for extension* are

- (1)
- (2)
- (3)

The *criteria for extension* should be capable of being objectively assessed.

These may be used in conjunction with KPI's (X20 – TSC, TSS) or the stated targets (for performance) (Performance Table - DBOC, FMC, FMS).

Option X23 Considerations



Option X23 is primarily about extending the time of the service contract.

What it doesn't provide for are the services to be undertaken during any Service Period extension.

As previously discussed, contract time is not directly linked with either the scope of works being delivered or how the works are being undertaken.

Additional time may be required to complete certain services, where compensation events have created inefficiencies to the service delivery.

It is expected that services to be undertaken would be part of the discussions and any subsequent agreement to extend the services.



Things to Consider ...

Things to Consider



If the *notice date* for a *period of extension* has passed, can you continue on to the subsequent *period of extension*?

All of the *criteria for extension* applies to each *period of extension*, unless described otherwise.

What happens if conditions change to make the *criteria for extension* 'obsolete' or impossible to achieve?

The notice requirements under the subcontract forms.

The use of other contract 'time management' measures including secondary options X11 and/or X19.

Agreement on what services are to be delivered during an extension to the Service Period.

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