

# Construction Procurement Process Overview for Counties (GC, CMR, and DB)

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# Construction Procurement

1. Design Professional Procurement
2. Construction Delivery Models: Procurement Overview, & Pros and Cons
  - Multi Prime (MP)
  - General Contractor (GC)
  - Construction Manager at Risk (CMR)
  - Design-Build (DB)
3. Comparisons of the Delivery Models
4. Common Claims under each Delivery Model

# Selecting a Design Professional

- Architects, engineers, landscape architects, surveyors
- Qualification-based selection process (QBS) is required for these services unless
  - (1) the county maintains a file with current qualifications (no more than 1 year old); and
  - (2) the cost of services is less than \$50,000

# Selecting a Design Professional

- Public notice of an available contract is published
- Request for Qualifications issued (no solicitation of pricing for services)
- Statements of qualifications received and evaluated
- Firms are ranked based on qualifications to determine the “most qualified firm” for the project
- Most qualified firm proposes fee and agreement for design services is negotiated

# Selecting a Design Professional

- Must focus on qualifications (including experience)
- Evaluation criteria – minimum criteria are listed in ORC 153.65(D)
  - Competence (training, education, experience of personnel)
  - Ability (workload, availability of qualified personnel)
  - Past performance by evaluations of previous clients)
  - Other similar factors
  - NOT cost
- Consider how project team members will work together (have they worked together in the past?)
- Does the firm’s personnel have experience that relates to the project requirements?

