

STRABAG



Cooperative Project Handling

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Initial Position in Austria

Market situation in infrastructure projects:

- overall infrastructure market is diminishing
- market power in major projects (tunnel construction!) is on the side of the EMP (only two national and one regional)
- contractors side: four major construction companies and many SMEs
- predatory competition, many major insolvencies
- detailed design is usually carried out by the EMP
- in project handling: occurrence of litigation increases
- no culture of mediation and arbitration

Leaflet Cooperative Project Handling (1)

How did it happen and why?

- “lowest price” leads to ruinous price competition
- high effort for claim management
- technical quality suffers
- innovative potential decreases
- dissatisfaction of the people in the project
- high turnover rate exacerbates the problem further
- project costs rise, yield drops

With other words: the suffering was great!

Leaflet Cooperative Project Handling (2)

Implementation

- joint development (EMP, CONT, designer, university)
- at the CONT-companies: internal information / forums
- internal and external convincing
- structures that emerged over decades cannot be changed in months
- it's a long way and there will be setbacks!
- ... but ultimately it should pay off

Construction Contracts (1)

Why do construction projects have so extensive contracts?

- several years can lie between the conclusion of a contract and his completion
- construction work is not finally defined at the conclusion of a contract: only some plans, no entire design
- extensive **risks**
- **behaviour of contractual partners** unpredictable
→ protect against **opportunism**

Construction Contracts (2)

Purpose of a construction contract is...

- to make uncertainties better projectable and assessable as well as distribute risks fairly
- to avoid opportunistic behaviour by providing appropriate incentives
- to decrease transaction costs
- to manage cooperation during the construction time
- to master complexity

Requirements for Fair Contracts (1)

General

- understandable, structured, clear, no hidden clauses
- construction target defined clearly and unambiguously
- free of contradictions
- use of standards; any deviations (to discretionary law, standards, guidelines) reduced to the necessary minimum
- balanced consideration of both interests (e.g. limitation of claims)

Requirements for Fair Contracts (2)

Construction period

- adequate
- sufficient time between signing of the contract and the start of construction
- no start of construction before conclusion of contract
- penalties only where really necessary

Requirements for Fair Contracts (3)

Risk transfers

- if risks are transferred, then in a clear and calculable manner
- fair distribution of risk
- no risk transfers by excessively large bandwidths
- opportunities for action and allocation of risk must not fall apart
- clear responsibilities

Requirements for Fair Contracts (4)

Interaction of the parties

- at eye level!
- reduce formalism to the necessary minimum
- clear authorisation rules and decision-making structures for both sides
- defined escalation levels

