



Contract Management - The Assessment of Risk

By

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“Please find enclosed the Tender Documentation.....” is often how the first step along the hazardous path of contract management commences. You may have already spent time and money in a lengthy process of pre-qualification or perhaps you have been invited to bid simply based on your position in the market. No matter how you arrived at this point you now have to start the process of assessing what constructing the highest building in the world or supplying 20,000 bath taps to Oman is all about.

Where do you start? Certainly if the tender involves a major project the task is likely to be divided. Certain colleagues may take the employer’s technical requirements, others are bound to look at the logistics of quantity, time and feasibility while those that are to be obeyed will undoubtedly look at issues of finance, cash-flow and liability. Where the task is of more modest proportions, these exercises are often completed by the same person but with the common purpose of assessing risk. The assessment of risk is the single most crucial exercise of all and in my view one that is often underestimated.

Given your expertise, the risk attached to the interpretation of the technical specifications and the planning of the logistics to provide what the client wants in the time given and, most importantly, whether or not you are going to make any money doing it, should be readily identifiable and assessable. Where the going gets tough and the tough must get going is during the process of deciphering that all empowering document... the proposed Contract Terms and Conditions. It is here, amongst all those “hereins”, “subject tos” “whereases” and “provided thats” where some of the heavyweight risks can be found and we need to flush them out.

Many of these risks will be no strangers to you and the yellow highlighter will be confidently employed in identifying liability. For example you may mark-up the provisions for consequential losses, limits on your liability, any required indemnity for negligent acts, fitness for purpose of design, penalties for failure to perform within a time for completion and whether or not the employer requires the ability to terminate for no cause. This is a course that contractors and suppliers generally tread well. Where their