Reading


Activity 4.2

In which cases do you think is it generally advisable to choose negotiations with suppliers as an approach to procurement?

Essentials of contract and legal commitment

The buyer and his or her team have conducted the negotiation and the parties have reached an agreement. However, reaching agreement is not the end of the negotiation process by any means. Rather, an agreement merely represents the beginning of the contract’s performance for the item, service or activity covered by the agreement. An important part of executing and following through on a negotiated agreement is loading the agreement into a corporate contract system so that others throughout the organisation have visibility of the agreement.

The terms and conditions of the official contracts should clearly stipulate the rights and obligations of both the supplier and the buying organisation in line with the agreement. A draft document, which can be prepared by either party, is used to confirm both parties’ understanding of their commitments before execution.

The buyer must be aware that a valid contract is a promise or agreement that the law will enforce. To be legally enforceable, a contract must satisfy the following essentials:

1. **Intention**: Both parties must intend to enter into a legal relationship.

2. **Agreement**: In a dispute, the court must be satisfied that the contracting parties had reached a firm agreement and were not still negotiating. Agreement will usually be shown by the unconditional acceptance of an offer. It is important to determine by whom the offer is made, whether the offer is valid and if it has been accepted. There is an agreement only when the offer is accepted.

3. **Consideration**: The definition of consideration is that something of value passes from one party to a second party in exchange for a promise from the second party. The value must be consistent with the second party’s promise. Law of contract is concerned with bargains, not mere promises. Thus, if A