CHAPTER

1

CONTRACTOR'S LIABILITIES FOR THE UNFORESEEN ISSUES IN HIGH-RISK EPC CONTRACTS

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1.1 PROLOGUE

Engineering, procurement and construction (EPC) contracts are becoming the most usual form of contracting applied by private sector to undertake construction works on large scale infrastructure projects (Picha et al., 2015) An EPC contract is where the project employer defines the project and hires a contractor with total responsibility for the detailed engineering, procurement, and construction of the project as an integrated package (Riso & Kunken, 2023). The EPC contractors play a crucial role in the project delivery to guarantee a successful project. The EPC contract involved a single point responsibility as the EPC contractor will undertake works from the designing until the handover of the project. Thus, it makes the contractor liable for risks, defects, and rectification of the project (Thomazios & Wong, 2021).

The standard form that has been applied in the EPC contract is the FIDIC Silver Book, which includes a significant amount of risk transfer to the contractor (LexisNexis, 2024). Other standard form of contract that has been used is bespoke forms. It is a client-produced contracts which allow clients to reflect their own preferred risk allocation.

Other than that, the pricing method in EPC contract is typically a lump sum contract resulting in certain pricing for the project (LexisNexis, 2024). Therefore, if any cost overruns happen during the project, the EPC contractors will be responsible for them. The EPC contract comes with a fixed completion date or specified commencement period (Thomazios & Wong, 2021). The client will have a guaranteed completion date for the project, and they will be allowed to claim for liquidated damages for any delay that occurs. The purpose of this case study is to introduce the concept of an EPC contract as a project delivery system for high-risk and complex projects in the construction industry. The case study focuses on various aspects of the contractual relationship between employer and contractor, specifically on the roles and responsibilities of the parties. It also illustrates the importance of a clear display of a single point of responsibility and the project employer's duty to cooperate.

KIM Offshore Solutions Group secured an EPC contract from an oil and gas energy company, Kuasa Gali Bhd., for the construction of sea-based compressor stations. During the contract negotiation, the contractor did not include rescue boat facilities in the proposal package because the employer stated that the station is unmanned in operation. The contractor designed and constructed the station within schedule and budget, but when approvals were needed from the maritime authorities to operate the station, it was discovered that rescue boat facilities were a prerequisite for permission to operate. Unhappy with how the situation turns out, Kuasa Gali Bhd. insists that KIM Offshore Solutions Group be solely liable for the cost and time implications of the missing rescue boat facilities. On the other side, KIM Offshore Solutions Group contends that Kuasa Gali Bhd. has a fair share of the inaccurate project requirement. Despite several discussions, both parties were unable to resolve the issue. Faced with the setback, the parties are in between a rock and a hard place on the extra cost and time of the rescue boat facilities. The case study shows the importance of understanding the scope, responsibilities, and liabilities, especially in the EPC contract given the unique risky, complex project nature associated with it.

1.2 THE MISSING RESCUE BOAT FACILITIES

On the morning of September 20, Adam put down the letter from the Department of Maritime Affairs, which had just arrived at his office with a heavy sigh. Adam is the contract manager for KIM Offshore Solutions Group, a company that started with an engineering base and has now extended their latest business activities in the energy sector. Adam is responsible for overseeing the work progress for an engineering, procurement, and construction (EPC) contract to build a subsea natural gas compressor station located 235 km from Bintulu in the South China Sea for their new client, Kuasa Gali Bhd.

The work progress is catching up with an impressive pace and within the agreed budget, which is now scheduled to reach completion despite facing various ebbs and flows. Adam is starting to feel nostalgic, reminiscing the bittersweet experience he and his team faced throughout the completion of the compressor station project. Suddenly, he feels a rush of optimism and is determined to handover the project accordingly. However, one problem lingers, a serious one. As expected, the Department of Maritime Affairs had made a decision to decline KIM Offshore Solutions Group's application for permission to operate the subsea natural gas compressor station. The reason is that there were no rescue boat facilities built for the sea-based gas compressor station.

Adam stared outside his window, trying to recall what happened during the contract negotiation meeting. During the meeting, he noticed that the rescue boat facilities were missing from the client's requirements. He wonders if he would have raised the issues back then, the decision today would have been different. He took a deep breath while trying to gather his thoughts. Without the approval of the maritime authorities, KIM Offshore Solutions Group's will not be granted permission to