Keeping Up With Construction Contracts Developments…

Are We Geared-up Yet?

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Vision 2020 for MENA

**TRADING HUB**
- Projected to be providing nearly one-quarter of the world’s oil supplies
- Emerging markets will become increasingly important trading partners and investment
- Gulf investors and sovereign wealth funds are likely to diversify their assets into Asia and Africa, and the region is likely to export more of its oil to industrializing countries.

**ECONOMIC & POLITICAL INTEGRATION**
- GCC is likely to continue gradual efforts at economic integration, including a single currency, a single central bank and greater harmonization of legal and regulatory environments. Political will is key
- Economic integration will depend on good political relations, but will take precedence over political integration. Development of a common foreign policy or a strengthening of shared security forces remains a longer-term project.

**COMMON CURRENCY**
- By 2020, it is likely that the GCC countries will peg their common currency to a trade-weighted basket of currencies, although one or two states may opt out.
- Any such basket will be heavily weighted towards the dollar—unless there is a global shift away from the practice of trading oil in dollars. Commodity prices (e.g., for oil and gold) may also be included in the basket.

**MANUFACTURING FOCUS**
- GCC states will aim to turn more of their oil into refined products or petrochemicals, and to use their oil and gas resources as feedstock for industries that will add more value and provide more jobs
- However, the GCC will remain dependent on foreign labor by 2020 despite a range of efforts to encourage the employment of nationals.

Source: The report from the Economist Intelligence Unit, sponsored by QFCA [Qatar Financial Centre Authority]
Construction Projects in MENA - 2014

Value and breakdown of projects awarded by sector, 2011-14 ($m)

Number and average value of major contracts by sector Worth over $50m, 2011-14

Source: Mena Projects Forecast and Review 2014, MEED Insight

• Employers/Developers/Projects Owners
  – Delayed Projects
  – Budget Overrun
  – Quality and HSE Issues
  – Engineer’s/Designers/Consultants
    – Undefined Scope
    – Unclosed Variations
    – Unclosed Claims
• Contractors/Suppliers
  – Delayed Payments
  – Incomplete/Undefined Scope
  – Unclosed Variations/Claims
  – Other Pending Actions
• Scope
  – Sophistication
  – Vagueness
  – Managing Fast-Track Projects
Current Contractual Trends in the Construction Industry

• The Culture of Fear of Impacts of Claims and Resorting to Litigation/Arbitration on Parties Relationships.

• No Formalized Corporate Policy Towards Contractual Issues/Disputes
  o Contractual issues are dealt with on a case-by-case basis
  o Decentralization of Contracts Management

• Variations/Claims closing-out takes a lot more time than before

• Skepticism about settlements of claims/disputes through modern ADR.

• Dispute Resolution Clause in the Contract
  o Some choose Litigation…… Some choose Arbitration
  o Some choose Institutions…. Some choose Ad Hoc

• Poor Contract Management and Administration - General
Developing Contractual Trends in the Construction Industry

• Risk Transfers
  – Force Majeure
  – Changes to Legislations
  – Political Insurance [Physical Damage – None-Physical Damages]

• Projects Audit
  – By Sector [Oil & Gas, Governmental Sector, Private Sector]
  – By Trade [Employers/Developers/Contractors….etc]

• The Hybrids
  – New bread of Engineers
  – New Specialty and Area of Expertise
  – Political Insurance [Fits here as well]
  – Online Dispute Resolution
  – Collaboration Tools … The new “in-writing /authenticated” approach
Developing Contractual Trends in the Construction Industry

• Emerging Risks
  – Environmental Related New Regulations (AUH Module)
  – More Delayed Projects
  – More Budgets Overrun

• Contract Drafting
  – Academic Research
  – Purposive/Directive drafting…… not just literate
  – This clause was not “luck”….. We drafted it this way

• Economic Pressure
  – Bias Contracts Vs Balanced Contracts
  – Squeezed Time and Budget….. All the time

Source: FMI Report on Industry Trends
Developing Contractual Trends in the Construction Industry

• Strategy
  – Silent, claim oriented and claim designated contractors
  – Corporate Academies and Costumed Contractual Training
  – Mitigating Competition Dictation While Concluding The Contract Conditions

• Return/Emerge of DAB
Technical Audits

Are We Geared Up Yet?
Develop Your Contract Conditions and Terms

• Pricing and Time....... Get Real
• Monitor, then audit, then improve....... then monitor, then audit, then improve....
• The Myth of “It won’t happen to us”
• Focus on Resolutions as much as You Focus on the Risks
• Ensure that there is a dispute resolution clause in the Contract Conditions with a proper mechanism in place to deal with any potential disputes.
• Shall we mitigate, accelerate or recover delays?
• Strategically Choosing of best ADR Approach
• Never Get Time-Barred
• Whose float is this?.... Time Saving Clause
• Solve all pending Claims/Variations/issues promptly and without delays
• Other risks.
Develop Your Practice…..The Powers of A Project Contractual Audit

Benefits of A Project Audit

- Cost Optimization
- Process Improvement
- Performing Corrective measures
- Applying Best Practices
- Identifying opportunities for improvement
- Risk mitigation plan for identified risks
- Improved operational efficiency
- Profiting on identified strengths
- Quality Assurance
- Training employees for in-house skill development
- Improved health, safety and environment practices
- Legal Acceptance
- Back up procedures and recovery plans
- Reduction in delays

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List of Deliverables of A Construction Project Audit

Risk Assessment & Internal Audit Plan

Risk Register

Risk & Control Matrix

Audit Work Papers

Internal Audit Files

Status Update Reports

Internal Audit Report
**Develop Your Risks Awareness**

High Risks Relating to Other Than Time, Money, Quality and HSE

<table>
<thead>
<tr>
<th>Area</th>
<th>Risk</th>
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</thead>
<tbody>
<tr>
<td>Scope Control</td>
<td>Scope creep and excessive change orders.</td>
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<tr>
<td>Schedule Control</td>
<td>Delayed completion dates.</td>
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<tr>
<td>Cost Control</td>
<td>Increased costs without appropriate reviews and approvals.</td>
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<tr>
<td>Contract Administration</td>
<td>Unfavorable contract terms and conditions.</td>
</tr>
<tr>
<td>Change Control</td>
<td>Excessive change orders for scope and schedule changes</td>
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<tr>
<td>Projects Prompt Closing-out</td>
<td>Continuing costs after project completion</td>
</tr>
<tr>
<td>Claim Prompt Closing-out</td>
<td>Unresolved/unapproved change orders and disputes</td>
</tr>
<tr>
<td>Labor &amp; Materials Rates</td>
<td>Billed at higher rates than contracted (levels, ST, OT)</td>
</tr>
<tr>
<td>Subcontracting Your Support</td>
<td>Billed without appropriate support (timesheets, invoices, receipts)</td>
</tr>
<tr>
<td>Duplication</td>
<td>Billed for previously paid labor/material invoices</td>
</tr>
<tr>
<td>Time Savings</td>
<td>No Mechanism for Time Saving within the Contract Conditions</td>
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**….. and Finally……..**
Develop Your Team……

Both Were Fired Last Week…. Don’t…. Please, Don’t Hire Any of Them....
Thank you.....

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