



Claims Against a Subcontractor's Non-Performance

Overview

All too often there is so much attention given to selecting suppliers at the lowest price vs. best value. Once awarding the subcontract, a significant amount of resources are committed in qualifying the supplier for production. The purpose of this paper is to communicate the need for financial consideration from subcontractors whose non-performance materially affected the financial objectives of a company's strategic vision.

Areas of Consideration

The Subcontract terms & conditions and Statement of Work/Specifications communicated during the source selection process and accepted within the subcontract award should provide the remedies in the event of the following non-performance:

- The level of the company's technical support and thus resources committed to the subcontractor for qualification, and identification of the responsibilities of the subcontractor to achieve qualification requirements in a manner and schedule set forth in the subcontract
- Waivers and Deviations (Materials and workmanship quality)
- Specified acceleration boundaries
- Warranties and applicable time periods
- Penalties specified from a subcontractor's delivery performance
- Continual failure to meet specifications along with an increasing trend of waivers and deviations requests



- Continual documented failure of the subcontractor to comply with the statement and/or services performance requirements
- Failure to correct performance in accordance with issued cure notices
- Termination for Default: ownership of the Tooling, Developmental Costs for Qualifying a new subcontractor, and economic and financial losses incurred by the company for its resulting performance failure to their customer.

The company should pursue all areas of non-performance with clear documentation by means derived from formal correspondence, signed meeting minutes, on-site reviews and documentation of results, and the company's customer on-site reviews and involvement regarding the subcontractor's ongoing failure to perform in a manner supporting the success of the program. This body of documented communications will provide for the entitlements necessary to seek financial redress and considerations from the subcontractor.

Strategies

The company's long-term strategic vision is in many cases dependent upon the performance of key suppliers. Strategies to ensure success are:

- Development of long-term agreements that require investments and facility upgrades from subcontractors necessary to meet the long-term demands of production: get the subcontractor's senior management involved early due to their significant investments needed for success.



- Establish long term master agreements that take precedence over purchase orders. Such agreements need to establish the specific criteria as to what constitutes a change to the price and schedule.
- Document, Document, Document the non-performance. Don't engage and take over the management of the subcontractor unless you want to own it at the expense of future consideration.

Preparation and Submittal of Claims Seeking Financial Consideration

It will be a business decision regarding the submittal of claims against the subcontractor's non-performance. The business team leads the preparation and negotiations of a submitted claim.

Conclusions

Failure to manage the documentation and eagerness to assume responsibility of the non-performance impacts the profitability of the long-term strategic vision and relations with customers for future business. GMC2 has the experience necessary to prepare claims and support successful negotiations involving a subcontractor's non-performance.