

## Australia : Understanding EPC Contracts for Renewable Energy Projects

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### **1. Introduction**

For companies looking for a reliable and cost-effective way to develop renewable energy projects, an Engineering, Procurement and Construction (**EPC**) contract is an essential legal instrument for delivery of the project. With an EPC contract, a company can outsource the entire design, procurement, and construction process to a single contractor who will handle all aspects of the project. This type of contract helps to reduce risk, costs, and timeframe associated with a project, which is becoming increasingly critical as the renewable energy sector continues to grow on an international scale. Understanding the details of an EPC contract is critical to ensuring that all parties involved are on the same page and that the project is completed on time and on budget. This article will examine the key elements of an EPC contract, as well as how to effectively negotiate, manage and deliver a project using this legal instrument.

### **2. Key Benefits of Utilising an EPC Contract**

As mentioned above, the primary benefit of utilising an EPC contract for renewable energy projects is that it eliminates the need to manage multiple contractors, thereby inherently reducing the risk profile of the principal with respect to the project.

Generally, an experienced and reputable EPC contractor would be familiar with the project and be able to manage any potential risks and cost escalations. Importantly, the contractor is also responsible for ensuring that the project is compliant with all applicable laws, industry regulations and standards.

### **3. Elements of an EPC Contract**

An EPC contract typically has several key elements and provisions which are set out below.

#### Single Line of Responsibility

An EPC contractor shall be solely responsible for the works, and therefore any issues arising out of the project. Consequently, the principal shall be entitled to defects and rectification of the same, or some form of monetary compensation. Where the EPC contractor comprises of a consortium of multiple entities, each party would typically be jointly and severally liable to the

principal.

#### Fixed Contract Price

The works under an EPC contract are delivered under a fixed and firm price, meaning that the EPC contractor shall be held responsible for cost escalations. Under some circumstances, where the principal has caused or contributed to a delay to completion, or amended the scope of work, the EPC contractor may be able to claim additional costs. Importantly, the pricing schedule can consist of either lump sum amount or milestone payments against deliverables.

#### Fixed Completion Date

The completion date is either a fixed date, or a predetermined period from the commencement date of the EPC contract. If completion is not achieved as prescribed under the contract, then the EPC Contractor shall be liable for liquidated damages.

#### Security

Most EPC contracts shall require the EPC contractor to provide a performance bond for the benefit of the principal in instances where contractual obligations are not met by the EPC contractor. Performance security usually takes the form of parent company guarantees, bank guarantees, retention security or advance payment guarantees.

#### Performance Guarantees

Performance guarantees are in place to ensure the EPC contractor performs its obligations under the EPC contract. These performance guarantees are supported by liquidated damages payable to the principal where the EPC contractor under-performed the contract.

#### Handover, Testing and Commissioning

An EPC contractor's responsibility, testing and commissioning form part of the works and take place preceding handover and completion of the project. Clauses relating to these obligations shall detail when the principal will take possession of the site and when completion shall be reached.

#### Limitation of Liability

A limitation of liability clause limits the liability of an EPC contractor up to a prescribed amount or percentage of the contract sum. Although the liability cap may vary, it is common practice to limit the liability to 100% of the contract sum.

#### Assignment and Subcontracting

EPC contracts may allow part of the EPC contractor's works to be subcontracted to third parties. The EPC contractor shall usually be required to notify the principal and obtain their approval with respect to the subcontractor's appointment.

#### Dispute Resolution and Governing Law

The dispute resolution clause sets out the medium of dispute resolution and procedure to be followed by the parties to resolve the dispute. It is very common to prescribe arbitration as the preferred dispute resolution method, with many parties opting for the arbitration to take place in Singapore pursuant to the Singapore International Arbitration Centre (**SIAC**) Rules.

A governing law clause prescribes the applicable law, jurisdiction pursuant to which the contract shall be interpreted and arising dispute shall be handled. This is increasingly critical in cross-border transactions where parties from different jurisdictions are involved.

#### **4. How to Find a Reliable EPC Contractor**

When it comes to selecting an EPC contractor, it is important to find a contractor with strong experience in construction of similar projects in the required jurisdiction. There are several ways to ensure this, including researching the contractor's background and reputation, checking references, and asking for quotes from multiple contractors.

Specifically, when researching the contractor's background, it is important to look into their experience in the renewable energy industry, as well as their track record for completing projects on time and on budget. It is also important to check references from past clients to get an idea of the contractor's level of service.

When asking for quotes from multiple contractors, it is important to make sure that the quotes include all of the elements outlined in the contract. This will help to ensure that the contractor is not attempting to add in any extra costs that were not included in the original agreement.

#### **5. Negotiating an EPC Contract**

Once a contractor has been selected, it is important to negotiate an EPC contract that is fair for all parties involved. When negotiating the contract, it is important to keep in mind the scope of work and contractual elements that were outlined earlier.

When negotiating the scope of work, it is important to make sure that the tasks that the contractor is responsible for are clearly defined and that the deliverables are clearly outlined. The cost element should also be negotiated to make sure that the contractor is not overcharging for their services. Additionally, the timeline should be negotiated to make sure that the project is

completed on time. Finally, the risk management element should be negotiated to make sure that the contractor is taking all necessary steps to mitigate any potential risks associated with the project.

## 6. Contract Management Strategies for EPC Contracts

Once an EPC contract has been negotiated, it is important to implement risk mitigation strategies to ensure the success of the project. The most important risk mitigation strategy is to ensure that the contractor is familiar with the project and is able to manage any potential risks. This can be done by providing the contractor with detailed project specifications and plans, as well as regular project updates.

In addition to providing the contractor with detailed project information, it is also important to ensure that the project is compliant with all applicable laws, regulations and standards. This can be done by working with an experienced legal team to review the contract and make sure that all of the terms and conditions are in compliance with the applicable laws.

Finally, it is also important to have a system in place to monitor the contractor's progress and performance. This can be done by setting up regular review meetings with the contractor and conducting audits of the project to make sure that the contractor is meeting all of the project requirements.

## 7. Conclusion

EPC contracts are becoming increasingly popular in the renewable energy industry as a way to reduce risk, costs, and timelines associated with a project. Understanding the key elements of an EPC contract, as well as the legal terms and conditions, is critical to ensuring the success of the project. Additionally, it is important to have a system in place to monitor and manage the contract to ensure that the EPC contractor is meeting all of the project requirements. By taking these steps, companies can ensure that their renewable energy projects are completed on time, on budget and with a lower risk threshold.



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