

LEKAS Offshore LNG facility, Melaka, Malaysia

Year	Contract	Employer	Project	Our Client
2013	PETRONAS bespoke EPC Target Cost	PETRONAS	LEKAS Offshore LNG facility	Muhibbah Engineering Bhd



Summary

Muhibbah were part of a consortium contracted to design and construct a new offshore LNG facility off the coast of Melaka, Malaysia. There was a split in the scope of the works where Muhibbah was responsible for the design and construction of the substructure and load bearing platform whilst the mechanical and electrical design and installation works were performed by the other consortium member, Worley Parsons. Following the completion of the structural works, the project was beset by design and quality issues relating to the installation of the topside MEI, the correction of which took many months and caused a delay of almost a year to the completion of the project.

The Employer disallowed any costs associated with re-work or the correction of defects and also the costs associated with the prolonged performance. This exposed Muhibbah, as a consortium member, to significant losses. Fraser and the team were engaged to identify the contractual remedies available to Muhibbah that would enable it to recover its portion of the disallowed costs from Worley Parsons and be indemnified from any losses in the event the Employer levied LAD's for the late completion.

The Quarrel

Worley Parsons would not accept that the delays had been caused by its performance of the topside works. It asserted that there had been significant delays to the substructure works which then impacted its MEI scope of work. However, these contentions were unsubstantiated. Muhibbah, who had provided some site supervision to assist Worley Parsons with their work, had compiled a significant body of evidence to counter that contention, including site records showing the plant and resource allocated to rework and reports from its site management discussing the extent of the delays that had been caused.

The Challenge

The most significant challenges faced were the lack of suitable site records or proofs required for the preparation of the as built programme, and the availability of key personnel to assist in this and our other work. This was a live site, the contractor's personnel were fully occupied in managing the completion of the project and it was vital that they were not distracted during our work. Fraser and the team were measured and flexible in their approach and this ensured the efficient use of everyone's time, allowing the claims and delay analysis to be prepared in a timely manner, whilst allowing the effective and continued management of the on site activities.

Actions

Our first task was to carry out a detailed review of all of the relevant contract documents to identify the contractual remedies available to Muhibbah. Having completed that review we prepared statements to set out our position and generate a response from Worley Parsons that would crystallise any dispute. Thereafter, Fraser and the team prepared a retrospective delay analysis comprising an as built programme and delay schedules, together with a Report which both explained and demonstrated the delays caused by the mechanical and electrical installation works.

Outcome

The position statements, report and delay analysis that Fraser and his team produced enabled the recovery of the losses Muhibbah had incurred as a consequence of the poor performance of its consortium partner.

Expert Profile

QUALIFICATIONS & ASSOCIATIONS

- BEng (Hons) Civil Engineering
- LLM Construction Law & Arbitration

Fraser Van Nuil

Executive Consultant

CONTACT DETAILS

UK t: +44 (0) 7880 704376
 UAE t: +971 (0) 566 99 2034
 e: fraser.vannuil@qualsurv.ae



Previous Expert Appointments

A representative example of disputes referred to arbitration, litigation and adjudication.

Arbitration: Claim for cost of prolongation

Delay Expert on behalf of a Joint Venture Contractor as part of their pleadings in preparation for an Arbitration with the Hellenic State. Favourable settlement before proceedings were enacted.

Arbitration: Recovery of damages for late completion

Delay Expert for a Contractor in an adjudication with the Employer relating to the construction of a £30 million mixed use development in Bristol, UK. The contractor was successful in recovering a significant portion of the liquidated damages that had been levied following the late completion of the project.

Arbitration: Wrongful termination and prolongation costs

Delay Expert for the contractor in an arbitration with the Employer relating to the construction of a 9km (10m x 5m) utility corridor on the Education City site in Doha. The Employer had terminated the contract citing performance issues and delays and called the contractor's performance bond. The analysis Fraser prepared helped the arbitral panel to find that the Employer had been responsible for much of the delay and the grounds for termination cited by the Employer were unfounded. The Employer was required to repay the performance bond, pay the costs of the arbitration and pay the contractor damages flowing from the wrongful termination.

Litigation: Evidencing contractor's right to terminate

Appointed as one of two Delay Experts for a Joint Venture Contractor in a litigation relating to the construction of a 38 km section of motorway in Poland. This was a complex linear project in which the records available for the production of the required factual and retrospective analysis were limited. Fraser, along with the co-expert designed a method that satisfied the demands of the legal advisors and utilised the records available.

Professional Profile

Fraser is a Civil Engineer with almost 20 years experience in construction who, in the formative part of his career, worked for contractors on large scale infrastructure projects including a number of years on the first phase of the Channel Tunnel High Speed Rail Link. He made the transition from contractor to consultant in 2007.

Fraser specialises in dispute resolution work and in particular, as an expert in matters of delay and programme, causation and its effect on time, cost and efficiency for a wide variety of construction projects. Fraser has substantive arbitration experience in the UK, Ireland and the Middle East. Fraser's experience extends to drafting expert reports and the preparation of retrospective delay analyses using all techniques in common use.

Amongst other things, previous work has involved demonstrating the cause, extent and cost consequences of varied work, delay and disruption involving:

- Mechanical and electrical services installations
- Bulk earthmoving and major road works
- Power stations
- Gas platforms and pipelines
- Reinforced concrete and composite structures
- Clean/wastewater treatment plants

Fraser is familiar with the need to collaborate closely with legal counsel and other legal advisors and is used to working to the deadlines that the arbitration and litigation processes demands of the expert.

Confidentiality prevents our disclosing details of the parties to the above contracts.