

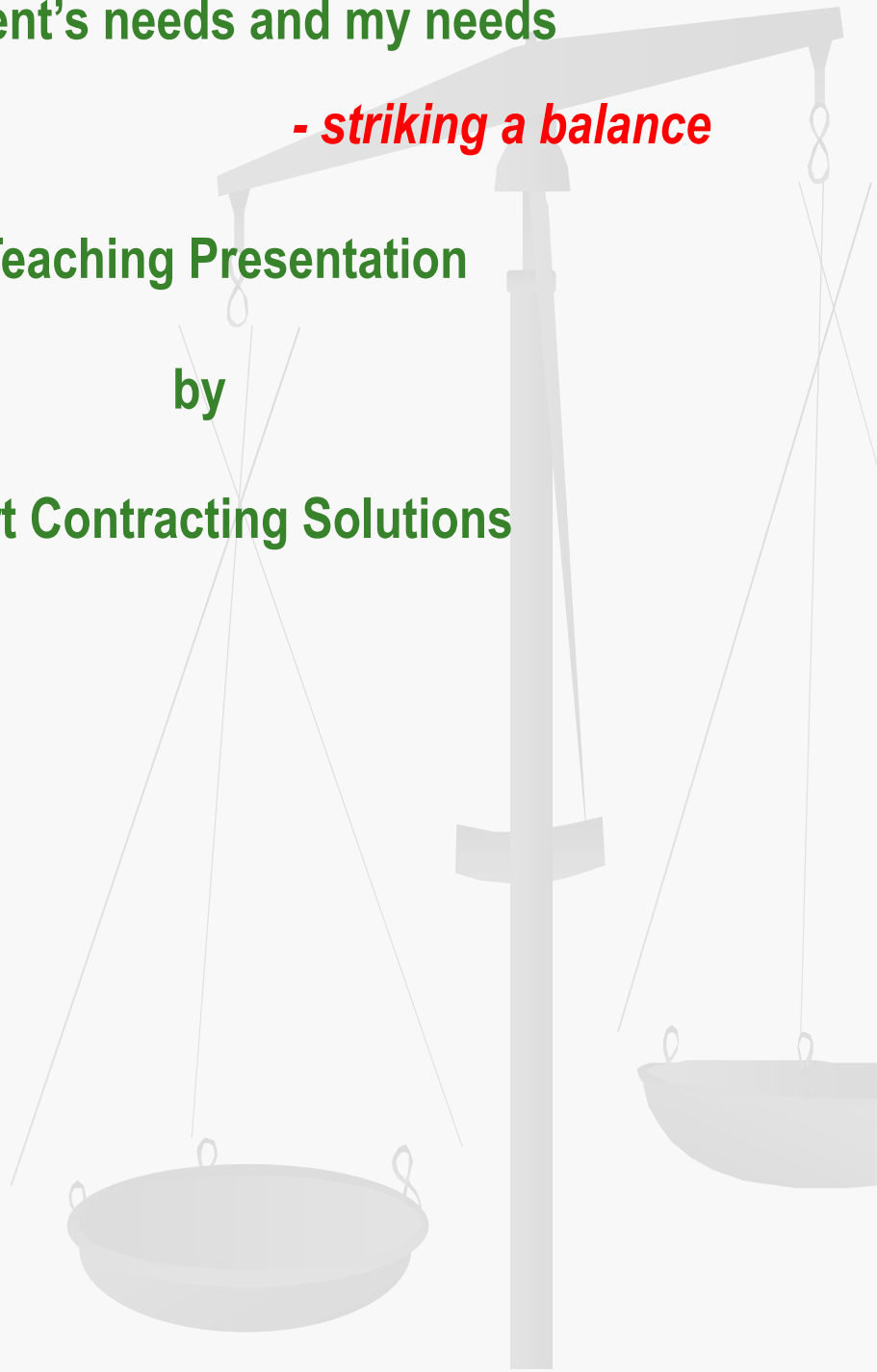
**The Client's needs and my needs**

**- *striking a balance***

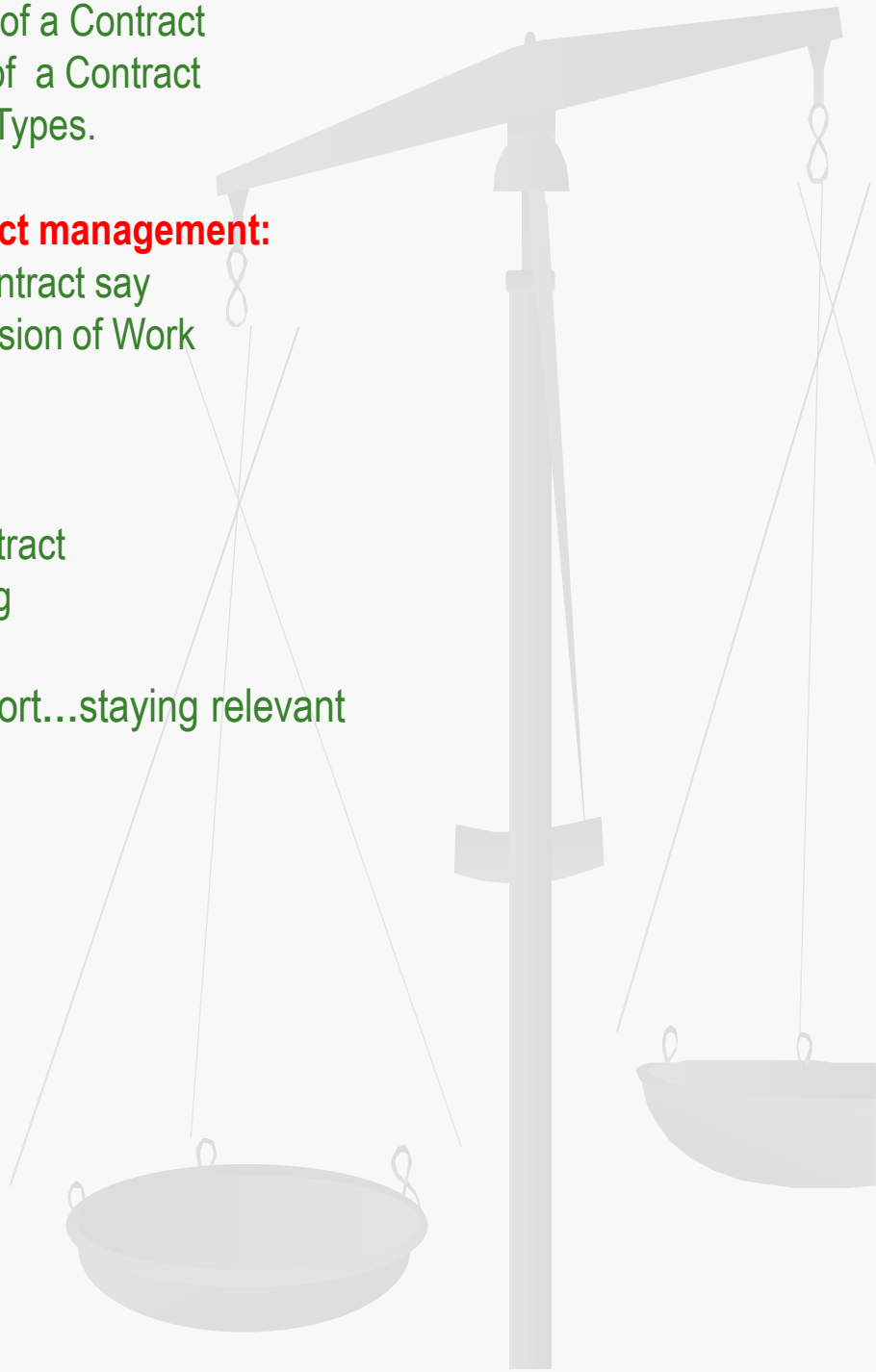
**A Teaching Presentation**

**by**

**Smart Contracting Solutions**



1. **Bid preparation:** The component parts of a commercially acceptable/viable bid
  
2. **The Contract Document:**  
What is a Contract...What a Contract is not.
  - General definition of a Contract
  - component parts of a Contract
  - General Contract Types.
  
3. **Day-to-day Contract management:**
  - What does the Contract say
  - Variations/Suspension of Work
  - Making a Claim
  
4. **General**
  - Negotiating a Contract
  - Minutes of Meeting
  - Contract ceilings
  - Contracting Support...staying relevant



## Bid preparation

**Making 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, Client's ability to pay, the trend of local politics/legislation, availability of basic infrastructure – i.e. roads, power supply etc.

**Component parts** of your 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 + Client's special needs) + your profit margin.

