

## SPARE PARTS – DON'T TREAT THEM AS AN AFTERTHOUGHT!

**EPC contracts often oblige the contractor to supply spare parts to maintain the function of the completed contract works for a defined period after completion.**

Such obligations may include any or all of the following:

- Cost to procure, transport, deliver to site, store and maintain the spares and provide first fills, commissioning and start-up consumables to be included in contract price.
- All spares and commissioning consumables to be new, purchased with the original equipment and included with its delivery.
- The contractor to procure, transport and deliver to site all spare parts required for repair or replacement of defects during the warranty period, at contractor's own cost.
- Contractor to issue final recommended spare part list for a specified number of years' operation on placing each subcontract, with prices held for the same period.
- On notification by employer of date for spare parts delivery, contractor shall guarantee such delivery date.
- Application of liquidated damages for failure to comply with spare parts obligations.
- For a specified number of years after warranty period, contractor to make all spare parts available to employer promptly and at international market prices.
- Requirements to maintain the spare parts (e.g. providing air conditioning, general maintenance, cleaning and lubrication).
- Requirement to provide spares for the operation and maintenance (O&M) period, in order to maintain equipment warranties during the O&M period.

There is a good deal of commercial risk involved in agreeing to include the cost of spare parts as well as first fills and consumables for commissioning and start-up in the contract price.

Assessing the amount to include in a tender for the EPC contract is difficult, as the actual quantities that will be required for commissioning and start-up is unknown, and, at tender stage, the contractor may be inclined to veer on the low side in terms of a contingency price for spares, to keep the bid competitive.

To mitigate this risk, contractors may propose that any spares provided be paid for on a cost-plus basis, rather than included in the contract price.

However, most EPC employers require a fixed price and are unlikely to agree a cost-plus mechanism for valuation of the spares.

In order to include a contingency amount for the spare parts, the contractor's procurement department usually constructs a list of the spares that are likely to be required and requests quotations for those spares from their suppliers, in order to build up the price for the spares for inclusion in the bid.

Analysis of data relating to spare parts required for the same equipment installed on past projects may assist contractors to predict a list of spare parts likely to be required.

However, reference to previous projects can have its limitations, given the ongoing evolution of design on EPC projects (i.e. within the 3D model and via the constantly evolving piping and instrumentation diagrams).

Also, EPC projects can take many years to complete, by which time, the prices upon which the amount for the spare parts was based, may have been substantially impacted by price escalation, as we have seen recently as a result of the global socio-political situation.

Therefore, a prudent contractor should seek to negotiate the inclusion into the contract of a cost escalation clause<sup>1</sup> or ensure that spare parts are covered by any existing price escalation clause in the contract.

Clear definition of the scope of the spare parts is also advised as expansion of the project (due to instruction of additional works) is likely to necessitate more spares than were originally included for in the contract price. Contractors should also remember to include the cost of additional spare parts, for the expanded scope of works, in their variation valuations.

If the contractor has produced a list of spare parts upon which its tender allowance for the spare parts is based, then it should append that list into the contract. Any necessary spare parts not listed may be clearly demonstrated as a variation to the "Spare Parts" which the contractor has agreed to provide under the contract and the resultant additional costs may be claimed by the contractor.

Failure by contractors to comply with spare parts obligations can hold up completion of the EPC works. In the absence of the requisite spares, the employer or O&M contractor may not sign-off completion of the EPC works, preventing the contractor from achieving Mechanical Completion or Provisional Acceptance milestones and risking the levy of associated damages against the contractor.

Therefore, it is important for contractors to carefully consider obligations relating to spare parts and ensure they can comply with them within budget, before executing contracts containing such terms.

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<sup>1</sup> See HFW's previous article -Mitigating the Impacts of Cost Escalation - HFW Construction Bulletin September 2022 - [HFW | Construction Bulletin, September 2022 | Constructio...](#)

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