



OULUN SEUDUN AMMATTIKORKEAKOULU – OSANA ELÄMÄÄ





Audit of public construction works in Finland

SINAOP Symposium, Cuiabá

**Initial for the theme of
Construction planning and sustainability**

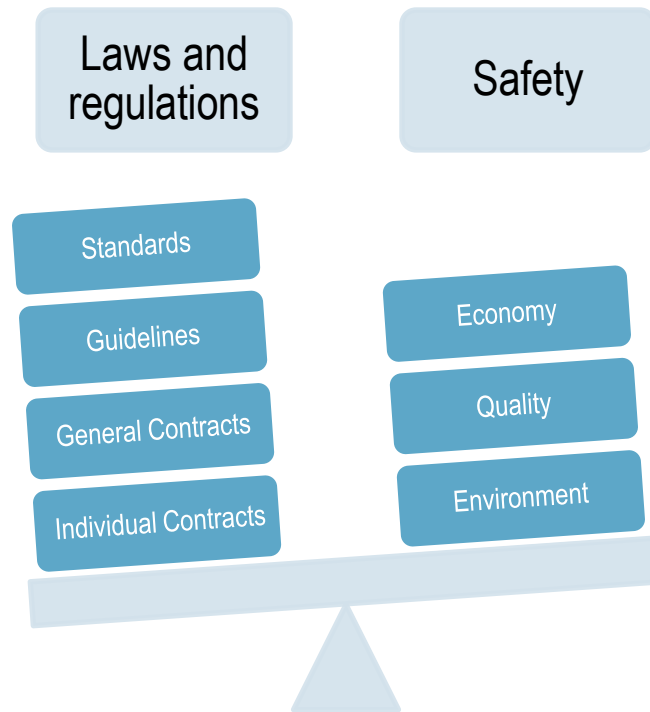
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Audit of public construction works in Finland





Audit of Construction Works

Auditing of Construction Works is voluntary in Finland, because laws, regulations and contracts have to be observed even without auditing!

The Construction Work is based on

- Laws and regulations
- Contracts
- Standards
- Recommendations and guidelines

→ Ordem e Progresso (Order and progress)!





Audit of Construction Works

- **Private and Public Construction Works**
- **The same laws and regulations are valid both in private and public construction works.**
- There is one exception
-
- **Act on Public Contracts**, the law for public procurement
- ... Based on European directives





Obligations and responsibilities

Laws, regulations, standards, guidelines and contracts guiding and governing construction works

Act and decree for Land use and Building (132/1999, amendment 222/2003)

Act on Public Contracts (348/2007)

Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)

Act on Employment Contracts (55/2001)

Act on the Supervision of Occupational Safety and Health and Cooperation on Occupational Safety and Health at the Workplace (44/2006)

Act on the Openness of Government Activities (621/1999)





Obligations and responsibilities

Laws, regulations, standards, guidelines and contracts guiding and governing construction works

... continues:

Standards (SFS-EN)

Building Regulations and Guidelines, Building Code of Finland (RakMk)

General Conditions of Contract (YSE)

Individual Conditions of Contract (SKU)

Individual Construction Contract





Obligations and responsibilities

– Act and decree for Land use and Building

– “Land Use and Building Act, section 12

– The objective of building **guidance** is to promote:

– 1) the creation of a good living environment that is socially functional and aesthetically harmonious, safe and pleasant and serves the needs of its users;

– 2) building based on approaches which have sustainable and economical life-cycle properties and are socially and economically viable, and create and maintain cultural values;

– 3) the planned and continuous care and maintenance of the built environment and building stock.”





Obligations and responsibilities

Act on Public Contracts (348/2007)

Purpose of the Act

(1) State and municipal authorities and other contracting authorities shall put their contracts out to tender as provided in this Act.

(2) The purpose of this Act is to increase the efficiency of the use of public funds, promote high-quality procurement and safeguard equal opportunities for companies and other communities in offering supply, service and public works contracts under competitive bidding for public procurement.

(3) This Act governs the entry into force of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, hereinafter referred to as the "Directive on public contracts", and Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, hereinafter referred to as the "Directive on the review procedures".





