

Design Phase

THE BEST LAID PLANS

David Hansen
Eichelbaum Wardell Hansen Powell and Muñoz

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Episode 1 Construction Procurement - The Rise of the Procurist

In this session we covered pre-bond planning, political advertising, architect requirements and engineer requirements, how to navigate the legal framework for construction procurement under the Texas Education Code, the Occupations Code and the Texas Government Code, the “emergency exception,” delegation of authority by the board of trustees, how to pick a delivery method for your project, the fundamental features of each delivery method, contractor selection strategies, and hiring the architect.

The Most Recent Version of the Presentation is available for viewing. Call 1800 488 9045 to find out how.

Episode 2, Part 1: What to Expect During the Design Phase - The Best Laid Plans

In this session we will cover special situations that frequently occur in construction procurement. Bids that bust budgets have to be dealt with. If you walk into a procurement midway it is important to spot check the work of your predecessor to look to ensure that your award of a contract is not at risk of legal challenges that could delay the project. Time is money.

From time to time you will discover an error or omission in the process. All accidents can be fixed. Sometimes it is easy and sometimes it is more involved, If you are reading this, you are probably one of the people expected to make sure the project finishes on time and on budget. Ironing out the problems in procurement will help you to meet the expectation.

We will also discuss a Trustee’s role in procurement and some of the practice that you can put into place to help maintain an effective and efficient system of procurement. We will cover rejecting the bid and dealing with complaints that arise from the bidding process.

We will then discuss special problems that arise that are unique to each of the delivery methods with a focus on the role of the design professional for job-order contracting, interlocal agreements, design-build, energy savings and performance contracting (the accidental design build) construction manager agency, construction manager at risk, competitive sealed proposals, and competitive bidding.

The Road We Travel

- Part 1
 - Cleaning the Slate
 - Right Method Wrong Approach
- Part 2
 - Hiring the Architect
 - The New Rules - Planning Assessment and Programming
- Parts 3 and 4
 - Design Phase Duties of the Architect
 - Design Phase Duties of the Construction Manager Agent
 - Design Phase Duties of the Construction Manager at Risk

Notes

Cleaning
the Slate



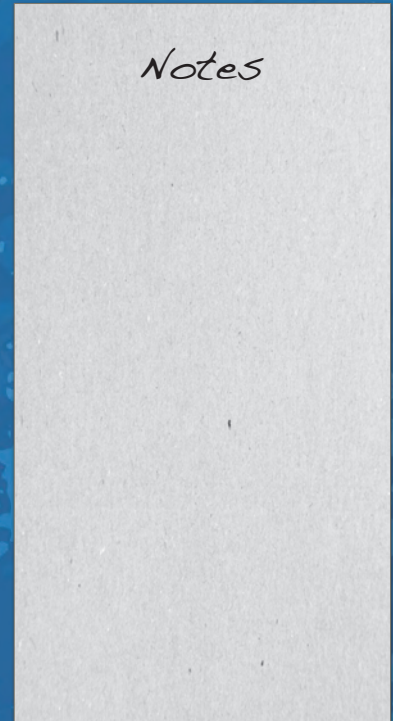
Attack of the Bids

- A Purchasing Director Walks Into A room....
 - Because of an Error the Method of Delivery was “Competitive Bids.”
 - Even the Lowest Bids are Too High.
 - Price Negotiation is Not an Option.
 - What do you do?
 - Clean the Slate.
 - If all of the plans and specs are done, then Competitive Sealed Proposals is an Option.

Notes

Competitive Sealed Proposals and GMP Amendments v. Bids

- If your method of delivery is competitive sealed proposals and your bids come in too high can you negotiate scope and price?
 - Yes.
- If your method of delivery is construction management at risk or design build and your Guaranteed Maximum Price (GMP) comes in too high, can you negotiate scope and price?
 - Yes
- If your method of delivery is Competitive Bids and your bids come in too high can you negotiate scope and price?
 - No



Spot Check

***SPOT CHECK - WHEN YOU
NEED TO CHECK YOUR
PREDECESSOR'S WORK
AND
BEFORE YOU ADVERTISE
AN RFQ, RFP, OR
REQUEST FOR BIDS***

