

The Management of Working-Day Claim for Project Construction in FIDIC Construction Contract Condition

Liu Jun¹, Liu Kun²

1 School of Management, Wuhan University of Technology, Wuhan, P.R.China, 430070

2 Shanghai Tianxing Water Treatment Equipment Co., Ltd., Shanghai, P.R.China,200035

(E-mail:liujun286@yahoo.com.cn, 21010467@qq.com)

Abstract The management of working-day claim for project construction in FIDIC construction contract condition is an important part of project management. This paper clarifies reason, content, analytic method about working-day claim in FIDIC construction contract condition, and analyzes quantitative problem about working-day claim, then advances proposal to improve the management of working-day claim. In order to occupy a favorable position in the fierce international market competition, we should constantly explore the new project management methods along with its development

Key words Project construction; FIDIC; Working-day claim

1 Introduction

The FIDIC construction contract condition has been widely applied in the world. Not only applied by the member states of FIDIC Organization, it also be applied in bidding of projects that invested by the World Bank, the Asian Development Bank and other international financial institutions. Nowadays, china has already joined the WTO, it has great significance that our Chinese contractors understand and master the mode of project management under the FIDIC construction contract condition.

Under the FIDIC construction contract condition, Contractors should establish such concept that it's not generally the more quickly the better to complete the project. No doubt, the project will be completed in a short time, if we don't care of the cost and unlimitedly input human and material resources and equipments, etc. But the result is a serious deficit, if we do like this. In a project we should choose and realize a most economical working-day under the precondition that resources input are unchanged to insure to profit in this project. Whether the project is reasonable or not can affect most aspects of the project, like construction plan, equipments preparation for construction, arrangement for materials purchase, personal quantity, etc. So it should be established on what's realistically achievable. Even if the working-day arrangement was very reasonable, we can still not prevent impact on project from external factors. Thus, contractor must study the contract working-day and related problems about claim carefully, to protect their own interests.

2 Causations and Contents in Claiming

There is diverse reasons cause the claim, yet there are many various contents of the claim. The common reasons include: construction circumstance changed, accelerate the construction, suspend work, delay the payment of project, owner broke the contract, special risks and majeure, interference from other contractors (delay, bad cooperation, etc.), caused by the third parties. Although claims due to many factors, but they are still based on the conditions of the contract. The contract items that contractor can claim to the owner are show in table 1.

Table 1 Items Can Be Quoted That Contractor Claim to the Owner

Serial number	contract item number	subject content of item	item can be claimed
1	5.2	Ambiguous contract documents	T+C
2	6.3~6.4	Drawing delay	T+C
3	12.2	The adverse external obstacles and conditions	T+C
4	27.1	Found fossils, monuments, etc.	T+C
5	36.5	Test	T+C
6	40.2	Suspend works	T+C
7	42.2	Owners did not provide construction site	T+C
8	69	Owner broke the contract	T+C

In this table T—Time, C—Cost

In a construction progress, under the FIDIC construction conditions, contractor should actively

invoke the relevant items of contract to claim as soon as the above reasons affected progress of the project. Thereby achieved two objectives: First, avoid the responsibilities for delayed completion date in contract, and then avoid suffering penalty or suffering less. Secondly, claim for damages those caused by delay.

3 Analytic Methods in Claiming

It will not mean contractors can start working-day claim to the owners when above events those affect working-day occurred. They should make a right decision whether or not to claim after a analysis to the effect that the incident impact on working-day.

3.1 Bases for analysis

The analysis gist of working-day claim include:

- (1) Master plan of working-day in contract;
- (2) The detailed scheduled plan that agreed by consultant engineers and submitted by contractors after contract has been signed;
- (3) Amendment files those mutual recognized, such as recognized letter, meeting minutes, correspondences, etc;
- (4) The progress monthly plan and adjust plans those owners, consultant engineers and the contractor mutually agreed;
- (5) The real construction progresses after interference, such as construction diary, schedule of works and progress report, etc.

3.2 The basic idea for analysis

The value of working-day claim, which is on the impact of interference incidents, can get through the original network plan and estimating probable network plan have been compared, and the emphasis of analysis is the key lines of the two statuses.

