Cristopher Farrar, Esq.

- Of Counsel in DLA Piper’s Corporate and Securities practice in Houston
- Focuses on international project development, with an emphasis on construction law
- 20 years of experience with significant international experience representing owners, developers, and contractors in the power, oil and gas, chemical, renewable, and infrastructure industries.
Frank G. Adams, PE

- President and founder of Interface Consulting
  - Interface has assisted clients on over 900 projects for 27 years
- Professional Engineer with 40 years of engineering and construction experience on projects worldwide
- Testified as an expert in over 50 matters in US, federal, and state courts, and in international arbitration forums including AAA, ICC, LCIA, VIAC, UNCITRAL, and ad hoc tribunals

Bidding International Construction Projects
International Construction Overview

- Bid Slate
- Government-Affiliated Owners
- Mandated Local Content
- Governing Law
- Technical/Execution Risks
- Financial Risks
- Legal Risks
- Dispute Resolution
- Risk Allocation Issues
- Authority Document
- Lender Requirements
- Strategies
Bid Slate

- Competing against contractors from developing nations (Korea, China, etc.)
  - Lower cost structure
  - More vertically integrated companies – cost advantage
  - Different business practices
  - Existing organization structures in the region

- More expensive to bid overseas projects
  - Proposal costs
  - Transportation & logistics (T&L) costs while bidding
  - Research costs associated with local practices and compliance
  - JV costs, if any

Bidding International Construction Projects
Government-Affiliated Owners

- National oil and gas and/or construction companies
- Quasi-private entities
- Commercial agents

Red flags:
- Local political influence
- Company executives are also local politicians
- Commercial agents want a percentage of the contract

Bidding International Construction Projects
Mandated Local Content

- Percentage of local labor, material, supplies, services, etc.
- Failure to meet local content may result in penalties
- Failure may result in revocation of authorizing documents
Governing Law

- Requirement to use host country laws
- Difficult to enforce provisions
- Differing choice of law provisions in the subcontract and prime contract create divergent liability and recovery chains
- Try to negotiate use of neutral country’s laws
- Contractual arbitration provision is critical
Technical/Execution Risks

- Use of local subs/vendors who are unfamiliar to you
- Transportation to remote locations
- Temporary labor camps and infrastructure
- Shortage of local skilled labor
- Unfamiliarity with local regulatory approvals/permits
- Importation restrictions
- Contract disputes
- Terrorism
- Equipment exportation
Financial Risks

- Bid and performance bonds
- Client’s credit worthiness and ability to pay
- Retainage concerns
- Insurance
- Expropriation
Financial Risks

- Taxes & Tariffs
- Mandated payments in local currency
- Hedge vs. currency exchange rate risk if must accept payment in local currency
- Limits on expatriating funds back to the US
Legal Risks

- Foreign Corrupt Practices Act (FCPA)
- UK Anti-Corruption Law
- Activities violating country laws
- Other legal issues?
Dispute Resolution

- Arbitration provision
- Requirement for host country ADR
- Impartiality of local ADR professionals
- Try to use neutral countries for ADR venue
- Enforcing arbitration/litigation awards in project country
- Enforcing arbitration/litigation awards in all countries involved
Risk Allocation Issues

- Excepted Force Majeure events
  - War, ammunitions, terrorist activities, military activities
- Schedule delays caused by employer/owner interference
- Site conditions
Authority Document

- PPA, order, concession, etc.
- Flow-down requirements
- Termination provisions
- Fines and penalties
- Guarantees and warranties
Lender Requirements

- Flow-down requirements
- Allocation of risk not always the same as standard and customary industry
- Caps on liability & exceptions
- Indemnities
Utilizing a separate offshore company to bid and execute the contract
  - Minimizes risk to parent company

Entering into joint venture or other arrangement with owner to finance project (contractor-financed projects)
  - To sharpen bidding competitive edge

Offering different contracting options
International Construction Questions

- Bid Slate
- Government-Affiliated Owners
- Mandated Local Content
- Governing Law
- Technical/Execution Risks
- Financial Risks
- Legal Risks
- Dispute Resolution
- Risk Allocation Issues
- Authority Document
- Lender Requirements
- Strategies

Bidding International Construction Projects