

Small-Scale, Big Strategy: Financing and Constructing School Improvement Projects

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Small Project Financing Considerations

Financing Options

- Voted Bonds
- Unvoted Bonds
- Energy Conservation Notes
- Lease
 - Equipment Lease
 - Lease Secured with Real Property Pledge

Voted Bonds

- **Purpose:** Finance “permanent improvements,” which are any property or asset with an estimated life of five years or more
- **Maximum Term:** Determined by weighted average maturity of the assets financed



Unvoted Bonds

- ORC Sections 133.15 and 133.06, authorize a board of education to issue general obligation securities (bonds and bond anticipation notes) on an unvoted basis to finance “permanent improvements”
- Direct debt limitation of 1/10 of 1% of AV; indirect 10 mill limitation also applies
 - AV=\$100M; debt limitation=\$100k

Energy Conservation Notes

- Energy Conservation Facilities Projects or “264” Notes
 - Permits borrowing to finance qualified energy conservation improvements to reduce energy consumption (projects such as HVAC systems, energy control systems, energy efficient windows and lights, etc.)
 - Also can be used to finance alternative fuel vehicles
 - The idea behind the financing is that the energy savings from the project will offset the cost of the facility improvements (15-year test) or alternative fuel vehicles (5-year test)
 - Requires OFCC approval, a number of other restrictions

Leases – ORC Section 3313.375

- Boards of Education can enter into a lease-purchase agreement which provides for the “construction, enlarging or other improvement, furnishing, and equipping; lease; and eventual acquisition of facilities or improvements to facilities, including but not limited to buildings, playgrounds, parking lots, athletic facilities, and safety enhancements” for any school district purpose
 - **No ballot approval required**
 - Not subject to direct debt limitations of ORC Section 133.06 since subject to annual appropriation

Permanent Improvement Tax Anticipation Notes

- Permanent Improvement Levy Tax Anticipation Notes – limited ability to borrow against a PI property tax levy for “general permanent improvements”:
 - If term limited (5 years max), 50% of the levy’s proceeds to be collected over the remaining life of the levy
 - If a continuing levy, 50% of the levy's proceeds over a maximum of 10 years
- Often easier to borrow against a PI levy by using a lease-purchase financing

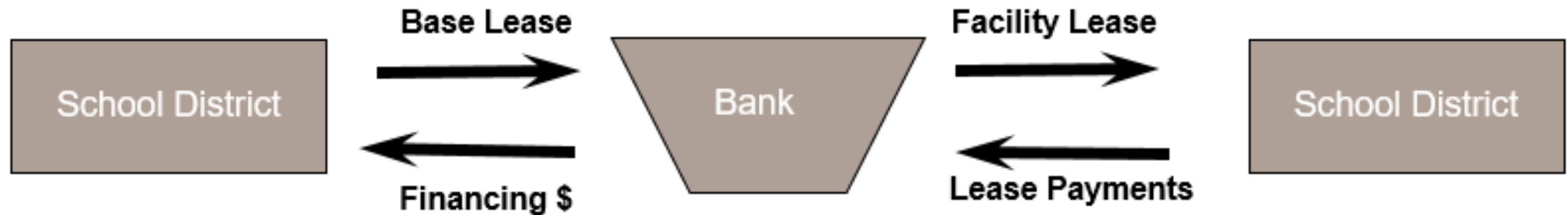
Practical Considerations under ORC Section 3313.375

- No new revenue source - debt service must be paid from general fund, fundraising, existing PI levy
 - Conceptually same as a mortgage
- Subject to appropriation, so not as secure as “general obligation” debt, and so typically carries a higher interest rate
 - Security = facility being financed (again, like a mortgage)
- Maximum term – 30 years

Lease-Purchase Structure

- A series of one-year renewable leases (banks don't like to go longer than 10-15 years)
- Lease-Leaseback
 - Base lease or ground lease provides leasehold interest to bank (the “Lessor”); school leases back facilities through lease-purchase agreement
- Lease-purchase agreement must provide that title to the leased property vests in the school district at the end of the lease
- Termination or event of default by school district means Lessor takes control of the building for remainder of term of ground/base lease
- Ground lease may (usually does) extend five-years beyond the term of the lease-purchase agreement

