



WORLD BANK CONTRACT MANAGEMENT OVERVIEW

CONTRACT ADMINISTRATION

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BUSINESS CONTRACTS



WHAT IS A
CONTRACT?



CONTRACT PRINCIPLES

What is a Contract?

A contract is an agreement between two or more parties whereby each party promises to do, or not to do, something; a transaction involving two or more individuals, whereby each has reciprocal rights to demand performance of what is promised. The term “contract” is generally regarded as a form of agreement, specifically one which is enforceable at law.



Elements of a Valid Contract



CAPACITY TO CONTRACT

The parties to the contract must have legal right and contractual authority to enter into the contract, with respect to age, competency and corporate authority.



CERTAINTY

The parties to the contract must be of the same mind about what is being offered and accepted and thus the essential terms must be definite and agreed upon by them.



CONSIDERATION

The parties to a contract must each give something of legal value to the other or a third party in return for the benefit he/she receives.



LEGALITY OF PURPOSE/OBJECT

The object of the contract must not be one of which the law disapproves. The law will not enforce an illegal contract, or when it is against public policy.



POSSIBILITY OF PERFORMANCE

A contract must be possible to perform. With certain exceptions, a contract need not be in writing. However, enforceability will depend on being able to prove the existence and terms of a contract. It is therefore highly recommended that all contracts be put into writing.

WHAT IS AN AGREEMENT



a negotiated **understanding**
between two or more parties

may **not legally be enforceable** because they are not formal contracts. However, they can sometimes be used in legal cases if there is a dispute on specificities.



AGREEMENT

An **AGREEMENT** further concretizes the negotiated relationship terms

It may not lead to a contract!

DISAGREEMENT

DISAGREEMENT is an agreement not to enter into a relationship!.

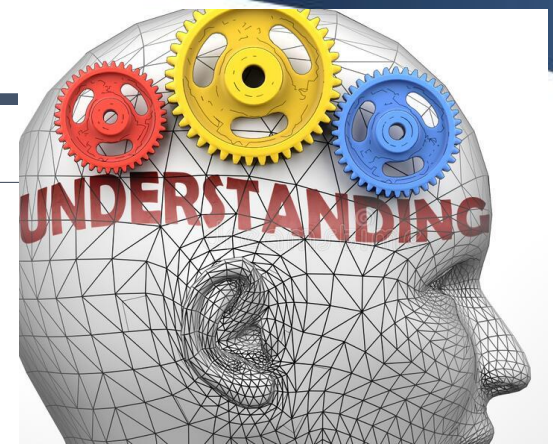




Agreement Specificity &
Ambiguities

SPECIFICS IN AN AGREEMENT

IMPLICATIONS



When the terms and conditions are understood by parties to the contract, it eases the implementation period.

For every contractual agreement, the execution to the agreed deliverables stated, prices, quality, and the scope of time is very paramount.



Agreement Ambiguity

NO NO NONO NO
NO NO NO NO NO
NONO NO NO NO
NO NO NO NO
NO NO NO NO
NO NO NO NO

A **contract** is **LEGAL** arrangement entered into voluntarily by **two or more parties** with the **intention** of creating a legal obligation, which may have elements in writing, though contracts can be made orally:



SOURCE: BOATENG D & PANAVEST INTERNATIONAL-2011-2017)

AGREEMENTS *VERSUS* CONTRACTS



Although a binding **CONTRACT** can (and often does) result from an **AGREEMENT**, an agreement typically documents the give-and-take of negotiated terms (**RELATIONSHIP SPECIFICITIES**), while a contract details both the relationship specificities and the permissible acceptable terms and conditions (normally in the form of a legally binding document)

SUMMARY

THREE DIFFERENT CONCEPTS

NEGOTIATION

A means to understand each others needs and requirements through engagement (Face-to-face, electronic, or other).

AGREEMENT

Output from negotiations.

Negotiated understanding between two or more parties.

Details the specificities of the relationship.

CONTRACT

Binding document to protect interests - just in case something goes wrong.

A means to legally solidify an agreement.



