New York Law Journal
Real Estate Trends
WWW.NYLJ.COM
An ALM Publication
VOLUME 266—NO. 92
WEDNESDAY, NOVEMBER 10, 2021

CONSTRUCTION LAW

Construction Management Agreements: Setting the GMP

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Under the guaranteed maximum price (GMP) construction contract delivery method, great care and attention must be given by the owner and construction manager (CM) to setting the GMP, usually done by way of a "GMP Amendment." From the owner's perspective, the GMP should be all inclusive, leaving little room for increases in cost; from the CM's perspective, the GMP should allow for cost increases over which it has no control. A well thought out GMP will address both interests.

Timing of the GMP

GMP agreements are most often used when the owner requires a firm price prior to completing the plans for the project and before the purchase of all trades by the CM. This is usually driven by a lender or some other circumstances requiring an early maximum price. However, because the plans are not 100% complete and the trades are not 100% bought, a fair amount of cost estimation (and assumption of risk) is required by the CM in proposing the GMP. For this reason, both CMs and owners seek to limit the risk by deferring the setting of the GMP until greater price certainty can be established; thus, the GMP proposal by the CM is customarily not made until the plans are at least 80% complete and the trades are at least 80% bought. Waiting until this point is in the best interests of both parties and may reduce the amount of the contingency (discussed below) requested by the CM.

Elements of the GMP Proposal

The Plans and Specifications. The CM and its subcontractors are bound to perform the work in accordance with the plans and specifications prepared by the owner's design team, and a detailed enumeration of these documents is vital to establishing clarity for the required performance of the work. In addition to such enumeration, the CM will also provide qualifications and assumptions for itself and its subcontractors which may modify or detract from their obligations to conform to the precise letter of the plans. It is, therefore, incumbent on the owner to identify the areas of work that might be excluded by a particular subcontractor and arrange for the work to fall within the province of another subcontractor. Care should also be taken by the owner to identify any qualifications by the CM that might diminish its contractual obligations under the construction management agreement (CMA).

Trade Cost Breakdown. The CM's GMP proposal will include a list of the anticipated trade (subcontractor) costs, based on firm commitments or estimated costs. In addition to the trade costs there may be "allowances" and "holds." An allowance is a dollar amount set aside for an item of work not fully priced by the subcontractor because, for example, the plans for the work have not been finalized. Once the price is determined at a later date (after the GMP is set), any excess cost would be paid for by the owner as a change order. Any savings in final cost would, generally, revert to the owner. (Owners should carefully scrutinize

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allowances; if many allowances are included in the GMP, the GMP loses much force and might result in a "cost plus" arrangement.) A hold is similar to an allowance; however, any excess cost would be borne by the CM (for which the contingency would be available) and any savings would, generally, become part of the contingency.

General Conditions Costs. General conditions (GC) costs include the cost of the CM's personnel and laborers and related expenses, supplies, small tools and field office costs. Also, included within GCs may be "general requirements" consisting of site safety, security, scaffolding and snow removal. The GMP proposal should include a detailed listing of GC costs in a spreadsheet format, often referred to as a GC matrix, specifying each GC element and projecting the cost for the life of the project. Commonly, owners request a separate GMP for GC costs or a "GC Cap." Under this arrangement, the CM bills its actual GC costs, but the costs are subject to the GC Cap. (The cap would be raised in the event of, for example, owner directed change orders.)

Contingency. The contingency is an amount established for the CM's exclusive use to provide funds in the event the CM finds itself responsible for subcontractor or GC costs which were not anticipated at the time of the GMP Amendment, such as for missed trade buys, overtime or other costs incurred because of delays for which the CM or a subcontractor are responsible. The contingency is usually a percentage of the cost of the work, first set forth in the CMA and then converted to a dollar amount at the time of the GMP Amendment. (The contingency might also be increased by the trade buy savings; any remaining contingency might be shared between the Owner and CM at the end of the project.) We usually provide that any fees or insurance markups on funds taken from the contingency be taken from the contingency so that the GMP is not increased by the markups.

The Fee and Other Markups. The CM's fee (usually a percentage of the trade and general conditions costs) is customarily established in the CMA, as are markups for liability insurance and, where applicable, subcontractor default insurance. While the GMP proposal should reflect the fee and other markups under the CMA, we have found that the fee is often misapplied when the GMP proposal is presented by the CM. For example, the CMA might provide that the fee is not calculated on insurance, yet the GMP proposal adds fee to insurance. The fee may also be calculated on the contingency, but the CMA may provide, as noted above, that any fees on the use of contingency are to be taken from the contingency.

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The Project Schedule. The key to a successful project is on-time performance, and the best tool used to secure that success is the project schedule. The project schedule should identify, at a minimum, all major and critical components of the work, including all milestone and interim dates for pre-purchasing materials (including long lead items) showing relationships to project approvals and the procurement schedule; and the dates of commencement, substantial completion and final completion of each portion of the project.

The GMP. The foregoing monetary items are then totaled and constitute the GMP. While, in a perfect world, that should end the story, a myriad of events (from owner changes to unavoidable delays) can arise that would alter the GMP—usually upward. The task of the owner is then to monitor the GMP and the CM in order to reap the benefits of a true *guaranteed* maximum price.