

Contractor selection, Bid preparation and Contract types

Contractor's function

- + Who are contractors?
- + Contractors as a business organizations!
- + Do we need contractors?
- + Contractor's office organization
- + Categorization, Registration,
- + Contractors association's and their role

CHOOSING A CONTRACTOR

There are basically only two methods

- a) selecting a contractor by some form of competitive tendering
- b) selecting a contractor without competitive tendering.

Choosing a contractor (contd.)

✚ The purpose of any tendering procedure is:-

- to select a **suitable Contractor at a time** appropriate to the circumstances and
- to obtain from him at the **proper time an acceptable tender or offer** upon which a contract can be let.

a) Competitive tendering

- ✚ This is an attempt to obtain a better deal by the introduction of an element of competition.
- ✚ It is also an attempt to ensure that everything is “open and above board” - i.e. no corruption, bribes etc.

Competitive tendering (contd.)

- ✚ Competitive tendering may be **open or selective**.
- ✚ In open competitive tendering **anyone may tender**, whether competent to do the “work” or not.
- ✚ Tenders are usually invited by an advertisement in the press.
- ✚ Although the cheapest tender may be selected, it is likely to cause serious problems and extra expense if it is an incompetent contractor who is selected.

Competitive tendering (contd.)

- There will be considerable extra costs and delays if a contractor goes bankrupt during the construction of the “work” and another contractor has to be called in to finish the work.

✚ In developed countries, many reputable firms may not choose to tender as they feel they have little chance of winning because of
a) *the large numbers tendering*

b) *the feeling that they will always be undercut* by some firm making a ridiculously low offer either **in error** because they have little experience of the type of work, or because they are **desperate for work at any price** even if they fail to complete the work.

b) Selecting a contractor without competitive tendering

i) Special expertise or plant availability

- ✚ If there is only one contractor with the **special expertise or plant**-or only one contractor available - true competitive tendering is either impossible or pointless.
- ✚ The contractor will be well aware of the special circumstances and is probably more likely, rather than less likely, to take advantage of them in a competition arrangement than in a negotiated one.

ii. **Contractor financed project**

✚ If the client finds it difficult or impossible to finance the project in any other way and contractor has the necessary financial backing, the client has little option but to go for a negotiated contract.

iii. Continuation Project

- ✚ A client has used a contractor for one project, with which he is well satisfied, and then another similar project comes along.

iv. Business relationship

- ✚ Obviously a property company with a subsidiary construction company will probably negotiate with them for the construction of a new building.
- A local shop is likely to prefer the local builder as it is in the local shop's long term interest that there is a local builder he can call on also money paid to the local builder is more likely to find its way back to the local store.

v. Rapid start

- ✚ If a quick start is important it will be much more likely that this can be achieved if there is no formal tendering procedure.

TWO STAGE TENDERING

- ✚ In two stage tendering, outline design details are sent to selected tenderers with a request that they provide, in confidence, **information on material prices, labour rates, overhead charges, plant capacity, management policy** etc.
- ✚ This data is evaluated and used to select a single contractor. ***1st stage!***

Two stage tendering (contd.)

- + During development and detailing of the scheme **this contractor assists and advises on all matters affecting the work.**
- + Bills of Quantities are produced and a formal contract and price is negotiated.
2nd stage!

Advantages

- The **Contractor** can have an **influence** on the design so that it suits his equipment, method of working etc.
- The Client should be aware at an earlier stage the costs and options, which should save on abortive work.
- There should be **less claims**, as Contractor is involved in the **design thinking**, has longer to assess the various problems etc.

Disadvantages

- ✚ Very difficult to assess and select single contractor in the first instance. Tends to be subjective.
- ✚ Once contractor selected, it is difficult to envisage any other contractor actually carrying out the work - and the contractor knows it. Hence **no really much competition once initial selection made.**
- **No incentive for contractor to keep costs down since he knows the situation in detail.**

TENDER PREPARATION BY A CONTRACTOR

- ✚ In the preparation of tender, contractor's are expected to **satisfy some requirements in order to increasing their competitiveness.**
- ✚ The following points are among those which must be considered by a contractor in tender preparation:
 - a) Sell your company**
 - ✚ Ensure you meet the clients' prime requirements.
 - ✚ Tell him why your company is ideally suited to give him what he wants.

- ✚ Make it clear that yours is an efficient company with experience in this type of work.
- ✚ Demonstrate this by producing a clear, well thought out series of tender documents.
- ✚ Emphasize any aspects you offer which are clearly of prime importance to the client.
- ✚ Is there an alternative, which might be attractive to the client and give you an edge on the competition.

b) Protect your company

- i. Clarify any points in doubt as to what is included.
- ii. Ensure that your total tender price makes sufficient allowance for everything within the tender, including profit.
- iii. Ensure that all terms and conditions are reasonable

Even if you fail to win the contract (perhaps someone else won it at a price or at conditions he will live to regret) make sure that the Client is left with a favourable impression of your Company

- there is always the next time.

