

ENGINEERING & CONSTRUCTION RISK INSTITUTE

Document number: ECRI-TC-008 (DESC)	CHALLENGING CONTRACT TERMS & CONDITIONS	Page 1 of 1
Issued: 22 December 2018		

PURPOSE:

The purpose of this Best Practice is to 1) summarize recent contracting trends propounded by clients, 2) discuss observed causes for these trends, and 3) discuss best practices that engineering and construction (“E&C”) companies are implementing to manage the new and ongoing risks and opportunities created by these trends.

INTRODUCTION:

With the economic downturn, clients have been demanding increasingly one-sided and previously unseen and unanticipated contract terms and conditions (“T&Cs”) from E&C companies. These terms and conditions do not reflect the established project finance approach of “the party best able to manage a risk should be the party to bear it” but are a global imposition of wide-ranging risks onto the risk registers and balance sheets of the E&C industry. This trend has resulted in ECRI E&C member companies (“Sponsors”) walking away from projects, losing projects to non-traditional bidders who may not be long-term players, losing projects to emerging and Asian companies, having to include such terms in agreements with subcontractors, and scrambling to accept and manage greater and greater risk with less and less control over mitigating these risks. With the market starting to rebound, it is unclear if this approach by clients will continue or if some risks will shift back to the project developer and a climate more open to reasonable risk allocation will emerge.

ECRI Description file – The complete version of this document is located in the Sponsors Resources area of this website and requires a Sponsors Login to access.

DISCLAIMER

Engineering & Construction Risk Institute, Inc., a nonprofit corporation incorporated under the laws of the District of Columbia (“ECRI”), and its directors, officers, employees and advisers make no representations or warranties (express, implied or statutory) with respect to the accuracy or completeness of any information disseminated thereby or its suitability for any purpose and assume no responsibility for the content of such information or the consequences of use thereof, which shall be at the sole risk of the user thereof. References by ECRI to other organizations or individuals or their publications, programs, information or services does not imply any ECRI endorsement thereof or of any policies or positions advocated thereby or therein.