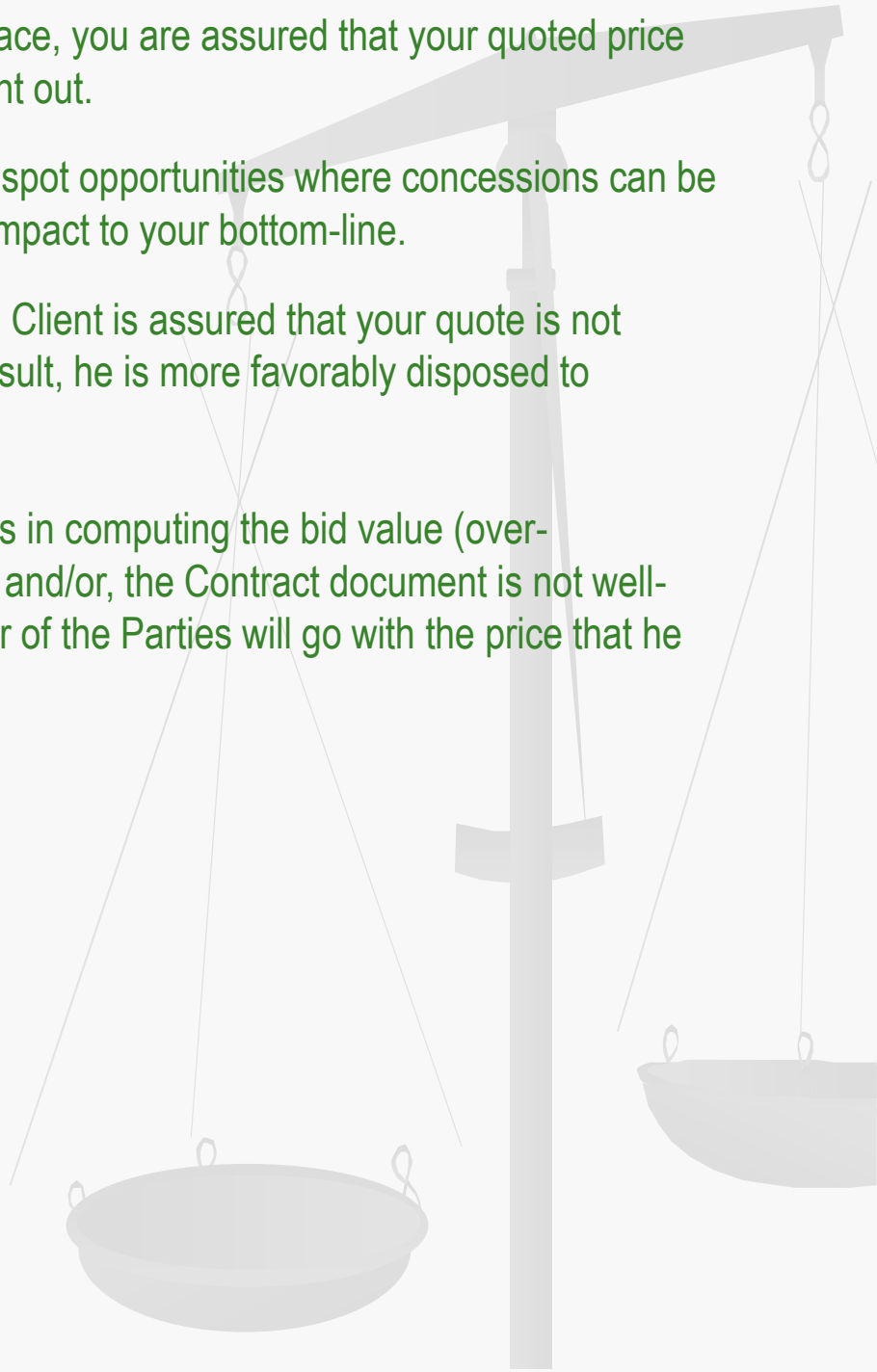
Projections should be made for inflationary trends – especially where the Contract duration is for up to 1 year.

## Speculative bids: the Pitfalls

### Why you must have a formula/basis for computing your 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.

\*\*Where there are lapses in computing the bid value (over-priced/underpriced) and/or, the Contract document is not well-drafted/lapses either of the Parties will go with the price that he prefers.



## The Contract Document

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

- Letters of Intent – What is a Letter of Intent?

*A Letter of Intent is no more than an expression of Intent to enter into a Contract at a later date.*

- The implications of acting on a Letter of Intent .

