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FROM THE GROUND UP

MARCH 2007

The EPC Contract What You Need To Know

by Arnie H. Olyan and John K. Taylor

So you think you need an EPC Contract? Why do you think so? What does E-P-C stand for anyway? Perhaps what you really need is a Construction Contract or an Engineering Services Agreement. What do you need to know about an EPC Contract?

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Arnie H. Olyan and John K. Taylor of BD&P wrote and presented the paper “*The EPC Contract and the Energy Lawyer*” for the Canadian Petroleum Law Foundation in Jasper in June 2006. The paper *précises* much of what goes in to an EPC Contract. We include below, that portion of the paper which set out the preliminary considerations impacting the allocation of risks and responsibilities as between the Owner and Contractor. Other topics in the paper such as *Aligning the Parties’ Interests* (cost control, delay, quality, liquidated damages, procurement strategy and process, alliance agreements), *Documentation, Change Orders, Notice, Breach of Contract and Limitations on Liability* will be featured in future editions of “*From the Ground Up.*”


PRELIMINARY ISSUES OR “SOUL SEARCHING”

1. COMPETENCY (“WHAT ARE WE GOOD AT?”)

When considering both the flavour and the specific terms of an EPC Contract¹, advisors to the parties should identify (and the clients themselves should previously have done some self-examination as to) their clients’ strengths and weaknesses as an organization and how such strengths and weaknesses can be efficiently and effectively optimized or mitigated (as applicable). For example, an owner who intends to own and operate a pipeline may have little direct construction experience. When considering the EPC phases of the project, the owner could (a) hire a contractor² (or contractors) to deal with all aspects of the pre-operations phase, (b) hire a full staff to coordinate EPC activities internally, or (c) contract for some blending of these two options. Typically, an owner with little construction experience will be more comfortable handing relative control of a project to a contractor than would an owner with more construction/ construction management experience and the owner’s choice of contractual framework should reflect its comfort and competencies accordingly.

2. CONTROL

Other factors may influence and can dictate the relative degree of control the owner wishes over the work and the contractual



“...the owner’s choice of contractual framework should reflect its comfort and competencies...”

terms to flow therefrom. For example, does the owner have a corporate culture that insists on control of counterparties (and in some cases their respective subcontractors) or does it prefer to offload responsibility (and ideally risk) to third parties. The latter may indicate a preference for more of a “turnkey” arrangement.

3. MARKETPLACE

It is often useful (and may assist a client to set realistic expectations) to determine the market’s appetite for various forms of agreement (and attendant risk) and what the current drivers may be that are associated with those forms of contract. For example, is the marketplace such that engineering houses are generally accepting of more risk (and presumably more reward) for certain EPC work and does this greater appetite for risk present an opportunity for a generally risk-adverse owner to offload some risk through its proposed pricing arrangements and other contractual terms? Is the marketplace for particular goods or services competitive, or dominated by relatively few market leaders?

Quite apart from how the present marketplace determines the risk aspects of an EPC Contract is how the marketplace understands the tendering process. While the scope of this paper is not intended to review the law of tendering in any detail, it is fair to say that the majority of the most sophisticated players in the EPC marketplace operate with an understanding of the tendering process that is quite distinct from how the courts have prodded the participants to behave. More often than not, contractors who participate in a tendering process anticipate that the submission of bids is merely the first stage in what is often a very extended negotiation process. Once it is evident to a contractor that the owner has selected a front running (preferred) contractor, that contractor will attempt to negotiate with the owner a variety of price, risk allocation and other terms that may not have been identified in an initial tender package. Owners are often complicit in such arrangements to circumvent the initial tendering regime in the hope that, with further discussions with a bidder or bidders, the price and other terms of an EPC Contract can be reworked to establish a mutually

advantageous relationship. That relationship may ultimately be on different terms than were stipulated in the initial tender package. Owners unfamiliar with such tactics will often be vulnerable to a contractor who appreciates that it is the only one still at the “bargaining table” and who attempts to re-negotiate terms more favourable than those in the EPC Contract originally proposed.