Lease-Purchase Structure



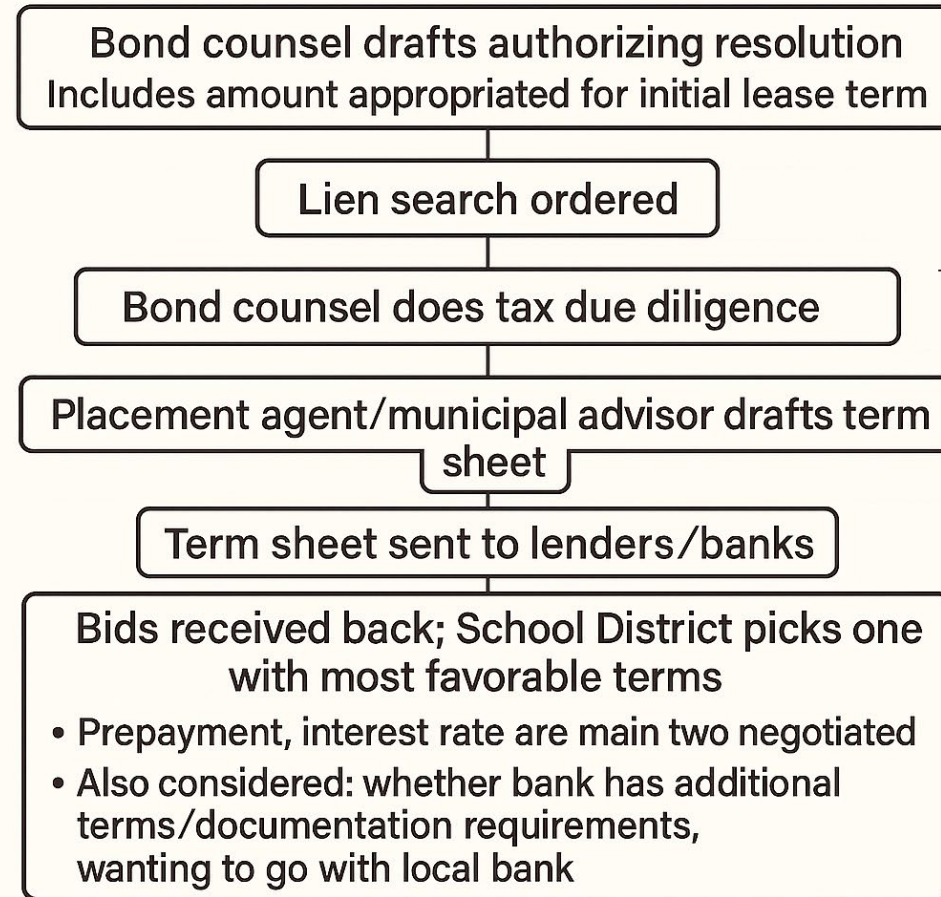
Other Considerations

- Lien Search
- Legal Description
- Subsequent Leases
- Recording of Lease Documents
 - Originals, ink, notarized

Depiction of Project Site →



Overview of Lease-Purchase Process



Lease-Purchase Documentation

Sample transcript list:

1. Special Counsel Opinion of Bricker Graydon Wyatt LLP
2. Base Lease and Lease-Purchase Agreement
3. Memorandum of Base Lease and Lease-Purchase Agreement
4. General Certificate
5. Authorizing Resolution of the Board of Education (**Exhibit A** to General Certificate)
6. Minutes of the November 13, 2025 Board of Education Meeting (**Exhibit B** to General Certificate)
7. Tax Compliance Certificate, including IRS Form 8038-G
8. Lessor Letter
9. Lien Search
10. Proof of Insurance

Examples of Recent Lease-Purchases

Amount	Length	Purpose
\$1,510,000	15 years	Replacing and upgrading a pool filtration system, acquiring bleachers, and making building weatherization improvements
\$3,363,000	15 years	Improving and equipping football and athletic facilities and making heating, ventilation, and air conditioning and electrical improvements
\$932,100	10 years	Resurfacing the high school track and related site improvements
\$14,091,000	15 years	Constructing classroom additions and related improvements to Mills Elementary School, constructing an addition and related improvements to the cafeteria at the District's middle school, and furnishing and equipping the same