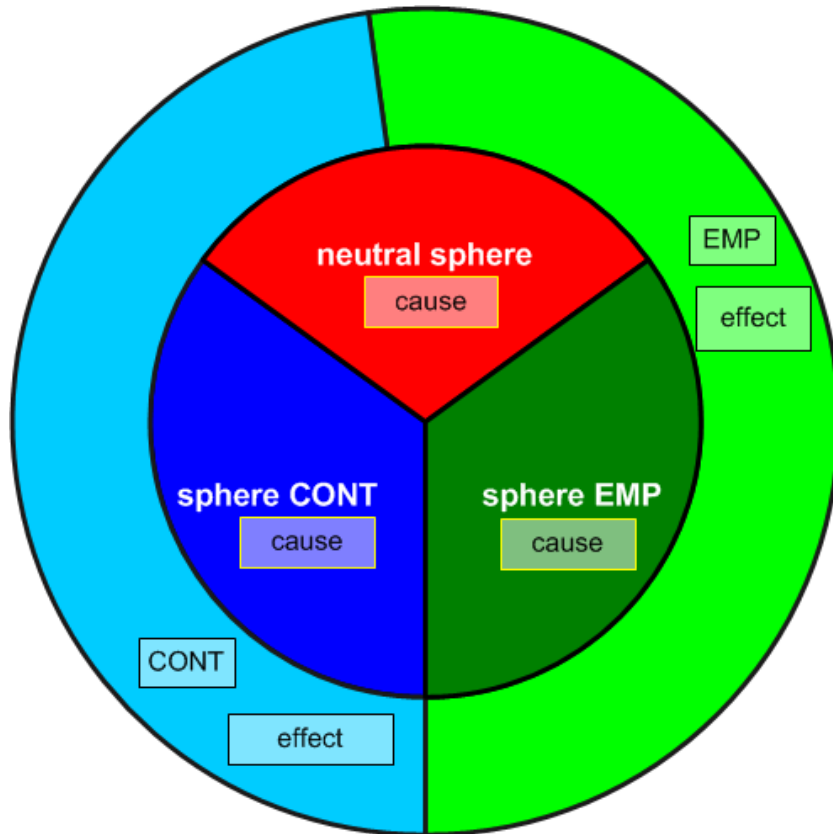
Trust is the key success factor

Requirements for Fair Contracts (5)

Handling of claims and deviations

- procedure defined clearly and unambiguously
- fair deviation management
- provide joint documentation
- establish incentive systems so that aggressive claiming is prevented!

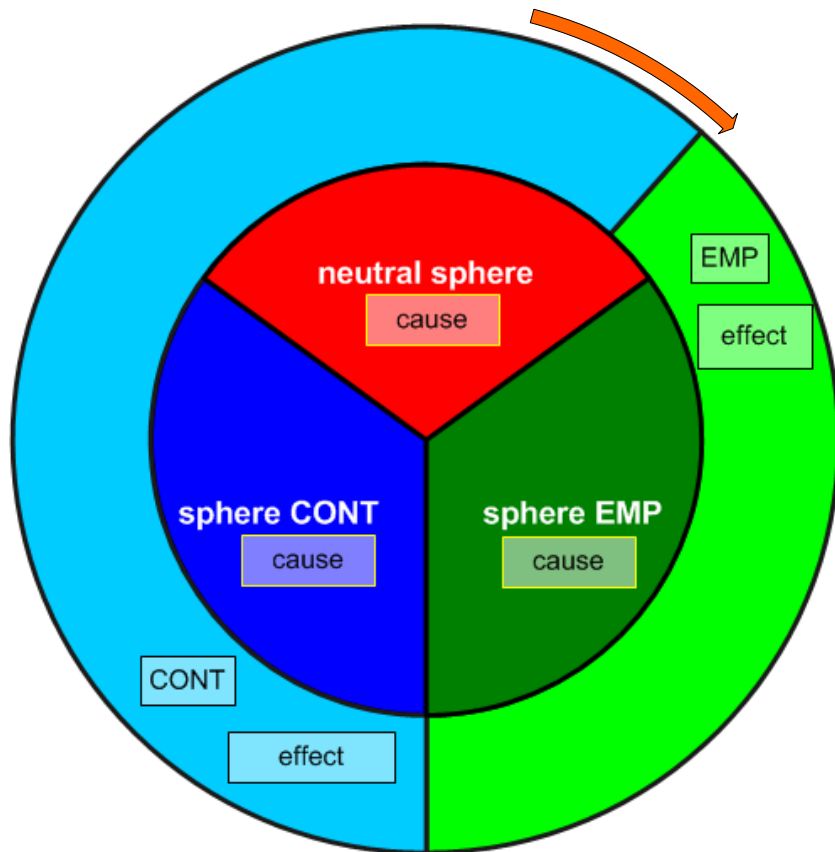
Distribution of Risk – Spheres Theory (1)



- e.g. ÖNorm B 2110
- e.g. VOB/B

Distribution of Risk – Spheres Theory (2)

