

2023 Texas School & Procurement Conference

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Austin, Texas



WHAT EVERY OWNER NEEDS TO KNOW ABOUT PROCURING CMAR & DESIGN-BUILD COST-PLUS FEE CONSTRUCTION CONTRACTS

("HOW TO MAXIMIZE VALUE RECEIVED")

Presentation by Debbie Townsend - November 30, 2023

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DEBBIE TOWNSEND

DATOWNSEND@RLTOWNSEND.COM
972-523-3115

R. L. TOWNSEND
& ASSOCIATES^{LLC}

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Position:

President at RL Townsend since 2012

Education:

BA in Accounting - California State University at Fullerton

Certifications:

CPA, CIA, CFE, CCA (Certified Construction Auditor)

Experience:

25 years conducting & managing construction
compliance audits

Majority of work is with Educational and Healthcare
organizations

RL Townsend & Associates, LLC: www.rltownsend.com

35 years assisting owners in controlling construction costs

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TOPICS COVERED:

01

RFP &
Contract RFP
Review

02

GMP
Assumptions &
Clarifications

03

Common Risks
& Oversights

04

Change Order
Language

05

Prevailing
Wage Rates

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CLASSIC ELEMENTS OF SUCCESSFUL PROJECTS:

Deliver project that meets the needs of the Owner

Deliver project on-time and within approved Budget

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OTHER ELEMENTS OF SUCCESSFUL PROJECTS:

Maximize the value received for amounts paid for construction

Minimize payments for costs that do not add value

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# of Projects	Budget	Type of Project
18	\$ 772,000,000	Cost Plus & DB Contracts
2	\$ 21,000,000	CSP
20	\$ 793,000,000	Total Construction
1	\$ 196,000,000	District Wide Maintenance
11	\$ 146,000,000	Admin Cost, Transportation, Computers, Minor Construction Projects
12	\$ 342,000,000	Total Non Major Construction
32	\$ 1,135,000,000	Total Bond Budget Allocation

EXAMPLE
BREAKDOWN OF A
\$1B 2017 BOND
PROGRAM

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RFP - KEY FIRST STEPS TO CONTRACTING SUCCESS:

Update your Standard CMAR and/or Design-Build Contract with the latest “Best Practice” business deal contract provisions

Update your Standard RFP Document to align with the terms of your updated contract

Always attach a copy of the contract documents you intend to use with your RFP documents and require responsive proposals

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REVIEWING THE RFP RESPONSES

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REVIEWING RFP RESPONSES & NEGOTIATING THE CONTRACT

REVIEWING RESPONSES - OVERVIEW

- Although the intent of the RFP is to obtain responses that are easily comparable, that is usually not what is received
- Proposals may be received with modifications to the amounts or percentages requested
- One common practice by contractors is to low ball the General Conditions Percentage or the Fee Percentage to appear to be the best value
- Once selected as best value, CM's may charge other costs which include hidden profit

Vendor Name	CMAR Fee	Pre-Construction Service Fee	General Conditions
CM RFP Response	2.50%	\$ 15,000.00	\$ 1,325,683.00
CM RFP Response	2.00%	\$ 7,500.00	\$ 800,000.00
CM RFP Response	1.95%	\$ 15,000.00	\$ 350,000.00
CM RFP Response	2.52%	\$ 7,500.00	\$ 801,965.00
CM RFP Response	3.20%	\$ 25,000.00	\$ 1,531,300.00

Beware of numbers which are a lot lower than others.
Ask Questions!

RFP & CONTRACT RISKS

AN EXAMPLE OF WHAT TO DO



PRECONSTRUCTION – WHAT DO YOU EXPECT AND HOW MUCH DO YOU WANT TO PAY?

