
Construction Reform Summary



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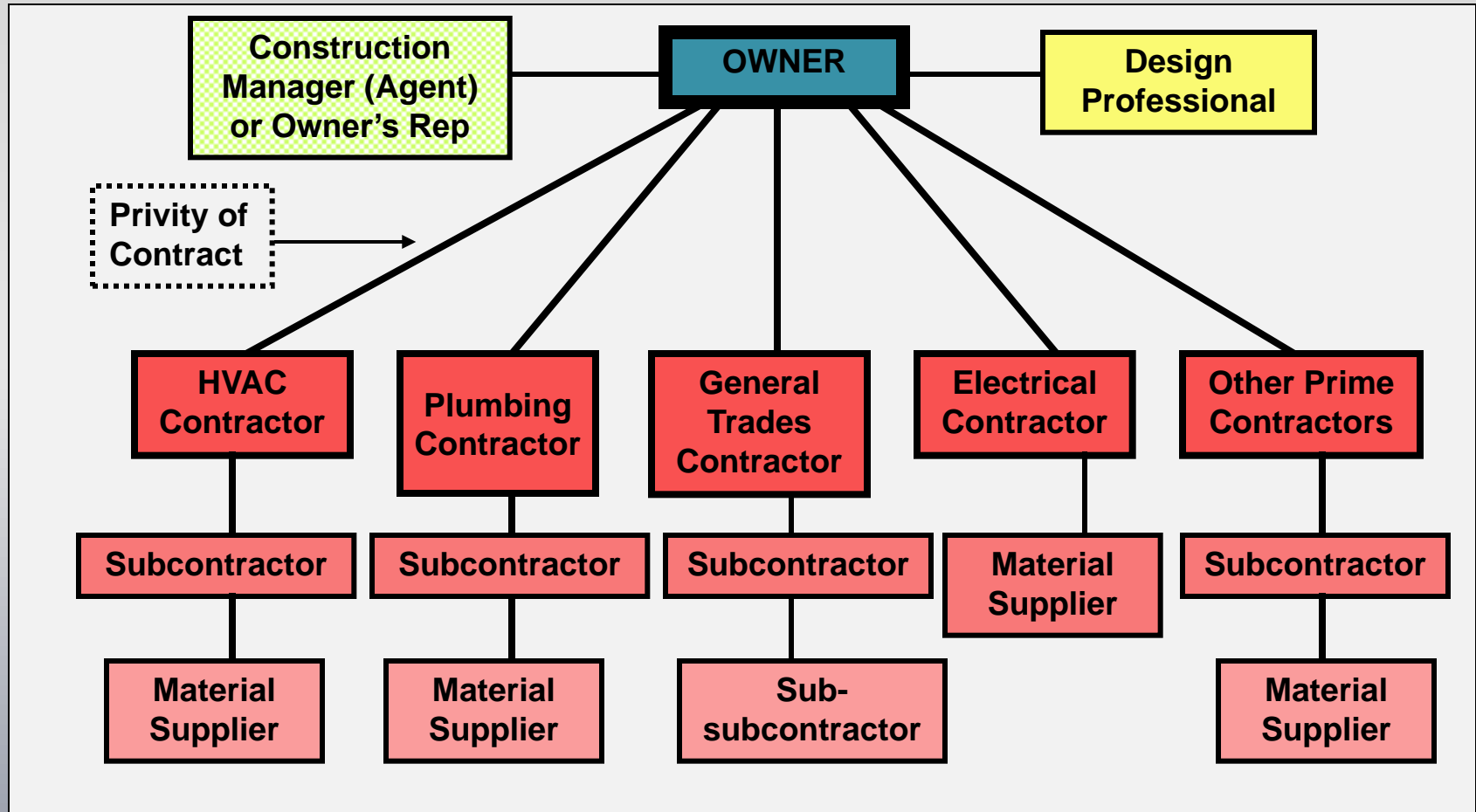