Federal Tax Law Considerations

➤ Arbitrage and Rebate

- Can't borrow at low rate and invest at higher, with exceptions

➤ Private Use

- 10% of proceeds used in trade or business of non-governmental unit
- 10% of issue is secured or derived from property used in the trade or business of non-governmental persons
 - Lease of bond-financed property by private party = private business use
 - Specific rules for management/service contracts

Federal Tax Law Considerations

➤ Bank Qualification

- Internal Revenue Code Section 265(b)(3) — all tax-exempt debt in a calendar year is reasonably expected to be less than \$10M
- Certain financial institutions get a deduction of 80% of their interest expense allocable to those securities



Post-Issuance Compliance Policy

- Policy typically covers both federal tax law requirements and securities law (continuing disclosure) requirements
- Not legally required, but there are questions on the 8038G regarding written procedures

- 43

If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ ☒
- 44

If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ ☒

Equipment Leases

- ORC Section 3313.37(B)(4) authorizes a board of education to acquire office equipment and computer hardware and software for instructional purposes by purchase, lease, installment payments, lease-purchase, or lease with an option to purchase.
 - Payments cannot extend beyond five (5) years.
- Many national leasing companies are unfamiliar with Ohio law and are often reluctant to authorize changes to their standard documents to comply with Ohio law
 - Problematic provisions: indemnification clauses, nonsubstitution clauses and provision that the lender will not sell fractionalized interests in the lease without written consent from the school district

Perrysburg EVSD – Case Study

Perrysburg EVSD – Energy Lease

➤ \$3,752,000 Equipment Lease – Energy Savings Measures – 2023



Perrysburg EVSD – Bus Lease

➤ \$1,727,119.92 Lease Purchase Financing – 2024



Procurement Options Under New State Law

Choosing the Delivery Model

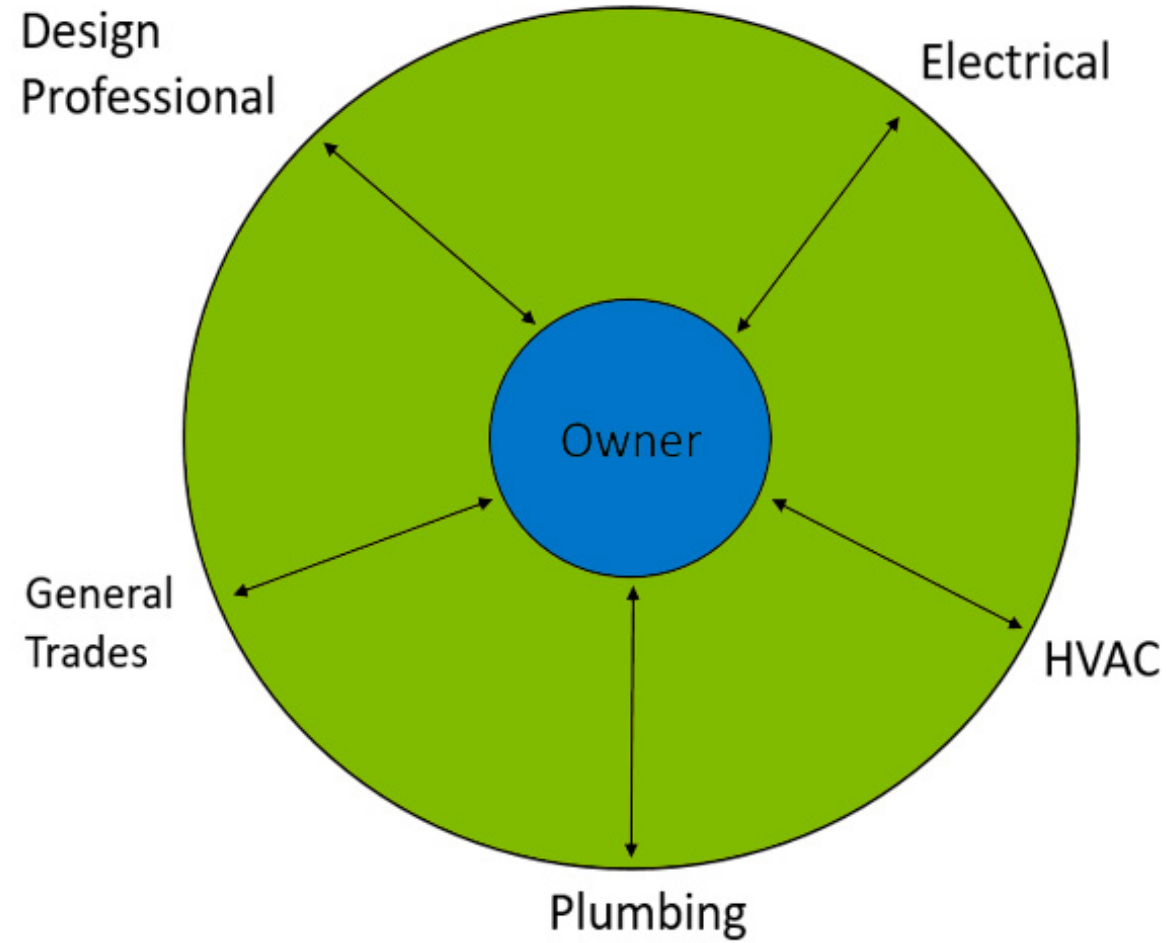
Multi Prime (MP)

