



# An Overview of Key Provisions in Engineering, Procurement and Construction Contracts in the Solar Industry

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## AGENDA

- An Overview of EPC Contracts
- Key Contract Provisions
- Recent Contract Trends for Force Majeure (COVID-19)

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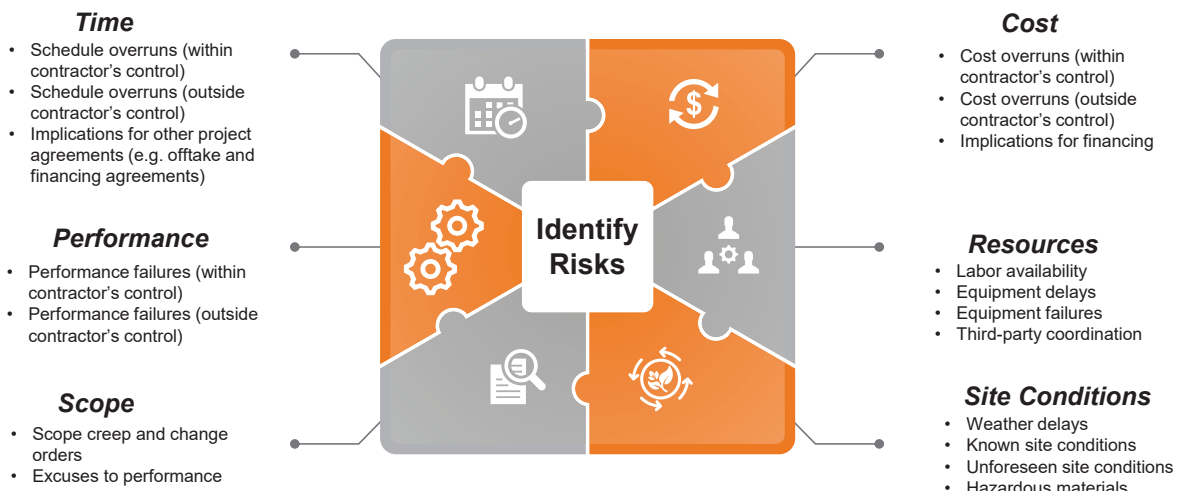
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## KEY STAKEHOLDERS



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## RISK IDENTIFICATION AND ALLOCATION



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SAMPLE RISK MATRIX

Risk	Allocated Risk	Mitigation	Effect on Owner	Effect on Contractor
Cost overrun that is within contractor's control (inc. subcontractors and suppliers)	Contractor	Construction contract is for a fixed price	None	Construction price reflects risk premium assumed by contractor, even for price fluctuations of equipment and services
Cost overrun not within contractor's control – insured force majeure event	Insurance company	Insurance proceeds	None	None if proceeds are sufficient
Cost overrun not within contractor's control – uninsured force majeure event	Contractor	Construction contract is for a fixed price	None	Construction price reflects risk premium assumed by contractor
Cost overrun not within contractor's control – subsurface site conditions	Owner/Developer	Stand-by equity commitment is drawn upon (owner)	None if owner can pass on costs to developer	None
Completion delay within contractor's control (inc. subcontractors and suppliers)	Contractor	Fixed completion date in construction contract; daily liquidated damages to cover debt service, offtake agreement damages (subject to cap)	Reduced return for damages in excess of cap; owner takes on credit risk of contractor to pay damages and finish project unless third-party security is provided	Contractor pays delay liquidated damages; construction price reflects risk assumed by contractor

Adapted, in part, from Scott L. Hoffman, *The Law of Business of International Project Finance*, 30 (3d ed. 2008).

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SAMPLE RISK MATRIX

Risk	Allocated Risk	Mitigation	Effect on Owner	Effect on Contractor
Completion delay not within contractor's control – uninsured force majeure event	Owner	Stand-by equity commitment is drawn upon	Reduced returns	None
Completion delay not within contractor's control – caused by local electric distribution co.	Owner and Contractor	Contractor assumes risk for first 15 days; owner assumes risk after 15 days (stand-by equity commitment is drawn upon)	Reduced returns if delay extends beyond 15 days	Contractor pays delay liquidated damages for first 15 days; construction price reflects risk assumed by contractor
Completion delay not within contractor's control – subsurface site conditions	Owner	Stand-by equity commitment is drawn upon	Reduced returns	None
Failure of contractor to satisfy performance guarantees at completion – not due to contractor fault	Equipment Supplier	Warranties in equipment supply agreement; replacement of defective equipment	Replacement of defective equipment may not be sufficient to cover consequential damages (lost revenue, lost profit, financing costs)	None
Failure of contractor to satisfy performance guarantees at completion due to contractor fault	Contractor	Performance guarantees in construction contract; liquidated damages for reduced performance payable by contractor (subject to cap)	Reduced return for damages in excess of cap; owner takes on credit risk of contractor to pay damages and finish project unless third-party security is provided	Contractor pays performance liquidated damages; construction price reflects risk assumed by contractor

Adapted, in part, from Scott L. Hoffman, *The Law of Business of International Project Finance*, 30 (3d ed. 2008).

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[2021 Renewable Energy Law eConference](#)

First appeared as part of the conference materials for the 16<sup>th</sup> Annual Renewable Energy Law Institute session "An Overview of Key Provisions in Solar EPC Agreements"