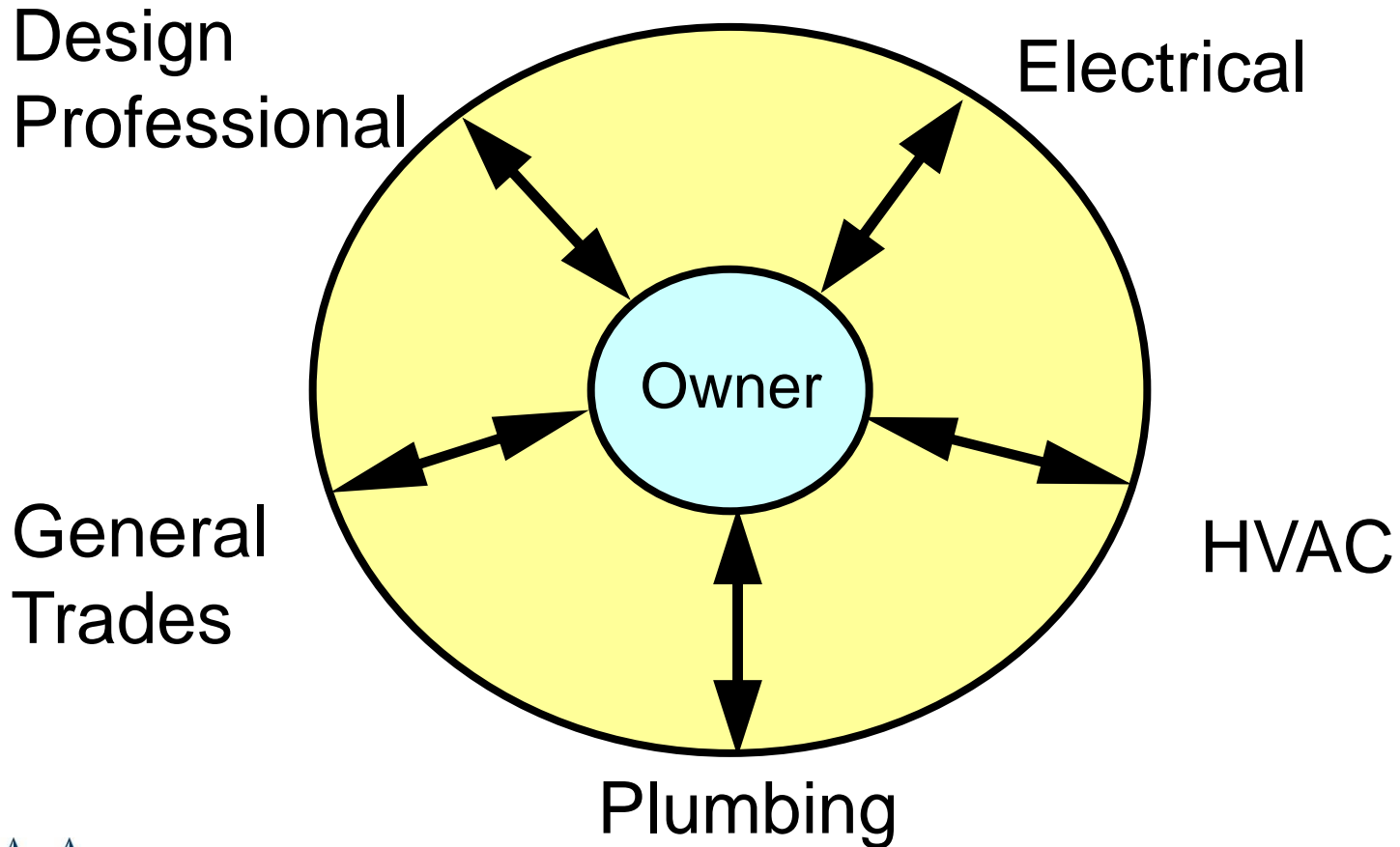
# Selecting a Project Delivery Method

- Available project delivery methods
  - Multiple Prime Contracting
  - General Contracting (GC)
  - Construction Manager at Risk (CMR)
  - Design-Build (DB)

# Selecting a Project Delivery Method

- Prior to HB 153, ORC 153.50 required separate prime contracts for construction projects (electrical, HVAC, plumbing, at a minimum)
- ORC 153.50 now requires these separate prime contracts for any project that includes these trades, **UNLESS** the GC, CMR, or DB model is used

