

Research on Contract Management and Claim of Construction Project

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ABSTRACT

The construction industry has always occupied an important position in the economic development of our economy. At present, the number of construction projects in China continues to rise, and the challenges of contract management of construction projects are increasing. The construction of the project is mainly based on the project contract. The quality of the construction project contract directly determines the construction quality of the entire project and the economic and social benefits of the project. In the process of contract execution, "claims incidents" are often accompanied by this, which is a relatively common phenomenon in engineering projects. The "claims incidents" proceed smoothly and actively in favor of the better development of the construction industry. The level of engineering contract and claim management is relatively low, and engineering claims often concern the fate of the entire project. Therefore, this article analyzes the contract management and claims of construction projects and proposes corresponding management measures.

Keywords: engineering contract, contract management, claim

I. INTRODUCTION

Both parties of the construction project shall cooperate in the principle of fairness and voluntariness and sign a written contract. The content of the project contract contains many information such as the cost of construction, the quality of construction project, the time of construction project, etc. in the process of performing the contract, things that can't be estimated, such as "claim event", will directly or indirectly affect the contract itself, and even lead to the change of the contract. If the change is negative, it is likely to give rise to the construction The project itself brings immeasurable losses. In order to guarantee the interests of both parties, we should strengthen the level of project contract management and optimize the handling of "claim events".

II. RESEARCH ON CONSTRUCTION CONTRACT MANAGEMENT

A. The connotation of construction contract management

The management of construction contract includes the establishment, fulfillment, claim, and breach of contract and cancellation of contract. High technical requirements, complex construction, huge investment, large impact on society, and long life cycle have always been the characteristics of construction projects.

Correspondingly, the rights and obligations of the parties to the contract will also become relative complex. Therefore, in construction projects, the management of engineering contracts has always had a high status. Good contract management often has the following advantages:

- Guaranteeing the rights and obligations of both parties to the contract.
- Reducing the probability of disputes and contract breaches[1].

B. Features of construction contract management of construction projects

The characteristics of construction project contract management have the characteristics of strong professionalism, high risk and high complexity.

The construction contract management of the construction project should not only take into account the entire construction process of the project, but also be implemented in accordance with the corresponding laws and regulations in the contract. This requires that the staff responsible for project contract management must be very familiar with the project, and at the same time should also have the legal knowledge corresponding to the contract. Since the content to be managed is extremely tedious, all aspects of the contract must be considered in the relevant work. Therefore, for the management of the engineering

contract, the corresponding staff must have certain professional knowledge and professional capabilities. [2]

Secondly, due to the complexity of the environment faced by the engineering project during the construction process and the overall long life cycle of the construction of the engineering project, this has led to various accidents often occurring during the construction process and increased the risk of construction. From the perspective of contract management of engineering construction, the risks it generates are divided into two types: the risks caused by the errors of the relevant staff's own thinking and the risks caused by the terms of the contract. Due to the relatively long life cycle of construction projects, a variety of problems will be involved in the construction process. The risks arising from the construction contract itself cause the construction contract management to be interfered by many parties, which will lead to more risks. Sometimes these risks must exist, and people cannot avoid the risks in time, so the best way can only be to reduce the probability of occurrence to a certain extent. For contract management-related staff, the risk caused by insufficient knowledge reserves for contract management or due to their own work errors is called human subjective error. These two risks are actually present and related to each other, which increases the risk of contract management to a certain extent[1].

Finally, because construction contract management often has a very high degree of complexity, contract management must be carried out more precisely and rigorously.

C. The role of construction contract management in construction engineering

In the management of construction project construction, the content contained in the project contract is in compliance with laws and regulations, and is meticulous and thoughtful. It is a very important prerequisite for the construction project management. The ultimate goal is to execute the construction project contract normally and on time complete the corresponding construction project according to the quantity. Contract management plays an important role in this, which has three main functions: one is to reduce the number of contract disputes to a certain extent; the second is to ensure the standardity and legality of the contract; and finally, to ensure that the project is constructed and completed within the specified time.

