

**12th ANNUAL MSBO
FACILITIES/OPERATIONS DIRECTOR
CONFERENCE**

**CONSTRUCTION PROJECTS:
CLARIFYING COMMON MISPERCEPTIONS OF
THE LAW**

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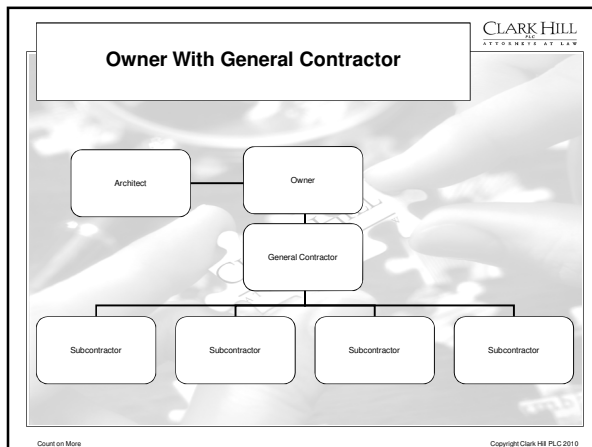
**Construction Players and Construction
Project Delivery Methods**

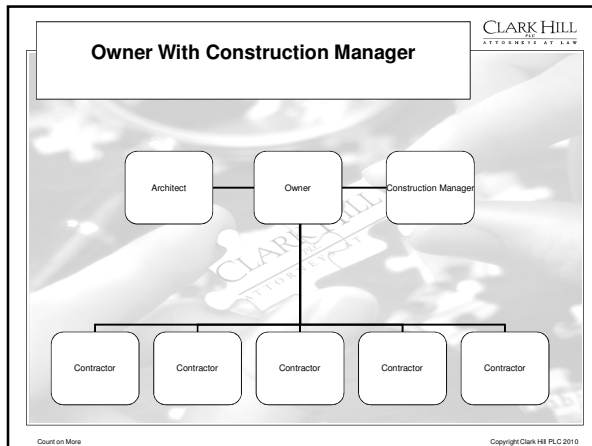
I. The Players

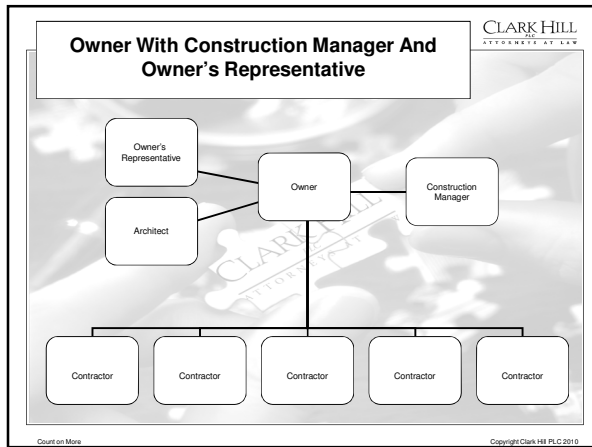
- A. The Owner
- B. The Architect
- C. The Construction Manager
- D. The Owner's Representative
- E. The Technology Designer
- F. The General Contractor
- G. The Contractor
- H. The Sub-Contractor
- I. The Surety

II. Delivery Methods

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Understanding the Law

I. The Revised School Code (MCL 380.1 *et seq.*)


A. MCL 380.1267

1. Monetary Threshold for Applicability (\$20,998 – **Cost of Construction Project**)
2. Requirement to Competitively Bid
 - a. For construction, repair or renovation of, or addition to, a new or existing school building
 - b. All material **and** labor
3. Advertisement Requirements
 - a. In newspaper and on State's designated website
 - b. Specific information required in advertisement
 - c. Familial Affidavit required
 - d. Reservation of Rights
4. Bid Bond Requirements
5. Michigan-Based Business Preference

B. MCL 380.1263(3)

1. Requires that design or construction of school building used for instructional **or** non-instructional purposes comply with requirements of School Building Construction Act.

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Understanding the Law

II. School Building Construction Act (MCL 388.851 *et seq.*)

- A. Monetary Threshold for Applicability (\$15,000 – **Total Cost**)
- B. 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.
- C. Architect, professional engineer or "other person qualified to supervise construction" shall supervise the construction of a school building.
- D. May **not** dispense of architect after they prepare plans/specifications.
- E. Authorizes Department of Energy, Labor and Economic Growth ("DELEG") to administer act and Single-State Construction Code Act.
- F. Design-Build: Only permitted for energy conservation improvements.

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Understanding the Law

III. Contractor's Bond for Public Buildings or Works Act (MCL 129.201 *et seq.*)

- A. Monetary Threshold for Applicability (\$50,000 – **Contract Amount**)
- B. Requirement of **Performance Bond**
 1. Protects Owner if Contractor does not perform
 2. Must be at least 25% of contract amount
- C. Requirement of **Payment Bond**
 1. Protects materialmen/suppliers and subcontractors against non-payment by contractor since lien on public property prohibited
 2. Must be at least 25% of contract amount
- D. Issues with Surety
 1. Surety must be licensed in Michigan
 2. Notice Requirements if elect to invoke the bond

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Common Misperceptions of the Law

- I. Emergency Exception under MCL 380.1267
- II. Definition of a "School Building" can be broad:
 - A. MCL 388.851a(a) – "School Buildings" shall include all buildings used for school purposes.
 - B. Mich. Admin. Code R. 29.1903(n) – "School" is a building or part of building owned or leased or under control of school district . . .
 - C. 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."
 - D. 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.

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Common Misperceptions of the Law

III. DELEG Issues

- A. Delegated authority under MCL 380.1263
- B. Approval of Plans
- C. Permits/Licensing
 - 1. Minor Repair Exceptions
 - a. Electrical Exceptions (< \$100)
 - b. No plumbing exception
- D. Certain Use Requires Local Reviews
 - 1. Examples: Cell Towers; Driveways/Access Entries; Sanitary/Storm Sewer; traffic control; wetlands; water supply

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Common Misperceptions of the Law

IV. Common Projects often not "viewed" as Construction

- A. Playground Equipment
- B. Field Turf Installation
- C. Demolition of Buildings
- D. Re-opening a Previously Closed Building
- V. Contractors who perform construction as part of other services may still be required to comply with Construction Laws and may require DELEG and local submittal for "dual" purpose (e.g., cell tower installations and lease of building).

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Construction Do's and Don'ts

- I. **Do** hire design and management professionals who specialize in school construction.
- II. **Don't** have Board approve professional before contract is fully negotiated.
- III. **Do** submit prototype Contractor Agreement, along with General Conditions and Supplemental Conditions, to School's Legal Counsel.
- IV. **Don't** rely upon legal documents prepared by Architect or Construction Manager.
- V. **Do** read and verify all bid, performance and payment boards.
- VI. **Don't** accept form of bond less protective than the AIA form.
- VII. **Do** require the Architect and CM to take responsibility for requiring adequate insurance for the specific contract in question.
- VIII. **Don't** rely upon the standard insurance requirements of the AIA A201 General Conditions (have your carrier review insurance requirements).

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Thank You
Any Questions?

Note: This document is not intended to give legal advice. It is comprised of general information. School Districts facing specific issues should seek the assistance of an attorney.

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