



National Association of Construction Auditors



# 2019 NACA CONFERENCE

**Park MGM ~ Las Vegas**

**September 9 – 11, 2019**

# **GMP Contracts:** Allowances, Contingency, Savings and other Considerations

**Park MGM ~ Las Vegas**

**September 11, 2019**

**Presented By: John L Wisz**

**WiszCo, LLC**



# What is a GMP Contract:

- **Cost Plus (a Fee) Contract with a “Cap” (i.e. NTE)**
- **Bottom line “Guarantee” only (not a Line Item)**
- **Billed on Cost incurred/Cost substantiated basis**
- **At project conclusion, Owner Pays LOWER of:**
  1. **Actual Cost + Fee (+ Savings)**
  2. **Guaranteed Maximum Price**
- **Final Accounting Required (by Contract)**
- **Transparent/open book/fully auditable**
- **Can be Competitively Bid or Negotiated**

# Items for Consideration (GMP Contracts):

- **Definitions of Reimbursable and Non-Reimbursable Cost (cost-based contract)**
- **Allowances**
- **Contingency**
- **Fee Determination**
- **Savings (if any) and related split (if Defined)**
- **Change Orders (contrasting effect on GMP contracts vs Lump Sum contracts)**

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*... is going to try and pull off a little magic act here. He's gonna try a little misdirection. He's going to astonish you with stories of rituals and dazzle you with official sounding terms like **Code Red.**"*

# You Want the Truth? You can't handle the Truth!



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# Definitions of Reimbursable and Non-Reimbursable Costs:

- **Labor and Labor Burden (Actual vs Rates)**
- **Equipment**
- **Misc materials**
- **Subcontracts (including related parties)**
- **Insurance and Bonds (or SDI)**
- **General Conditions/General Requirements**
- **Overhead and other Indirect Costs**



# Allowances:

- Need to be accounted for
- Need to be adjusted by Change Order (per Contract)
- Allowance Savings should not be credit to Contingency or comingled with overall project Savings. They need to be accounted for by a reduction to the Contract Sum (in a similar manner as overages would be accounted for as an addition to the Contract Sum)
- GMP contracts provide for an evaluation and “verification” of actual costs whereas Lump Sum contracts do not. In those cases, actual costs associated Allowances in Lump Sum contracts will need to be requested (since they are not the defined basis of compensation).

# Contingency: What is it? What is it for?

- It is an undefined pool of money unallocated to any particular line item
- To cover unknowns, unforeseeable or unanticipated events.
- Not for changes in scope, non-reimbursable costs, costs in excess of the GMP, excess Gen Cond's costs, etc.
- Established by contract, buyout savings (or both)
- Contract should provide for "approved use" and authorized by Change Order (not LIA's). -\$0- Dollar
- Disposition of remaining unspent Contingency Funds should be defined by contract and not commingled with "regular" Savings

# Fee Determination:

- **What is FEE? → Overhead (Indirect Costs) + Profit**
- **Percentage (%), Fixed or Hybrid?**
- **Fee Calc for Pricing vs Fee Calc for Cost of Work (and associated Billing)**
- **Fee Base Contract vs Change Order (See SOV Format)**
- **Fee Exclusions (Bonds, Insurance, Sales Tax, etc.)**
- **Nesting Issues (avoiding the circular reference in Excel)**
- **Get it “right” in the Contract (prior to Execution)**

# Savings:

- How are they achieved?
  - Construction “means and methods.” Labor efficiencies. Material purchasing savvy, etc.
  - Buyout Savings (Purchase and award of trade contracts)
  - Unspent Contingency
- Savings Calculation (defined contractually)
  - Shared Savings (when and how is it calculated)
  - What is “split-able?”
  - What are “Early Savings?”
- What should be done with unspent Contingency?

# Change Order Considerations:

- Is it worth the fight? We think so. But, we're in the minority (seemingly 😊).
- Know your contract. **After a change order is signed, what audit rights remain? The time conundrum.**
- The Big 4: Labor Units/Hours; Labor Rates; Material Quantities, Material Prices.
- Markup Fee %'s – what's normal, what do they cover? **Mark up Fee = Overhead and Profit**
- See prior presentations from 2012 and 2016 (included with package)

# Contract Administrative Considerations:

- Summary page summarizing the key business terms:
  - Contract Date
  - Contract Amount and Basis of Compensation (Lump Sum; GMP; Unit Price, etc.)
  - Unit Prices and Labor Rates for Extra Work (Change Orders) – **\*\* with “Caveat”**
  - Change Order Mark Up %’s for OH&P
  - Allowances and accepted VE included in Contract Sum
  - Insurance, Bonding and/or SDI Provisions, as applicable
  - Alternates not included in the Contract Sum
- Contract Financial Summary (in additional to a Schedule of Values); **Obtain/retain native file format (Excel)**
- Establishment of acceptable Payment Application format for billing purposes **NOTE: ORIGINAL SCHEDULE OF VALUES**
- Narrative of INCLUSIONS and EXCLUSIONS (Exhibit)

# GMP Contract Considerations:

- **Sandbagging:** *The strategy of lowering the expectations of an organizations strengths and core competencies, in order to produce relatively greater-than-anticipated results*

## Phase GMP (Build as you go) Example:

**Buyout Savings**

**Unreconciled/Unaccounted Allowances**

**Untethered Costs**

**Added Contingency**

**Added General Conditions**

**Savings Split**

**Result → Laugh Out Loud on the way to the Bank**

**Questions,  
Comments or  
Thoughts?**



**John L. Wisz**  
Principal

**WiszCo, LLC**

9446 Hilldale Drive  
Dallas, TX 75231

**[www.wiszco.com](http://www.wiszco.com)**

**(214) 221-3371**

**[john.wisz@wiszco.com](mailto:john.wisz@wiszco.com)**

