

CHAPTER 31: CONTRACTS

31.1 INTRODUCTION

- 1 Road authorities may elect to outsource the design, installation and maintenance of traffic signals. The extent and nature of the projects can vary significantly, and may range from the installation of a single traffic signal to that of an advanced central control system.
- 2 Regardless of the scope of the projects, there are features common to all. The outstanding feature is that a contract between the road authority and a consultant or contractor is brought into being. A further feature is that the road authority is finally responsible for the provision and operation of a safe and efficient traffic signal system.

31.2 CONTENT OF CONTRACT DOCUMENTS

- 1 The intent behind the drafting of any contract is that there should be a clear, unambiguous and shared understanding between the contracting parties of items such as the following:
 - (a) The exact extent of the work to be undertaken in terms of the contract (with extent implying both a quantity and quality of specified activities).
 - (b) The responsibility of the contracting parties to each other.
 - (c) The time frame within which the work is to be completed.
 - (d) The total cost of the work.
- 2 It is often said that a contract document is not necessary until relations between the contracting parties become soured. To allow for this eventuality, contracts should always include clauses defining what constitutes disputes and the methods to be employed in their resolution.
- 3 Contracts also include clauses setting out the grounds and methods for termination of the contract. The preferred termination is simply that the work has been completed and paid for to the satisfaction of both parties. It is also possible that non-performance by either of the parties may force a premature termination as the only option.

31.3 STRUCTURE OF CONTRACT DOCUMENTS

- 1 An important principle in drawing up contract documents is the need for standardisation. Insistence on unique contract documents for each project will require contractors to study each tender document in detail prior to calculating and submitting a bid. Bid submissions are usually made under tight time constraints and contractors will price accordingly, usually with a margin of safety to allow for contingencies they may have been overlooked. Insistence on unique documents will thus carry an implicit cost penalty. A further penalty involves the fact that the continuous development and updating of any document, whether by the road authority or some other body can be a costly exercise. Furthermore, unique documents can inadvertently contain loopholes that can result in problems.

- 2 Standardisation of documents will allow for improvement over time by introducing amendments making individual clauses more readily understandable, and simultaneously removing loopholes that have presented themselves. Many bodies, such as SAICE and FIDIC, have developed standard documents that are a solid basis for any contract. It is also possible to refer to other documents such as the SABS standard specifications, Acts of Parliament, Provincial Ordinances and local by-laws. It is not necessary to repeat the content of these documents in the contract documents, and references to them would be adequate.
- 3 The contract documents should include the following:
 - (a) General Conditions of Contract, which spell out the typical relationship between client and contractor.
 - (b) Standard specifications being descriptions of the work to be done and that do not vary from project to project.
 - (c) Project specifications describing the specific project.
 - (d) A list of quantities, which may either be a Bill of Materials or a Schedule.
 - (e) Drawings, which may include standard drawings.
- 4 In order to tailor the standard documentation to a specific project, it may be necessary to include the following in the contract:
 - (a) Special Conditions, which take precedence over the General Conditions and further define the contractual obligations of the two parties; and
 - (b) Special Provisions, which modify the Standard Specifications.
- 5 Contract documentation typically requires that the contractor provides performance guarantees in the form of insurance policies. In the event of non-performance by the contractor, it may be possible to recover losses sustained as a result of this non-performance.
- 6 A Tender Bid becomes a Contract on signature by both parties of a Letter of Agreement. The contract documentation normally includes a pro-forma Letter of Agreement for the information of the tenderer.
- 7 Tenders can be fixed price or allow for escalation, the latter being more equitable in times of high inflation or where the project may span over more than one year. In this case, the basis on which escalation of the contract price is calculated is defined in the contract documentation.
- 8 For a variety of reasons, it seldom happens that a project is built exactly as detailed in the original drawings. As the work progresses, it will be necessary to issue instructions or revised drawings (referred to as Variation Orders) to the contractor. These typically are grounds for the contractor to revise a price quoted for an item or to quote a new price for the work. Once agreed to by both parties, Variation Orders are signed by both and thereafter become part of the Contract Documentation.

