

Building Contract in Sweden – Legal Points, Approval and Warranties.

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Four different parts in the building contract

Normally a building contract consists of four different parts that are a result of the process to get an building contractor to commit to a job that a builder wants to be done. Below these four different steps are described.

The Specification

The first step that has to be taken when a building contract is to be created is to specify what is to be built. This is done in a specification. The specification is very important because it establishes the performance of the building. By sending out the same specification to each building contractor ensures that the building contractor calculates on the same things. The two basic things in a specification are a room description and a drawing. The specification can be designed in two different ways depending on what kind of construction form the builder wants to have.

If it is a Design-Construction that is to be done, the builder has to include the design in the specification.

If it is a Turn-Key contract the specification does not include the design, only the function of the building.

The Offer

Once the building contractor has calculated the cost of carrying out the content of the specification they send the builder a quotation, which basically indicates how much they will charge to do the job that is described in the specification.

The building contractor also has the possibility of including reservations into the offer if they feel that there are uncertainties in some parts in the specification.

The Acceptance

The builder then has to choose to either reject the tender or to accept it. They accept it by sending the building contractor an acceptance in written form.

The Contract

Once the builder has accepted the tender the building contractor has delivered, the parties normally sign a contract. The contract shall be in a written form and refer to the other, underlying parts of the contract, which is:

- The Specification
- The tender
- The acceptance

The factors that normally are regulated by the contract between the two parties are:

- Name of the parties
- The scale and design of the commitment.
- The price.
- Regulations of payment
- Times for commencement and completion.

Different kinds of procurement forms

Procurement form

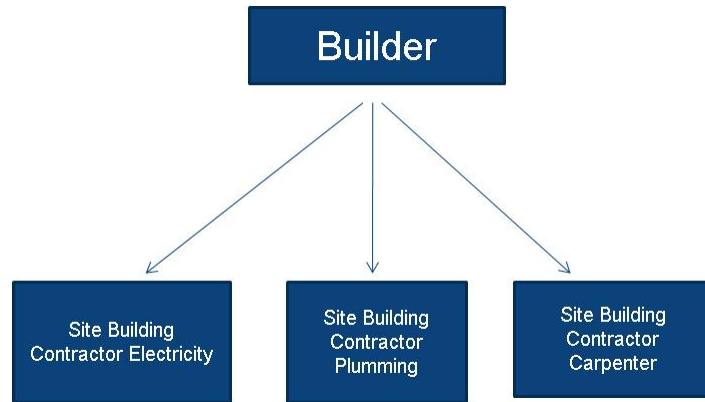
There are different ways that the builder can ask the building contractor in order to get a quotation. The reason for this is that there are different professions and the builder has to decide if they will receive one offer from all of the professions together or one offer from each one of them in turn. The three most common ways of asking the building contractors is illustrated below.

Shared Contracting

The first procurement form presented here is the Shared Contracting. This means that the builder sends the tender to different site building contractors in each profession one by one separately. It could for instance be to an electrician, a plumber

and a carpenter. The builder then has one offer from each building contractor in each profession to take care of.

The figure below illustrates Shared Contracting as a Procurement-form

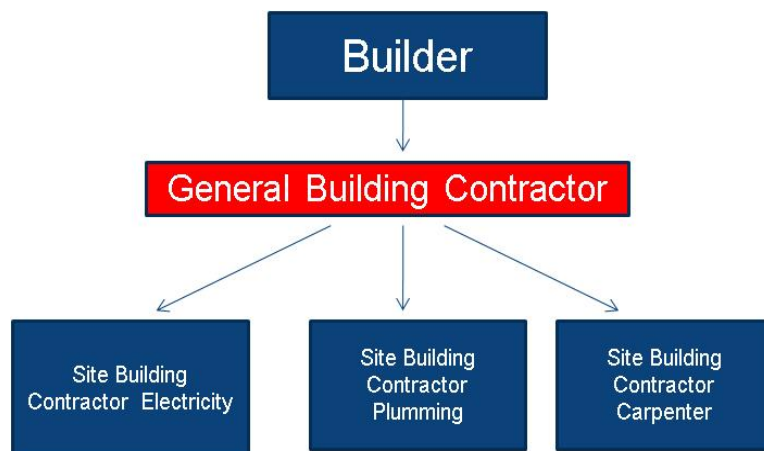


Shared Contracting as a Procurement form.