**With carefully negotiated AGREEMENTS (specificities)
Legally crafted CONTRACTS (subject to trust and
jurisdiction) may not be necessary.**

FORMATION OF A CONTRACT

A contract is formed on the basis of offer and acceptance.

An offer is:



The Contracting agency inviting offers from suppliers is termed as, “**invitation to treat**” and must not be confused with an “**offer**”.

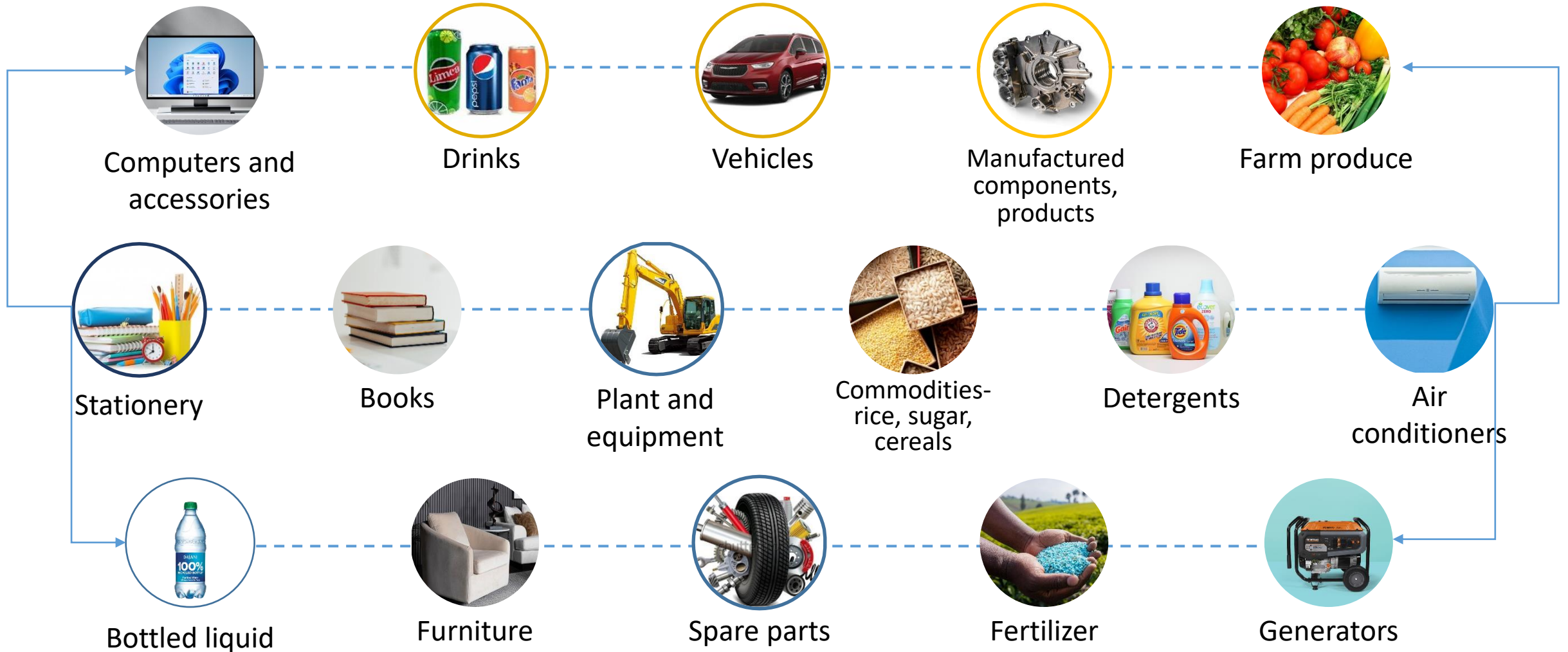


There is an agreement when a procurement entity accepts an offer made by a Supplier, Contractor or Service Provider.