Notes

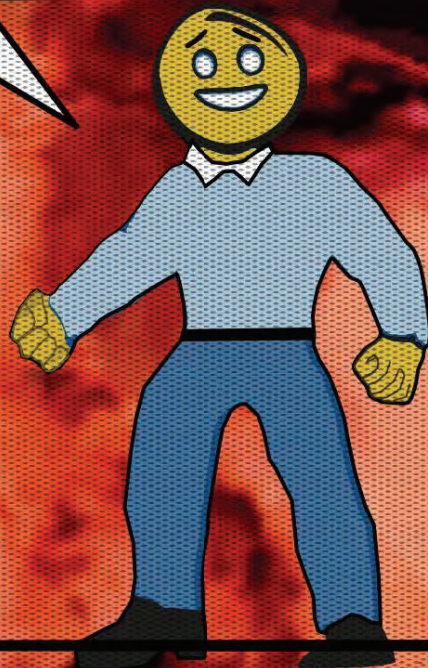
Spot Check

- Did you Choose a Method of Delivery?
- Did the Board Delegate Authority?
- Did you Hire a Design Professional?
- Did Your Board Adopt a Prevailing Wage Rate?
- Did you Adopt Selection Criteria and Relative Weights?
- Did You Fail to Publish?
- It's Better to Start Over When You Notice that Something is Missing.

Notes



WE DIDN'T TELL THE BOARD,
HE WOULDN'T GET AN ARCHITECT OR
ENGINEER,
WE COMPETITIVELY BID EVERYTHING,
HE WOULDN'T ADOPT A PREVAILING WAGE
RATE. .. HE WAS BASICALLY AN OUTLAW



The Illegal Act

- When you find out that your predecessor failed to comply with the applicable purchasing laws, you can choose to be a law-abiding citizen or an outlaw.
- There are several offenses defined by the Education Code which attach severe consequences to proven violations.
 - Component Purchases
 - Separate Purchases
 - Sequential Purchases
 - Criminally negligent violations
 - Knowing Violations

Notes

The Illegal Act

- “Component purchases”
