



## Dar Al Riyadh Insight #67

### Claims Avoidance – Contract 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.*

#### Contract

The end of the tender phase, including bid evaluation and negotiation, results in execution of a contract for the works to be performed. It is important at this stage that there be no ambiguity in the work to be performed. In particular, attention must be paid to any external approvals or filings associated with the execution of the contract or any financial documentation or bonds required from the contractor. Timeframes for provisions are typically included in contract requirements. Failing to meet these early commitments may be a harbinger of future problems, including claims.

One item of the executed contract that often establishes a basis for an initial claim is a delay in issuing a notice to proceed (NTP). After contract negotiations, the NTP date should be either directly stated in the contract (for example, April 22, 2022) or stated in terms of not more than so many days after contract execution (which itself should be a defined term). Delays in NTP issuance have resulted in significant contract claims.

Contracts always should require “force account rates” from bidders to cover any situation in which a lump sum or unit rate is not agreed upon.

**Owner and contractor should both fairly interpret the contract, considering the totality of the agreement. Owners should note any ambiguity that is present in the contract is always against the drafter of the contract.**