

Pick Your Poison, Construction Contracts and Potential Risks

Live Webinar

Thursday, June 25, 2020
11 a.m. – 12 p.m. Central Time

Presented by:



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Agenda

- Housekeeping
- Audience engagement in today's webinar
- Guidelines for earning CPE credit from NACA
- Recap learning program and learning objectives



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Program Summary

A comparison of the different types of Construction Contracts and Potential Risks
– A cheat sheet for Owners

Learning Objectives

1. Fixed Price/Lump Sum
2. Unit Price
3. Cost Plus GMP
4. Time & Materials



Fixed Price/Lump Sum Contracts

What is a Fixed Price/Lump Sum Contract?

This is where the Owner agrees to pay the General Contractor (GC) a specified amount for services provided by the GC.

Services can include, project management, construction, etc.

Potential Risk Areas

1. Percentage of Completion

- ❑ Difficult to audit unless conducted as the project is happening (physical progress)
- ❑ Review the process to ensure Percentage of Completion is not inflated

2. Quality

- ❑ Difficult to audit unless the auditor has the technical skills and knowledge
- ❑ Review the process to ensure inspections are occurring and specifications are being met

Potential Risk Areas

3. Change Orders

- ❑ Largest opportunity during an audit for potential cost recoveries
- ❑ Must determine if the change request is out of scope of work
 - Ask if the change is Contractor driven or Owner driven
- ❑ Select a sample or audit the entire population
- ❑ Closely audit the usage of all contingencies and the supporting documentation



Unit Price Contracts

What is a Unit Price Contract?

This is where the Owner agrees to pay the GC a specified price for each unit installed (e.g. cubic yard of concrete, linear foot of pipe/cable etc.) provided by the GC or Trade.

Potential Risk Areas

1. Units Installed

- ❑ Difficult to audit for some units being measured unless done in real time
- ❑ Largest opportunity for volume/quantity discrepancies
- ❑ Technical skills and knowledge preferred to perform actual measurement of units installed (concrete, piping, cable, etc.)
- ❑ Review the process to ensure completeness and accuracy of quantities and measurements

Potential Risk Areas

2. Change Orders

- ❑ Largest opportunity during an audit for potential cost recoveries
- ❑ Must determine if the change request is out of scope of work
 - Ask if the change is Contractor driven or Owner driven
- ❑ Select a sample or audit the entire population
- ❑ Closely audit the usage of all contingencies and the supporting documentation



Cost Plus GMP Contracts

What is a Cost Plus GMP Contract?

This is where the Owner agrees to reimburse the Construction Manager (CM) for actual project material and labor costs incurred by the CM, as well as a specified amount (in the form of either a fixed fee or a fixed percentage of the contract cost) for CM overhead and profit (i.e., “compensation”). A Guaranteed Maximum Price or GMP establishes a “cap” or “target price” for project costs.

Potential Risk Areas

1. Construction Manager Fees

- ❑ Ability to audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs)
- ❑ Determine if the fee was calculated per the contract terms (i.e. on the cost of the work)
 - Original Scope Work
 - Change Order Work

Potential Risk Areas

2. General Conditions

- ❑ A large area for potential cost recovery
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs)
- ❑ Audit the backup/documentation to support all costs invoiced

Potential Risk Areas

3. Self-Performed Work

- ❑ Another area for potential cost recovery
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics when possible
- ❑ Audit the backup/documentation to support all costs invoiced
 - Labor – include burden
 - Materials
 - Equipment
 - Expenses

Potential Risk Areas

4. Subcontractors

- A large area for potential cost recovery
- Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs)
- Evaluate whether they billed more than contracted for
- Audit the backup/documentation to support all costs invoiced
- Verify that the fee is being calculated correctly according to the contract guidelines

Potential Risk Areas

5. Risks involving Change Orders and Quality may be present in a GMP Contract as well if a cap/target price has been negotiated. However, it is not as large of a risk as a Lump Sum Contract



