

Construction Claim

Case Study

Introduction

A large global joint venture refiner awarded a \$200 million contract for the engineering, procurement, and construction (EPC) of a refinery expansion project to an international EPC firm. The expansion project included the addition of a vacuum distillation unit and delayed coker unit.

The project was completed in less time and at a lower contract price than originally planned. One year after the completion of the project, the EPC firm presented a claim requesting an additional \$30 million for scope changes, delay, acceleration, claim preparation costs, and interest.

Key Issues

The following issues framed the effort and set the priorities for development and implementation.

- The EPC firm's request for additional money and time, in light of the early completion date and reduced contract value, was an adopted theme of broken "promises."
- The broken "promises" concept originated from a pre-contract negotiated agreement in which both parties acknowledged certain goals.
- The EPC firm claimed that certain goals were not met, such as seeking low cost solutions to problems, maintaining a philosophy of eliminating change orders, and avoiding preferential engineering.
- The EPC firm asserted that since these "promises" were broken, the final contract value was to be reopened for negotiation.

Role

Our consultants' role on the project was to provide the following:

- Determine if a basis existed for entitlement reimbursement in regards to contractual agreements.
 - Review refiner's actions in regards to these promises.
 - Determine if alleged damages and delays were caused by refiner's actions.
 - Quantify the EPC firm's damages and delays associated with these issues.
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Deliverables

Our consultants' prepared a response to the claim, which was broken into three time periods: pre-contract issues, contract issues, and post-contract issues. The report responded in detail to each of the claimed damages during the three time periods in regards to contractual entitlement, related project documentation, and information to substantiate costs and delays.

In each instance, the claimed issues were shown to be without entitlement as the EPC firm had been either previously fully compensated, it had previously agreed to absorb associated costs, or the costs were a result of its own errors/rework.

The response to the claim also proved that the EPC firm was not entitled to its alleged delay and acceleration damages.

- Project documentation showed that the EPC firm was contractually responsible for the delays including any labor attrition impacts.
- Project schedules and progress reports showed that the delay to achieving an early completion date was due to the EPC firm's high rate of absenteeism.

- Acceleration that the EPC firm undertook was shown to be self directed and for its own benefit to achieve an even earlier completion date than what it achieved.
- Industry standards and case law contradicted the EPC firm's ownership of schedule float for an early completion.

Our consultants' also calculated and presented a formal \$60 million claim offset that was also distributed between each of the three time periods. This \$60 million claim offset was to be applied to any money that the EPC firm would be entitled to receive.

The EPC firm's compensation would be reduced by the value of pre-contract compensation adjustments and contract concessions that the refiner made in negotiating and executing the contract. These concessions were shown to have diminished the value of the project as originally contracted by allowing the substitution of lesser materials and systems without reducing the contract price accordingly.

Results

Our consultant(s) assisted in the negotiations of the claims by providing executive negotiation training and summary level negotiation documents to present to the EPC firm. The negotiation document clearly communicated to the EPC firm that it was not entitled to its \$30 million claim and could face significant liabilities if they pursued this in court. During the negotiations, the refiner settled very favorably.