Obligations and responsibilities

Act on Public Contracts (348/2007)

Principles of public contracts

(1) Contracting authorities shall make use of the existing competitive conditions, ensure equality and non-discriminatory treatment among all participants in the procurement procedure and act in a transparent way while meeting the requirements of proportionality.

(2) Contracting authorities shall endeavor to organize their procurement procedures as economically and systematically as possible, in as appropriate combinations as possible, taking environmental considerations into account. In order to reduce administrative work involved in procurement, contracting authorities may employ framework agreements and joint procurement or make use of other partnership opportunities available in awarding public contracts. If the candidate or tenderer is another contracting authority or a community or institution which is owned by the contracting authority, it shall be treated equally alongside other candidates or tenderers.





Obligations and responsibilities

Act on Public Contracts (348/2007)

Requirement for non-discrimination in service activities based on special or exclusive rights

Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than such a contracting authority, the act by which that right is granted shall provide that, in respect of the contracts which it awards as part of said activities, the entity must comply with the principle of non-discrimination on the basis of nationality.





Obligations and responsibilities

Act on Public Contracts (348/2007)

Provisions in accordance with the WTO Agreement on Government Procurement

In public contracts falling within the scope of the World Trade Organisation (WTO) Agreement on Government Procurement (Treaty Series of the Statute Book of Finland 5/1995) the same conditions shall apply to the tenderers and bids from other contracting states as apply to those from Finland and other European Union member states.





Obligations and responsibilities

Act on Public Contracts (348/2007)

National Thresholds...

This Act shall not apply:

- (1) to public supply and service contracts, design contests or service concessions the estimated value of which, net of VAT, is less than EUR 15,000;
- (2) contrary to what is stated in paragraph 1 on public service contracts, health care and social services contracts within the meaning of Annex B (Group 25) and the services mentioned in Annex B and purchased pursuant to Section 3 of Chapter 6 of the Act on the public employment service (1295/2002) in a joint purchasing agreement with the employer, provided that the estimated value of the contract, net of VAT, is less than EUR 50,000; and
- (3) to public works and public works concessions contracts the estimated value of which, net of VAT, is less than EUR 100,000





Public contracts

Act on Public Contracts (348/2007)

EU thresholds...

The EU thresholds shall be:

- (1) EUR 137,000 for public supply and service contracts awarded by central government authorities;
- (2) EUR 211,000 for supply and service contracts awarded by contracting authorities others than those covered by paragraph 1.
- (3) EUR 5,278,000 for public works and public works concession contracts.

The European Commission shall revise the thresholds every two years and publish the revised thresholds in the *Official Journal of the European Union*;





Public contracts

Current thresholds, valid 1.1.2010-31.12.2011

Updated thresholds for construction works

Finnish (national)	EUR 150 000
European	EUR 4 845 000

Updated thresholds for design competitions

Finnish (national)	EUR 30 000
European	EUR 125 000 (state) ,193 000 (other authorities)





Public contracts

Different acquisition methods used

Open acquisition:

The tenders are sent directly to the client

Everyone can send their tender

Restricted, consultative or competitive acquisition:

At first tenderers have to apply for tendering

→ Client selects applicable tenderers

→ Selected tenderers make the tenders





Public contracts

The Criteria for selecting the best tender

The price ... is easy and the most common ... of course!

The quality of tenderer ... is difficult, but becoming more and more important

→ difficult for new companies with few referencies

The size of tenderer ... when reliability of the acquisition is important

The form of contracts ... the Act doesn't restrict this

→ e.g. Project Management Contract is easy because after selecting the Management the Act on public contracts is no longer applicable in other contracts





Public contracts

Experiences of the selection of tenders

Appeals in The Court of Market (the first level for appealing):

- 451 cases in 2008
- time of hearing 14 weeks
- only few compensations approx. 1 / 15
- possible compensation is based on the difference between tenders and the costs of appealing
- selection criteria is not always clear, e.g. the points for quality are often the same





Public contracts

Online registers of public contracts

HILMA

The Finnish online register of public contracts exceeding the national and EU thresholds in Finland

<http://www.hankintailmoitukset.fi/fi/>

TED

The European online register of public contracts exceeding EU thresholds based on the agreement with WTO

<http://ted.europa.eu/>

... and in The Official Journal of the European Union.