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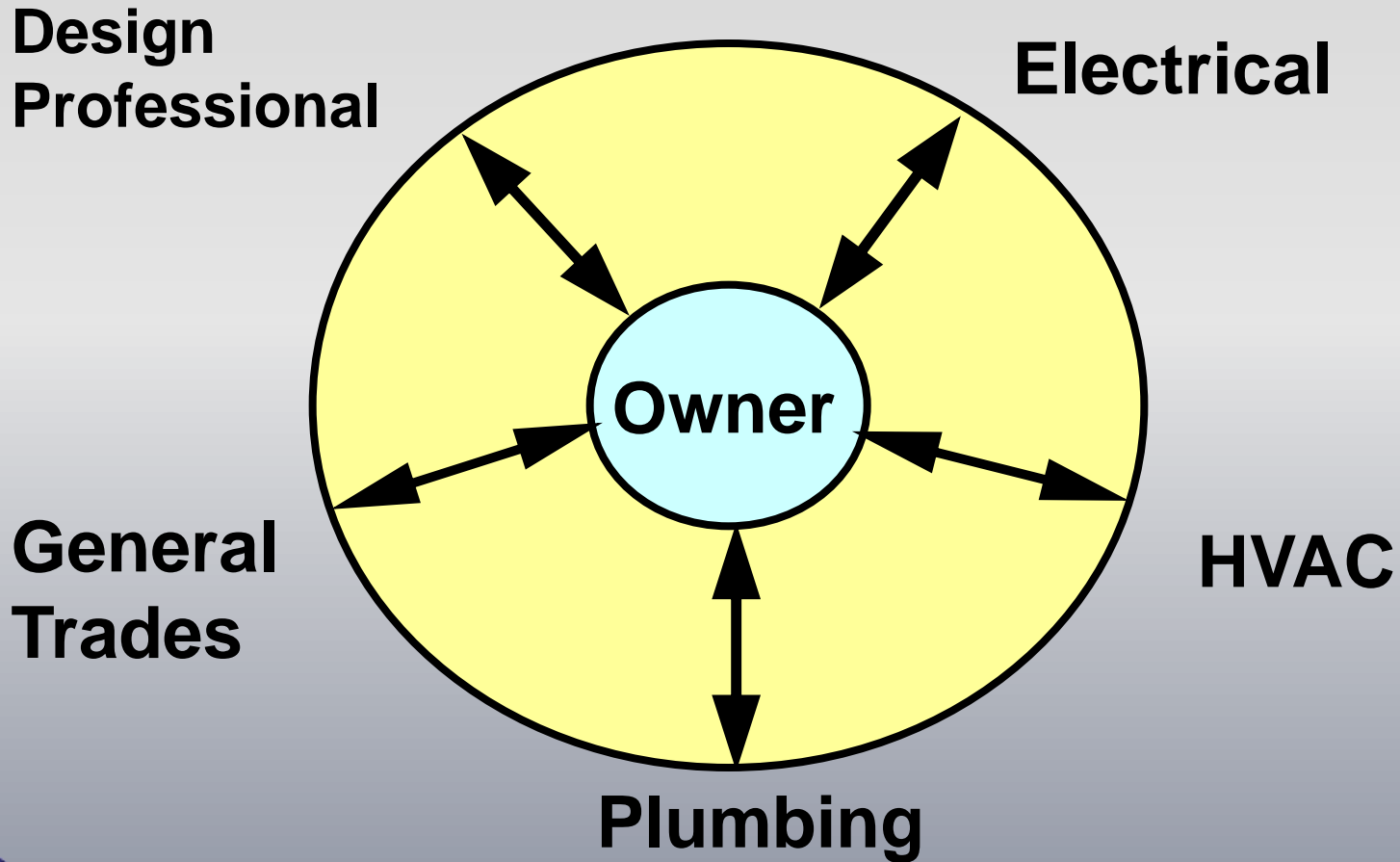
- The former ODAS, State Architect's Office, and OSFC are now the Ohio Facilities Construction Commission (OFCC)
- Three new project delivery options:
 - General Contracting
 - Construction Manager at Risk
 - Design Build
- Other changes include:
 - Public notice/advertisement publication
 - Design professional selection process
- The new Construction Reform rules:
<http://ocr.ohio.gov/Rules.aspx>



Multiple Prime Model



The Wheel of Misfortune



Construction Reform Summary

Public authorities can now choose between the following project delivery methods:

- Multiple Prime Contracting
- General Contracting (GC)
- Construction Manager at Risk (CMAR)
- Design Build (DB)



Multiple Prime Contracting

- Prior to HB 153, ORC 153.50 required separate prime contracts for construction projects over \$50,000 (electrical, HVAC, plumbing, at a minimum)
 - HB 153 eliminated this threshold
- ORC 153.50 now requires these separate prime contracts, UNLESS the GC, CMAR, or DB model is used
 - There is no dollar threshold for using one of the 3 new project delivery models



General Contracting

ORC 153.50(A)(5) defines general contracting as “constructing and managing an entire public improvement project, including the branches or classes of work specified in division (B) of this section, under the award of a single aggregate lump sum contract.”

