

Unit AB6 Prepare and agree the contract

Elements

AB6.1 Recommend and agree a form of contract

AB6.2 Prepare contract

AB6.3 Negotiate and conclude a contract

UNIT COMMENTARY

This Unit is relevant to archaeologists responsible for the development of projects on behalf of clients and the agreement of contracts to undertake the project. This function is performed both by internal project managers developing a project on behalf of their own organisation and by external consultants who are likely to be working for non-archaeological organisations. This Unit is about your role in advising the client on the selection of a suitable form of contract and your subsequent action in preparing the contract forms and negotiating details with prospective suppliers. It is specifically concerned with the use of standard forms of contract and not with the drafting of one-off or complex forms which are properly the domain of legal specialists.

In order to negotiate and conclude a contract you will need to be clear about the expectations of both parties and aware of the limits of your authority to vary contract terms and conditions. Your negotiations will need to be conducted in a manner that maintains goodwill and trust between the parties. And, at the conclusion of the negotiations you will be responsible for ensuring that all contract documentation is complete and accurate, complies with normal contract requirements and is processed in accordance with best practice.

AB6 Prepare and agree the contract

AB6.1 Recommend and agree a form of contract

Performance Required

This will involve:

- a) identifying the **parties** to and the purpose of the contract
- b) selecting, with others where appropriate, a **form of contract** which is appropriate to the client's needs and project requirements and making a clear and realistic recommendation to the client
- c) confirming, with others where appropriate, that the **form of contract** selected and recommended is matched realistically to the client's objectives for performance, time, cost and quality
- d) giving the client an opportunity to comment and seek clarification and providing clear and accurate information and advice on related contractual issues
- e) recommending a **form of contract** which is fit for the purpose, legally valid and enforceable

Occupational Context

1 Parties to contracts:

- client
- employer
- contractor
- identified third parties

2 Forms of contract (as recommended by):

- sector bodies
- professional institutions
- central and local government and related agencies

Knowledge Requirements

You need to know about:

Forms of contract

- Principle types and forms of contract relevant to procurement of works, supplies and services (including professional services)
- Characteristics and merits of different forms of contract in the context of different project and client contexts
- Archaeologist's duties and responsibilities in providing advice on contracts
- Sources of expert support and advice on contracts

AB6 Prepare and agree the contract

AB6.1 Recommend and agree a form of contract

Required Skills

You should demonstrate:

- How to identify the purpose of the contract
- How to select the most appropriate type of contract.
- How to communicate recommendations and deal with feedback from the client
- How to recommend a form of contract fit for the purpose, legally valid and enforceable

Evidence Required

You should provide evidence that you can recommend and agree a form of contract s

The candidate should be questioned, based upon the documentation provided, to explore how they

- selected and recommended a form of contract which is fit for the purpose, legally valid and enforceable

Evidence Rules

- The candidate should have been involved in the preparation of contracts for at least 2 substantive activities

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AB6.2 Prepare contract

Performance Required

This will involve:

- a) verifying, with others where appropriate, that the **form of contract**, clauses and documentation selected are valid, suitable for purpose and the **type of procurement** proposed
- b) making legitimate modifications to standard forms to ensure that the contract is matched to client and project requirements and the proposed form of procurement
- c) verifying that particulars and preliminaries incorporate completely the needs of the client, supplier and identified third parties
- d) confirming that the contract, clauses, appendices and amendments are complete, legally valid and comply with statutory requirements
- e) seeking advice, as appropriate, on modifications and amendments to standard forms and on the implications of drafting non-standard contracts, clauses and documents and clearly explaining the outcome to the client, supplier and identified third parties
- f) making checks and obtaining approvals for contract documentation which are necessary and sufficient

Occupational Context

1 Forms of contract (as recommended by):

- sector bodies
- professional institutions
- central and local government and related agencies

2 Type of procurement:

- competitive tender - limited competition (select list), open competition
- non-competitive - negotiation, extension of contract

3 Types of Tender

- fixed price
- fixed price with contingency provision
- estimate
- hourly/day rates

Knowledge Requirements

You need to know about:

Forms of contract

- Principle types and forms of contract relevant to procurement of works, supplies and services (including professional services) in the construction industry
- Characteristics and merits of different forms of contract in the context of different project and client contexts
- Archaeologist's duties and responsibilities in providing advice on contracts
- Sources of expert support and advice on contracts

Contract law

- Principles of contract

Amendments and variations

- Allowable amendments and variations to standard forms of contract within the construction industry

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AB6.2 Prepare contract

Required Skills

You should demonstrate:

- How to modify the contract to suit the needs of your organisation, the client, supplier and form of procurement
- That the contract, clauses, appendices and amendments are complete, legally valid and comply with statutory requirements

Evidence Required

You should provide evidence that you can prepare a contract

The candidate should be questioned, based upon the documentation provided, to explore how they

- verified that the form of contract, clauses and documentation selected are valid, suitable for purpose and the form of procurement proposed

Evidence Rules

- The candidate should have been involved in the preparation of contracts for at least 2 substantive activities

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AB6.3 Negotiate and conclude a contract

Performance Required

This will involve:

- a) conducting negotiations in a manner which maintains goodwill and the co-operation of the parties, involving others as appropriate
- b) negotiating and agreeing contract terms, conditions and **amendments** with all relevant parties and accurately recording outcomes
- c) ensuring that sufficient copies of final contract documentation are prepared, signed, complete and accurate and meet **regulatory and legal requirements**
- d) identifying the **obligations** of all the parties and obtaining acceptable proof these can be met at identified stages in the programme
- e) confirming, with others where appropriate, that documentation relating to the contract is complete, accurate notified to relevant parties and secure

Occupational Context

1 Contract amendments:

- allocation of risks and responsibilities
- structure of contract
- key instructions
- insertions and deletions

2 Regulatory and legal requirements:

- statutes
- codes of practice and procedure
- common law

3 Obligations:

- payments and retentions
- insurances
- bonds
- warranties
- statutory approvals
- financial guarantees

Knowledge Requirements

You need to know about:

Forms of contract

- Principle types and forms of contract relevant to procurement of works, supplies and services (including professional services) Characteristics and merits of different forms of contract in the context of different project and client contexts
- Archaeologist's duties and responsibilities in providing advice on contracts
- Sources of expert support and advice on contracts

Contract law

- Principles of contract
- Case law as it applies to standard forms of contract

Amendments

- Allocation and assignment of risk
- Allowable amendments and variations to standard forms of contract

Contract obligations

- Acceptable proof regarding:
- Payments and retentions
- Insurances
- Bonds
- Warranties
- Statutory approvals
- Financial guarantees

AB6 Prepare and agree the contract

AB6.3 Negotiate and conclude a contract

Required Skills

You should demonstrate:

- How to negotiate and agree contract terms, conditions and amendments

Evidence Required

You should provide evidence that you can negotiate and conclude a contract

The candidate should be questioned, based upon the documentation provided, to explore how they

- negotiated, agreed and confirmed contract terms, conditions and amendments
- ensured that contract is compliant with requirements

Evidence Rules

- The candidate should have been involved in the preparation of contracts for at least 2 substantive activities