

Engineering and Construction Short Contract (ECSC)

THE ECSC PACKAGE

The ECSC package includes the conditions of contract and forms which, when filled in, make up a complete contract. The forms are on pages 1 to 9 of the package and are provided for:

- The title page
- Contract Data
- The Contractor's Offer
- The Employer's Acceptance
- Price List
- Works Information
- Site Information

Stage A: How an Employer invites tenders for a job

The Employer uses the package to invite tenders for proposed works by providing the following information on the forms and sending the package to tenderers with the invitation to tender:

- **The title page (p 1) - see example A1**
- **Contract Data (pp 2 & 3) - see example A2**
- **The Contractor's Offer and the Employer's Acceptance (p 4) -leave blank**
- **Price List (p 5) - see notes on cl. 50.3**

Entries in the first four columns in this Price List are made either by the *Employer* or the tendering contractor. If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the expected quantity to produce the Price which is also entered.

- Works Information (pp 6-8) (see notes on els. 11.2(3) and 60.1(1))

The Works Information should be a complete and precise statement of the Employer's requirements. If it is incomplete or imprecise there is a risk that the Contractor will interpret it differently to the Employer's intention. Information provided by the Contractor should be listed in the Works Information only if the Employer is satisfied that it is required, is part of a complete statement of the Employer's requirements and is consistent with the other parts of the Works Information.

1. Description of the works

Give a detailed description of what the Contractor is required to do and of any work the Contractor is to design.

2. Drawings

List the drawings applicable to this contract.

3. Specifications List the specifications applicable to this contract

It is important that these are thoroughly prepared and comprehensive because the ECSC definition of a Defect (cl. 11.2(9)) is based entirely on the Works Information. Include in the specifications details of:

- quality standards for design (if any) and construction,
- any tests and testing procedures required and
- any specific Equipment and methods of construction to be used.

4. Constraints on how the Contractor Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work. Refer to any specific constraints relating to the country where the site is. These may include provisions such as a labour intensive approach using appropriate technology, and maximising local employment.

The Contractor should be allowed to subcontract work without any limit (cl. 21.1). However, the Employer may wish to limit the extent of subcontracting if, for example, the Contractor is being selected for a particular expertise. The Employer may also wish to provide lists of subcontractors and suppliers who would be acceptable for specific categories of work or supplies. Any such constraints should be stated here.

If the Contractor's work needs to be co-ordinated with other activities or contracts before Completion, define the parts of the works affected and state the dates by which each is to be completed.

5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

The programme may take the form of a list of dates, bar chart or network diagram etc.
The information to be shown on the programme should include at least

- the starting date
- the Completion Date,
- the Contractor's planned Completion,
- key dates for the Employer to provide "services and other things" (not earlier than the dates stated in part 6 of the Works Information) and
- key dates for co-ordination with other contracts (see part 4 above).

If there is anything unusual about the Employer's intended use of the works after Completion, state in the description of the works (part 1 above) what the intended use is to be. For example selling or leasing to other people or passing on to a later stage of construction (cl. 11.2(8)).

6. Services and other things provided by the Employer

Describe what the Employer will provide such as services (including water and electricity) and "free issue" Plant and Materials and equipment

The descriptions should include the capacities available and the location of connection points.

If the Employer wishes to retain any surplus Plant and Materials they should be listed here (see notes on cl. 70.2).

- **Site Information (p9) - see notes on el. 11.2(4), 60.1(12) and 60.2.**

Give information about the site such as the ground conditions and any other information which is likely to affect the Contractor's, work such as limitations on access and the position of adjacent structures.

The information on ground conditions should include references to publicly available information relevant to the Contractor's work (cl. 60.2) and information about underground or otherwise concealed services which would not be apparent from a visual inspection of the site.

- **Invitation to tender**

The Employer's invitation to tender should include a list of suggested adjudicators from which the tenderers are asked to choose one (see notes on cl. 94.1).

The invitation to tender may also include other matters, for example,

- any constraints on how the Price List should be used for the submission offenders,
- if (he Employer requires tenderers to give names and details of supervisory staff, Equipment to be used and methods of construction, the information should be requested in the invitation to tender, Normally it should be stated that any such details should not form part of the Contract and are provided for information only,
- in some circumstances the Employer may also wish to draw the attention of tenderers to local employment legislation and health and safety legislation and may also emphasise the importance of gender equality (equal opportunities, equal pay for work of equal value), minimum age of employment and protection of wages (to ensure wages are paid on time and in cash).

Stage B: How a tenderer makes an offer

A tenderer uses the package to make an offer by providing information on the following forms:

- Price List (p5) - see notes under stage A and on cl. 50.3
- The Contractor's Offer (p4) - see example BI,

Enter the total of the Prices from the Price List.

The tenderer's covering letter should also include the following:

- the tenderer's choice of adjudicator from the list suggested by the Employer or, if none is acceptable, the tenderer's own suggestions,
- any extra Works Information proposed by the tenderer,
- any additional information asked for by the Employer in the invitation to tender such as
- names and particulars of tenderer's supervisory staff or work force proposed and
- proposals for Equipment to be used.

The letter should also make it clear if any part of the Contractor's, Offer does not comply with the Contract Data or the Works Information provided by the Employer.

Stage C: How a contract is made

The package becomes the complete contract document when the Employer makes the following additional entries and sends a copy to the Contractor who has made the chosen offer:

- The Employer's, Acceptance of the Offer (p4) - see example C1.
- The title page (pi)- Contractor's name added - see example C2.
- Contract Data (p2) - Adjudicator's name added - see example C3.

Under the law of England and Wales, the contract between the Employer and the Contractor is then made. There may be other requirements in other jurisdictions.

The ECSC uses a simple offer (The Contractor's Offer p4) and acceptance (The Employer's Acceptance p4) to create a contract. It is emphasised that this is the most efficient and clear way of creating a simple contract and users should aim to achieve this. However if

- the tenderer's covering letter requires changes to the documents (other than to incorporate the addition of the accepted Adjudicator) or
- the Employer has issued supplements to the invitation to tender amending the documents,

these need to be recorded with the Contractor's Offer or the Employer's Acceptance.

This is achieved either by

- the Tenderer adding after the offered total of the Prices: "This offer includes our covering letter Reference..... Dated" or
- the Employer adding into the Employer's Acceptance before the signature: "The Offer includes the information provided in....."

(This is either the tenderers covering letter if not already mentioned in the Contractor's Offer or a document or summary agreed by the two parties after the tender was received).