III. RESEARCH ON ENGINEERING CLAIM MANAGEMENT

A. Connotation of engineering claims

The so-called "claim" means that during the performance of the contract, the person in charge of one of the parties to the person in charge of the other party

in the contract has not correctly implemented the corresponding clauses specified in the contract, or failed to meet the quality on time. If the contract stipulated by both parties is completed on a quantitative basis and its own interests are damaged, compensation can be obtained from the other side of the contract.

Article 111 of the "General Principles of the Civil Law of the People's Republic of China" stipulates that if one party fails to perform its contractual obligations or the performance of its obligations does not meet the conditions stipulated in the contract, the other party has the right to request performance or take remedial measures, and to claim compensation for losses[3].

B. Claims and causes that often occur in engineering construction

During the implementation of the construction project contract, because the terms specified in the contract are not clear, the construction project has problems, the construction funds have not been received in time, the overall progress of the project has been delayed, the construction quality of the project is lacking, and the management of the project is not in place. The occurrence of the situation will bring about the occurrence of a claim, but from the point of view of the claim incident, there are basically two kinds of claim incidents. The first is that the construction party requires the owner to make a claim for a fixed fee and the relevant money in the contract. The second is that the construction party requires the owner to properly extend the completion time of the project to make a claim, so that the completion time of the project is properly extended according to the standard time in the contract, to a certain extent, avoiding the monetary penalties for breach of contract content. [4] The following are several common claims incidents.

1) *Claims caused by changes in geological conditions:* When the project actually starts, it is often encountered that the information that is inconsistent with the information obtained in the hand is the case. If sand and stone appear instead in the place where there is no sand and stone, the construction party will often carry out claims.

2) *Claims caused by the handling of underground man-made obstacles:* During construction, the construction team often encounters obstacles such as city cables, buildings, etc. that are not specified on the drawings. This situation usually causes an increase in the cost budget. It consumes manpower and material resources, so the contractor will claim compensation from the owner.

3) *Claims caused by design changes:* This type of claim is the most common, because the owner modifies the project content in the contract or due to changes in the construction conditions. If there is a problem in the

design itself, which ultimately causes the construction party to increase the cost or the project is delayed, the contractor will make a claim against the owner.

4) *Claims due to arrears of project payment:* The claims incidents due to the owner's arrears of project payment also account for a higher proportion. The proportion is also relatively common. The owner should provide the project funds in accordance with the terms specified in the contract. When the gold supply is not timely and the capital chain is broken, it will often have a greater impact on the project. Unqualified quality and postponement of the construction period will occur from time to time, so the contractor will make a claim.

5) *Claims due to the ambiguity of the contract terms:* The terms of the contract must be scientific and rigorous, and there can be no ambiguity or ambiguity, otherwise it will cause catastrophic consequences for the project. For example, although the length unit km and m are only the difference between words, once negligent, in the actual construction will bring unpredictable losses, and the contractor will often make claims to the owner.

6) *Claims due to temporary termination of construction or reduced efficiency:* After the construction starts, there will often be funds such as the owner's funds. Changes can not continue to provide funds, the owner's sudden change, the owner's wrong order caused the construction efficiency to be greatly reduced, etc., or may cause the construction party's project to be delayed, which will increase the construction cost of the project and cause unnecessary waste. Therefore, the construction party will report to the owner Party claims;

7) *Claims due to force majeure brought by the environment:* The so-called force majeure refers to However, natural disasters such as earthquakes and floods that occur in the environment that are not transferred by human will. Although these natural disasters are less likely to occur in daily life, once they occur, the consequences will be catastrophic. Therefore, in the event of a force majeure claim, it should be properly handled to maximize the interests of both parties to the contract. Therefore, how to define the force majeure event has become a key. In summer, there are often heavy rains for several days. This situation occurs from time to time, and it is not a force majeure natural disaster. In 2012, Beijing suffered a 60-year event. The heavy rain caused many projects to be forced to stop and even caused great damage to the project. This kind of extraordinary natural disaster that has not been encountered for hundreds of years can be classified as force majeure brought by the environment, because no one can avoid these things. According to

this, the contractor cannot make a claim when a normal situation occurs, because the additional cost is already included in the normal engineering cost, and the contractor can make a claim when the environmental force majeure occurs;

8) *Claims caused by the delay in construction period:* The description here is due to the owner's reasons, such as failure to provide construction drawings of the project within the specified time, failure to submit the construction site according to the specified time, bad weather environment and other data, failure to notify in time, and data such as design drawings are not If the construction site encounters incidents such as optical cables of underground facilities or engineering damage caused by force majeure of the environment, the contractor may make claims based on reasonable and reasonable evidence. However, in some cases, the reasons are often complex and changeable, so both parties of the contract are required to seek truth from facts and jointly solve the problem [5].

