



## Dar Al Riyadh Insight #66

### Claims Avoidance – Tender Phase

*Dar Al Riyadh Insights reflect the knowledge and experience of our Board, executives and staff in leading and providing PMC, design and construction management services. Dar Al Riyadh believes in the importance of broadly sharing knowledge with our clients and staff to improve project outcomes for the benefit of the Kingdom of Saudi Arabia.*

#### Tender Phase

Claims avoidance measures continue into the tender phase, building on the good work undertaken during the pre-tender phase. Deferral of pre-tender activities to the tender phase is not recommended. When this does occur, completeness of documents may be found lacking and internal consistency may be absent.

High-quality tenders are the first step in the tender phase. Clients may choose a two (or more) step process, where the first step is focused on prequalification of bidders to develop a highly qualified shortlist. Screening at this stage is essential to ensure high-quality, technically competent, and competitively priced bids. Note the focus on competitively priced as contrasted with the irrationally lowball bids seen in the industry, which result in a bid and claim execution strategy.

Owners may choose to undertake best value procurements, where nonfinancial factors are weighed together with price. Avoidance of bid protest requires absolute clarity around nonfinancial factors.

Claims avoidance strategies at the tender phase include:

- More rather than less information available to bidders.
- Ready identification of known information gaps or areas where the owner has assessed that a high degree of uncertainty exists.
- Mandatory site visits or facility walk-throughs.
- Complete and timely response to bidders' queries. Last-minute responses are of limited value and may act to increase contractor pricing.
- Formal presentation/review of project scope with bidders together with written response to questions.
- Formal review of owner-identified risks that may affect the project and contract. This documented process assures clarity of risk and responsibilities and has proven to be beneficial, especially in shared risk and contingency contracting structures. These reviews also support subsequent partnering efforts and provide another layer of claims inoculation.
- Clarity on any claims process, including notice provisions, time limits, response and resolution, and subsequent dispute processes.



- Clear, fair (not arbitrary or onerous), and timely payment provisions, with contractor rights and entitlements for withheld payments clearly spelled out.
- Review of other requirements addressed in the pre-tender stage (reporting, documentation).
- Development of a record of negotiation (including clarity on how the official project schedule is handled and maintained and who owns project float) signed by clients and contractor in conjunction with contract execution.

Like the pre-tender phase, the tender phase goes a long way towards setting up the project to avoid claims.