

Pursuing International Contracts

When competing for and carrying out U.S. government projects overseas, what you do not know will hurt you.

By Michael H. Sedge, M.S.A.M.E.

“The greatest concern a manager should have is that for which he does not know.”

This advice was given to me two decades ago. Now, as the owner of five companies providing professional services on four different continents, I can say that nowhere do these words hold more truth than in international contracting.

Each year, thousands of companies enter the global marketplace thinking that because they are working for the U.S. government domestically, they are qualified and understand the procedures and policies sufficiently to handle jobs overseas. This, in fact, is rarely the case.

Even worse, there are times when even government representatives and contracting officers are not fully aware of the specific requirements in countries where work is to be performed—particularly when awards come from domestic contracting offices. An example of this recently came across my desk. We were asked to execute (as a subcontractor) a design-build renovation project of a U.S. military hospital in Europe. The prime had taken a contract and scope of work, issued by a U.S.-based Army Corps of Engineers contracting office, and passed it onto us.

In my return comments, I noted that while this contract would be perfect for a project stateside, it was missing several major items required in the country of execution. I then provided a list of examples. Two weeks later an email arrived from the prime stating, “We forwarded your comments to the contracting office. They reached out to their counterparts in Europe. Attached are an additional 37 pages of host nation and EU requirements.”



European construction often requires a host nation safety manager, in addition to any U.S. requirements administered by the Occupational Safety & Health Administration. PHOTO COURTESY MICHAEL-BRUNO LLC

DETAILS MATTER

U.S. government contracts for work abroad often carry a short, but very significant clause to the effect that contractor must abide by all host nation rules, regulations and laws. Such wording changes the entire landscape of your contract, your bidding, your pricing, and your risk.

Legal Liabilities. Even though the jurisdiction of a contract may be in the United States, specific clause wording makes you liable, in most cases, to all host nation legislation. This happened to us recently. We were awarded a contract for energy audits on U.S. Navy installations overseas. For certain aspects of the work we hired a local subcontractor. A month after completing the project, we received a letter from the lawyers of a firm that we had never heard of stating we had not paid them. Further investigation found that, little known to us, our subcontractor had sub-contracted the work to a third party and, in accordance with host nation law, we were liable for payment. Nearly a year later and many international legal hours, the issue was resolved.

Competitions. Depending on the country where the work is to be performed, there may be a variety of unknowns, such as host nation compliance, labor laws, international treaties and your liability under foreign laws and jurisdictions. A request-for-proposal or government contracting officer may reveal some of these issues, but you cannot assume they cover everything.

One of the best examples is the now-famous Base Operations and Support contract for Camp Lemonnier, Djibouti. Following award from Naval Facilities Engineering Command, the new contractor tried to reduce the local labor force to fit its projected needs, only to have every local nation walk out, literally shutting down the base. This was due to the fact that the national government ensured all workers would remain employed—something that should have been known, and considered, during the bidding process, but was not.

Similarly, a construction contractor recently told me they were bidding work in Djibouti and would bring a labor force from Egypt. Despite no one from the



Overseas project management takes on several unique aspects, beginning with people. All personnel going into a foreign country require legal documentation.
PHOTO COURTESY MICHAEL-BRUNO LLC

U.S. government saying anything to the contrary, I informed them that according to international treaties, 80 percent of the labor force had to come from local resources. That, more or less, blew their winning strategy out of the water.

Design Specifications. Architect-engineer (A-E) firms that work overseas know that “Host Nation Compliance” translates to greater complexity and costs. Very common in Europe and parts of the Pacific, this requirement is extending into Western Asia and the Middle East. This means that you must design not only to meet all U.S., international, and Unified Facilities Criteria norms, but you also must fulfill all codes of the country in which you are working. In the case of conflicts, host nation codes take priority in most cases.

U.S.-based design firms must have a host nation A-E partner and address issues such as multi-language design, dual measurement standards, extended reviews, additional deadlines, greater decision making to facilitate double code and compliance and increased expense.

Cooperative working relationships can also create challenges. Our European company, for instance, provided host nation compliance to a Chicago firm two years ago. The prime would not accept the fact that host nation structural regulations required support columns twice the size of those used in the United States. The firm was trying to reduce the construction costs and ultimately de-scoped this part of our contract. They wound up going with another firm. Six months later I received a call asking why we had not complied with local structural laws. I explained the facts and, in the end, this issue cost the prime contractor and the U.S. government a great deal of time and money to repair.

Construction Management and Administration. Overseas project management takes on several unique aspects—beginning with people. All personnel going into a foreign country will require certain legal documentation. It surprises me when I hear, “We checked on the internet and go into the country as a tourist.”