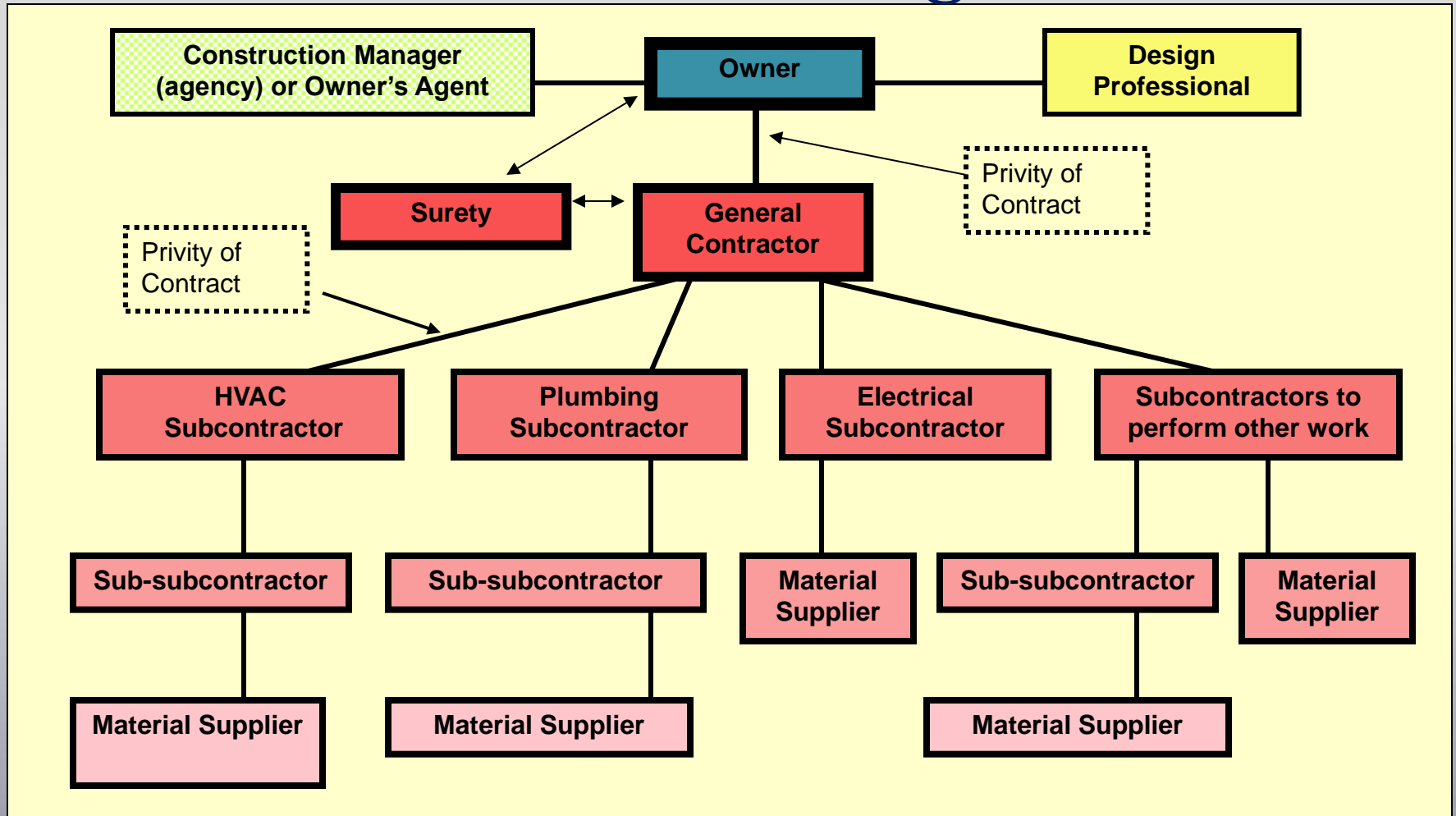


General Contracting

- Single prime model
 - GC is responsible for all of the construction work
 - GC holds all subcontracts (form prescribed by the OFCC)
 - Public authority may reject subcontractors as “not responsible”
- Award of the general contract by a public authority must be to the “lowest responsive and responsible bidder” or “lowest and best bidder”
- Eliminates the wheel of misfortune:
 - Shifts risk of claims from separate contractors (the multiple prime model) away from the Public Authority and to the GC
 - Does not eliminate disputes about whether a defect was caused by design or construction