Given the long term and integrated relationship that invariably results from execution of an EPC Contract, it is essential that the parties understand their own goals in this regard and properly coordinate their activities under the EPC Contract to reflect this.

4. PRIORITIES

It is a commonly held view that on construction projects there are three main goals that owners effectively prioritize. These priorities are: (a) maintaining budget, (b) maintaining schedule, and (c) establishing and maintaining quality. An owner’s ordering of these priorities should be reflected in the owner’s contracting strategy and, ultimately, in some of the specific terms of the EPC Contract. For example, if the owner’s two most important goals are to stay within (capital) budget and on time, then the contract should impose costs on or set forth rewards (or both) for the contractor if these goals are achieved. In this example, and to achieve its goals, a contractor will necessarily insist on a high degree of control over its work. Lawyers must recognize the relative priority among these three goals that clients may formally or informally establish so that the nature and terms of the applicable EPC Contract properly reflect clients’ relative desires to achieve these goals, and the trade-offs inherent in such prioritization.

5. TOLERANCE FOR RISK

The most efficient and effective EPC Contract will recognize that the parties’ allocation of risks and rewards must be a proper

reflection of the participants’ appetite for risk and quest for reward. Parties often do not spend sufficient time identifying their respective interests in this regard and may not adequately articulate their interests to their own counsel, among business units within one organization or to the counterparty. As a result, the parties may be well into the process of negotiation when they discover that their respective philosophies as to allocation of risk (and reward) are leading to unnecessary confusion and tension that is not conducive to finalizing an agreement.

Given the long term and integrated relationship that invariably results from execution of an EPC Contract, it is essential that the parties understand their own goals in this regard and properly coordinate their activities under the EPC Contract to reflect this. The lion’s share of risk should be borne by the party most able and willing to manage that risk and such party should be rewarded in a commercially reasonable fashion. By improperly allocating risk, the relationship between parties will be marred by resentment, much like a troubled marriage. Parties may then manipulate the systems that have been established in the contract (such as under change orders, reporting systems, and approval mechanisms) in an effort to redistribute the risk and reward in order to “claw back” rights and obligations that may not have been properly articulated at first instance in the EPC Contract.

Note: Copies of the full paper are available upon request to the Managing Editor.

Footnotes

¹For this article, “EPC contracts” collectively includes design-build, engineering, equipment purchase, construction management, pure construction, EPC and various forms of design-build-operate agreements.

²For the purposes of this paper, the term “contractor” will be used as a generic term that could include consultants, engineers, construction contractors, construction managers, and engineering, procurement and construction management (“EPCM”) contractors who contract with owners, operators and developers (collectively, “owners”) with respect to EPC Contracts.



Tenders Revisited By SCC: Do Owners Have a Duty to Investigate a Bidder's Promises?

by Simon J. Lee, P. Eng., Student-at-Law

INTRODUCTION

In January 2007, the Supreme Court of Canada handed down its decision in *Double N Earthmovers Ltd. v. Edmonton (City)*¹. This case, which considers a tender call that took place over twenty years ago, addresses a number of issues relating to the “Contract A / Contract B” framework that has governed the tendering process in Canada since the Supreme Court of Canada’s 1981 decision in *R. v. Ron Engineering*².

FACTS

In June 1986, the City of Edmonton (the “City”) issued a tender call for the supply of heavy mobile equipment and operators for a 30-month contract to handle refuse at a landfill site operated by the City. It was a specific requirement of the tender that all heavy equipment used for the work must be 1980 models or newer. Following submission of the bids, the City entered into negotiations with the plaintiff Double N Earthmovers Ltd. (“Double N”) and a rival bidder, Sureway Construction of Alberta Ltd. (“Sureway”). During negotiations, Double N informed the City that its rival Sureway did not own any 1980 or newer heavy equipment as it had represented in its bid, and so could not meet the terms of the tender or the final contract. The City responded that, if this was the case and Sureway was awarded the contract, the City would be entitled to insist that Sureway provide 1980 or newer equipment. Crucially, it was later determined that the City did not know for a fact that Sureway could not supply the equipment as promised until after they had awarded the work.