Public contracts

Statistics of public contracts from HILMA between 1.1.2010 – 31.12.2010

Clients	Amount (pcs)	Value (€)
State, state's utilities	2 189	2 630 005 173
Municipalities, other local authorities	1 873	9 671 028 286
Other public clients	5 284	8 343 364 606





Public contracts

Statistics of public contracts from HILMA between 1.1.2010 – 31.12.2010

Contracts	Amount (pcs)	Value (€)
Goods	5 559	2 577 024 480
Services	6 360	6 194 401 495
Construction works	3 842	3 833 815 562
Others	182	39 340 492





Audit of Construction Works

– Who is auditing and what?

Safety ... of users and construction workers ... comes first?

Economy ... essential for all participants

Quality ... important especially for the client (and all users)

Environment ... everyone has to pay attention to

→ **Participants** of the construction work have to share the responsibility with the users!





Sharing the work and responsibility in a Construction project

– The participants of the construction work

Act and decree for Land use and Construction (117 §, 119 §, 120 §, 122 §)

- Municipal building supervision authorities and other authorities
- Client
- Developer
- Principal designer (a person)
- Other designers (persons)
- Contractor and its employees, e.g. responsible supervisor on the construction site (a person), safety coordinator, etc.
- Manufacturers of the building materials and components





Sharing the work and responsibility in a Construction project

– Client

Selects the competent developer (if not competent himself)

Selects the competent principal design office (a person)

Client carries always the biggest responsibility of the construction work, at least in the end!

→Client should have the biggest interest in auditing!

Finnish Laws and regulations assume that the client of the construction work is supposed not to be stupid!





Sharing the work and responsibility in a Construction project

– Developers

Certified developers (RAP), Certified senior developers (RAPS) are needed, because

Contracts are more complicated

Increased competition, new forms of contracts, public contracts, etc.

Constructions are more complicated

Hard demands: new standards, safety regulations, energy efficiency, ecology, sustainability, etc.

Clients are not professionals of construction

Especially public organizations have reduced their own ability and competence for auditing





Developers obligations and responsibilities

- **Developer and contractor share the responsibility like their share the work**
- Both parties carry out all their duties and obligations according to the contract
- Both parties are in charge of
 - their plans
 - their work
 - purchased construction materials and components
 - purchased and enrolled information and research results
 - given regulations and guidelines
 - following the public standards
 - their employees
 - their experts
 - their subcontractors





Developers obligations and responsibilities

- **Developers obligations:**
 - Liability to pay the contract price
 - Obligation to inform
 - Obligation to cooperate – generally and according to The General Conditions of Contract (YSE)
- Other obligations defined in The General Conditions of Contract (YSE)
 - Supervisory duty and quality assurance
 - Management duties on construction site (YSE 4 §)
 - Possible obligation for deposit of security





Sharing the work and responsibility in a Construction project

– Designers

- *“Land Use and Building Act, Section 123*
- *The person drawing up a building or special design...must have the training and expertise required by the type of building project concerned and the demands of the duties involved. The qualifications required in designing are judged according to the intended use of the building and the spaces within it, the structural loads and fire loads, the design, calculation and dimensioning methods, environmental requirements and in addition to the above any unconventional aspects of the design approach....*
- *Design and management duties can be classified in requirement classes in order to specify the minimum qualifications. The minimum qualifications shall be prescribed by decree, and more detailed regulations and guidelines will be issued in the National Building Code of Finland.”*





Sharing the work and responsibility in a Construction project

– Designers

Qualifications are defined in Regulations.

→ Building Code of Finland (RakMk section A2)

– Competence of a designer is based on both education and experience.

– The designer's adequate proficiency is required in relation to the demands of respective design task.

→ Qualified designers

Municipal building supervision authorities approve or disapprove designers for every individual construction project!

→ Persons are named in every individual Building Permit

Principal designer has an exceptional heavy responsibility in Finland!





Sharing the work and responsibility in a Construction project

- **Principal Designer**
- **Regulation**
- It is the principal designer's duty to ensure the sufficient quality and comprehensiveness of the designs for the building project so that they can be used to establish that the requirements set for building are being met.
- The principal designer is answerable to the building supervision authorities for carrying out his duties in an appropriate manner during the building project's design stage and the construction work.