- 9 Very often, a Dayworks Schedule is also included to allow for abnormal circumstances not necessarily forming part of the contract but where it is convenient to have these additional activities undertaken by the contractor. The Dayworks Schedule is, however, not considered as part of the contract for adjudication purposes.
- 10 Because of the issue of Variation Orders, it is necessary at completion of the project for "As Built" drawings to be submitted to the client. In the event of any subsequent dispute, reference is made to the "As Built" and not to the original design drawings.
- 11 Many contracts also provide for a period of maintenance, usually with a duration of twelve months, to ensure that there are no latent defects in the work as delivered. Any defects revealed during this maintenance period are repaired by the contractor at his own expense.

31.4 TENDER PROCESS

- 1 The client issues a Call for Tenders by advertising it in gazettes as well as newspapers. This advertisement typically includes:
 - (a) The name of the client.
 - (b) The number and name of the project being tendered for.
 - (c) A brief description of its content.
 - (d) The closing date for submission of bids.
 - (e) The source from which tender documents can be obtained, including reference to any payment that must be made for these documents, specifying whether this is a refundable deposit or not.
- 2 The tender documents are, in fact, the contract documents and include a list of quantities against which the tenderer can quote rates for each item billed.
- 3 If the client considers a Tenderers' Site Visit desirable, details of the date and venue will be included in the Call for Tenders. The Site Visit may be compulsory, in which case the client will issue Certificates of Attendance to tenderers. These should then be bound into the submitted bids. Failure to return a certificate could be deemed adequate grounds for rejection of the associated bid.
- 4 At the Site Visit, the client will describe the full extent of the works and draw attention to any points of particular concern as well as clarifying any uncertainties that would-be tenderers may have.
- 5 Tender submissions can take many forms. One method that can be followed consists of first requesting the tenderer to submit information illustrating an ability to undertake the intended project. This can be followed by a request for a technical proposal, which in turn may be followed by a request for the final bid.
- 6 A second method is the two-envelope process in which a tenderer submits a technical proposal (as well as information on the ability of the tenderer to undertake the intended project) in one envelope and a bid in the other envelope. Tenderers are then first adjudicated on the submitted technical proposals, followed by a second round of adjudication based on submitted bids.
- 7 The two-envelope method has fallen into disfavour because, particularly on large projects, pricing a tender is usually not a trivial task and pricing strategies can, in fact, be quite complex. It is considered inequitable to require a tenderer to devote significant amounts of time and money to deriving a bid when, in the opinion of the client, he or she is not competent to undertake the project. On relatively small and straightforward projects, it does however have the advantage of shortening the time span between advertisement and award of contract.

31.5 PROCUREMENT

- 1 A somewhat different form of contract involves the procurement of supplies outside the scope of normal design, construction and maintenance contracts. It would be patently ridiculous for an authority to have to call for tenders every time a light bulb had to be replaced. As a public body, the road authority must, however, be able to account for all funds disbursed.
- 2 In effect, procurement contracts amount to the creation of a panel of preferred suppliers for specified products with prices agreed to for a finite period, usually one year in duration.
- 3 Apart from the benefit of the creation of a system whereby public accountability is subject to audit, a properly structured procurement contract relieves the client of the necessity for maintaining a large stores department carrying a variety of capital and consumable items.

31.6 SERVICE LEVEL AGREEMENTS

- 1 Service Level Agreements are another specialised form of contract. They are brought into play when a road authority elects to outsource one or other of the activities that would normally be carried out in-house. A case in point would be the maintenance of all its traffic signalisation equipment.
- 2 All the normal conditions of the contract previously described apply equally to the Service Level Agreement. What is additionally specified, is the extent and quality of service required. For example, the maximum acceptable time elapsed between a request for service and arrival on site would be defined in the agreement.

31.7 BIBLIOGRAPHY

- 1 SAICE, 1982, General Conditions of Contract, South African Institution of Civil Engineering, Johannesburg.
- 2 FIDIC, 1987, Conditions of contract for electrical and mechanical works including erection on site, with Forms of Tender and Agreement, International Federation of Consulting Engineers, Lausanne.