- Consulting
- Prepare project schedules
- Recommendations regarding phased construction
- **Cost Estimates**
- Subcontracting & Supplier plan
- Procurement schedule
- Preparation of the GMP

CONTRACT LANGUAGE – FEE:

- § 6.1.2 The Construction Manager's Fee:
- *(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee)*
- **% of the Cost of the Work**
- We do not recommend changing this clause to Lump Sum or Fee on the GMP amount

CONTRACT LANGUAGE WITH A MAX ON GENERAL CONDITIONS:

- 6.1.5 f. **Actual costs for the items listed as the Project General Conditions** in Attachment “A” hereto incurred after acceptance of Construction Manager’s Guaranteed Maximum Price proposal and receipt of a Notice to Proceed with construction from the Owner and prior to Substantial Completion, provided that the Construction Manager shall only be entitled to payment for those items listed as Project General Conditions once, regardless of whether any of those items are also listed under any other provision of Article 6 describing the Cost of the Work. In no event, however, shall the total costs to be included in the Cost of the Work for the Project General Conditions exceed the Maximum PGC Costs specified in Attachment “A”. As used herein, the “Maximum PGC Costs” shall be as defined in Attachment A. **Any costs for Project General Conditions in excess of the Maximum PGC Costs shall not be included in the Cost of Work and shall be the responsibility of Construction Manager.**



CONTRACT LANGUAGE VS. GMP OR PROPOSAL

CONTRACT LANGUAGE ON WHAT IS AND ISN'T PART OF THE CONTRACT?

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the A201 General Conditions specifically referenced herein, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

GMP ASSUMPTIONS & CLARIFICATIONS (PT 1)

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; **additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies known to the Construction Manager between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;**

GMP ASSUMPTIONS & CLARIFICATIONS (PT 2)

§ 3.2.3.5 If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the

section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

EXAMPLE OF HOW ONE TEXAS CM CHANGES ISD CONTRACTS VIA THE GMP PROPOSAL:

Owner Contract Terms

- Not to Exceed General Conditions billed at Actual Cost
- General Requirements billed at Actual Cost
- Self Performed work billed at actual cost plus a fee
- Competitively bid Subcontract Lump Sum contracts
- Fee calculated on GC's & Cost of work.

Proposed Contractor Terms

- Lump Sum General Conditions
- Lump sum General Requirements
- Lump Sum Self Performed Work
- Lump Sum Subcontracts
- Lump Sum Fee





PAYMENT & PERFORMANCE BONDS

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BONDS IN TEXAS:

- Can be purchased by the CM at a higher rate and then given dividends/rebates at the end of the project
- Can be purchased by the CM at a rate net of dividends/rebates
- The bond is priced based on the GMP amount. If the GMP goes up or down, there will be an adjustment to the bond cost to the CM

Opportunity for Savings:

Possible Excessive Charges for Contractor Payment & Performance Bond

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FIXED % VS. ACTUAL COST FOR BOND:

Bond Calculations			
Description	Basis for Calc	Bond %	Amt to be Billed
Billed on Total GMP	\$ 100,000,000	1.00%	\$ 1,000,000
Billed on Actual Cost	\$ 98,000,000	0.60%	\$ 588,000
Difference			\$ 412,000
Fee @ 4%			\$ 16,480
Total			\$ 428,480

Opportunity for Savings:
Possible Excessive Charges for Contractor Payment & Performance Bond

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CONTRACT LANGUAGE EXAMPLE:

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

- 6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Dividends or premium refunds received by the Construction Manager for insurance or bond premiums for the project shall accrue to the Owner.

Opportunity for Savings:
Possible Excessive Charges for Contractor Payment & Performance Bond

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TRADITIONAL INSURANCE

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CONTRACT LANGUAGE EXAMPLE:

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

Opportunity for Savings:
Possible Excessive Charges for Fixed Insurance
Percentages

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EXAMPLE: GMP VS. ACTUAL INSURANCE COST:

Insurance Calculations			
Description	Basis for Calc	Bond %	Amt to be Billed
Billed on Total GMP	\$ 100,000,000	1.00%	\$ 1,000,000
Billed on Actual Cost	\$ 100,000,000	0.50%	\$ 500,000
Difference			\$ 500,000
Fee @ 4%			\$ 20,000
Total			\$ 520,000

Opportunity for Savings:
Possible Excessive Charges for Fixed Insurance Percentages

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WHAT INSURANCE IS REQUIRED VS. WHAT IS IN THE FIXED %?

