

CLARIFYING WIDESPREAD MISUNDERSTANDINGS ABOUT CONSTRUCTION LAWS AND PROCEDURES



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What's on Tap?

- **The Players in Construction Projects**
- **The Delivery Methods for Construction Projects**
- **Understanding the Laws**
- **Common Misperceptions**
- **The Do's and Don'ts**



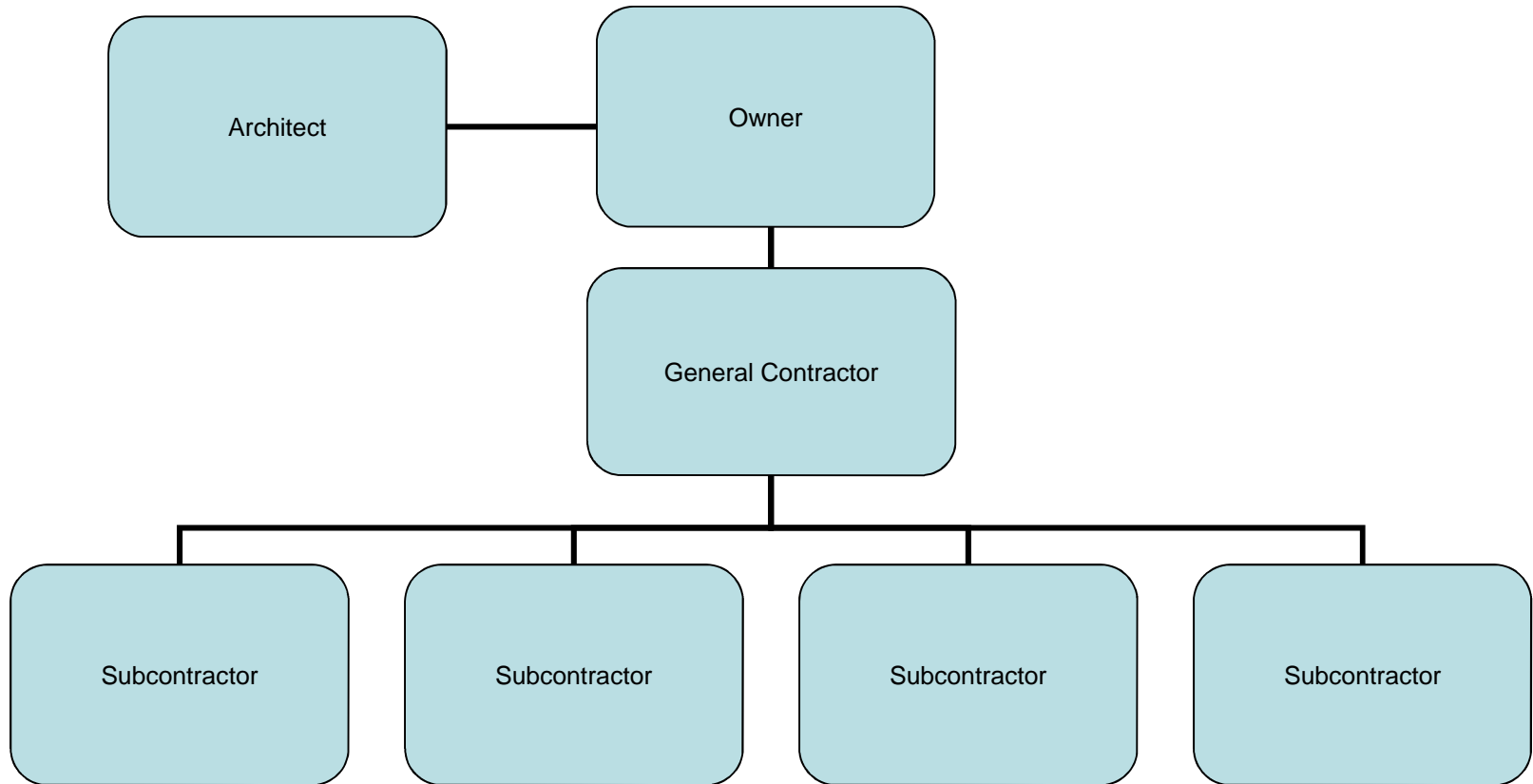
This document is comprised of general information relative to the subject matters discussed herein. It is not intended to give legal advice and does not establish any attorney-client relationship. School Districts facing specific issues should seek the assistance of an attorney.

