

9 Practical Contracting Tips to Help Bring Your Project in On-Time and On-Budget

Wisconsin Counties Association

January 23, 2017

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1. Control bids from subcontractors to bring a project in below the Guaranteed Maximum Price (“GMP”)

- A contractor may win a bid with the lowest Guaranteed Maximum Bid but it has a financial interest in bringing a project in as close to that GMP as possible, rather than under it, because its fee is often a percentage of the cost of the work.
- Modify the contract to require sealed bids from multiple contractors that are given directly to the owner. Specify the amount of mark-up the contractor may receive on the subcontractor’s invoice. Require that no contractor fee be taken on the mark-up.

Control bids from subcontractors to bring a project in below the Guaranteed Maximum Price (“GMP”) (Cont’d)

- *Practical suggestion*: The review of the bids by an owner’s representative may reduce your cost if you do not have an experienced in-house facilities group who know material and labor costs. The rep may find that all of the bids are above market and recommend a sub that can do the work for less.

2. Control the cost of self-performed work

- The contractor may self-perform work rather than have a subcontractor do it (for example, installing dry-wall).
- The standard AIA contract allows the contractor to self-perform work at a cost that is not subject to competitive bidding. This can be a profit center with inflated costs for the work.
- Recommend the contractor bid on self-performed work with other subs in the sealed bid process.
- *Practical tip:* If this change of the AIA contract is not possible, use an owner's rep or your experienced facilities group to assess the charges.

3. Control the cost of contractor supplied rental equipment

- It is typical for a contractor to supply the project with equipment that it owns and charge a rental rate for the equipment. This is another profit-center for the contractor.
- The standard AIA contract allows the contractor to charge whatever it wants.
- There are many modifications that must be made to this section to control costs. One common modification is to tie the contractor's rental rates to the AED (Associated Equipment Distributors) Green Book of national rental rates for equipment.

Control the cost of contractor supplied rental equipment (Cont'd)

- *Practical tip*: Sometimes it's cheaper to buy a used machine than pay for rental charges. The rental rate section is one of the most heavily modified sections because there are so many ways to lose money in equipment rentals.

4. Control the cost of Change Orders

- Change Orders modify the scope of work that is being done and may increase the GMP and extend the construction schedule.
- The standard AIA contract has no real controls on the cost of a Change Order. Change Orders are probably the single most popular way for a contractor to increase the agreed upon GMP. It is a substantial profit center. Contractors can inflate the cost of labor and materials and take substantial mark-ups.
- Recommend the contractor's mark-up on Change Orders. Also see "General Requirements", which is a topic that crosses over into this one.

Control the cost of Change Orders (Cont'd)

- *Practical tip*: We encourage owners to spend more in the pre-construction phase with actions such as team meetings with HVAC, electrical and other major subcontractors. These meetings tend to significantly reduce the amount of Change Orders encountered during construction. In addition, we strongly recommend that an owner have the clarifications and assumptions in the GMP amendment professionally reviewed to avoid Change Orders during construction for items the owner thought were included.

5. Control the cost of General Requirements (also referred to in the trade as “General Conditions”)

- General Requirements are the cost of items needed for the construction process (portable toilets, fencing, etc.) and the cost of supervisory personnel. It is also a profit center.
- The standard AIA contract puts no limits on General Requirements. It is not bid out and the contractor can increase the cost during construction.
- General Requirements should be fixed as a lump sum when the GMP Amendment is signed.
- *Practical tip:* Do not permit additional General Requirements to be added to Change Orders unless it can be demonstrated that the Change Order actually increases the cost of the General Requirements.

6. Control costs and time in the Dispute Resolution Process

- The Standard AIA contract requires the parties to refer the dispute to the Initial Decision Maker, then enter into non-binding mediation, with the American Arbitration Association as the default mediator, and, if that fails, to binding arbitration, with the American Arbitration Association as the default arbitrator.
- This process is so long, so unfavorable and so expensive to the owner as to prevent most owners from starting it and to give up on claims. The contractor, on the other hand, merely has to stop working if the owner fails to make payments to enforce its claims. No owner can afford a stoppage of the work.

Control the cost and time in the Dispute Resolution Process (Cont'd)

- The entire section should be deleted and provisions should be inserted allowing the owner to choose litigation or binding arbitration with agreed upon timelines for each phase of the process.
- *Practical tip:* Require the litigation to be held in the circuit court of the county where the owner is located.

7. Control the use of the plans and specifications

- The architect owns the plans and specifications it develops for a project in the standard AIA contract. The contract provides that the owner must use the same architect if it renovates the building in the future or the owner cannot use the plans and specifications and cannot update them. The owner cannot easily choose the best architect for the renovation under these terms.
- Obtain a permanent license to do what the owner wants (regardless of any payment to the architect) and delete the requirement that the same architect must be used if the plans and specifications will be modified

Control the use of the plans and specifications (Cont'd)

- Practical tip: Always require a record set of plans and specifications from the architect when the work is done. These are updated to show all of the modifications to the documents that were made during construction. It is essential to have the record drawings to guide future work on the building safely and with a minimum of cost.

8. Obtain builders risk insurance that conforms to the contract

- The standard AIA contract requires the owner to obtain builder's risk insurance and, if the owner doesn't do so, the contractor will obtain it and charge the cost to the owner. Builder's risk insurance will pay for damage to the building by such causes as fire, regardless of how the fire started. It permits the project to proceed since it pays for the repairs. Otherwise, the project could be stalled for years while the matter is litigated.

Obtain builders risk insurance that conforms to the contract (Cont'd)

- The contract requires the insurance to be maintained until the later of final payment or until no one working on the project (contractor, subs, etc.) has a financial interest. These requirements are often at odds with the insurance owners carry. Revise the contract to conform to the coverage requirements of the owner's policy. Otherwise, the owner could be liable to pay for an uninsured loss.
- *Practical tip:* Sometimes an owner's existing policies of insurance allow the addition of builder's risk for all projects undertaken by the owner so an owner does not have to insure each project separately.

9. Do not wave consequential damages

- Consequential damages are the damages an owner incurs in addition to the costs of repairing or replacing damaged property. For example, if a new building will not open on time because of the contractor's negligence, the owner may have to rent interim space, pay movers, install temporary wiring and IT equipment, etc.
- The standard AIA contract transfers the cost of consequential damages arising because of the contractor's negligence to the owner. Although consequential damages are much rarer than direct damages, if it happens it is very difficult to explain to an owner's constituency why they are paying for a contractor's negligence.

Do not wave consequential damages (Cont'd)

- Modify the provision so that damages are not waived by the owner.
- *Practical tip*: Sometimes it's acceptable to cap the damages to the limits of the contractor's insurance. Obtain expert advice to make these modifications.

Questions

