Moody's: Fixed-price E&C contracts can be more risk than reward, *ConstructionDIVE, ft. Andrew Richards*

Andrew Richards, co-managing partner at Kaufman Dolowich & Voluck, LLP in Long Island and chair of the KD construction practice group, was quoted in an article on fixed price engineering and construction projects written by Kim Slowey for Construction DIVE (September 10, 2019) -

Dive Brief:

- **In a report issued this week and obtained by Construction Dive, Moody's Investors Service came to the conclusion that fixed-price engineering and construction (E&C) contracts offer more risk than reward for the companies that choose to take them on.**
- **Moody's said that there is a shift toward fixed-price contracts within the E&C sector, and, while that creates more certainty for owners, it has resulted in more charges for E&C companies like Fluor and McDermott Technology Inc. beyond the original contract amount, as well as negative cash flows and weaker credit ratings. In the last year, Fluor and McDermott alone saw combined charges of $1 billion. Clients are able to demand fixed-price contracts, the credit rating agency said, because of the high level of competition between E&C contractors for large, complex and potentially high-margin projects like power plants, LNG terminals and infrastructure.**
- **The companies that aggressively bid these projects and then experience events that cause losses — labor issues, bad weather and other project challenges — "indicate shortcomings in risk management and execution," Moody's said. Some of the E&C companies that Moody's tracks have announced that they plan on reducing the number of high-risk, fixed-price contracts they pursue, but the authors of the report indicated that because of a still-competitive bidding environment and big project backlogs, the results of those strategy changes will likely not be realized in the short term.**

"Estimating is very hard on those projects," said Andrew Richards, attorney and chair of the construction practice group at Kaufman Dolowich & Voluck, LLP in New York. However, he said, it is key to a successful project, along with controlling the costs associated with general conditions and subcontractors.

Also critical is making sure the project is delivered on time — even if the delays are owner-driven.

If there is a "no damages for delay" clause in the contract, Richards said, that means the contractor is on the hook for all of the associated costs caused by owner-related delays on the project, which can be significant. "That's where you can get killed," he said.