Typical Coverages

General Liability
Workers Compensation
Auto Insurance

Builders Risk

Other Coverages

Cyber Insurance
Drone Insurance
Officer's & Directors
Professional Liability
Equipment Insurance
Pollution Insurance

Opportunity for Savings:
Possible Excessive Charges for Fixed Insurance Percentages

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CCIP – CONTRACTOR CONTROLLED INSURANCE PROGRAM

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WHAT IS CCIP?

A Contractor Controlled Insurance Program (CCIP) is an insurance program that protects the general contractor, its subcontractors and the project owner from third party general liability and worker's compensation claims.

Opportunity for Savings:
Possible Excessive Charges for Contractor
Controlled Insurance Programs (CCIP)

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EXAMPLE: CHARGE 2.5% VERSUS COST OF 2% FOR CCIP

Insurance Coverage	Contract Value	Max CCIP Rate percentage	Proposed CCIP Charges	Contractor vs. Proposed
Contractor Recommendation	\$100,000,000	2.50%		\$2,500,000
Worker's Compensation	\$100,000,000	1.00%	\$1,000,000	
General Liability	\$100,000,000	1.00%	\$1,000,000	
Combined WC & GL	\$100,000,000	2.00%		\$2,000,000
Difference				\$500,000
Fee @ 4%				\$20,000
Total				\$520,000

Opportunity for Savings:

Possible Excessive Charges for Contractor Controlled Insurance Programs (CCIP) Covering Insurance for Both the Prime Contractor and the Subcontractors

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CCIP CONSIDERATIONS AND QUESTIONS:

- Find out what it covers? Worker's Comp and General Liability or just one of the two?
- Get a copy of the policy for Risk Management purposes
- Find out who is covered and who opts out
- Try not to change insurance programs once the GMP is established
- It is generally billed on the total GMP (Not Precon)

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Volume of Project	\$ 45,945,000.00	
Estimated Payroll	\$ 8,622,721.58	
Cost of G/L at \$10.80294 / \$1,000 of volume	\$ 496,340.86	
Cost of W/C at \$4.26448 / \$100 of payroll	\$ 367,714.31	
Total Cost to be Billed from Carrier for WC & GL		\$ 864,055.17
% Rate	1.8806%	
Medical Trailers	0.0080%	\$ 3,675.60
Drug Testing	0.0050%	\$ 2,297.25
Safety Plan Development and Review	0.0150%	\$ 2,297.25
Payroll Analysis	0.0346%	\$ 1,172.19
Administrator's Fee (TSIB)	0.0095%	\$ 4,364.78
Claim Administration	0.0320%	\$ 14,702.40
Risk Console System – Liberty Mutual	0.0246%	\$ 11,302.47
FINAL RATE PER CONTRACT	2.0093%	
BILLED ON PAY APP#1 TO OWNER		\$ 923,164.00

EXAMPLE OF CM'S CCIP COST BREAKDOWN

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COST RECOVERY EXAMPLE CONTRACTOR CONTROLLED INSURANCE PROGRAMS (CCIP)

- During an audit of a \$450 million CMAR project
- CMAR included 2% CCIP charge on all subcontracts including \$50 million in subcontracts covered by conventional insurance
- Cost recovery totaled \$1 million



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WHAT CCIP USUALLY DOES NOT COVER

- Auto Insurance
- Professional Liability
- Offsite General Liability
- Pollution Insurance
- Equipment Insurance
- Builders Risk

Be careful how much you pay for these coverages



SUBCONTRACT DEFAULT INSURANCE (SDI)

WHAT IS SDI?

Subcontractor Default Insurance (SDI) provides coverage for economic loss incurred by a general contractor or construction manager caused by a default of performance of their subcontractor(s), including both direct and indirect costs.

Opportunity for Savings:
Possible Excessive Charges for Subcontract Default Insurance (SDI)

EXAMPLE: GMP VS. ENROLLED SUBCONTRACTS

SDI Calculations			
Description	Basis for Calc	SDI %	Amt to be Billed
Billed on Total GMP	\$ 100,000,000	1.20%	\$ 1,200,000
Billed on Enrolled Subcontracts	\$ 80,000,000	1.20%	\$ 960,000
Difference			\$ 240,000
Fee @ 4%			\$ 9,600
Total			\$ 249,600

Opportunity for Savings:
Possible Excessive Charges for Subcontract Default Insurance (SDI)

