

CHAPTER 9. CONTRACTS

This chapter covers the type of contract available to the client in a construction project. It also questions the type of tenders put forward for projects in member countries. Further mention of tenders also appears in Chapter 10 where members were asked about the use of fee scales in their respective countries.

Question 9.1. Is a client free to adopt any type of contract (s)he wishes?

Question 9.2. What particular types of contract are used?

Question 9.3. What is the most common system for tendering for public projects in your country?

Question 9.4. Is the normal criteria, lowest tender?

Question 9.5. What other criteria may be taken into account?

Question 9.6. Is electronic tendering used frequently in your country? Is it, or will it soon be obligatory?

COUNTRY	
Croatia	<p>Type of contract: The client is free to accept any type of contract. Contract fees for design and supervision services are defined in detail in the Chamber's List of Fees. The best offer is not necessarily the lowest one. The Client can make his selection based on the designer's references.</p> <p>Common system and criteria for tendering for public projects: According to the law currently in force, in case of public tendering, the lowest offer is deemed to be the best. This provision is now being reconsidered and will probably be modified. Tendering and contracting for public construction works is regulated by the Public Procurement Law which is in fact based on relevant European Directives.</p> <p>Different types of contracts are used in practice: turn-key contracts, fixed price contracts, unit price contracts, etc.</p> <p>Use of electronic tendering: Electronic tendering has not as yet been introduced.</p>
Cyprus	<p>Type of contract: A client is free to adopt any type of contract (s)he wishes. A series of contracts have been published by the Cyprus Joint Committee for Building Contracts the basis of which is the JCT contracts. Members of the Cyprus Joint Committee for Building Contracts are the following organizations:</p> <ul style="list-style-type: none"> (a) Cyprus Association of Civil Engineers (b) Civil Engineers and Architects Association (c) Cyprus Association of Architects (d) Cyprus Association of Quantity Surveyors (e) Cyprus Federation of Building Contractors. <p>These contracts are generally used by the private sector of the building industry. The FIDIC conditions of contract are generally used in public projects. The system used for tendering of public projects is that which is specified by the relevant Public Procurement Directive of the European Union.</p>

	<p>Common system and criteria for tendering for public projects: Normal criteria for award is the lowest tender within specification. For large specialized public projects, the pre – qualification system is used.</p> <p>Use of electronic tendering: Electronic tendering is sometimes used by some public organizations.</p>
Czech Rep	<p>Type of contract: A Private client is free to adopt whatever kind of contract (s)he wishes.</p> <p>For the Public client – tendering is according to Czech tendering law The normal criteria is indeed usually lowest tender. Other criteria that may be taken into account are the period of realisation, technical, economic and financial reliability of a company.</p> <p>Use of electronic tendering: Electronic tendering is not used frequently.</p>
Estonia	<p>Type of contract: A private client is free to adopt any type of contract. Public clients are obliged to call for an open tender. 9.2 For international contracts the FIDIC system is recommended.</p> <p>Common system and criteria for tendering for public projects: The most common system is that of lowest tender, but the importance of other factors (Quality, terms etc) is increasing.</p> <p>Use of electronic tendering: The use of Electronic tendering is not obligatory in Estonia.</p>
Finland	<p>Type of contract: Public procurement processes in Finland are conducted according to EU-regulations.</p> <p>Common system and criteria for tendering for public projects: Private procurement is done as the client wishes. Finnish General Conditions of Contract are normally used. All contract types are in use, PPP-contracts are increasing. Different types of Project Management contracts are also widely used.</p> <p>Use of electronic tendering: All tender documents are in PC-applicable form and normally distributed by e-mail. Tenders can be submitted in electronic form (e.g. CD-Rom) or by e-mail, but signed documents are generally required to verify the tender or contract.</p>
France	<p>Type of contract: The type of contract to be adopted is free for private business.</p> <p>For public services, terms of references and fees of design and engineering are defined by law under the “Maitrise d’Oeuvre Publique” (MOP) Act.</p> <p>Common system and criteria for tendering for public projects: Calls for tender and public procurement are ruled by the “Code des Marchés Publics”. The possibility of selecting the best offer rather than the cheapest one is taken under consideration.</p> <p>Use of electronic tendering: Electronic tendering is not yet really developed. (Don't some major French companies oblige this???)</p>
Germany	<p>Type of contract: In Germany a private client is free to adopt any type of contract he wishes, whereas public clients are obliged to call for tenders. With regard to types of contract, normally the German regulations of ‘VOB’ are used.</p> <p>Common system and criteria for tendering for public projects: The most common system of tendering is public tendering. Price is normally one of the main factors in tendering.</p>

