

COSCSMO13 SQA Unit Code H99Y 04

Ensure that contracts are prepared, negotiated and agreed in construction management



Overview

This unit is about ensuring that contracts are prepared, negotiated and agreed. You will need to select appropriate forms of contract to suit the project. You will ensure that standard forms of contract are amended to suit the form of procurement. You will ensure that any necessary preliminaries to the form of contract are drafted. You will demonstrate that you have verified that the proposed contract satisfies all party's interests and that you have negotiated agreements and any amendments with the concerned parties. You will ensure that the contract meets legal requirements to the point of signature.

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Performance criteria

You must be able to:

Ensure that forms of contract are prepared

- P1 select **forms of contract**, contract clauses and documents for the **form of procurement** proposed
- P2 ensure that standard **forms of contract** are amended so that the clauses and documents are suitable for the **form of procurement** proposed
- P3 ensure that particulars and preliminaries are **drafted** which accurately describe the needs of all the stakeholders in the **form of contract**
- P4 ensure that contract clauses are checked and that appendices and amendments meet statutory requirements
- P5 ensure that non-standard **forms of contract**, clauses and documents are **drafted**, which have legal precedent, where standard or modified standard forms are not suitable
- P6 obtain legal advice on the implications of **drafting** non-standard clauses and **forms of contract** and explain why this is necessary to the stakeholders in the contract
- P7 obtain necessary checks and approvals for the draft **forms of contract**

Ensure that the contract is negotiated and agreed

You must be able to:

- P8 ensure that the **obligations** of the parties to the **contract** are identified and obtain valid, written proof that they are able to meet the **obligations**
- P9 negotiate **contracts** using a style and manner which maintains good long term relationships with all the stakeholders
- P10 negotiate and agree optimum **contract** terms, conditions and **amendments**
- P11 record the results of negotiations accurately and pass the information on, promptly and in accordance with **legal requirements**, to all the stakeholders
- P12 ensure that accurate copies of the final **contract documents** are prepared and checked to meet **legal requirements** and arrange for them to be signed

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Knowledge and understanding

You need to know and understand:

Ensure that forms of contract are prepared

- K1 how and why to select **forms of contract**, contract clauses and documents for the **form of procurement** proposed (evaluation)
- K2 how to ensure that standard **forms of contract** are amended so that the clauses and documents are suitable for the **form of procurement** proposed (application)
- K3 how to ensure that particulars and preliminaries are **drafted** which accurately describe the needs of all the stakeholders in the **form of contract** (application)
- K4 how to ensure that contract clauses are checked and that appendices and amendments meet statutory requirements (application)
- K5 how to ensure that non-standard **forms of contract**, clauses and documents are **drafted**, which have legal precedent, where standard or modified standard forms are not suitable (application)
- K6 how to obtain legal advice on the implications of **drafting** non-standard clauses and **forms of contract** (application)
- K7 how to explain why it is necessary to obtain legal advice on the implications of **drafting** non-standard clauses and **forms of contract** the stakeholders in the contract (application)
- K8 how to obtain necessary checks and approvals for the draft **forms of contract** (application)

Ensure that the contract is negotiated and agreed

You need to know and understand:

- K9 how to ensure that the **obligations** of the parties to the **contract** are identified (application)
- K10 how to obtain valid, written proof that the parties to the **contract** are able to meet the **obligations** (application)
- K11 how and why to negotiate **contracts** using a style and manner which maintains good long term relationships with all the stakeholders (synthesis)
- K12 how and why to negotiate optimum **contract** terms, conditions and **amendments** (synthesis)
- K13 how and why to agree optimum **contract** terms, conditions and **amendments** (synthesis)
- K14 how to record the results of negotiations accurately (application)
- K15 how to pass the information on, promptly and in accordance with **legal**

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requirements, to all the stakeholders (application)

K16 how to ensure that accurate copies of the final **contract documents** are prepared and checked to meet **legal requirements** (application)

K17 how to arrange for the final **contract documents** to be signed (application)

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Scope/range

Ensure that forms of contract are prepared

- 1 Forms of contract:
 - 1.1 standard
 - 1.2 non standard
- 2 Form of procurement:
 - 2.1 competitive tender
 - 2.2 non-competitive
- 3 Drafted:
 - 3.1 allocation of risks and responsibilities
 - 3.2 structure of contract
 - 3.3 key instructions
 - 3.4 legal factors
 - 3.5 business standing orders
 - 3.6 fair and prompt payment arrangements

Ensure that the contract is negotiated and agreed

- 4 Obligations:
 - 4.1 insurances
 - 4.2 bonds
 - 4.3 warranties
 - 4.4 statutory
 - 4.5 financial guarantees
 - 4.6 competence of people
 - 4.7 deliverables
- 5 Contracts - type:
 - 5.1 standard
 - 5.2 non-standard
- 6 Amendments:
 - 6.1 allocation of risks and responsibilities
 - 6.2 structure of contract

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- 6.3 key instructions
- 6.4 legal factors
- 7 Contract documents:
 - 7.1 invitation to tender
 - 7.2 forms of tender
 - 7.3 returns procedures
 - 7.4 specifications
 - 7.5 survey reports
 - 7.6 drawings and schedules
 - 7.7 bills of quantities/schedules of rates
 - 7.8 health and safety plans
 - 7.9 scope of services
 - 7.10 terms and conditions
- 8 Legal requirements:
 - 8.1 statutes
 - 8.2 regulations
 - 8.3 codes of practice and procedure
 - 8.4 common law

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