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Understanding the Practice of Contract Drafting and Negotiation in the Public Sector

Course Overview:

Contracts are the basic structure of all occupational relationships in public projects, whether they be for the construction of a major new facility, or the supply of goods, the terms and the management of the contract itself are critical to the success of the projects concerned. As such, contracts touch every aspect of the industry, and all staff (whether directly involved in contract management or not) must understand how they operate, particularly in an international context.

The training covers the three stages of contracting; negotiating the “deal”; documenting that deal in a robust, but practical way; and managing the performance of the contract itself. The intention is to develop general skills with application to a wide range of contracts and to allow participants to have an awareness of practices in other areas and other industries, which may add value to their situations. This training will also allow considering matters from the perspective of the other party to a contract.

Course Objectives:

At the end of this course, the participants will be able to:

- Emphasize the need to negotiate the “deal” before structuring the contract documentation
- Provide tools and techniques to assist in such negotiations
- Examine the drafting and modification of specific contract clauses, using real examples
- Look at some of the differences in approach in different jurisdictions (and the common themes that run through contracting)
- Review some of the skills that will enhance the efficient management of contract
- Examine ways to avoid disputes, or manage them successfully

Course Coverage:

Topic 1: The “Deal” Behind the Contract, and How Do We Get There?

- What constitutes a contract?
- How to structure commercial arrangements
- Innovative commercial solutions (e.g. Partnering, “BOOT” contracts, etc)

- How to negotiate a contractual structure
- Basic techniques for negotiation
- How to document discussions
- Relationship between negotiation and contract drafting
- Closing a deal
- Dealing with difficult negotiators

Topic 2: Drafting Contracts and Negotiating Contracts:

- Using standard forms
- Developing your standards
- Modifying forms
- Dealing with contract qualifications and amendments
- Structuring complex documents
- “Level playing field” issues – how to be fair to more than one bidder
- Dealing with errors in a bid
- Negotiating complex wording
- Formalities to finalize the contract
- Authority to sign

Topic 3: Drafting Specific Clauses:

- Performance of the work
- Title
- Risk
- Intellectual property
- Variations
- To the contract
- To the scope of work
- Extension of time
- Force majeure
- Time for completion
- Liquidated damages and penalties
- Acceptance and testing
- Termination and suspension
- Law of the contract and dispute resolution

Topic 4: Management of Contracts:

- Risk assessment and management
- Kick-off meetings
- Assignment of responsibilities
- Setting and managing expectations
- Planning
- Reporting – being realistic with requirements
- Progress meetings and expediting
- Dealing with defaults
- Dealing with external factors (e.g. force majeure)
- Recognizing and managing change
- To the contract terms
- To the scope of work
- Payment issues including international trade

- Closeout
- Lessons learned

Topic 5: Dealing with Contract Disputes:

- Spotting potential contract problems
- Resolving issues as they arise
- Legal rights and Viable outcomes distinguished
- Negotiation structures for internal dispute resolution
- Types of external dispute resolution
- Litigation
- Arbitration
- Adjudication
- Expert Determination
- Mediation
- Issues with different legal systems
- Enforcement of awards
- Management of disputes
- Avoiding disputes in the first place

Targeted Participants:

- Contract Administrators, Contract Professionals and Project Coordinators
- Supply Officers, Buyers, Purchasing & Procurement Professionals
- The project, Construction, Cost and Quantity Professionals
- Claims Personnel, including Legal Advisers
- Contracts Managers
- Those new to the function, preparing for a major project or experienced professionals looking for a refresher
- Those who want to extend their skills and knowledge to the contracting area to improve their profile