CONTRACT LANGUAGE EXAMPLE:

6.1.8 Construction Manager shall be entitled to reimbursement for that portion directly attributable to this Contract of premiums for insurance and bonds which Owner has required Construction Manager or subcontractors to maintain pursuant to the Contract Documents; provided, however, the bond rate shall not exceed the percentage for bonds as set forth in Attachment "A" hereto. If Construction Manager requires subcontractors to maintain payment and/or performance bonds, **or subcontractor default insurance, the cost to subcontractors of the bonds, shall be included in the Cost of the Work under this Contract only if Owner approves the inclusion in writing as part of the GMP Amendment, and only for enrolled subcontractors.** Construction Manager shall not be entitled to reimbursement for deductibles or co-payments. Construction Manager shall not be entitled to any additional markups on the costs described in this Subsection. The costs of insurance and bonds shall not be included in the Cost of the Work.

Opportunity for Savings:

Possible Excessive Charges for Subcontract Default Insurance (SDI)

CONSIDERATIONS:

- **Ask for a copy of the policy**
- Ask if it is a captive insurance program and who are the owners of the program
- **Find out who is enrolled and who will have traditional bonds**
- You may want to limit what you pay for:
 - Some owners only enroll subs with a subcontract value of \$\$ or more.
 - SDI generally does not cover self-performed work or related party work
 - You may want to eliminate any vendors where there is not risk...i.e. dumpster vendor, etc.
 - If a sub defaults, you should not be asked to pay for related costs.

Opportunity for Savings:

Possible Excessive Charges for Subcontract Default Insurance (SDI)

OPPORTUNITY FOR SAVINGS POSSIBLE EXCESSIVE LABOR & LABOR BURDEN COSTS

- The GMP should include:
 - a breakdown of the estimated General Conditions and Cost of Work labor cost by position, person, weeks/months and total.
 - a listing of billable rates by person including overtime where applicable.
 - a listing of what is included in the labor burden/fringes added to the base rate.
- Billings:
 - Labor should be billed by person at actual cost or periodically trued up to actual

EXAMPLE: ACTUAL VS. FIXED LABOR COST

Description	Totals Billed on Pay App	Allowable Cost Plus Fees Per Audit	Agreed to Credit
Payment and Performance Bonds	\$ 364,605	\$ 305,779	\$ (58,826)
Builder's Risk Insurance	\$ 49,154	\$ 49,154	\$ -
General Conditions Staff	\$ 1,894,153	\$ 1,589,980	\$ (304,174)
Subtotal General Conditions	\$ 2,307,912	\$ 1,944,913	\$ (362,999)
Contractor Controlled Insurance Program	\$ 1,110,505	\$ 1,099,611	\$ (10,894)
Subcontractor Default Insurance	\$ 592,382	\$ 456,789	\$ (135,593)
General Works	\$ 2,117,876	\$ 2,117,876	\$ -
All Other Subcontracts Per Audited SOV	\$ 42,975,213	\$ 42,975,213	\$ -
Subtotal Cost of Work	\$ 46,795,976	\$ 46,649,490	\$ (146,487)
CM Fee	\$ 1,651,284	\$ 1,634,611	\$ (16,673)
Total Construction Costs Plus Fee	\$ 50,755,172	\$ 50,229,013	\$ (526,159)

Opportunity for Savings:
Possible Excessive Charges for Fixed GC Labor

KEY CONTRACTS POINTS REGARDING CM LABOR:

- Do not agree to pay all-inclusive hourly rates

However,

- If you agree to all-inclusive hourly rates, always examine employee payroll registers and other records to verify rates paid and benefits provided



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6.1.2 The Cost of the Work shall include labor costs, consisting of:

- Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- Wages or salaries, **excluding bonuses**, of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement for the portion of their time spent working on this Project.
- Wages or salaries, **excluding bonuses**, of certain personnel stationed at the Construction Manager's principal office or offices other than the Project site office shall not be included in the Cost of the Work unless expressly approved as off-site personnel.
- Wages and salaries, **excluding bonuses**, of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, and with Owner's prior consent.
- Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under this Article 6.

Opportunity for Savings:
Possible Excessive Labor & Labor Burden Costs

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EXAMPLE: WHAT ARE YOU WILLING TO PAY?

