Construction Webinar

A comparison of EPC and EPCM contracting and the key risk mitigation measures

28 January 2016
Overview

- Different procurement methods
  - Engineer, Procure and Construct (EPC)
  - Engineering, Procurement and Construction Management (EPCM)
  - Design & Build
  - Construct Only

- Considerations - EPC (or “turnkey”) and EPCM compared

- Risk mitigation in EPC and EPCM
EPC and EPCM contracts – Where do they fit in the risk continuum?

Owner

EPCM Contracting

Contractor

Construct Only

Design & Build

EPC / Turnkey Contracts

Relative risk
Typical EPC structure

FEED Contractor → Owner → EPC Contractor → Subcontractor → Subcontractor → Subcontractor
Split EPC structure
Construct only

Project Company

- Turbine Supply
- Electrical Works
- Civil Works
- SCADA Systems
Typical EPCM structure
EPCM Case study: Wind Farm
Which method? Factors to consider

Factors

- Time
- Cost
- Quality / Control
- Market access
- Remedies
- Financing
Greater risk to Project Company ➔ increased sponsor support requirements
“Bankability”

- What is “bankable”, from the perspective of a lender?
  Is the project structure robust enough to secure full repayment of principal, interest and fees (through project delivery or legal recourse)?

- Commercial counterparties with the ability, incentive and legal obligation to perform

- General preference for a single point of responsibility over multiple points of responsibility (i.e. ability to identify and attribute blame to the responsible party)

- Ability to seek recourse from responsible parties

NB: bankability is an overall judgement taken by bankers based on an analysis of all relevant aspects of a project; it is not an issue by issue process run by lawyers
Risk mitigation in EPC

- Two-stage contracting and long-lead procurement
- Selecting and apportioning specific risks e.g. change of law, force majeure, foreign exchange/currency, design, ground conditions
- Reputable and credit worthy contractor (or parent)
- Gain share/bonus
  - Bonuses for completing the project early or exceeding performance targets
- Insurance
Risk mitigation in EPCM

- Selection of EPCM Contractor and suppliers/trade contractors (track record, experience etc.)
- Full-time team working for Owner to monitor and manage the execution of the project and identify risks early
- Incentivisation (gainshare/painshare)
  - EPCM Contractor accepts risk and rewards on project outcomes
  - Not a full risk transfer but creates a financial incentive for Contractor to manage risk
- Obligations on contractors to cooperate and mitigate
- Consolidated dispute resolution
- Insurance
Risk Management: Case Study

Major Projects - EPCM

- Managing Cost Overruns
- Disputes Management
- Changing Procurement Strategy
- Managing Contractors, Programme & Cost
Questions?

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Bree is a specialist major projects lawyer.

She has particular expertise in project delivery method selection and risk allocation, and drafting and negotiating procurement arrangements as well as the full suite of project documentation including concession and offtake agreements, consortium agreements/JVAs and supply agreements.

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Nav is a partner in our Engineering and Construction team.

She provides full service expertise from procurement through to delivery and dispute resolution. In particular, she has extensive experience of providing advice on risk management during project delivery, including identification and management of potential liability issues.

Please join us for our next webinar in our series on ‘Dispute Avoidance: Navigating Complex Infrastructure Projects’.  
To register please contact Alexandria Gould.