

Vinson & Elkins

Middle East Construction, Engineering & Infrastructure Conference

Back to the Future: Lumpsum EPC — Fact or Fiction?

Thursday, 5 October 2023 | Agenda





Schedule of Events

9:00 a.m.

Welcome and Opening Comments

We set the scene for the day by introducing our project: an LNG project conceived as part of a publicly funded project to assist with energy transition at a time when the world was at (relative) peace and gas prices made it financially viable.

At various snapshots in the life of our project, we will explore:

- whether a full-risk pass through on a fixed-price basis is still achievable or even desirable in the face of the premiums that it demands;
- the trend of growing contractor resistance — borne out by high-profile insolvencies and financial losses, unprecedented supply chain disruption and ever-increasing price escalation;
- the unintended consequence of a race to the bottom when lowest price procurement incentivises a behaviour of under-valuation of risk and over-optimism in project delivery; and
- balancing the standard form procurement convention with the reality that there is no universal answer.

The rationale for looking at these issues across the life of a project in reverse (from dispute to initial project procurement), is to learn from the law of unintended consequences and explore the possibility of moving away from entrenched positions or trying to do things differently.

9:15 a.m.

At the Dispute Stage

This session will focus on when relationships fall apart and conduct is openly adversarial.

By reference to various scenarios, the panel will look at a number of issues including the holy trinity of:

- termination – at least, in part, termination “at will” to avoid the project losses but being dressed up as termination “for cause” / repudiatory breach;
- bond calls – the tests that are applied when challenging a bond call and the strategic use of anti-suit injunctions to prevent forum shopping; and
- emergency arbitration proceedings – the growing trend of fast track additions or alternatives to interim relief from the courts.

10:30 a.m.

Break

11:00 a.m.

Mid-Project / Execution Stage

This session will focus on live project management — how to make relationships work day-to-day, as well as practical tips on how to deal with problems before they escalate and put in place protections should you later need them.

By reference to scenarios, our panel will take up the roles of the Employer, the Contractor, and the Lender to deal with common issues that arise during execution:

- notice provisions – including whether it is possible to correct non-compliance with condition precedent provisions and, if so, how; what level of substantiation is adequate and how frequently should it be updated;
- delay and disruption – with particular focus on the cumulative impact of a combination of typical culpable events (such as Employers drip-feeding and delaying comments in the design review cycle and Contractors' problems in mobilising manpower) with more neutral force majeure / change in law events (such as pandemics and sanctions), at least some of which appear to be concurrent; and
- amendments / variations – reaching a compromise can sometimes just be the beginning; the terms of the variation or amendment to the contract still need to be negotiated and approved by the Lenders. How much information can / should be shared openly with the banks to justify the compromise?

12:15 p.m.

Q&A Panel on the Morning Sessions

12:30 p.m.

Lunch

1:45 p.m.

The Technical Experts' View

2:30 p.m.

Project Establishment Stage

With contributions from members of our leading front-end construction and finance team, this session will include:

- a mock negotiation focused on the allocation of risk from the point of view of the Employer, the Contractor and the Lender; and
- a discussion on the future of contracting and possible alternatives to lumpsum EPC procurement.

3:30 p.m.

Q&A Panel on the Afternoon Sessions

3:45 p.m.

Break

4:00 p.m.

The Tribunal View – A Behind the Curtain View

In this session, an all-star cast of former judges and current arbitrators will share their views on issues such as:

- choosing an arbitrator / chair – key factors to consider;
- interviewing arbitrator candidates ahead of selection/nomination;
- the factors taken into account when determining whether to conduct an in-person, virtual or hybrid hearing;
- the dynamics of how tribunals work, the composition of the arbitration panel, the role of arbitrators;
- how the arbitration process – and especially costs – might be controlled; and
- the extent to which the conduct of the parties is taken into account.

5:00 p.m.

Closing Comments, Followed by a Drinks Reception and Canapes



Our Cast of Market-leading Speakers this Year Includes:

Sean Brannigan KC
Head of 4 Pump Court

David Brynmor Thomas KC
39 Essex Chambers

Lauren Davies
Partner, Vinson & Elkins

Roberta Downey
Partner and Head of International Construction,
Vinson & Elkins

Bill Haggart
Partner & Technical Expert, HKA

Nabeel Ikram
Partner and Head of International Disputes – MENA,
Vinson & Elkins

Cathy Joshi
Technical Director, HKA

Siân Mirchandani KC
4 New Square

Robert Landicho
Counsel, Vinson & Elkins

Andrew Nealon
Partner, Vinson & Elkins

Robert Stephen
DIAC Registrar

Richard Wilmot-Smith KC
39 Essex Chambers

Crispin Winser KC
Crown Office Chambers

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