

CONSTRUCTION OPTIONS FOR HLPUSD SCHOOLS

January 9, 2020



ORBACH HUFF SUAREZ + HENDERSON LLP

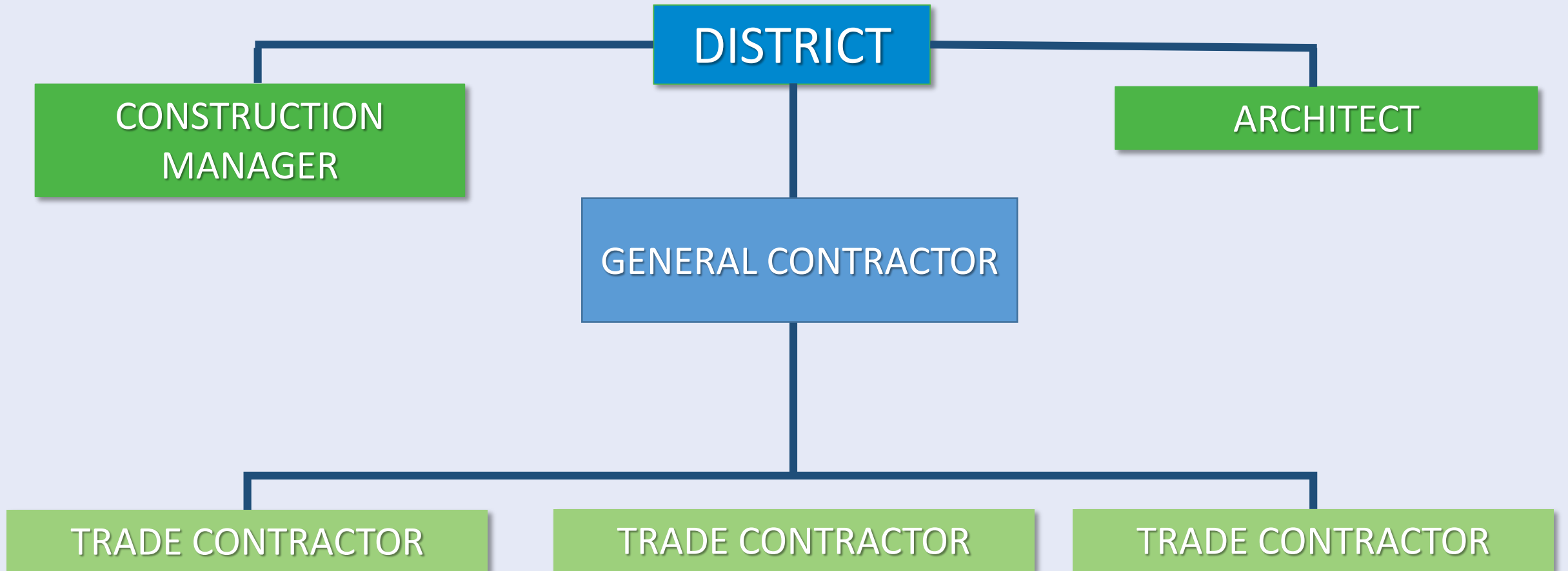
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OPTIONS AVAILABLE