General Contractor (GC)

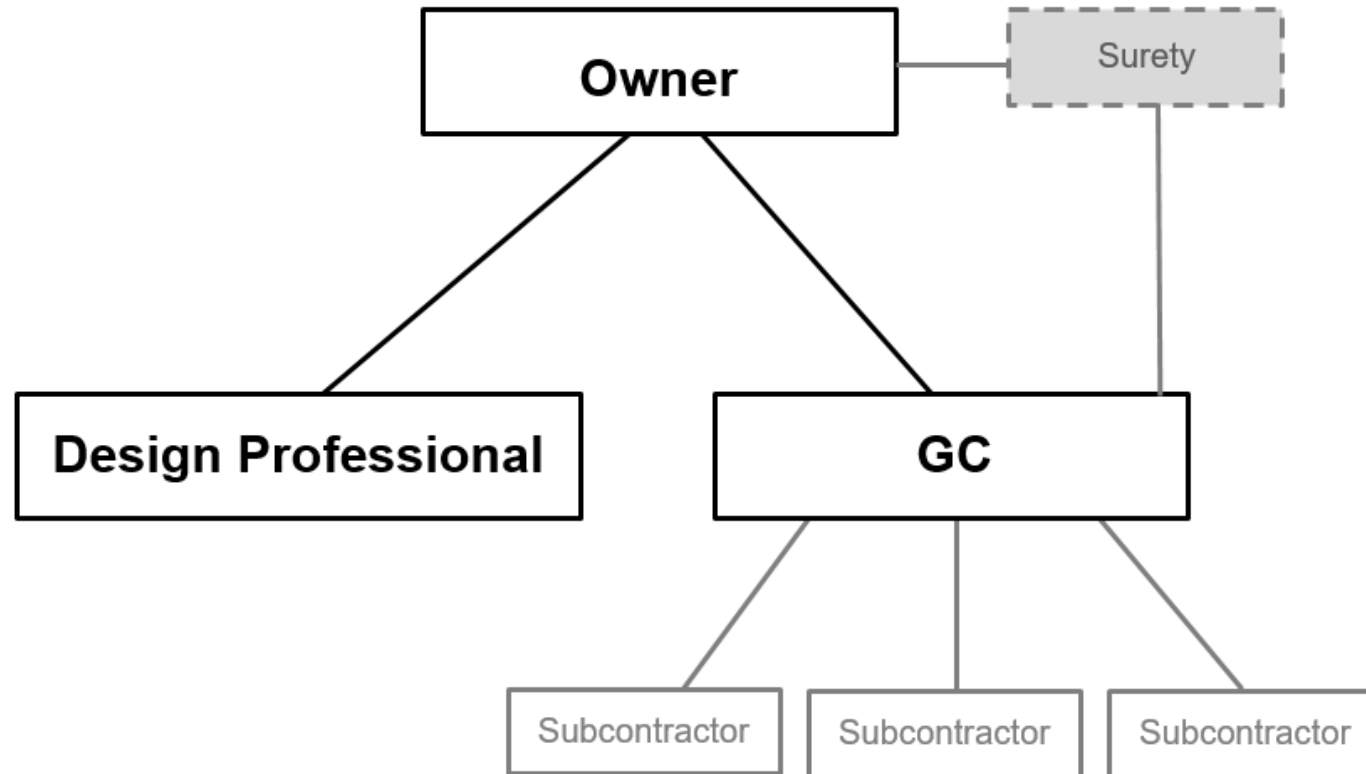
Construction Manager at Risk (CMR)

