



Commercial Awareness Training for EPC Projects

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1. INTRODUCTION

The fundamental goals of the Project Execution Team (PET) in the performance and handover of a large-scale, multidimensional Engineering, Procurement, and Construction (EPC) project include delivering the project to the Owner on schedule and within budget, achieving all performance guarantees and technical requirements, and maintaining a profitable gross margin. To successfully achieve these goals, it is necessary that the PET have a clear understanding of the EPC contract and the obligations and responsibilities of the Parties to the EPC contract. It is also necessary that the members of the PET have a clear understanding of their individual roles and responsibilities in the execution of the EPC contract.

The key commercial and technical aspects of the EPC contract must be analyzed and summarized in a detailed presentation to be communicated to the PET through training sessions to instill a sense of commercial awareness regarding the EPC contract and to develop team building amongst PET members.

2. CONTRACT HANDOVER MEETINGS

Key members of the PET are usually different than the Sales Team individuals who negotiated and sold the EPC Contract. It is essential that, following execution of the EPC contract and prior to Notice to Proceed (NTP), contract handover meetings be conducted between Sales Team personnel and at least the Project Director and/or the Project Manager as well as other key PET members (if already assigned to the Project).

The purpose of these meetings is for the Sales Team to explain how the final EPC contract documents were developed and negotiated and to advise the PET regarding potential areas of risk in the EPC contract related to scope definition, budget, schedule, execution strategy, performance guarantees, bonuses, liquidated damages, etc., and suggest how to mitigate such risks in the context of the final negotiations with the Owner. During the EPC contract negotiations, the respective parties in the negotiations may have had certain commercial or technical issues which were not finally agreed upon.

However, in the interest of “getting it done”, unresolved issues may find their way into the EPC contract with both negotiating parties believing that the “creative language” included in the in the EPC contract resolved the issue in their respective favor. If contract handover meetings between the Sales Team and the PET do not take place to reconcile differences in the tendering baseline documents and the EPC baseline contract documents and identify issues that have intentionally been left open to interpretation in the final EPC contract, the PET may discover open risk issues too late to properly mitigate them and wind up with obligations which cannot be performed without additional cost and or schedule impacts. Many Project Managers and EPC Contract Managers at some point in their careers find themselves faced with this problem. It should be



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noted that another benefit of proper handover meetings between the Sales Team and the PET is to build a trusting and working relationship between these two teams with the common goal of successfully executing the project and maximizing gross margin.

3. BUILDING BLOCKS OF COMMERCIAL AWARENESS TRAINING

Prior to the issuance of the Notice to Proceed, the key members of the PET should be appointed. On a large-scale, multidimensional EPC construction project, this would generally include a Commercial Manager and EPC Contract Manager. The construction industry has recognized the value of EPC Contract Managers for direct commercial support and guidance to the Project Director and Project Manager. The EPC Contract Manager provides proactive administration and management of the EPC contract and commercial coordination between the PET and the Owner. In this regard, the EPC Contract Manager has the lead responsibility to develop the Commercial Awareness Training for the PET. If an EPC Contract Manager is not assigned to the Project, the responsibility for Commercial Awareness training would normally fall to the Project Manager (along with all the Project Manager's other responsibilities). Alternatively, if no in-house expertise is available, the project could engage an external consultant to prepare and present the Commercial Awareness Training for the Project Team.

The development of the Commercial Awareness Training presentation includes the preparation of an EPC Contract Brief which summarizes each clause of the EPC contract General Conditions, Special Conditions, and Commercial Exhibits. Once this fundamental tool has been developed, it can be used to prepare specific reference lists for the PET such as:

- Action Requirements
 - Reporting
 - Submittals
 - Meetings
- Notice Requirements
 - Change event which may result in schedule extension and or additional compensation
 - Intent to subcontract or procure major equipment over a certain dollar value
 - Shipping notices
 - Potential insurance claim
 - *Force Majeure* event



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- Intent to work on public holidays
- Start of performance tests
- Owner Obligations
 - Site access
 - Permits
 - Construction all risk insurance
 - Construction water and power
- Change Order Procedure
 - Change identification
 - Notice
 - Documentation

4. KEY ITEMS OF THE COMMERCIAL AWARENESS TRAINING PRESENTATION

After the contract handover meetings with the Sales Team and the preparation of the basic reference documents (Contract Brief, Action Requirements, Notice Requirements, Owner Obligations, etc.) have been completed, the EPC Contract Manager should focus on the preparation of the Commercial Awareness Training presentation. In general, the presentation should include a review of the following items:

- Where to find the EPC contract documents in the project document control system, including the tendering baseline documents and the order of precedence of these documents under the EPC contract
- Owner's organization and who on the Owner's team has authority to authorize and approve changes
- Owner's obligations
- Action requirements list
- Notice requirements list
- Scope of work
- The critical path and key milestones of the project schedule