The Construction Players

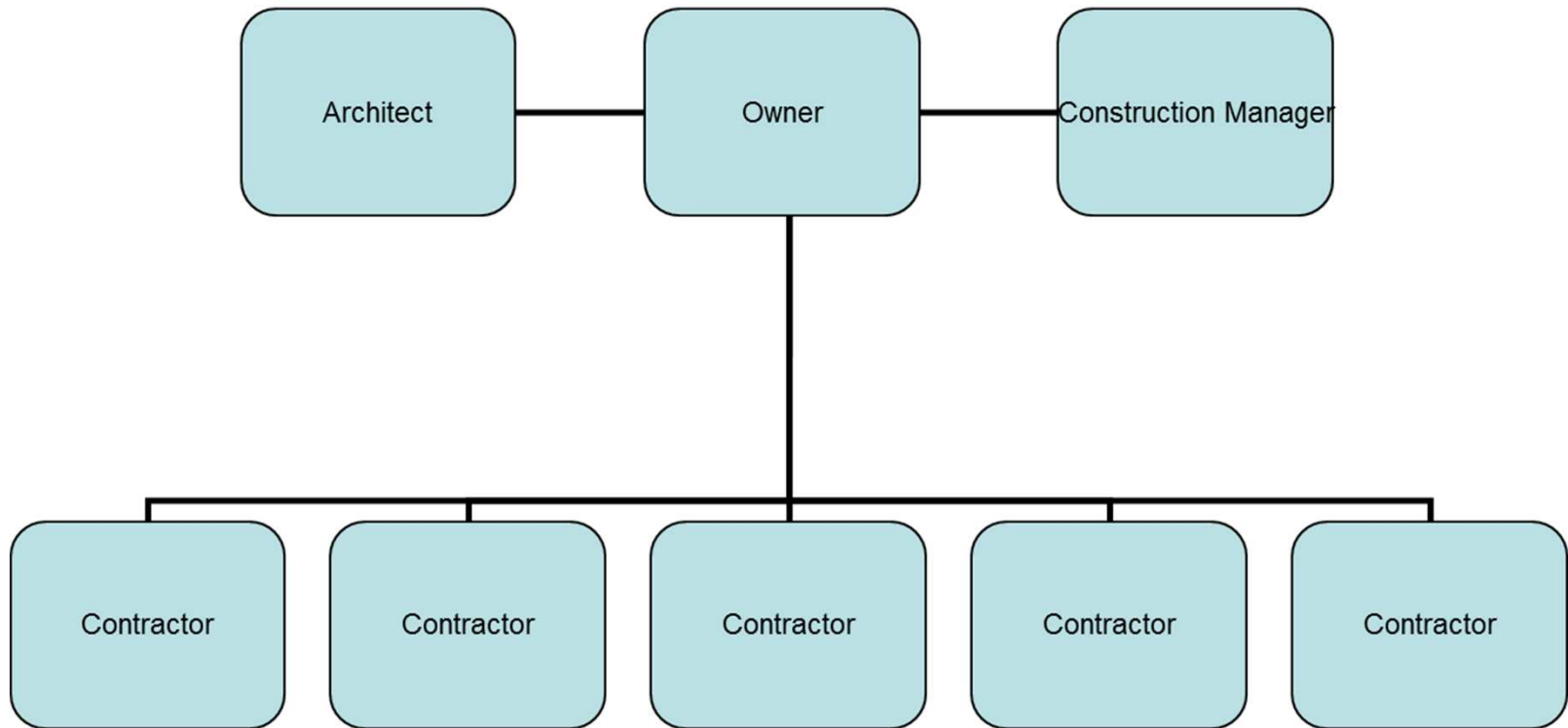
- There are various “players” that may be involved in a Construction Project.
 - The Owner (*i.e.*, the School District)
 - The Architect
 - The Construction Manager
 - The Owner’s Representative
 - The Technology Designer
 - The General Contractor
 - The Contractor
 - The Sub-Contractor
 - The Surety

- Not all of these “players” will be involved in every construction project. It depends on the delivery method utilized by the Owner.

