

# Dredging works are inherently risky both operationally and commercially

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### **Dredging works are inherently risky both operationally and commercially.**

The management of the commercial risks of a capital dredging project commences when the promoter chooses the terms and conditions of contract. If a promoter requires certainty of contract price he would probably choose a lump sum fixed price form of contract. If the promoter is prepared to accept that the original contract price may be exceeded, he would probably choose a re-measurement form of contract which generally requires him to carry the risk of the sub sea bed conditions not being those reasonably foreseeable at the time of tender.

The form of contract chosen will also influence the time risks associated with a capital dredging contract. A lump sum form of contract would generally carry fewer provisions than a re-measurement form of contract for the contract completion date to be extended, for example on the grounds of variations and / or unforeseeable sub sea bed conditions.

One of the FIDIC forms of contract are often used for dredging works and there are alternative forms, the Yellow book being a lump sum form and the Red book being a re-measurement form. There is also a Blue book specifically for dredging and reclamation works which can be used, depending on the option chosen, as a lump sum, re-measurement, target cost or cost reimbursement form of contract.

The challenge to a promoter of capital dredging works is to decide on the level of commercial risk he is prepared to accept and then choose an appropriate form of contract.

Whatever form of contract the promoter chooses he should ensure that the contract is properly administered such that it reduces the risks of disputes arising.



This requires the site representatives of both parties to be fully aware and recognise the risks which the contract imposes upon the respective parties. If risks which the promoter has accepted when choosing the form of contract arise and they result in delays to the contract completion date and the contractor incurring additional costs, the contractor is obliged to keep records and give notices of the risk events and their time and cost effects.

The following abstract from the IADC advice to parties engaged on dredging contracts is relevant in this respect:-

*"It is now more important than ever that the users and especially site representatives should acquire a profound knowledge of the conditions of contract and the consequences of various clauses if they are not strictly adhered to. The conditions should certainly not be considered a document to be consulted only if difficulties arise on site and conflicts are expected. They constitute the "rules" of the game which if not followed may lead to adverse results for the position of one of the "players". Also, many procedures in the conditions are concerned with users communicating matters to each other which have an effect on the execution of the works and must be carried out within set time limits".*

The promoter's site representative should not take exception when the contractor gives notices in respect of risk events which are the promoter's liability and submits particulars of their effects in delaying the completion date and the incurrence of additional costs. If the risk events are dealt with at the time of their occurrence it reduces the possibility of disputes arising which can be time consuming and expensive to resolve and result in damage to the relationship between the parties.

The use of a company with extensive experience and knowledge of the commercial risks associated with capital dredging projects to assist promoters to choose



appropriate forms of contract has considerable benefits. Such a company can also assist promoters and contractors in administering such contracts to their benefit. Should disputes arise as to contractor's entitlements to the contract completion date being extended and / or to increases in the contract price, the use of a company not only with extensive experience and knowledge of the dredging industry but also with extensive experience and knowledge of contracts and the resolution of disputes by way of negotiation, mediation or adjudication can also be of considerable benefit to promoters and contractors.