

ICSC 2015 OH, KY, IN, MI & PA
Retail Development and Law Symposium
Hilton Columbus / Polaris
Columbus, OH

“Project Delivery: What is a GMP and How Do I Use It?”

Roundtable Discussion A

Erin Luke
Thompson Hine LLP
Cleveland, Ohio

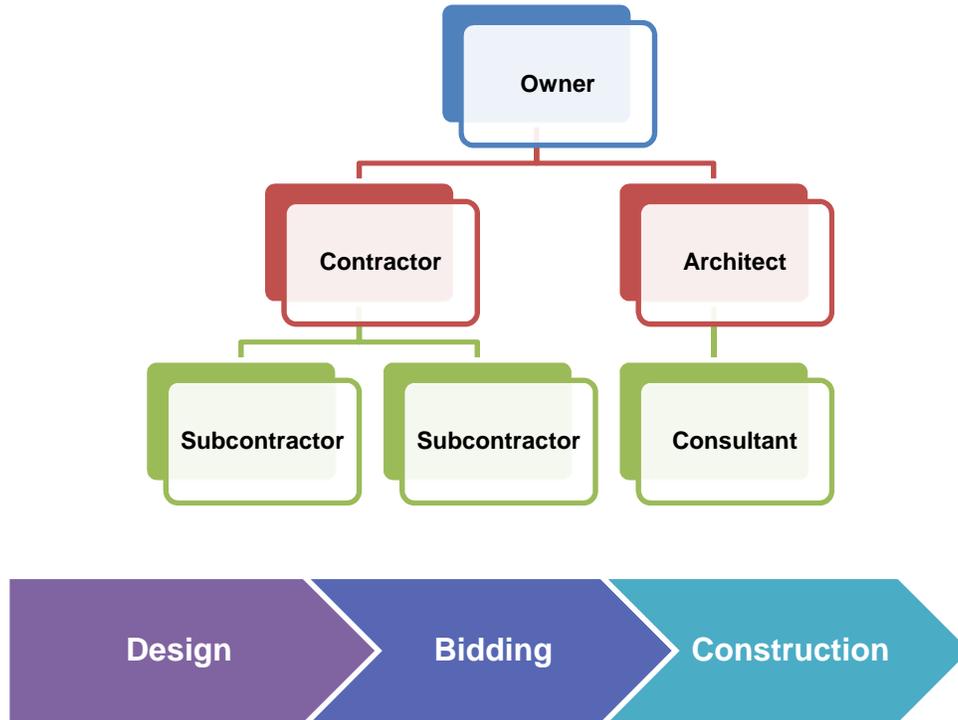
What compensation model is best for your construction project? This discussion will highlight features of different project delivery methods, focusing on a “Cost of the Work with GMP” compensation approach. The guided discussion will identify how a GMP works and why it differs from other compensation models. We will also explore different methods for GMP development to achieve better pricing and cost control on construction projects.

This presentation may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel. This document may be considered attorney advertising in some jurisdictions.

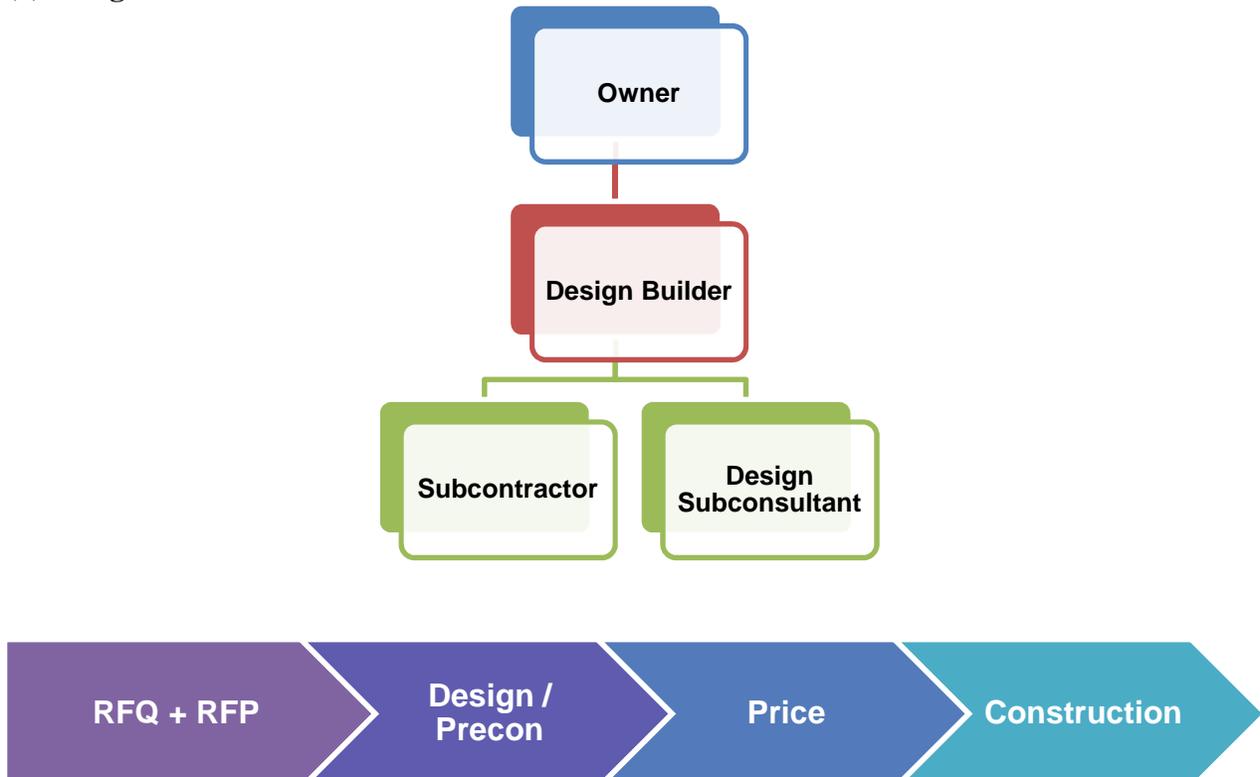
© 2016 THOMPSON HINE LLP. ALL RIGHTS RESERVED.

