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Preparing for the execution of an infrastructure or construction contract

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Large infrastructure or construction projects are often complex, high-value undertakings that involve long-winded tender periods that could even take a couple of years. When a Principal Contractor is finally awarded a construction contract following a long and successful tender bid, the next critical phase is preparing for contract execution.

Construction contract execution involves a range of activities that ensure the contractor is ready to manage the project effectively and comply with contractual obligations. Thorough preparation mitigates risks and lays a solid foundation for the project's success.

This article will explore five essential steps that Principal Contractors, and other contractors in general, must take in preparation for the execution of a construction contract.

1.Contract review and risk assessment

One of the first and most critical tasks any contractor must undertake after being awarded a tender is a comprehensive review of the contract. This is not merely a cursory glance at the terms; it involves a deep, meticulous examination of the contract clauses, specifications, and appendices.

Every aspect of the contract must be clearly understood by the proposed members of the project team. Key activities when reviewing a construction contract include the following.

Legal review

Even though there may not have been any legal involvement during the tender stage, it is recommended to engage legal advisors to analyse the contract to be executed, paying particular

attention to liabilities, penalties, and force majeure clauses.

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Review and update risk matrix and mitigations

Due to the long tender periods of large infrastructure and construction projects, the risk profile may have changed in the time between the initial tender submission and awarding of the contract. This means that at contract execution, it is important to identify and review any new or existing risks related to project delays, financial instability, environmental factors, and third-party actions.

Risk mitigation strategies, such as adjusting project timelines, securing or adjusting appropriate insurance, or negotiating risk-sharing mechanisms with stakeholders, must also be reviewed. This means that contract negotiations do not necessarily end until it is time to execute the contract. Contractors must be alert to the potential for risk allocation to shift at the final stages.

1.Form a project team and assign roles

A successful project relies heavily on a competent and cohesive project team. At tender award, the Principal Contractor must be ready to assemble the key positions of the project team that have been proposed in the tender documents.

Clearly define roles and responsibilities

Clearly defining the personnel roles and responsibilities within the team is equally important. Each team member should be fully aware of their duties, deliverables, and reporting structures. A well-organised team ensures that decision-making is streamlined and that all aspects of the project are being managed effectively. The project team should have the necessary experience and qualifications to handle the complexities of the contract.

Establish communication lines

Large and complex construction projects often involve numerous internal and external stakeholders, including subcontractors, suppliers, regulatory bodies, and clients.

The Principal Contractor should create a global directory with the contact details of all stakeholders in a single location. There are popular software applications for project communications to manage project mail using the global directory. Maintaining open lines of communication helps ensure that everyone involved in the project is on the same page.

1.Develop a detailed project program and schedule

The program and/or project schedule used during the tender must be revisited before executing a construction contract to ensure that the most current version is used or referenced in the contract. The key activities in this task include creating or updating several documents.

Creating or updating the Work Breakdown Structure

A Work Breakdown Structure (**WBS**) divides the project into manageable tasks or work packages, each with its own timeline and deliverables. Once these tasks are identified, a contractor can allocate resources such as labour, materials, and equipment to each task. This allows a contractor to forecast and manage resource needs throughout the project's lifecycle, avoiding bottlenecks that could delay progress.

Creating or updating the Gantt Chart

During the tender stage, the Principal Contractor will typically estimate the project timeline. This estimate should be further developed or reviewed. Several software applications can produce a Gantt Chart or similar scheduling tool to visualise the project timeline.

During the entire construction project life cycle, Gantt Charts help track progress against the original schedule that was used during the execution stage. It is therefore essential to get this right at the start of the project because the project clock starts ticking after contract execution.

Creating or updating the procurement plan

In addition to resource allocation, contractors must review the procurement plan that was used during the tender. Procurement of materials and equipment needs to be carefully timed to avoid delays, especially considering the long lead times that are often involved in construction projects. This may require the revalidation of quotations used from suppliers and subcontractors used during the tender stage to ensure timely delivery of materials and services.

1.Budget finalisation and financial planning

Finalising the construction project budget and putting financial controls in place ensures that a contractor can manage costs effectively and maintain profitability throughout the project. The relevant tasks include:

Breaking down the contract price into fine detail

At tender award, the contractor must ensure that the contract price has been broken down into more detailed cost estimates, covering all aspects of labour, materials, subcontractor fees, equipment, and contingency funds for unforeseen expenses.

Establish or review systems for financial management

There are many software applications that a contractor can use to establish a system for financial management and control throughout the project. Each new project must have its own processes for tracking expenses, managing cash flow, and ensuring payments are made promptly to suppliers, subcontractors, and employees. These processes and systems can be duplicated from project to project; however, it is important to ensure that mistakes from previous projects are not carried over into new projects.

Contractors will often face cash flow issues due to the lag between making payments and receiving payments from clients, so careful planning, including incorporating lessons learned, is essential to avoid liquidity problems.

Establish financial reporting obligations

Depending on the requirements of the client, the Principal Contractor must prepare for both the internal and external (client-facing) financial reporting obligations.

Typically, construction and infrastructure projects are fixed lump sum contracts, therefore it is critical for such projects to require regular and accurate reporting on budget status and forecasts to the client. Establishing a good reporting system ensures transparency and maintains trust.

1.Reviewing compliance and safety requirements

In large and complex infrastructure and construction contracts, since there is usually a long period of time between initial tender and final contract execution, the contractor must review the regulatory landscape to ensure that it can remain compliant with the current laws. The key activities in this task include:

Reviewing changes to the regulatory landscape

Construction projects are subject to a range of legal requirements, including building codes, environmental regulations, and health and safety laws. If there is a change of law between the tender submission and the contract execution, this must be examined and addressed before the start of the project.

Compliance with these regulations is essential not only to avoid legal penalties but also to ensure the safety of workers and the public.

Obtain permits and approvals

The Principal Contractor must obtain all necessary permits and approvals before construction can begin. This may include building permits, environmental impact assessments, and planning approvals from local authorities.

Failure to secure these permits can result in costly delays or fines. Applications for permits and approvals for the project need to be updated and ready to go so that there are no surprise requirements when the project starts after contract execution.

Create a site-specific health and safety plan

This is a typical legal requirement that the Principal Contractor is required to undertake on a construction project. A site-specific health and safety plan will typically address the unique risks associated with the project and outline measures to mitigate those risks. It may include procedures for managing hazardous materials, ensuring worker safety, and complying with environmental standards.

The plan should also include the appropriate site-specific safety inductions for all personnel to ensure everyone who attends the site is aware of the health and safety requirements.

Establish sustainability standards

Increasingly, construction projects are required to comply with sustainability standards to minimise environmental impact or wastage. Large and complex infrastructure and construction projects will typically require enormous volumes of construction material which may not be used up for the project. Prior to commencing the project, it is important to establish systems within the supply chain that can incorporate the use of sustainable materials, reduce waste, or energy-efficient construction practices.

At the start of the project, the Principal Contractor should also establish and communicate to all the construction crew, the preferred system or method for recycling construction materials that may be left over from the construction project.

Get help from a construction lawyer

As part of your project's multi-disciplinary team, Wambeti Legal can help get your project off to a successful start at the execution of the contract. We can help you on key areas such as contract review and regulatory compliance to ensure a smooth transition from tender submission to executing the contract for your winning bid.

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