TENDER APPRAISAL AND SELECTION

- ✚ In a traditional organisational arrangement the consultant produces a detailed design, and the contractors submit tenders to build that design.
- ✚ The contractors should all be tendering for the same design, same specification, same contract period, same contract conditions etc.
- ✚ Hence the selection of the tenderer should be mainly on price.

Tender appraisal and selection (contd.)

It is the engineer's/consultant's job to recommend to the client which of the **contractors' offers should be accepted**. Steps he should take are as follows:

1. Check arithmetical accuracy - correct as necessary - advise contractor.
2. Scrutinise for obvious mistakes and exceptional prices - high or low.
3. Compare individual prices between tenders.
4. Time to complete work if varying between tenders (ref Tender Appendix) should be taken into account.

Tender appraisal and selection (contd.)

5. Carefully examine effects of any qualifying statement or reservation in tender or covering letter.
6. Carefully consider suitability and effects of any alternative offered.
7. Carefully consider lowest 2 or 3; concentrate attention on the 20% which accounts for 80% of the cost.
8. Discuss and clarify any outstanding points with contractors.

Tender appraisal and selection (contd.)

Check Arithmetical accuracy

- ✚ It is, at first sight, surprising to discover that a firm that may be tendering for a multi-million Birr contract cannot do simple arithmetic correctly.
- ✚ However tender periods are short, a lot of different people are involved in preparing the tender, last minute adjustments are made under pressure and a tender does consist of a large quantity of number manipulation such that simple arithmetical errors are not uncommon.

Tender appraisal and selection (contd.)

Errors in tenders:

- ✚ If an error is discovered in the contractors tender, then theoretically the tender could be accepted and the Tenderer held in law to the tender.
- ✚ However, if the Tenderer were able to prove that the Client was aware of the error at the time of acceptance of the tender and did not disclose it to the Tenderer, then a change of fraud could be found against the Client.
- ✚ Thus having discovered an error the Client (or the Consultant) is more or less bound to disclose it to the Tenderer if he is seriously considering employing that tenderer.

Tender appraisal and selection (contd.)

- ✚ If it is clear what is the mistake and what was intended

e.g. one page of the bill of quantities has not been added into the subtotal, or one of the **rates x quantities was incorrectly multiplied**, then it is a simple matter to correct the error and advise the tenderer as to what he has done and how you have corrected it.

- ✚ If in the unlikely event as a result the tenderer wishes to withdraw his tender, it would be advisable to allow him to do so.

Tender appraisal and selection (contd.)

- ✚ If, however, it is a **rate error** – e.g. the rate for supply and fix is clearly less than the rate for supply, the Tenderer may be asked whether he is prepared to keep to his Tender or whether with this knowledge he wishes to withdraw the Tender (revoke his offer).
- ✚ If he is given the opportunity to correct his rate this could lead to an **unsatisfactory situation**. Since at this **stage he is aware of the other Tender figures**, he could adjust his rate to still keep his overall total Tender figure below the others.
- Even if other tenders were not known the tenderer could have effectively obtained a longer tender period.

Tender appraisal and selection (contd.)

- ✚ In these circumstances **tenderers might decide to always include a few errors:** - although they would have to take the risk that the Engineer did not spot them.

Alternative Designs

-  *It is not unusual for the tenderer to propose an alternative.*
-  *This may be a different construction period, different contractual arrangement, different method of financing or a different design.*
-  *This is not surprising, since there are an infinite number of options, from which the client's designer has selected and developed one only into the official design.*
-  *The tenderer may have particular expertise, equipment, finances, resources etc., which enable him to offer an alternative, which the tenderer considers, will be attractive to the client.*
-  *If the tenderer thinks that the official design does not meet the client's requirements well, he is more likely to offer an alternative.*

ACCEPTANCE OF A TENDER

- ✚ The employer sends a letter of acceptance to the successful Tenderer.
- ✚ The letter is usually prepared by the Engineer, but it is signed by the Employer.
- ✚ If the letter is from the Engineer, then it can only say that the Employer is willing to accept the Tender - but this does not constitute a Contract.
- ✚ An Employers letter of acceptance (in accordance with the tender document) constitutes a binding contract between the Employer and the Tenderer.

ACCEPTANCE OF A TENDER (contd.)

- ✚ The letter of acceptance often makes arrangements for a meeting for signing of the 'Form of Agreement'. At this meeting other items may be discussed such as:-
 1. Starting date -
 2. Site staff - contractors/engineers
 3. Site offices - Location, completion, temporary arrangements, phones etc.

ACCEPTANCE OF A TENDER (contd.)

4. Programme of works.
5. Land Availability/
6. Statutory Undertakers.
7. Sub-Contractors and suppliers.
8. Measurement and Certificates.
9. Progress Meetings
10. Document queries.

Further copies of the drawings, specifications and unpriced BOQ may be given to the contractor for his use.

LEGAL ASPECTS OF CONTRACT

- ✚ Once a contractor has been selected then it is necessary to come to some agreement that he should do the work for some considerations (payment).
- ✚ This agreement is a legal contract between the client and the contractor.
- ✚ There are different forms of contract (eg. BaTCoDA, PPA, FIDIC, ICE, ...)

