

My needs and the Service Provider's

- striking a balance

A Teaching Presentation

by

Smart Contracting Solutions

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CONTRACTING AND CONTRACT MANAGEMENT

1. Identify My Work Requirements

2. Make a Plan

- where do you need it
- when do you want it
- how much would it cost?
- have you made budgetary provision for it
- if not, how do you plan to pay for it
- going by internal approval processes when should I raise a Business Proposal for my work requirement?

3. Sourcing for my Work Requirement

Pre-bid Process:

- how complex is my work requirement }
- Is it capital/resource intensive }
- Is it time sensitive }
- how do I want to pay for it (periodic, lumpsum or rates)
- My detailed Work requirement (scope)
- What type of Contractor can give me what I want?
- Are the Contractors I have selected on the Company's list of approved bidders? If not, why not?
- Can they be registered before the planned Contract signature?
- how much would it cost
- Obtaining Management endorsement for your Work requirement
- dispatch of Bid Invitations
- Prepare your Company Estimate

Evaluating a Bid: a commercially acceptable quote should be based on the current market rate for the generic work type + **the value of any factors that may otherwise cause an increase/reduction in your quoted price** (i.e. contract duration, security, legal requirements (e.g. local content etc.), peculiar local legislation, Clients requirements (are they more detailed than what is provided for in the open market) etc. + profit margin.

Market Price: What is the current market Price: determined via market surveys – verify same by looking on the internet or via other relevant publications – where applicable.

Risk factor: local weather conditions/terrains, ability to pay, the trend of local politics/legislation, availability of basic infrastructure – i.e. roads, power supply etc.

Component parts of a bid price/quote = market price + risk factor + client's peculiar requirements/specifications + profit margin.

Having identified the current market rate – add on actual additional costs of efficiently providing the service (risk + special needs) + a competitive profit margin.

Projections should be made for inflationary trends – especially where the Contract duration is for up to 1 year.

Post -tender Invitation Processes:

- Bid evaluation
- Bid Clarification
- Award Recommendation
- Contract award/signature



Speculative bids: the Pitfalls

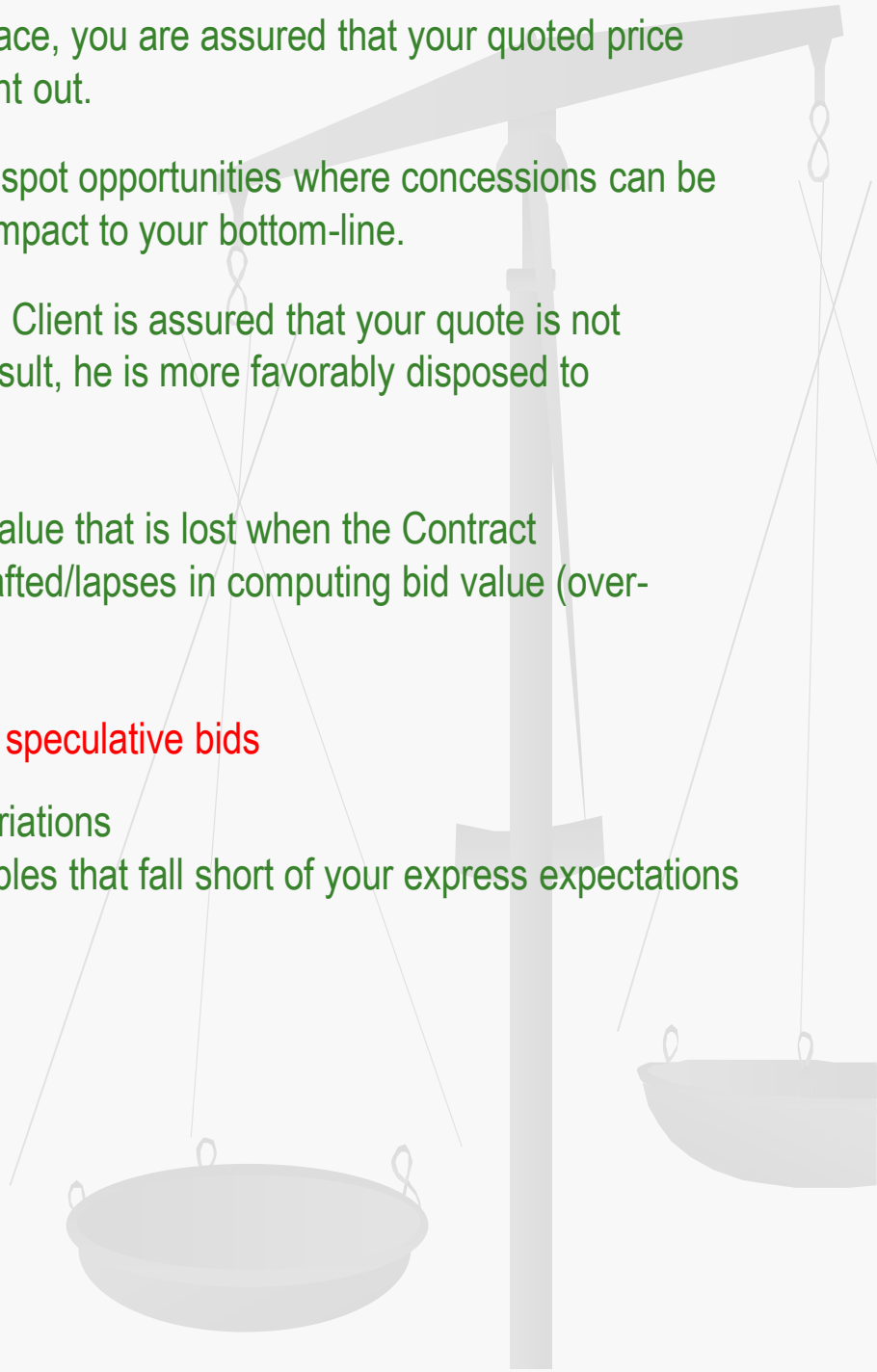
Why there must be a formula/basis for fixing your Company Estimate/Bid Price