Acceptance, thus, must be **positive, unconditional, unequivocal and unambiguous.**

The Nature and Types of Goods



General Principles for **Contracts**

The following general principles apply to contracts:

- The terms of contract must be precise, definite and without any ambiguities.
- Standard forms of contracts should be adopted wherever possible, if not, legal and
- financial advice should be sought in drafting the clauses.
- Price Variation Clause to be provided only in long-term contracts, where the delivery period extends beyond eighteen (18) months.

General Principles for **Contracts**

- The contract should also contain the mode and terms of payment.
- The terms of a contract, including the scope and specification once entered into, should not be materially varied.
- All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the service provider/supplier.

General Principles for **Contracts**

- A warranty clause should be incorporated in every contract
- Suitable provision for settlement of disputes shall be incorporated into the contract

GROUP PROJECT

EXERCISE ONE



GROUP EXERCISE

You have just been recruited by a multinational company as a contract manager/administrator.

What are the key attributes and skills required of you for the effective execution of your role?

What are the roles and responsibilities of a good contract administrator?



Contract Administration

1

Contract Administration involves all **technical** and **administrative tasks** performed by designated public officials from the time a contracting process **starts** until it is **successfully completed**, accepted or terminated and payment is made, and/or disputes resolved

2

Contract Administration seeks to manage all actions, after the award of a contract, which must be taken to assure compliance with the contract.

Contract Administration is the responsibility of the Procurement Entity and is distinguished from physical performance of the contract which is the responsibility of the Supplier

OBJECTIVES OF

CONTRACT ADMINISTRATION

The main objectives of Contract Administration are:

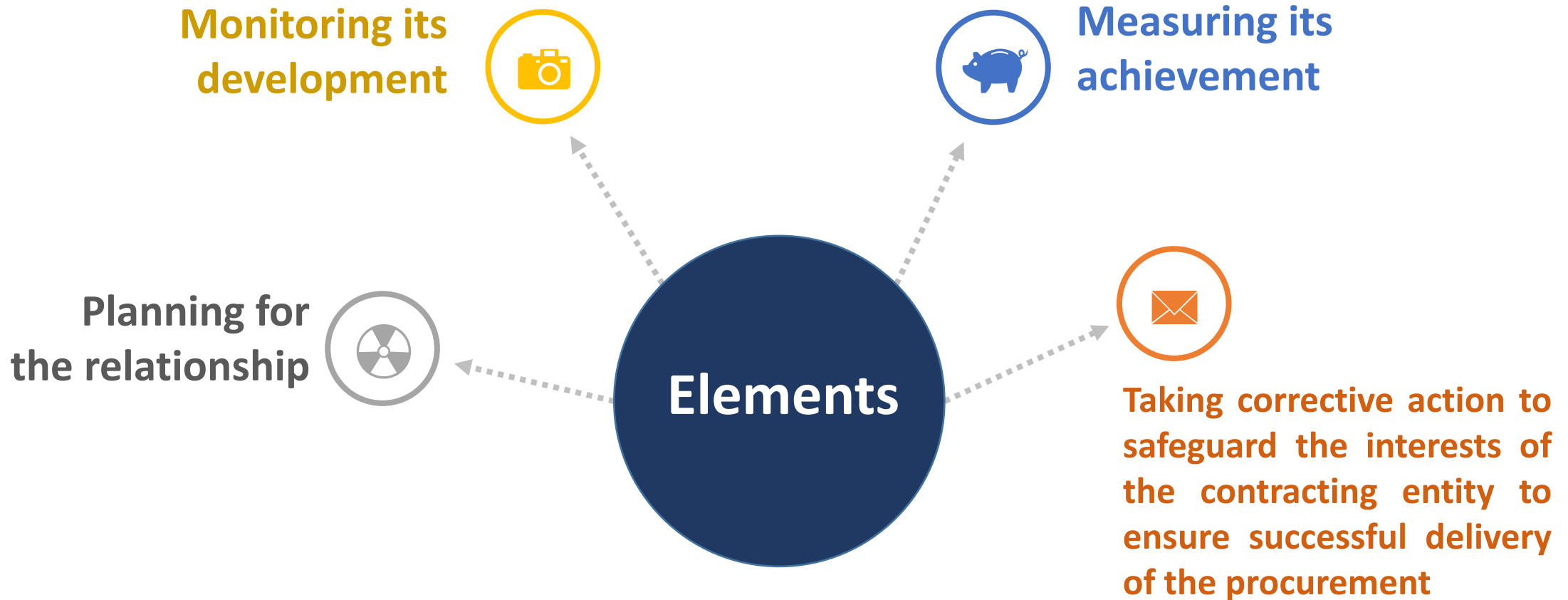


The **successful delivery of the procurement** in a timely and economic manner;