General Contracting Model



Construction Manager at Risk

ORC 9.33(B)(2) defines CMAR as "a person with substantial discretion and authority to plan, coordinate, manage, direct, **and construct** all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure or other improvement and **who provides the public authority with a guaranteed maximum price** as defined in section 9.334 of the Revised Code." (emphasis added)



Construction Manager at Risk Selection Process

- CMAR chosen by public authority through two-step best value selection process

Step 1 Qualifications: Public authority to provide notice to submit proposals

- shall be published at least 30 days prior to the date for accepting the proposals
- Must include:
 - a general description of the project,
 - a statement of the specific management services required, and
 - a description of the qualifications required for the project.



Construction Manager at Risk Selection Process

- Owner's Initial Requirements
 - Owner evaluates qualifications
 - Owner selects not fewer than three CMARs

Step 2 Proposal: Owner provides:

- a description of the project, including a statement of available design detail,
- a description of how the guaranteed maximum price is to be determined,
- the form of the contract, and
- a request for a pricing proposal



Construction Manager at Risk Selection Process

- CMAR's requirements
 - Submit price proposal, which must contain:
 - a list of key personnel for the project,
 - a statement of the general conditions and contingency requirements, and
 - a fee proposal divided into:
 - a pre-construction fee,
 - a construction fee, and
 - the portion of the construction fee to be at risk in a guaranteed maximum price.



Construction Manager at Risk Selection Process

- CMAR must provide the public authority with a guaranteed maximum price utilizing an open book pricing method
 - Open Book Pricing:
 - make available all books, records, documents, and other data
 - Guaranteed Maximum Price:
 - the total maximum amount to be paid by the public authority to the CMAR



Construction Manager at Risk Selection Process

- Owner's Selection Requirements
 - Rank the CMARs based on its evaluation of the value of each pricing proposal
 - Enter into negotiations with the CMAR whose pricing proposal the public authority determines to be the “best value”, considering the proposed cost and qualifications.
 - “Best value” - price is a factor but not the only factor