Unbalanced, but fair

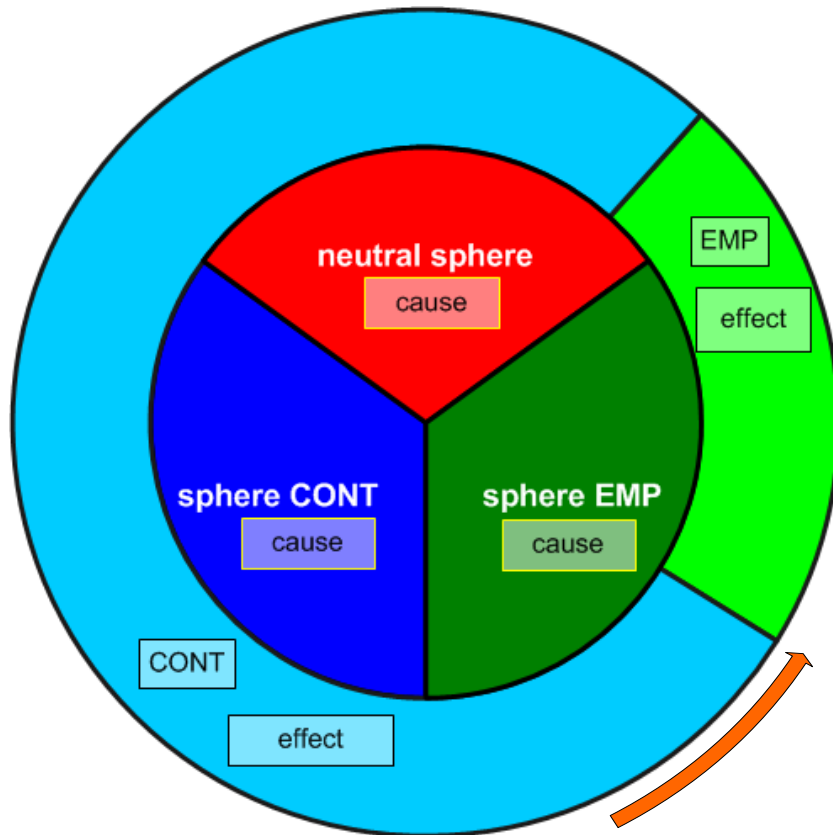


Distribution of risks transparent and calculable, but strongly deviating from the ÖNorm

Contract becomes unbalanced as a result, but not unfair yet

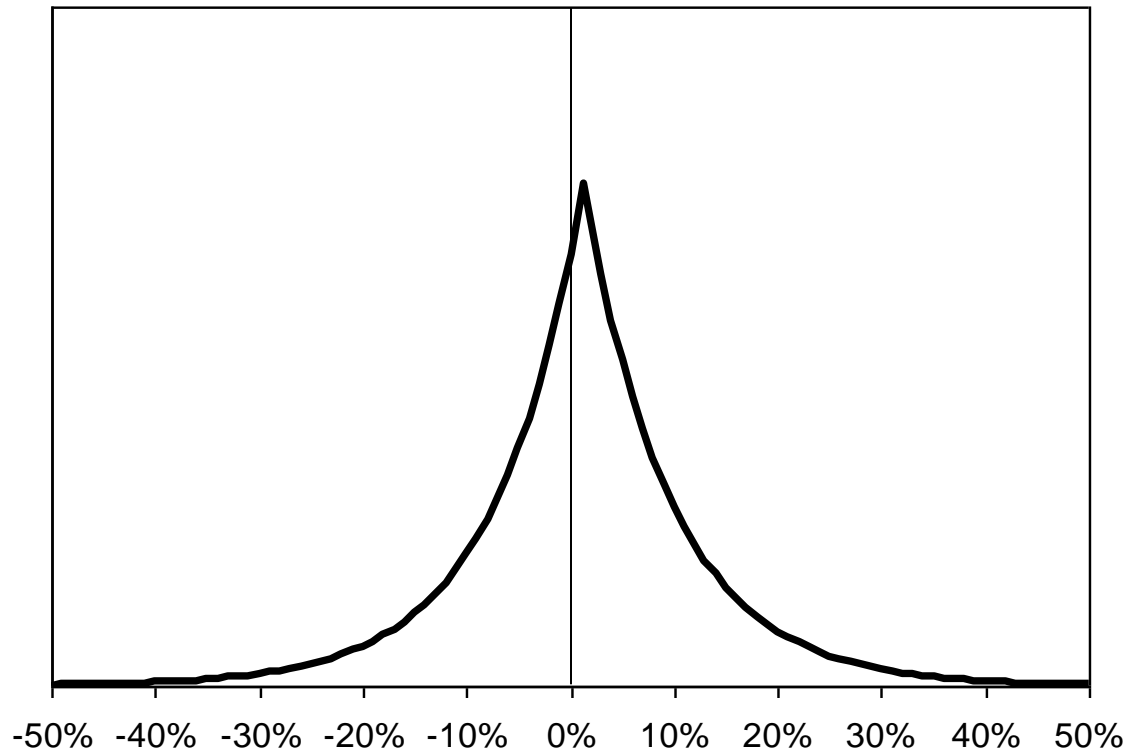
Distribution of Risk – Spheres Theory (3)

