

Comparison of Saudi Public Works Contract versus the UK Counterpart

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Abstract

Recently, Saudi Arabia has become a member of World Trade Organization (WTO) after undertaking major revision in many laws and regulations. Simultaneously, Saudi Arabia is required to redraft other major laws including Public Works Model Contract in order to comply with the WTO bylaws. A step in this direction, this paper aims are to review the Saudi Public Works Model Contract vis-a-vis accepted international practices.

The paper is an extension of a larger research project which dealt with evaluating the Saudi Public Works Model Contract vis-a-vis ICE, FIDIC, and AIA. The objectives of this paper are to compare and contrast the Saudi Model Contract versus the UK Public Work Contracts in order to adapt the first one towards international practice. Obviously, the culture of work, country development, jurisdiction, type of administrative and civil courts, and other factors reflected significantly in the design of their public works contracts and public procurement policies. It is interesting to see that Saudi Model Contract use one version for all types of projects leaving each public agency to use its own form of contracts be it lump sum, design build, turnkey and so on. In the UK system, each type of contract in relation to the contract type has been drafted separately to suit the size and type of the project.

Highlighting such shortcomings of the Saudi Public Works Contract should pave the way for re-drafting it to bring up to accepted international practices, minimize litigation, and improve contract administration efficiency.

Keywords

Public works, Contracts, Government projects, Procurement, Model contracts

1. Introduction

Recently, the Kingdom of Saudi Arabia and Arab Gulf countries witnessed a construction boom as the project numbers multiplied gradually during the last three years, which led to increase demand on goods and services in building and construction sector. This in turn led to an increase in building materials costs and then to an increase in construction projects prices while using an outdated model public works construction contracts. The combination of the previous factors led to delay in completing the projects, decrease of quality level, and resulted in a financial and economic loss from which both private and public sectors suffered (Al Jazierrah Newspaper, 2008).

A step towards improving the draft of new Saudi model public works contract (1986), this paper attempt to compare this contract with its public works contract of the United Kingdom in order to improve the efficiency and development of the construction industry in the Kingdom of Saudi Arabia.

2. Literature Survey

In an expanded study for reviewing the existing model public works contract of Saudi Arabia, the author (Al- Hammad *et al.*, 2008) stressed the importance of reviewing the public works contract for suggesting a balanced formulation of construction contract to be used in the Kingdom of Saudi Arabia for developing its construction industry. A literature survey has been made for research covering the different sides of construction contracts, as well as studying three model construction contracts used in industrial countries: The contract of the Institution of Civil Engineers (ICE) in the United Kingdom, the contract of American Institute of Architects (AIA) in the United States and the international contract of FIDIC. These contracts reflect what the advanced practices settled on concerning contracting in construction. The most important results concluded by the research team were: 1) the necessity of distributing the project risks between the employer and the contractor together with specifying the risks that the contractor will be compensated for, 2) tender documents should include a detailed report on the project soil, 3) the contract should include a motive for the contractor upon the early finishing, also 4) adding terms for organizing the relationship between the employer and the contractor as well as what public works contract includes. These results form a basis for the research team moving forward toward preparing the suggested formulation for the construction contract.

Furthermore, the author and his research team (Bin Homaïd *et al.*, 2008) provided a comparison between the existing model of public works contract and the suggested formulation for developing it where the basis on which the formulation has been built was clarified, then a study of the public works contract articles and a statement of changes occurred in its suggested formulation: new, deleted, included or amended. It became clear that change rate reached about two third of public works items number. As the balance between the duties and rights for the two contract parties is a prerequisite in construction contract, the additional tasks in the suggested formulation of the public works contract that the two contract parties will bear as well as the advantages that the two parties will have as a result for applying this formulation has been shown. Finally, the research explained contradictions of the suggested formulation with governmental purchases and competitions system and its executive regulation thus it is necessary to change it before applying the suggested formulation. The suggested formulation of construction contract may achieve what the competition system requires of drafting balanced rules protecting the contractor rights and the contracted governmental agency will lead to the development of the construction industry in the Kingdom.

There are numerous research and publications world in the subject of governmental/public procurement and contracts; however, the cross-countries transfer of experience in executing public projects is limited.

3. Objectives and Choosing the English Government Contract for Comparison

Although, extensive review of the literature survey is done in carrying on reviewing the Saudi unified contract of public works, we find that there are other contracts done by other countries public works contracts were not addressed in the previous studies due to the large and wide field of research problem. In a step toward building on the previous research, this paper will compare selectively the unified contract of public works with an ideal government contract of a developed country like the United Kingdom for the purpose of the cognitive addition and cognizance of practicing international governmental construction contracts.