■ **Auto:**

- Who receives an Auto Allowance? Typically, limited to Supt, PM, etc.
- How much is the Auto Allowance? \$800/mth vs \$1500/mth
- How is it charged? Typically, it is charged as an hourly rate based on time worked
- What is included in the charge?

■ **Fuel, Toll & Travel Charges:**

- Typically 100% of the fuel cost for GC personnel is billed to the project.
- Personal vs. Business expense
- Driving to and from home to the project site
- Per Diem, Hotel and other expenses

Opportunity for Savings:
Possible Excessive Charges for Auto, Fuel & Travel

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CONTRACT LANGUAGE EXAMPLE:

- On a \$12MM project, this clause saved the ISD \$44,000

4. The portion of reasonable travel and subsistence expenses of the Contractor or of its officers or employees incurred while traveling in discharge of duties connected with the Work. However, this does not include travel to and from the Site.

Opportunity for Savings:
Possible Excessive Charges for Travel and Fuel

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AGC Fees: (per google)

- General Contractor members pay service fees (assessments) on each and every general construction prime contract and construction management contract awarded to them. The service fee is approximately 1/10 of 1% of the contract amount, and the maximum annual assessment amount (aggregate) is \$50,000.
- **Among the services we offer as an organization include:**
 - Safety – We have a FT safety director who works with both GCs and subs on jobsites to help with safety issues and training. He offers regular classes throughout the year and AGC members get a reduced price
 - Advocacy – We represent the collective voice of the commercial construction industry in places such as the Austin City Council, school districts, state legislature and other public entities
 - Networking – We regularly offer networking/social events to help companies meet and establish business relationships
 - Education – We offer classes to educate the local industry, whether in safety, project management or other aspects of construction
 - Insurance – We offer Workers Comp, and 401(k) Plan for contractors through our outside partners who provide those services



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WARRANTY CHARGES:

- The contract includes a 1-year warranty
- Contractors may want to charge a % of the GMP for Warranty



Opportunity for Savings:
Warranty Charges

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WHAT ARE YOU WILLING TO PAY?

- **Types of Charges:**
- Hardware (computers, iPads, TV's, printers, etc.)
- Software On Site (internet connections, hot spots, Bluebeam, Microsoft, etc.)
- Software and hardware troubleshooting, home office software
- **Project Specific Software:**
- Procure = Estimated at .1% (100,000,000 x .1% = \$100,000)
- Textura = A % of the GMP plus each Subcontractor is billed \$50 to \$2500 depending on the contract value
- **It costs are billed in several ways:**
- As cost is incurred
- As a \$ amount per hour worked
- As a % of some basis

Opportunity for Savings:
Hardware & Software Charges

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EXAMPLE CONTRACT LANGUAGE REGARDING REIMBURSABLE IT HARDWARE AND SOFTWARE

- 7.6.6.1 The actual allocable costs of hardware related to personal computers, tablets and cell phones provided to employees working on the project will be considered reimbursable
- 7.6.6.2 The costs of software applications such as Microsoft Office Suite, Project Online, Blue Beam, Primavera Scheduling will be considered overhead and not considered reimbursable, and as such will be considered to be covered by the Construction Manager's FEE. Further any costs of BIM software, Information Technology support services, and any other Construction Manager data processing applications, accounting applications, and similar project management applications used by Construction Manager shall also be considered non-reimbursable overhead and covered by the Construction Manager's FEE.

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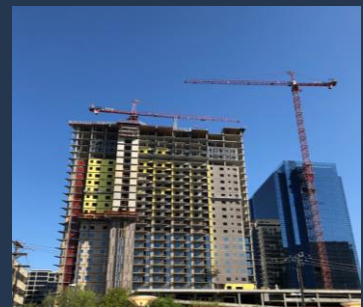


SELF-PERFORMED WORK – COST PLUS VS. LUMP SUM

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COST AVOIDANCE EXAMPLE NON-BID SELF-PERFORMED WORK BY PRIME CONTRACTOR