Sharing the work and responsibility in a Construction project

– **Principal Designer**

– **Regulation**

- Together with the party engaging in a building project, the principal designer shall, as required by the quality and difficulty of the project:
 - • ensure that required basic information is available and that it is consistent and up-to-date, and make it available to the designers;
 - • ensure that all designers involved in the project know which part of the required designs is their responsibility;
 - • organize the collaboration of the designers from different fields;
 - • ensure that sufficient time has been allotted to design work in the timetable; and
 - • ensure that all required designs are drawn up and that they have been confirmed to be mutually compatible and consistent.





Sharing the work and responsibility in a Construction project

- **Principal Designer**
- **Regulation**
- The principal designer must also:
 - • participate in the start-up meeting if such is called and ensure that the design duties laid down at the meeting are fulfilled;
 - • monitor the impact on design work of matters revealed when the structures are opened or demolished in repair or alteration work;
 - • take care of coordinating of the alteration design and, when necessary, of applying for authorized approval or building permit the alterations may require; and
 - • supervise construction work if he has been assigned to do so in the building permit or at the start-up meeting.





Sharing the work and responsibility in a Construction project

– Designers

– Regulation

- Designers must draw up the building designs they are responsible for so that they can be used to establish that the requirements set for design work and building are met.
- With regard to the designs they are responsible for, designers must:
 - • ensure that they have access to the basic information required for the design work;
 - • draw up the designs that fall within in their field and the related drawings and other documents needed for the building permit application or during building;
 - • make any changes to designs needed during building;
 - • draw up use and maintenance instructions for their field of design; and
 - • carry out any supervision duties assigned to them in the building permit or at the start-up meeting.





Sharing the work and responsibility in a Construction project

- **Designers**
- Extract from the Building Code of Finland (RakMk section A2):
- Degree of difficulty of the design task and proficiency of the designer

Qualification of Professionals in Building, HVAC and Real Estate Sector in Finland

Online private register [FISE](#)





Sharing the work and responsibility in a Construction project

– Authorities

Municipal building supervision authority in all municipalities

→ Building permit

→ Inspections

Industrial safety district authorities

→ Inspections





Obligations and responsibilities

Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)

- **Objectives of the Act**
- The objectives of this Act are to promote equal competition between enterprises, to ensure observance of the terms of employment and to create the conditions in which enterprises and organizations governed by public law can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labor discharge their statutory obligations as contracting parties and employers.





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **This Act shall apply to a contractor :**
- 1) who in Finland uses temporary agency workers; or
- 2) at whose premises or work site in Finland an employee is working, who is in the service of an employer having a subcontract with the contractor, and whose tasks relate to the tasks normally performed in the course of the contractor's operations or to transportation relating to the contractor's normal operations.





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **This Act shall apply to a contractor :**
- In building, and in repair, servicing and maintenance relating to building, the Act is applied:
 - 1) to construction contractors using subcontractors;
 - 2) to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in the Act on Occupational Safety and Health (738/2002) Section 49.
- This Act shall not apply when the vessel of an enterprise engaged in merchant shipping is outside the borders of Finland. On board a Finnish vessel, however, this Act shall be applied to work falling within the scope of the Seamen's Act (423/1978), even when the vessel is outside the borders of Finland.





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **Derogations from the scope of the Act**
- This Act is not applied if:
 - 1) the duration of the work by the temporary agency worker or workers does not exceed a total of 10 days; or
 - 2) the value of the compensation referred to in Section 2, subsection 1, paragraph 2 is less than 7 500 euros without value added tax.
- When calculating the limit values referred to in the above subsection 1, the work is considered to have continued without interruption if the work or work outcome performed for the contractor is based on successive, uninterrupted contracts or with only short breaks between them.





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **The contractor's obligations to check**
- Before the «contractor» concludes a contract on the use of a temporary agency worker or on work based on a subcontract, the contractor shall require from the contracting partner, and he or she shall provide the contractor with:
 - 1) an account of whether the enterprise is entered in the Prepayment Register in compliance with the Act on Prepayment of Tax (1118/1996) and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register in compliance with the Value Added Tax Act (1501/1993);
 - 2) an extract from the Trade Register;





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **The contractor's obligations to check**
- ...continues:
- 3) a certificate of tax payment or of tax debt, or an account that a payment plan has been made regarding a tax debt;
- 4) certificates of pension insurances taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made; and
- 5) an account of the collective agreement or the principal terms of employment applicable to the work.