General Contracting

The second form presented here is the general contracting. This means that the builder sends the tender to one certain general building contractor which in turn asks site building contractors for their tenders. Each site building contractor gives the general building contractor the quotation and the general building contractor compiles the offers and presents them to the builder.

The figure below illustrates General Contracting as a Procurement-form.

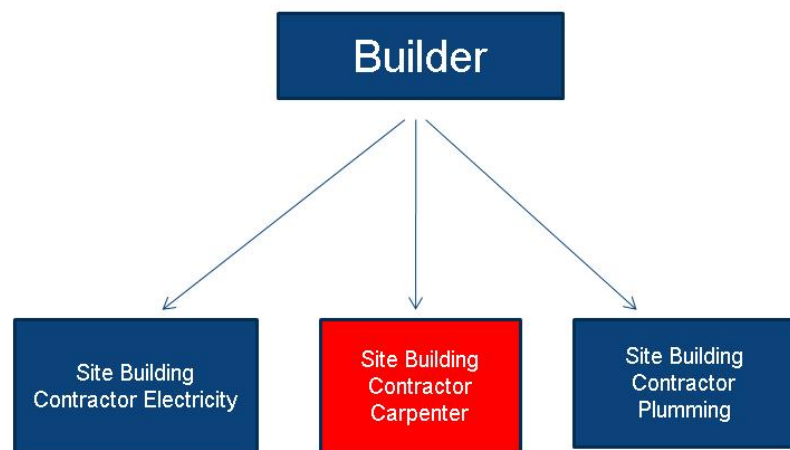


General Contracting as a Procurement-form.

Coordinated General Contracting

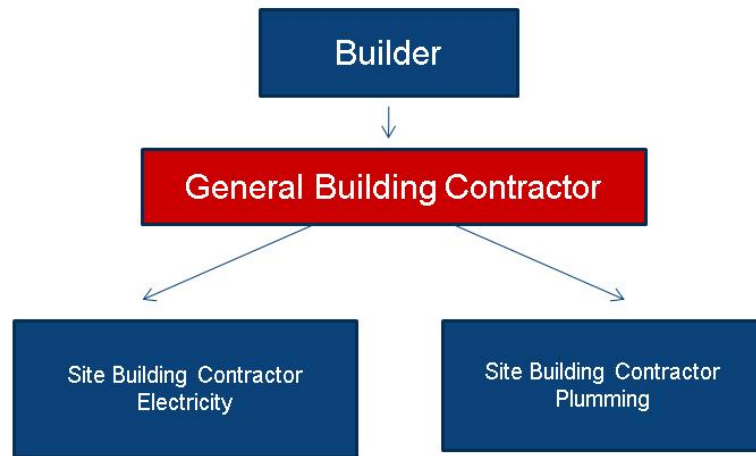
The third form presented is the Coordinated General Contracting. This means that the builder sends the request for tender to all building contractors in the same way as the shared contracting. When the contract is completed in the next phase the contracts are transferred to one of the building contractors which then becomes the General-building contractor in the execution phase.

The figure below illustrates the first step of Coordinated General Contracting as a Procurement-form.



General Contracting as a Procurement form.

The figure below illustrates the second step of Coordinated General Contracting as a Procurement-form.



The figure above illustrates the second step of Coordinated General Contracting as a Procurement-form.

Different kinds of construction form

Design Construction

This means that the builders arranges, provides and are fully responsible for the design and planning. The building contractor just has to strictly follow the documentation they receive from the builder. The building contractor builds exactly after the documentation he has received from the builder.

This form of construction means the builder has the responsibility for the functional responsibilities. For the builder it is easy to calculate a price and their guarantee commitments are less burdensome compared with the Turnkey Contract-form.

Turnkey Contract

This means that the builder only needs to specify the functional requirements. The building contractor then has to do the design and planning based on the functional requirements.

This form of construction means the building contractor takes a major responsibility in the design and planning phase.