Unfair:

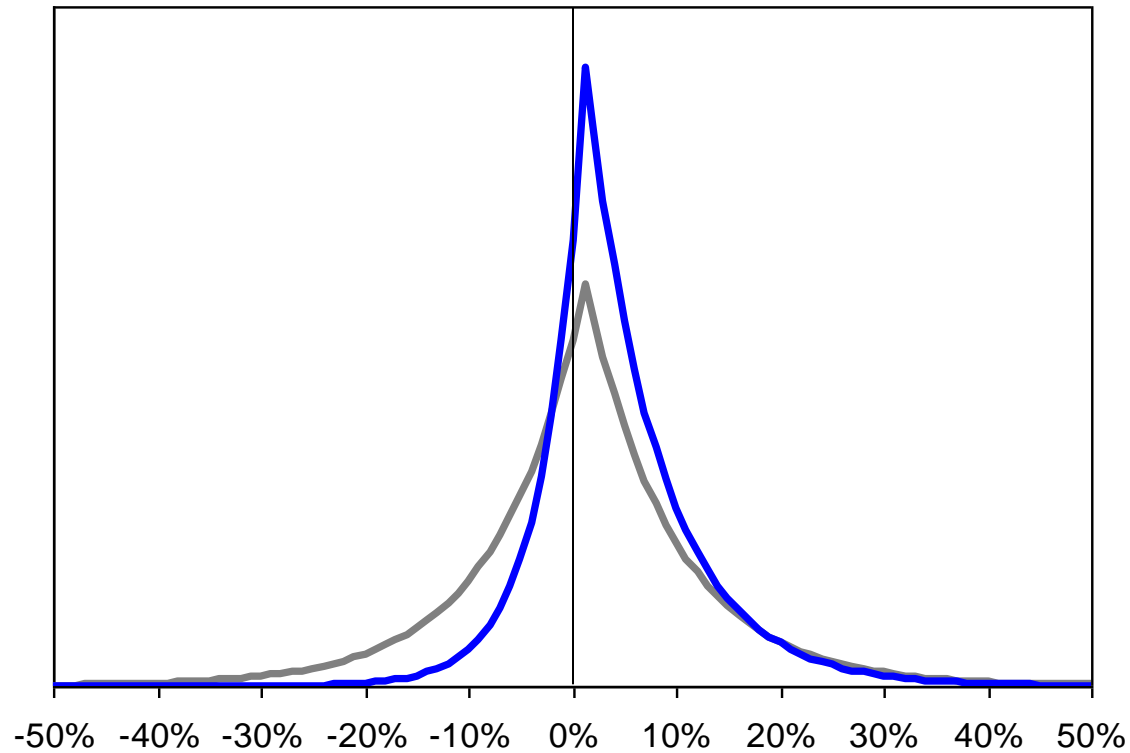


Responsibility of one contractual party is shifted into the contractual area of the other