C. Intermediate significance of engineering claims in construction contract management

1) *It is conducive to enhancing the consciousness of the project contractor's claim for the engineering contract and improving the level of enterprise claims management:* The success of the claims incident on the one hand improves the level of enterprise contract management. On the other hand it will directly and indirectly improve the economic benefits of the enterprise. In many cases, the contractor is passive in the project, and the claim management is good for the enterprise. The driving force for sustainable development must attach great importance to claims management.

2) *It is conducive to ensuring the legitimate interests of both parties to the contract and ensuring that the project is carried out in an orderly manner:* The legal effect of the engineering contract is manifested by the claim, that is, regardless of which party's actions directly or indirectly cause the other party's interests to be infringed, this party can make a claim against the other party to ensure its own legal interests. Accordingly, the claim not only constrains the actions of both parties of the contract, but also alleviates the general contract disputes to a certain extent, ensuring the orderly execution of the engineering contract. [6]

3) *It is conducive to enhancing the international competitiveness of related companies in China:* Compared with some developed countries, China's development in the field of engineering claims is not

mature enough, especially in the case of outsourcing projects where claims cannot be made from time to time, or because the company's own capabilities are repeatedly failed in the event of claims, its own benefits without guarantees, especially the large international market brought about by the current economic globalization, in order to obtain good economic benefits, claims management is indispensable. In order to improve China's international competitiveness, we must vigorously improve the level of claims management.

IV. CASE ANALYSIS

A. Brief case description

According to the bidding documents and all construction design drawings of a 300 m² double-storey residential construction project, a construction unit adopted the method of low quotation when issuing the bidding documents and successfully won the bid. And this unit signed a fixed amount of construction contract for 9 months with the owner on the residential construction project on a certain day in 2019. The owner (hereinafter referred to as Party A) has difficulty in capital turnover due to financial difficulties. After the construction unit (hereinafter referred to as Party B) settled on the work site, he failed to pay the construction funds to Party B in time, and requested Party B to request After a month and a half of work stoppage, Party B agreed with Party A's approach. After the construction of the project was completed, when Party A inspected the project according to the acceptance date specified in the previous contract, it was found that there was a problem with the quality of the construction of the project, and Party B was ordered to resume construction. One and a half months later, Party B completed the construction again, and Party A completed the acceptance of the project. During the final project settlement, Party A determines that Party B's project transfer has been postponed, and shall compensate the liquidated damages in accordance with the terms of the contract. Party B believes that it was due to the sudden request of Party A to stop construction during the construction period. In order to complete the project within the stipulated time, Party B increased the construction speed. During this process, the quality of the construction will inevitably have problems, so the responsibility for project extension is not its own. Fang insisted that the suspension of construction during the construction process and the failure to extend the delivery period were negotiated and negotiated with Party B, and Party B should bear the responsibility and compensate.

B. Problems and analysis in the case

According to the relevant clauses in the "Contract Law of the People's Republic of China" and "Construction Engineering Construction Contract", whether it is an engineering contract or a contract-related change should be expressed in paper form. If the condition or situation is relatively urgent, it can be solved temporarily by dialogue, but once the conditions permit, it should be determined immediately in paper form. Otherwise, once the two parties in the engineering contract have differences due to the above issues, it is difficult to use the dialogue between the two parties as evidence, which will further evolve into a claim event. In the case, the owner, Party A, temporarily stopped construction during the construction of the construction unit, Party B, and Party B agreed to this. This was a dialogue between the two parties and did not constitute a paper form, which led to the problem of contract changes. Development into a claim event. Because of the differences arising after the completion of the construction delivery, the benchmark for the measurement is the original contract.