 - “Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.”
- “Separate purchases”
 - “Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase”
- “Sequential purchases”
 - “Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase”

Notes

The Illegal Act

- Violations, whether they be the result of negligence or knowingly committed require action.
- How can we violate Texas Education Code Section 44.031??

Notes

The Illegal Act

- 44.031(a) related requirements:
 - \$50,000.00. or more?
 - \$50,000.00 or more in the aggregate over a 12-month period?
 - Method Prescribed by Law?
- 44.031(b) related requirements
 - Selection criteria

Notes

The Illegal Act

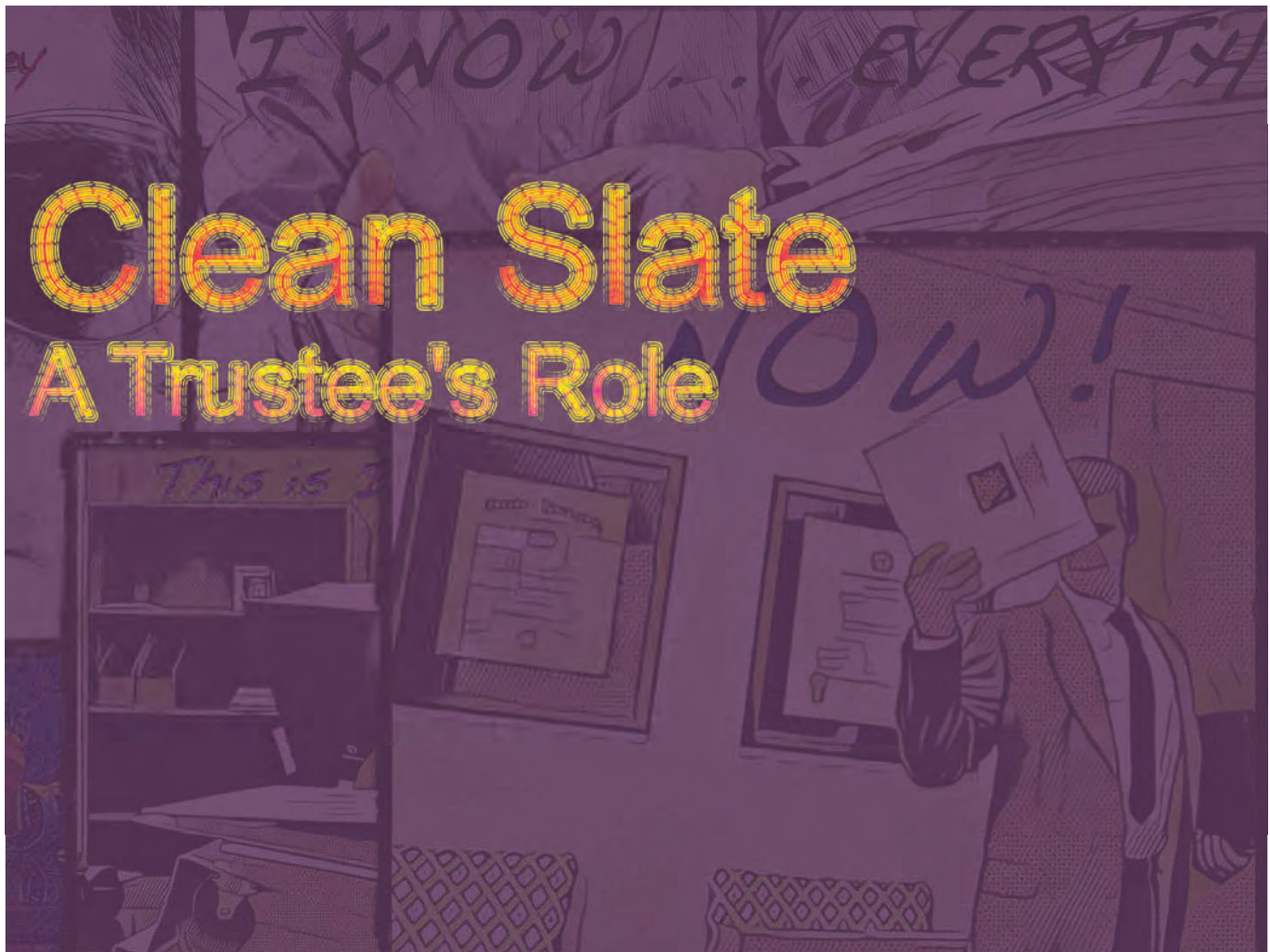
- 44.031 (b-1)-(m) requirements (pertinent to construction)
 - Considering business location without complying with Local Gov't Code §271.9051;
 - Hiring a design professional without complying with the professional services procurement act Tex. Gov't Code Chapter 2254.
 - Failing to comply with emergency provisions of TEC 44.031.