Design-Build (DB)

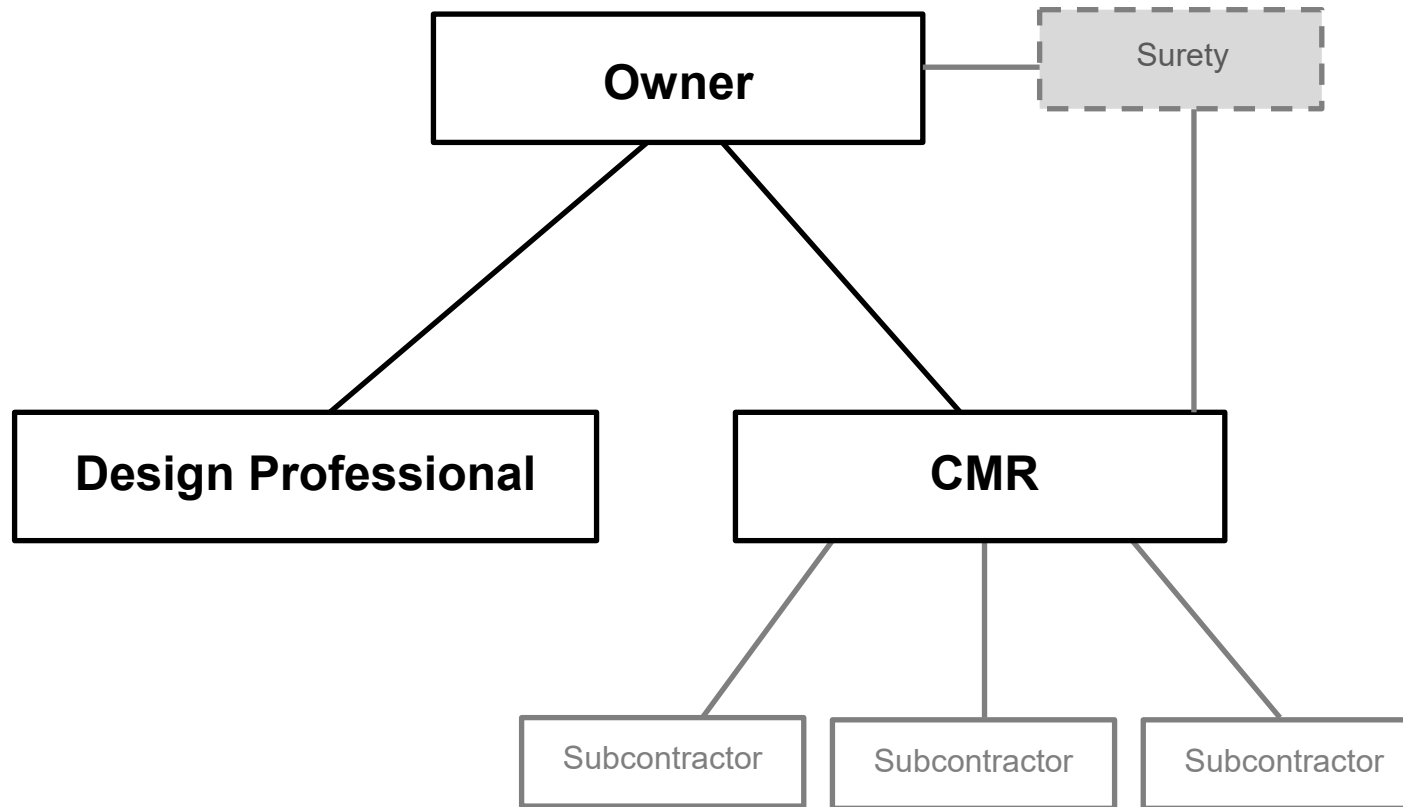
Multi Prime: The Wheel of Misfortune



General Contracting



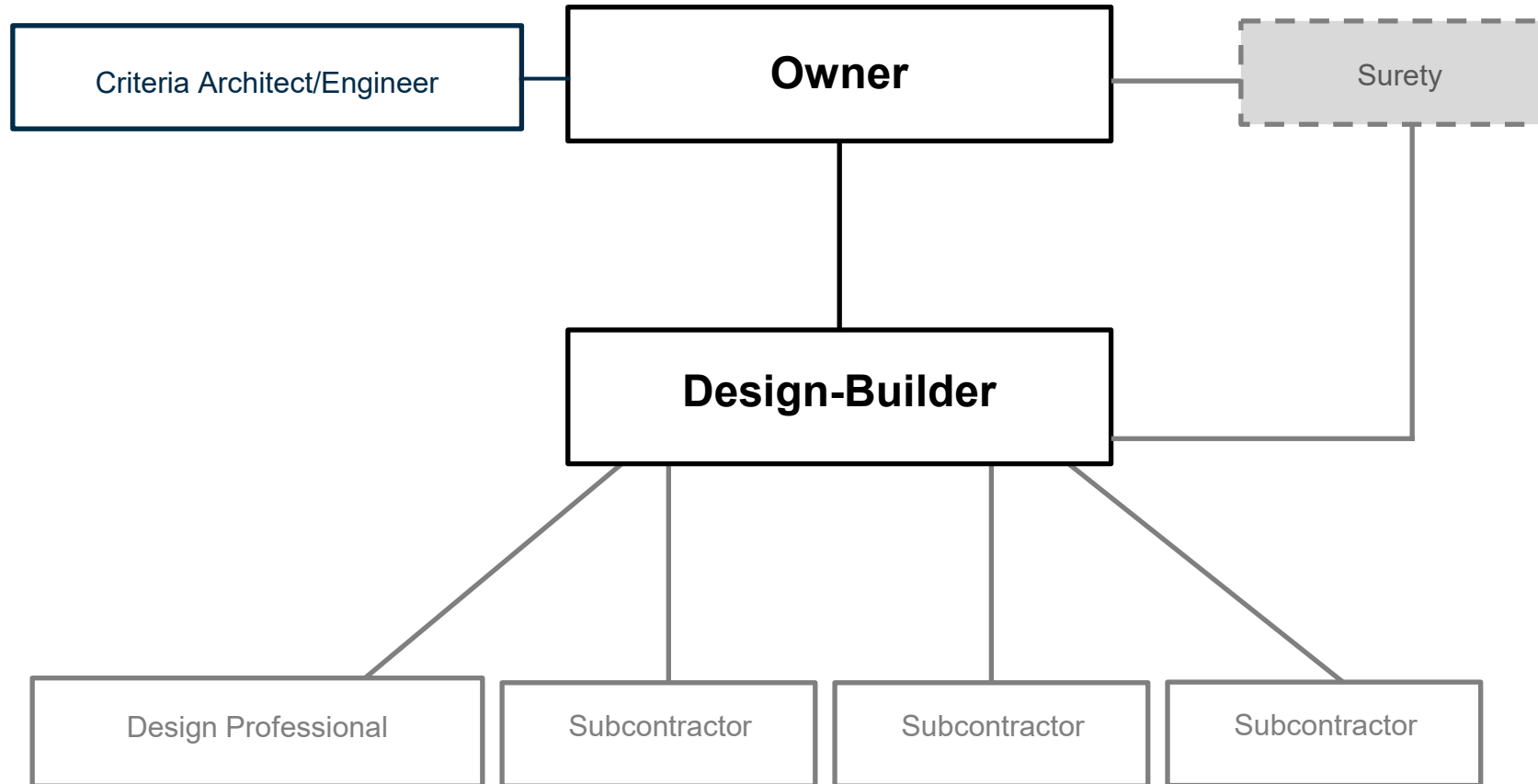
Construction Manager at Risk



Standard CMR – ORC 9.33

- Public authority requests:
 - Qualifications (RFQ) – first step
 - Pricing (RFP) – second step
- Pre-proposal meeting
- Ranking process:
 - Rank firms on qualifications
 - Shortlist selected
 - Evaluate pricing and conduct interviews
 - Best value selection

