

# MITIGATION MEASURES OF CONTRACT RISKS

**PIN010**

## COURSE DESCRIPTION

Increasingly complex contracts and procurement structures often make it difficult to fully appreciate risk allocation and its implications. Late delivery, defects and cost overruns, damage to reputations, client relationships and the bottom line, can all be reduced or avoided through risk management. Unforeseen changes often occur to the design and scope which can cause further calls to increase investment.

This course covers the risk management as a fundamental element of professional contract management and is not often given the priority it deserves, which can lead to costly consequences. Research shows that contract risk management is a discipline that is difficult to consistently apply and maintain over the duration of a contract without the proper tools. This is especially difficult for contract managers who are responsible for managing a large number of complex contracts across multiple locations with multiple stakeholders.

## COURSE GOAL

To enhance the participants' knowledge, skills and abilities necessary to provide a good grounding in the essentials of contracts risk management arising out of construction contracts in an international context.

## COURSE OBJECTIVES

By the end of this course, participant will be able to:

- Understand practical contract management obligations and client responsibility.
- Facilitate greater understanding between commercial, technical and legal departments in meeting challenges over the duration of a contract from procurement to duration.
- Understand and managing the impact of scope creep and quality failures over the duration of works.
- Develop sound strategies for managing risk to business from loss of competitive edge to personal reputation.
- Improve relationships with suppliers and contractors as a result of recognizing needs and avoiding conflict.

## WHO SHOULD ATTEND

- Contract managers who are responsible for managing a large number of complex contracts across multiple locations with multiple stakeholders.
- Those newer to this field.
- Those who wish to refresh their knowledge of risk mitigation measures.

## COURSE DURATION

5 Working Days

## COURSE OUTLINES

### 1. Understanding and Identifying risk in Contracting

- The Role of the contract in managing risk.
  - Contract components, validity, formation requirements, authority and agency.
  - Contract provision: terms and conditions; warranties and indemnities; third parties; insurance; dispute resolution mechanisms; force majeure.
- Understanding both Client's and Contractor's positions in the tendering process.
- Types of contract risks.
  - The challenge of selecting the appropriate jurisdiction.
- Impact of national, local, industry-specific and regulatory laws.
- International laws.
- Inadequate contract execution.
- Failure to monetize high value services appropriately.
- Ill-defined and renegade contract communications.
- Poor management of obligations.
- Scope creep and quality failures - including failure of the contract to meet the business needs.
- Damage to business - from loss of competitive edge to personal reputation.
- Loss of intellectual property - poorly managed knowledge transfer.
- Loss of bargaining power - inability to act as an informed buyer.
- Technical risks.
  - Design change after FEED or other reasons.
  - Unforeseen conditions.
  - Obsolescence of product and new technology.
- Commercial risk.
  - Financial risk.
  - Tax liability.
  - Commodity rates fluctuation.
  - Currency fluctuation.
- Environmental Risk.
  - Environmental laws / liability.

## 2. Practical Risk Management and Mitigation

- Clearly understanding your contract in-depth.
  - Using standard form construction contracts.
  - Selecting the appropriate contract that best fits the project characteristics.
  - Scope of work, schedules and variation.
- Controlling risks that impact on delivery and return on investment.
- Avoiding and minimizing non-essential variation.
- Contractual mechanisms to enforce performance; a structured approach.
- Using exclusion, time and notice provisions.
- Engaging with the end users of your contracts to ensure they fully understand the terms of the contract and how it is intended to operate.
- Dealing with Delay and Disruption, Acceleration and Global Claims.
- Investing in appropriate, joined up tools to provide continual oversight and governance of risks that may negatively impact completing the project to schedule and on budget.
- Holistic risk management strategy to manage those risks and opportunities throughout the life of your project.
- Early warning, monitoring pricing adjustments, price list additions or other amendments.
- Educating the key members of your own project team.
- Developing change management, reporting and record keeping procedures and proforma documents to ensure you are not liable for breaching any of the legal requirements under the project's contractual regime.
- Employer imposed change, suspension and termination.
- Understanding how and when claims arise.
- Party or force majeure events.

## 3. Effective Risk Migration

- Case study: Effective risk migration strategies.
- Outsourcing proactive, regular advice from legal experts familiar with your business, your project, your people and your commercial objectives to secure early and objective identification of the specific key legal risks and opportunities facing your project.
- Using contractual risk migration.
- Limitation of liability.
  - Insurance.
  - Currency / Commodity rates fluctuation provisions.
  - Indemnity.
  - Other risk migration provisions.