1. It provides a framework against which any review (upwards/ downwards) of the quoted price can be benchmarked.
2. With a formula in place, you are assured that your quoted price was carefully thought out.
3. You are also able to spot opportunities where concessions can be made with minimal impact to your bottom-line.
4. In a negotiation, the Client is assured that your quote is not speculative. As a result, he is more favorably disposed to paying a 'fair' price.

**discuss the potential value that is lost when the Contract document is not well-drafted/lapses in computing bid value (over-rated/underpriced)

The danger of acting on speculative bids

1. The potential for Variations
2. Settling for deliverables that fall short of your express expectations



The Contract Document

What is a Contract...What a Contract is not.

Types of Contract – Oral and Written Contracts and why written Contracts are a great idea

- Letters of Intent – What is a Letter of Intent?
 - The implications of acting on a Letter of Intent and the preferred alternative (Interim Agreement)
- Component parts of a Contract (there must be an agreement on Price, workscope, duration of Contract, payment terms and the contracting parties should also have the capacity to Contract, Contract signature – and taking a second look at the Contract you are about to sign.

There is no such thing as standard Contract terms IF you were not party to same.

Exception: Global Contracts.

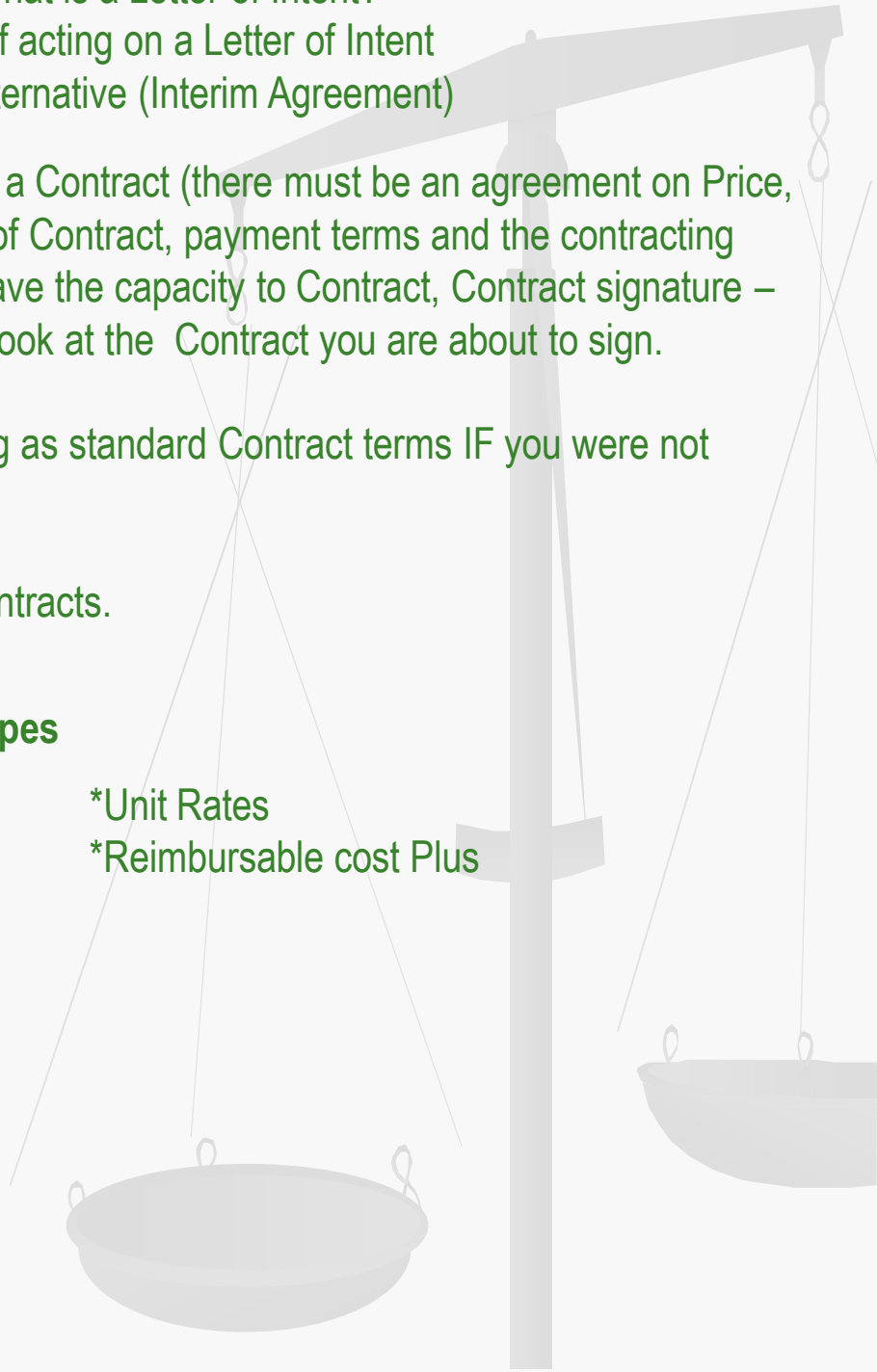
General Contract Types

*Lumpsum

*EPIC

*Unit Rates

*Reimbursable cost Plus



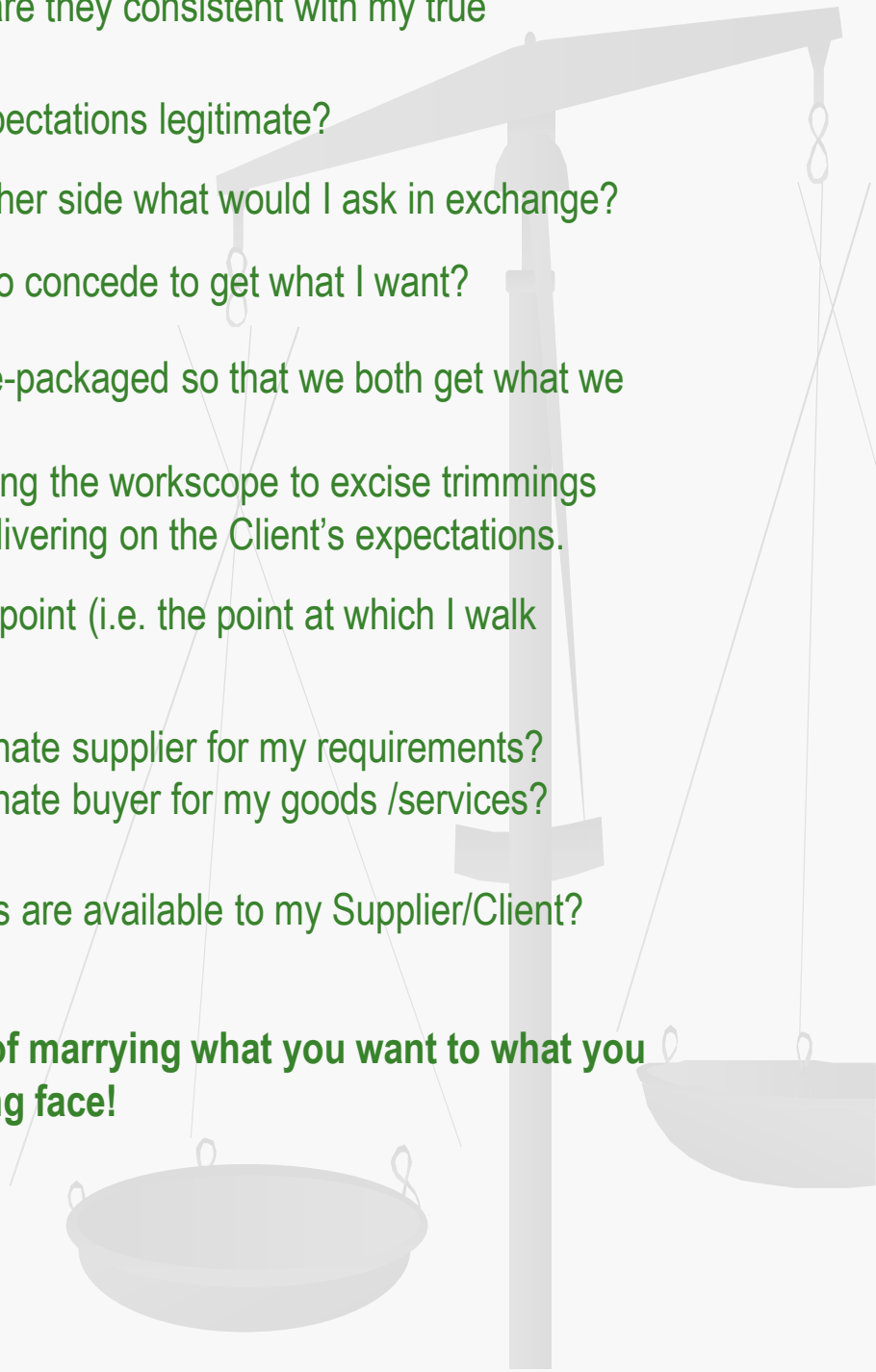
Negotiating a Contract

Your objective: to get the most commercially acceptable deal for your organization.

Questions you should ask yourself:-

- What do I want...are they consistent with my true expectations
 - are my expectations legitimate?
- If I were on the other side what would I ask in exchange?
- What am I ready to concede to get what I want?
- Can the deal be re-packaged so that we both get what we want
 - e.g. revising the workscope to excise trimmings whilst delivering on the Client's expectations.
- What's my trigger-point (i.e. the point at which I walk away)?
- Do I have an alternate supplier for my requirements?
- Do I have an alternate buyer for my goods /services?
- What other options are available to my Supplier/Client?

Negotiation: the art of marrying what you want to what you can get without losing face!



Standard Contract Terms and Conditions

Important terms and Conditions

- (a) Force Majeure
- (b) Terms of Payment
- (c) Contract duration – Contract start & end dates
- (d) Termination (reciprocity)
- (e) Bonus/liquidated damages (reciprocity)
- (f) Correspondence under the Contract and the role the Contract-recognized Representative
- (g) Liens – the power of a lien

Implied Contract terms

- *Mitigation of Loss
- *Implied competence
- *The Law of Bailment - duty of care for Client's property in your custody/under your control
- *Contract execution:- does it satisfy the requirements of applicable law (Deeds & Contract Agreements)...are Contract signatories recognized under local laws?

Things to look out for

- Does Contract have Standby rates?
In the event of indefinite suspension of work by Client...am I protected?

