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CONSTRUCTION ENGINEERING & INFRASTRUCTURE

Kingdom of Saudi Arabia

Construction in KSA – useful tips to know

Why Saudi?

- + UAE is challenging market
- + Doubtful that growth will be as forecast 6-10%
- + KSA diversifying its economy away from oil dependency
- + Public Investment Fund (PIF)
- + Significant Projects –
 - King Abdullah Economic City
 - King Khaled International Airport Terminal 5
 - Jeddah Corniche
 - Riyadh Metro
 - Red Sea Project
 - Saudi Qiddiya Entertainment Project
 - NEOM



Government Tenders and Procurement Law

- + Regulates government tenders and procurements
- + Greater flexibility and increased economic efficiency
- + Local companies, SMEs and Saudi listed companies are given priority over foreign companies
- + New Local Content and Government Procurement Commission ('LCGPC')
- + Wider choice of procurement methods
- + All procurement of consulting services undertaken on the basis of limited tender

Strategic Procurement Unit

- + Coordinate purchases of commonly used goods and services across the GEs
- + Unify technical specifications, launch tenders, receive and review bids and select the best bidder
- + Conclude framework agreements and prepare model tender documents
- + GE's tendering out a project must send feasibility studies, evaluation studies and other tender documents to the SPU for their review and approval

Strategic Procurement Unit

- + Engage contractors and / or consultants using framework agreements
- + Government Entities are not permitted to procure works required by more than Government Entity other than through the Strategic Procurement Unit
- + In respect of other works, Government Entities are permitted to use framework agreements where quantities or the volume of work is not certain

Government Tenders and Procurement Law

- + Default rights
 - Government may pay subcontractors direct to overcome delay
 - Delay penalties – not exceeding 20% of contract value
- + Move away from the old Public Works Contract
- + Sets out various requirements for contract forms – for example:
 - Arabic or dual-language (Arabic is used interpretation)
 - The Implementing Regulation shall specify the types of contracts that may be used by Government Entities
 - Only need ministerial approval if the contract relates to an allocation in the General Budget of the State

Government Tenders and Procurement Law

+ Knowledge Transfer

- The Commission, or at the request of a Government Entity, may subject to prior Ministry approval, contract for the Saudization of the industry and knowledge transfer, with rules stipulated by Regulations
- Contracts may include clauses relating to knowledge transfer, training and transfer of operating skills to employees of Government Entities

+ Stand still period of 5 days to give parties a chance to object to the Award Decision

Government Tenders and Procurement Law

+ Contract Administration

- Variation orders to increase price by 10% of contract value (or reduce by 20%) no longer require approval
- Affords greater flexibility to individual government entities to manage projects
- Performance Bond due 15 days after Award

+ Old GTPL included Decennial Liability at Art 76

+ New GTPL no longer includes Decennial Liability – could be included in the implementing regulations (yet to be released)

Government Tenders and Procurement Law

+ Arbitration in Government Contracts

- Ministerial approval
- Contract Value over SAR 100 M (roughly USD 26M) (may be adjusted)
- Saudi Centre for Commercial Arbitration

Ban on Foreign Consultancies

- + Royal Order banning the award of contracts to foreign consultancy and advisory companies where a Saudi firm or research centre, with sufficient experience, is able to provide the required consultancy service
- + No regulations providing clarification on what is a “*foreign consultancy*”
- + Saudization
- + Directing money from KSA back into KSA organisations

Typical KSA Contract Terms

- + Difficulty negotiating terms on Government contracts
- + Unlimited liability
- + Resourcing Requirements – Saudi Air, Saudi owned rail operators,
- + Boycott of Israel Clauses or obligations to '*comply with all laws*' – problem if you have US entities
- + Variation clauses with no recourse to payment
- + Back to back contract obligations where Main Contract is not provided

Typical KSA Contract Terms

- + Decennial liability by way of contract
- + Decennial obligations can be extended. Look for clauses which include:
 - Any materials or methods which may reasonably be suspected to be unstable, dangerous, combustible, otherwise unsuitable or inadequate
 - Materials generally known to be deleterious at the Time for Completion which are deleterious to health and safety or durability
- + Withholding Tax applicable on payments from a resident to a non-resident. Rates vary between 5%, 15%, and 20%

Arbitration in KSA

- + Arbitration of disputes on Government projects
 - Subject to contract value over SAR 100M (USD 26M)
 - Minister approval required
 - Saudi Centre for Commercial Arbitration or licensed arbitration centre (unsure of other centres who are licensed in KSA)
- + Saudi Arabia a signatory to United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) since 1994

Arbitration in KSA

- + New Saudi Arbitration Law (New Law) came into force on 09 July 2012
 - Modelled on the UNCITRAL Model Law
 - Embraces international standards and aligns Saudi Arabia with other arbitration regimes within the Middle East
 - Greater independence of the arbitral process
 - Enhanced procedural powers of arbitral tribunal

- + Enforcement of Awards has improved in recent years
 - New Enforcement Law came into effect in the Kingdom in March 2013
 - Enforcement of awards before an Execution Judge

Conclusions

- + Vision 2030
- + Government Tenders and Procurement Law
- + Contract Terms
- + Arbitration in KSA

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