

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

ARTICLE IX:6(b) NEGOTIATIONS
STUDY OF CERTAIN TYPES OF SERVICE CONTRACTS

ARCHITECTURAL AND CONSULTING ENGINEERING SERVICES

The present addendum compiles contributions from the European Economic Community in respect of Belgium, Denmark, France, the Federal Republic of Germany, Ireland, the Netherlands and the United Kingdom, and a reply from the United Kingdom on behalf of Hong Kong.

I. COMMERCIAL IMPLICATIONS FOR CODE COVERAGE OF THE SERVICE

A. Definition of the service sector

BELGIUM

Architectural services
Engineering consultancy services
Verification and control services

DENMARK¹

Definition: Consulting services in connection with planning, design and control of construction activities on real estate.

FRANCE

As defined in the relevant regulations, engineering and architectural services cover a vast area involving architecture and technology as well as economic matters, with a view to carrying out a building or civil engineering project or a construction comprising industrial components.

The present note concerns only these operations, to the exclusion of:

- specification studies (e.g. scheduling) which can be carried out either by the project owner if he has the means, or by independent specialized bodies (whether public or private);
- technical verification assignments consisting of opinions regarding the solidity of works and personal safety in the construction considered. Such assignments, which are compulsory only where so stipulated by law, can be entrusted only to officially approved persons or bodies;

¹The following answers do not include the sectors which are not covered by the GATT Agreement, i.e. railways, tele-sector and defence.

- organizational, supervisory and co-ordination assignments which concern on-site management and can be carried out either by the contracting authority under a specific contract or by the building contractor in the context of his works contract, or again by a private specialist in pursuance of a specific contract.

In the interest of broad coverage, the services referred to in this study comprise determination of assignments in regard to assistance to the project owner in preparing and awarding works contracts, and assignments designed to allow better project management, works supervision, financial administration of contracts and acceptance proposals.

The services taken into account in this note are those contracted with private-law service undertakings by the State and its public establishments, but only those of an administrative or scientific and cultural character. They include, inter alia, the central or external services, if any, of ministerial departments, universities, certain hospitals (national public establishments), etc.

They also include all private service undertakings which can operate in a variety of sectors (architects - technical development offices - consultant engineers - engineering firms - building-sector technicians - interior designers, etc.). They carry out assignments with regard to specification, design, consultancy, assistance, verification, co-ordination, supervision, etc.

The corresponding contracts are subject to the government procurement code in regard to their devolution, award and administration and by the Decree of 28 February 1973 as regards the specification, content and remuneration of assignments.

In the context of the 1973 regulations mentioned above, remuneration is no longer determined a posteriori in relation with the cost actually recorded, but a priori in relation with a "target cost", to which the engineering designer commits himself - allowing for a certain margin of accuracy. If that cost is reached, he receives maximum remuneration. To avoid over-estimating, if the cost of the project is less than that forecast the amount of remuneration is reduced slightly. If the estimate is exceeded, the fees are reduced in proportion to the excess but with a higher adjustment rate than in the first case.

Among the operations referred to above, those most currently undertaken by the project owners covered by this note concern in particular:

- in the building sector: constructions for schools, universities, hospitals, sports and social-educational projects, as well as public and industrial buildings;
- in the engineering sector: roads, highways, bridges, tunnels, etc.;
- as regards building projects comprising industrial components: thermal power stations, ventilation and air-conditioning plants, steam-producing district-heating installations.

FEDERAL REPUBLIC OF GERMANY

Architectural and Engineering Services - the liberal professions are specifically excluded from the coverage of the Federal Procurement Code and thus it is not possible for the Federal Republic to consider bringing such services under the coverage of the Code.

IRELAND

Architectural and Engineering Services - the State employs its own professional personnel for design and cost control, etc., purposes. It is only on rare occasions for specific large one-off projects that the State has recourse to firms in the private sector.

NETHERLANDS

Consultant Engineering - Definition: development contracts for specific technical part of larger projects.

Architect Services - Definition: building plans and advice on building costs, quality organization and control.

UNITED KINGDOM

The definition which has been used for this pilot study is:

Architecture

- planning, designing or supervision of erection, construction, enlargement or alteration of buildings of any kind or nature.

Consulting Engineering

- advisory services of a continuing nature or for particular projects or problems (e.g. inspection of production);
- preliminary investigations and feasibility reports on given project;
- preparation of detailed drawings, specifications and contract documents, and analysis of bids and recommendations thereon;
- supervision of construction, management and sometimes initial operation of project; and
- specialized design and development services (e.g. application of automatic controls to machinery or equipment).

