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Construction Contracts Management for Public Sector Projects

Course Overview:

Construction projects in Public Sector have a history of contractual disputes and conflict. These problems have reduced the efficiency and profitability of developments, and have not been to the benefit of either clients or contractors. Construction tends to attract contractual problems because of the complex nature of the work and commercial arrangements involved.

The purpose of this course is to help delegates understand the reasons why such problems arise, and how to avoid them in the future. Many contracts are now being conducted in a different way to the traditional approach, with more openness between the parties, and this has, in some cases at least, reduced conflict and increased profitability for all parties.

Course Objectives:

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

- Understand how contracts work, and why they sometimes cause problems
- Address some specific clauses and provisions that are a common source of problems
- Develop thinking around more collaborative approaches to working on construction contracts
- Recognize the dangers that such approaches bring, and how to minimize problems
- Look at construction contracting in an international context
- Understand how to resolve disputes quickly and efficiently
- Exploring major issues in engineering and construction contracting
- Analyze why things so often go wrong
- Discuss ways to improve
- Explain how a more collaborative approach might benefit engineering and construction projects

Course Coverage:

Topic 1: The Fundamentals of Construction Contracts:

- Why Construction Contracts are Necessary
- How Contracts are Formed

- Particular issues with Construction Contracts
- Use of Standard Forms
- FIDIC
- NEC
- LOGIC
- Differences in bargaining positions
- Problems with competitive tendering
- Problems with different industries
- And different regions/countries
- Issues with different Legal Systems

Topic 2: Major Problem in Construction Contracts Clauses:

- Design Responsibility
- Requiring contractors to warrant the design of others
- Standard of work
- Fitness for purpose
- International/National/Company standards
- Standards for Professional Services
- Variations
- Time
- Money
- Force Majeure
- Intellectual Property
- Limits of Liability
- Indemnities
- Insurance
- Some minor problems:
- Notices
- Entire Agreement
- Incorporation by Reference

Topic 3: Traditional Approaches to Construction Contracts:

- Lump-Sum/Fixed Price
- Bill of Quantities/Schedule of Rates
- Adding incentive fees
- Escalation
- Dealing with general price inflation
- Economic Price Adjustment
- Problems with volatile materials (or labour) markets
- Selecting the right index
- Call-off Contracts

Topic 4: Looking Beyond Traditional Approaches to Construction Contracts:

- Risk and Reward Structures
- Build Operate Transfer (and similar models)
- Open Book Approaches

- Collaborative Working
- Advantages
- Dangers, and how to avoid them

Topic 5: Disputes – Avoidance and Resolution:

- How disputes arise
- Methods to avoid disputes, or deal with them quickly as they arise
- Negotiation techniques
- Traditional third-party approaches
- Courts (litigation)
- Arbitration
- Adjudication
- Some Alternative Approaches
- Mediation
- Conciliation
- Early Neutral Evaluation
- Expert determination
- Dispute Review Boards and similar arrangements
- Pendulum arbitration
- Mini-arbitration

Targeted Participants:

- Project Managers
- Contract Managers
- Contract Personnel
- Construction Professionals
- Cost Consultants and Quantity Surveyors
- Procurement Personnel
- Project Engineers
- Contract Engineers
- Anybody involved in construction and engineering contracts