

Case Study: Creek Relocation Diversion

*Claims analysis and correspondence assistance
related to alleged differing site conditions and
unit rate construction costs*

Dispute

A state energy agency contracted with a North America-based contractor to construct a creek relocation diversion project in a remote area of the United States. The project required installing a diversion dam, intake structure, pipeline, roads, and other facilities that re-routed creek water towards a lake reservoir supplying a hydroelectric power plant. The contract specified unit rates and completion dates that aligned with the contractor's bid estimate and schedule.

After the contract was executed and before work began, the contractor modified its construction schedule and compressed its overall duration, introducing months of float between its planned completion date and the contractual completion date. During construction, the contractor claimed that it encountered differing site conditions and requested multiple design changes, which the state agency accommodated by having its engineer provide the contractor an alternative design. As a result of the alternative design and other alleged changes, such as significantly increased rock excavation quantities, the contractor submitted change order requests for approximately \$10 MM of additional compensation. The contractor based its delay-related change order requests on its post-award compressed schedule rather than its bid schedule, and the contractor asserted the significantly increased rock excavation quantities caused its cost per unit of rock excavation work to increase.

The state agency disputed these change order requests, as it considered that the contractor was not entitled to delays relative to its post-award compressed schedule, was properly paid in accordance with the contract unit rates, and was not entitled to additional costs as a result of its own shortcomings. The contractor then submitted a formal written claim regarding these issues, initiating the contract-specified claim process. The contractor continued to complete its work as the claim was addressed.



Project

Creek Relocation Diversion

Contract

\$35 MM+ Unit Rate Construction
Contract

Primary Issues

Differing Site Conditions

Schedule Delays

Equitable Unit Price Adjustments

Construction Means and
Methods

Approach

GlassRatner was retained to assist in advising the state agency regarding the contractor's claim. GlassRatner assessed the merits of the alleged issues and the valuations for each of the claim components. GlassRatner's role involved analyzing the contract, project specifications, design documents, bid documents, project schedules, status reports, labor data, pay applications, survey quantities, and other project documents to evaluate the following:

- Site conditions that the contractor could have reasonably expected to encounter prior to entering the contract
- The effectiveness of the contractor's means and methods executing the work and managing excavation and fill materials
- Whether the contractor achieved its planned staffing levels and labor and equipment efficiencies anticipated in its bid unit rates
- Concurrent contractor delays
- Whether the contractor could have met its compressed schedule in the absence of external impacts
- Claimed alternate equipment costs
- If an equitable unit price adjustment was due as a result of increased rock excavation quantities



Approach

GlassRatner determined that a majority of the contractor's claims lacked merit for several reasons. The state agency adequately informed the contractor of its alleged unforeseen conditions through the bid documents and through the contractor's multiple site visits before the contract was executed. The contractor mismanaged its work by wasting material resources, failing to procure materials in support of the schedule, and inefficiently using its labor and equipment, which contributed to much of the additional costs it may have incurred. As such, GlassRatner demonstrated that the contractor was not owed additional compensation for much of its claimed changes and was properly paid over \$35 MM through its contract unit rates.





Outcome

Throughout the project, GlassRatner consulted with the state agency's project personnel and leadership, and GlassRatner provided input to periodic project communications from the state agency to the contractor.

At the time GlassRatner was engaged, the contractor had submitted its initial claim for approximately \$10 MM. Shortly after GlassRatner began work, the contractor reduced its claimed amount from \$10 MM to below \$7 MM. After a year of GlassRatner analysis, correspondence input, and advice to the state agency, the contractor further revised its claim, reducing its claimed amount to just above \$3 MM.

Relative to the final revised claim, GlassRatner provided a written report providing recommended responses for the state agency to consider. Shortly thereafter, the parties reached an amicable agreement, settling the claim and avoiding litigation or arbitration.