Consulting engineers operate in any engineering field - civil, mechanical, electrical, electronic, industrial, etc. Main areas of activity are:

- municipal (e.g. sewage disposal, roads and streets);
- buildings (e.g. acoustics, ventilation);

- petroleum and natural gas;
- power generation, transmission and distribution;
- mining and metalurgy;
- plant process (e.g. production method design or evaluation);
- transportation;
- forestry and forest products, agriculture and fisheries;
- dams and irrigation;
- air and sea ports (design, management, etc.);
- telecommunications; and
- miscellaneous (e.g. interior design, pollution control, computer science).

UNITED KINGDOM ON BEHALF OF HONG KONG

The Government Supplies Department is Hong Kong's Code-covered entity; it has no dealings with architectural and consulting engineering contracts.

B. Current number and value of procurement contracts by signatory governments of the service

BELGIUM

There appear to be more contracts in the "building sector", but of smaller value, while the situation in the "communications" sector (in particular underground railways) is exactly the contrary.

Building: 229, i.e. + or - 89/year
+ or - BF1.470.00/contract

Communications:

- I. Extension of development contracts: approximately BF222,8 million (number of commitments: 50)

New development contracts: approximately BF118,3 million (number: 15)
- II. 1. Amount of fees for civil engineering: between BF0,255 million and BF70 million.

2. Amount of fees for finishing: between BF2 million and BF5 million.

DENMARK

The total amount is estimated to be about DKr 300 million per year.

FRANCE

Engineering and Architectural Contracts Awarded by
the State and its Administrative Establishments

Year 1982

PRODUCT	Total including Defence	
	Number	Amount (FF million)
Engineering and architectural contracts concerning:		
Building	1,127	238.6
Infrastructure	239	49.4
Industrial engineering	35	7.9
Other technical studies ²	856	764.9
Services furnished by architects quantity surveyors (re-parcelling etc.)	1,649	367.3
TOTAL	3,906	1,428.1

NETHERLANDS

Consultation Engineering: Ca. 100 contracts per year. In 1981 the State purchased f. 804 million in the area of consultant engineering and architectural services. It is not possible to define the share of Central Government in this figure.

Architect services: Number/Value - about 100 contracts per year. For value see Consultant Engineering.

UNITED KINGDOM

The number and value of commissions placed in 1982-83 by the major Government departments which engaged consultants was as follows:

¹ At this stage, it has not been possible to extract "military" contracts awarded by the Ministry of Defence.

² This heading can also include development contracts not covered by the note but which cannot be identified at this stage.

£million

	<u>Architecture</u>		<u>Engineering</u>	
	<u>Number</u>	<u>Value*</u>	<u>Number</u>	<u>Value*</u>
Property Services Agency of the Department of the Environment	258	10.7	830	21.4
Department of Transport	-	-	46	36
Scottish Office	2	0.2	23	1.2
Welsh Office	4	0.3	7	35.5
Northern Ireland	3	0.1	7	0.1
Home Office	165	2.5	399	6.1
Royal Mint	1	.005	6	.03

There are no import/export figures for these Services.

II. QUESTIONS REGARDING THE PROCUREMENT OF THIS SERVICE BY GOVERNMENT ENTITIES:

A. What are the procedures used to procure the service, including the criteria used in evaluating and choosing bids, e.g. reliability, price, quality, etc.?

BELGIUM (both buildings and communications)

- (a) - in general, negotiated tender;
- or inserted in company contracts in the case of stability studies;
- exceptional, competitions for architectural projects in accordance with the rules of the International Union of Architects;
- (b) - registration in the rolls of the professional institute as regards acceptability;
- professional capability;
- references;

*Values relate to the full value of fees for the duration of the project, not just an amount allocated to 1982-83.

- qualities of the project (urbanism, architecture, technology, etc.);
- economic aspect.

FRANCE

General procedures (Article 108 bis of the Procurement Code):

- tendering with competition;
- or negotiated after competition.

Special procedures:

- negotiated without competition (Articles 104 and 108 bis);
- on basis of written submission (Article 123).

The procedure of tendering with competition, in response to a public invitation to tender, can be in one stage (selection on simplified summary preliminary draft) or two stages (first stage: selection of outline; second stage: selection on simplified summary preliminary draft).