You may be able to get away with this in

some countries with very short scheduled projects, but it is not legal and it ultimately will catch up with you.

Another thing I frequently hear, particularly in the Middle East, is “We have a local sponsor.” In Bahrain and the United Arab Emirates, the way to obtain a legal visa and residency is to own a company in that country or utilize a subcontractor that can act as a sponsor. What has arisen, however, are several “sponsor” companies, which the national government is trying to eliminate. These “sponsor” companies offer visas to non-resident workers. To do this, they require these individuals to become their “employees” on paper. They can then list these individuals as legal workers of their company and obtain visas and resident paperwork—all of this, naturally, at a monthly or annual fee to the prime U.S. government contractor.

The fact that this practice is common and used by many contractors does not make it legal. And in the end, it could create serious issues for a firm and its in-country project staff.

In some countries you may also be required to have additional staffing. We recently provided a European-certified safety manager to a prime contractor, which was in addition to its safety manager. The Italian government required this figure be present to fulfill national safety law, given that military bases occupied by U.S. Armed Forces in this country are legally Italian territory where national construction law applies.

Materials and Supplies. Overseas work can create challenges for construction materials as well. One example, for instance, is that there is a European requirement that all construction materials used must be manufactured and purchased in the European Union. If material does not fulfill this requirement, the systems cannot be legally certified.

Currency and Banking. We recently completed a \$2 million design-build project. It was priced nearly two years ago using an U.S. dollar to Euro exchange rate of \$1.35 to €1.00. Over the course of the project, the dollar gained strength in the European market, causing us to gain \$.17 to every dollar—a great increase to our profit. While we were all smiles about the additional profit, it is a cautionary reminder. This exchange rate could have gone in the other direction, increasing our liability and costs by this same amount.

Another often overlooked issue is payment to international subcontractors and suppliers. We found this very challenging in Africa, where certain banks have been blacklisted by the U.S. government for supporting terrorism. You cannot send funds from a U.S. bank to these financial institutions. If you are working with companies that deal with these banks, you will need to find alternative payment methods. In our case, we obtained a list of authorized financial institutions (available from U.S. embassies, the Department of Commerce, and U.S. government internet resources) and requested suppliers and subcontractors to have an account with one of these banks.

KNOW THE SITUATION

To avoid pitfalls when pursuing international contracts, do your homework. Do not rely exclusively on the information provided by a request-for-proposal. Know the rules and regulations of the country in which you will be working. Understand that host nation compliance is written into contracts for a purpose.

Perhaps most importantly, do not underestimate the advice and value of your local partner. In most cases, they are the ones who will keep you out of trouble and save you money on U.S. government projects.

TIME

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Disclaimer: Information and suggestions within this article are not and should not be considered as legal consultation. They are merely the views of the author.



31st Medical Group Hospital, Aviano AB, Italy. U.S. AIR FORCE PHOTO BY STAFF SGT. MERCEDES CROSSLAND

LESSONS LEARNED: 31ST MEDICAL GROUP HOSPITAL PROJECT

When Synergy Kirlin Joint Venture (SKJV) and team partner Kroeshell Engineering Co. received the award to upgrade the 31st Medical Group Hospital in Aviano, Italy, it was both exciting and concerning. None of the firms had worked overseas. Now they look back on the lessons learned.

“We discovered that international work comes with unique issues,” explains Jake Gum, an executive with Kirlin Builders. “Host nation laws and compliance, dealing with different languages, unusual design requirements, measurements, European specs, materials and methodologies.”

“Strive for community. Make it a team effort,” Gum adds. “Our team was comprised of many different companies, as most projects are. In this case we were dealing with different nationalities and languages as well. Everyone had the project’s best interest in mind first. That made our goals easier to obtain. When project hurdles arose, we approached them as a team, stayed positive and crossed them together as a community of professional contractors and engineers.”

SKJV discovered quite a bit during the proposal process that reduced its risk and saved government time and money. These were items that are typically taken for granted in the United States, but they are not standard or available internationally.

Barry Klassy, Executive Vice President, Kroeshell Engineering Co., emphasizes that firms must do their research. “We had to navigate multiple, complex differences between business domestically and internationally. We looked at currency exchanges and fluctuations, subcontract structures, Value Added Tax waivers, immigration visa requirements and timelines, translation services, Defense Base Act insurance, host nation compliance, and code differences.”

The SKJV-Kroeshell team recommends companies looking to work abroad bring their “A” team. Managing any project risk takes good people. Managing international projects risk takes great people. Oversight is hard, it is even harder when it is foreign-based work. Make sure your project managers are great leaders with the ability to communicate efficiently with the client, with the partners, and with the local nationals. These individuals can make or break a project. -M.B.