

SSM 36 - DEVELOPING INCENTIVE CONTRACTS

Contracts are the basic structure of all business relationships, whether they be for the construction of a major new facility, or the supply of stationery, the terms and the management of the contract itself are critical to the success of all companies. Contracts touch every aspect of business life, and it is important that all staff (whether directly involved in contract management or not) understand how they operate, particularly in an international context.

The seminar 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 own situations. The seminar will also give an opportunity to consider matters from the perspective of the other party to a contract.

Competencies addressed and enhanced by this seminar include: Negotiation, Structuring contracts, Contract drafting, Dealing with qualifications to contracts, International contracting, Avoiding disputes and Resolving disputes.

WHO SHOULD ATTEND?

- Project, Construction, Cost and Quantity Professionals
- Purchasing officers
- Procurement, Tendering, Contracts Personnel
- Buyers & Financial Professionals
- Those new to the function, preparing for a major project, or experienced professionals looking for a refresher

PROGRAMME CONTENTS

Day 1 - What is the “deal” behind the contract, and how do you 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 and how to document discussions
- Relationship between negotiation and contract drafting
- Closing a deal
- Dealing with difficult negotiators

Day 2 - Drafting contracts

- Using standard forms
- Developing your own standards
- Modifying forms
- Dealing with contract qualifications and amendments
- Structuring complex documents

Negotiating contracts

- "Level playing field" issues – how to be fair to more than one bidder
- Dealing with errors in a bid
- Negotiating complex wording
- Formalities to finalise the contract
- Authority to sign

Day 3 - Drafting specific clauses

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

Day 4 - Management of contracts

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

Day 5 - Dealing with disputes

- Recognising potential problems
- Dealing with issues as they arise
- Legal rights and commercial outcomes distinguished
- Negotiation structures for internal dispute resolution
- External dispute resolution: Litigation, Arbitration, Adjudication, Expert Determination and Mediation
- Issues with different legal systems
- Enforcement of awards
- Management of disputes
- Avoiding disputes in the first place
- Conclusion, overview of seminar and final question session