The City subsequently awarded the contract to Sureway, who was the lowest bidder. Sureway then informed the City that the work would be completed with 1977 and 1979 equipment, not the 1980 or newer equipment that the contract required. The evidence showed that City officials were “angered” at this news but made the decision to allow the matter “to lie peacefully” and did not insist that Sureway meet the terms of the contract by supplying newer equipment.

HISTORY IN THE COURTS

Double N sued the City for breach of the “Contract A” created when Double N submitted a compliant bid to the City, claiming the profits it would have realized had Double N been awarded Contract B (the construction contract)³. The trial judge found that Sureway had deliberately intended to deceive the City by submitting a bid it could not honour and planning to later (after the contract was awarded) persuade the City to permit it to use older equipment. Even so, all three courts⁴ hearing the matter, the Alberta Queen’s Bench, the Alberta Court of Appeal and the majority of the Supreme Court of Canada, found for the City, essentially determining that the City’s right to insist on compliance with essential terms following acceptance would ensure the integrity of the process. The Supreme Court of Canada decision, a close 5:4 decision of the full Court, adds important details to the operation of the Contract A / Contract B model⁵ originally outlined in *Ron Engineering*.

DID THE CITY HAVE A DUTY TO INVESTIGATE SUREWAY'S BID?

Double N first argued that the City had a duty to investigate whether the equipment Sureway proposed did actually meet the City's specification. The tender documents allowed the City to inspect the equipment prior to award. However, the SCC found that while the City had the *right* to inspect the equipment, it did not have a duty to do so, i.e. the City could choose whether or not to inspect the equipment prior to award. The SCC found that there is no implied duty requiring an Owner to investigate to see if bidders will really do what they promise in their tender. This would appear to make sense; it would be impossible for an Owner to check that a Contractor is capable of fulfilling every obligation of a contract prior to entering into it. What is surprising perhaps, is that the SCC found that, even after Double N had informed the City that Sureway could not meet the terms of the tender, no such duty arose. The four dissenting judges were of the view that the obligation to accept only a compliant bid would be meaningless if it did not include the duty to take reasonable steps to ensure the bid is compliant—particularly as in this case where the equipment particulars could be verified in the City's own records.

DID THE CITY ENGAGE IN IMPERMISSIBLE BID SHOPPING?

Double N also argued that the City's pre-award negotiation with Double N and Sureway amounted to impermissible "bid shopping".

The SCC adopted the British Columbia Court of Appeal's definition⁶ of bid shopping as "conduct where [an owner] uses the bids submitted to it as a negotiating tool, whether expressly or in a more clandestine way, before the construction contract has been awarded". However, the tender documents issued by the City clearly stated that:

[C]hanges in tenders will not be permitted after the Tenders have been opened, *unless negotiated with the lowest evaluated tender.* [emphasis added].

In this case, the SCC found that the City clearly had the right to negotiate with Sureway, as it was the lowest bidder. The SCC added that the City could be criticized for negotiating with Double N as it was not the "lowest evaluated tender", but such negotiation was actually to Double N's benefit, such that Double N had no basis for a complaint in this regard.

DID THE CITY AWARD THE CONTRACT ON TERMS OTHER THAN THOSE SET OUT IN THE TENDER DOCUMENT?

Double N also argued that the Contract B awarded by the City to Sureway was on different terms than those contained in the bid documents, (i.e. contrary to the bid documents, the final contract was for the use of equipment older than 1980).

The SCC found that no one at the City knew for a fact that Sureway did not have 1980 equipment until after the award of the contract. In this case, the award of the contract was valid, and there was no evidence of collusion between the City and Sureway to disregard the terms of the tender process⁷. Presumably, the Court envisages that any problems relating to a contractor being unable to meet the terms of its bid should be dealt with by enforcement of the terms of Contract B after award.