✚ Agreement must consist of an **offer** and an **acceptance** of the offer

- Offer

- **Revocation:** an offer may be revoked by the person who makes it, at any time before it is accepted.

✚ The revocation takes effect from the time when it comes to the notice of the person to whom the offer was made.

✚ An offer only remains open for a “reasonable time” unless specific length of time that offer should remain open is included in the contract.

- **Acceptance:** must be unconditional and must be communicated to person who made the offer. If conditional it becomes a counter offer.

Legal aspects of contract (contd.)

- **Consideration(valid):** without this there can be no contract.
- Legal Capacity:-
- **Contract:** Must be clear and precise expressing all implied terms. A verbal contract is just as much a contract as a written contract although it might be more difficult to enforce if one side disputed it.
- **Rectification** in case of error, mistake. If both parties agree, mistakes can be changed. It may be insufficient for one party to show that the contract does not respond his/her own intentions – he/she must show that the intention was common to both sides.

MAJOR CONTRACT TYPES

A) Lump sum

B) Measurement

C) Reimbursement

Lump sum

Advantages

- 1) The cost is fixed beforehand so the client knows what he is going to have to pay.
- 2) A lot of detailed accounting and measuring is not required - this can lead to a saving in time as well as money.
- 3) Suitable for supply and installation of proprietary equipment, which may differ significantly in cost and performance from one manufacturer to another.
- 4) Easy to compare competitive tenders as far as price.

Lump sum (contd.)

Disadvantages:

- 1) Problems in assessing how much the contractor should be paid if any variation in the work is desired/required.
- 2) Problems if any part of the work was not sufficiently well specified.
- 3) If competitive tendering used, then cost of tendering may be high as each tenderer has to work about quantities required etc. Costs of tendering successfully and unsuccessfully must be paid for somehow tendency to higher costs.
- 4) Courts have tended to interpret lump sum contracts as purely stating the objective that is to be achieved for the lump sum. Hence the risks to the contractor tend to be high and he is likely to submit very high prices to cover the risk.

Measurements

Advantages

- 1) It is possible to vary the amount of work during construction and relatively fairly pay the contractor for the extra work – e.g. if extra excavation is found to be necessary.
- 2) The contractor is paid according to how much work he does. The risks to the contractor are hence reduced and he is therefore prepared to do the work for a lower price.
- 3) The client has a fairly accurate estimate of the total cost.
- 4) Fairly easy to compare competitive tenders by calculating the total tender price - the aggregate sum of the assumed quantities multiplied by the tender rates.
- 5) Everybody should have a clear idea of what is involved in the work, as the process of producing the detailed bill of quantities should clearly show all the various items required.
- 6) All tenderers price on the same basis

Measurements (contd.)

Disadvantages

- 1) It may be difficult to get a job going quickly as all the detail in the bill of quantities has to be completed before work on site can begin.
- 2) Not really suitable where the contractor is producing the design, since the bill of quantities can only be produced after the design has been completed. If the design is not produced by the contractor, then it is difficult to take account of special plant or equipment of the different tenderers.
- 3) Variation in quantities is not always as simple as it looks eg reduced quantities often actually “cost” a contractor the same total. “One more” may cost vastly more if special arrangements have to be made, or nothing at all if it was there and would have gone to waste if not required.
- 4) A tender has no obvious place to put major temporary works costs hence detailed comparisons may be meaningless.

Cost Reimbursement

Advantages

- 1) Work can be got under way quickly - eg before design complete, or for exploratory work, the results of which will determine future work.
- 2) Contractor is not concerned about losing money on the contract - high quality workmanship can be obtained.
- 3) Suitable for use when amount and type of work not known.
- 4) Suitable for use when 'techniques' not yet established.
- 5) Where there is a risk of a costly occurrence within the contract it is generally cheaper for the Client to bear the risk and only pay out if the event occurs. If the Tenderer has to carry the risk then the Client is likely to effectively pay out whether the event occurs or not.

Cost Reimbursement (contd.)

Disadvantages

- 1) Client has little idea of total cost.
- 2) There is no incentive for the contractor to be efficient - in fact there is a disincentive as the more it costs, the more profit he makes. There are various methods to try and overcome this weakness. For example, the percentage profit may be reduced with increasing cost or a total target sum may be agreed beforehand - if the total cost is less than the target then the contractor and the client share the saving.
- 3) Every invoice, pay sheet, material record, must be checked by the Engineer and his auditors as well as the contractor to ensure it was really paid for work on the contract and is therefore reimbursable.

Exercise

1. Consider a good medium sized contractor's firm and sketch the ideal administrative structure and discuss functions of each unit.
2. Visit internet and find top 10 contractors in the World and assess their capital, yearly turnover, number of employees, etc. Then compare with any two class one contractors in Ethiopia.
3. What is the normal profit range of contractors in international and local construction projects? Do you think being a contractor is easy and fast money making ladder? Why?
4. List and discuss at least 15 important factors to become a successful contractor in any country.

Submission date: _____

Thank you!!