Will EPCM model take off now?

The first standard form of the EPCM contract has been published, with the second expected to be out by the end of the year. STUART JORDAN* elaborates on the basic structure of this professional services contract and highlights how it differs from the EPC model.

SOME good news for 2023: at last we have a published standard form of EPCM contract – and, by the end of the year, we should have two!

The Institution of Chemical Engineers (IChemE) has recently published its Blue Book: an EPCM contract. It is intended for use in any jurisdiction, similar to the IChemE's existing "International" forms of main contract – and similar to the Fidic forms. And speaking of which, Fidic will also publish an EPCM this year, according to its recent announcement.

EPCM is recommended in preference to the EPC model where the project owner is looking for quicker mobilisation, more control (particularly in the flexibility to change the works scope or re-sequence activities) and lower cost. The trade-off for these features is that there are responsibilities interfaces, both between engineering and construction and between construction contractors, because several contributing parties are responsible to the owner for delivery of the project. In short, the single fixed price, fixed completion date EPC "wrap" is missing.

EPCM has been the "coming thing" in construction contracting for about 15 years. It is reported to be growing in use but (at least in my observation) it has been more talked about than used in live projects.

So why has it taken so long to gain market share? One answer might be that this contracting model is simply not well understood in our industry. Despite all the discussion from commentators (myself included), maybe the message hasn't got through. Another answer might be that the real decision makers (project owners and funders) understand it but just don't think it is good enough, as an alternative to EPC.

I hope that these published forms of EPCM will, at least, help address that knowledge gap. Let's recap on the basic EPCM structure:

EPCM uses the same shorthand as EPC but it is fundamentally different. An EPCM (engineering, procurement, construction management) contractor is responsible for the engineering in broadly the same way as in EPC contracting – and is also responsible for procurement but this is done on behalf of the owner; the various works package contractors, suppliers and services providers will be appointed directly by the owner, rather than as subcontractors to an EPC contractor. And because of that, EPCM contractors are not directly responsible for delivering the project. They are responsible only for construction management of the owner's works package contractors, suppliers and service providers. An EPCM contract is a professional services contract – it is not a construction contract at all.

Jordan ... attention on EPCM will help close the knowledge gap.

This basic description allows a lot of scope for differences in the detail of an EPCM contract. That means there is a wide spectrum of potential EPCM contractor responsibilities.

At one end of the spectrum, the EPCM contractor might only advise the owner on the selection of works package contractors and provide construction management services to a required level of professional competence, that is, with a stated level of skill and care.

At the other end, the EPCM contractor might:

- Source the entire supply chain, tender all works, supply and services packages, give fully-reasoned recommendations on selection of each package and sign them off as suitable contractors, suppliers and providers to successfully deliver the project;
- Create the package contracts (technical, commercial and legal components), negotiate them and sign them off as suitable and sufficient to successfully deliver the project; and
- Sequence the works, coordinate their execution and manage and enforce the works package contracts by all available means to bring about completion on time, correction of defects and the meeting of guaranteed plant performance levels.

At this high level of responsibility, the EPCM contractor is a lot closer to an EPC contractor. In effect, its only means of avoiding liability for cost or time overrun or from plant underperformance, is to show it was caused by works package contractor failure that the EPCM contractor could not, using all required skills and efforts, have prevented. Most people would say that this is not what they consider to be mainstream EPCM – but what is?

In the absence of published forms, we have all developed our own bespoke contracts to match our own views and our clients' needs. Some contractors also use the lack of consensus (and lack of knowledge in the industry) to label basic project management services (PMC contracts) as EPCM.

So the next few months will be interesting as we absorb these new published forms. Of course, IChemE and Fidic are only industry bodies and they have no authority to set contracting terms for the industry, but these forms will come to define "mainstream" EPCM and they will naturally become benchmarks for negotiations.

The attention on EPCM will itself help to close that knowledge gap, and I hope it will generate debate about what level of EPCM contractor responsibility might be considered bankable.

I will report shortly on the content of the IChemE Blue Book. ■

** Stuart Jordan is a partner in the Global Projects group of Baker Botts, a leading international law firm. Jordan's practice focuses on the oil, gas, power, transport, petrochemical, nuclear and construction industries. He has extensive experience in the Middle East, Russia and the UK.*