RISKY BUSINESS: DO YOU HAVE THE CORRECT PROCUREMENT STRATEGY FOR YOUR CONSTRUCTION PROJECT?
In an economic environment impacted by a depressed oil price, the focus now needs to be on understanding how to avoid these disputes in the first place, rather than just resolving them in the most efficient way possible as and when they materialise.

In the Sixth Annual Arcadis Global Construction Disputes Report, we also noted repetitive issues around a failure to properly administer the contract, followed by poorly drafted or incomplete and unsubstantiated claims. In many cases, however, the root cause of the problem is more fundamental and relates to the fact that insufficient time was spent in selecting the most appropriate project procurement strategy and delivery method at the very outset of a project.

**COMMON WAYS OF DELIVERING CONSTRUCTION PROJECTS**

Before deciding on the right procurement strategy, an employer should consider each of the delivery method options available, and choose the approach that is most appropriate for the project stakeholders involved and the technical requirements of the project. In the Middle East, there are three main methods deployed, each with their own benefits and disadvantages; the traditional approach, design and build and the turnkey solution.

1. **Traditional approach**

   This is the most widely used delivery method and typically carries the least risk as there is a level of certainty about design, cost and duration. All project elements are fully designed by the employer or by the employer’s consultants in advance, and when the construction contract is signed, the contractor is then responsible for completing the project on time and within budget.

   This approach allows the employer to define and detail its needs and requirements to absolute specification, and can achieve a high level of performance and quality in the design. In general, this is a transparent process and the detailed level of information means there is a reasonable level of cost certainty. It also offers the employer, consultants, government authorities and funders, time to coordinate throughout the design process to ensure the final product is acceptable to all stakeholders.

   On the down side, construction cannot commence until the design is complete and the sequential nature of the process often results in lengthy project durations. Furthermore, it offers little scope for early contractor or supply chain involvement in the design or planning phase, and the employer requires a larger staff to maintain proper project control and to manage the multiple interfaces. Any significant design change post-contract will also weaken the contractor’s commitment to the original price and programme.

2. **Design and build**

   In this instance, engineers and architects are engaged early to develop a preliminary design and corresponding Employer’s Requirements, which are then issued for contractor bidding. The employer’s design team responsible for the preliminary design may be novated to the contractor, or retained by the employer to ‘police’ the project if the contractor engages its own design team. The employer has less control than with the traditional approach, however, there is a single point of responsibility for the design and construction. The contractor must deliver the project to the required quality, at the agreed price, and within the agreed programme.

   This approach offers the potential for early completion as it allows construction and manufacturing to begin before the designs and specifications are complete. It also means construction expertise can be reflected in design development. A single source of responsibility for design and construction also negates the need for an employer to have a large internal team.

   However, with design and build, employers are reliant on the contractor to construct a functional facility and it is often difficult to remove the contractor in the event of non-performance. The employer is also required to commit to a design intent at an early stage, often before detailed designs are complete. As a result, the final project may not be exactly as the employer expected and the employer may struggle to control design quality and aesthetics. Furthermore, bidder prices may be higher to reflect the higher level of risk assumed, whilst the employer will almost certainly pay a premium if there are any significant changes to scope post-contract.

3. **Turnkey solution**

   In this scenario the contractor assumes complete responsibility for the design and execution of the project, with little involvement of the employer. The contractor will carry out all engineering, procurement and construction and provides a facility to the employer at completion, ready for operation at the “turn of a key”.

   In committing to specific targets around cost, time and quality, the contractor offers the employer a high degree of certainty of final price and programme. The model allows the contractor an opportunity to be innovative and shorten the project programme by overlapping the design, procurement and construction phases. Significant risk is transferred to the contractor as it has single and absolute design and construction responsibility.

   The downside with this model is that there are limited opportunities for third party participation, and the employer has less control over design and construction. This means the final project delivered may not be exactly as the employer envisioned. Finally, there is likely to be a cost premium to the employer to reflect the total risk transfer to the contractor.
SELECTING THE MOST APPROPRIATE DELIVERY METHOD:

When it comes to deciding on the most suitable project delivery method, an employer needs to assess how much responsibility and corresponding risk it wants to delegate, and the level of project control and coordination its in-house staff and/or consultants can provide.

To help make that decision, there are a number of important risk parameters to consider. Four key areas include:

1. **Internal resource**
   - Does the client have sufficient in-house resource, with the right level of experience in both the design and construction phases, to effectively manage multiple interfaces on a project? If not, outsourcing greater levels of responsibility and risk may be a more appropriate choice.

2. **Scale of the project**
   - The length and complexity of the project will be a key determinant in whether to keep it in-house or outsource the risk to a contractor. Similarly, understanding what the key drivers are e.g. cost or speed, will influence the delivery method selected on a project.

3. **Use of technology**
   - If new or untested technologies are being adopted on a project then there is always a degree of risk involved. To ensure the potential impact is minimised during the design and construction phases, the responsibility should be allocated to the teams with the most experience or understanding of the technology in question.

4. **Contractor experience**
   - This is one of the most important considerations when deciding where to allocate risk. If the contractor has limited experience in a particular delivery method or a history of working on projects that end up in dispute, then that could be a potential red flag. Similarly, resourcing availability and competition in the market are two other factors that should be considered when making any decision about risk allocation.

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TO AVOID IS ALWAYS BETTER THAN TO MITIGATE OR TO RESOLVE:

In our experience, there is no ‘one size fits all’ solution when it comes to procurement strategy. However, taking the time at the very outset to fully understand a project’s risk is crucial in order to make the best strategic decision. In more simple terms, to avoid is always better than to mitigate or to resolve.

In a tight market such as the Middle East today, awareness of the consequences of rushed or poorly thought out contract decisions needs to be even greater. In this market, disputes are no longer an inconvenience that ties up cash and senior resource for an extended period of time, but something that poses significant financial risk that could threaten not only the survival of your project and future business relationships, but ultimately your business.
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