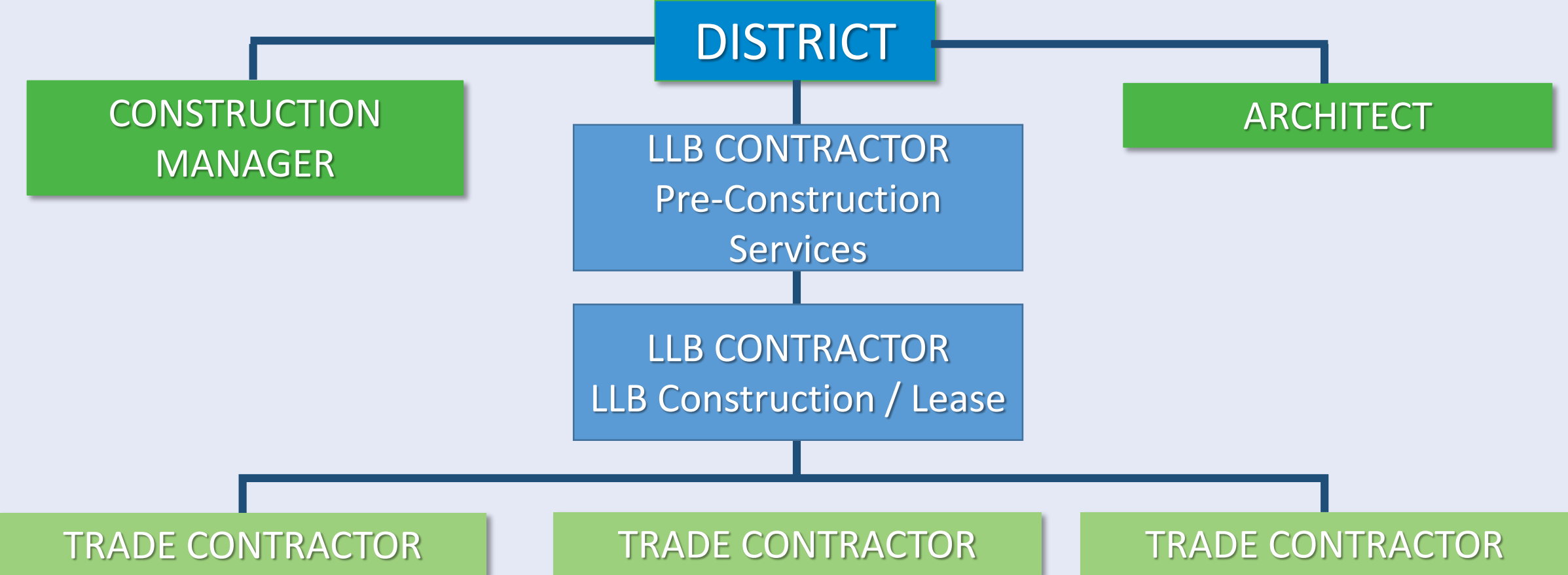
● DESIGN – BID – BUILD

● LEASE – LEASEBACK

DESIGN-BID-BUILD STRUCTURE



LEASE-LEASEBACK STRUCTURE



WHAT THEY HAVE IN COMMON

- BOTH ARE LEGAL
- BOTH ARE INTENDED TO PROVIDE LOWEST PRICE FOR CONSTRUCTION
 - ONE BY BID
 - OTHER BY NEGOTIATION

DIFFERENCES BETWEEN LOW BID & LEASE-LEASEBACK

- ARCHITECTURAL PLANS

- LOW BID – BIDDER/DISTRICT TIED TO PLANS AND SPECIFICATIONS

- LEASE-LEASEBACK – CONTRACTOR WORKS WITH DESIGN TEAM AND DISTRICT TO REVIEW AND SUGGEST CHANGES TO PLANS AND SPECIFICATIONS

DIFFERENCES BETWEEN LOW BID & LLB

- CONTRACTOR

- LOW BID – DISTRICT MUST USE LOWEST RESPONSIVE BIDDER

- LEASE-LEASEBACK – DISTRICT SELECTS MOST QUALIFIED CONTRACTOR

- REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSALS

- RESPONSES SCORED BY SCORING COMMITTEE

- HIGHEST SCORING CONTRACTOR SELECTED

DIFFERENCES BETWEEN LOW BID & LLB

● PRICE

- LOW BID – NO POST-BID NEGOTIATION ON PRICE
- LEASE-LEASEBACK – DURING “PRE-CONSTRUCTION SERVICES” PRICE IS NEGOTIATED PRIOR TO AWARD OF CONSTRUCTION CONTRACT

REACHING AN ACCEPTABLE PRICE

● DESIGN-BID-BUILD

- DISTRICT BUDGET HAS LIMITED INFLUENCE
- PRICE IS FIXED
- PRICE IS MARKET DRIVEN
- LOWEST BID WINS
- NUMEROUS FACTORS CAN INFLUENCE BID AMOUNTS
- DISTRICT CAN LOWER PRICE POST-AWARD BY
DESCOPING WORK