To ensure **performance by all parties** in accordance with the requirement of the contract.

ELEMENTS OF CONTRACT ADMINISTRATION



The Benefits of a **Good Contract Administration**

Effective control: ensuring that both parties know their obligations and implementing a contract controls system that reflects the performance requirements of the contract and provides mechanisms of the coordination and dissemination of information.

Performance to the required standard: full use should be made of the Supplier's own management information and performance measurement systems, with the vendor reporting progress through agreed procedures.

Compliance with contract conditions: managing the contract conditions will help to ensure that they are met; if they are not, they provide for remedies to be applied properly and promptly



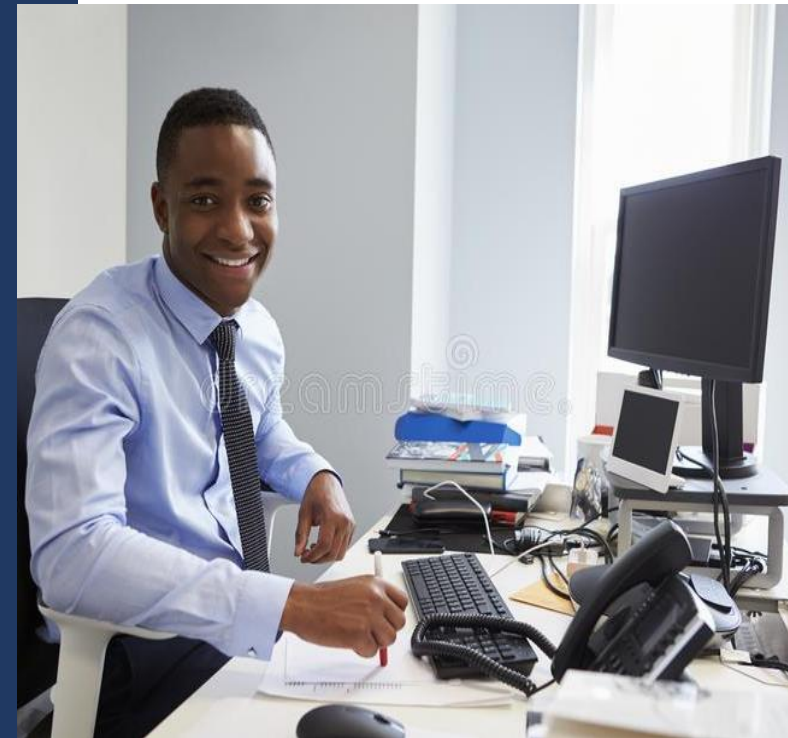
The Benefits of a **Good Contract Administration**

Value for Money: this is a balance of cost, risk, delivery and quality which should be managed to;

- Record costs;
- Ensure no change in the balance of risks;
- Ensure timely delivery;
- Ensure quality.

Clear and documented records which are essential in the event of invoking default procedures for seeking correction of failures to perform.

Management of change: it is the contract administrator's responsibility to define appropriate change control procedures which enable him/her to anticipate, manage and control changes to requirements and/or costs.



Responsibilities of a Good Contract Administrator

The primary responsibilities of the contract administrator include:

- Participating, as necessary, in developing the solicitation and writing the draft documents.

Contract administration must be considered during this process.

- Monitoring the Supplier's performance to ensure that delivery conforms to the contract requirements.
- Authorizing payments consistent with the contract terms.
- Exercising remedies, as appropriate, where a Supplier's performance is deficient.

