



Standard Forms of Contract

What rules are usual when constructing for public entities?

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Public Entities in Switzerland

- Federal Administration
- Cantons (26)
- Cities & Communities (> 2'000)
- Entirely or partially state-owned companies (e.g. public transport, energy, telecommunication etc.)
- Others (e.g. Swiss Federal Institute of Technology Zürich)

Principles when constructing for Public Entities

- Contracts are governed by private law

Art. 363 – 379 Code of Obligations

SIA Norm 118 (2013) (Swiss society of engineers and architects)

- No special law for contracts with public entities
- Freedom to contract
- No special limitations

KBOB

- KBOB = Koordinationskonferenz der Bau- und Liegenschaftsorgane der öffentlichen Bauherren / Coordination of Federal Building and Real Estate Authorities
- Members inter alia: federal ministries, ETH, association of cities and communities
- www.kbob.admin.ch
<https://www.kbob.admin.ch/kbob/de/home/publikationen/dokumente-entlang-des-beschaffungsablaufs.html>

KBOB

- Versions in German, French and Italian
- Intention to have «well-balanced» standard contract forms, especially total and general contractor agreements
- Intention to align with SIA-Norm 118 (2013)

Abuse of market power?

- Due to procurement law it is easier for the state to enforce conditions (« take it or leave it »)
- Negotiating clauses bears the risk of disqualification
- Abuse of market power?
 - Kartellgesetz (Federal Act on Cartels and other Restraints of Competition)
 - Art. 7 KG « Unfair conditions of Trade »

Commitment to fairness?

Are public entities bound to special fairness rules? In principle, the state has to seek for fair and balanced construction contracts.

Ex.: is it justified if public entities require guarantees on first demand?

Thank you

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