Notes

The Illegal Act

- INJUNCTION
 - A court may enjoin performance of a contract made in violation of 44.031.
 - Attorney fees may be awarded to the prevailing party.
 - Injunction means “STOP”
 - STOP MEANS LATE
 - LATE MEANS \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$
\$
\$

Notes



A Trustee's Role in Procurement

- Trustee Pressure
- What is the Role of the Individual Trustee In Procurement?
- The individual Trustee Does Not Play A Role In Procurement.
- The Individual Trustee Does Not Have Authority.

Notes

A Trustee's Role in Procurement

- What is the Board's Role?
- The Board Makes Policy.
- In Construction The Board Usually Adopts a Method of Delivery.
- The Board May Choose Selection Criteria.
- The Board Either Ranks or Adopts a Ranking Based on the Selection Criteria.
- The Board Delegates Authority to the Administration to negotiate the agreement.
- The Board Declares Emergencies When Necessary.

Notes

A Trustee's Role in Procurement

- A Board May Delegate Authority to one or more trustees.
- If a board delegates procurement authority to a committee of the Board, then those committee meetings must be posted and conducted in accordance with the Open Meetings Act.
- The safest route for everyone is for the Board to retain authority to make the final decision.

Notes



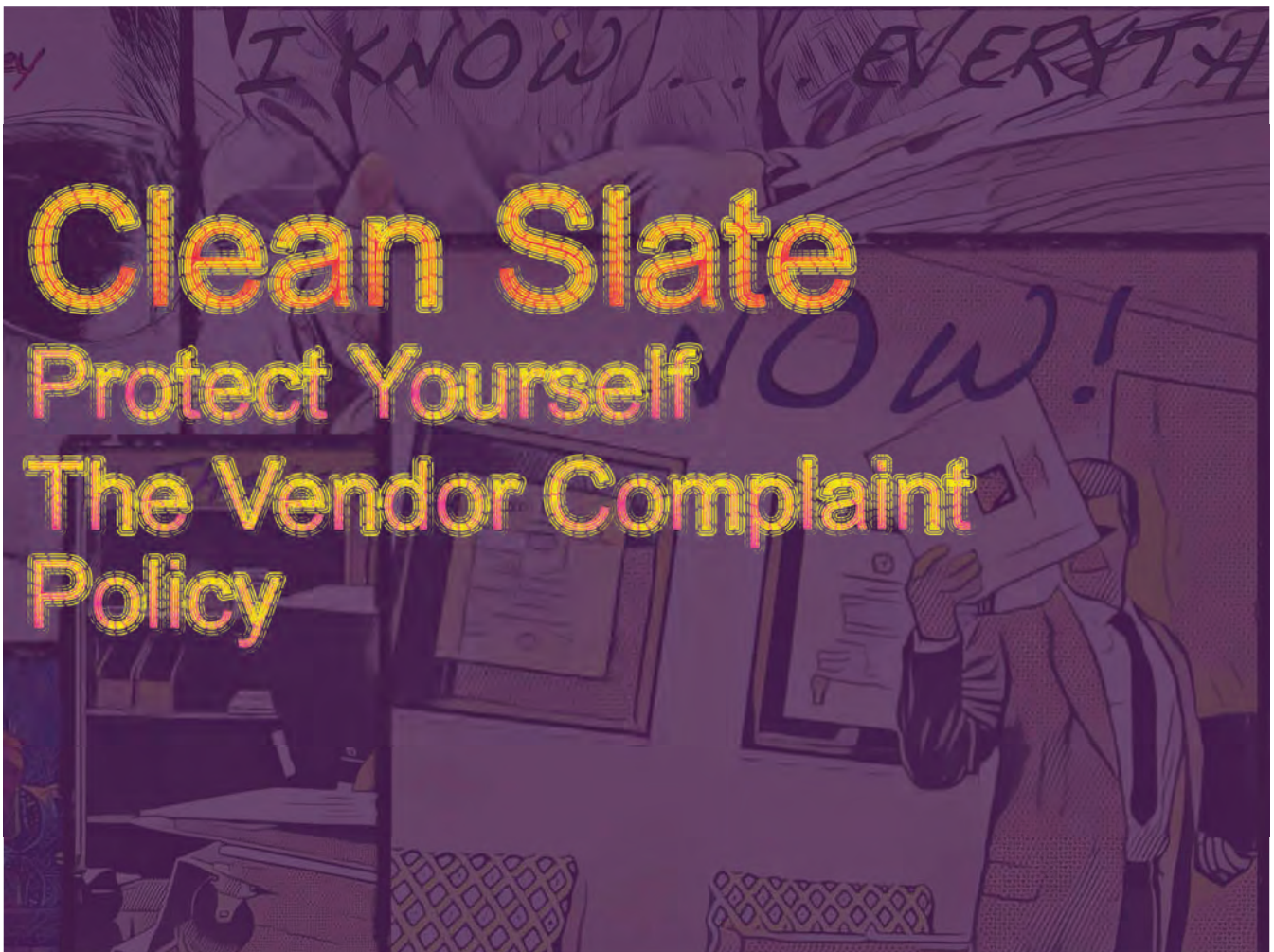
Rejecting the Bid

- You have the right to reject any bid for any reason.
- You Don't Have to Give a Reason if You're Rejecting them All.
- You should always have a reasonable basis for doing it.
- Waiver Language in The Re-Bid
 - By submitting a bid/response I agree to waive any claims pertaining to the bid/response...

Notes



Clean Slate Protect Yourself The Vendor Complaint Policy



The Vendor Complaint Policy

- CJ (LOCAL)
- GRIEVANCE PROCESS FOR VENDORS
- HELPS TO RESOLVE PROBLEMS
- HELPS GET INFORMATION IN FRONT OF THE DECISION MAKERS IN A TIMELY MANNER
- YOU CAN MAKE IT A contractual PRE-REQUISITE TO SUIT.

Notes

Right Method
Wrong
Approach

What is a **Method of Delivery**?

It's just a Method for bidding and supervising a construction project.

