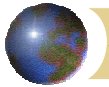


Contract Clauses

Presented by:

**INTERNATIONAL CONSULTING &
CONTRACTING**



Contract Clauses to Understand

- Welcome to this HSM Workshop
- Today's Clauses:
 - Force Majeure
 - Warranty
 - Indemnity
 - Applicable Law
 - Claims Made
 - Owner Insurance
 - Debarment
- If you have an additional clause you would like discussed, please submit your request to the instructor



Force Majeure

- Covers natural disasters or other “Acts of God”, war, fire, loss, lockout, strikes, or the failure of third parties – such as suppliers and subcontractors to perform their obligations to the contracting party
- IMPOSSIBLE, NO POSSIBILITY OF PERFORMANCE
 - No excuse: for more difficult, more costly, or potentially hazardous
 - Must be abnormal and unforeseeable
 - Consequences could not have been avoided through the exercise of all due care
 - Failure to perform could not be avoided by the exercise of due care by that party
 - Is it available anywhere?

© Donald L. Woods, 2006



Force Majeure (cont.)

- Use specific examples of acts that you will accept to excuse performance
 - “An earthquake that destroys the restaurant where delivery of the goods is scheduled for delivery would terminate the responsibilities of both parties.”
 - Issues
 - Who is responsible for the cost of anticipated delivery? What happens to specialty goods
- How can the clause be improved?

© Donald L. Woods, 2006



Warranty Types

- Express Warranty
- Implied Warranty
 - Merchantability
 - Fitness for use
 - Of Title
- Arises from course of dealing or trade usage
- Exclusions or Modifications
- Seller's Liability
- Applicability to Services

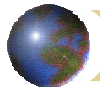
© Donald L. Woods, 2006



Indemnity

- "Regardless of the coverage provided by any insurance policy, the contractor shall indemnify, defend, and hold owner harmless...for any attorney's fees and other costs of defense."
- To secure against loss or damage or to hold harmless, and/or to compensate someone or something for loss or damage.
- How the clause works

© Donald L. Woods, 2006

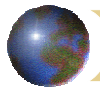


Indemnity, (cont.)

Have Your Attorney Provide/Approve the Clause

- Is it the same for all bids?

© Donald L. Woods, 2006



Indemnity, (cont.)

Procedure Upon Lawsuit:

- Put Contractor on Notice
- Keep Track of Costs
- Plead and Request

Know How this Clause Works

© Donald L. Woods, 2006



Indemnity, (cont.)

Upon Receipt of Summons and Complaint (Lawsuit):

- ✚ Immediately deliver originals to Contract Officer (if related to bid/contract supplier)
- ✚ Log in and note date
- ✚ High priority
- ✚ Start litigation file

© Donald L. Woods, 2006

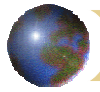


Indemnity, (cont.)

If Entity is Named as a Party (Defendant):

- ✚ Deliver originals to attorney representing entity
- ✚ Determine who mails indemnification letter to Supplier
- ✚ Suspend (calendar/diary) for response

© Donald L. Woods, 2006

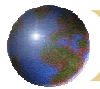


Indemnity, (cont.)

If Supplier Refuses to Defend (Most Probable Result):

- Entity attorney or hired attorney must answer and defend
- Notify Supplier who will represent Entity
- Make a record of all costs incurred
- During the court proceedings, the Court will be informed of the indemnity clause

© Donald L. Woods, 2006



Indemnity, (cont.)

Supplier Refuses #2 (continued):

- After the trial your attorney will request that the Court order Supplier to pay all applicable costs:
 - Court costs (filing fees, jury fees, etc.)
 - Attorney's fees
 - Discovery costs
 - Judgments against Entity
- Collect and process monies

© Donald L. Woods, 2006



Applicable Law

- "The terms and conditions of this agreement will be governed by the laws of the State of New Jersey"
- Overcoming this clause

© Donald L. Woods, 2006



Claims Made (see handout #3)

- Where does this clause appear in almost every contract?
- What is it; and how does it work?
- If and when is it acceptable?

© Donald L. Woods, 2006



Owner Insurance (see handout #2)

- Worker's Compensation to the minimum statutory limits
- Small firms where the owner is one of the workers
- What are the statutory requirements?
- *Do you need more than minimum statutory coverage?*

© Donald L. Woods, 2006



Debarment (Disbarment)

- "Blacklisting a supplier"
- Should bidder and suppliers be ineligible?
- What conditions trigger debarment?
- Who will make the recommendation, **and the decision?**
- How about prequalification and determining **responsibility?**

© Donald L. Woods, 2006



Questions and Answers



© Donald L. Woods, 2006



Thank You for Attending

Donald L. Woods, J.D., C.P.M.

International Consulting & Contracting

1501 Frandosa Lane

Las Vegas, Nevada 89117-1191

(702) 254-6606 *phone*

(702) 254-7067 *fax*

dlw@anv.net *email*

© Donald L. Woods, 2006