

Standard Construction Contract Clauses From the Perspective of the Owner, Contractor and Design Professionals

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- Who are we and why are we here?
 - Tyrone Holt
 - Jeffery B. Stalder
 - Charlotte Wiessner
- How do we approach the negotiation of construction contracts?

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“The Profession functions within a matrix of laws intended to provide a level of consistency and predictability for all involved in design and building”, -- Ava Abramowitz, Esquire

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- In every contract negotiation that I am involved with, my goals are to:
 - Make a reasonable business deal for my client
 - Assist my client in its understanding of the potential business risks of the contract terms
 - Get the “spikes” out of the deal for everyone
 - Identify and address any unusual risks
 - Make every effort to have the language of the final agreement accurately set forth the business deal of the parties.
 - Address and provide any ancillary or related documents
 - Complete the deal, with a fully executed agreement as soon as possible and as cost effectively as possible consistent with the realities of the deal

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- **Lawyers' Roles – vary from deal to deal – be flexible**
 - Every deal is different
 - The lawyer's role may be different from deal to deal
 - Technical Advisor
 - Scrivener
 - Negotiator on key provisions
 - Technical Advisor, Negotiator and Member of Group Negotiating/Drafting Team
- In every role, my job is to get a reasonable deal done – not to
kill the deal**

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Evaluate Project Risks

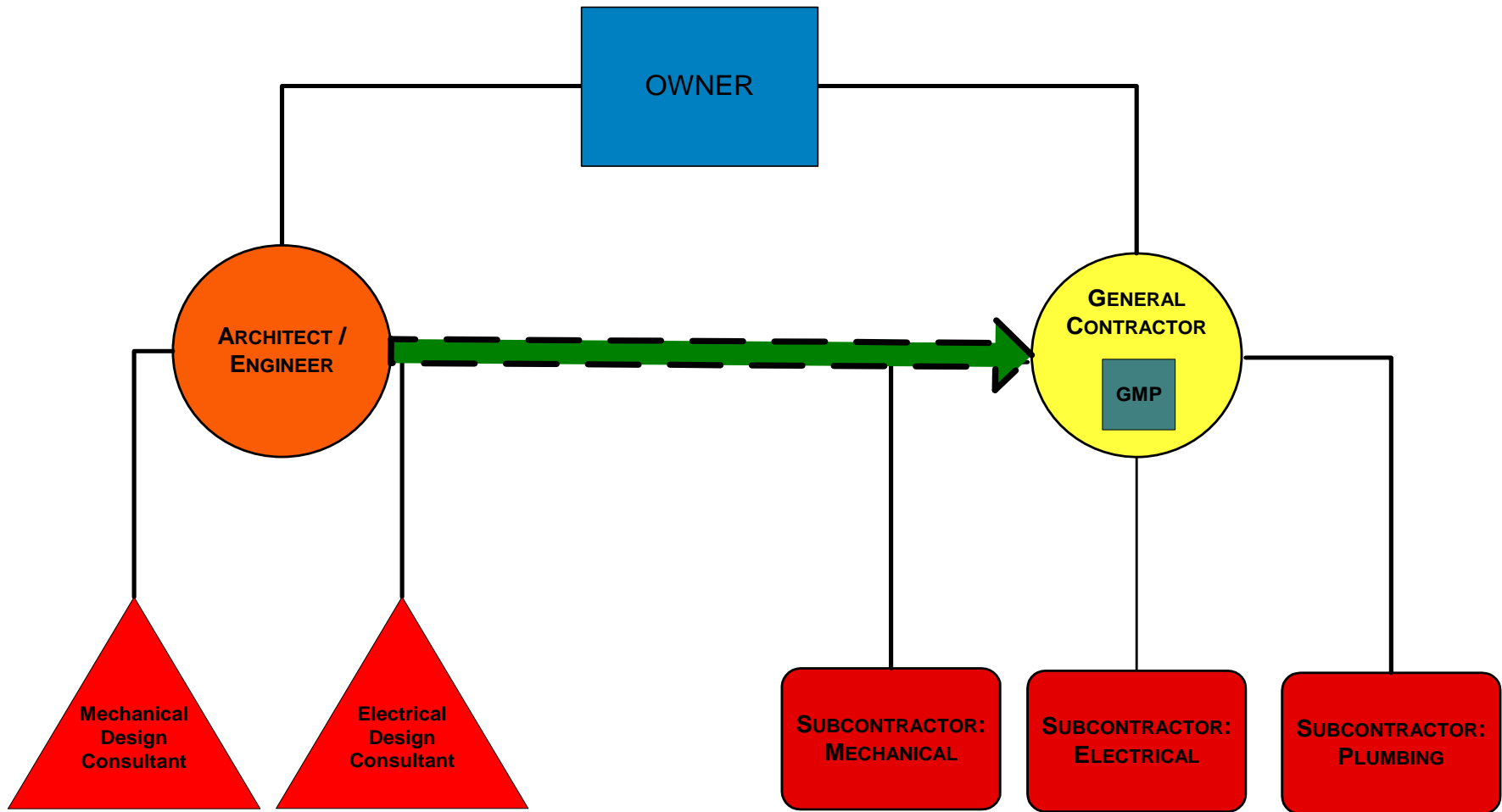
- **Type and Expectation of Owner**
- **Size and Complexity of Project**
- **Role of Your Client and Size of Fee**
- **Each Party shall a different type of concern and exposure to the project risks**