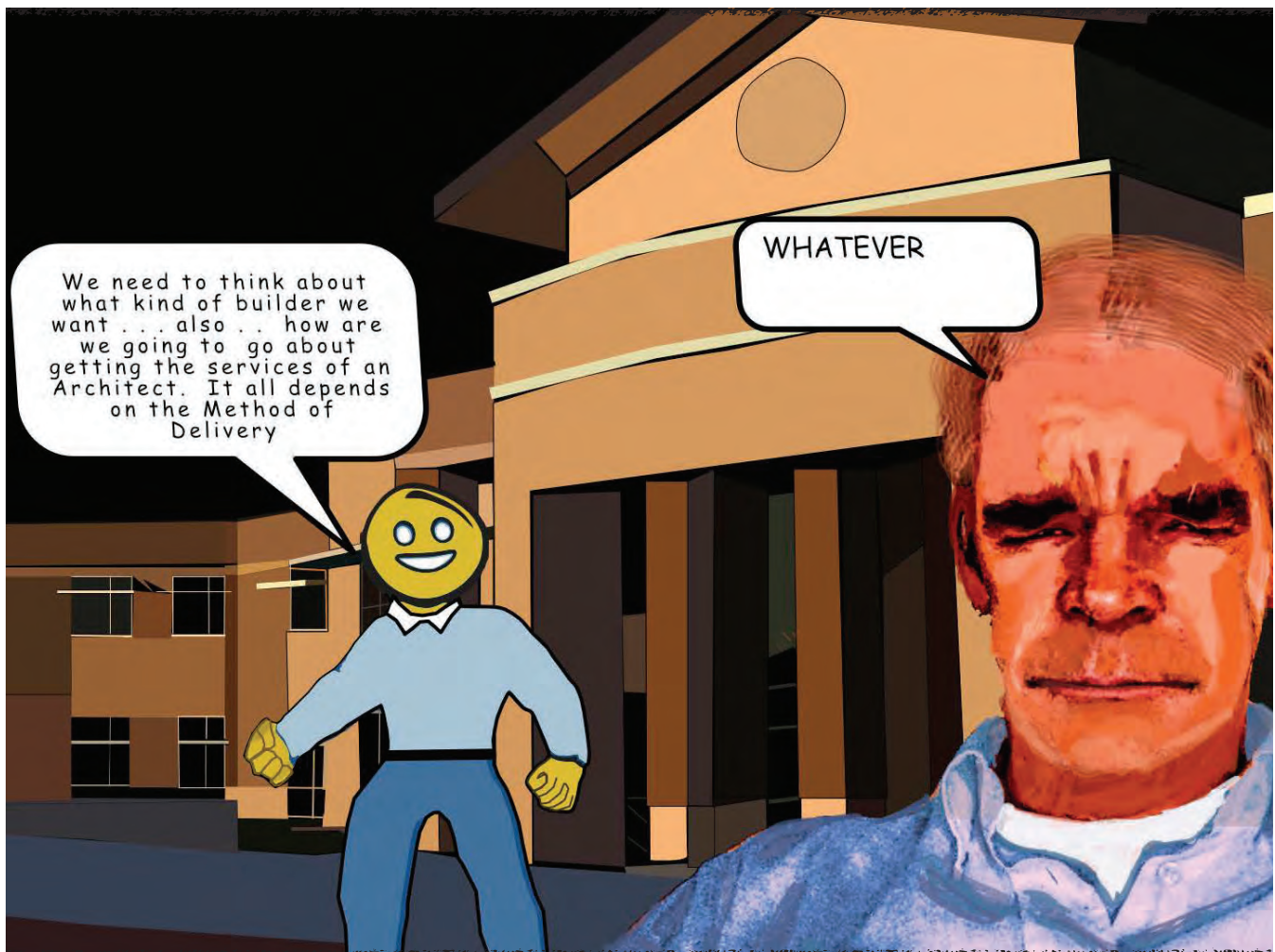
Choosing a Method of Delivery is a

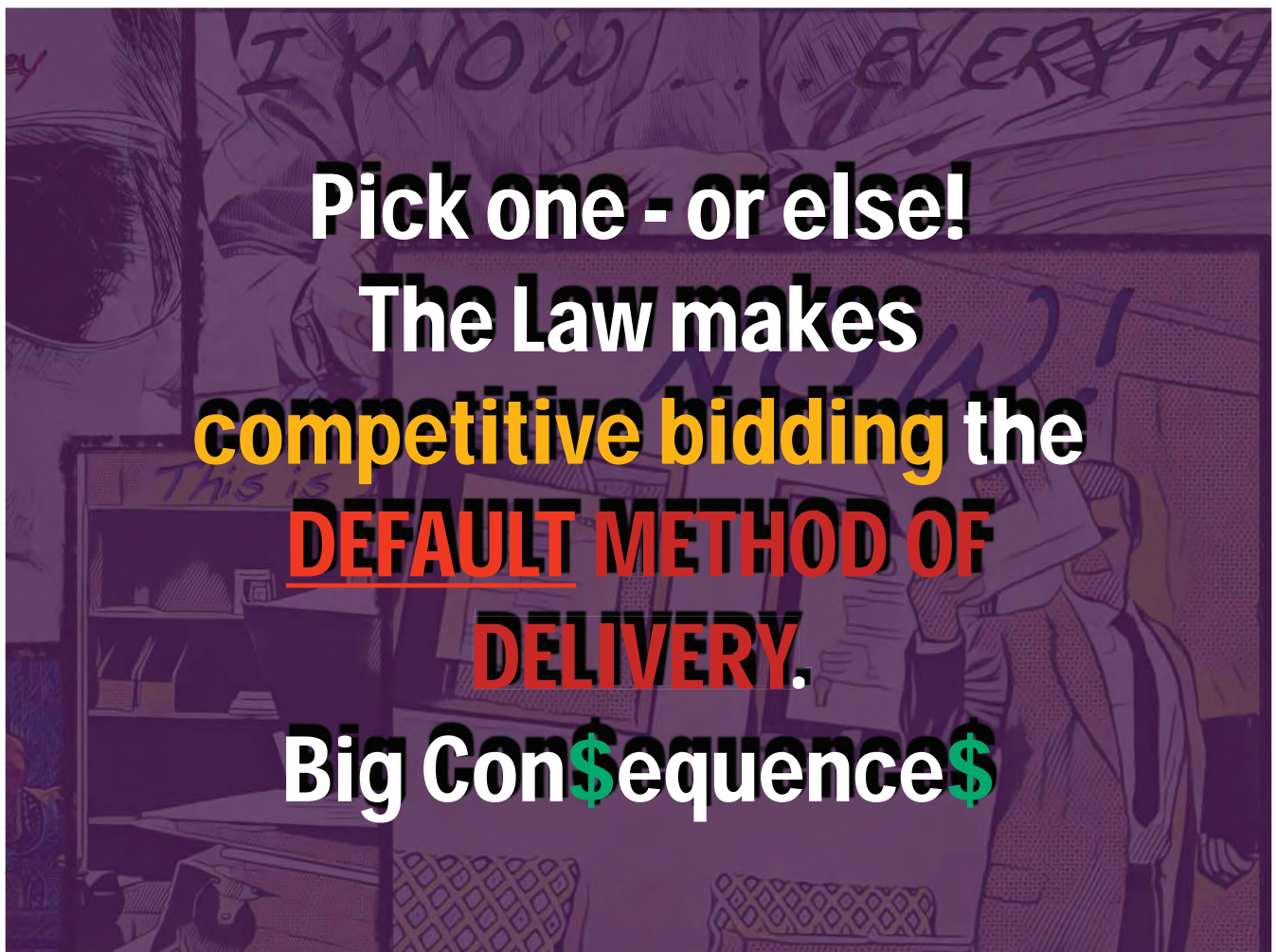
Critical Decision,

It Determines Who, in the End, is

Responsible for Providing an

Acceptable Finished Product.





There is no “cheaper”
method. However, some
methods can be inefficient
in ways that may not be
readily apparent.

Special
Problems





Job-Order Contracting

- Not for new school construction
- Job Order Contract
- May be awarded when the work is of a recurring nature, but the delivery times, type, and quantities of work required are indefinite..”
- Thus, this method, by itself, is not suited for major school construction projects.

Notes

Job-Order Contracting

- Only Delivery Method Where a Design Professional Might not Be Required
- It Depends on the Project
- New School Facility
 - Greater than \$100,000.00
