

RHarper Consulting Update

Don't Let Your GMP be a Guaranteed *Minimum* Price Contract!

We often work with owners who have executed Guaranteed Maximum Price Contracts (“GMP”) for new construction or rehabilitation projects. Usually these owners’ primary business is not construction or real estate development, and their understanding of the GMP concept is often naïve and oversimplified – they believe, mistakenly, that maximum means maximum and the GMP figure is the most they will have to pay. Unfortunately for them, that is not always true – and cost overruns arise, with predictably tragic results for the owner’s budget.

How do GMPs Go Bad?

There are many reasons construction costs may exceed the contracted GMP amount. Some of the most common are:

- **Construction documents are not sufficiently developed to fully define the scope of the project at the time of bidding** – If a project is being “fast tracked”, there is pressure for the design team and contractor to pronounce the documents “good enough” for a GMP. Later, as the construction documents are completed, code review comments incorporated, and final detailing completed, the pricing the contractor and subcontractors have provided in the bid documents is open to legitimate change orders. Further, the project schedule is often negatively impacted if the scope change is significant enough, or if the original project sequencing must be changed.
- **Inadequate** - If the bid documents are not fully mature at the time of bidding, then the design team, contractor and owner must thoroughly review the bid documents, identify the areas to be covered by allowances, and provide adequate allowances to address the document deficiencies. Allowances are often a convenient line item to reduce or eliminate to get the project in budget. Later, once the design documents are complete, the allowance is insufficient and results in a change order.
- **Code research deficiencies** – Nothing is more frustrating than having a building ready for final inspection, then having the building inspectors point out code deficiencies resulting from poor code research by the design team. Using a third party code consultant for research and review can eliminate or reduce these costly surprises.
- **Owner program changes** – Once the building begins to take form, various stakeholders may wander through their particular area of interest and begin to lobby for changes that result in cost and schedule impacts. Usually, these same stakeholders were either not present during the preliminary designs or failed to review them adequately.

Steps You Can Take to Tame Your GMP

Some guidelines we suggest you follow when using a GMP contract include:

- **Develop the construction documents and bid packages as thoroughly as possible prior to bidding the GMP** - If schedule demands require the GMP be executed prior to completion of construction documents, then jointly develop a firm and mutually understood allowance schedule with the design team and contractor prior to execution.
- **Craft the construction contract, general conditions and supplementary general conditions to reflect the status of the project at time of bid** - If the documents are not complete at time of bid, then acknowledgements and disclaimers reflecting the deficiencies are required, along with a schedule for completion of the documents and anticipated schedule for final pricing.
- **Provide for adequate owner representation during the design and construction of the project** - The contractor has a full office and field staff, the design team has a construction administration staff, yet often the owner will abdicate their representation on the project to the architect (who has an inherent conflict of interest) or to a retired, part-time “clerk of the works.” Professional representation of the owners’ interests on a project is the most cost effective tool at the owners’ disposal for assuring the best outcomes relative to cost, schedule and finished quality – and for avoiding unpleasant surprises as the project moves forward.
- **Provide sufficient project contingency** – In spite of everyone’s best efforts at planning and execution, changes happen. While the contractor’s budget may include a construction contingency, those funds generally are not subject to control of the owner, or available for use to absorb code or program changes. The owner’s budget should have adequate contingency for scope and program changes.

The purpose of the GMP is to place the risk for completing the construction of the project within the cost and schedule constraints on the contractor. However, just because you have executed a GMP contract does not mean you have accomplished that goal. Bottom line: lock in as many costs as possible early in the process, ensure that you are adequately represented throughout, and... don't let your GMP become a Guaranteed *Minimum* Price contract.

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RHarper Consulting Group provides development consulting, program management, and owner representation services focused on the senior living and mixed use sectors. In addition, Mr. Harper is also a listed mediator and arbitrator providing dispute resolution services for the construction and real estate industries.



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