Q: What happens where no provision has been made for such eventualities?

Ans: you may have to go through the arduous and time-consuming process of submitting a Claim; and even then, your Claim could still be rejected.

Day-to-day Contract management:

What requirements are mandatory/discretionary?

The impact of ostensible authority

What does the Contract say?

Have you complied with the terms of Contract?

Suspension of Work:

a) by the Client

b) due to Contractor's fault

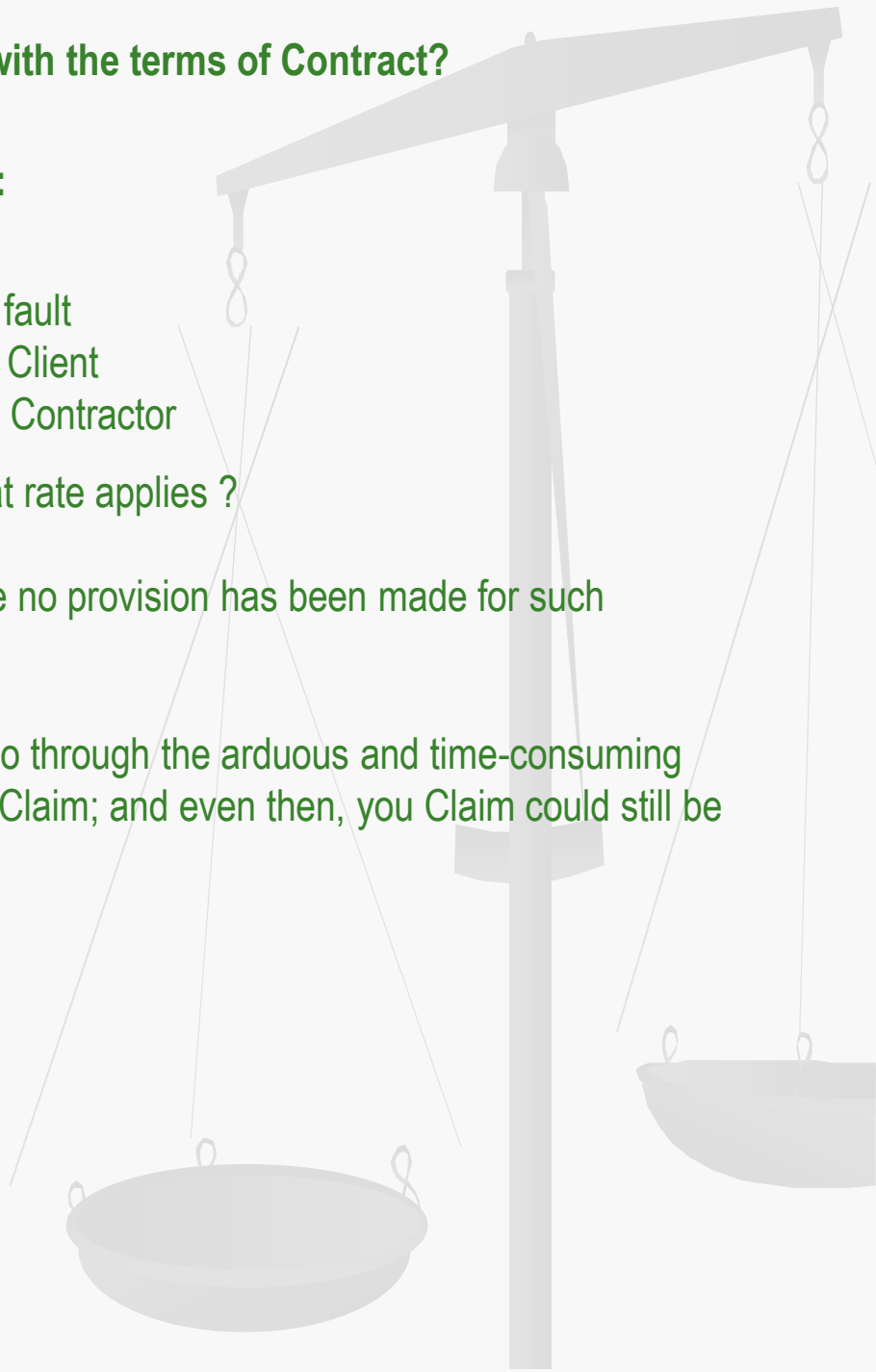
- Obligations of the Client

- Obligations of the Contractor

c) Who pays and what rate applies ?

