

# € TRAINING

Contract Drafting for Procurement, Tendering  
& Commissioning



# Contract Drafting for Procurement, Tendering & Commissioning

## Introduction:

The critical importance of effective and appropriate contract drafting catered to the specific needs of the particular business and the situation cannot be emphasized enough. Robust contracts identify and minimize risk for the organization and ensure that projects and procurement are carried out efficiently and without costly disputes. All too frequently contract wording used is not properly understood which ultimately detrimentally affects the performance of the project and even possibly leads to contract failure.

Procurement and tendering have become increasingly sophisticated but all individuals need to be aware of the current and best practices adopted by some of the major international corporations to increase the effectiveness of their procedures. This course will assist all individuals in dealing with such contract wording and procedures to maximize the benefits to the organization and reduce risks.

## Course Objectives:

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

- Provide an understanding of contract structures, and why contracts are drafted in a particular manner
- Explain the commercial impact of key contractual provisions
- Develop an understanding of the interaction between contractual provisions and the need for consistency.
- Identify where things can go wrong, and learn how to avoid problems, or mitigate their effects through well-drafted contracts and good management.
- Understand how to avoid disputes but learn how to deal with them if they arise.
- Examine the legal effectiveness and formation of contracts
- Assessing the appropriate contract type and tender process
- Key contract clauses focusing on risk, remedies, and insurance
- Securing the performance of a party's obligations
- Appropriate dispute resolution and dispute avoidance

## Targeted Audience:

- Contract Administrators, Contract Professionals, and Project Coordinators
- Procurement Managers
- Purchasing Managers
- Specifiers, Buyers, Purchasing Professionals, and Procurement Officers
- Contracts Managers
- Project Managers

## Course Outlines:

### Unit 1: The Importance of Contracts:

- The Importance of Contracts
- Controlling the contract process
- Understanding the deal
- Controlling the negotiation

- Tips for effective negotiation
- Contract Formation
- Offer and Acceptance
- Battle of the forms
- Consideration and Intention
- Oral or written?
- Electronic contracts
- The value of due diligence and financial stability

## Unit 2: Tender Process & Different Contract Types:

- Auctions and Bids
- Tender Process
- Invitations to tender
- Request for Proposal
- Request for Quotation
- Pre-qualification
- Compliance
- Letters of Award
- Heads of Terms and Letters of Comfort
- Which contract type to select?
- Advantages and disadvantages of the main contract types
- The problem with fixed fees?
- Modern methodology
- Economic Price Adjustment clauses
- Bonds and Guarantees
- Compliance with law/change of law

## Unit 3: Main Contract Clauses:

- Obligation to deliver/perform
- Controlling subcontractors
- Monitoring and Milestones
- Securing Payment
- Ensuring prompt payment
- Non-payment remedies
- The use of Letters of Credit
- Parent Company Guarantees
- Time and place of delivery
- Transfer of title and risk - ICC Incoterms
- What is the retention of title clauses?
- Why is "time of the essence" important?
- Delivery, Ownership, and Risk in Procurement
- Liquidated Damages/Penalties and the dangers

## Unit 4: Other Key Considerations During the Commissioning Process:

- Variations and changes
- Liability beyond contract
- The value of Intellectual property
- When do contracts end?
- Limiting liability

- Warranty
- Which law to apply to the contract?
- Final contract review and closeout process

#### Unit 5: Dealing with Disputes:

- Compromise and settlement
- Dispute Resolution clauses
- Litigation
- Arbitration
- Modern methods of resolving disputes
- Mediation
- Conciliation
- Early Neutral Evaluation
- Expert Determination