- Major Space Renovations and Additions (...Modifying walls and entrances..)
 - Greater than \$50,000.00

Notes

Job-Order Contracting

- New School Facility?
 - Not JOC
- Major Space Renovations and Additions?
 - Possibly

Notes

Job-Order Contracting

- Does the Project Require Engineering?
 - If a Project Involves M.E.P. Engineering and is \$8,000.00 or more
 - Yes
 - If a Project involves any other kind of Engineering and is \$20,000.00 or more.
 - Yes

Notes

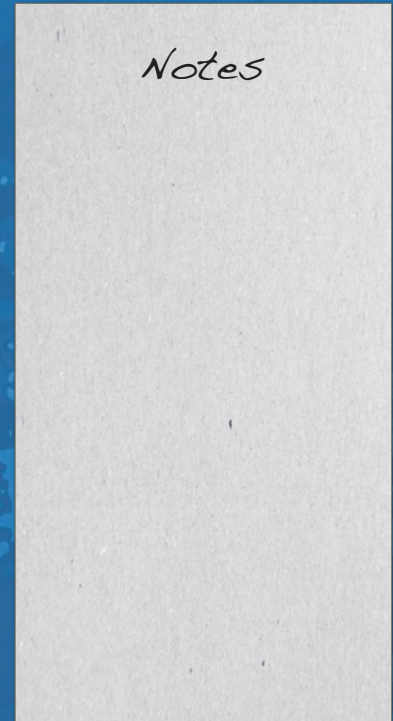
Job-Order Contracting

- Maybe Not Needed For:
 - Painting;
 - Minor Patching
 - Tile work
 - Cabinet and Finish Repairs

Notes

Job-Order Contracting

- RFQ for an emergency design firm yearly or biennially.
 - Structural Engineers
 - Civil Engineer
 - MEP Engineers
 - Architects
 - Geotech Engineers



IT'S US AGAIN!