During the construction of Party B, Party A was forced to ask Party B to stop construction for a period of time (one and a half months) due to its own financial problems. According to relevant laws and regulations, Party B has the right to claim compensation according to law. However, in the case, Party B agreed to Party A's request, and did not make a claim against Party A within the time prescribed by law, but according to the provisions in the General Principles of the Civil Law of the People's Republic of China, within the validity period of the civil lawsuit, Party B has the right to demand that Party A bear some responsibility for the incident. Due to the capital problem of Party A, the funds that should be sent to Party B were not in place on time, so Party A should bear the responsibility of the shutdown period, and should compensate Party B for the loss of funds within this one and a half months, and also extend the construction period by one and a half months. However, due to the quality problems of the last delivered project, Party A requires Party B to re-construct, Party B should bear the responsibility for postponing the delivery, should compensate Party A for the penalty of the delay of one and a half months, and Party B shall be responsible for the additional expenses caused by the re-construction.

C. Improvement measures for case problems

1) *Popularizing contract legal education:* In the current economic background of China, the construction industry is booming, and the contract as a document that restricts the behavior of both parties A and B in the construction of the project has certain legal effect, and with the improvement of relevant laws, the future of the construction industry is also more clear.

According to this, the construction unit should follow the development and use legal means to resolve the differences and claims in the contract management of the project to ensure that the interests of both parties are maximized.

2) *Training contract management talents:* As an important aspect of project management, contract management should receive the attention of enterprises, increase the supply of people, funds, and materials, and ensure that contract management professionals can maximize work efficiency and enhance enterprise contract management capabilities. At the same time, the relevant professionals need a solid professional theory as the basis of their work, and have a certain understanding of the legal knowledge related to contract management. Due to the large number of staff involved in contract management, such as department heads, project managers, grassroots managers, etc., this requires the selection of contract management personnel with strong work ability, responsible, and sufficient knowledge reserves, and regularly Staff conduct training to further strengthen the company's contract management capabilities.

3) *Establishing a complete contract management mechanism:* In the contract management of an enterprise, the enterprise not only conducts detailed analysis of the content of the contract, but also establishes a complete contract management mechanism. A good contract management mechanism can ensure the smooth progress of contract management. According to the relevant rules and regulations, it is necessary to establish a scientific contract management mechanism and implement the idea of contract management in Enterprises. In actual life, you can: on one hand, for the entire process of contract management, including the preparation of the contract, the signing of the two parties, and the later implementation of the contract content, especially for the construction part that covers many stakeholders, it's needed to be sure to be rigorous in every detail of each process to take control to ensure the coordination of all units and the smooth progress of the project. On the other hand, in order to ensure the smooth progress of the entire process of contract management and everything is stipulated, both parties of the contract need to implement all matters on paper, rather than verbal agreements, in order to ensure that all events during the construction process are in compliance and reasonable to provide relevant guarantees for possible engineering claims.

4) *Implementing dynamic contract management:* The construction project is carried out dynamically. Although the engineering contract is only a paper

document between the parties, it is this document that plays an important role in the entire process of the project construction. It also promotes the project and the parties at the same time. In the context of China's economy, in order to reduce the occurrence of frequent problem projects, various types of engineering accidents, project delays, and claims incidents mentioned in this article, it is necessary to implement the signing of the contract and carry out all aspects of work in strict accordance with the signed contents. The whole process of construction projects is dynamic. Therefore, in the process of contract management, it is necessary to carry out all-round dynamic management, restrict the behaviors of the contract participants according to the terms indicated in the contract, endow the contract participants with certain rights and obligations, and implement these matters into the whole process of project and contract management, especially the content of the contract that involves the interests of the participants such as construction period, capital use, project quality, etc., to achieve all-round dynamic management in the early, middle and late stages.

V. CONCLUSION

In the context of the rapid development of China's market economy, the number of construction projects is increasing year by year, and the construction methods and contents of the project are also being updated. In this process, good contract management is a powerful guarantee. The quality, cost, and on-time delivery of the project can also promote the efficient operation and coordinated management of both parties to the contract, and even establish a long-term cooperative relationship. At present, there are still many problems in the contract management and claims of construction projects. All parties need good contract legal education, cultivate excellent contract management talents, establish a complete contract management mechanism, and implement dynamic contract management in order to deal with claims for engineering contracts. The event promotes the further development of China's construction projects.

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