



# BMH AVOCATS

## LEGAL TOOLBOX #4 PUBLIC WORKS CONTRACTS IN FRANCE

### QUESTION

### ANSWER

**What is a public works contract under French law?**

The purpose of a public works contract is either (i) the execution or design and execution of works listed in a notice attached to the said Code, or (ii) the execution or design and execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority, which has a decisive influence on the nature or design of the work.

**How does the contracting authority choose its contractor?**

In certain cases, the contractor may be chosen **without prior advertising or competitive procedures**, for instance when the estimated value of the contract is **less than €40,000**.

When the estimated value of the contract is **equal to or greater than €40,000 but less than €5,350,000 excluding VAT to date**, the contract may be awarded following an **adapted procedure (*procédure adaptée*)** whose conditions are freely determined by the contracting authority.

When the estimated **value of the contract exceeds €5,350,000 excluding VAT to date**, the contractor must be chosen through a **formal procedure (*procédure formalisée*)**. In most cases, it comprises a call for tenders (*appel d'offres*).

**What are the rules governing the performance of public works?**

The French public procurement Code sets out certain rules applicable to all procurement contracts concluded by public legal bodies (the State, public administrative establishments, local authorities, etc.).

The contract documents usually refer to the **general administrative clauses (*Cahier des clauses administratives générales*)** applicable to public works contracts.

For each contract, the **special administrative clauses (*Cahier des clauses administratives particulières*)** contain a list of the general documents applicable as well as the "administrative" provisions specific to that contract.

**According to which criteria are the candidates' bids assessed?**

The contracting authority determines the "**economically most advantageous offer**" (*l'offre économiquement la plus avantageuse*) on the basis of one or more objective and precise criteria, which, together with implementation modalities, must be specified in the tender documents.



**Can the contractor use subcontractor(s)?**

The contractor is in principle bound to **perform the contract personally**. Subcontractors can be used subject to their authorization and approval of their terms of payment by the contracting authority.



**Can the parties amend the contract during its performance?**

The contracting authority may unilaterally amend the public works contract, for instance by requesting additional or modifying works. The payment of these extra works is subject to specific conditions. **The contractor is not empowered to do the same.**

**Can the contractor refuse to perform the contract?**

Yes, but only if the amount of the work referred to in the "service order" received from the contracting authority exceeds one tenth of the contract amount. The contractor may always **express reservations** concerning the service orders, which may have to be taken over when the definitive general statement of fees is drawn up.

**How and when is the reception of works carried out?**



The contractor must notify the contracting authority and the project supervisor (*Maître d'œuvre*) in writing of **the date on which he considers that the works have been or will be completed.**

**Pre-acceptance operations** (*opérations préalables à la réception*) of the works are carried out in the presence of the contractor by the project manager, who draws up a report. This report and the project manager's proposals are forwarded to the contracting authority, which decides whether or not to accept the work or whether to accept them with reservations.

**How is the definitive general statement of fees (*décompte général et définitif*) drawn up?**

After completion of the works, the contractor draws up its draft final statement of fees (*projet de décompte final*). The project supervisor (*Maître d'œuvre*) draws up the draft general statement of fees (*projet de décompte général*) and sends it to the contracting authority. Once this draft is signed by the contracting authority, it becomes the definitive general statement of fees (*décompte général et définitif*) which is then sent back to the contractor.

**How are disputes between the contracting authority and the contractor resolved?**

The contractor must first draw up a **statement of claim** (*mémoire en réclamation*) setting out the grounds for the dispute and, if need be, the amounts requested. If no favourable response is given to this statement of claim, the contractor may bring the same requests before the **administrative court**, submit the dispute to the **advisory committee on friendly settlement** (*comité consultatif de règlement amiable*) or have recourse to **conciliation or arbitration.**



**Wish to learn more?**

The legislation regarding public works contract in France is full of traps, so contact us first!

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## About this factsheet

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