

## The Art of Negotiation: Tips for a Successful EPC Contract

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As a project owner, if you could harness all the benefits of design-build and receive certain guarantees about the performance of your new infrastructure, would you do it?

Enter engineering, procurement, and construction (EPC) - a turnkey model that's gaining momentum as a preferred project delivery method but can require a hefty dose of patience to find the right EPC partner and negotiate a mutually beneficial contract.

### EPC Fast Facts

The term "EPC" often is used interchangeably, albeit incorrectly, with design-build. The two share similarities, including single-source responsibility, fixed-price contracts, and the risks of cost, schedule, and performance. But EPC offers an extension of services that distinguishes it from other delivery methods and renders it highly applicable to distinct project types, such as complex industrial, life science, and manufacturing facilities.

Let's review some of the highlights of EPC delivery:

- » **Since EPC integrates design and construction**, teams experience a high level of integration throughout the project. Field activities can commence much earlier than with other delivery methods, offering owners cost savings and accelerated project schedules.



- » **The EPC firm is solely responsible for the project. These projects can be delivered in any cost format:** lump-sum, guaranteed maximum price, or time and materials.
- » **In addition to designing and building the facility**, EPC delivery calls for the contractor to guarantee product quantity and quality performance.
- » **To facilitate turnkey project delivery**, the EPC contractor procures all equipment, construction materials, and subcontractor services.

### Guidelines for Selecting the Right Partner

Don't rush the capital project selection process without

investing the time to vet your contractor. As with any project, the outcome is only as good as the execution team. You're paying for personnel, company integrity, experience, and project delivery knowledge.

As you consider candidates for your project team, use this checklist to guide your decision:

- » Learn about the firm's values, vision, standards, and business processes.
- » Check licenses, complaints, and litigation history.
- » Review the firm's safety record.
- » Examine personnel resumes for qualifications.
- » Check the team's skill set and verify alignment with required project tasks and complexities.
- » Note relevant team experience and project sizes compared to yours.
- » Get details on the firm's track record for delivering projects on time and on budget.
- » Inquire about the capacity for additional projects during the scheduled time frame. Often, the best personnel are the busiest; they may not be available to start immediately.
- » Dig into the team's history of working together.
- » Ask for details on quality assurance and quality control practices.
- » Conduct client reference checks. Did the project flow smoothly? Was the working relationship positive? How were issues resolved?
- » Meet the proposed team members face-to-face. There's no better way to assess the team's synergy.

EPC partnerships require collaboration, flexibility, and trust, and choosing the right partner is critical to project success.

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## Contract State of Mind

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Just like it's important to take the time to vet your partner, it's also imperative to navigate the contract negotiations with patience and skill. We recommend leading the negotiation while keeping your advisors and legal team involved. As with any contract, each side should take the advice of legal counsel.

Be sure to keep the negotiations professional and courteous.

Realize the importance of understanding your overall project goals and schedule issues. To start, always try to understand what is important to both sides, what limitations each may have, and where you and your company might have flexibility before embarking on the arduous task of negotiation.

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## Deal Dynamics

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It's essential to remember the forces at work during the deal. Items for consideration include:

- » Who is the real decision maker?
- » How do you utilize leverage in the negotiation?
- » What are the project's timing and delivery constraints?
- » What are the alternatives to not selecting the preferred supplier?
- » Are both sides going to benefit from working together? If so, use this leverage in your favor.

Start preparation and review the points of reference. Pay attention to the history of contracts, competition, and press releases. Make it a goal to establish a good long-term relationship with the preferred supplier. Draft a version of the contractual agreement with key points for discussion. Be prepared to concede on some items while holding firm on others. Have a contract negotiation approach plan before starting this discussion. Know the items on which your company must be firm. "Give and take" with balance is the key. Utilize a collaborative and positive tone, as it is more likely to lead to a successful agreement.

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## Business Negotiations

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Now you are ready to negotiate. Remember, the longer a deal takes to get completed, the more likely it is that something will derail it. Be prompt at responding, press your legal team to turn documents around quickly, and keep the transaction moving. Don't get hung up on one issue. A creative or alternative solution can be agreed to later, outside the heat of the negotiation.

Negotiation of EPC contracts requires a higher degree of sophistication than ordinary contracts due to the performance

guarantees that EPC contracts contain. Performance targets and corresponding penalties are often balanced, i.e., multiple dates are established for achieving increasingly higher outcomes until the final target is met.

Often, performance must be sustained for a specified period. You must be able to move to an alternative supplier if the terms of the deal aren't aligned with your company's standards. Counter language and some back-and-forth negotiations are normally necessary for both parties to be satisfied.

If you take the time to research your EPC contractor and carefully negotiate contract terms, you'll be well on your way to realizing the benefits of this preferred project delivery method.

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## EPC in Action

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Here are two projects that successfully applied EPC methodology, fully engaged each team member, and resulted in increased efficiency and distribution for the project owner.

### NOVO NORDISK AND THE TOWN OF CLAYTON, NORTH CAROLINA

At the \$40 million wastewater pretreatment plant for Novo Nordisk and the Town of Clayton, North Carolina, a multiphased EPC delivery approach was used to meet the project's 17-month schedule requirement. As the EPC firm, Gannett Fleming performed process design and construction management services, including specifying, procuring, and installing all process and related support equipment. They certified the performance of the completed facility, including quantity (flow) and quality (effluent discharge requirements). The EPC approach saved time, equating to client cost benefits by integrating design and construction activities into the process.

### CHARLOTTE'S WEB

When Charlotte's Web, an industry leader in cannabinoid extraction and laboratory operations, needed to expand production capabilities, using an EPC delivery method sped up facility delivery. For the expansion, Gannett Fleming provided an initial basis of design to align client expectations with the design and construction path. Full engagement of each team (design, construction, client) was critical for early deployment of construction and thorough design.

Beginning with the warehouse phase, the client began operations in this space as the construction of the second phase offices was underway. The offices were occupied during the construction of the production phase. This approach allowed the client to exit their previous facilities earlier, reducing operating costs. Current good manufacturing practice spaces, hazardous rooms, and clean manufacturing spaces were all included in the design and construction of the facility. 



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### About the Author

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### About the Article

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