Time and Material (T&M) Contracts

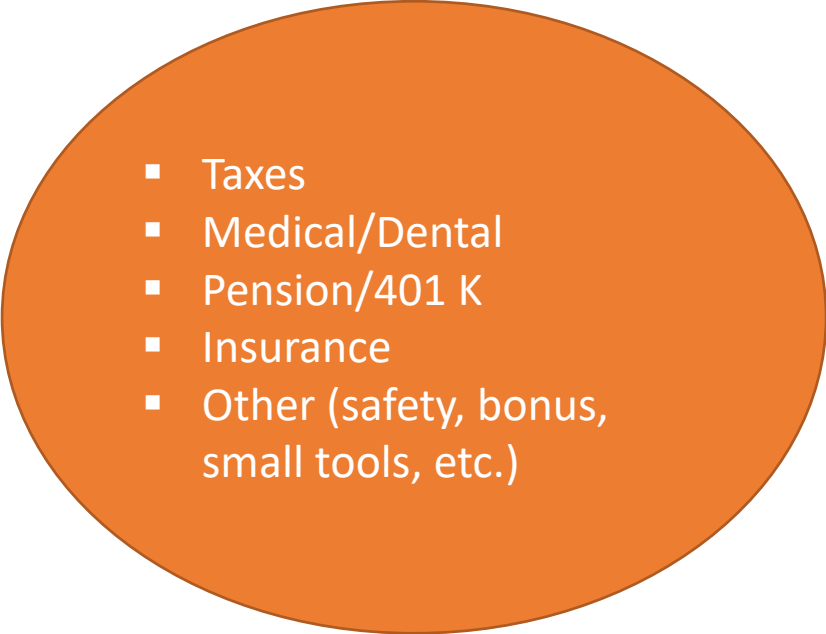
What is a Time and Material (T&M) Contract?

This is where the Owner agrees to pay the GC agreed upon rates for time incurred and material costs for all work performed by the GC. Fees are also negotiated between the Owner and GC and applied in addition to the cost of work.

Potential Risk Areas

1. Labor Burden

- ❑ Determine components of labor burden – accruals/percentages

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- Taxes
 - Medical/Dental
 - Pension/401 K
 - Insurance
 - Other (safety, bonus, small tools, etc.)

- 
- Vacation
 - Sick day
 - Holiday
 - Vehicle
 - Training
 - Phone

Potential Risk Areas

2. Labor

- ❑ One of the largest opportunities during an audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Evaluate if labor hours and rates (including burden) were invoiced per the fully executed contract terms

- Rates (hourly, monthly, etc)
- Job Classification
- Exempt/Non-exempt
- Taxes (FICA, SUTA & FUTA)
- Vacation Days

- Sick Days
- Holidays
- Weekends
- Overtime & Double-time
- On/Off Duty Time

Potential Risk Areas

3. Equipment

- ❑ Another great opportunity during an audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Evaluate if equipment was billed appropriately
 - Rates (hourly, daily & monthly)
 - Type
 - Quantity
 - Hours
 - Operator
 - Onsite/Offsite
 - Rentals (contractor owned or 3rd party)
 - Purchases

Potential Risk Areas

4. Expenses

- ❑ One of the largest opportunities during an audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Determine if the expenses invoiced are reasonable and appropriate

- Accruals
- Projected Costs
- Charge Backs
- Adjustments
- Markups
- Bonuses
- Incentives
- Permits
- Team Building Events

- Certifications/licenses
- Repairs
- Safety equipment/gear
- Mileage
- Fuel
- Surcharges
- Credits
- Discounts
- Outings

Potential Risk Areas

4. Expenses (continued)

- Gifts or Gift Cards
- Insurance (employee health, workers comp, auto liability, etc)
- Training
- Cell Phone/Smart Phone/Walkie-Talke
- Meals (also snacks and drinks)

- Travel (air, hotel, car, per diem, parking, tolls, etc.)
- Relocation/Moving
- Recruiting
- Entertainment
- Materials
- Tools
- Equipment
- Car/Truck/Vehicle

Potential Risk Areas

5. Allowances

- ❑ An opportunity during an audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Evaluate if allowances were billed along with the expense

- Relocation
- Office Supplies
- Data Processing
- Mobile Phones
- Safety Program
- Vehicles

Potential Risk Areas

6. Rework / Warranties

- ❑ An opportunity during an audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Evaluate if work was previously performed then billed again in error

Potential Risk Areas

7. Insurance / Bonds

- ❑ Audit for potential cost recoveries
- ❑ Audit all payment applications or select a sample of payment applications (depending upon the Owner's wants and needs) using data analytics
- ❑ Determine the following:
 - Insurance/bond costs incurred were less than billed
 - Insurance/bonds billed were actually obtained
 - Insurance/bonds refunds/rebates were actually credited back to the project at close out



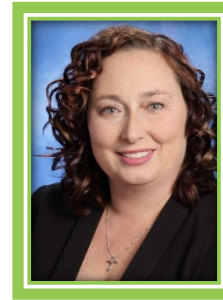
Question & Answer

Closing Comments and Announcements

Contact Information of Today's Presenters



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