The SCC found that there is no implied duty requiring an Owner to investigate to see if bidders will really do what they promise in their tender.



DID THE CITY BREACH ITS DUTY TO TREAT ALL BIDDERS FAIRLY AND EQUALLY?

Finally, Double N argued that in entering into a contract with Sureway, the City breached an implied term of Contract A to treat all parties equally and fairly by permitting Sureway to supply equipment that did not conform with the terms of Contract B⁸. The SCC disagreed and found that the terms of Contract A (and thus the implied duty to treat all bidders fairly) terminate upon the award of the contract and crystallisation of Contract B. The conduct that Double N complained of occurred after the award of Contract B, when the Contract A duty no longer existed.

The dissenting judges took a dim view of the actions of both Sureway and the City, stating at para. 104 as follows:

This is the cautionary tale of a tendering process gone badly wrong. Although in some business contexts parties might decide to turn a blind eye to contractual inaccuracies and ambiguities, the tendering process is different. It is a process in which fairness and integrity are of paramount importance.

The four-judge dissent concluded that the City breached its obligation to accept only a compliant bid and breached its duty to treat all bidders equally and fairly. It would have granted judgement in favour of Double N.

CONCLUSIONS

In this case, the SCC has provided several important additions and clarifications to the law of tendering laid out in the *Ron Engineering* line of cases:

- 1) The implied term in Contract A that the Owner must treat all bidders fairly and equally terminates on award of Contract B.
- 2) An Owner has no duty to enquire as to whether a bidder is capable of meeting the terms of Contract B prior to awarding it. However, if

the Owner *does* choose to enquire prior to the award of Contract B and discovers that a bidder cannot meet the terms of Contract B, the Owner presumably cannot then award Contract B to that Contractor without giving the other bidders the opportunity to revise their bids accordingly.

A different result would have been reached if the Owner had actively colluded with Sureway during the bid process, or if the Owner was aware that Sureway could not meet the terms of Contract B prior to awarding it. In this case, the Court would presumably have found that the award of the contract was a sham and that the owner had breached its duty to treat all bidders equally and fairly.

Footnotes

- ¹ 2007 S.C.C. 3
- ² *R. v. Ron Engineering & Construction (Eastern) Ltd.* [1981] 1 S.C.C. 111
- ³ See *From the Ground Up*, November 2005, for a detailed description of the Contract A / Contract B model. In summary, the Contract A / Contract B model states that a contract (“Contract A”) arises between a bidder and the owner upon submission of a bid, irrespective of whether the actual construction contract (“Contract B”) is awarded to that bidder. The terms of Contract A are defined by the terms in the bid document and also may be implied by industry practice. The submission of the bid forms both the acceptance of Contract A and an offer of Contract B. In particular, Contract A contains an implied duty on the Owner to treat each bidder equally and fairly.
- ⁴ (1988) 57 Alta. L.R. (3d) 288 (Q.B.) and (2005) 41 Alta. L.R. (4th) 205 (CA).
- ⁵ See Footnote 3
- ⁶ *Stanco Projects Ltd. v. British Columbia (Ministry of Water, Land & Air Protection)* (2006) BCCA 246
- ⁷ Compare to, for example, *Best Cleaners & Contractors Ltd. v. Canada* [1985] 2 F.C. 293 (Fed. C.A.), in which the Federal Crown awarded a contract to a contractor on the terms of the tender call with the deliberate and mutual intent of changing the terms of the contract as soon as it was awarded. The Federal Court of Appeal found this was unlawful, describing the award as ‘a sham’.
- ⁸ See *Martel Building Ltd. v. R.*, [2000] 2 S.C.R. 860, which first identified the Owner’s duty to treat all bidders fairly and equally

What We’ve Been Up To

John K. Taylor and Simon J. Lee presented a luncheon seminar for the employees of a construction client on tendering issues on Jan.9, 2007.