*Since it confers no contractual benefit, acting on a Letter of Intent is At Your Own Risk*

- 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)

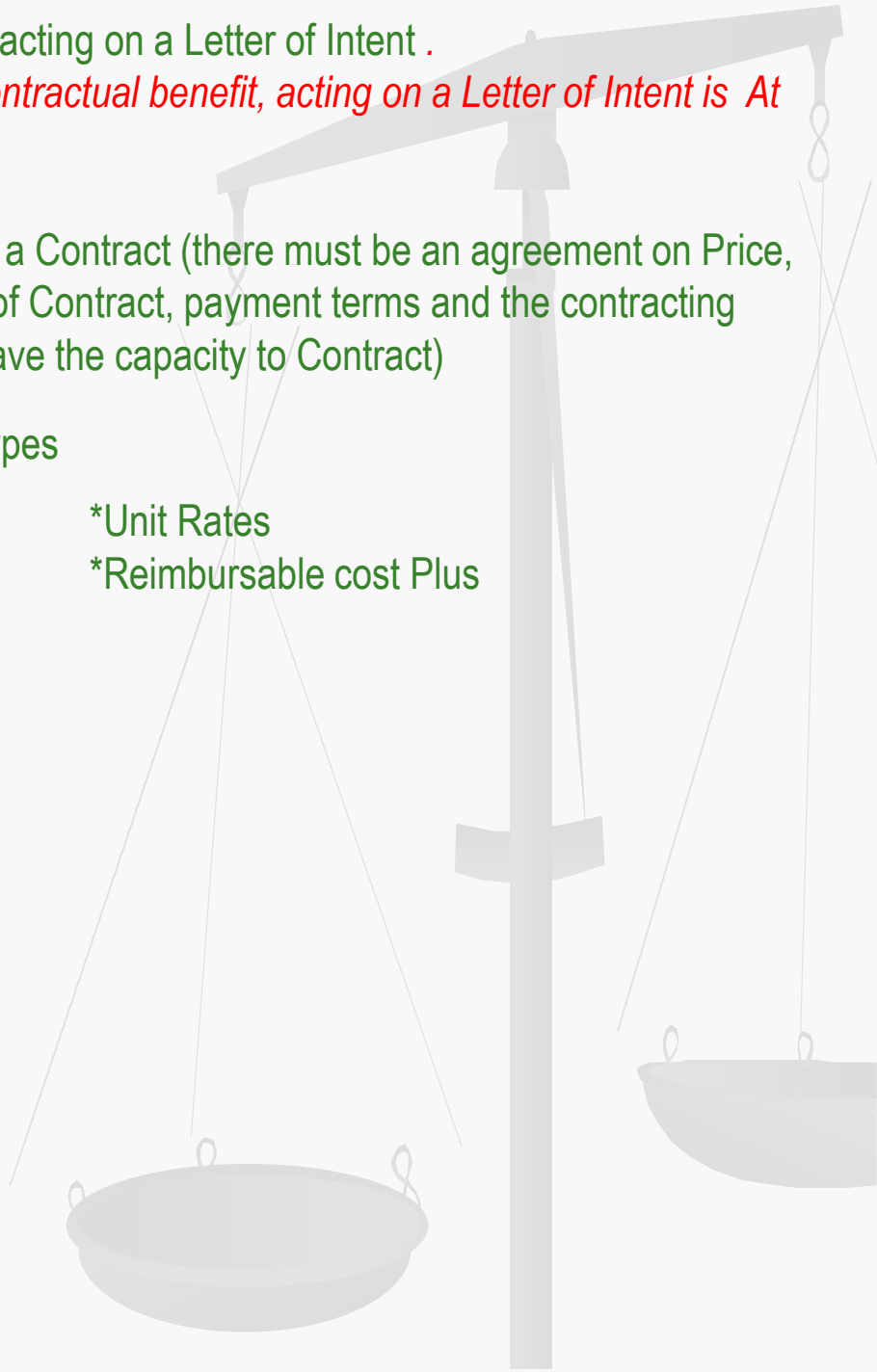
- General Contract Types

\*Lumpsum

\*EPIC

\*Unit Rates

\*Reimbursable cost Plus



# 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-recognised Representative

## 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 does the Contract say?

- Have you complied with the terms of Contract?

What requirements are mandatory/discretionary

The impact of ostensible authority on existing terms of a Contract?

When acted upon by the other , the former cannot then avoid any liability that flows therefrom.