REACHING AN ACCEPTABLE PRICE

● LEASE-LEASEBACK

- DISTRICT BUDGET HAS STRONG INFLUENCE
- PRICE IS NEGOTIATED
- VALUE ENGINEERING PERMITTED TO REDUCE PRICE
- SCOPE CAN BE CHANGED TO REDUCE PRICE
- IF PRICE STILL NOT ACHIEVABLE DISTRICT CAN PROCEED TO NEXT RATED CONTRACTOR

DESIGN-BID-BUILD: PROS & CONS

● PROS

- PROCESS IS ESTABLISHED
- CONTRACTOR SELECTION IS OBJECTIVE
- NOTHING TO SCORE – LOWEST BIDDER WINS
- DISTRICT TIME/EFFORT/COST MINIMAL
- PROCESS FROM CALL FOR BIDS TO AWARD AS FAST AS 45-60 DAYS
- DISTRICT ALWAYS HAS OPTION TO REJECT ALL BIDS

DESIGN-BID-BUILD: PROS & CONS

● CONS

- DISTRICT HAS NO CONTROL OVER SELECTION OF CONTRACTOR
- DISTRICT OBLIGATED TO AWARD TO LOWEST RESPONSIVE BIDDER
- IF LOW BID HIGHER THAN DISTRICT BUDGET, NO OPPORTUNITY TO REVISE PRIOR TO AWARD OF CONTRACT – ONLY OPTION IS TO REJECT ALL BIDS
- ANY ERRORS IN BID DOCUMENTS = CHANGE ORDER
- ANY UNFORESEEN CONDITIONS = CHANGE ORDER
- ANY TIME/SCHEDULE IMPACT = CHANGE ORDER

LEASE-LEASEBACK: PROS & CONS

● PROS

- DISTRICT HAS CONTROL OVER SELECTION OF CONTRACTOR
- DISTRICT SELECTS THE “MOST QUALIFIED” CONTRACTOR USING A “BEST VALUE” SCORING PROCESS

LEASE-LEASEBACK: PROS & CONS

● PROS

- SELECTED CONTRACTOR DURING PRE-CONSTRUCTION PHASE PARTICIPATES IN REVIEW OF PLANS AND PROJECT:
 - COST SAVINGS
 - TIME SAVINGS
 - CORRECT ERRORS AND OMISSIONS
 - REDUCE LIKELIHOOD OF BUDGET-BUSTING CHANGE ORDERS
 - NEGOTIATION OF PRICE TOWARDS DISTRICT BUDGET
- IF CONTRACTOR AND DISTRICT UNABLE TO AGREE ON CONSTRUCTION PRICE, DISTRICT MAY TURN TO NEXT LOWEST SCORED CONTRACTOR

LEASE-LEASEBACK: PROS & CONS

● CONS

- LEGALITY CURRENTLY ESTABLISHED BY STATUTE AND CASE LAW BUT NOT AS ROCK SOLID AS LOW BID
- CONTRACTOR SELECTION IS SUBJECTIVE
- ANY PROCESS WHICH IS SCORED IS SUBJECT TO CHALLENGE
- DISTRICT TIME/EFFORT/COST SIGNIFICANT

LEASE-LEASEBACK: PROS & CONS

● CONS

- PROCESS CAN BE 45-60 DAYS LONGER THAN LOW BID
- NO GUARANTEE THAT AT END OF PROCESS DISTRICT WILL BE ABLE TO ENTER INTO A CONSTRUCTION CONTRACT
- INTEREST/FINANCING COST ON THE FINAL 5% OF CONSTRUCTION COSTS (THE LEASE PAYMENTS) PAID OVER 12 MONTHS AFTER COMPLETION; INTEREST RATE IS USUALLY AT 2%
- EXAMPLE – ON A \$30,000,000 PROJECT THE FINANCING COSTS WOULD BE APPROXIMATELY \$30,000

THANK YOU!

QUESTIONS/COMMENTS?