Interlocal Agreement

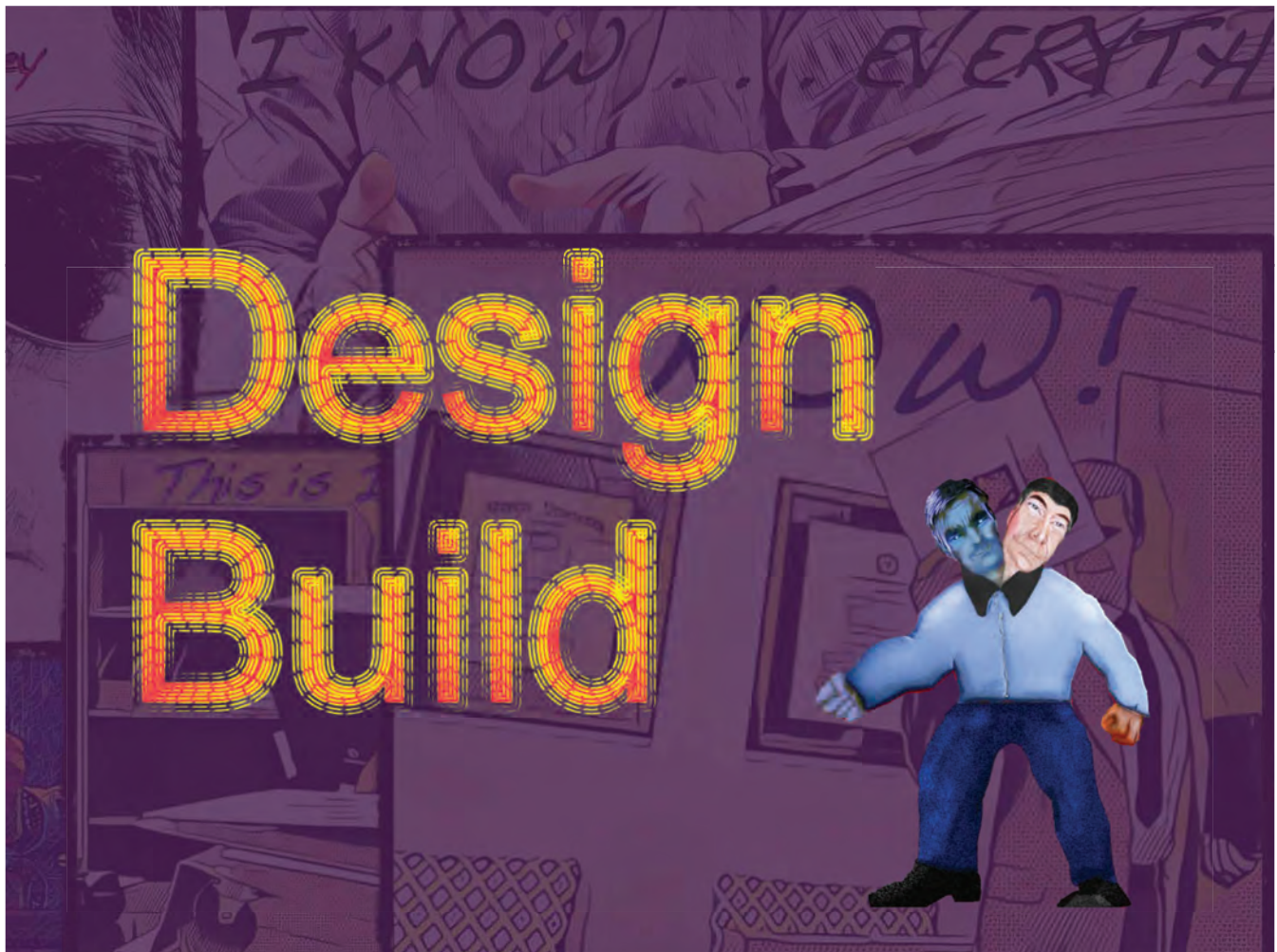
- Restrictions on procurement of design services.
 - May not purchase design services through a purchasing cooperative.
- The Interlocal Cooperation Act also requires a certification regarding design services before signing certain contracts for goods and services that will be incorporated into a construction project.

Notes

Interlocal Agreement

- When goods or services are purchased for use in a construction project and the contract will be for \$50,000.00 or more,
- Before signing the contract, the Owner must designate someone to certify:
 - that the project does not require a design professional; or
 - that the plans and specifications have been prepared by a design professional under the applicable occupations code provision.

Notes



Design Build

- Single Contract for Both Design and Construction
- Yes. You still need a design professional of your own.
- Before you hire a Design Builder, you hire a Design Professional to help with the solicitation.
- Your design professional develops the ***Design Criteria Package***
- During Construction Phase, the Design Professional Advises the Owner.

Notes

Design Build

- The Design Criteria Package (the “DCP”) may include, as appropriate:
 - budget or cost estimates;
 - information on the site;
 - performance criteria;
 - special material requirements;
 - initial design calculations;
 - known utilities;
 - capacity requirements;
 - quality assurance and quality control requirements;
 - the type, size, and location of structures; and
 - notice of any ordinances, rules, or goals adopted by the governmental entity Regarding historically underutilized businesses.