# Multi Prime: The Wheel of Misfortune





# Multiple Prime Contracting

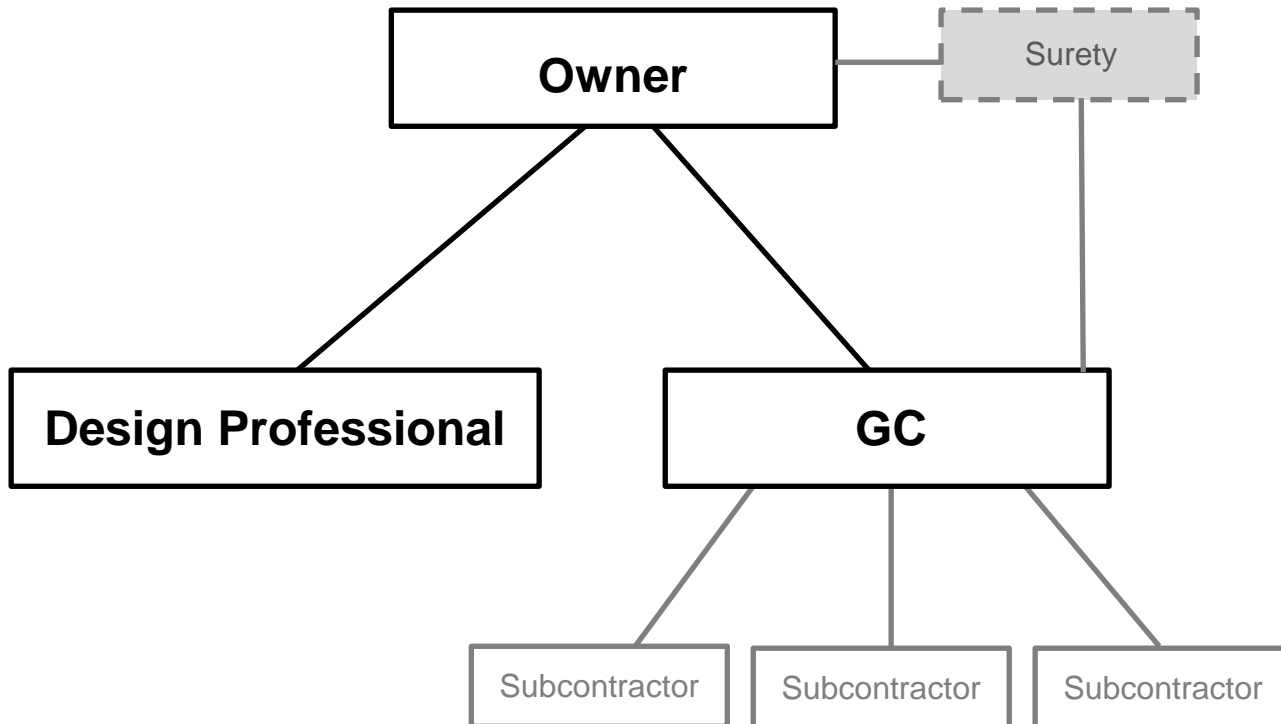
## ■ Pros

- Generally understood
- No GC markup

## ■ Cons

- Owner caught in the middle
- Increased owner contract coordination (CMA often used)
- Scope of work disputes
- Prime contractor delay disputes
- Defective work disputes

# General Contracting



# General Contracting

- Traditional design-bid-build approach (procure design professional separately, before GC)
- Only one contract is awarded for all of the work
  - Compared to multiple prime contracts
- Statutory competitive bidding process is used

# GC Competitive Bidding

- ORC 307.86 – Applies where the county seeks to purchase, lease, lease with an option or agreement to purchase, or construct, including but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, the cost of which will exceed \$50,000
  - NOTE: The State bidding threshold is \$200,000 but currently counties have a \$50,000 bidding threshold

# GC Competitive Bidding

- Counties have the power to reject any and all bids.
- The county commissioners must award and execute the contract “within sixty days after the date on which the bids are opened” unless it agreed with the accepted bidder to extend this time. (ORC 153.12)
- The county cannot enter into a contract if the contract is 10% over the published estimated construction cost for the work. (ORC 153.12)
- The contract shall be awarded to the “**lowest and best bid**” that is responsive. (ORC 307.90(A))

# GC Competitive Bidding

- Exceptions to competitive bidding for counties:
  1. Real and Present Emergency (ORC 307.86)
  2. Regional Councils of Government (ORC 167)
  3. Energy Conservation Measures (ORC 307.041)
  4. Certain Professional Services (e.g., attorneys, accountants, consultants) (ORC 307.86)
  5. Joint Purchasing Programs (ORC 9.48)

# County Competitive Bidding Overview

- Threshold is \$50,000
- Minimum 2-week bid period
- 2 legal notices in the local newspaper – should be brief and contain only the required information for the contract
  - Notice must also be maintained in a public place
- State prevailing wage law applies to county projects
- Specific statutory exceptions
- Remember, professional services are procured first and are not procured through “bidding”

# General Contracting

## ■ Pros

- Owner not caught in the middle
- Single point of responsibility for construction
- Reduced owner coordination
- Generally understood