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Evaluate Project Risks

- **\$500,000 House vs. \$5,000,000 House**
- **\$2,500,000 Office Bldg. vs. \$50,000,000 Office Bldg.**

TRADITIONAL PROCUREMENT - DESIGN - BID/NEGOTIATE - BUILD



- 1: Solid Line=Contract between entities
- 2: Dotted Line= Oversight/Administrative responsibilities without contract between entities
- 3: GMP= Entity responsible for guaranteed maximum price
- 4: FIN= Entity responsible for short and long-term financing

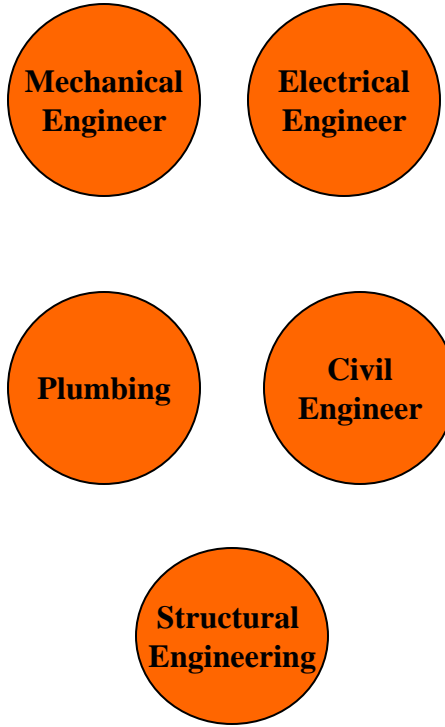
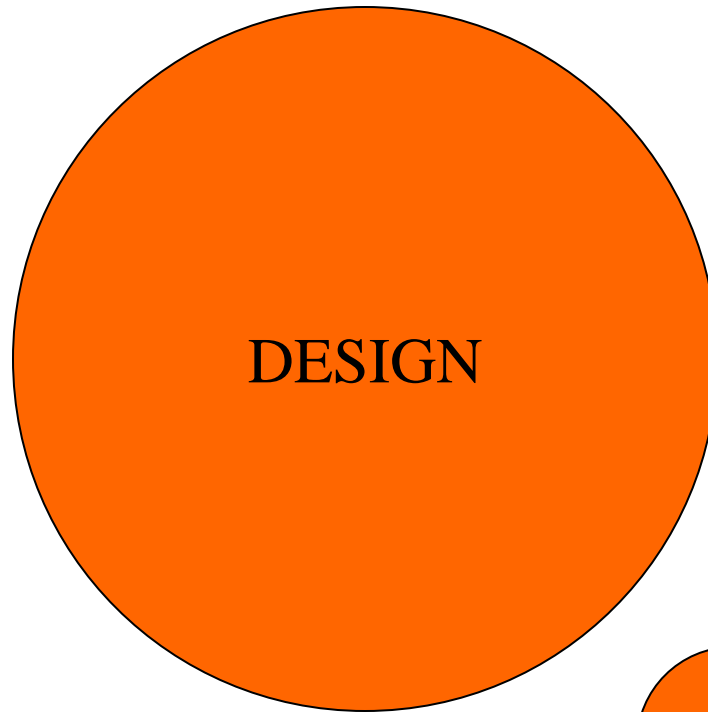