Notes

Design Build

- Special Problems
 - the approach,
 - Interlocal cooperatives & Design Build,
 - the expertise,
 - the stipulated sum - with no stipulated work,
 - the guaranteed maximum price,
 - the failure to hire an engineer or architect,
 - the switch from performance contractor to design builder (*The Accidental Design Build*).

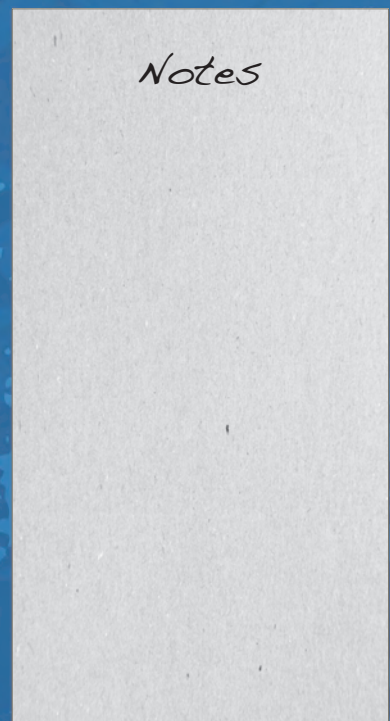
Notes





The Accidental Design Build

- Energy Savings and Performance Contracts
 - Special Rules for Procurement and Financing.
 - For Improvements to Energy Efficiency of Building Systems.
 - Basic Premise is that it must pay for itself.
 - Must guarantee savings.
 - Savings must be independently verified before signing the contract.



The Accidental Design Build

- Problems Occur When
 - Energy Audit Reveals that the Project doesn't qualify for inclusion in the statute.
 - Audits used to be free, now they are not.
 - "Some Savings are Better than No Savings. . . I guess."
 - So - Why not Design Build?
- In Some Ways an ESPC is like a Design Build But not exactly.

Notes

The Accidental Design Build

- Have to restart the procurement process
- DON'T FORGET. You Need A DESIGN PROFESSIONAL TO CREATE THE DESIGN CRITERIA PACKAGE AND MONITOR THE WORK
- If your "free" audit comes with a price tag And you choose not to hire the performance Contractor,
- How do you go through the design build procurement without considering price as a factor?
- Remember- the first step is to consider qualifications only.

Notes

Construction Manager Agent



Construction Manager Agent

- Special Problems
 - Failing to Hire the Architect First
 - True Savings
 - Bid holes
 - “Value engineering”
 - The expertise
 - Disputes
 - Overlapping bids
 - Insurance requirements

Notes

Construction Manager Agent

- Special Problems
 - The reasonable fee
 - Surprises concerning responsibility.
 - Strength of Cost Estimation Capabilities

Notes

**Construction
Manager
at
Risk**



Construction Manager at Risk

- Must First Hire the Architect
- Usually hired before plans and specifications are done.
- Pre-Construction Services
 - Cost Estimation and Design Input
- During Construction Phase the CMAR is Somewhat Like a General contractor
- When the plans are done or nearly done, the CMAR proposes- The GMP.
- The GMP is known as the Guaranteed Maximum Price.

Notes

Construction Manager at Risk

- Special Problems
 - The general conditions “guarantee” (before you have even designed the project)
 - Failing to sign the contract (informality kills).
 - Weak Cost Estimates
 - Beginning work before agreeing to a Guaranteed Maximum Price (the “GMP”)
 - Excessive contingencies within the GMP
- The guaranteed maximum price negotiation
 - “Value” “Engineering”
 - The Construction Manager at No risk
 - Bid stacking
- Accounting requirements and inexperienced construction management firms

Notes



Competitive Sealed Proposals

Competitive Sealed Proposals

- Architect Prepares Construction Documents Prior to Procurement
- Used for hiring Contractors for Projects Large and Small.
- This is the method you select if you want a General Contractor.
- You can negotiate scope and price after you open the proposals.
- You cannot negotiate scope and price if using competitive bids.
- This is a reason that sometimes general contractors are not good at playing the role of a CMAR -this, and Accounting.

Notes



Competitive Bids

Competitive Bids

- Hire the Architect First
- All Issues Relate to the Construction Phase (not around during the design phase)
- Competitive Bidding is The Default Method.
- Mainly For very small and simple projects.
- No Post Bid Negotiation
- Not Well Suited for Large facility construction

Notes

**If you have any questions, Please call
David at 1800.488.9045 send an email
to dph@edlaw.com**



**1-800-488-9045
dph@edlaw.com
David Hansen**



EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.