

2.1.4. Signing the contract with the relevant company

Notification of Award

On agreement with the Employer and the Funding Agency to the award of contract, the notification to the successful Tenderer should be made immediately in the form and detail specified in the tender documents. Negotiation must not be held with the successful Tenderer with the intention of getting a reduction in price or change of scope of the contract, except in exceptional circumstances.

The successful Tenderer must respond, accepting the award and furnishing the Employer with the necessary documents to enable the Employer to draw up the Contract for mutual signatures.

Most tender documentation specifies a finite tender period, during which the tender is valid after the tender opening date. This validity period is often 90 days and the Employer should normally reach the decision on awarding the contract within this period.

In exceptional cases, it may turn out that the evaluation and award decision is unavoidably delayed. In such cases it would be necessary to seek an extension of the validity of the tender, as follows:

- The request to extend the validity of tenders must be sent to all Tenderers who submitted tenders within the original period of tender validity.
- The request for extension must specify a reasonable period for the extension which would allow adequate time for completing the evaluation and arriving at an award decision.
- A Tenderer is free to turn down the request and not extend the validity of its tender without losing its tender security.
- Tenderers extending the validity of their tenders must arrange to extend the period of their tender security for the relevant period and submit the revised tender security with their notice of extension of validity.
- In fixed price contracts, the Employer must state, when requesting the extension, an adjustment factor to be applied to the tender price.

The request for extension must clearly specify:

- The period of extension requested.

- The deadline for responses to the request for extension (a minimum of fourteen (14) days is often allowed, but for large contracts a longer period, say twenty-one (21) days, may be more appropriate).
- In case of a fixed price contract, the adjustment for the period of extension should be spelled out.
- The request should be sent to the Tenderer's official address with a request for a confirmation of receipt by return in writing.
- Tenderers agreeing to such an extension cannot be required or permitted to change the price, scope or any other aspect of their tender as a condition of the extension.

The award of the contract concludes the procurement process, subject to the successful Tenderer providing all the necessary guarantees, bonds and signatures as required in the Tender Documentation to effect the contract.

CONTRACT

Contract is a binding agreement between two or more parties for performing, or refraining from performing, that the law will enforce. Although the word 'contract' often refers to a written document, writing is not always necessary to create a contract. An agreement may be binding on both parties even though it is oral.

The major elements needed to form a valid contract from a promise are as follows:

- **Offer:** It is the 'manifestation of willingness to enter into a bargain', which justifies another person in understanding that his assent can conclude the bargain. The law considers a construction bid to be an offer.
- Example: A says to B, "I'll sell you my house for 100,000, if you give me a check right now for 10,000 and promise to pay the rest within 10 days," this is an offer
- **Acceptance:** It is 'a manifestation of assent to the terms thereof made by the offeree in a manner required by the offer. In other words it is the expression of a willingness to abide by the terms of the offer or bid.
- Example: If B says, "Here is my 10,000 cheque, and I'll give the balance to you next week," this is an acceptance.

- **Consideration:** As a general rule, a contract will not be enforceable unless it is supported by ‘considerations’. A consideration is what each party gives up and what each party receives from the transaction.
- **Legal capacity:** The parties must have the legal capacity to form a contract. They must be over the age of majority, which is 18 in most countries.
- **Legal purpose:** The law will uphold contracts that have been entered into for a legal purpose.