



THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED

CLAIMS REVIEW BOARD SUBMISSION

Confidential

Date: 28/06/2022

Category	DFTP	Contract ID: SAP Contract No:	NG01011278 4610035798
Contract Title Contractor	FYIP OFFSHORE FLARE DOWN WORKS OPI INTERNATIONAL NIG. LTD		
Agenda Item			
Start & end dates/ Duration and Extension options	12.12.2011 - 31.10.2021		

Objective of this submission is to secure CRB's approval:

1. Based on legal support and Business decision, to negotiate a fair and equitable compensation, to not more than 100% of CE, for Hydrodive's claim on delays that occurred during the hook up of FYIP 7 oil wells.
2. Use a one-off Purchase Order (PO) to pay Hydrodive if mandate is achieved.

Update Post-CRB of 1st November 2021

Inform the CRB of the negotiation outcome of **\$1,800,000.00** (99.57% of company estimate) being **full and final** settlement agreed at the negotiation with HYDRODIVE on 25th May and 3rd June 2022 with respect to their claim totalling \$3,977,033.66 and N421,273,961 (i.e., F\$5,004,531.13 @\$1: N410)

Declaration:

Signatories to this submission acknowledge that they have read and understood the Conflict-of-Interest Policy in SCiN and that they do not have any direct or indirect arrangement or relationship with any other person or company that breaches the requirements of that Conflict-of-Interest Policy, or that they have fully disclosed any potential Conflict of Interest to the Contract Owner.

Signature	Salomi Ihejiahi Digitally signed by Salomi Ihejiahi Date: 2022.06.29 14:45:53 +01'00'	DocuSigned by: Moses Adeogun 1E12707897CC493... 6/29/2022			
	CP Lead	Contract Holder	Budget Accountant	Contract Owner	SC, Commercial Mgr. Projects
Sign for	Whole submission		Confirm adequate budget cover and cost recovery	Accountable Parties: Whole submission and process	
Name	Salomi Ihejiahi	Adeogun Moses	Femi Ajala	Chris Ubuane	Gregory Akhibi
Ref Ind.	PTC/U/GP	PTP/O/NS	FUP/CGP	PTP/O/N	PTC/U/G

***Reviewed by Claims Team + signed Legal opinion attached**

Approved/ Not approved by:

Claims Review Board Chairman

DocuSigned by:
Ian Scott
61A9FF842810442...

Ways forward:

- ☐ Claim has no contractual basis. The Contract Holder is to notify the Contractor accordingly.
- ☐ Claim has a contractual basis. The Contract Holder is to evaluate and submit variation approval form
- ☐ Others:

Claims Review Board Submission

SECTION A: BACKGROUND		
1.	References & Approval dates for previous approvals	References & dates of previous approvals by MTB/SCC, NAPIMS. Attach the signed copies.
	17 May 2010	MTB approved FYIP Contracting Strategy (Selective Tendering including bid list)
	15 Nov 2010	Obtained Management Steer to accelerate FYIP Flares down component (mandated project team to source suitable available lay barge on a fast-track basis – single sourcing, that is mutually acceptable to NAPIMS.
	20 Dec 2010	MTB approved FYIP Flares Down Contracting Strategy.
	11 Apr 2011	Received NAPIMS approval of FYIP Flares Down Contracting Strategy.
	29 Jun 2011	MTB approved contract award recommendation and Interim scope agreement to CONTRACTOR.
	28 Mar 2012	Received NAPIMS approval for full scope contract award.
	14 Sep 2012	MTB approved VO-01 for splitting of pipe laying payment milestones into offshore and onshore components.
	17 Feb 2014	MTB deferred VO-03 approval of a mandate of 110% of Company Estimate to negotiate the acknowledged variation proposals (VPs) directing revision of mandate to 100% of Company Estimate.
	07 July 2014	MTB approved VO-04 to split contract payment milestones into mini-milestones without change in ACV.
	22 Sept 2014	MTB approved Part C1 of VO-03 for a revised mandate to negotiate the acknowledged variation proposals (VPs) to a maximum of 100% of Company Estimate
	10 Nov 2014	Received NAPIMS approval to close-out negotiation with CONTRACTOR on the acknowledged VPs.
	08 Dec 2014	MTB approved Part C2 of VO-03; and LDL for the outcome of the negotiation (F\$21.5m).
	20 Jan 2016	MTB approved Part C1 of VO-05; mandate to negotiate acknowledged VPs and extension of contract end date to 31 December 2017.
	29 Jul 2016	MTB approved Part C1 of VO-06; mandate to negotiate acknowledged VPs. The combined negotiations of VOs 5 & 6 were held on 26 August 2016 and 15-17 September 2016 and deadlocked.
	10 Oct 2016	MTB approved Part C1 of VO-06A; (1) A single mandate to negotiate the combined VOs 5 & 6; and implement the negotiation outcome, without recourse to MTB if mandate is achieved.
	03 Nov 2016	Line/CP approval of Negotiation outcome of VO-06A (Combined VO-05 & 06).
	13 Dec 2016	MTB approved VO-07 for split of contract payment milestones into mini-milestones without change in ACV; and direct payment to 2# Sub-contractors via TPAs.
	10 Oct 2017	MTB approved VO-08 for extension of CONTRACT end date till 30 th June 2019, and weather compensation for the diving operations on the subsea spool installation scope
	05 Mar 2018	MTB approved VO-09 negotiation mandate for the additional works and standby costs emerging on the ongoing installation of subsea spool installation works for the 18" & 24" Oil and AG export pipelines at NEFS.
	19 Mar 2018	MTB approved proposal VO-10 to: (1) descope some scope elements contract with no ACV reduction (2) negotiates substituted scope listed in submission to within 95% of company estimate.
	21 Dec 2018	MTB deferred VO-11 approval for proposed increase of contract price of the riser and topsides installation scope and directed a resubmission after work is resumed by contractor at site.
	04 Feb 2019	MTB conditionally approved VO-11 for proposed increase of contract price of the riser and topsides installation scope whilst maintaining overall contract price.
	16 May 2019	MCB final approval of VO-11 for proposed increase of contract price of the riser and topsides installation scope whilst maintaining overall contract price, plus direct payments to key service providers.
	19 Aug 2019	MCB approval to fully descope the contract, terminate, and pay off all outstanding services and salaries incurred till Aug-2019.
	14 Nov 2019	VO 12_MCB approval to make payments for se cost of demobilizing and close-out of the African Worker Barge TPA, settlement of FTO Commitments, negotiate standby charges for delays against dive spreads and time extension to April 2020.

Claims Review Board Submission

2. REASON FOR THIS CLAIM**CURRENT STATUS OF THE CLAIM**

The proposal to Negotiate with Hydrodive was re-presented to the CRB SPDC_CLA_21_03_1 on 15th March 2021 with the following request:

1. To negotiate to not more than 100% of CE, Hydrodive's claim for delays that occurred during the hook-up of FYIP 12 oil wells.

2. Use a one-off Purchase Order (PO) to pay Hydrodive, if mandate is achieved

Note: Since there is no contract between SPDC and Hydrodive, this claim will have to be settled purely as a Business Decision.

Amongst other queries and steers (See attachment 7 – CRM MoM), CRB posited that:

"..... the claims proposal is rejected except there is a clear steer from Legal and the company that this approach is the best approach for the company."

Also, on the 15th October 2021, Hydrodive sent in a letter of appeal (see attachment 8) to SPDC Management for their Claims to be considered and requested to be paid additional sum of \$471,186 and NGN49,911,169 to cover interest on late payments.

CMT met the above quoted CRB SPDC_CLA_21_03_1 condition, as it secured the following:

- Legal support (attachment 9) to settle the claims on the grounds that SPDC do have a moral obligation based on the encouragements to HD to continue the works when it wanted to pull out of site
- Business support (attachment 10) to *"settle the Hydrodive claim, based on a fair evaluation"*.