Design-Build



Standard Design-Build ORC 153.65(G)

- Design-Build Services are defined in Ohio Revised Code Section 153.65(G) 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 or a public improvement.”
- Similar to the CMR delivery model with the exception that the builder also serves as the design professional
- Must also have a criteria architect or engineer, which can not be the same design professional working with the builder, develop the criteria for the procurement
- Best value selection standard like CMR
- Minimum Notice is now 14 days instead of 30 days

Streamlined CMR (ORC 9.334) and DB (ORC 153.693)

- Applies to projects under \$4 million
- Public authority requests:
 - Qualifications + Pricing proposals in a combined RFQ / RFP
- Mandatory pre-proposal meeting
- Ranking process:
 - Rank firms on qualifications
 - Shortlist selected
 - Evaluate pricing and conduct interviews
 - Best value selection
- Public authority can still use the standard process for project under \$4 million

Purchasing Programs

- State and National Purchasing Consortia (ORC 9.48)
- Councils of Governments (ORC 167.08)
- Ohio Cooperative Purchasing Program (125.03)
- Federal General Service Administration (9.48)
- Other Political Subdivision Contracts (ORC 9.48)

State and National Purchasing Consortia

➤ ORC 9.48:

B. A political subdivision may do any of the following:

...

(2) Participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision is eligible for membership.

C. Acquisition by a political subdivision of . . . **services**, through participation in a contract of another political subdivision or participation in an association program under division **(B)(1) or (2)** of this section, is exempt from any competitive selection requirements otherwise required by law, if the contract in which it is participating was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure of **another political subdivision within this state or in another state**.

OAG Opinion No. 2024-003

- The term ‘services’ as used in R.C. 9.48 does not include ‘construction’ or ‘construction services.’ 2019 Att’y Gen. No. 2019-028, followed.
- However, the term ‘services’ may cover the **installation, maintenance, repair, and the like of items acquired under R.C. 9.48 provided such services do not constitute nor cross into construction or construction services.**
- Whether any particular service to be acquired under R.C. 9.48, including any repair, maintenance, replacement, installation, or up-grade constitutes ‘construction’ or ‘construction services’ is a question of fact beyond the opinion-rendering function of the Attorney General.

Types of Services Relevant Under OAG Op. 2024-003

- Asphalt and Concrete Improvements
- HVAC Upgrades
- Roofing Repair and Replacement
- Installation of Playground Equipment
- Turf Replacement and Installation
- Flooring Removal and Installation
- Plumbing Improvements
- Electrical Improvements
- And more. . . .

Cooperative Purchasing OAG Op. No. 2019-028

- 2019 Att’y Gen. No. 2019-028 did opine that R.C. Section 167.081 permits contracts for services on a per **unit basis** for the repair, enlargement, improvement, or demolition of existing buildings or structures.

Councils of Governments (COGs)

- Ohio Revised Code Section 167.01
- “That governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.”

Councils of Governments (COGs)

- **Type of Contracts:** COG's can enter into unit price contracts.
- **Scope of the Projects:** Repair, enlargement, improvement, or demolition of a building or structure. Cannot be used for new construction.
- **Procurement Process:** The contract is awarded pursuant to the competitive bidding procedure of: a council member; OR a statewide consortium of which the council is a member; OR a multistate consortium of which the council is a member.
- **Participation in the Contracts:** Council members may participate in such contracts without the application of additional competitive selection or bidding requirements.
- ORC 167.081, OAG Opinion No. 2019-028

Managing the Construction Process

What Is an Owner's Representative

- Owner's Representative
 - Owner's "eyes and ears"
 - Serve Owner's best interest
 - Extension of Owner's Staff
 - Construction Expertise
 - Not responsible for design or construction