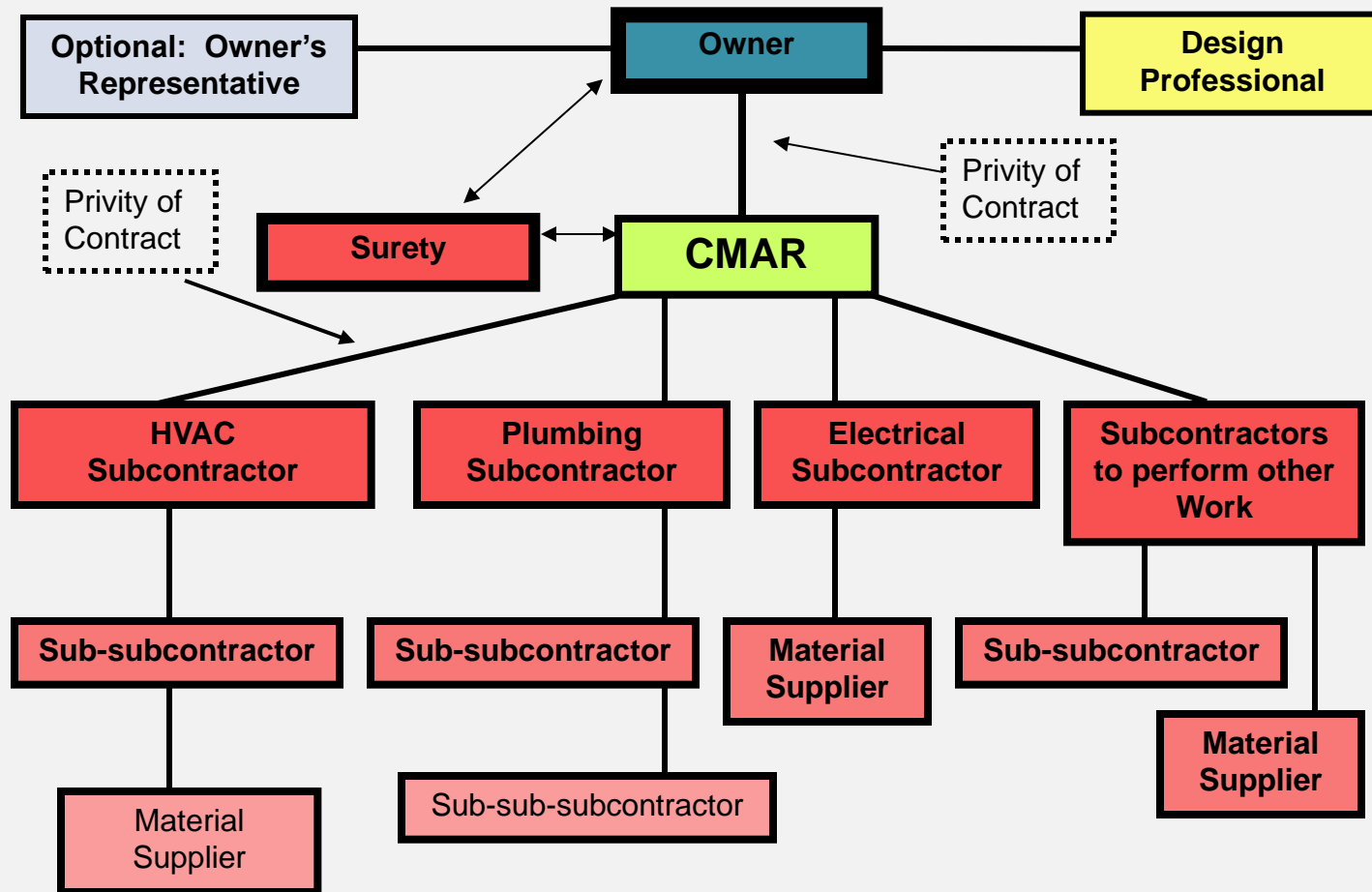


Construction Manager at Risk

- Eliminates the wheel of misfortune
- CMAR is responsible for all of the construction work
 - CMAR holds all subcontracts (form prescribed by OFCC)
 - CMAR required to establish criteria for prequalifying prospective bidders
 - Not required to award to the lowest subcontract bidder
 - Public authority may reject subcontractors as “not responsible”
- CMAR can self-perform work, if permitted by the public authority and work is bid properly



CMAR Model



Design Build (DB) Model

ORC 153.65(G) defines design-build services as “services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement”



Design-Build Firm Selection Process

- DB chosen by public authority through RFQ/RFP process based on best value
- Criteria Architect or Engineer
 - Public Authority must obtain the services of a criteria architect or engineer by either :
 - contracting for the services consistent with how design-build firms are selected, or
 - using a properly qualified employee of the public authority and notifying the OFCC



Design-Build Firm Selection Process

- Criteria Architect or Engineer
 - if non-employee, use the QBS process
- Design Professional Selection Process – Threshold for selection of a design professional increased from \$25,000 to \$50,000 **IF** the public authority maintains a file with current statements of qualifications from DP and DB firms and those statements of qualifications are updated at regular intervals; \$25,000 threshold was eliminated



Design-Build Firm Selection Process

Step 1 Qualifications: The Public Authority and the Criteria Architect or Engineer

- Publically announce all contracts available for Design Build services
 - Sufficiently in advance to allow RFQ to adequately address project
 - General description of the Project
 - Indicate how statements should be submitted
- evaluate the statement of qualifications
- select not fewer than three design-build firms



Design-Build Firm Selection Process

Step 2 Proposal: Give each selected design-build firm:

- a description of the project and project delivery,
- the design criteria produced by the criteria architect or engineer,
- a preliminary project schedule,
- a description of any pre-construction services and the proposed design services,
- a description of a guaranteed maximum price, including the estimated level of design on which it is based,
- the form of the contract, and
- a request for a pricing proposal.



Design-Build Firm Selection Process

- Design-Build Firms Submit Pricing Proposals
 - a design services fee,
 - a preconstruction fee,
 - a design-build services fee
 - a list of key personnel for the project,
 - design concepts adhering to the design criteria,
 - the firm's statement of the general conditions and estimated contingency requirements, and
 - a preliminary schedule.