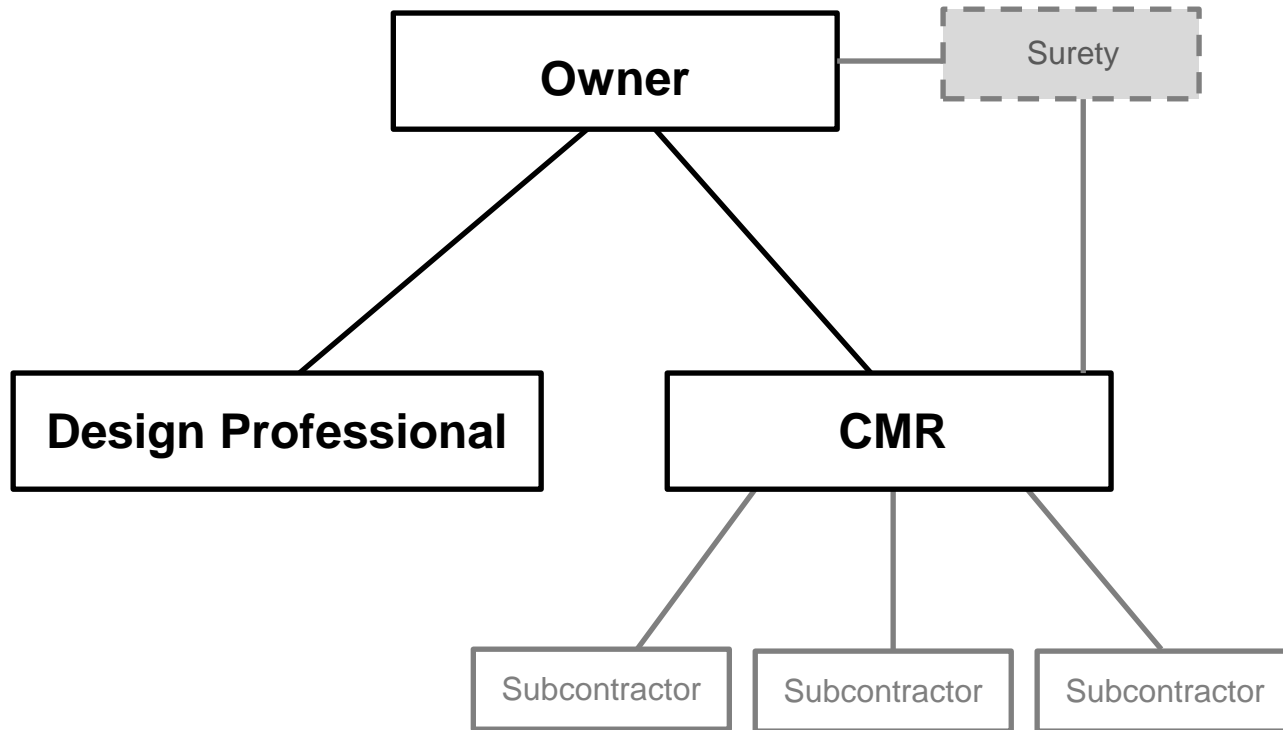
## ■ Cons

- Additional GC markup
- Does not eliminate design disputes



# Construction Manager at Risk

## Similar Contract Structure to General Contracting



# Construction Manager at Risk

- The CMR is selected through a two-phase statutory procurement process:
  - 1) RFQ soliciting qualifications
    - Note: Must advertise the RFQ and it must be on the street for **at least 30 days**
  - 2) RFP requesting technical and pricing proposals from the short-listed firms
- Evaluation of proposals to determine the firm that will provide the “**best value**” for the project

# Construction Manager at Risk

- Similar to general contracting delivery model
- Practical Differences
  - Time of engagement
  - Pre-construction services (schedules & budgets)
  - Guaranteed Maximum Price
- Legal Differences
  - CMR must bid subcontracts
  - Restrictions on self-performed work
  - **Best value** selection standard

# Construction Manager at Risk

- A Guaranteed Maximum Price (GMP) is negotiated and added to the contract when the design is nearly complete.
- Criteria for subcontractors must be approved by the Public Owner.
  - Prequalified subcontractors must be approved for each subcontract, and the CMR must solicit bids from at least 3 subcontractors.
  - The Public Owner must approve subcontractors proposed by the CMR.
  - State requires certain subcontract terms.