Responsibilities of a Good Contract Administrator

- Resolving disputes in a timely manner.
- Meeting with the Supplier when the need arises so as to review progress, discuss problems and consider necessary changes.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Managing any public property used in contract performance.
- Documenting significant events.
- Maintaining appropriate records



Skills required by a **Contract Administrator**

1

A basic understanding of procurement policies, procedures and practices;

2

An understanding of organizational goal;

3

An ability to communicate well both internally and with Suppliers;

4

An ability to operate in a team and as a team leader;

The Contract Administrator must be proactive and ideally needs to have the following competencies:

Skills required by a **Contract Administrator**

An understanding of the terms and conditions of the contract being managed and their significance;

5

An understanding of organizational goal;

6

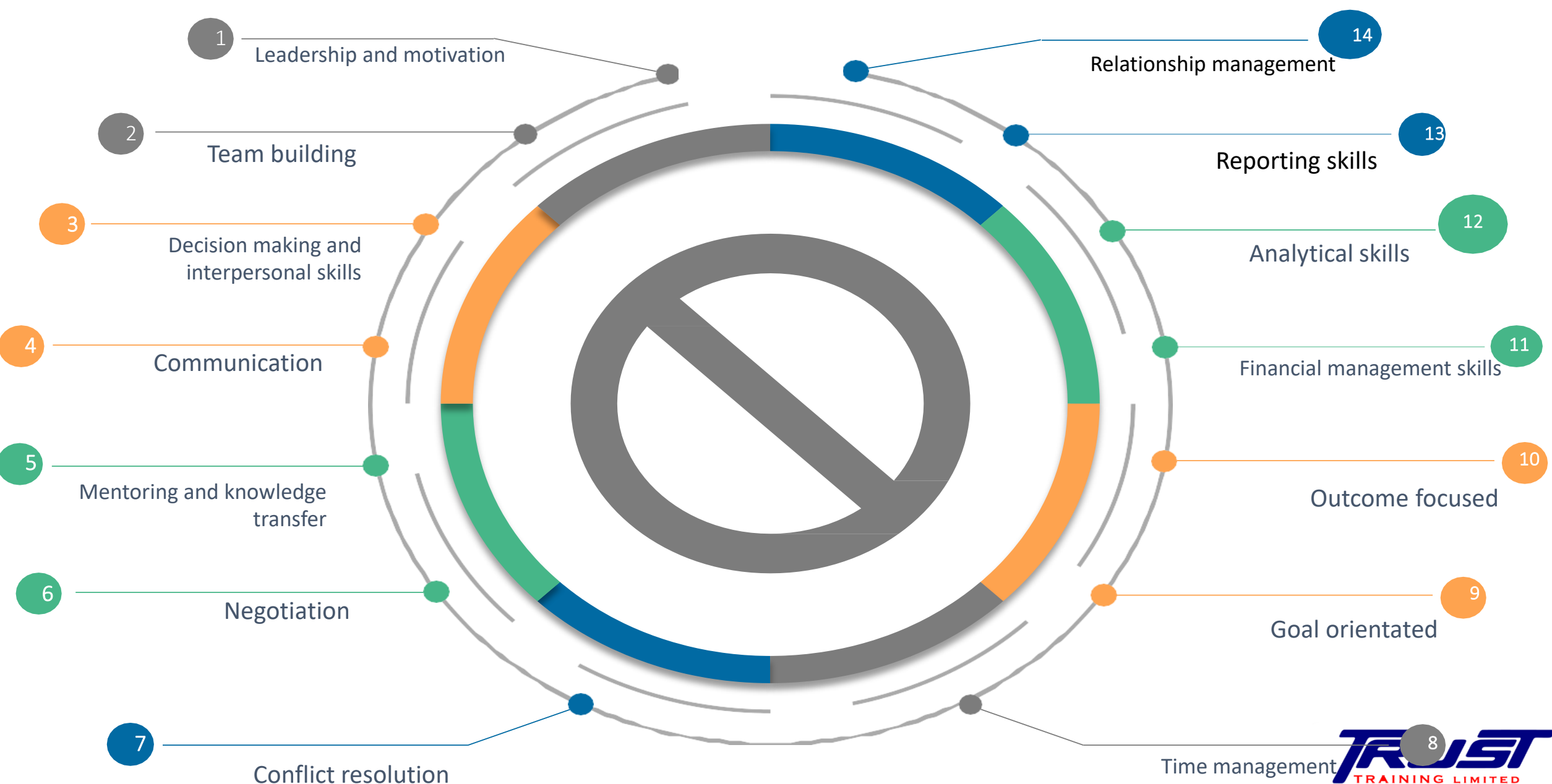
An ability to communicate well both internally and with Suppliers;

