

THE IN-HOUSE TRAINING COMPANY

Commercial awareness

Overview

An intensive, stimulating and thoroughly enjoyable entry-level programme for a wide-ranging audience, introducing them to the skills of commercial contracting.

Training objectives

This course will help the participants to:

- See their roles in context
- Think more strategically when preparing bid submissions
- Increase the likelihood of success of winning bids submitted
- Identify the benefits of time spent at the front end, pre-contract award, on drafting and negotiating a solid contract in order to reduce problems later, during contract management stage
- Appreciate the value of good preparation and groundwork, prior to submitting a bid and in advance of a negotiation
- Anticipate, identify and manage potential risks, both pre- and post-contract award
- Make a greater contribution to the profitability of their projects and contracts
- Develop their commercial 'nous'

Audience

This is an ideal programme for all those whose role, and future career development, requires a greater degree of commercial awareness and understanding, including:

- Commercial and contracts specialists (particularly those relatively new to the role)
- Project managers and engineers (particularly those who have regular contact with clients and customers and who may find themselves moving into more commercial roles)
- Purchasing and procurement specialists (particularly those relatively new to the role)

Format

An inter-active two-day course with a strong emphasis on practical exercises. If required, a one-day version of this programme can be provided instead, although the learning would be significantly diminished without the exercises.

Special features

For maximum benefit from the course, we recommend that the trainer be given access to sample contracts and live projects on which to base the case studies and practical exercises.

The expert trainer

Catherine is an independent consultant and trainer in contract and commercial risk management. She was formerly a Commercial Manager at BAe Systems, following previous contract and commercial roles with GEC and Siemens, and has extensive practical experience of commercial risk management, contract management, contract negotiation and bid management. She is a highly experienced and a very popular trainer, as the following comments from course participants show:

'Excellent – you made contracts sound interesting!' *Co-op Group*

'Good speaker, passionate about subject and good two-way discussions were held throughout the presentation.' *Silvertown UK Ltd*

'Very enjoyable with a lot of interaction.' *Hitachi Data Systems*

'Well prepared and well paced.' *Honeywell*

'Catherine obviously knows and relishes her subject and this enthusiasm came over at all times. Delivery was excellent and kept it from being very dry as it could have been.' *Jungheinrich*

'This was an excellent training course. Totally relevant to what I do and future of the company.'
ABB Ltd

'Great course, very useful and well delivered.' *Complinet*

Course outline

1 The commercial environment

- Key elements of commercial behaviour
 - Maximising profit
 - Minimising risks
 - Getting a good return on investment
- Understanding the company – the corporate objective / mission / strategy
- Understanding the customer's objectives / decision criteria
- Different types of commercial and contractual relationship

2 Winning the contract

- Tender evaluation – to bid or not to bid?
 - How does project fit with company's objectives / strategy? (Boston matrix)
 - How do your company's strengths / unique selling points / areas of differentiation compare with the competition and align with customer's objectives / decision-making criteria?
 - Do you have the resources and time to bid?
 - Do you have the capacity and capability to do the contract if won?
- Bid preparation – presenting the bid documentation as:
 - A legal document (legal obligations / liabilities of both parties)
 - A selling document
- *Bid / no-bid review exercise*
 - *Alignment with the customer*
 - *Differentiation from the competition*

3 Establishing a legally binding contract

- Understanding the requirements to create a legally binding contract (LILAC)
 - Legality
 - Intent
 - Legal capacity
 - Agreement
 - Consideration (LILAC)
- Offer and acceptance
- Battle of the forms.
- Letter of Intent
- Authority
- *Entering a legally binding contract – LILAC exercise and battle of the forms facilitation session*

4 Drafting an express term contract

- Understanding the difference between implied terms and express terms
- Understanding what the default, implied terms are
- Understanding the risks associated with the implied terms
 - 'Unlimited consequential damages' liability on breach party
 - 'Burden of proof' obligation on non-breaching party
- Drafting express terms which take precedence over and revise implied terms to create a more appropriate and / or favourable position for one, or both, parties
- Excluding, capping / limiting liability clauses

- 'Cake and eat it' clauses – implied, unlimited liability taking precedence over expressed capped liability
- Limitation of Unfair Contracts Terms Act
- *Understanding the default position – Silence exercise*

5 Negotiating styles

- Styles
 - Bargaining
 - Logic
 - Emotion
 - Threat
 - Acceptance
 - Compromise
- Matching style to bargaining position
- Settlement zones and creating a 'win-win' outcome
- *Individual questionnaire identifying each participant's default negotiation style*

6 Managing the contract

- Creating a cohesive, efficient working team
 - Effective internal communication and processes
 - Contract reading and kick-off
 - Allocating responsibilities
 - Empowering individuals
- Having an action plan
 - Storyboarding
 - Ensuring no gaps
 - Issues log
 - Dependency log
- 'No more, no less' rule
 - Avoid a 'creeping scope' and gross margin erosion
- Proactive management
 - Reviews and monitoring
 - Risk register
- Managing failures to avoid disputes / hostility
 - Present solutions, not problems
- Good external co-operation and communication, with customers, suppliers and subcontractors
- Managing / formalising contract changes, internally through procedures and externally through contract
- Contract completion
- Lessons learnt
- *Contract reading exercise*

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