
Overview

This standard 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 standard 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.

Performance criteria

You must be able to:

Recommend and agree a form of contract

- P1 identify the parties to and the purpose of the contract
- P2 select, with others where appropriate, a form of contract which is appropriate to the client's needs and project requirements and make a clear and realistic recommendation to the client
- P3 confirm, 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
- P4 give the client an opportunity to comment and seek clarification and provide clear and accurate information
- P5 recommend a form of contract which is fit for the purpose, legally valid and enforceable

You must be able to:

Prepare contract

- P6 verify, with others where appropriate, that the form of contract, clauses and documentation selected are valid, suitable for purpose and the type of procurement proposed
- P7 make legitimate modifications to standard forms to ensure that the contract is matched to client and project requirements and the proposed form of procurement
- P8 verify that particulars and preliminaries incorporate completely the needs of the client, supplier and identified third parties
- P9 confirm that the contract, clauses, appendices and amendments are complete, legally valid and comply with statutory requirements
- P10 seek advice, as appropriate, on modifications and amendments to standard forms and on the implications of drafting non-standard contracts, clauses and documents and clearly explain the outcome to the client, supplier and identified third parties
- P11 make checks and obtain approvals for contract documentation which are necessary and sufficient

You must be able to:

Negotiate and conclude a contract

- P12 conduct negotiations in a manner which maintains goodwill and the co-operation of the parties, involving others as appropriate
- P13 negotiate and agree contract terms, conditions and amendments with all relevant parties and accurately recording outcomes
- P14 ensure that sufficient copies of final contract documentation are prepared, signed, complete and accurate and meet regulatory and legal requirements
- P15 identify the obligations of all the parties and obtain acceptable proof these can be met at identified stages in the programme
- P16 confirm, with others where appropriate, that documentation relating to the contract is complete, accurate notified to relevant parties and secure

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Prepare and agree the contract

Knowledge and understanding

You need to know and understand:

- K1 the principle types and forms of contract relevant to procurement of works, supplies and services (including professional services)
- K2 the characteristics and merits of different forms of contract in the context of different project and client contexts
- K3 the Archaeologist's duties and responsibilities in providing advice on contracts
- K4 sources of expert support and advice on contracts
- K5 the principles of contract
- K6 allowable amendments and variations to standard forms of contract within the construction industry
- K7 case law as it applies to standard forms of contract
- K8 amendments and variations
- K9 allocation and assignment of risk
- K10 acceptable proof regarding:
 - K10.1 payments and retentions
 - K10.2 insurances
 - K10.3 bonds
 - K10.4 warranties
 - K10.5 statutory approvals
 - K10.6 financial guarantees

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