Q: What happens where no provision has been made for such eventualities?

Ans: you may have to go through the arduous and time-consuming process of submitting a Claim; and even then, your Claim could still be rejected.



Day-to-day Contract management

Variations to Contract

The importance of keeping written records.

Q: What happens where the requested work item is outside the agreed workscope?

Ans: make a formal (written) request for an increase in contract workscope to include this new work requirement.

Q: What happens where the Contract has expired and the Client still requires your services?

Ans:

- (a) Notify the Client that the existing Contract has expired
- (b) request Contract cover - i.e. that a replacement Contract be put in Place.

Note: a written request from the Contract Authorized Representative/ principal officer of the Client for the continued provision of the Services would suffice in the interim PROVIDED always that the signatory to the letter is either Contract auth. Representative/ principal officer of the Client.

Q: What happens where the requested work item has caused a ceiling overrun?

Ans: make a formal (written) request for an increase in contract ceiling to include for the costs of providing the additional service.

No emergency should preclude the preparation and signature of the requisite contract documents within 1 week of its occurrence

Day-to-day Contract management

Minutes of Meeting (M.O.M.):

Where no minutes are taken, you should make a note of what is discussed and agreed at the meeting and send same under cover of a letter to the other party. Identify same as your understanding of what was discussed and agreed at the meeting and also request confirmation that your account truly reflects what was discussed and agreed.

This will then serve as the record of the terms discussed and agreed.

Contract-related Correspondence: must be addressed as specified in the Contract – failing this, if for any reason the incumbent addressee leaves office before resolving that challenge, you will have to re-table your matter when his replacement resumes office – *Stephen Odeyerni Vs NITEL*.

Email correspondence & what the law says - securing commitments made.

3rd Party interfaces/correspondences : putting the right foot forward

General Caution: Do not take responsibility for the Client's/Contractor's internal processes/limitations. Whilst recognizing his constraints, remember that his constraints are his to resolve. Focus on resolving your Contract-backed concern(s).