# Construction Manager at Risk

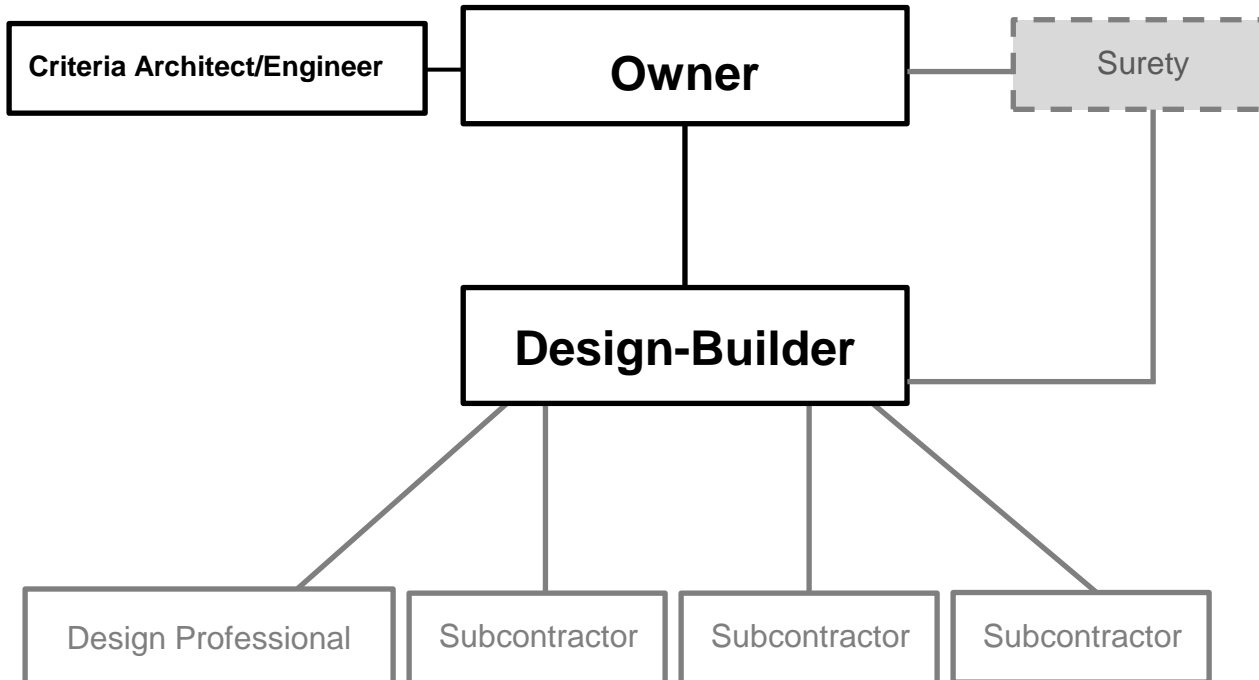
## ■ Pros

- Same as single prime or GC
- Can be involved throughout design
- Preconstruction services
- **Best value** selection
- Familiarity
  - Design
  - Design team
  - Public owner

## ■ Cons

- Same as single prime or GC
- Additional CMR markup
- Does not eliminate design disputes – should reduce design dispute

# Design-Build



# Design-Build

- Criteria Architect/Engineer (CA/CE): The Public Owner must select a CA/CE following the QBS process for design professionals in ORC 153.65 to prepare the scope/Design Criteria for the project

# Design-Build

- The DB is then selected through a two-phase process similar to CMR:
  - 1) RFQ soliciting qualifications (followed by evaluation/selection of short-listed firms)
    - Note there is no time period required for advertising the RFQ unlike CMR
  - 2) RFP requesting technical and pricing proposals from the short-listed firms (includes Design Criteria prepared by the Criteria A/E)
- Evaluation of proposals to determine the firm that will provide the “**best value**” for the project