	<p>Other criteria that may also be taken into account are economic viability, availability of equipment, success in other projects, long-lasting co-operation etc.</p> <p>Use of electronic tendering: Electronic tendering is used more and more, data banks are offered. It is especially necessary for so called ARGEs (a group of co-operating companies on a temporary basis and on a special project). In some Bundesländer (Federal regions) a special software is used which must also be used by the tendering companies. Electronic tendering is not obligatory.</p>
Hungary	<p>Type of contract: A client may adopt a particular type of contract according to the licence (s)he is given by the Chamber. (Please explain). Tendering for public projects is harmonised in line with the European Directives.</p> <p>Common system and criteria for tendering for public projects: Regrettably, the normal criteria is often lowest tender. Other criteria that may be taken into account. These are the normal criteria which one finds used internationally.</p> <p>Use of electronic tendering: Electronic tendering is not frequently used in Hungary.</p>
Ireland	<p>Type of contract: The client is free to adopt whichever type of contract (s)he wishes. The types of contract used as IE, FIDIC and ICE.</p> <p>Re public projects – please see response from other countries as an example.</p> <p>Common system and criteria for tendering for public projects: It would appear that lowest tender is the most likely criteria. Other criteria which may be taken into account are quality, delivery etc.</p> <p>Use of electronic tendering: Electronic tendering is not used frequently in Ireland and it is unlikely that it will become obligatory in the near future.</p>
Italy	<p>Type of contract: Professional commitments by public Administration are ruled by law 109/1994 and later updates as well as by the Law Decree 157/1955 implementing the Directive 92/50/EEC on supply of services. Commitments to private clients are free, but the minimum fees are fixed by law and are binding (D.M. 4 April 2001). They are drawn up with a conventional model contract in compliance with the performance specifications.</p> <p>Common system and criteria for tendering for public projects: Professional commitments by public Administration are ruled by law 109/1994 and later updates as well as by the Law Decree 157/1955 implementing the Directive 92/50/EEC on supply of services. Commitments to private clients are free, but the minimum fees are fixed by law and are binding (D.M. 4 April 2001). They drawn up with a conventional model contract in compliance with the performance specifications.</p> <p>Use of electronic tendering: e-tendering is still not allowed in Italy</p>
Lithuania	<p>Type of contract: A private client is free to adopt any type of contract. For international contracts the FIDIC system is recommended.</p> <p>Common system and criteria for tendering for public projects: Public clients are obliged to call for an open tender. It is essential to sign a contract with lowest price, however other factors are also important : quality, terms,</p>

	etc.
Poland	<p>Type of contract: The private client is free to adopt any type of contract (s)he wishes.</p> <p>For the public client this is according to Polish Tendering Law The type of contract used is the so called 'civil contract' according to Polish Codex of Civil Law</p> <p>Common system and criteria for tendering for public projects: This is the so called 'non-limited auction'. The normal criteria is lowest tender. Other criteria that may be taken into account are (1) Period of realization, (2) Technical, economical, and financial reliability of a firm</p> <p>Use of electronic tendering: No, this is not used frequently in Poland, nor will it soon be obligatory.</p>
Portugal	<p>Type of contract: A private client is free to adopt any type of contract he wishes, but public contracts are defined by law. The most common system for tendering for public projects in Portugal is by public tender.</p> <p>Common system and criteria for tendering for public projects: The normal criteria is lowest tender if tendering is restricted to invited competitors. If tendering is open to all, price is one of the factors, usually together with time, technical expertise and financial capacity.</p> <p>Use of electronic tendering: Whilst electronic tendering is not used frequently in Portugal, it is developing fast and begins to be used.</p>
Romania	<p>Type of contract: The usual procedure is to have separate contracts for the design and for the construction. At present, there is an increased interest to promote the system of contracting both the design and the construction work, based on a feasibility study.</p> <p>Common system and criteria for tendering for public projects: In the private sector, the owner can commission a qualified engineer to design and plan the project and a construction company to construct the works. An engineer or sub-engineer can be commissioned to supervise the works. In the public sector, the owners are obliged to call for tenders, both for the design and for the construction. The overall control of the works is done usually by the owner's staff or can be passed to a consultancy firm.</p> <p>The owner cannot obtain the whole set of approvals and authorisations required for a project unless the documents are drafted by a professional engineer.</p> <p>In accordance with the Law No. 10, the design has to be checked by checkers accredited by the Ministry of Transportation, Constructions and Tourism. For special projects, the checking process can be commissioned to accredited experts. On 30th June 2003, 1,661 checkers, 823 experts and 4,230 technical responsible for the execution work were registered at the Ministry of Transportation, Constructions and Tourism for various areas of civil engineering.</p> <p>Use of electronic tendering: The electronic tendering was introduced for public investments and procurement with good results leading to the extension of the method.</p>
Russia	<p>Type of contract: Please complete this section</p> <p>Common system and criteria for tendering for public projects:</p>