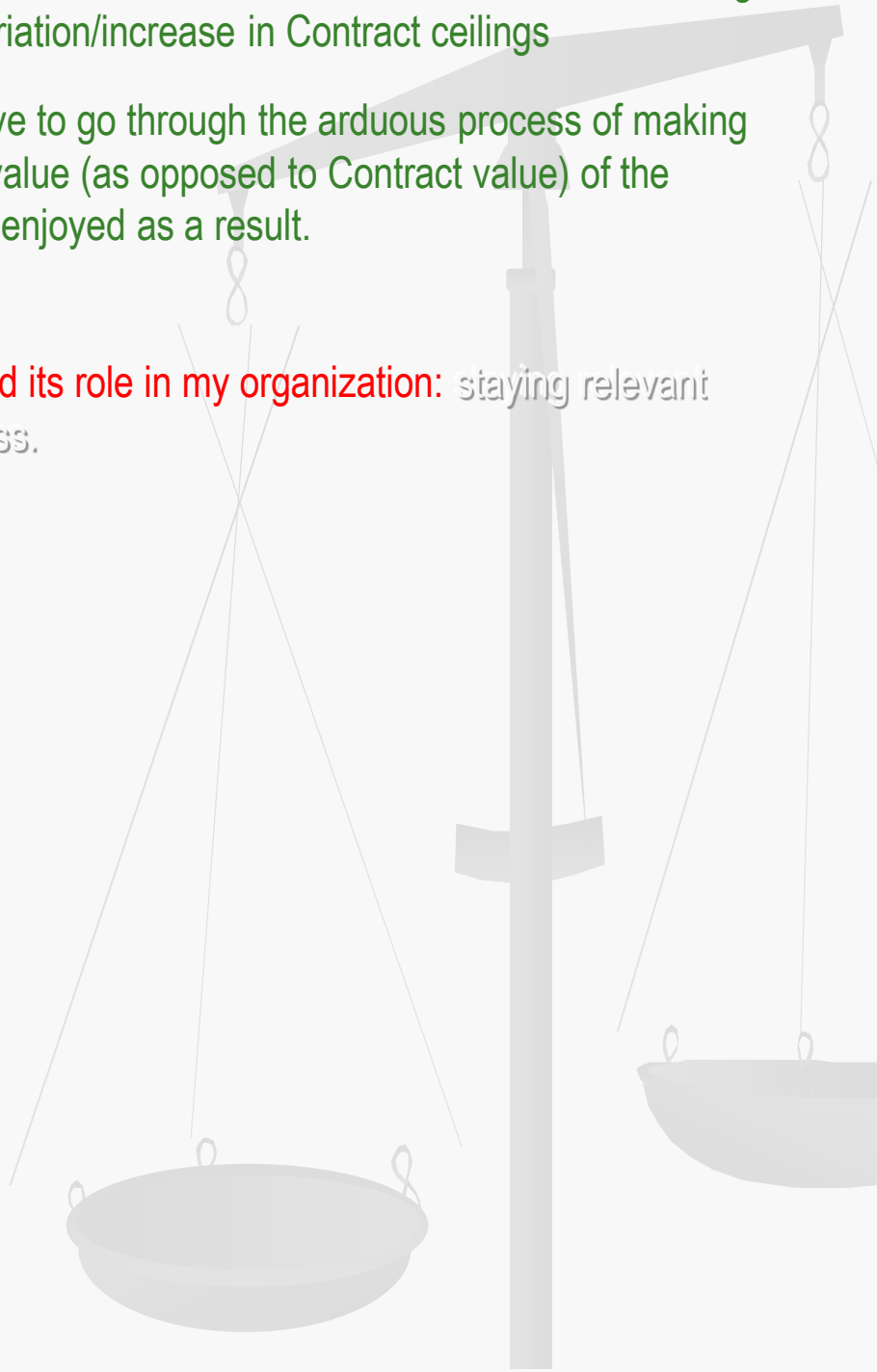
Making a Claim:

- (a) What is a Claim?
- (b) Packaging a Claim
- (c) The impact of delay on a Claim

When viewed against the terms of Contract, is there a basis for making a Claim/Request for variation/increase in Contract ceilings

Failing this, you will have to go through the arduous process of making a claim for the market value (as opposed to Contract value) of the services the Client has enjoyed as a result.

Contracting Support and its role in my organization: staying relevant
y adding value – Discuss.



Contract Closeout

Q: What is Contract Closeout?

Ans: In very general terms it is the formal conclusion of the Contractual relationship created and the Contract archived.

A Contract may be closed either upon work completion or, upon termination of the Contract before the Contract completion date.

In the former case, a Contract shall be closed out where the work and/or services have been completed, any guarantee period has expired, retention have been released, materials have been reconciled, company-owned surpluses returned, HSE and overall performance has been recorded, all possible legal issues have been resolved and all monies due from/to the Contractor are certified as fully reconciled by both the Contractor and the company.

In the latter case, a Contract shall be closed out where materials have been reconciled and Company -owned surpluses returned, and all monies due to the Contractor for the partly completed work has been paid.

Contract Closeout this would require an account reconciliation in the following areas:

Contract Execution: this shall cover the Contractor's obligations, variations, omissions, company-supplied materials, testing, completion/commissioning, remedy of any defects and Company's acceptance and ownership.

Payments: this shall cover entitlements, variations, price fluctuations, escalation, interim payments, liquidated damages, offsets, guarantees, retention, performance bonds (where applicable) and final accounts.

Any Bank Guarantees/Bonds provided by the Contractor should be released to the Contractor at the Closeout stage of the Contracting stage.

Timelines: covers issues such as the CONTRACT start/end dates, changes (if any) in workscope etc.

Performance: covers Contractor CASHES/overall performance, Contract performance e.g. suitability of contract used, contract learning points, pricing etc. for statistical purposes.

The prudent Client/Contract holder would maintain a Contract Closeout list to verify that all pertinent Contract issues are addressed .

You cannot closeout a Contract where there is ongoing litigation between you and the Contractor.