# Design-Build

- A Guaranteed Maximum Price (GMP) is negotiated and added to the contract when the design is nearly complete.
- Again, criteria for subcontractors must be approved by the Public Owner.
  - Prequalified subcontractors must be approved for each subcontract, and the DB must solicit bids from at least 3 subcontractors.
  - The Public Owner must approve subcontractors proposed by the DB.
  - State requires certain subcontract terms

# Design-Build

## ■ Pros

- Single point of responsibility
- Greater collaboration between designer and builder
- Preconstruction services
- **Best value** selection
- Speed of delivery

## ■ Cons

- Fees (overhead & profit) traditionally greater
- Owner will not be in direct contract with architect
- Owner may need to engage party to monitor quality (criteria architect or engineer maybe used during design and construction for oversight)

# Side-by-Side Comparisons

## Procurement

Type	Differences
General Contracting	Public Bidding (lowest and best)
Construction Manager at Risk	RFQ/RFP (best value)
Design Build	RFQ/RFP (best value)

# Side-by-Side Comparisons

## Project Cost

Type	Differences
General Contracting	Lump Sum Bid
Construction Manager at Risk	Guaranteed Maximum Price
Design Build	Guaranteed Maximum Price

# Side-by-Side Comparisons

## Constructor's Design Phase Involvement

Type	Differences
General Contracting	None
Construction Manager at Risk	Varies <ul style="list-style-type: none"><li>• Constructability</li><li>• Cost Estimating</li></ul>
Design Build	Part of Services

# Side-by-Side Comparisons

## Effort by Owner (Pre-Construction)

Type	Differences
General Contracting	No Coordination with GC (traditional A/E services)
Construction Manager at Risk	Varies (depends on CMR scope)
Design Build	Extensive (develop design requirements, etc.)

# Side-by-Side Comparisons

## Effort by Owner (Construction)

Type	Differences
General Contracting	Less than Multi Prime (typical contract administration)
Construction Manager at Risk	Less than Multi Prime
Design Build	Can be Extensive (Owner required to make timely decisions)

# Side-by-Side Comparisons

## Design-Related Claims

Type	Differences
General Contracting	Not Eliminated – Can be frequent
Construction Manager at Risk	Not Eliminated – Should be reduced
Design Build	Nearly eliminated, except program based disputes



# Side-by-Side Comparisons

## Constructor's Ability to Self-Perform Work

Type	Differences
General Contracting	No Restrictions
Construction Manager at Risk	Optional – Sealed Bid Required
Design Build	Optional – Sealed Bid Required

# Side-by-Side Comparisons

## Selection of Subcontractors

Type	Differences
General Contracting	Prequalification and Bidding of Subs Not Required
Construction Manager at Risk	Prequalification and Bidding of Subs Required – Open Book Pricing
Design Build	Prequalification and Bidding of Subs Required – Open Book Pricing

# Side-by-Side Comparisons

## Rejection of Subcontractor by Owner

Type	Differences
General Contracting	Owner Can Reject (Depends on Contract)
Construction Manager at Risk	Owner Can Reject
Design Build	Owner Can Reject

# Side-by-Side Comparisons

## Types of Projects

Type	Differences
General Contracting	Small and large projects
Construction Manager at Risk	More suitable for large projects
Design Build	More suitable for: <ul style="list-style-type: none"><li>• Large projects</li><li>• Projects that are “repetitious”</li><li>• Horizontal work</li></ul>

# Side-by-Side Comparisons

## Project Length

Type	Differences
General Contracting	Longest Project Duration
Construction Manager at Risk	Potential for some Fast-Track
Design Build	Shortest Project Duration (can also be Fast-Track)

# Delivery Model Comparison Summary

Model	Risk to Owner	Potential Litigation Costs	Likely Up-Front Costs
MP	Highest	Highest	Lowest
GC	High	High	Lower
CMR	Lower	Lower	High
DB	Lowest	Lowest	Highest

# QUESTIONS?



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