



Design-Build/EPC Contracts: legal and practical issues encountered

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How to insure to have a project delivered

- on time ?
- on budget ?
- fit for the purpose ?
- at least cost ?

The traditional DBB answer and its limits

- The **Design Bid Build (DBB)** approach
 - Rationale: Employer control design and costs based on unit price and measure of quantity
 - In most cases successful bidders selected on lowest estimate final price
 - Considered lower than other delivery methods such as Design and Build
- The real world of DBB:
 - in many situations and specially in low income countries, the final price through the DBB method exceeds the estimated price by a large percentage (20% to 50% not uncommon)
 - Projects are less than often completed in time
 - No reliable statistics available

The growing interest for BDB and global contracts

- BDB has a long history in legal systems where the contractor is legally bound to reach results and must guarantee fitness for purpose: (example French civil code entrepreneurship contract)
- BDB has been tested and developed internationally for plants and facilities for over 30 years
- Example series of turnkey projects in Algeria presented and discussed in committee T 25 years ago
- In the last decade, employers and IFIs more and more concerned by cost overrun and delays in traditional DBB and consider seriously BDB.

The merits of Design & Build, Turnkey and EPC models

1. Main benefits for Employers: focus only on what he really wants in terms of functionality and outcome

- Gaining time in project preparation
- Reducing design and procurement costs
- Reducing corruption
- While at the same time serious guarantees against
 - ✓ Cost overrun
 - ✓ Delay in delivery

1. Main drawback

- Lump sum price prima facie higher

1. Main benefits for Contractors

Experienced DB contractors with in-house skills, knowhow and efficient construction methods enjoy higher profit margin

2. Main drawbacks

- Bidding costs
- high risks if bid not well prepared and if Public Authority is not reliable

Current trends on BDB development

More and more BDB including EPC and turnkey projects underway or considered around the world :

- Example in the US:

- Wide use of DB/DBO Delivery Method Across all Project Categories is on the West Coast (California, Oregon, Washington), spreading everywhere
- Government Projects (State and Federal) are increasingly using DB/DBO Delivery Method
- Recent Proposals by U.S. Government indicate more funding and further increases in DB/DBO Infrastructure Projects

European Development Fund :

Recent analysis indicate that BDB may often offer best value for money specially for complex plants or facilities

- Development of a new contract form underway (EDF DB)

Various contract forms dealing with BDB

- FIDIC silver and blue, ANAA form

Snapshot of issues to consider for successful BDB projects

- How to agree the final design between Contractor and Employer meeting all employers requirements within a lump sum price and fixed delivery date?
- How to guarantee a construction process and programme in line with applicable norms and best practices?
- How to check functionality performance and fitness for purpose ?
- How to guarantee performance during the operation period ?

Thank You !

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