	Use of electronic tendering:
Slovak Rep.	<p>Type of contract: A client is free to adopt any type of contract in general. Public procurers are subject to the Act No. 253/2003 Coll. on tendering. Private works are usually subject to a tendering process as well.</p> <p>There are contract regulations and legislation regulating the general contract as well as related aspects of the tendering process. The basic subjects in the contract in accordance with the legislation are: the subject of contract, the price and the date of performance. The legal background to a building contract is the Building Act No. 50/1976 Coll. as amended by subsequent regulations. Furthermore, there are the provisions of the Civil Code, the Trade Code, the Business Code, Act No. 253/2003 Coll. on tendering, the Act No. 18/1996 Coll. on the price, the Act No. 90/1998/Coll. on building products, etc.</p> <p>All these acts and civil codes are consulted by the government with the Slovak Chamber of Civil Engineers, the Association of Construction Entrepreneurs of Slovakia, with the unions, and eventually with other individual organisations.</p> <p>Common system and criteria for tendering for public projects: In a tendering process the price is an important part of the public procurement process, but not decisive. The most common criterion for public projects is the lowest price/tender. Other criteria, such as the date of construction, quality, complexity of the delivery, constructional and technical solutions, may be taken into account.</p> <p>Use of electronic tendering: Electronic tendering is used in Slovakia and it is not obligatory.</p>
Turkey	<p>Type of contract: There are Contract Laws regulating general contract related aspects and tendering progress. Similar to other engineering related regulations, Contract Laws have deficiencies which can cause mistreatment and injustice in the contracts. Private sector applications are free to be adopted in any type of contracts. However, there are criteria and regulations for public sector tendering process.</p> <p>Common system and criteria for tendering for public projects: There are two types of tendering procedures; Lump sum tendering and BOQ based tendering are commonly used in Turkey in tendering process. BOQ is the mostly applied tendering type.</p> <p>There are two staged tendering process applied in many cases. After a prequalification stage, tendering stage is applied, which leads to elimination before tendering according to other criteria considered.</p> <p>Although there is not a legal constraint, the most commonly used method is still lowest tender evaluation. Recent regulations and legislations about the Contract Law achieved an important step by obliging every public office to provide a contract for each job, and therefore preventing any injustice decisions. The lowest tender application will hopefully thin out through present regulations, and criteria such as experiment, financial situation, equipment availability, personnel, etc. will be considered at project basis.</p> <p>Calculation of tendering fee is free, whereas values out of normal ranges are questioned and examined. There are several methods to calculate the value, such as providing the BOQ and requesting the price, or directly providing the price and dealing with the contractor which is a seldom used process.</p> <p>Use of electronic tendering: Electronic tendering has begun to be known, but it is not used for the civil engineering sector in Turkey. Providing the hardcopy of the contract and all tendering process is an essential part of the</p>

	<p>system. Electronic government planning is not suitable for Turkey without dispute, an issue which has been discussed recently, and relatively, it is almost impossible make electronic tendering obligatory.</p>
<p>United Kingdom</p>	<p>Type of contract: There are no restrictions on the form of contract to be used for construction work. However, most would base their conditions on a standardised contract type.</p> <p>Joint Contracts Tribunal (JCT) Forms cover most building work and is the predominant contract form in building construction.</p> <p>The ICE Conditions of Contract for civil engineering construction are the basis for many contracts used in the UK. Under its terms a Chartered Engineer acts impartially within the terms of the Contract in administering the construction of the works and supervising the contractor to ensure compliance with the contract documents.</p> <p>The New Engineering Contract (NEC) is a legal framework of project management procedures designed to handle all aspects of the management of engineering and construction projects. It is in use across the spectrum of engineering and construction activities by a very wide range of clients, consultants and contractors. Its use encompasses projects both large and small, civil engineering and building, national and international. The NEC was developed by the Institution of Civil Engineers in the early 1990s with the aim of introducing a new form of non-adversarial form of contract strategy which would contribute towards the more effective and smoother management of projects. It comprises a suite of contract documents and range of support services comprising training, consultancy, software and a Users Group. Since the original launch of the main engineering and construction contract and subcontract, the NEC has been extended to include a professional services contract, an adjudicators contract and a short contract. Further extensions of, for example, a term services contract, are under development.</p> <p>Common system and criteria for tendering for public projects: In the UK, tendering for public projects must be done in accordance with public procurement laws and regulations, in particular the EU acquis, but also domestic regulations and case law. Goods, works or services should be acquired by competition unless there are compelling reasons to the contrary. All public procurement is to be based on “value for money”, having due regard to propriety and regularity. Value for money is the optimum combination of whole-life cost and quality (or fitness for purpose) to meet the user’s requirement. The purchaser would normally establish a set of “price and quality/purpose scores” to decide which bid gives best value for money.</p> <p>In general, public purchasers are free to agree the terms of the contracts they enter into, bearing in mind the advantages of using model terms and conditions developed in the light of collective experience and with which they and potential suppliers are likely to be more familiar.</p> <p>The use of PPP (public/private partnerships) and PFI (private finance initiatives) is increasingly used in the UK. Tenders for such projects must also follow public procurement rules.</p> <p>Use of electronic tendering: The UK Government has launched a project called eProcurement, which aims at introducing the use of electronic methods in every stage of the purchasing process from identification of requirement through to payment, and potentially to contract management. Several government departments and public services are now using electronic tendering and “eAuctions” regularly (although still to a limited</p>

degree as far as civil engineering contracts are concerned).

Apart from this, all public tenders will be published in the "Tenders electronic daily", a supplement to the Official Journal of the European Union.