

Commercial Contracts for Managers Series

UNDERSTANDING TENDERS

TABLE OF CONTENTS

	111
Preface	v
Acknowledgments	xi
About the author	xiii
Introduction	1
Chapter 1 Foundation	
Introduction	5
Terminology	7
Stages of the tendering process	12
Benefits of a tendering process or system	14
Organisations without a tendering process	15
Chapter 2 Tender documents	
Conditions of tender	18
Conditions of contract	22
Variations to the conditions of contract	23
"Tenderer's offer" form	25
Confidentiality agreements	26
Chapter 3 Tendering: the steps	
Checklist: steps for prospective tenderers	31
Timing the evaluation of contracts	35
Controls on the orderly flow of information	38
Rating a prospective Contractor	39
<i>Checklist:</i> assessment criteria for a prospective Contractor	40
Steps after winning a contract	41
Checklist: steps after award of contract	42



Chapter 4 Contract provisions

Outsourcing risk to Contractors	43
Indemnities	44
Consequential loss	48
Liquidated damages	51
Ownership of intellectual property	53
Case study: what's yours is mine	56
Force majeure	59
Termination for convenience	61
Time of the essence	63
Assignment	64
Change of control in the Contractor	67
Changes to the law	70
Case study: Is our contract future-proof?	71
Governing law and jurisdiction	73
Chapter 5 Aspects of contract evaluation	
Consequences of inadequate systems	79
Implementing systems	80
Inherent conflict of interest	81
Decentralising contract evaluations	83
Contract management policy	86
Chapter 6 Other isssues in tendering	
Relationship between tenderer and Principal —	
partnerships or "pistols at dawn"?	87
Capital expenditure (CAPEX)	90
Golden nugget: a word about working capital	92
Pricing	94
Variation to the scope of works	96
Disputes	98
Alternative dispute resolution (ADR)	100
Obligation to act reasonably	104
<i>Case study</i> : Be reasonable! The power of a contract administrator	106
Sub-contracts	110
Collusive tendering and other questionable practices	113
Chapter 7 Conclusion	
Checklist: why tenders are becoming more demanding	117
Appendix $A - Draft$ covering letter	121
Appendix B — Sample tender questionnaire	123
Appendix C — Sample tender form	127
Appendix D — Sample Conditions of Tender	129
Appendix E — Sample Statutory Declaration	137
Index	141