Top Ways for an EPC Contractor to Get Into Trouble

Presented to:

Rice Global E&C Forum

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December 10, 2010
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Interface Consulting Overview

- Formed in 1986 to provide service in:
  - Construction claims management
  - Construction management consulting
  - Litigation and arbitration assistance
  - Management consulting
- Service to clients on over 800 projects worldwide
- Clients include contractors, owners, engineers, attorneys, insurers, sureties, and banks
Interface Consulting
Project Locations

Services Provided in Over 45 Countries
Presentation Objectives

- Identify risks
- Avoid trouble on EPC projects
- Mitigate the impact of poor decision making in construction projects
- Reduce future mistakes
Presentation Overview

- EPC Contractors – Risk Factors
  - Geographical Area & Project Size
  - Contracting Parties & Type of Work
  - Incomplete and Unbalanced Contract
  - Project Management Failures
Bidding a project in a geographical area without knowledge of all operational parameters

Key Risk Elements

- Environmental conditions
- National and local laws and regulations
- Labor market
- Social customs
- License requirements
- Supplier availability
- Security considerations
- Agency requirements and relations
- Customs and importing requirements
- Taxation
Taking on a project which substantially exceeds your typical project value/size

Key Risk Elements
- Insufficient labor resources, equipment, and material
- Risks that could jeopardize the company
- Dilution of management attention
- Inability to fund such a large project
- Cash flow restrictions
Contracting with a party who is financially or politically unstable

Key Risk Elements
- Payment risk
- Risk of bankruptcy or restricted cash flow
- Delays in committing funds for the project
EXECUTING A CONTRACT FOR A TYPE OF WORK NOT PREVIOUSLY PERFORMED BY YOUR FIRM

Key Risk Elements

- Unfamiliarity with design, codes, standards, and construction requirements
- Unfamiliarity with required subcontractors and vendors
- Lack of awareness of industry norms, practices, and standards of care
SIGNING A CONTRACT WITH AN INCOMPLETE PROJECT DEFINITION, INCOMPLETE WORK SCOPE, OR ILL-DEFINEd PERFORMANCE REQUIREMENTS

Key Risk Elements

- Uncontrollable work scope expansion
- Unknown cost exposure
- Inability to schedule project work accurately
- Unclear project completion milestones
Signing unbalanced contracts that place too much risk on one party

Key Risk Elements

- Disproportionate split of risk and reward benefits
- Roles and responsibilities of both parties are unclear, subject to misunderstanding, and unenforceable
Allowing project management team to deviate from the requirements of the contract

Key Risk Elements

- Favorable contract provisions are waived
- Parties’ actions become the contract standard
- Potential loss of rights under the contract
- Risk of owner claims for mismanagement
Failing to recognize changes to the contract which have an adverse impact on your firm’s operations

Key Risk Elements

- Waiving rights to claim for changes if not documented
- Risk of performing work without approval or additional compensation
- Unfunded changed work – cash flow issues
- Bonds/Insurance response
Failing to document problems, delays, disruptions, and disagreements

Key Risk Elements

- Inability to substantiate change order requests or claims for additional compensation
- Exposure to claims or legal action from the owner
- Exposure to claims or legal action from subcontractors or vendors
- Waiving of contractual rights
- Acceptance of adverse position
Failing to address at an early stage changes and disruptions in the work

Key Risk Elements

- Unable to mitigate costs and delays
- Undocumented changes
- Payment risk due to undocumented changes
- Failure to modify behavior of party
- Tacit acceptance of adverse position
Failing to have well-defined changes and dispute resolution provisions

Key Risk Elements

- Subjection of your firm to foreign or adverse legal forums
- Problematic arbitration provisions
- Inability to manage change during project
- Monetary exposure for inability to properly substantiate change provisions
Presentation Review

- Bidding a project in a geographical area without knowledge of all operational parameters
- Taking on a project which substantially exceeds your typical project value/size
- Contracting with a party who is financially or politically unstable
- Executing a contract for a type of work not previously performed by your firm
- Signing a contract with an incomplete project definition, incomplete work scope, or ill-defined performance requirements
Presentation Review (cont.)

- Signing unbalanced contracts that place too much risk on one party
- Allowing project management team to deviate from the requirements of the contract
- Failing to recognize changes to the contract which have an adverse impact on your firm’s operations
- Failing to document problems, delays, disruptions, and disagreements
- Failing to address at an early stage changes and disruptions in the work
- Failing to have well-defined changes and dispute resolution provisions