

Question: Gail McBride, B.C. Government

Jack, you mentioned that there was increasing potential for North American companies to joint venture with Asian Pacific Rim companies to do work in foreign markets outside of North America. How would you see Canadian consulting engineering services playing a role in this?

Answer: Jack McKeown

My sense of that is that probably the bigger opportunities are joint venturing with, let's say, someone from Japan and doing a project in a third country. Probably with a joint venture partner in the third country as well. We're beginning to see some of that right now. As you know, the proposed petrochemical project, if it proceeds, will end up being a joint venture in the end in terms of the equity; but also at the design, build and construct stage it would be a joint venture operation involving two or more Japanese partners and two or more Canadian partners. I think that in the first instance we will see more action in Canada. And as the relationships grow, if you are Simons or Swan Wooster or SNC or Lavelin, and start working with Japanese construction firms, then I think there's every likelihood that we will see them involved in jobs in third countries.

Third Comment: Jack McKeown

I think that points up one of our weaknesses. Over the years the way we have developed in Canada companies only did the engineering whereas in the United Kingdom, West Germany and other places there was more of a turnkey or a consortium approach. I think probably we're now moving toward that, particularly in terms of Japanese partners, where the engineering would come from Canada as part of a total package.

Question:

The traditional route for joint venturing in North America is that we'd start off with a memorandum of understanding and as you get a bit more comfortable you might go into a joint venture and so on. How would you define something that would satisfy your criteria as a pure joint venture? That is the first question. The second question is in the progression from exploratory meetings for a memorandum of understanding through to possibly a joint venture, possibly to a more complex arrangement. How would that be changed if you are dealing with a Pacific Rim country as opposed to another nation.

Answer:

Well, defining the pure joint venture, what you try and do is you base it on a purely contractual basis so you have an agreement. A memorandum of understanding, unless it ends up being an agreement, is just like a letter of intent. It means nothing, it doesn't bind anybody and is great for political purposes or whatever or as an initial step, as you said, but it doesn't get you anywhere.

So, you have to have an agreement and I don't care what you call it. You can call it a memorandum of understanding but as long as all the provisions are in there, it is in essence an agreement. Now, a pure joint venture, first of all, is an unincorporated association which you are going to set up and the key thing that you try and do is make sure that it's not characterized as a partnership because if it's characterized as a partnership you get all these laws relating to partnership being imposed upon you. So, you try to characterize it as not being a partnership by having provisions in your agreement that, for example, any funds that are contributed are not pooled, they are kept separate and distinct, in the accounts of each of the contributors. Any assets that are contributed are not pooled, they are retained and they will be given back to the contributors. You make it quite clear that one party cannot bind the other party in terms into agreements with other parties. There are a number of items and if you had the opportunity of picking up this little overview that I left on the side table that they're listed as to what is the distinction and it sort of expands upon what I went through and what you're trying to do is set out in the agreement provisions that reflect that.

Now, to expand it into a joint venture that has within its mandate or scope activities in a foreign country, you have to then make it a much more complex agreement because it has to deal with all these other issues, such as foreign markets, standards, things that you may not put into the joint venture agreement if it just relates to North America because one of the parties already has addressed those when it developed its product for North America or the laws. You wouldn't deal with things like laws. So, there are a variety of items that you have to then start addressing because it falls into sort of the foreign or international type of agreement at that stage.