- On a \$100 million project, the Contractor proposed to Self-Perform Work for a Lump Sum subcontract amount totaling \$4 million
- Contract stated all self-performed work must be done as “Open Book” Cost Plus 7.5% Fee with a Guaranteed Maximum Price
- Audit Recommended leaving the Self-performed work subcontract as a Cost Plus with a GMP
- **Audited Cost Avoidance = \$1 million**



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§ 7.2.1.1 To the extent allowed by law, the Construction Manager may seek to perform portions of the Work itself by submitting a bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors (such work is referred to in this section as "Self-Performed Work"), subject to the following provisions:

1. Self-Performed Work is payable on a "cost"-plus-"fee" basis subject to an agreed-upon guaranteed maximum price, as follows:
 - (i) The "cost" is defined as costs for the following items, but only to the extent they are properly reimbursable as Cost of the Work under this Agreement: labor performed with Construction Manager's own forces, labor burden, materials, and equipment.
 - (ii) The "fee" is defined as an amount no more than 7.5% of the "cost." The "fee" defined in this Section 7.2.1.1.1(ii) solely applies to the "cost" under Section 7.2.1.1.1(i), and in no circumstances can it be applied as the fee for Work properly categorized as "Subcontract Costs" under Section 7.3.
2. The Construction Manager's bid or proposal shall reflect the requirements of this section and shall specify a guaranteed maximum amount for the Self-Performed Work. The Owner's obligation to reimburse for Self-Performed Work shall not exceed the specified and agreed-upon guaranteed maximum price for such Self-Performed Work.
3. This paragraph is intentionally left blank.
4. For purposes of defining Self-Performed Work, any division of Construction Manager, or any separate contractor or subcontractor that is partially owned or wholly owned by the Construction Manager, or any of Construction Manager's parent companies, employees, or employee's relatives will be considered a related party entity and any work performed by such entity will be considered Self-Performed Work by the Construction Manager.
5. No Self-Performed Work will be allowed to be performed on a lump-sum basis.
6. If the Construction Manager does not self-perform the majority of the scope of Self-Performed Work and as a result subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such work.

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EXCERPT FROM A I33 CMAR CONTRACT RECOMMENDED CLAUSE FOR SELF-PERFORMED WORK

§ 3.3.2.1.1 For scope of work bid packages typically performed by subcontractors, Construction Manager or their teaming partner, or their joint venture partner, may "self-perform" such work on a cost-plus fee (not-to-exceed seven and one-half percent (7.5%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Construction Manager must bid their proposed Work to be "self-performed" against at least three non-related party trade contractors submitting responsible bona fide bids and Owner will decide if such bid constitutes the best value for the Owner. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in the Agreement) plus a maximum of 7.5% self-performed work subcontract fee and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of the Agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under the Agreement and the Guaranteed Maximum Price of the Agreement. For purposes of defining "self-performed work" subject to this Contract provision, any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and not a non-interested trade contractor and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

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EXCERPT FROM A I 33 CMAR CONTRACT RECOMMENDED CLAUSE FOR SELF-PERFORMED WORK

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts approved to be awarded by Owner will be reimbursable as Cost of Work per this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1 and 3.3.2.2, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such self-performed Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work as a Guaranteed Maximum Subcontract amount and will be reimbursed on a cost plus subcontract fee basis with a guaranteed maximum for the proposed amount equal to the bid or proposal for the scope of work submitted in accordance with the terms of Section 3.3.2.1.1 which states that no self-performed work will be allowed to be performed on a lump sum basis.

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RELATED PARTIES

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RELATED PARTIES:

Resource to verify related parties:

<https://www.corporationwiki.com/>

Opportunity for Savings:

Possible Excessive Charges for Related Parties



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CMAR OWNS AND OPERATES A SUBSIDIARY THAT BUYS MATERIAL AND RE-INVOICES MATERIAL TO THE PROJECT AT PRICES THAT ARE ON AVERAGE 2 X THE ACTUAL MATERIAL COSTS

- During an audit of a \$25 million cost plus fee with GMP construction contract
- CMAR's subsidiary billed the project for approximately \$400,000 of doors and hardware they delivered to the project
- The estimated overcharge was at least \$200,000 on this project

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CONTRACTOR OWNED EQUIPMENT

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CONTRACTOR CHARGED APPROXIMATELY \$500,000 FOR CONTRACTOR OWNED EQUIPMENT