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- Performance guarantees, potential bonuses and incentives, and potential liquidated damages
- Payment provisions and required supporting documentation
- Project insurance provide by the Owner
- Change Order procedure with an emphasis on how to recognize a change or compensable event, notice requirements, and required supporting documentation

5. PREPARATION FOR THE COMMERCIAL AWARENESS TRAINING MEETING

When the presentation has been prepared and approved by Project Director and Project Manager, it should be distributed to the PET members for information prior to the Commercial Awareness Training meeting. PET members should be advised to read the EPC contract, commercial exhibits, and scope of work, and become familiar with the EPC contract brief and other commercial tools such as Actions Requirements, Notice Requirements, and the Change Order Procedure, prior to attending the Commercial Awareness Training meeting.

The PET members should also be requested to identify contractual obligations which, based on their expertise and team function, pose potential risks to the project schedule or cost during performance of the work if not managed properly.

For example:

- The Procurement Manager may advise of a possible schedule risk due to the late delivery of a major equipment component
- The Engineering Manager may advise of a possible technical risk due to an ambiguity in the performance test criteria which could be interpreted by the Owner in such a way that the performance test would never succeed as written
- The Subcontracts Manager may advise of possible cost risks due to higher than budgeted tender responses from potential subcontractors

6. OBJECTIVES OF THE COMMERCIAL AWARENESS TRAINING

The objectives of Commercial Awareness Training should be to:

- Increase the PET's knowledge of the essential commercial features of the EPC contract and, through better utilization of contract management tools, heighten the identification of entitlement to time extensions and additional costs.



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- The Commercial Awareness Presentation should inform the PET where it can find all baseline EPC contract documents within the project's document control system for reference as necessary
- Provide the reference tools for Action Requirements, Notice Requirements, the Change Order procedure, etc.
- Review of key commercial and technical elements of the EPC contract such as the critical path, insurance provisions, payment provisions, performance guarantees, bonus provisions, liquidated damages, and the Owner's obligations and supply scope
- Obtain feedback from the PET regarding possible cost, schedule, and technical risks.
 - Each PET member will have the opportunity to identify potential risks to the project and initiate discussion on how such risks can be mitigated
 - A member of the Sales Team which negotiated the final EPC contract should also be invited to the meeting to provide feedback any on issues which were not fully clarified or documented during final negotiations
- Provide a team building experience by clarifying duties and responsibilities with regards to management of risks, provision of notices to the Owner, follow-up of contractually defined actions and support of the Change Order procedure.
 - After discussing notices, actions, risks, and the Change Order procedure, etc., the PET, led by the Project Manager, should agree on which team member is responsible for carrying out actions, issuing notices, and tracking potential risks. This should be documented by the EPC Contract Manager, issued to the PET, and updated as necessary over the course of the project.
 - The PET should be encouraged to proactively participate in the commercial management of the EPC contract and to communicate their ideas and observations regarding risk mitigation, potential "scope creep", or any event which may affect the successful delivery of the project to the Owner or impact the project's gross margin.

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7. CONCLUSION

Commercial Awareness Training for Project Execution Team (PET) members on large-scale, multidimensional EPC construction projects is an essential activity which will encourage team building, communication, identify potential project risks and mitigation strategies, establish responsibilities between the PET members, and strengthen change identification and the Change Order process. The development of a detailed and effective Commercial Awareness Training presentation is an arduous and time-consuming task which the Project Director and Project Manager in many cases “does not have time for” at the beginning of a project. If there is no in-house expertise to perform Commercial Awareness Training, the project should consider hiring a qualified consultant to conduct the training for the PET.

Commercial Awareness Training should be provided periodically over the life of the project as new members join the team. For example, the training should be performed in advance of NTP, at the start of construction, during construction, and at the start of commissioning and performance testing. It is also a good practice to conduct a redacted form of Commercial Awareness Training with the major on-site civil, mechanical, and electrical subcontractors for the purpose of claims avoidance and team building.

About the Author



Roger D. Javid, MBA, is a Senior Executive Consultant with Long International and has over 30 years of experience on large international projects ranging in size from US\$100,000 to over US\$ billion. Mr. Javid is an expert in project management, commercial management, development of project budgets, analysis and negotiation of EPC variation orders and amendments, management of project purchasing and contracting cycles, field supervision, project close-out, insurance claims, commercial awareness training, and construction claims preparation and settlement negotiations. He also has extensive experience with FIDIC contracts, Federal Acquisition Regulations, and USAID Acquisition Regulations. His project experience includes NGL/GOSP facilities, LNG facilities, offshore platforms and pipelines, petroleum refineries, petrochemical facilities, telecommunication fiber loops, wastewater treatment facilities, power generation facilities, and theme parks and resorts. Mr. Javid is based in Las Vegas, Nevada and can be contacted at rjavid@long-intl.com and (702) 908-1066.