

## Turnkey Contracts - the Client's Perspective

By Daniel Alain Dagenais



Turnkey contracts are popular with clients and several analysts continue to suggest that a significant number, if not the majority, of major constructions will henceforth be executed under this contractual framework.

Nevertheless, in spite of its popularity, the turnkey contract is not adapted to every situation. This bulletin aims to define its attributes, to facilitate the decision as to whether or not to enter into this type of contract. Even though this type of contract can take several forms, we can isolate certain characteristics that allow us to paint a general picture of both the benefits and disadvantages of this formula.

### Main Benefits

The first benefit is no doubt the fact that the client transacts with a single supplier for both the design and the execution of the project, which simplifies its management. But there is more.

Indeed, right at the outset, once his needs are precisely defined, the client may be presented with as many solutions as there are bidders, providing him with options that he would not have otherwise been aware of.

Turnkey contracts are usually entered into on a fixed amount basis as the formula works better in this context. The supplier therefore assumes the bulk of the risks related to the construction, which he must deliver as agreed and within the time-frame provided. The client assumes fewer risks and is less likely to face claims for costs overruns.

In addition, since he is responsible for the design, general contracting and execution of all specialized work, it is generally easier for the supplier to provide the client with a performance guarantee that not only will the project be completed, but that it will also achieve the expected performance.

Finally, when a problem occurs, it is not necessary for the client to determine which participant is at fault since he only has to deal with a single supplier.

Among other benefits, the following must be emphasized:

- it is possible to accelerate the project, since construction can begin even before the design process is completed;
- the client can benefit from the skills of the constructor earlier in the project;
- the client can obtain a definite price more rapidly;
- it is possible to reduce or eliminate the change orders; and
- fewer disputes are likely to occur and, if they do, will be easier to resolve.

### Constraints

However, the formula is not a panacea.

The client relinquishes for the most part the control he would otherwise exercise on the project and its evolution.

He must, right at the outset, be in a position to provide the bidder with a very accurate description of his needs and he does not benefit from the services of a professional with whom he would have been able to consult during the design process, the bidding process and even beyond. Of course, the client can always hire an independent professional to help him determine his needs and supervise construction, but apart from the increase in costs that this entails, the professional himself will, for the most part, be kept outside of the design and execution processes, which are controlled by the supplier.



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Where several bidders propose different concepts, it may prove difficult to compare prices and to choose the best proposal.

Since estimate costs are high, there is also the risk that fewer bidders will be interested in taking part in the bidding process. Accordingly, there may be less competition on prices and delivery times.

Since the supplier assumes more risks, he may increase his bid price correspondingly.

During execution, if the supplier is confronted with unexpected difficulties, he may be inclined to skimp on elements that could bear on the longevity, reliability or ease of maintenance of the work, this in a context where the client is not in the best of positions to supervise the work, that is, to supervise the quality of execution, adjust the design according to unexpected circumstances, authorize the payments, monitor compliance with deadlines and review requests for extras.

Finally, in case of a major difficulty, the solvency of the sole supplier becomes the key issue.

### Useful Precautions

Solutions that enable to compensate for these disadvantages generally translate into an increase of the construction cost.

For example, an internal or external project management team may be set up to define the owner's needs as well as monitor the progress of the work.

Experience shows that turnkey projects are more successful when the client is able to accurately indicate his needs and the financial resources available to him to realize the project. Where the client's expectations are not clear, dissatisfaction becomes a certainty for all participants.

It is also preferable that the client reserves some control at several critical phases of the project and establishes balanced payment methods.

It is also recommended that the owner, particularly where he deals with a joint venture, ascertains that the liability insurance of the designers and the surety bonds really apply to the project and do not feature limits or exclusions that would reduce or negate the protection that they offer. Indeed, products available on this market are generally not conceived for turnkey projects, even more so for turnkey projects executed by a joint venture.

One must also make sure that the joint venture will last at least as long as the various protection mechanisms or that each participant in the joint venture remains personally liable for the obligations of the joint venture in their entirety.

One must also make sure that the client can independently seek enforcement of the warranties given by the subcontractors and suppliers, notwithstanding the fact that he did not contract directly with them.

This bulletin only aims to provide general information about turnkey contracts. Please contact Mr. Daniel Alain Dagenais at (514) 877-2924 for an analysis of the specific circumstances of your project.

The *Lavery, de Billy* team of specialists in Construction and Surety Law can also organize seminars for your personnel to inform them on legal aspects relating to construction and orient them as to compliance therewith. Our specialists will be pleased to provide you with advice and help you implement relevant and efficient solutions to the problems that you face.

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