Owner's Representative Construction Phase Services

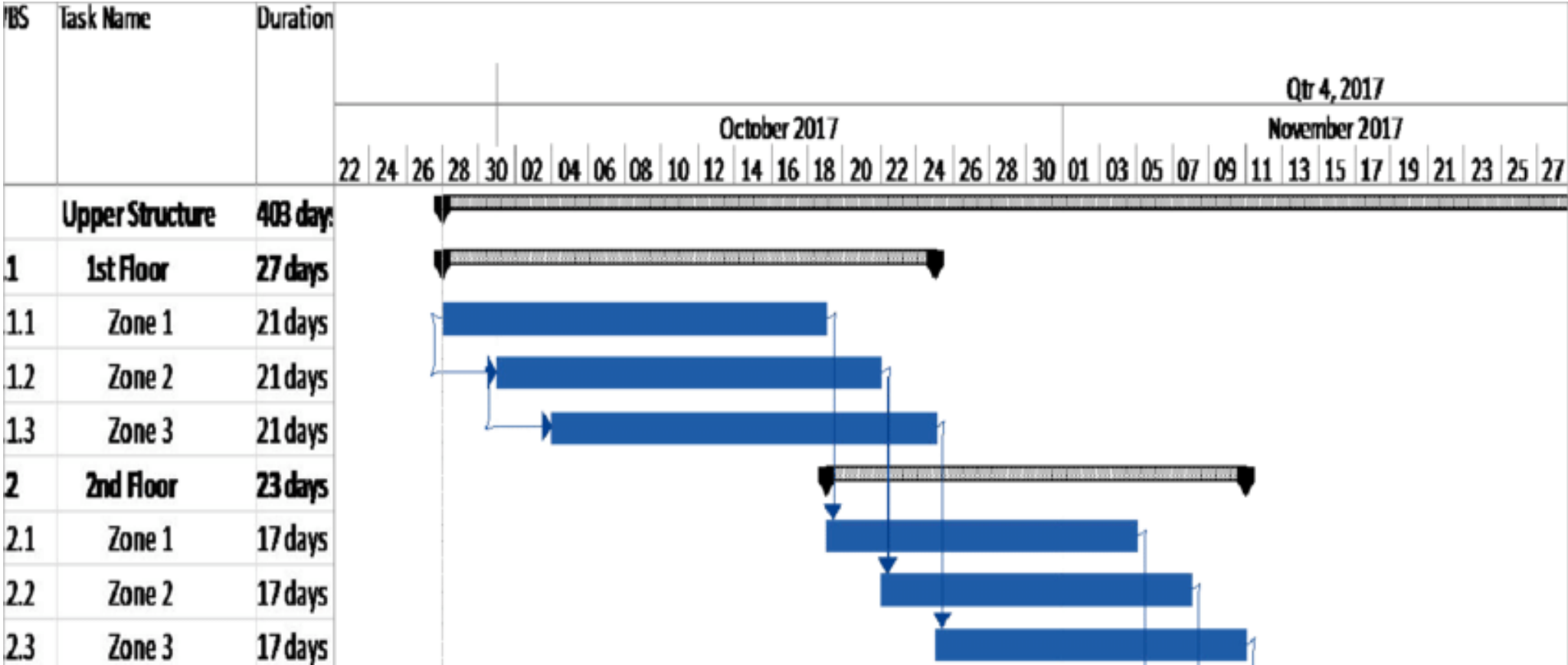
- Project Liaison
- Meetings
- Schedule/Sequencing
- Project Budget/Cost Monitoring
- Monthly Invoice Review
- Submittal Review
- Defective Work, Disputes, and Delay Claims
- Use of Contingency
- Close Out

Project Schedule

- Improved Project Management
- Enhanced Communication
- Resource Optimization
- Risk Mitigation
- It is a 'living document'

Project Schedule

➤ Gantt Chart Schedule



Key Contacts



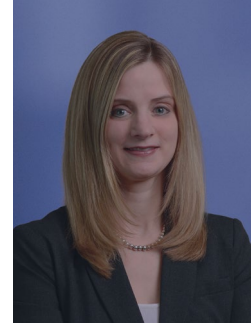
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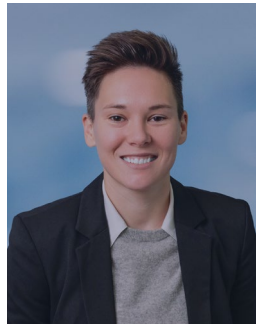
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