7

An ability to operate in a team and as a team leader;

8

ATTRIBUTES AND SKILLS OF A CONTRACT ADMINISTRATOR



GROUP PROJECT

EXERCISE TWO



CASE STUDY

Apex Authority awarded a contract to Westland Enterprise Ltd to supply and install 100 units of generator sets at a contract sum of three million United States Dollars through a restrictive tendering process. The delivery date was three months from the contract commencement date. The supplier immediately proceeded to order the generator sets from a manufacturer in China, but the contract expressly stated the country of origin as Japan. Upon manufacturing 90% of the goods, Westland Enterprise Ltd wrote to the CEO of Apex Authority to nominate officials to undertake a factory or site inspection, which was not stated in the contract document. However, the CEO nominated the Director of Finance, IT, and Legal to accompany him to the factory inspection. Upon arrival at the factory in China, the manufacturer and the CEO of Westland led the team to inspect the items produced. After two days of a thorough inspection of these items, the officials signed the factory acceptance report confirming that the goods that had been produced met the specifications in the contract document.

CASE STUDY

Upon the delivery and installation of the generator sets, the audit and estate/facilities management team inspected these items. The inspection report revealed the items' missing features and functionalities - including an automatic change-over switch, and the silent option was unavailable. As a result, the audit and facilities team rejected the generators because they did not meet the required specifications. Therefore, they did not recommend payment for the generators. The Head of the Entity wrote to the supplier to rectify these defects before payment could be effected. But the supplier insisted that the officials of the Authority have accepted the factory inspection test report; therefore, the report should be used as the basis for payment. This has resulted in a dispute between the Authority and Westland Enterprise Ltd.

QUESTION

1. What avenues are available for the resolution of the dispute?
2. Should the procurement entity decide not to pay, what is the implication of such a decision on both parties?
3. What are the ethical issues in this case?

CASE STUDY

ABC Authority awarded a contract to Mid Atlantic Engineering and Constructing Limited to construct an ultra-modern head office at a contract sum of USD20m through International Competitive Tendering. The contract had detailed working drawings and specifications per the client's requirements with 18 months duration. The contract was also a fixed-term contract as it was a turnkey project. Mid Atlantic Engineering and Constructing Limited began the construction project in accordance with the Bill of quantities and design stated in the agreement. However, after completing 70% of the construction work, a new CEO for the ABC Authority was appointed. Six weeks after the assumption of office, the CEO constituted a forensic audit team to undertake thorough investigations concerning the contract award process, client's requirements/specifications, contract sum, and all ancillary services.