Although work environment and culture and the economy of building and construction is different in the United Kingdom, as a developed country, and the Kingdom of Saudi Arabia, as a country of tremendous oil wealth that exports great deal of advanced administrative and technical techniques, but is not classified neither as a developed nor developing country but it is between the two. The spread of English language as business language, the huge commercial relationship between the two countries, the large number of

Saudi students was sent to the United Kingdom, and the British old and modern presence in the Arabian Gulf. Also, many professionals in Saudi are acquainted with British Best Practice, led the researcher to choose its public works contract for comparison.

4. Selected Comparison

It may be difficult for the researcher to be acquainted with all comparison aspects between the two countries contracts for the involvement of various governmental policy and professional specializations that influences drafting public works contract including economists, engineers, lawyers and accountants. In addition, other bodies of common and different interests are involved such as subcontractors, suppliers, supervisor consultant, owner, main contractor, etc.

Within the scope of this paper, selected aspects of comparison, is exposed. The researcher resorted to the above citations for the Saudi Public Works while he cited the references (GC/Works/1 (1998) and (1999), GC/Works/2 (1998), GC/Works/3 (1998), GC/Works/4 (1998), GC/Works/5 (1998), GC/Works/5 (1999), GC/Works/6 (1999), GC/Works/7 (1999), GC/Works/8 (1999), GC/Works/9 (1999), GC/Works/10 (2000), GC/Works Sub-contract (1999) for the UK Governmental Contracts . An overview of the two contracts, the researcher found that there are differences in the general frame of constructing and influencing the contract formulation and implementation. In Table 1, we find that the English contract comprise a number of main contracts versions, which are seven construction contracts forms for large engineering building and construction projects. Each form identifies the contract type with general conditions agree with the nature and size of each construction project. These forms have been explained in details in Appendix (1), as the first bundle includes seven issues six of which are typical contracts and a seventh issue contains samples and comments. The six issues of contract forms are: the first issue specifies the amounts of work, the second issue is without work amounts (i.e. built according to specifications and drawings), the third is being used when the contractor develops the designs and implement simultaneously, the fourth is used when preparing designs and implementation are done in two stages by the contractor, the fifth is used when there are amounts of works and supervision by Construction Management, the sixth is used when there are not amounts of works or supervision by Construction Management.

Appendix (1) also shows the second type of typical contracts specified for small works which costs don't exceed 25-200 thousand sterling pounds that fits demolition works, while the third kind is being used in electromechanical projects and the fourth type for electromechanical works when work costs are above 75 thousand pound sterling. The fifth type is concerned with supervisory consulting works, the sixth is concerned with employees wages and materials costs, the seventh is concerned with admeasurements contract works (maintenance), the eighth is concerned with the maintenance of huge equipments, the ninth with is concerned lump-sum contracts for maintenance works, the tenths is concerned with managing and maintaining the construction and the eleventh type is a typical contract for subcontractor.

Accordingly, we can see that contract forms are verified and detailed in the British governmental contract than in the Saudi government contract which left the field open before different government bodies to put its own conditions as they like provided that they don't contradict the general conditions. It is noted in comparison table that the English contract is subjected in some of its articles to the European purchasing system and gives priority to dealing with foreign contractors in accordance with bilateral agreements, while this is not clarified in the Saudi contract.

Table 1 also shows that the last issue of the British typical contract was in 1998, while the last issue of the Saudi contract was in 1986; yet there are many elevated orders that led to the amendment of some of the contract items but unsubstantially. Perhaps it is crucial to note an important point which is explaining the basis on which the development of the final English government contract is drafted. This version is highly

influenced by an independent report by Sir Latham (1994). The so called "Latham Report" was an influential report written by Sir Michael Latham who was commissioned by the UK Government and Industry to review procurement and contractual arrangements in the construction industry. It tackled the most controversial issues facing the industry during a period of lapse in growth as a whole. Picking up on modern selection of renderers, contracts reviewing, and construction procedures it sought to aid the industry as a whole by encouraging a team approach to all aspects.

The last point of comparison in this research is the presence of an explanatory memo for the English contract items and comments on the formulation, and in the case of the Saudi contract there are an official generalizations for answering questions and inquires from the different governmental bodied that are complementary for the unified contract.

