

International
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ICLA

Introduction – Standard Problems on “Big” Construction



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Standard Problems in “Big” Construction

Assuring adequate funds are available to manage risk

- 2 methods
 - Pay me now
 - Pay me later
- **Pay me now**
 - Contractor includes cost of all contingencies
- **Pay me later**
 - Contractor assumes all risks “clearly” and “legally” allocated
 - Only entitled to payment if unallocated risk arises

Standard Problems in “Big” Construction

Contract Formats and Risk

- Design-Build
 - More, but not all, risk to Contractor – Pay Me Now
- Design-Bid-Build
 - Allocates risk to Contractor
 - If unallocated risk arises – Pay Me Later
- Key to both formats – adequate funds available
- Lack of funds leads to more complicated legal issues
 - Lien/Charging Order
 - Piercing Corporate Veil
 - Involving 3rd parties like Guarantor or Insurers
 - Etc.
- Contractor will not accept loss which can arguably be recovered from others

Standard Problems in “Big” Construction

Never assume that contract format alone solves risk allocation issue

- There is always the possibility of the unexpected
 - No permit
 - Restricted working hours
- The “super” changed physical condition
- Events of force majeure
 - War
 - Political unrest/revolution
 - Weather
 - Embargo
 - Etc.