Obligations and responsibilities

- **Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**
- **Supervision**
- The Occupational Safety and Health authorities supervise compliance with this Act as provided in the Act on the Supervision of Occupational Safety and Health and Cooperation on Occupational Safety and Health at the Workplace (44/2006), unless otherwise ensuing from this Act.
- The Occupational Safety and Health authorities have the right to receive from the contractor on request the documents relating to the obligation to check and to take copies of them if necessary. Should the inspector notice that the conditions for prescribing a negligence fee exist, he or she must immediately bring the matter to the local office of the Occupational Safety and Health Inspectorate for consideration. If the Occupational Safety and Health authority has received notification of suspicion that the obligation to check has been breached, the local office of the Occupational Safety and Health Inspectorate shall deal with the matter urgently.





The Liability of the construction company

- **The Construction Quality Association RALA ry**
- An independent and impartial association established by core organizations within the Finnish construction business.
- Its purpose is to promote the prerequisites for fair competition and high quality construction.
- <http://www.rala.fi/>





The Liability of the construction company

- **The Construction Quality Association RALA ry**
- **The RALA Certification of Competence** constitutes proof of an enterprise's competence and transparency, and is issued by RALA's Certification Board. The qualification criteria are as follows:
 - **Technical competence and resources:** A certain number of completed projects in each technical business field, evidence of sufficient resources, information on quality management, environmental management, and occupational safety management systems.
 - **Legal obligations and information:** The enterprise must be entered in the Trade Register, the tax Prepayment Register and the VAT register. The enterprise must have met its tax obligations and have paid its employees' pension contributions. Information must have been entered into the employer register, alongside an account of the collective agreement in question, as required.
 - **Financial state:** Accredited information on the closing of the accounts.





The Liability of the construction company

– The Construction Quality Association RALA ry

- **The aim of RALA Certification of Competence** is to assist in the evaluation of enterprises and the surveillance of legal obligations. RALA compiles information on qualified enterprises and makes such information available to the market via an [internet-based register](#). Updated information on competent enterprises, in particular the updated status disclosing whether or not the enterprise meets the related legal obligations, can be checked, via the internet-based register.
- **RALA monitors the legal obligations of qualified enterprises** on a monthly basis, but does not monitor enterprises' credit information. Enterprises are responsible for any evidence they provide to RALA.
- **A certificate** will be renewed based on an annual reapplication to, and subsequent approval by, the Certification Board. In the event of any failure to meet the requirements in question, an entry stating that the requirement has been neglected will be entered in the register for a fixed period. This will be removed if corrective action is taken to ensure the fulfilment of said requirements. If the enterprise does not take such corrective action, the certificate of competence may be cancelled.





The Liability of the construction company

- **Tilajavastuu.fi**
- Another online register for smaller construction companies ensuring only the legal obligations.
- Required information:
 - clearance of marking in Preliminary Tax Withholding Register
 - clearance of marking in Register of Employers
 - clearance of marking in obliged Value Added Tax Register
 - extract from the Register of Companies
 - certificate of paid taxes, certificate of tax liability or clearance of scheme of dept payment





The Liability of the construction company

– **Tilaajavastuu.fi**

- Required information (continues...):
 - certificates of (paid) pension insurances or clearance of the payment agreement for delayed pension insurances
 - clearance of applicable collective agreement or central terms and conditions of employment

<http://www.tilaajavastuu.fi/>





Audit of Public Construction Works in Finland

– **Some observations**

- The participants of the construction projects are supposed to be construction professionals e.g. understanding the terms involved in contracts of the construction work!
- Finnish Laws and regulations assume that the client of the construction work is supposed not to be stupid, because the client carries always the biggest and the final responsibility!
- The client decides if auditing is needed and how it is carried out!
- The laws, regulations and contracts have to be observed even without auditing!





General information of public construction in Finland

- **Some Clients of Finnish public constructions**

- State, government

Senate Properties

<http://www.senaatti.fi/index.asp?siteID=2>

The Finnish Transport Agency

<http://portal.liikennevirasto.fi/sivu/www/e>

- Municipalities
- Other public organizations





Audit of Public Construction Works in Finland

– Thank you for you attention 😊