James T. Swanson of the BD&P Intellectual Property & Technology Group spoke on “Electronic Document Management in Construction – Making Sure You Have the Electronic Data You Need, When You Need It” at the Construction Superconference held on January 23, 2007.

David H. Strand conducted a presentation at a client’s mine site outlining the nature and the pros and cons of performance bonds and letters of credit on Feb.21, 2007.

Simon J. Lee has facilitated a series of project management workshops for a large, international engineering and environmental consultancy.

Arnie Olyan, current Chair of the Southern Alberta Construction Subsection of the Canadian Bar Association (“CBA”), reminds our readers who are CBA members, that they can contact the CBA Office at 263-3707 if they wish to become members of the Construction Law subsection and avail themselves of some construction camaraderie as well as a variety of topics that are likely to be of particular interest to them.

INTRODUCTION

Workplace drug and alcohol testing can be a minefield for employers in Canada. While every employer would expect that it has a right to prevent an employee from working while under the influence, detection of alcohol or drugs has been and remains a difficult target to achieve. An addiction or dependence on drugs or alcohol is considered a physical or mental disability or both. Employers are prohibited under provincial and federal human rights legislation from either refusing to employ or terminating an employee because of a physical or mental disability. This has put employers in a particularly difficult position as employers are also obliged to create and maintain a safe workplace environment, and may be exposed to liability if an employee causes personal injury or property damage to other employees in the course of his or her employment. To further complicate matters, a positive test of an employee may trigger a duty to accommodate on the part of the employer. Fulfilling this duty to accommodate may be a costly and time-consuming endeavour.

Certainly employers have attempted to incorporate different forms of drug and alcohol testing in the workplace, such as pre-employment drug and alcohol screening, post-accident drug and alcohol testing or random testing on the job. However, such policies have come under scrutiny by human rights commissions and courts in Canada and the jurisprudence within Alberta remains limited.

LEADING CASE

The seminal drug and alcohol testing case in Canada is the Ontario Court of Appeal decision in *Entrop v. Imperial Oil Ltd.*, [2000] O.J. No. 2689 (C.A.) (“*Entrop*”).

This case involved an employee who was removed from a safety-sensitive position after disclosing that he was a recovered alcoholic, which disclosure was required under the terms of the policy. As a result, the employer’s drug and alcohol policy was challenged and subjected to the scrutiny of the courts.

Drugs & Alcohol An Employer’s Nightmare

by Richard F. Steele and Susan J. Martyn



The Court held that a blanket policy of random and pre-employment drug and alcohol testing is discriminatory. In order to justify such a policy, an employer must show that the policy is a *bona fide* occupational requirement (“BFOR”). To do so, the employer must meet the three-step test (“the Meiorin test”) as set out in *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U. (“Meiorin”)* (1999), 176 D.L.R. (4th) 1 (S.C.C.) at pp. 24-25 by showing:

- ▶ that the employer adopted the standard for a purpose **rationaly connected** to the performance of the job;
- ▶ that the employer adopted the particular standard in an **honest and good faith** belief that it was necessary to the fulfillment of that legitimate work-related purpose; and
- ▶ that the standard is **reasonably necessary** to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer. [emphasis added]

In *Entrop*, the Court of Appeal found that the employer had met the first two steps of the *Meiorin* test in that (1) the purpose of the testing, to minimize the risk of impaired performance due to substance abuse in order to ensure a safe, healthy and productive work environment, was a purpose rationally connected to the performance on the job, and (2) the employer had developed and implemented the challenged provisions of the policy honestly and in good faith.

In terms of the third step of the test, whether the testing provisions were reasonably necessary to accomplish the employer’s purpose, the Court of Appeal made significantly different rulings on drug testing, compared to alcohol testing. According to the Court of Appeal, random *alcohol* testing in safety sensitive positions could be justified because it accomplishes the goal of deterring and detecting alcohol impairment. This was so because breathalyser testing can show an employee’s level of present impairment. Testing of an employee for alcohol, after a

significant work accident, incident or “near miss” can also be justified on the same logic. However, in order to fully justify the policy, the employer also has to show that it meets its duty to accommodate the needs of those who test positive. The Court of Appeal held this accommodation should include consideration of sanctions less severe than dismissal and where appropriate, the necessary support to permit the employee to undergo a treatment or rehabilitation program.