Table 1: Selected Comparison between English Government Contract for Public Works and the Saudi Unified Contract for Public Works

Comparison Aspect		English Government contract for Public Works	Saudi Unified Contract for Public Works
1	Contracts Forms	Several Forms according to the project type and price	One Form
2	Foreign Laws Correspondence	Purchasing Regulation of the European Union, also there is special treatment for some other countries pursuant to bilateral agreements	Some of the International chamber of commerce resolutions
3	Last Issue	1998G	1986G
4	Bases Upon Which Contract Modification Depends	<ul style="list-style-type: none"> Sir Latham Report on Building and Construction sector in 1994G. Government Report concerning Purchasing procedures in Building and Construction sector in 1994G. 	There is no technical or professional reference for preparing the unified contract, and there is no published studies on this topic
5	Explanatory Memos on the General Conditions of the Contract	Comments on the formulation of the General conditions	Responses, equal to judgments, to inquiries from government bodies

5. Conclusions

In order to develop building and construction industry in the Kingdom by improving the formulation of the Unified Public Works Contract, this research presented a brief on the English government contract for Public Works and its development mechanism versus the corresponding Saudi Contract to use it in developing the latter. The research recommends in reviewing all English legislations concerning building and construction sector to seek guidance from them in developing Saudi Arabian Building and construction Sector.

6. References

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GC/Works/7 General Conditions of Contract for Measured Term Contracts (1999). The Stationery Office Limited, UK.

GC/Works/8 General Conditions of Contract for a Specialist Term Contract for Maintenance of Equipment (1999). The Stationery Office Limited, UK.

GC/Works/9 General Conditions of Contract for Operation, Repair and Maintenance and Electrical Plant, Equipment and Installations (1999). The Stationery Office Limited, UK.

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Appendix 1: UK Construction Model Contracts

Government Contracts for Public Works and A/E Consultations Contracts

No.	Form Name in English	Model Type
First Category	Bundle GC/Works/1 (1998) and (1999)	Lump-sum contract for use in projects of buildings and large-scale structural engineering. There are 6 issues with forms and comments on the general conditions
1	GC/ Works/ 1 With Quantities (1998)	
2	GC/ Works/ 1 with quantities (1998)	
3	GC/ Works/ 1 Single Stage Design And Build (1998)	
4	GC/ Works/ 1 Two Stage Design & Build (1999)	
5	GC/ Works/ 1 With Quantities Construction Management Trade Contract (1998)	
6	GC/ Works/ 1 Without Quantities Construction Management Trade Contract (1998)	
7	GC/ Works/ 1 Contract For Building And Civil Engineering Minor Works (1998)	
2	GC/ Works/ 1 Contract For Building And Civil Engineering Minor Works (1998)	Lump-sum contract based on specifications and drawings without quantity tables for use in projects of buildings and small-scale structural engineering at the cost of 25-200 pound sterling. It is suitable for demolition works of any volume.
3	GC/ Works/ 1 Contract For Mechanical And Electrical Engineering Works (1998)	For use in electromechanical projects of any value.
4	GC/ Works/ 1 Contract For Building, Civil Engineering, Mechanical And Electrical Small Works (1998)	lump-sum contract for projects of buildings, civil engineering, and electromechanical works according to specifications or\ with drawings, only for works of value higher than 75,000 pound sterling
5	GC/ Works/ 5 General Conditions For The Appointment Of Consultants (1999)	Consulting services contract for public works contracts of one project only.
5-1	GC/ Works/ 5 General Conditions For The Appointment Of Consultants: Framework Agreement (1999)	Consulting services contract for public works contracts for a period of 3-5 years as necessary.
6	GC/ Works/ 6 General Conditions Of Contract For Day Work Term Contract (1999)	Employees' wages contract according to the previously prepared table, and material cost plus specific percent, for a period of 3-5 years.

No.	Form Name in English	Model Type
7	GC/ Works/ 7 General Conditions Of Contract For Measured Term Contracts (1999)	Admeasurements contract of work for 3-5 years
8	GC/ Works/ 8 Conditions Of Contract For A Specialist Term Contract For Maintenance Of Equipment (1999)	Used for maintenance of big equipment according to work achievement by Admeasurements.
9	GC/ Works/ 9 Conditions Of Contract For Operation, Repair And Maintenance And Electrical Plant, Equipment And Installations (1999)	Lump-sum contract for maintenance, operation, repair for mechanical workshop or Electrical Plant and Equipment Installations for a foundation or a group of buildings for 1-4 years
10	GC/ Works/ 10 Facilities Management Contract (2000)	Facilities Management Contract for 3-5 years
11	GC/ Works/ Sub-contract (1999)	A sub-contract used in government contracts