The basic ideas for analysis are:

Assume that construction always carry out as working-day and sequence of construction those confirmed by original network plan before. But nowadays, some interference incidents happened, one or more activities in this network have been interfered. The following are several examples of these incidents, like extending duration, or changing logical relationship between activities, or adding a new activity, etc. Take these effects into original network, re-analyze this new network, the result is we get a new working-day. And then the difference between new working-day and original working-day is effect on whole project that made by these interferences, which is the value of working-day claims. Usually, if the activity that has been interfered is in the key lines, the activities of the extension of the duration of this activity shall equal to the extension of the total working-day value. But if the activity is in non-critical lines, and it is still in a non-critical line after interference, then the interference incident can't affect working-day, so it should not make the claim.

4 Quantify the Claim

In the information of working-day claim, contractor usually should include compensation for extension of time and economic loss. In the actual implementation of FIDIC contract items, owners usually only pay extension of working-day to contractors without pay any financial compensation. But contractors will all claim for financial compensation yet at the same time. Because delayed working-day make them loss the opportunity to generate revenue under the contract. FIDIC contract consider that, contractors are normal for such a request, because the definition of 'fee' in contract includes the management fee in company's base outsider construction scene.

When contractors claim such economic working-day compensation, should not generally require owners to compensate for their loss. They must demonstrate accidents have really happened, and the proofs can are able to withstand the relevant verification and inspection those consulting engineers carry out. Owners should pay economic compensations for the extension due to owners' or consulting engineers' mistakes, and contractors can usually claim deferred management fees for working-day delay at this time. Owner's principle of compensation is to pay the actual economic losses to contractors. After earned the time extension compensation, how to convert it into specific economic claims, there are two common methods:

- (1) Quantum meruit method

Quantum Meruit is Latin; it means pay after check the quantity. This method is under the principle that compensates contractors' real loss, use way that reimburse according to the physical truth to

compensate contractors' actual economic losses. The payment basis is the value of expenditures in the session of lay-off. Finally, in the period of recognizing the payment of the claim, contractors must show their invoices, receipts, accounts and other financial documents at the moment. Therefore, contractors should pay attention to collect evidence in ordinary times, and do a good job in the preparation of claims in terms of this method, to prevent no evidence when they claim after expenditure.

(2)Hudson/Emden's formula

Under the FIDIC contract conditions, management fee are calculated as a percentage into the quotation in the bidding, and its recovery is a function of time in normal circumstance. So FIDIC contract believe that, contractor's personnel and equipment can not be put into production during lay-off, and then there will be no prices based on working as an economic income. Just because they were occupied by this project, an actual economic losses resulting from it. If there is no lay-off impact, the contractor can earn back management fees that had calculated into the quotation through the construction. Based on this possibility and on the principle that only pay contractors the actual economic losses, owners only pay lay-off management fees to contractors when working-day claim. Customary to use the following Hudson / Emden formula:

$$H_E = C_P \times H_O \times (D_T / C_T) \quad (1)$$

In the formula

H_E —Amount of delay management fee;

C_P —Contract amount;

H_O —the rate of company's basis management fee (percentage), usually get it through use the sum of management fee and profit divided by turnover;

D_T —Extension of time (days);

C_T —Contract working-day (days).

The calculating of compensation of international contracted projects deferred management fee is usually based on the above formula, it makes appropriate adjustments in this calculation results according to the actual situation.

5 The Management of the Claim

As can be seen from the above analysis, working-day claim is a complicated job. Thus a contractor should manage it as an important part of project management, and do the following works better.

5.1 Nurturing and set up awareness of working-day claims

Working-day claims are very important to improving economic benefits for contractors, they must set up the awareness of claim. Specifically, three main aspects should be strengthened:

First of all, strengthen the legal awareness. Working-day claim is the contractor's legitimate right and it's a way to protect their legitimate rights and interests. Strengthen awareness of the claim, in essence, is to strengthen the contractor's legal awareness. This will not only strengthen the contractor's self-protection awareness, enhance their self-protection capabilities, but also enhance the consciousness of contractor performance the contract, and consciously avoid infringement to others benefit. So both sides of contract can have a good atmosphere of cooperation and it's conducive to achieve the general objective of the contract.

