

SINGAPORE CONTRACTORS ASSOCIATION LIMITED

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AN OVERVIEW OF GUARANTEED MAXIMUM PRICE (GMP) CONTRACTS

presented by

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WHAT IS A GMP CONTRACT?

- There is no universally accepted and common definition of a GMP contract
- Various expressions have been used to describe GMP contracts
- Examples - “price cap”, “no upward price adjustment”, “price cannot be exceeded”, “fixed price guaranteed”

WHAT IS A GMP CONTRACT?

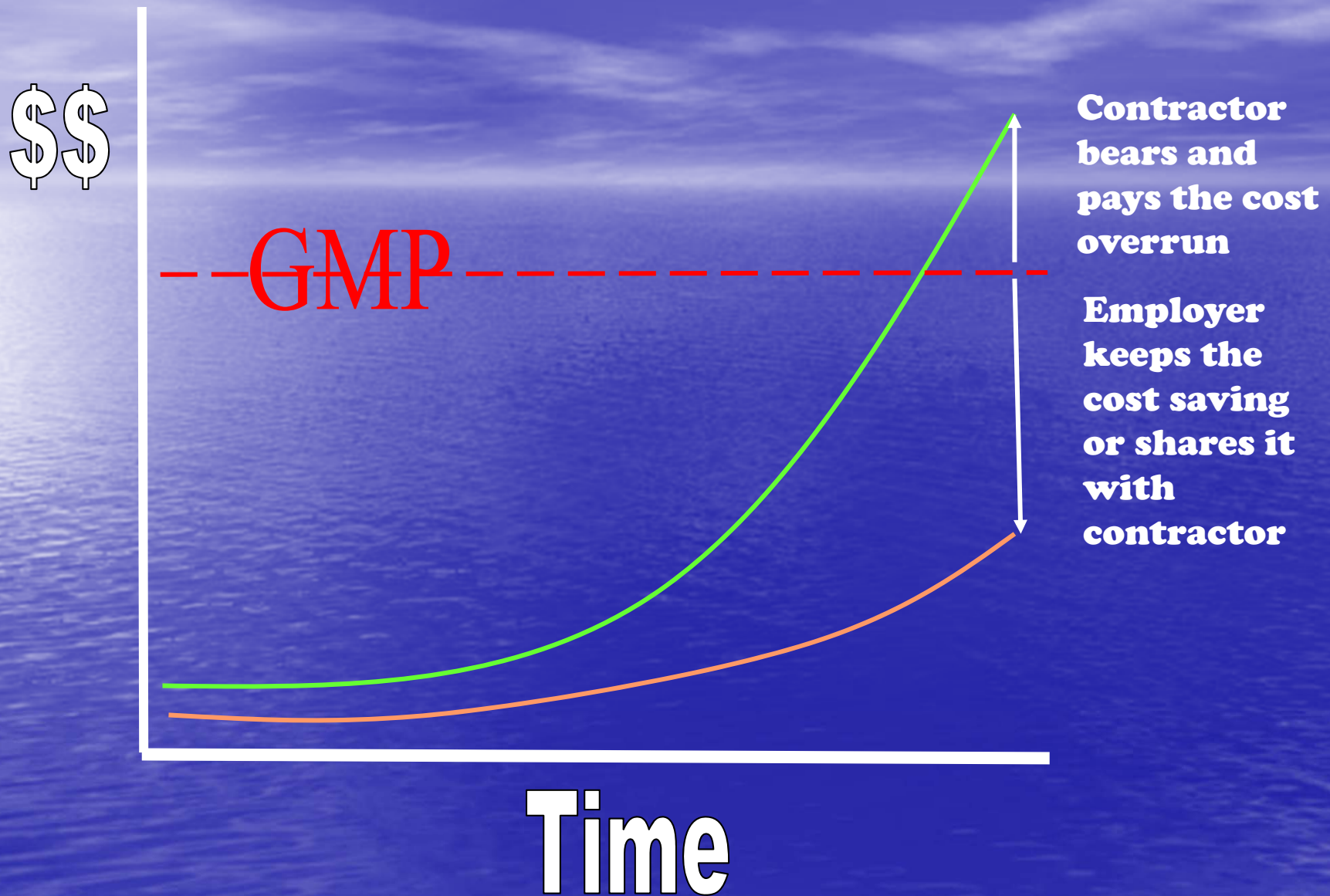
- How accurate are these expressions in describing GMP contracts?
 - ✓ Descriptions accurate only if it is a pure GMP arrangement
 - ✓ However, this is not always the case in reality

WHAT IS A GMP CONTRACT?