Project Delivery Models

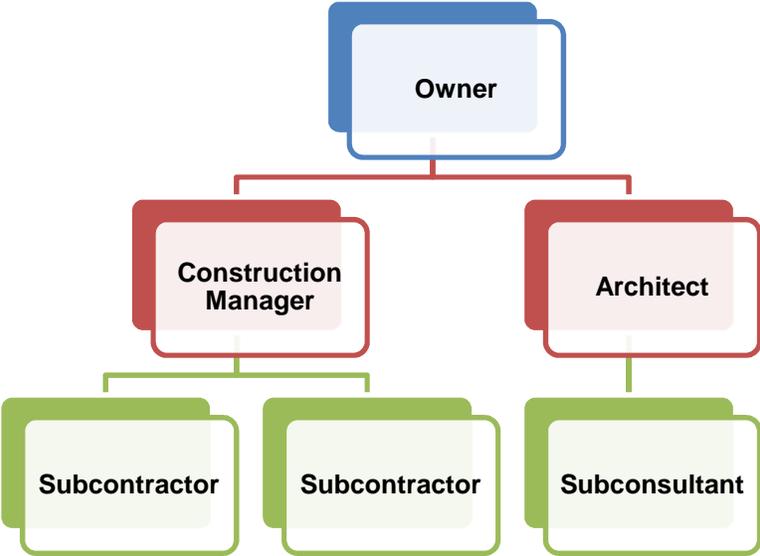
(1) Design-Bid-Build



(2) Design-Build



(2) Construction Manager At-Risk



Compensation Models

Lump Sum: Owner pays the contractor's price, no audit. Contractor bears risk on price and gets benefit of savings.

Cost of the Work: Owner pays the cost plus a fee, auditable. Owner bears risk on price and gets benefit on savings.

GMP: Owner pays the cost plus a fee subject to a "guaranteed maximum price," auditable. Contractor bears risk on price, and Owner gets benefit of savings.

- "Guaranteed": Contractor takes risk on price by setting the ceiling
- "Maximum": The ceiling may increase due to owner changes, unforeseen conditions

GMP Pricing Notes and Tips

Timing: The more detailed the drawings, the more accurate the GMP, and the less risk to both parties. Typically, GMP set at end of design development

Scope: The contractor will soften the GMP with qualifications and assumptions, the owner will narrow the exceptions.

Alternates and Allowances: These create flexibility in the GMP. The contractor will enlarge and the Owner will trim. Alternates are typically lump sum items the Owner may select later. Allowances are typically at cost and the overrun or savings go to the owner.

Contingency: It is typical to establish a contingency fund as a placeholder in the GMP to pay for unforeseen problems. The fund can be tapped by contractor and reverts to owner at completion.

Savings: If the cost of the project is ultimately less than the GMP, contractors may ask to share in the leftover funds. The parties negotiate a split. Ensure that savings are "earned" (i.e., resulting from contractor's efficiency), not just left over "fluff" from a high bid.

ERIN LUKE - Erin is a member of Thompson Hine LLP's construction practice. She has represented owners, developers, contractors and design firms in large-scale domestic and international projects (including the Middle East) in a broad range of industries including hotels and leisure, energy and infrastructure, health care and long-term care, commercial construction including schools and office buildings, and civil construction including airports and mass transit systems. Erin's practice has focused on negotiating and drafting construction, design, development, trade and consulting contracts for a variety of construction and real estate transactions. In addition, she has prosecuted and defended a full range of construction disputes through arbitration, litigation and alternative dispute resolution. She earned her law degree from Saint Louis University School of Law with a Certificate in International and Comparative Law.

Erin is not licensed to practice law in Ohio; she is licensed only in Missouri, Illinois and Texas.