
Traditional Middle East procurement practices: is it time for a change?

Daniel King, associate director in the Dubai office, landed in the Middle East three years ago having served twelve years in the UK construction market, there gaining exposure to many varying procurement mechanisms. This period coincided with a significant shift in construction procurement practices in the UK on the back of the Latham (1994) and Egan (1998) Reports, which promoted a more collaborative procurement and delivery agenda, supported through the advent of new industry forms of contract such as the New Engineering Contract (NEC) as subsequently mandated by the British Government in public procurements of certain criteria. A large part of his experience was therefore gained riding the wave of this shift in culture. As a disciple of this new philosophy, Daniel reflects on his experiences in the Middle East and looks at how the region might benefit from adopting new procurement practices.

I wasn't completely 'wet behind the ears' when deciding to move to the Middle East to work. I understood that there was a high reliance on traditional procurement practices, with complete design and full bills of quantities being produced under relatively rigid contractual forms (almost entirely FIDIC Red Book). This, coupled with the constraints of long-standing cultural trading behaviours, often based on a prevalent claims-conscious appetite, was also not a surprise to me, and I looked forward to the challenge of what lay ahead.

My first assignment lived up to expectations: a mega-project where I was tasked with assisting the commercial close-out of two sizable fit-out packages in parallel with the procurement of a third package of similar scope. Representing the client, my natural role of amicable mediator between the entrenched conflicting parties served to achieve little other than making the commercial/claims meetings less confrontational and more conciliatory. It was obvious to me from the outset that the dispute would be played out in full, lost in an abyss of convoluted variations and claims accompanied with reams and reams of disjointed schedules and bills of quantities. Six months later we were still debating the same issues in these weekly meetings with no resolution in sight. Seeing several highly qualified people sitting in a site cabin having long-winded discussions of high subjectivity and varying contractual interpretations, I could not appreciate what 'value' was being derived through this all-too-common charade playing out on project after project. In my mind, all it was serving to do was to further entrench positions for higher powers to strike a deal over at some later date, be it at board level or under expensive and further protracted dispute resolution procedures.

Fast-forward three years, and I have just walked off another major project site after enduring another six months of the same posturing. I have often voiced frustration over these repetitive behaviours. I believe, however, that the industry may now be approaching something of a crossroads, with a collective dawning realisation that we might all have to work a bit 'smarter' going forward.

I strongly believe in a need for change. This belief is founded not only on lessons learnt from my early groundings in the profession, but fundamentally also on the backdrop of new economic norms for the region: long term oil price depression, increasing budget deficits and ever-tightening credit conditions. Gone are the days of bottomless money pits underpinned by inflated oil prices. The region must start development planning with a longer-term value prerogative firmly at the forefront. Under the prevailing economic conditions, development margins may be harder to achieve and maintain. More careful consideration will, therefore, become imperative in development feasibility and appraisal.

Perhaps more importantly, it is increasingly apparent that a move away from traditional procurement practices may be becoming more fashionable as clients seek to adequately transfer post-contract risk away from themselves and on to the supply chain, mitigating the risk of longer-term claims exposure liability. Anecdotally I have been made aware of this being true of some of the more established developers in the market, who are following several innovative procurement methodologies along the design and build model, involving early contractor involvement and supply chain integration.

These alternative procurement practices should be encouraged. If the market is to mature at the rate it needs to, it needs to embrace a level of trust. This will always be a challenge where there are many different nationalities and cultures operating in the same space, but if the UAE is testament to anything, it is that no challenge is considered too big. The construction industry needs to employ this trust right through the supply chain for the longer-term benefit to all.

Similarly, as development funding options potentially become more constrained, alternative sources will be desired and may come in the forms through the likes of public-private procurement (PPP) models, where more stringent fund monitoring regimes would be expected. The need for closer cost control and margin protection throughout the development lifecycle will be ever more in focus, as the funder(s) seek to protect their investment. There will be emphasis on closer working practices to reduce residual risks.

In my view, it is now time for this market to take heed of the long-established teachings of Latham and Egan. We must start working together in full cohesion as an industry, with open trust and co-operation. Value is best derived in the pre-contract stage, and clients should be bold in inviting supply chain expertise into design planning discussions at the earliest juncture. This can be better assisted through various procurement mechanisms such as joint venture/partnering, two-stage tenders and 'design and build' to name a few, with consideration given to incentivisation such as the guaranteed maximum price pain/gain mechanisms, for instance.

It would also be interesting for the market to experiment with new collaborative forms of contract such as the New Engineering Contract (NEC), acknowledging requirements for careful amendments to suit local legal jurisdiction. Albeit hard to imagine, it would also be nice to see a move away from the often claim-inspiring bills of quantities towards pricing documents such as schedules of work and schedules of rates. Again, this involves embracing trust.

There will always be grounds for dispute in construction projects and therefore a need for capable dispute resolution. Where large-scale complex projects are as prevalent as in the Middle East, the risk of disputes arising can often be higher. It is not that a change in procurement practices and softening of cultural differences will completely negate the chance of dispute occurring, but a shift in procurement ideology and behaviour would surely make life more enjoyable for all involved. Do we want to remain mired in confrontation and claims arguments long after the project is completed? Wouldn't it be easier if all parties walked away happy from a project completed on time and on budget, with no lingering liabilities, with an asset delivering margin for the client within the originally anticipated timescales?

With the growing influence of information technology in construction given the rise of building information modelling (BIM) and even the onset of 3D-printing technologies, it is more important than ever for clients, consultants, main contractors and supply chain to come together to harness the full potential of these opportunities. A collective knowledge-sharing environment developed with a long-term perspective would surely serve the industry well in reducing waste, decreasing the risk of dispute and increasing professional credibility.