This is the procedure normally used for important or complex operations.

The procedure of negotiating a contract after competition does not require any public invitation to tender. Opening of a competition can at present be limited to examining the references and capabilities of candidates (simplified procedure) if the foreseeable remuneration does not exceed FF 350,000 (including taxes and charges).

This procedure is used for operations of small or medium importance and complexity.

Contracts can be negotiated without competition only in very special cases and within limits laid down in the procurement code. For example: existence of a patent, licence or exclusive rights held by one conceptual designer only.

At present, the procedure of contract award on the basis of a written submission - which does not involve the establishment of a contract as such, but only a written order - can only be applied when the foreseeable remuneration does not exceed FF 150,000.

Selection criteria for candidates

The dominant criterion is always architectural quality and technical reliability. Additional criteria concern evaluation of target cost, complexity rating and amount of remuneration as well as time-limit for preparing the documents studied.

NETHERLANDS

Procedures (both types of services): Selective procedures and single tendering.

In the case of architectural competitions, open procedures are used.

UNITED KINGDOM

There are no major commercial implications for including this service as part of the Agreement. Public sector bodies already award commissions for architecture and consulting engineering services on the basis of reputation, proven ability and financial soundness. Consultants must be members of the appropriate British professional institution in order that they may be eligible to carry out work for United Kingdom Government departments. Where a project is to be designed and built abroad, however, consultants from that country may be used.

B. In the procurement of this service by governments, are there problems in defining the origin?

BELGIUM AND DENMARK

No.

FRANCE

Definition of origin does not seem to give rise to any particular difficulties for this type of contract.

NETHERLANDS

Origin - Determined by the address of the awardee (both types of services).

UNITED KINGDOM

Provided the origin of the service is classified on the basis of the location of the firm offering the Service, there should be no difficulty. Where international firms are employed there could be technical difficulties if it was considered desirable to try to apportion where the work was actually done.

C. Does the procurement of this service typically involve sub-contracting?

BELGIUM

Normally not, but not excluded in engineering.

DENMARK

No.

FRANCE

Engineering and architectural contracts can involve sub-contracting. As a general rule, joint contracting - involving a group of joint contractors - is recommended and in practice is preferred to sub-contracting. In these circumstances, sub-contracting is not very frequent.

NETHERLANDS

Sub-contracting - from time to time, in particular for highly specialized parts of the contract (consultant engineering).

Sub-contracting exists (architect services).

UNITED KINGDOM

Not normally, though occasionally consultants may sub-contract for specialist advice not available within their own practice. For Department of Transport schemes it is usual to sub-contract site supervisory staff, the cost of whom is often the major element of the fee.

- D. Are there issues or ambiguities concerning the valuation of the service procurement contract, including, inter alia:
1. Is the procurement of the service in some cases not the purchase of a discrete service, but rather a contract for ongoing, possibly open-ended work?

BELGIUM

No, all contracts of this kind concern building with a specified time-frame.

DENMARK

There are only few cases of open-ended work and multi-year contracts.

FRANCE

Engineering and architectural contracts indeed concern operations of some duration; in the majority of cases, however, the duration can be pre-determined fairly closely and does not give rise to any problem. Because of the diversity of situations, however, no meaningful average duration can be indicated.

NETHERLANDS

Majority of contracts are open-ended (consulting engineering).

Small contracts are clearly defined; larger contracts are usually open-ended (architect services).

UNITED KINGDOM

The Property Services Agency (PSA) normally places a "term commission" - a type of call-off contract - where a number of small value projects are expected to arise over a period within a fairly small area. Term commissions are let for a specified period, normally up to two years, and are subject to financial limits on both the fees for any one project, and on the estimated annual fee value of all projects on which services are to be provided (currently, £10,000 and £100,000 respectively). There is otherwise no limit to the scope of the services to be provided. Other departments, apart from PSA, do not place term commissions to the same extent.

2. Is the procurement of the service done in some cases through multi-year contracts?

BELGIUM

Yes, in the case of comprehensive maintenance and servicing contracts for large-scale heating and ventilation installations.

DENMARK

See under D.1 above.

FRANCE

Yes, for reasons of financing contracts can provide for firm instalments and conditional instalments.

NETHERLANDS

Consulting engineering contracts are from time to time multi-year. Architect contracts running over several years are regularly awarded.