Based on this, CMT represented the submission to CRB SPDC_CLA_21_09 on 1st November 2021 wherein it was conditionally approved. The directives and close out status is detailed below -: ref MOM in attachment 13

UPDATE POST-CRB REVIEW OF NOVEMBER 1ST, 2021

The four directives from CRB SPDC_CLA_21_09 have now been closed out as outlined below.

S/N	Directives	Close out action	Relevant attachments
1	Team to review CE for consistency	Cost Estimating team reviewed CE – Revised estimate value - \$1,807,789.50	Attachment 3
2	Team to review with Lanre on NCD exposure	Engagement held with NCD manager and cleared to progress– see attachment	Attachment 14
3	Team to carry out the negotiation and revert with the outcome	Negotiation held, full and final outcome agreed.	Attachment 13 – Negotiation Mom
4	Team to share negotiation plan	Negotiation plan attached	Attachment 15

CMT also formally notified NAPIMS of the claim and their nomination for the negotiation session received – ref attachments 11 & 12

NEGOTIATION OUTCOME:

Negotiations have now been held with Hydrodive and the SPDC-JV team comprising SPDC and NAPIMS on 25th May 2022 and 3rd June 2022 where Hydrodive accepted SPDC-JV final offer of **\$1,800,000.00** as full and final settlement of all claims on the OPI contract. Detailed negotiation proceedings are captured in the MOM – see attachment 13

The negotiated sum is within the approved mandate at **99.57%** of the Company Estimate.

BACKGROUND OF HYDRODIVE CLAIMS (OPI OUTSTANDING INDEBTEDNESS TO HYDRODIVE)

Claims Review Board Submission

Hydrodive (HD) was the Dive sub-contractor on the project and the backbone for the successful hook up and production of the 7 oil wells on clusters 51A and 3A, as the scope was dive intensive. During the prolonged execution of the project, Hydrodive severally threatened to pull off the project claiming F\$4.67mIn (@\$1NGN =360) covering unsettled legacy debts (debts preceding the 7 wells hook-up), high losses and value erosion due to excessive non-productive down time (due to poor funding and logistics challenge from main Vendor) but was engaged by SPDC PMT to support the project to completion. In a resolution meeting facilitated by SPDC to forestall demobilization of the dive spread, Hydrodive offered OPI/TECHNIXS a discounted total value of F\$4.54mIn for the variations, and OPI/TECHNIXS accepted liability for the variation items but maintained that they were insolvent and unable to settle them. Subsequently, Hydrodive shared the variation, and which was reviewed by SPDC (Appendices 2 and 3) to arrive at a company view which was issued as Company Estimate to the Board Secretary.

The PMT's consideration for a mandate to negotiate Hydrodive's discounted claim is based on the following facts:

- a. The mandate being sought covers only payment for delays suffered by HD during the hook up of the 7 wells which are currently producing circa 12mbopd.
- b. Because of cash flow challenges, SPDC took on OPI and Technix's financial obligations to their subcontractors and settle these directly including the duration of overstay spent on site (subcontracts on day rates). HD is the only contractor whose overstay is yet to be settled because they were on Lump Sum price and could only recover these costs via variation/claim.
- c. SPDC directly paid all subcontractors that participated in the delivery of the 7 wells and HD is the last of these contractors to be so compensated.
- d. Although SPDC did not have a direct contract with HD, it however mediated in the OPI/TECHNIXS/HD engagements against HD leaving site when it wanted to do so, on account of OPI and Technix's inability to pay it. OPI pledged to settle the claims off subsequent earnings from the remaining scope on the contract via direct instruction to SPDC, which SPDC agreed to support. However, this did not materialize as the contract was terminated upon completion of 7 oil wells. SPDC therefore was constrained to make this pledge to HD to prevent the collapse of the wells hook up since HD was pivotal to the completion of the scope
- e. MCB had previously agreed (4th Feb 2020) for this cost to be considered for settlement via future additional works to hook up the balance 5 wells. However, that payment mechanism has fallen through as HD/WAOS will no longer hook up the wells and this proposal is now to settle this as a standalone cost.

