



Negotiation Exercise:

You will participate in this event in groups of 4 and will be randomly assigned one of the following roles:
Owner - a private developer active in the region, and the company is what's known as a "serial builder" – i.e. it usually has one or more projects under construction and several more in the offing.

Architect - the design professional of choice for the Owner, although there is much competition for the Owner's work and the Owner has sometimes used other design professionals for more routine projects.

Contractor - has had one successful project under its belt for the Owner, but the Owner has used other contractors for its work.

Subcontractor - has recently begun to use negotiated Cost Plus GMP contracts for its work with the GMP determined later as the design is developed, and the GMP is added to the contract by an amendment.

****It is important that you take time to prepare to represent the interests of all of these roles since you could be called upon to play any 1 of them.**

This Project is construction of an apartment building. It was on a tight schedule and like many fast track projects, the design was not fully developed when the GMP was signed. The design documents were about 60% complete, and GMP amendment stated that the Contractor's price included all design development that was reasonably inferable from the state of the design documents at the time the GMP amendment was executed.

The Contractor's Mechanical Subcontractor reviewed the final Construction Documents when they were issued several months after the GMP amendment was executed. The Subcontractor thought the Construction Documents included material changes that couldn't have been reasonably anticipated from the documents on which the GMP was based. The Subcontractor told that to the Contractor and Architect in a weekly job progress meeting, but the Subcontractor did not give the Contractor a written notice that the Subcontractor would be seeking a cost or time adjustment to its subcontract. Six months later in the project, the schedule was being delayed because of the additional work that the Subcontractor claimed was in the Construction Documents. When the Owner expressed concern that the grand opening of its apartment building looked like it was going to be delayed, the Subcontractor provided written notice of its claim for additional cost of \$500,000 for what it claimed was added, out-of-scope work to the HVAC work, and a schedule extension request for Substantial Completion of an additional three months.

The Contractor did not pass the request upstream to the Owner and Architect for fear of the reaction. Two months later, the Contractor passes the Subcontractor's written notice to the Owner, and the Contractor received in return what it expected. The Owner threatened to assess lost rent damages and denied the claim for a schedule extension and the request for more money. As a result, the

Subcontractor ran double shifts with extended overtime for three months, recaptured the claimed delay, and incurred additional acceleration related costs of \$100,000.

The project is now completed, but the Subcontractor will not give up its claim for \$600,000 – i.e. the \$500,000 for what it claims was out-of-scope work and \$100,000 for acceleration costs it incurred when the Owner would not extend the date for Substantial Completion. The Architect and Owner contend the additional work being claimed by the Subcontractor was reasonably inferable from the GMP documents. The Owner's position is that even if the Architect added HVAC scope, the Architect should pay for the claim because the Owner didn't authorize an increase in scope beyond what would be covered in the GMP. The Architect argues that it showed the final plans to the Owner and the Owner was the one that insisted on including what the Subcontractor claims is additional scope. The Owner also relies on the requirements in the contract between the Owner and the Contractor stating that any claim for additional time or money must be made within 30 days of discovery of the problem or the claim is waived. There is a flow down clause in the subcontract stating that the Subcontractor owes the Contractor whatever duties and obligations the Contractor owes to the Owner in the Owner/Contractor contract. The Contractor never provided the Owner/Contractor contract to the Subcontractor. Half of the \$500,000 claimed by the Subcontractor was work that was required by Code. This job has already been a loss for the Subcontractor without consideration of its claim. Before the Contractor files for arbitration of the claim, it schedules a negotiation session with the Owner, Architect, and Subcontractor to see if the claim can be resolved.

Role play your assigned role:

CEO of the Owner

Architect

Contractor

Subcontractor

Can you negotiate a resolution of the claim?