UNITED KINGDOM

Appointments other than term commissions are related to a single scheme or project for which the design may span a number of years, generally between one and ten, depending on the complexity of the project and the extent of the service required.

3. Is there ambiguity as to what would be considered the value of the service procurement contract?

BELGIUM

No, it is expressed as a percentage of the cost.

FRANCE

No, the value of the contract, which corresponds to the designer's remuneration, is determined by regulation in relation with the cost of the project envisaged, the content of the assignment and the complexity of implementation.

NETHERLANDS

Consulting engineering: It is difficult to determine the value of existing and running contracts.

Architect services: It is difficult to determine the value of large contracts running over several years.

UNITED KINGDOM

Yes, at the time of commissioning. Fees are currently paid on set scales which depend on the value of the work assessed at tender stage. Before the project is begun fees can only be assessed as a percentage of an

estimate of the cost of the project. The United Kingdom Government is in the process of changing from a set scale of fees system to one based on competitive/negotiated fees, but the difficulty of estimating the value of the service at the time of commissioning will remain.

E. Further characteristics of government procurement of this service, such as:

1. What is the range of typical values of government contracts in this area? Do the bulk of purchases typically exceed a certain value?

BELGIUM

The range of typical values is approximately 50 per cent.

DENMARK

Typical value of contracts: DKr 200,000-500,000.

FRANCE

Because of the very great variety of contracts, it is not feasible to establish any typical value or to calculate an average or representative range.

NETHERLANDS

It is not possible to define a typical consulting engineering contract. Contracts can run up to several million guilders.

The value of the contract in architecture can be extremely high - several million guilders.

UNITED KINGDOM

There is no typical value of commissions since the fee depends on the size of the project.

2. What is the typical time necessary in the procurement process of this service between invitation to tender and bid deadline?

BELGIUM

The time necessary depends on the nature of the contract. There is no rule.

DENMARK

Time necessary between invitation to tender and bid deadline: about two months.

FRANCE

The time necessary to conclude the contract, as from the deadline for tendering is variable. This time period, which must be indicated in the letter of commitment, is left to the appreciation of the project owner, in

relation with the complexity of the operation and administrative constraints. The "model letter of commitment" annexed to the regulations provides for a period of 100 days for conventional operations.

NETHERLANDS

Consulting engineering: In competitive tenders time limits are fixed compatible with the exigencies of the project. For single tenders the classical concept of time limits does not exist.

Architect services: In selective and single tender procedures the time limits are agreed by the parties concerned. In competitions the limits can be extremely long.

UNITED KINGDOM

Because fees currently depend on a set scale, we have no experience of tendering periods. When in the near future commissions start to be placed on a competitive or negotiated fee basis the tendering period must depend on the complexity of the project and the brief which the consultant must assimilate. It seems doubtful, therefore, whether there will be a typical tendering period.

F. Are there practices that affect foreign access to government contracts in this service area?

BELGIUM

Yes, the law of 26 June 1983 - M.B. of 5 July 1963 - establishing an Institute of Architects - Article 5 - requirement of registration in the rolls of the Institute - Article 8:3 - Belgian nationals and foreigners exercising the profession of architect abroad and wishing to exercise their profession in Belgium, on an occasional basis, are required to obtain prior authorization from the Council of the Institute within whose sphere of responsibility they intend to exercise their activities, except where the second paragraph of the present Article has been applied.

FRANCE

In the field of engineering and architecture, there is no requirement to publish invitations to tender in the OJEC. Certain projects of national significance have been, or are being, entrusted in part to foreign designers (Centre Pompidou-Beaubourg, "Défense" development, Louvre complex, Opéra de la Bastille, etc.).

Furthermore, award of a contract implies that the awardee must observe all the French regulations applicable to the subject of the contract. In the area of building and public works, the fact that each country has its own regulations can result in implementation difficulties if the awardee is not fully conversant with the applicable regulations.

Accordingly, in the case of contracts awarded to foreign conceptual designers, French conceptual designers are regularly appointed to work with them, being fully conversant with the regulations and practices in force in France.

The participation of French conceptual designers is likewise justified by the need to have a team on the spot to ensure proper verification and supervision of implementation.

NETHERLANDS

Consulting engineering: The distance between purchaser and the awardee can present an obstacle. Very specific expertise is purchased on a worldwide basis.

Architect services: Distance between the potential partners is a substantial barrier.

UNITED KINGDOM

None other than those mentioned under II.A above.