Legal framework for the two different constructions forms

In Sweden there is a framework or so called general provisions of laws that are adapted to the two construction-forms which are mentioned above, Design Construction and Turn Key Contract. These two frameworks are called AB 04 for Design Construction and ABT 06 for Turnkey Contract. The purpose with these two frameworks is that if two parties goes into a contract with the form Design Construction or Turnkey Construction they do not have to create a whole contract with every thing written down. They just refer in the contract that AB 04 or ABT 06 shall be followed if the contract does not say anything else.

The subjects that are regulated in AB 04 and ABT 06, is listed below together with a short explanation:

The extent of the contract

This part treats the coverage of the commitment. For instance it stipulates that the building contractor is obliged to recognize the conditions of the workplace by visiting it.

The execution of the contract

This chapter stipulates how the execution shall be carried out if nothing about this is mentioned in the contract. For example the paragraph stipulates that the work should be carried out in the level of professionalism that is to be expected from a certain profession in the area.

The organization

This chapter describes the types of organization and the level of competence that is required from both parts.

Construction time

The chapter treats how the building contractor is obliged to follow the construction time that is determined in the contract and what happens if they do not. It also handles a couple of obstacles that the building contractor can not be responsible for and will not be punished for.

Responsibilities and remedial

This chapter regulates the responsibilities between the builder and the building contractor. The paragraph says that the building contractor is responsible for part of the construction that is not delivered to the builder. It also says that the building contractor is responsible for damages that occur during the warranty-time.

Economy

This chapter regulates how the financial compensation shall be done.

There are for instance two different types of reimbursement forms that the parties can use.

The first one is called current account. This means that the final cost is not known in advance. The building contractor reports frequently the costs to the builder and the builder has the opportunity to adjust the execution of the work during the process.

The second type of reimbursement form is called fixed price. This means that the two parties in advance set a price. This price can then be changed according to the amount of additional or outgoing work that the builder orders from the building contractor

There are a couple of circumstances the building contractor has the right to charge more than the initial contract sum stipulated. This might be the case when the conditions changes during the construction. These changes are called alteration and additional works. AB04 and ABT06 regulate how much the building contractor is entitled to charge due to the changes. This might be the case if there have been changes of the cost due to governmental decisions or nature disasters.

Inspection

The only way to declare that a construction or a part of a construction is finished is to inspect the construction. This chapter regulates in what way this is done, and what will happen if the inspection does not get approved.

The inspection will be carried out by an inspector that has the right authorization. It is the builder that is entitled to choose inspector.

You normally make three different types of inspections in a project.

Pre-inspection:

This inspection is appropriate if the part that will be inspected is closed for visual inspection in the next phase of the project. It is also appropriate to do if a correction will be much more expensive to fix in a later stage. The pre-inspection is most common on big projects.

Final inspection:

This inspection is done when everything is considered to be completed. When the final inspection is approved the whole project is considered to be completed. When this is done, and the final inspection is approved, the builder has to pay the rest of the contract sum to the building contractor.

The day after the final inspection has been approved the warranty-time starts to run.

Warranty Inspection:

The warranty inspection is done in the same moment that the warranty time is running out. It is the builder that shall convene to the warranty-inspection.

The purpose with the warranty inspection is to note defects and damages that have occurred during the warranty time. These types of damages that are pointed out in the warranty inspection the building contractor is obliged to fix.

Supreme Inspection

Both of the parties have the opportunity to call for a supreme inspection. This is done when one of the parties does not accept the normal final inspection. The supreme inspection is carried out of one person or a supreme inspection court consisting of three people with one chairman. The result of the supreme inspection has to be followed by both parties.

Cancellation

The builder has the right to cancel the contract if a couple of circumstances have occurred.

These are:

- If the contract is delayed in a way that there is no possibility to finish the work in time according to the contract.
- If the building contractor does not restart the work after the building contractor has stopped the work due to withholding payment from the builder.
- If part of the contract has been carried out in the wrong way and the building contractor does not correct the mistakes.
- If the building contractor is going bankrupt.

Dispute Resolution

If a dispute occurs between the parties the first step is to appoint an impartial arbitrator person. This person might be specified in the contract in advance.

Within a week after that an arbitrator-person has been appointed, both parties have to express their opinion in the matter in written form. The document shall be sent over to the arbitrator as well as to the opposite party. The opposite party then has one opportunity to express their opinion about then content from the complaining part.

The arbitrator then has to give their judgement in the matter within four weeks.

Both parties have the opportunity to appeal the matter to the general court.