Second is to strengthen awareness of the market economy. FIDIC Conditions of Contract for Construction is based on the background to the market economy, and do project constructions must comply with the rules of market economy.

The third is to enhance awareness of project management. Working-day claim involving the work of project management in all its aspects. To obtain a successful claim, contractors must improve their level of project management, to further improve and perfect the management system.

5.2 Strengthen contract management is the basis of the working-day claims

Contract is the basis to the claim. Claim is aim at events those not conform to or breach of contract, and to determine the items of the contract as the ultimate standard. Thus, the claim is a continuation of contract management and is a unique approach to resolve the contract dispute between the two sides of the contract. Therefore, the contractor must well do contract management job in all phases of the project, to lay the foundation for the claim.

In process of project bidding, negotiation and signing of contract, the contractor should carefully study the project host country's laws, policies, regulations and contract conditions, in items of the contract the parties clear the rights and obligations of every side in order to provide a legal basis and foundation for a possible working-day claim in the future.

Before signing the contract and before the contract to be implemented, both parties can predict and identify potential opportunities for the claim by checking and analyzing the contract.

In the process of the contract implementation, contract managers monitor and track the contract. First of all, they should ensure the contractors fully implement the contract, not breach of contract. And monitor and track the implementation of the contract of opposite party, detect the incident of interference in time.

5.3 Strengthen the management of schedule for the project

Fundamentally speaking, Working-day claims are caused by the difference between the actual construction working-day after interfered and the date in project schedule, and the size of the claim value is often decided by this difference. Moreover, construction claims can get conclusion from the planed and the real key lines in the progress of the project. Therefore, management of plan of progress of the project can not be overlooked.

5.4 Strengthen the project document management

Working-day claim needs evidences, which constitutes a part of a claim report. If there is no evidence or insufficient evidence, the claim will not lie. Document management can timely, accurately and systematically give the working-day claim information for analysis and evidences to prove the existence and influence of interference incident, further to prove that the loss of the contractor and prove the reasonableness and legitimacy of the claim.

In their daily work, contractors should pay attention to collect evidences of economic activities, and must maintain a complete record of the actual works. At the same time, set up the project document management system, assigned particular staff to take charge of collection and collation engineering data and other economic activities information

5.5 Analyzing scientifically, making decision carefully

Working-day claims are based on whether the interference incident have an impact on the key lines in the plan of progress of the construction, and therefore the effect from the interference events should be analyzed with a scientific attitude of seeking truth from facts.

In addition, the claims management is not only a part of project management but also a part of contractor's operating management. The decision whether or not to claim should be subordinated to the overall situation of business strategy. If contractors could not claim positively and effectively, the result is they will suffer financial losses; but if they claimed, more or less will affect the cooperation between the two sides of contract; and the excessive claims would undermine the credibility of the contractor, affected the contractor's long-term interests.

Therefore, the contractor should establish a basic principle in claims management, and its specific contents as follows:

(1) establish the thought of responsibility to fully complete the contract. (2) focus on the major working-day claim. (3) attention to flexibility in the claims. (4) seek a peaceful solution to the dispute.

6 Conclusion

Management of working-day claim under the FIDIC construction contract is an important component of the project management mode in the whole FIDIC contract condition, our project contractors familiar with its content of management and skills is an urgent requirement to elevate the our international competitiveness. And FIDIC contract conditions is an open development system, we should constantly explore the new project management methods along with its development, in order to occupy a favorable position in the fierce international market competition.

References

- [1] Tian Wei. Practical Skills in FIDIC Contract Condition [M]. Beijing: China Building Industry Press, 2002. (In Chinese)
- [2] Jack.Guido, James P.Clemens. Successful project management [M] Translated by Zhang Jincheng. Beijing: Machinery Industry Press, 1999
- [3] Davil Bentley, Gary Rafferty. Project Management Key to Success [J]. Civil Engineering, 1999,(4): 35-36
- [4] Cheng hu. Construction Contract Management and Claims [M]. Nanjing: Southeast University Press, 2000 (In Chinese)
- [5] Yang Jing, Wang Xiaowu. Management of Claims of Project Cost. Construction Supervision [J], 2003,(1): 45-47 (In Chinese)