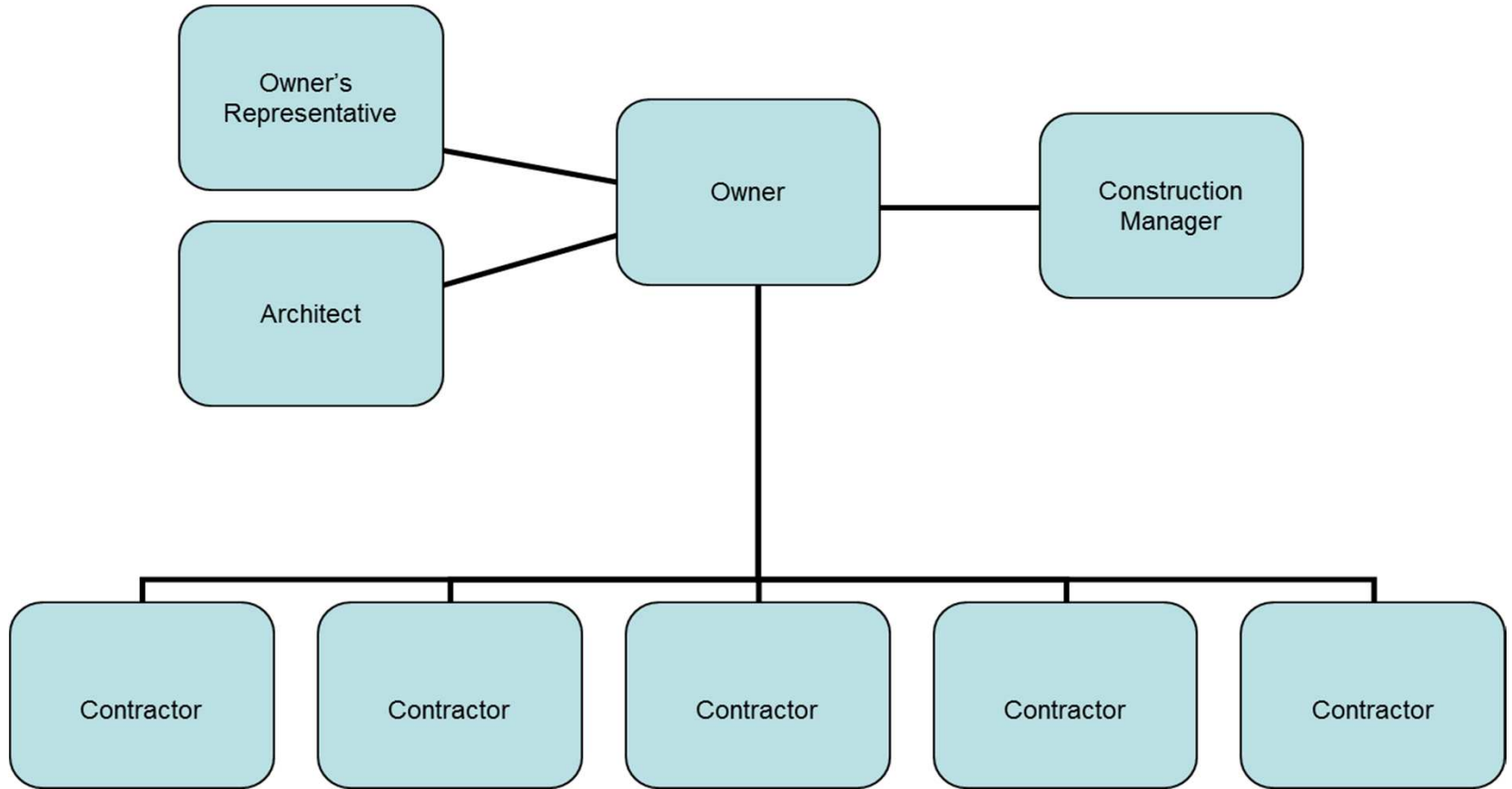
Delivery Method – Owner with General Contractor



Delivery Method – Owner with Construction Manager



Delivery Method – Owner with CM and Owner’s Representative



Understanding the Law

- **The Revised School Code – MCL 380.1 et seq.**
 - **MCL 380.1267 – Construction, Addition, Renovation or Repair of School Buildings**
 - Monetary Threshold for Applicability - \$22,766 (**“Cost of Construction Project”**)
 - Requirement to obtain Competitive Bids
 - For construction, repair or renovation of, or addition to, a new or existing school building
 - All material **AND** labor
 - Advertisement Requirements
 - In newspaper **and** State’s Website (**“Buy4Michigan”**)
 - Specific information required in advertisement
 - Familial Affidavit required
 - Reservation of Rights
 - Bid Bond Requirements
 - Michigan-Based Business Preference