The key elements of this variation proposal and PMT's review are as follows:

- i. Legacy debt from 18" and 24" Subsea spool installation at NEFS:
During sail out of the AW barge in November 2018, HD initially refused to mobilize their dive spread because of unpaid carry over debts of F\$1.8mIn from subsea spool installation works at NEFS, also executed under the contract. OPI committed to pay HD from the proceeds to be gained from the subsequent clusters' works and originally included this debt in their proposed milestone payments for the clusters' riser installation works. However, following SPDC intervention of direct payment to sub vendors on the riser installation works, OPI has not received any earning on the works and maintains they have no means of settling the HD debt. This variation item is rejected by the PMT as it is outside the scope of the riser installation works.
- ii. Standby costs of Non-productive time for Dive spread:
Hydrodive has submitted a variation for non-productive time and resultant standby costs incurred during cluster installation works for clusters 51A and 3A. These were largely attributed to adverse weather conditions unusually extreme for that period of the year, thus causing disruption of dive activities. Also, relocation of AW barge from Cluster 51A to cluster 3A was delayed by over a month due to non-availability of suitable AHT to access the shallow seabed at cluster 51A. HD submitted a total variation of F\$2.313mIn which the PMT has evaluated. See company estimate
- iii. Deployment of Additional divers:
Hydrodive submitted a variation of F\$0.4mIn for the deployment of additional divers over their contractual requirement in concurrence with SPDC Dive SME's request at Cluster 51A following a reassessment of the risks inherent in the shallow seabed. Hydrodive variation proposal for F\$0.4mIn has been evaluated and included in the company estimate.

Claims Review Board Submission

iv. Additional costs due to increased rate of crew changes:

Hydrodive submitted a variation of F\$0.4mln for the additional cost they incurred to ensure compliance with DPR's offshore crew rotation of 28 days max in the field as against 42 days stipulated in their contract with TECHNIXS. SPDC rejected this variation as it is a regulatory requirement.

The Company estimate done by the corporate cost estimating team has been sent separately to the CRB Secretary.

In the absence of a direct contracting relationship with Hydrodive, the following payment options were considered with Option 3 being proposed:

Table 2: Payment Options

S/N	Options	Pros	Cons
1	Pay through the OPI Contract	1. Payment will be referenced to the Original Contract. 2. It will provide a clear audit trail of payment.	1.It could jeopardize the ongoing litigation with OPI/Technixs 2.It might open an opportunity for other sub-Contractors that OPI &Technixs are indebted to.
2	Pay through FI	1.It is a faster payment process. 2.It will enable CMT to make payment without any reference to the OPI Contract	1.It will raise Audit red flag as FI is not meant for this type of payment. 2.The full RTP process will not be followed.
3	Use One off PO	1. It provides a payment vehicle to avoid the usage of the OPI Contract. 2.There will be no cost recovery challenge as there is a provision/accrual for OPI related claims/contract close out in OP21. 3.The One-off PO approval would provide Audit clarity as reference would be made to how the payment originated from the OPI Contract. 4.The PO would enable compliance to RTP process.	1.Since the Value is >F500k Auditors may ask for the NAPIMS approval. 2.The PO would not be linked to an agreement, and it could raise Audit Flag

3. Justification

This request would enable the full & final closure of the Hydrodive Claims and protect SPDC's integrity. Other key sub-contractors on the 7-Wells hook-up scope had been paid directly by SPDC during execution (since H1 2019), based on day-rates, in line with MCB approval. The hooked-up Wells average circa 12mbopd.