Alcohol testing in safety sensitive positions may be justified as testing can show current impairment and it can accomplish the goal of detecting alcohol impairment for the purpose of providing a safe workplace.

The Court of Appeal treated *drug* testing very differently. Due to technological limitations, a positive drug test may indicate prior drug use but does not indicate present impairment and inability to perform at work. Accordingly, the random drug testing could not be justified as reasonably necessary to accomplish Imperial’s goal of a safe workplace. Further, the one and only sanction of automatic termination in this case was considered too harsh. Imperial had failed to demonstrate why it could not tailor its sanctions to accommodate individual capabilities without incurring undue hardship.

In terms of the employer’s requirement that an employee disclose a past substance abuse problem, which gave rise to the litigation in this case, the Court held that such an obligation to disclose, without regard to whether the problem was recent or historic, was an unreasonable requirement. The expert evidence showed that there is a point when the risk of relapse (after 5 to 6 years of successful remission) is no greater than the risk of a member of the general population suffering a substance abuse problem. Further, automatic reassignment out of a safety sensitive position was not reasonably necessary. The employee in question had been in remission for over 7 years and his past alcohol abuse had not adversely affected his performance on the job.

Key Points made in Entrop:

- ▶ A blanket policy of pre-employment or random drug and alcohol testing is *prima facie* discriminatory.
- ▶ Alcohol testing in safety sensitive positions may be justified as testing can show current impairment and it can accomplish the goal of detecting alcohol impairment for the purpose of providing a safe workplace.
- ▶ Drug testing cannot be justified as reasonably necessary to accomplish a safe workplace as it cannot measure present impairment.

RECENT ALBERTA CASE

The case of *Alberta (Human Rights & Citizenship Commission) v. Kellogg Brown & Root Co.*, 2006 ABQB 302 (“*Chiasson*”) involved an issue of the termination of an employee, Mr. Chiasson, after a positive pre-employment drug test. Mr. Chiasson was required to take a pre-employment drug test and was terminated nine days after starting work when his test results turned up positive for marijuana use. The employee acknowledged that he was a recreational user, not an addict, and that he had used marijuana five days before the drug screen was conducted. There was no allegation that Mr. Chiasson used marijuana while at work. He initiated a human right complaint alleging discrimination on the basis of handicap.

The Alberta Court stated that the proper way to determine whether a drug testing policy could be justified was the *Meiorin* test. The parties in the *Chiasson* case agreed that the first two parts of the test were satisfied so the court had to determine if the policy was reasonably necessary to accomplish the workrelated purpose.

While acknowledging that Kellogg Brown & Root Co.’s (“KBR”) drug and alcohol policies had the laudable purpose of promoting a safe and healthy work environment, the Court found that this organization’s policies were overly broad—they failed to account for individual circumstances or provide for accommodation. For example, the policy provided for automatic termination in the face of a positive drug test. The Court did not accept KBR’s argument that the pre-employment drug testing was a necessary facet of a wider drug and alcohol

...random or pre-employment drug testing will not likely be justified in any situation, pending further technological advancements allowing drug testing to measure present impairment.



policy strategy to counter the pressing danger of the growing drug culture in Fort McMurray. In terms of the further argument of KBR, that it was too costly to provide counselling and programs for prospective employees who tested positive, the Court found that while the duty to accommodate was “circumstantial, flexible and is to be judged in context”, doing nothing fell well short of the standard of “every possible accommodation to the point of undue hardship”.