- In reality, a GMP contract is best described as a lump sum contract with a very tightly controlled variation procedure

WHAT IS A GMP CONTRACT?

- The lump sum price is the maximum amount of money that the employer is contractually obliged to pay, with an upward adjustment in price permissible only in very limited circumstances
- Any saving in cost is to be kept by the employer or shared with the contractor



THE USUAL ELEMENTS **OF A GMP**

- In general terms, a GMP contract arrangement tends to be one that seeks to involve the following concepts or elements:

THE USUAL ELEMENTS **OF A GMP**

- ✓ The GMP (of course), with the risk of the final cost exceeding the price cap falling on the contractor
- ✓ An agreed scope of works, against which changes to the GMP will be judged

THE USUAL ELEMENTS **OF A GMP**

- ✓ A mechanism by which the GMP may be adjusted (upwards), if the scope of works is varied in a way that adds cost or complexity

THE USUAL ELEMENTS **OF A GMP**

- ✓ A mechanism by which the contractor may suggest cost saving changes to the scope, with the savings to be kept by the owner or shared in some way between the employer and contractor

HOW DOES A GMP CONTRACT WORK?

- There is no standard process in which GMP contracts are procured - can work in a variety of procurement routes
- The more common way involves a two-stage process

HOW DOES A GMP CONTRACT WORK?

- **First stage** - contractor is pre-selected and engaged to confer with the architect in the early stages of design
- **Second stage** - the guaranteed maximum price is confirmed and fixed

HOW DOES A GMP CONTRACT WORK?

- There can also be a variant of GMP arrangements – can work either on its own or in combination with different methods of procurement

HOW DOES A GMP CONTRACT WORK?

- Possible combinations include:
 - ✓ Cost-plus GMP
 - ✓ Lump sum GMP

FORM OF GMP CONTRACTS

- There is no standard form of GMP contracts
- In fact, GMP is a method of project delivery, rather than a form of contract

FORM OF GMP CONTRACTS

- In practice, GMP contracts are usually adapted from existing standard forms of contract
- Whatever standard form of contract is used, the parties must fully understand the risks they are assuming

FORM OF GMP CONTRACTS

- Parties should not be under a false sense of security that a standard form of contract is being used
- Extreme care and time must be taken to review the amendments and analyse the risk to be undertaken
- For illustration of the problems that can arise, see *Skanska Construction*

FORM OF GMP CONTRACTS

- Attention should particularly be paid to the following matters:
 - ✓ The price cap
 - ✓ The agreed scope of works
 - ✓ The agreed variations
 - ✓ The cost saving scheme
- Precedent GMP contracts

PROS AND CONS OF GMP

- Sharing of cost saving
- Risk of possible cost overrun
 - ✓ See *Mowlem v Newton Street*
 - ✓ Cf. *Norman Peterson v Container*
- Tapping on the contractor's experience and expertise
- Price certainty
- Risk of high price

CONCLUSION

- Contractor takes the risk of limited upward price adjustment
- To minimize risks, contractor should take their time to gather as much information as possible before actually agreeing to the GMP - this should include firm prices from the subcontractors

CONCLUSION

- The contractor must have a very good estimation of the actual costs
- The less certain the contractor is about the prices, the greater the allowance to be made in the GMP
- Thu, GMP will not be suitable where events are unforeseeable and price is uncertain

The End

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Major Publications (author or co-author):

“The Singapore Court Forms”

“The Singapore Standard Form of Building Contract – An Annotation”

“Construction Defects: Your Rights and Remedies” title of the Sweet & Maxwell's
Law for Layman Series

Singapore Civil Procedure 2003 (White Book)

Real Estate Developers' Association of Singapore's (REDAS) Design and Build
Standard form contract