



GOVERNMENT CONTRACTS AND PROCUREMENT

Public Officers' Law Seminar :
Understanding the Law
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Overview

- Introduction to Advisory Units under the Civil Division
- Public Officers' Responsibility
- Importance of Contracts
- Importance of Contract Management
- Procurement and Contract Process
- Contract Terms
- Common and Practical Issues



Advisory Units under the Civil Division

- Advisory 1 and Advisory 2
- Provide advisory services to Ministries, Departments and Statutory Boards including:
 - drafting, vetting and negotiating contracts, Memorandums of Understanding
 - statutory interpretations



Importance of Contracts

- Government procurement/projects utilise government funds and for a public purpose.
- Contracts:
 - provide a description of responsibilities.
 - bind parties to their duties.
 - establishes a time frame for duties.
 - secure payment.
 - provide recourse when the relationship falters.



Importance of Contract Management

- Money is involved.
- Goods and Services are being procured.
- Failure can result in:
 - Lack of compliance
 - Missed opportunities
 - Broken relationships
 - Costly Arbitration



Public Officers' Responsibility

- Public Officers who manage projects must be familiar with essential activities in contract planning, tendering and contract administration.
- Sanctions in place against errant or negligent Public Officers who have not properly discharged their duties in accordance with the procedural, regulatory and legal framework of tendering.
- Public Officers are subject to **Financial Regulations, 1983.**



Public Officer's Responsibility

- **Regulation 286 FR** : Responsibility of Public Officers for losses.
- **Regulation 339 FR** : Responsibility of Heads of Departments to ensure that Contracts are drawn up in accordance with current requirements particularly with regard to the provision for guarantees, penalties and damages.
- **Regulation 340 FR** : Heads of Departments to ensure that any variation to a Contract receives due authorisation.
- **PMO Circular 01/1984, 11/1984 and 06/2007 (Signatories)**
- **MOF Circular 01/2014 (Performance Bond)**



Procurement and Contract Process

- Tender
- Contract Drafting
 - Pre or Post Tender
 - Negotiated Contract
- Contract Signing
- Contract Performance
- Contract Closure/Closeout



Tender/Invitation to Tender

4 sections:

- Section 1: Instruction to Tenderers
- Section 2: Government Requirements
- Section 3: Schedules
- Section 4: Contract



Elements of a Contract

- Offer
- Acceptance
- Consideration
- Intention to create legal relations
- A contract does not have to be formed in a single document (where Party A and Party B sign on the same piece of paper.)



Contract Format

(1) Main Contract

- Contains general agreed terms
- Usually not changed

(2) Schedules

- Contains specific information
- Project specific



Contractual Documents

- Agreement for the Purchase of Goods and Services
- Master Supply and Services Agreement
- Consultancy Services Agreement
- Technical Services Agreement
- Construction/Building & Civil Work Agreement
- Non-Disclosure Agreement
- Tenancy Agreement



Contract Terms

- Parties
- Commencement Date
- Type of Procurement
- Scope of Services/Specification of goods
- Project Schedule
- Payment Schedule
- Performance Bond (if any)



Contract Terms

- Liquidated Agreed Damages
- Acceptance Procedure
- Intellectual Property Rights
- Warranty
- Maintenance
- Termination



Boiler Plate Clauses

- Liability
- Waiver
- Confidentiality
- Severability
- Personnel
- Entire Contracts
- Gifts
- Amendments and Variations



Boilerplate Clauses

- Force Majeure
- Taxes and Duties
- Notices
- Assignment and Sub-contract
- Compliance with Law
- Collusion
- Conflict of Interest
- Indemnity
- Governing Law and Dispute Resolution



Common and Practical Issues

- Performance before contract signed
- Backdating of contracts
- Performance Bond – MOF Circular 1/2014
- Liquidated Damages
- Delivery and Acceptance of Services and Goods
 - Verification and supporting documents
 - Timing
 - Delays and Liquidated Damages



Common and Practical Issues

- Payment
- Stamp Duties
- Indemnity and Liability
- Termination for Convenience



Contract Closure/Closeout

- The process for completing and settling each contract
 - Ensure that all deliverables are received and services performed as per the agreement
 - Documenting final acceptance
 - Considering any outstanding obligations from either party
 - Considering any outstanding claims or issues
 - Ensuring that final payment is made
 - Collecting Liquidated Damages and returning Performance Bond
 - Ensuring that contract documents are filed
 - Ensuring certifications, warranty, spare parts list, operation manuals and training have been provided
 - Procedures for record maintenance
 - Post contract review meeting for evaluation



QUESTION AND ANSWER SESSION



THANK YOU