

NEC Secondary Option X3 Multiple Currencies

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About Us




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 a 'live' project environment, assisting both contractors and subcontractors.

Our specialist NEC services include;

- Commercial and contract management of projects,
- Bespoke training,
- Project health check reviews,
- Contract reviews,
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What is a currency?

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Definition

The word 'currency' is often used interchangeably with 'money', although this represents just a small part of a monetary economy.

'Currency' can take on different meanings depending upon the context, including as follows;

- It provides a unit of measure for determining the relative value of a product,
- It facilitates transactions within an economic structure,
- It is used by a government to implement economic policies,
- It represents a measure of trust in the economic status of a country.

In recent years other currencies have emerged in the form of 'cryptocurrencies' which follow similar principles to normal currencies but have no centralised control.

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Currency Exchange

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Currency Exchange

All currencies have value in comparison to other currencies.

The value of a particular currency is determined by its 'spot price', or 'spot rate', that is the current market value, defined by;

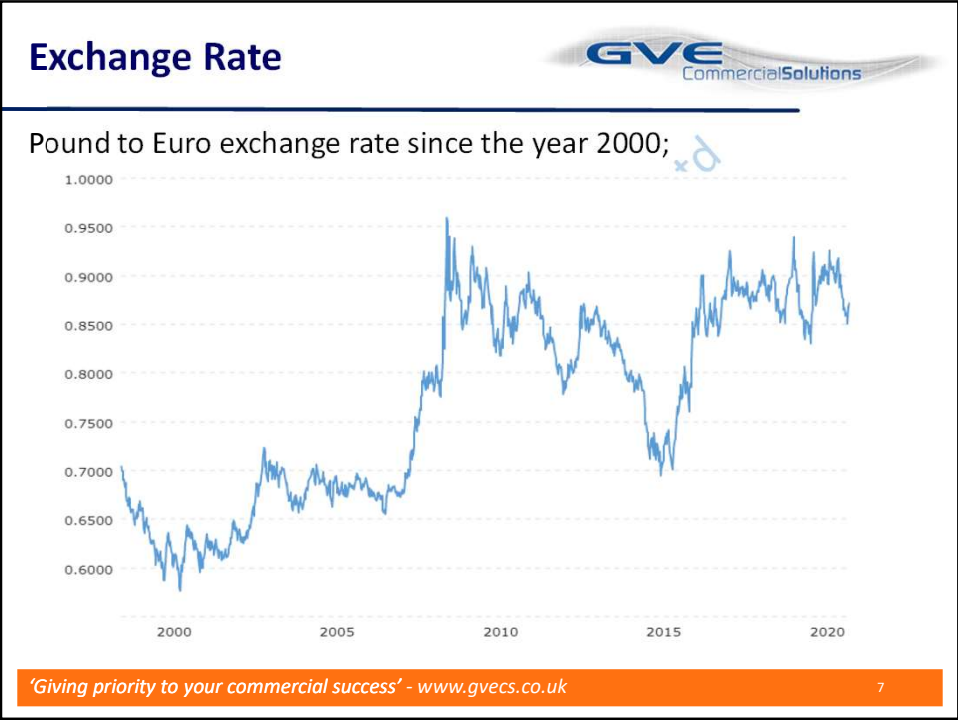
- Demand for that currency on the open market,
- Whether it is 'pegged' to another currency or commodity,
- Economic factors within the currency region,
- Government actions.

Unlike share prices, currency exchange rates are 'comparative'.

A low value currency means imports for a country are more expensive and its exports are less expensive in foreign markets.

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X3 – Multiple Currencies

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Background



Secondary option X3 is based on a contract procedure used by the World Bank.

World Bank contracts provide for payment in a maximum of three 'foreign' currencies and expressly state that;

' ... no exchange risk shall be borne by the Bidder.'

Under the NEC forms secondary option X3 is designed to 'imitate' the World Bank provision, with the intention that;

'The ... 'payer' ... carries the risk of any movement in the exchange rate after (the date of the published exchange rate) ... '.

NEC Suite



Secondary option X3 can be found in the following NEC forms of contract;

- Engineering and Construction Contract (ECC),
- Engineering and Construction Subcontract (ECS),
- Professional Services Contract (PSC),
- Professional Services Subcontract (PSS),
- Term Service Contract (TSC),
- Term Service Subcontract (TSS),
- Facilities Management Contract (FMC),
- Facilities Management Subcontract (FMS),
- Supply Contract (SC),
- Design Build and Operate Contract (DBO).

Introduction



The secondary option X3 wording is substantially the same for all the NEC forms.

Secondary option X3 only applies, however, with the following main options;

- Option A – ECC, ECS, PSC, PSS, TSC, TSS, FMC, FMS.
- Option B – ECC, ECS.

Note: The SC and DBO forms do not have any main options.

For main options where the payment is assessed using Defined Cost, the payment procedure includes a provision to convert amounts paid to the *currency of the contract*.

Stated Information



The 'Client' lists out in Contract Data Part 1 the 'items' and 'activities' to be paid for in other currencies.

Against each item and activity the 'other currency' is stated.

A total maximum payment in the currency is also stipulated, which may also include an allowance for compensation events.

items and activities	other currency	total maximum payment in the currency
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Stated Information



The 'Client' further lists out in Contract Data Part 1 the applicable *exchange rates* and the date when they are published.

The *exchange rates* are those published in
on (date)

The 'date' stated for the publication is usually set close to the date for submission of tenders.

The 'bidder' prices the listed items and activities using the *exchange rates* and 'date' to convert these to the *currency of the contract*.



Issues to Consider

Contract Procedure



Under certain NEC forms there is a specified person or 'intermediary' who certifies payments, as follows;

Project Manager – ECC,
Service Manager – PSC, TSC, FMC, DBO,
Supply Manager – SC.

The specified person's obligation is to certify the amount due, assessed using the 'Prices' which are in the *currency of the contract*.

Where secondary option X3 applies, the specified person and 'payer' will need to agree a procedure for how payments in an 'other currency' are dealt with.

Use of Exchange Rates



The following information is stated in Contract Data Part 1;

The *exchange rates* are those published in
on (date)

The NEC's intention is that the 'payer' carries the risk of any movement in the exchange rate after the date of the published exchange rate.

This objective, however, can only be achieved in practice where the stated information expressly provides for this.

Where this intention is expressly provided for, however, it raises a further issue to consider.

When to Calculate



The payment procedure at core clause 5 follows a strict timetabled process for assessing, certifying and making payments.

For the ECC form the payment procedure timescales are as follows;

- Payment application - prior to the assessment date,
- Assessment date - each assessment interval,
- Payment certificate - assessment date plus 7 days,
- Payment made - assessment date plus 21 days.

Where secondary option X3 provides for payments in 'other currencies' to be calculated using the 'latest' published *exchange rates*, at what point in time should this calculation be made?

Options X1 and X3



Where both secondary options X1 and X3 apply, then consideration should be given to ensure no 'double accounting'.

This may be provided for in one of the following ways;

- choice of index which doesn't include such 'imported' materials,
- selection of index from the 'other currency' country,
- allowance within the 'non-adjustable' element.

Alternatively the supplier would assume the risk for any price adjustments except for currency exchange on the items and activities under secondary option X3.

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