

Effective contract management and administration: key considerations

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Introduction

Contract management and administration within the context of a construction project is the process of managing and administering the relevant project contract in order to facilitate the timely and efficient delivery of the project with a view to ensuring that operational and financial performance is optimised and that project risks (including the possibility for disputes), are where possible, minimized.

The importance of effective contract management and administration is often overlooked by parties until a dispute occurs. It is fundamental to the effective operation of any construction contract and arguably needs to be implemented well before a contractor has even mobilized to site.

A lack of good contract management and administration is one of the most common causes of disputes in the region. Therefore as well as helping ensure timely and efficient project delivery it can also help parties potentially avoid or at least mitigate the possibility of formal disputes arising by dealing with issues in the manner which the parties intended under the contract as and when they occur, thereby potentially helping to mitigate the impact of such disputes if and when they do arise.

Where formal disputes cannot be avoided, good contract management and administration can also prove critical to being able to successfully bring or rebut a claim.

In this article we will briefly examine in further detail some, key effective contract management and administration strategies that parties may deploy in the Kingdom of Saudi Arabia, in order to ultimately help facilitate the timely and efficient delivery of the project with a view to minimizing scope for disputes between the parties. These may have broader relevance and application not only in Saudi Arabia but also elsewhere in the Middle East.

Contract Management and Administration

Unsurprisingly, the starting point to ensuring effective contract management and administration is of course the contract itself.

Entering into a legally sound, mutually advantageous, robust construction contract is critical to the success of any project. The contract must describe in sufficient detail what is expected of both parties during the term of the contract in order to limit the scope for breaches or other issues occurring that may lead to either side not fulfilling their contractual obligations. This includes but should not be limited to:

- clearly defining the scope of work and deliverables;
- including a detailed timeline (or 'programme') accounting for every important milestone including the project commencement and completion dates;
- including clear payment terms; and
- drafting a well thought out relief regime (where additional time or costs need to be claimed) which addresses and plans for those risks which may arise and details the steps to be taken if they occur.

This emphasis on the terms and conditions of the contract is made all the more important in the Middle

East, where in numerous jurisdictions (including Saudi Arabia) the principle of ‘freedom of contract’ prevails, such that where a dispute arises, the overwhelming emphasis in terms of deciphering parties’ rights and obligations is invariably not only what is enshrined in law but fundamentally also what has been agreed between the parties in the underlying construction contract.

Important Considerations

As well as having a detailed and well drafted contract in place, various strategies can be implemented in order to help ensure effective management and administration of the contract and the project with a view to minimizing the risk of disputes occurring. This includes the following:

- ensuring the parties are aware of and comply, in good faith, with the terms of the contract. This is a fundamental principle of Sharia law, which arguably underpins all aspects of contractual relationships in the Kingdom. Parties that are perceived by the Saudi courts to have acted contrary to this principle of good faith may have contractual undertakings set aside in order to redress any judicial perception of unfairness or imbalance.

In addition, the project stakeholders, namely the employer and the contractor, their respective representatives and key personnel, should be acutely familiar with and understand the terms of the contract they’ve signed up to, so as to ensure alignment and common understanding of roles, responsibilities, expectations and key deliverables and importantly, to ensure compliance with the contract;

- there is always a need for the party assigned as contract administrator to have the requisite knowledge and experience of administering and overseeing contracts of the value, nature and complexity to the project in question. Even having a degree of jurisdiction specific knowledge with respect to the local nuances and issues that can arise and how best to overcome them, can help ensure the project is steered through to completion in a timely and efficient manner;
- the parties should arrange regular progress meetings. This is in order to ensure both parties are aware of developments on site and, where needed, to ensure any risks or issues that have arisen or which it is anticipated may arise, are promptly identified and resolved, with the parties regular meetings ensuring these issues do not manifest into bigger problems later on during the programme;
- a contractual early warning procedure is another further tool by which contracts and projects can be more effectively managed and administered while also potentially helping mitigate the possibility of a formal dispute arising. This is usually in the form of an ‘early warning’ provision which requires the parties to provide advanced warning (in the form of a written early warning notice) of anything that may delay the works or result in an increase in costs, as soon as the relevant party becomes aware of the issue. The parties usually then convene an early warning meeting to explore how to avoid or mitigate its impact on the project. Usually within works contracts, if the contractor has failed to give the required early warning when required, they will only be compensated for the effects that would have occurred in any event notwithstanding the lack of an early warning notice;
- effective document management and record keeping is another important measure that can be implemented by not only the contract administrator but more generally by the contracting parties and all project stakeholders. In any dispute scenario, maintaining accurate records becomes all the more critical and can help strengthen the basis upon which a claim is brought or rebutted. This may seem like an obvious point, but in reality it is all too often overlooked.

This document management and record keeping should preferably be done in one place so that you have a single platform to turn to in order to refer to the relevant contracts, correspondence, photographs (if indeed photographing the works on site is permitted as pictures of actual progress take away much of the doubt as to progress report accuracy), minutes of meeting and other ancillary project documents. These should be kept up-to-date in order to ensure they clearly and accurately track and record actual progress

and in doing so align with developments on site and reflect what has been agreed off-site, for example in project meetings;

- good contract administration also involves the issuing of notices in a timely manner in accordance with the contract. This can be critical, for example when notifying a party of a claim for relief in the form of additional time or costs. Such notices must usually comply with specific contractual requirements including with respect to: (i) the required form of the notice; (ii) the content of the notice and the information it needs to include; (iii) transmission requirements; and (iv) the timescale within which the notice must be submitted. It is customary in the market for contracts to include the issuing of notices within the contractually specified time period as a condition precedent to a claim for an extension of time or to additional costs, failing which the claiming party may be time barred and therefore prevented from claiming such relief;
- a further area of frequent difficulty, which should be avoided when administering a contract, is parties having side agreements agreeing matters relating to a project in correspondence or side documents before, during or even after the performance of the works or services. Whilst such side agreements are commonly used and can be effective in modifying the terms originally agreed, it is essential that consideration is given to how these agreements refer back to and interface with the terms of the original contract. Otherwise such communications and side agreements may inadvertently be construed as an amendment or even waiver of certain rights or obligations contained within the original contract. For example, if a sum of money is to be paid, it is essential that it is clear how that sum relates to the calculation of the amount due under the contract. If this is not addressed, there is a risk that entitlement under the contract still exists in addition to any entitlement under the side agreement;
- our final point relates to the importance of using technology (not just for record keeping and document management). In a world where technology has arguably permeated nearly all aspects of our daily lives, there are various types of contract management and administration software which can help reduce inefficiencies and make the contract and indeed the project that little bit easier to manage and administer. For example, such software can help keep the project on track, by providing automated alerts, notifications and reports to notify of forthcoming deadlines related to deliverables and any other dates deemed worth tracking.

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Concluding Remarks

There is no doubt that a myriad of important factors and considerations can help enhance the overall contract management and administration process for a construction project, only some of which have been briefly discussed in this article.

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For further information, please contact [Leith Al-Ali](#).