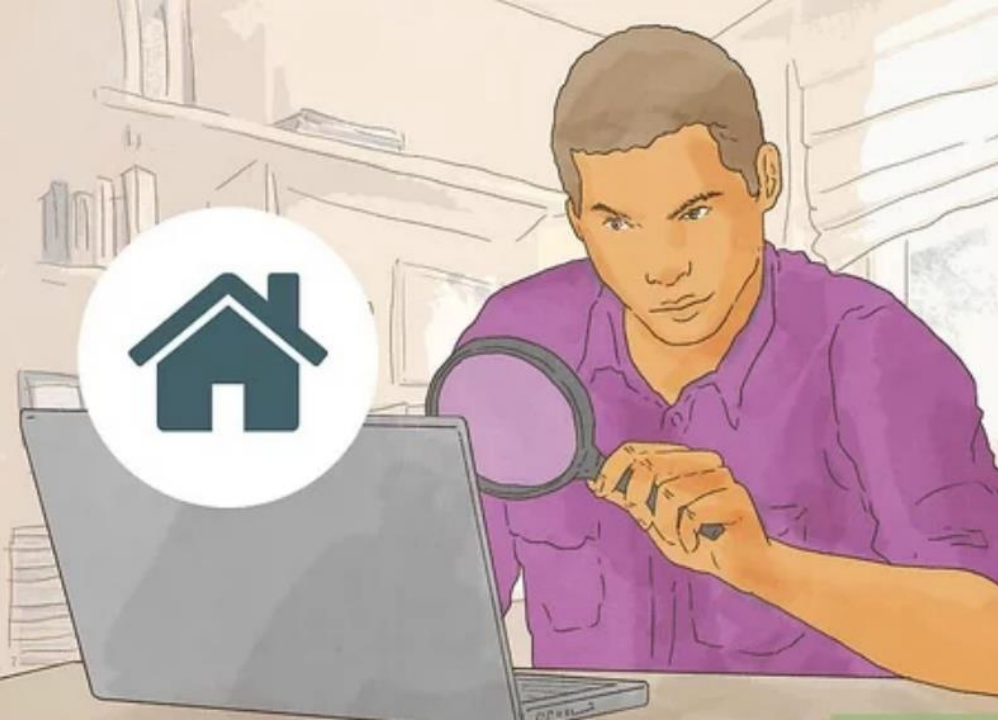
CASE STUDY

While the forensic audit was ongoing, the CEO wrote to the contractor to suspend all work without providing any reason to the contractor. The Findings of the forensic team revealed the following: substandard materials have been used, the contract price has been inflated compared to similar projects with the same level of complexity and risk, and finally, the part owner of Mid Atlantic Engineering and Constructing Limited is a relative of the Finance Director who is a member of the Entity Tender Committee. Based on these findings, the CEO immediately terminated the contract and applied to the Public Procurement Authority, seeking approval to award the remaining contract to a different contractor, claiming that the Authority is paying high rental charges for the current space being used and that there is an urgent need to complete the head office and move in. As a result, mid Atlantic Engineering and Constructing Limited wrote to the ABC Authority demanding full payment for work done plus compensation for wrongful termination of the contract.

QUESTIONS

1. Does the New CEO have the right to terminate the project based on these findings?
2. What does the Public Procurement Act 663 as amended say about the termination of a contract?
3. Was Mid Atlantic Engineering and Constructing Limited right to demand full payment and compensation even though the company had used substandard materials and inflated the contract sum?
4. Discuss any ethical issues concerning this contract.





RED FLAGS FOR CORRUPTION

Red flags are indicators that something needs to be questioned or otherwise validated. Some of these red flags are;

- frequent change orders or variation requests especially with regard to items with high prices;

- requests for subcontracting, especially to firms that took part in the bidding process and were rejected or offered higher prices;

RED FLAGS FOR CORRUPTION

failure to report any deviations from the contract;

failure to use proper project management tools


poor filing and recordkeeping (missing invoices, supporting documents etc.).




Remedial and Pro-active Actions:



Maintain close control on the Supplier (permanent contact, spot checks, site visits, issues log, inspection and control logbook etc.);



Enforce internal audit procedures, four eyes principle (particularly with regard to the actual verification of invoices and supporting documents).
The transaction must be approved by at least two people as a form of control mechanism.



The person approving the payment should not be involved in the verification of payment documents;

Remedial and Pro-active Actions:

Enforce a relevant and comprehensive reporting system (monthly, quarterly, by milestone etc.) to monitor closely all aspects that are important for contract management: actual vs. planned progress (both quantity and quality); timeliness of deliverables, etc.;

Enforce all applicable and reasonable contract remedies – liquidated damages for delays or for non-compliance; remedies against the insurance policies and performance securities, etc.;

Questions

THANK YOU