Again, the Court has been asked to make determinations as to the effectiveness or enforceability of a drug testing policy that an employer has introduced to address a problem that the employee sees in the workplace. Indeed, many contracts and contractors require such a policy to be in place, before work can

commence. As is obvious, however, there are many hurdles to overcome to succeed in the implementation of such a policy, including the significant problem of what an employer may be able to do to the employee, when a positive result is obtained. Not surprisingly, *Chaisson* has been appealed to the Alberta Court of Appeal and leave has recently been granted for a number of interveners (parties interested in the outcome of the proceeding) to be present and to argue their positions on these difficult points.

CONCLUSION

Whereas random *alcohol* testing can be justified in limited circumstances such as safety sensitive positions (or post-incident investigations), random or pre-employment

drug testing will not likely be justified in any situation, pending further technological advancements allowing *drug* testing to measure present impairment. However, employers should bear in mind that even if random alcohol testing is justified in the circumstances, this leads to a duty to accommodate the employee who tests positive for alcohol and claims (or appears) to have an addiction. To satisfy that duty, the employer must consider options such as counselling and rehabilitation programs, reassigning the employee to a less safety-sensitive position, or considering a leave of absence. For these reasons, the introduction of a comprehensive drug and alcohol testing policy by an employer is fraught with dangers and is extremely difficult to implement.



BD&P's Construction Team

BD&P's Construction Team is comprised of 15 dynamic litigators and solicitors who offer full service representation in all facets of the construction industry.

Our Team represents owners, contractors, sub-contractors, engineering firms, developers, banks, and other financial institutions on a wide-range of construction issues ranging from the straight forward to the complex. We review, negotiate and prepare terms and conditions and other documentation for varied construction and engineering projects; provide practical, timely and expert legal support throughout the construction process; and provide experienced litigation services when required.

BD&P's Construction Team represents a diverse range of client interests from those of small local contractors to developers of large-scale energy and infrastructure projects. Whether our clients require the review of a contract, the arbitration of a construction dispute, or the coordination and preparation of the multi-faceted and complex series of transactions demanded by a major project, BD&P is able to provide the individual lawyer or assemble a team with the appropriate depth and experience.

For your easy reference, we highlight both our Significant Areas of Service and examples of Major Projects in which either individual firm lawyers or the firm were involved, which include some of the largest projects carried out in Canada.

SIGNIFICANT AREAS OF SERVICE:

- Negotiation and preparation of tender packages and joint venture, confidentiality, consulting, engineering services, and architectural services agreements
- Negotiation and preparation of construction, construction management, sub-contract, supply and mining services agreements
- Negotiation and preparation of Engineering, Procurement, & Construction (EPC) and design/build contracts
- Negotiation and preparation of Engineering, Procurement, & Construction Management (EPCM) contracts
- Delay claims
- Industrial design disputes

- Construction and contract disputes
- Tender disputes
- Engineering claims
- Lien claims
- Insurance issues including liability, builder's risk, errors and omissions, and professional liability coverage
- Regulatory and municipal planning approvals
- Preparation of construction security documentation
- Representation at arbitrations and mediations
- Service as arbitrators and mediators in construction disputes

MAJOR PROJECT EXPERIENCE:

- **Hibernia Project**– offshore oil production platform off coast of Newfoundland
- **Terra Nova Project** – floating production, storage & offloading facility in oilfields on Grand Banks
- **Sable Island Project**– offshore natural gas recovery project off coast of Nova Scotia
- **Horizon Oil Sands Project** – oil sands project in northern Alberta
- **Muskeg River Oil Sands Project**– oil sands project in the Athabasca oil sands region of northern Alberta
- **Long Lake Oils Sands Project**– development project of heavy oil infrastructure in the Athabasca oil sands region of northern Alberta
- **Tanguh Project** – a liquefied natural gas project in Indonesia
- **Confederation Bridge Project**– fixed link bridge across Northumberland Strait
- **Sakhalin Island Project**– large scale oil and gas development project on Sakhalin Island in Russia
- **Husky Oil Upgrader**– development of Lloydminster Heavy Oil Upgrader
- **MEGlobal**– worldwide joint venture for manufacture and sale of ethylene glycols



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