



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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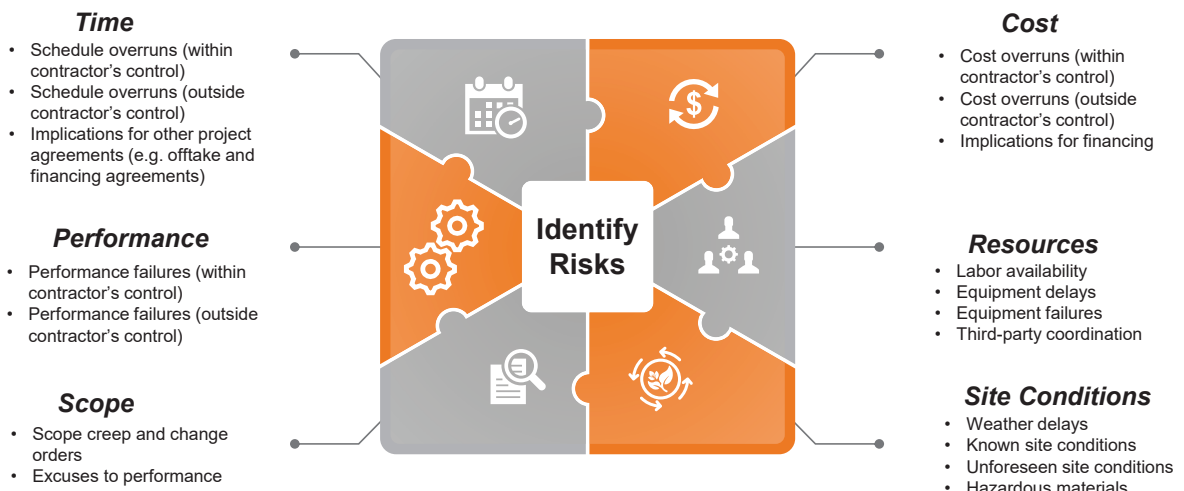
KEY STAKEHOLDERS



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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 |

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