4. Financial Status

Original ACV	Current ACV	Commitments to date	Amount for this claim
FUSD	FUSD	FUSD	FUSD
372,336,240.00	403,114,510.80	245,320,982.73	1,800,000.00 *Negotiated sum

5. Basis of this claim

Is the claim based on established unit rates? For negotiations, show aspiration, fallback, and walk-away positions. Proposed Negotiation Team.

Aspiration 80% of CE

Fall Back 90% of CE

Walkway >100% of CE

6. Impact of this Variation





Describe any major impacts of this claims on business, explain budget coverage/offset, NPV calculation based on this claim (if applicable)

Payment would be made outside the contract ACV via one-off PO.












Claims Review Board Submission

Section B: Post Award Contract Management					
1.	Contractor Performance	Contractor performance under this contract including application of KPI's and review dates. Highlight any performance issues (including HSE management, NCD) and support required.			
	Construction works on the CONTRACT commenced in January 2012. The delay in the execution was mainly due to unfavourable weather windows, CONTRACTOR's cash flow challenges and inefficiencies. The contract was fully descope on 31st August 2019 due to non-performance, and contract termination process is ongoing.				
	<p>HSE statistics - zero LTI.</p> <p>Performance Assessment, rating based on Good/Adequate/Inadequate.</p> <p>Good: Fully satisfied expectations, met requirements without support; no identifiable improvements</p> <p>Adequate: Generally satisfied expectation & met requirements but needed support to ensure required performance was achieved</p>				
	<p>Performance Assessment, rating based on Good/Adequate/Inadequate.</p> <p>Good: Fully satisfied expectations, met requirements without support; no identifiable improvements</p> <p>Adequate: Generally satisfied expectations and met requirements but needed some support to ensure required performance was achieved.</p> <p>Inadequate: Contractor standard of performance below that needed for repeat business; severe deficiencies in service performance</p>				
	Management	Commercial	Technical	HSES	Overall
	N/A	N/A	N/A	N/A	N/A
2.	Contract Management	Highlight any contract management issues, e.g., training, documentation. HSE, NCD. List outstanding activities, action parties and target date.			
	Not Applicable as project execution was completed in 2019				
3.	Nigerian Content Execution Plan	Express the Nigerian Content Plan in % and their monetary equivalents in USD			
	Not Applicable as project execution was completed in 2019				

APPENDICES:

S/N	Description	Document
1	OPI Contract NG01011278 Financial exposures	 Appendix 1 NG01011278 Financial
2	Hydrodrive Initial Variation letter - 29 th Aug 2019	 Hydrodrive letter Appendix 1a.pdf
3	Hydrodrive Variation details and PMT view (including updated CE)	 HD CLAIM FIGURES AND CE.xlsx
4	Legal Opinion	 Legal view - HD request.pdf

Claims Review Board Submission

5.	Minutes of 15 th March 2021 CRB Meeting	 CRB Minutes of Meeting - Hydrodrive.x
6	Hydrodrive' s letter of appeal – 15 th Oct 2021	 Hydrodrive letter 15.10.21.pdf
7	Legal Support	 Legal support.pdf
8	Business Support	 GM COG support.pdf
9	Minutes of CRB meeting- 1 ST Nov, 2021	 SPDC_CRB_MOM-_2 1_09 - 1ST OF NOVEN
10	HD letter post CRB clarification – 19 th Nov 21	 FYIP - 19-11-2021 -1.pdf
11	SPDC letter to NAPIMS requesting nomination for negotiation – Mar 2022	 LETTER TO NAPIMS_MAR 22_CC
12	NAPIMS response letter with nominees for negotiation – April, 2022	 NAPIMS response_April 22.p
13	MOM of negotiation meeting – 25 th May and 3 RD June 2022	 MoM of Claims Negotiation Meeting -
14	NCD Manager steers and clarification	 NCD MANAGERS CLEARANCE.pdf
15	Negotiation plan	 Negotiation Plan for Hydrodrive.pdf