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Insights



Warranties in EPIC Contracts for Offshore Projects – Navigating the Variables

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The warranty regime in Engineering, Procurement, Installation, and Commissioning (EPIC) contracts for offshore projects, such as FPSOs, calm buoys, platforms and windfarms, demands careful consideration. The practical challenges of rectifying defects in offshore projects and the commercial impact of defects are significantly greater than in the general trading of ocean-going vessels, making warranty provisions crucial. Below are key factors parties should evaluate when structuring warranty terms in their EPIC contracts.

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- Nature of the defect: It is essential to clarify whether a warranty claim requires a physical defect attributable to a deficiency in workmanship and/or materials, or whether any non-conformity with the contract specifications would suffice. The SAJ form (widely used for shipbuilding), for instance, typically mandates the former. We also see the latter commonly employed in company wordings issued with invitations to tender. Clear contractual wording would be required to allow warranty claims for any non-conformity with the contract specifications but if that is what the parties agree then the English courts would enforce the clause.

- 'Warranty duration: A primary consideration is the warranty period, typically 24 months in EPIC contracts for FPSO and longer for offshore wind farms. The company may also seek longer warranty periods for certain important equipment or supplies, such as paint.

- Sole remedy' clause: Contractors often include a provision limiting their liability to the obligation to rectify defects discovered within the specified warranty period. A robustly drafted 'sole remedy' clause would mean that the contractor does not have any other liability for defective work, arising under the contract or at English law. In the absence of a 'sole remedy' clause (a) the company may have an option of claiming under the warranty clause or claiming damages for breach of another contractual obligation; and (b) the company's rights to claim against contractor are unlikely to expire when the warranty period expires. Accordingly, the sole remedy clause is arguably the most important from the contractor's perspective.

- Offshore works: Once the unit is at the offshore site, rectifying defects can incur significant additional costs for transportation of materials, equipment and personnel expenses and even additional marine spread. The contractor will often seek to exclude or cap liability for such costs.

- Consequential loss: Post-delivery rectification work may limit, delay or result in complete shutdown of offshore operations, with far greater consequences than for an ocean-going

vessel that can more easily access repair facilities. Despite these foreseeable losses, the parties invariably exclude liability for all consequential losses. Clear contractual wording is necessary to define excluded consequential losses accurately.

- Other common exclusions:
- (a)Contractors often exclude liability for defects caused by a lack of maintenance, fair wear and tear, or any negligence or improper handling by the company, its operations and maintenance (O&M) contractor, or agents.
- (b)Another exclusion concerns third-party repairs. Contractors generally refuse liability for repairs performed by other contractors. However, the company may seek to negotiate a carve-out for work completed with the contractor's guidance and approval. This is particularly relevant when it would be more sensible for the company to arrange for the offshore repairs to be undertaken in order to minimize downtime.
- (c) Additionally, if an approved third party undertakes remedial work, contractors typically seek to limit liability to the cost they would have incurred had they performed the repairs themselves.

- Capped warranty exposure: Contractors usually seek to impose an aggregate cap on their liability for warranty claims. The contract should be clear on whether this cap is separate to, or part of, the overall liability limitation under the EPIC contract. If there is no separate aggregate cap then the contractor will want to ensure the overall liability limitation applies.

- Subcontractor and supplier warranties: It is important to ensure the EPIC contract includes clauses governing the extent to which contractor is obliged to assign rights under warranties from subcontractors and suppliers to the company. If subcontractors and suppliers offer longer warranty periods, the company should explore benefiting from these extended terms.

- Security: In offshore projects, contractors sometimes provide a 'warranty bank guarantee' or bond, securing their liability under the warranty clauses.

Conclusion

Each warranty clause we see varies significantly. Some provide the company with valuable additional rights and afford no protection to the contractor. Others provide the contractor with valuable protections against its post completion exposures. Without a carefully negotiated warranty clause, the contractor may not have a clear understanding of when its exposure for defects/ contractual non-conformities ends or the extent of such exposure. Such risk is unlikely to have been adequately assessed in the lump sum price and is unlikely to be adequately insured.

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