Design-Build Firm Selection Process

- Owner's Selection Requirements
 - Rank the design-build firms based on its evaluation of the value of each pricing proposal
 - Enter into negotiations with the firm whose pricing proposal the public authority determines to be the “best value”, considering the proposed cost and qualifications.
 - “Best value” - price is a factor but not the only factor



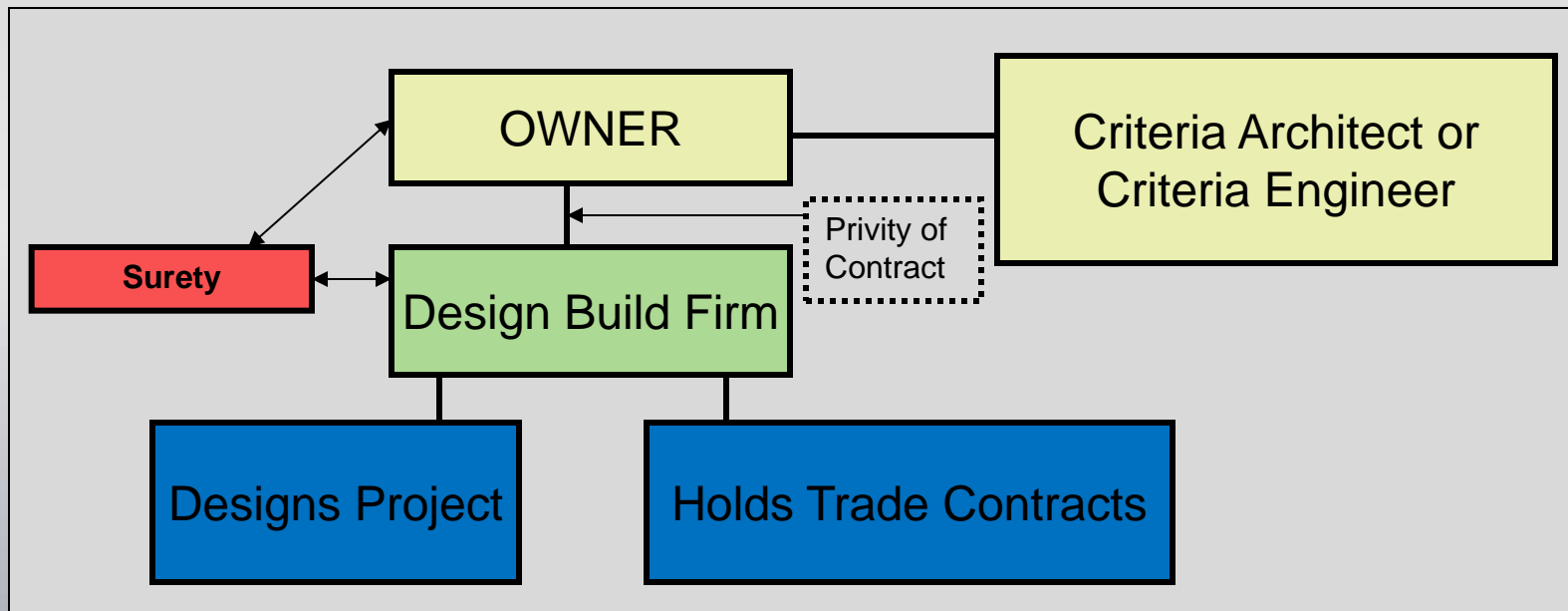
Design Build

- DB must use open-book pricing method
- Eliminates the wheel of misfortune
- DB is responsible for all of the work
 - DB holds all subcontracts (form prescribed by OFCC)
 - DB required to establish criteria for prequalifying prospective bidders
 - Not required to award to the lowest subcontract bidder
 - Public authority may reject subcontractors as “not responsible”
- DB can self-perform work, if permitted by the public authority and work is bid properly



Design Build

Public authority contracts with a single entity for both design services and construction of the project.



DB firm is responsible for design of the project, construction of the project, and performance of the project when completed.



Permissible Contract Forms

- CMAR delivery model
 - American Institute of Architects
 - ConsensusDOCS, LLC
 - Construction Management Association of America
 - OFCC
- DB delivery model
 - American Institute of Architects
 - ConsensusDOCS, LLC
 - Design-Build Institute of America
 - Engineers Joint Contract Documents Committee
 - OFCC



Criteria Architect Observations

What Criteria Architect can do to smooth the process:

- Coordinate stakeholder input
- Evaluate local regulatory issues
- Coordinate responses to questions
- Identify level of detail to be included in design criteria
- Programming and schematic design , allowing the project to be defined early
- Offer the Public Authority greater control over the project scope and creep



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