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 ?



## Day-to-day Contract management:

### Variations to Contract

**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.**



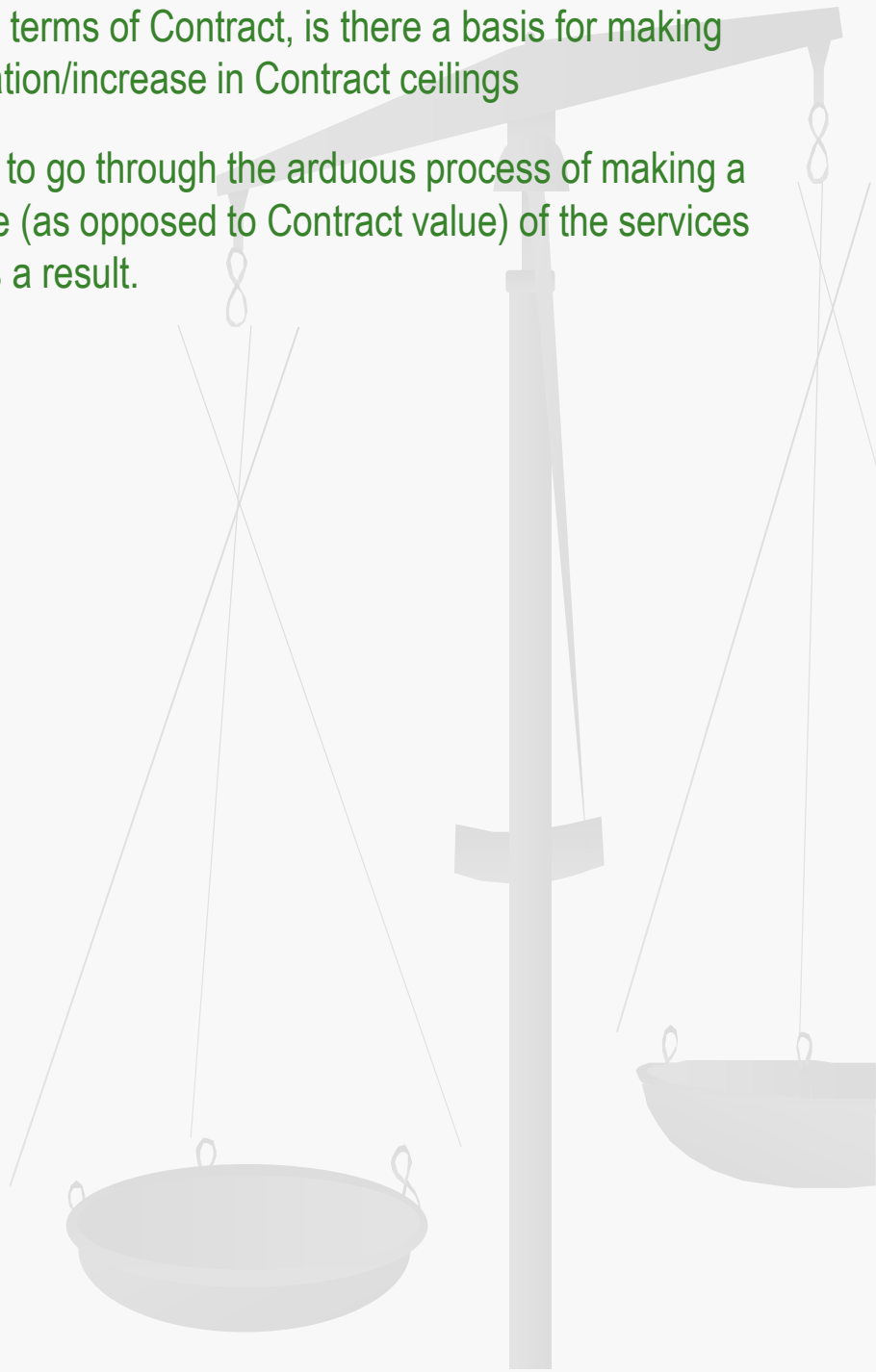
## Day-to-day Contract management

### 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.



## GENERAL

### 1. Negotiating a Contract

**Your objective:** to get the most 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 buyer for my goods/services?
- What other options are available to my Client?

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

## 2. 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.

3. **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 Odeyemi Vs NITEL*.

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

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

6. **3<sup>rd</sup> Party interfaces/correspondences :** putting the right foot forward

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