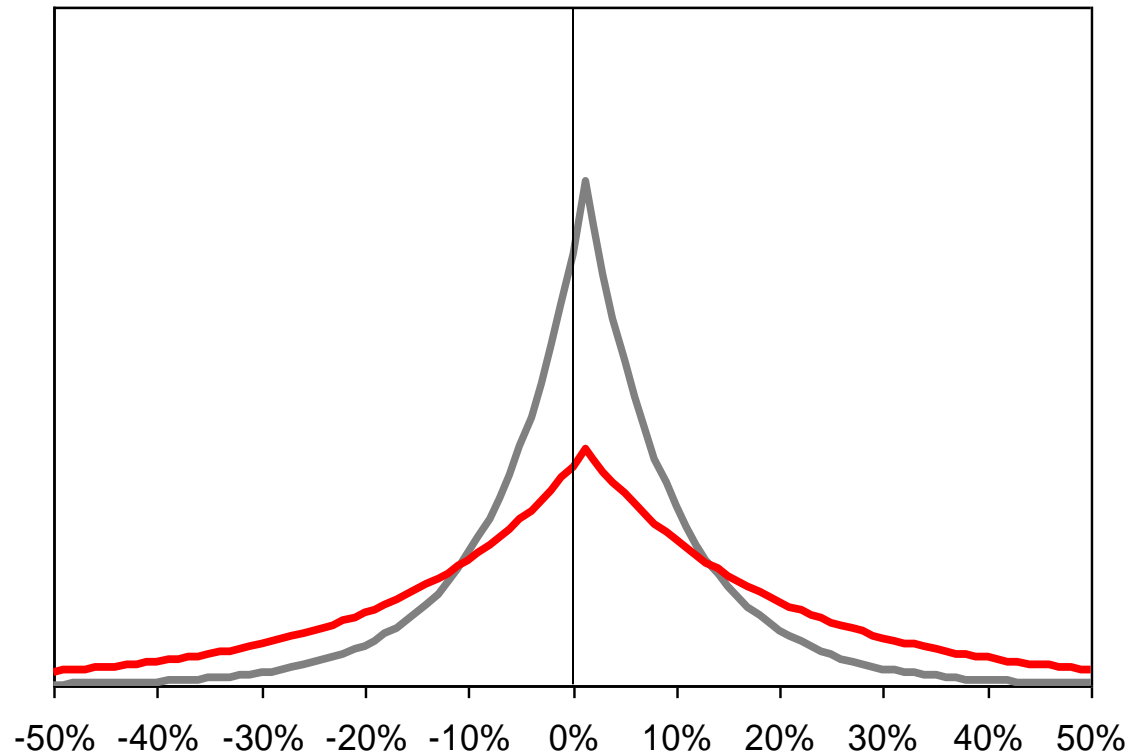
Yield Distribution: Entire Portfolio



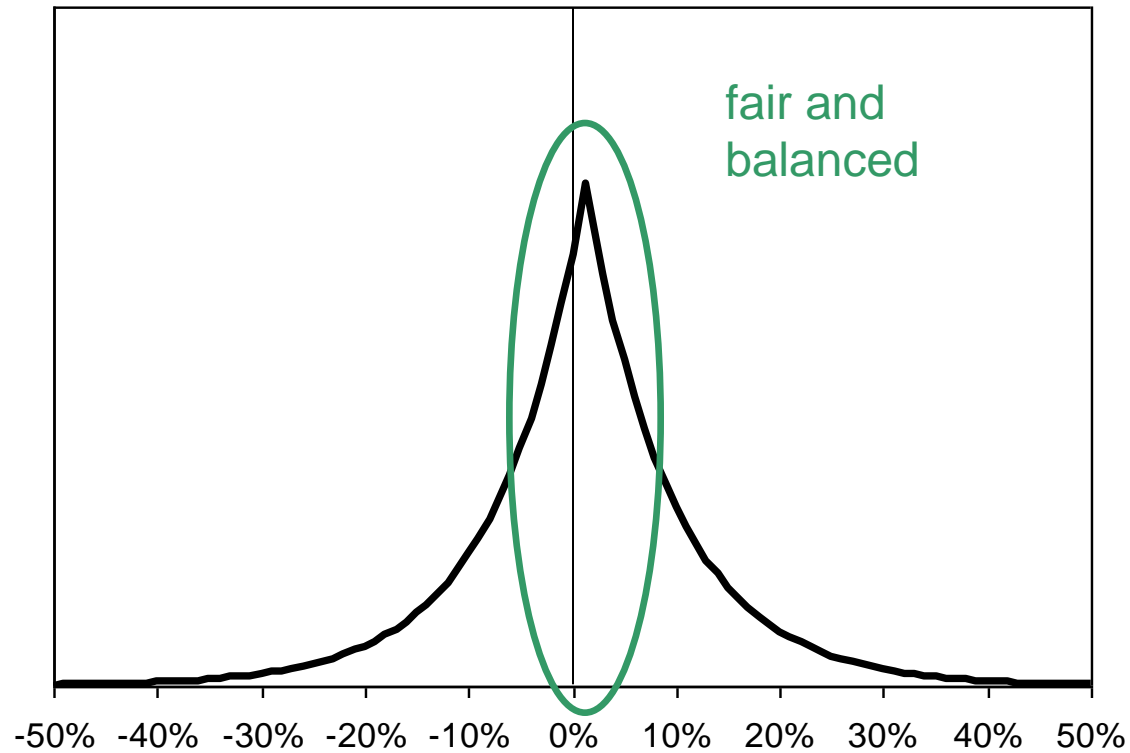
Yield Distribution: Low-risk Projects



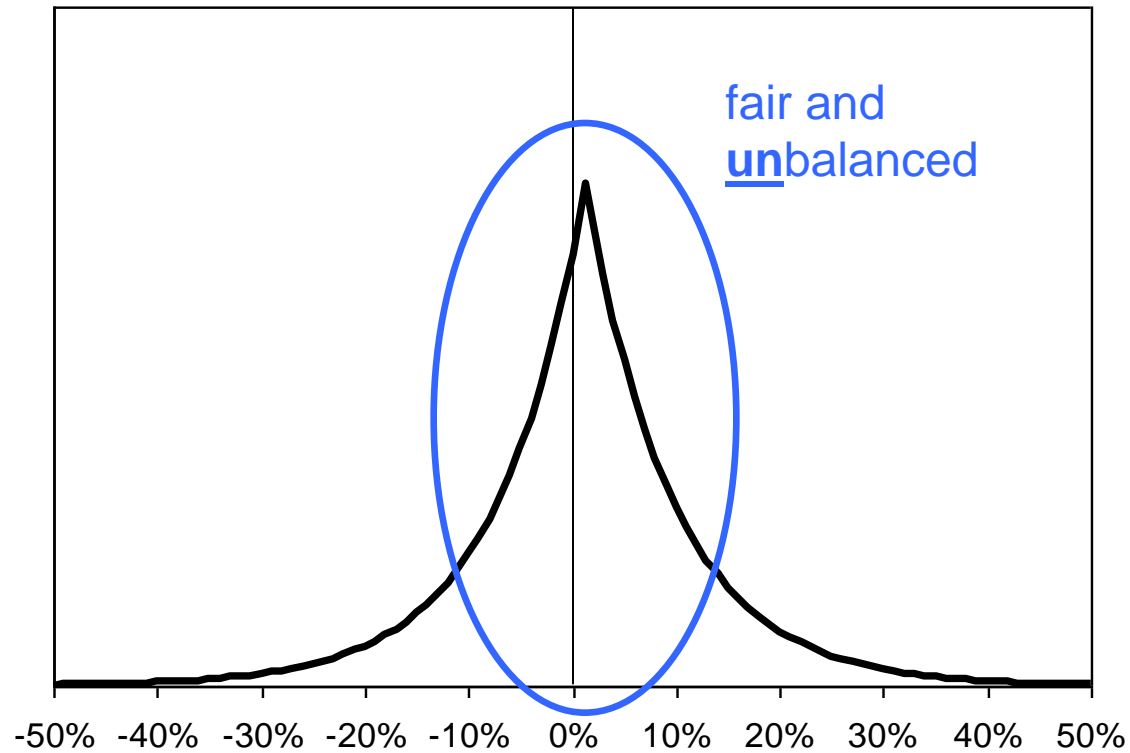
Yield Distribution: High-risk Projects



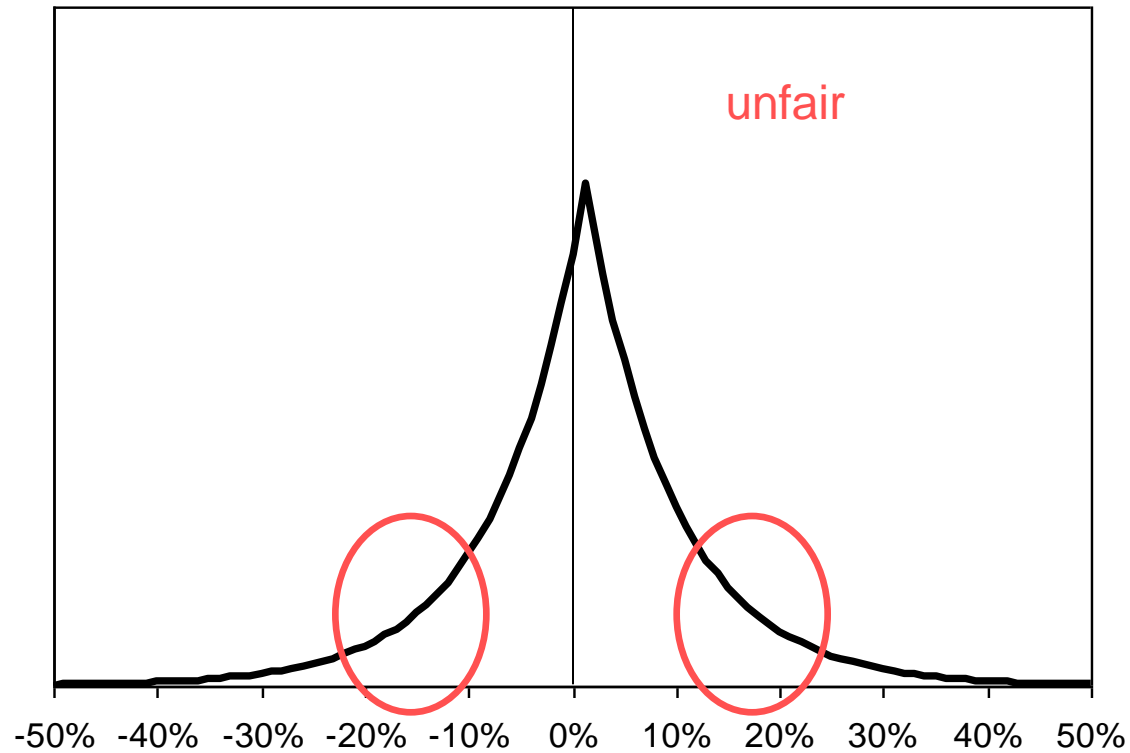
Yield Distribution: Influence of the Contract



Yield Distribution: Influence of the Contract



Yield Distribution: Influence of the Contract



The Fair Construction Contract

- ... is an important prerequisite
- ... promotes cooperation
- ... but is not a universal remedy
- development of recent decades must be reversed
- the "watertight" construction contract is an illusion!

Workshop in August 2014:

what fair actually means

- ▶ has a lot to do with communication
- ▶ is a **quality seal** for construction contracts useful?

Quality Seal “Fair and Balanced Contract”

Determination by a neutral third party whether the contract is

- fair and
- balanced within the meaning of the above



Catalogue of Criteria - Evaluation

Based on criteria still to be established, an evaluation is performed:



based on partnership



fair & balanced



fair



Other Requirements for Cooperation

Besides the fair construction contract

- realistic costing stands at the beginning
- level of planning details at the time of the tender (tender design)
- fair offer (free from speculations, transparent calculation)
- bidding procedure: selection of partners

But most importantly:

- open communication
- behaviour of people on the site

STRABAG

TEAMS WORK.