Understanding the Law

- ❑ **The Revised School Code – MCL 380.1 et seq.**
 - **MCL 380.1263(3)**
 - Requires that the design or construction of school buildings used for instruction or non-instructional purposes comply with requirements of School Building Construction Act.
- ❑ **School Building Construction Act – MCL 388.851 et seq.**
 - Monetary Threshold for Applicability - \$15,000 (“Total Cost”)
 - All plans and specifications for the construction, renovation, repair or remodeling of a school building must be prepared by an architect or professional engineer licensed in Michigan.
 - Architect, professional engineer or “other person qualified to supervise construction” must supervise the construction of a school building.
 - May NOT dispense of architect or professional engineer after they prepare plans/specifications.
 - Authorized Department of Licensing and Regulatory Affairs (“LARA” – formerly DELEG) to administer Act and Single-State Construction Code Act.
 - Design-Build – Only permitted for energy conservation improvement projects (MCL 380.1274a)

Understanding the Law

- **Iran Economic Sanctions Act – MCL 129.311 (Public Act 517 of 2012)**
 - **Applicability - ALL requests for proposals (competitive bids) issued by public entity.**
 - **“Public Entity” includes school districts and intermediate school districts.**
 - **Requires contractor submitting proposal to certify that it is not an “Iran Linked Business” as defined in the Act.**

- **Contractor’s Bond for Public Buildings and Works Act – MCL 129.201 *et seq.***
 - **Monetary Threshold for Applicability - \$50,000 (“Contract Amount”)**
 - **Requirement for Performance Bond**
 - **Protects Owner if Contractor does not perform**
 - **Must be at least 25% of Contract Amount**
 - **Requirement of Payment Bond**
 - **Protects materialmen/suppliers and subcontractors against non-payment by contractor since lien on public property is prohibited.**
 - **Must be 25% of Contract Amount**
 - **Surety must be licensed in Michigan**
 - **Be aware of notice requirements if elect to invoke the Bond**

Common Misperceptions of the Law

- ❑ **State Website Posting Requirements**
 - Has changed to “Buy4Michigan”
 - School district must post all documents to “administrative site”
 - “Link back” to school district website no longer viable
- ❑ **Emergency Exception under MCL 380.1267**
 - Only applies to “repairs in emergency situations”
 - Emergency = “health, safety, welfare” issues
- ❑ **No “Sole Source” Exception**
- ❑ **Definition of “School Building” can be broad**
 - MCL 380.851a – “School Building” includes all buildings used for school purposes
 - MCL 125.1502a(1)(f) – “Building” means a combination of materials, whether portable or fixed, forming a structure “bonding a facility or shelter for use or occupancy by persons, animals or property”
 - MCL 125.1502a(1)(z) – “Structure” means that which is built or constructed, an edifice or building of any kind, or piece of work continually built up or composed of parts joined together in some definite manner.

Common Misperceptions of the Law

□ LARA Issues

- **Delegated authority under MCL 380.1263**
- **Approval of Plans**
- **Permits and Licensing**
 - **Minor Repair Exceptions**
 - **Electrical Exceptions (< \$100)**
 - **No Plumbing Exceptions**
- **Certain Use Requires Local Reviews**
 - **Examples that require local review:**
 - **Cell Towers**
 - **Driveways/Access Entries**
 - **Sanitary/Storm Sewer and Water Supply Systems**
 - **Traffic Control**
 - **Wetlands**

Common Misperceptions of the Law

- ❑ **Common Projects often not “viewed” as Construction**
 - **Playground Equipment**
 - **Field Turf Installation**
 - **Demolition of Buildings**
 - **Re-Opening of a Previously Closed Building**

- ❑ **Third-Parties who perform work as part of other services**
 - **Contractors who perform construction as part of other services may still be required to comply with Construction Laws and may require LARA and Local review**
 - **Examples that may require “dual purpose” LARA and Local submittals:**
 - **Cell Tower Installations**
 - **Leasing of Buildings**

Construction Do's and Don'ts

- ❑ **DO hire design and management professionals who special in school construction.**
- ❑ **DON'T have Board approve professional before contract is fully negotiated.**
- ❑ **DO submit prototype Contractor Agreement, along with General and Supplementary Conditions, to School's legal counsel.**
- ❑ **DON'T rely upon legal documents prepared by Architect or Construction Manager.**
- ❑ **DO read and verify all bid, performance and payment bonds.**
- ❑ **DON'T accept form of bond that is less protective than AIA form.**
- ❑ **DO require Architect and CM to take responsibility for requiring adequate insurance for the specific contract in question.**
- ❑ **DON'T rely upon the standard insurance requirements of AIA documents – have your insurance carrier review.**

THANK YOU! Any Questions?



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