- DURING AN AUDIT OF A \$75 MILLION COST PLUS FEE WITH GMP CONSTRUCTION CONTRACT
- CONTRACTOR BILLED THE PROJECT FOR APPROXIMATELY \$500,000 OF CONTRACTOR OWNED EQUIPMENT RENTED TO THE PROJECT
- OWNER DEDUCTED \$250,000 FROM THE FINAL PAYMENT TO THE CONTRACTOR TO ACCOUNT FOR CONTRACTUAL CAP = TO EQUIP. PURCHASE PRICE

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CONTRACT SOLUTION: CONTRACTOR OWNED EQUIPMENT

The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed xx% of the fair market value of such equipment at the time of its commitment to the Work.

The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment.

Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment.

For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

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CHANGE ORDER LANGUAGE

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RFP/RFQ & CONTRACT LANGUAGE

KEY CONTRACT LANGUAGE ADDITIONS FOR CHANGE ORDERS TO THE A201 - 2017

- **The following additions to the standard language will help to minimize change order overcharges:**
 - Include the overhead and profit percentages for direct work and managing the work. Ex: Subcontractor vs. Sub Subcontractor
 - Change orders should be submitted with supporting documentation
 - The costs intended to be covered by the Overhead and Profit percentage should be listed. Ex: supervision, project managers and other general conditions items
 - Change orders should be priced based on estimates of actual labor, material and equipment costs

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**ORIGINAL CONTRACT
VS. CHANGE ORDER**

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PREVAILING WAGE RATES

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HOW TO AVOID SURPRISES:

- Make sure the RFP states there is a Prevailing Wage Rate requirement
- Make sure the Prevailing Wage Rate Schedule is included in the contract and/or Specifications
- **What does this prevent:**
 - Change orders asking for additional funding for prevailing wage rates
 - Confusion by subs and workers
 - Potential claims by workers

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RFP/RFQ & CONTRACT LANGUAGE – COST PLUS CONTRACT KEY CONTRACT LANGUAGE TO MINIMIZE RISK

- Use of the contingency should be reviewed and approved by the District. It should not be used for rework, subcontractor default costs or funding of an overrun of General Conditions
- Include a flowdown clause
- Include an Audit Clause
- Make sure your insurance requirements are clear



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SUMMARY OF POTENTIAL COST AVOIDANCE:

Description	Proposed by CM	Recommended	Cost Avoidance
General Conditions Staff (Fixed Vs. Actual)	\$ 5,000,000	\$ 4,500,000	\$ 500,000
Payment and Performance Bonds (Fixed vs. Actual)	\$ 1,000,000	\$ 600,000	\$ 400,000
Builder's Risk Insurance (Fixed vs. Actual)	\$ 300,000	\$ 200,000	\$ 100,000
Other General Conditions (Misc Costs)	\$ 700,000	\$ 600,000	\$ 100,000
Subtotal General Conditions	\$ 7,000,000	\$ 5,900,000	\$ 1,100,000
Contractor Controlled Insurance Program (2.5% vs. 2%)	\$ 2,500,000	\$ 2,000,000	\$ 500,000
Subcontractor Default Insurance (1.5% vs. 1.2%)	\$ 1,375,000	\$ 948,000	\$ 427,000
General Works (Lump Sum vs. Actual)	\$ 6,000,000	\$ 4,000,000	\$ 2,000,000
All Other Subcontracts (Change Orders)	\$ 80,000,000	\$ 79,000,000	\$ 1,000,000
Subtotal Cost of Work	\$ 89,875,000	\$ 85,948,000	\$ 3,927,000
General Conditions & Cost of Work	\$ 96,875,000	\$ 91,848,000	\$ 5,027,000
CM Fee 3.2%	\$ 3,125,000	\$ 2,479,896	\$ 135,729
Total Construction Costs Plus Fee	\$ 100,000,000	\$ 94,327,896	\$ 5,162,729

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“EVERYTHING IS NEGOTIABLE”
“TRUST BUT VERIFY”



Conduct targeted reviews of significant cost factors



Conduct detailed analysis of past and current costs when negotiating



Remember Costs Always Matter
...Eventually!

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THANK YOU!

Any Questions?

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