Design
Construction
Land Acquisition
Financing
Planning
Use

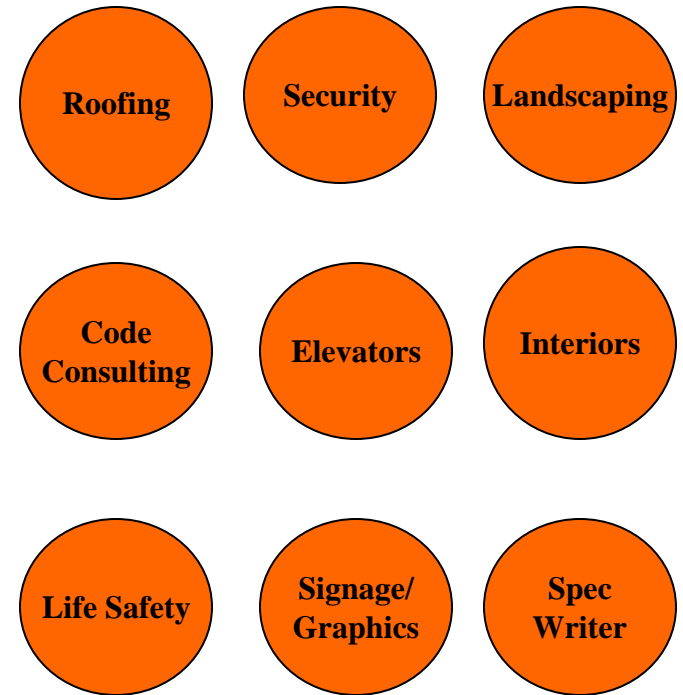
Input into design
Input into construction
Which site is appropriate
Loan, cash, lease, etc.
Configuration of site
Can I use it for this?

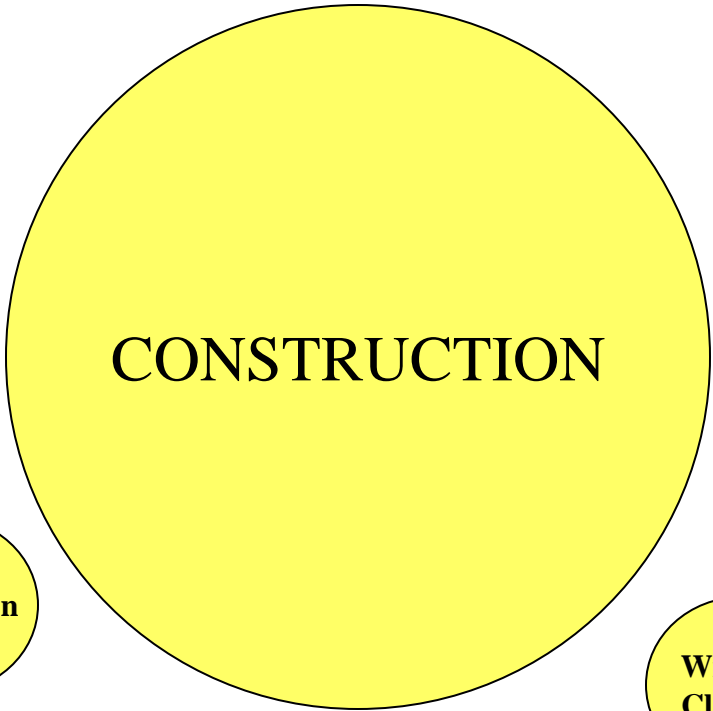
Licensed professional services
Building permit requirements
Code requirements
Code, guidelines & standards
Lender requirements
Production of drawings
Contract Administration
Specifications
Responds to RFI's
Construction observation

No construction provided
No warranty or guarantees
No bonds – professional liability insurance
Safety and safety procedures for workers
Estimates of probable construction costs – no estimate or GMP's
No schedules
Work product in paper or graphic form – drawings, specification



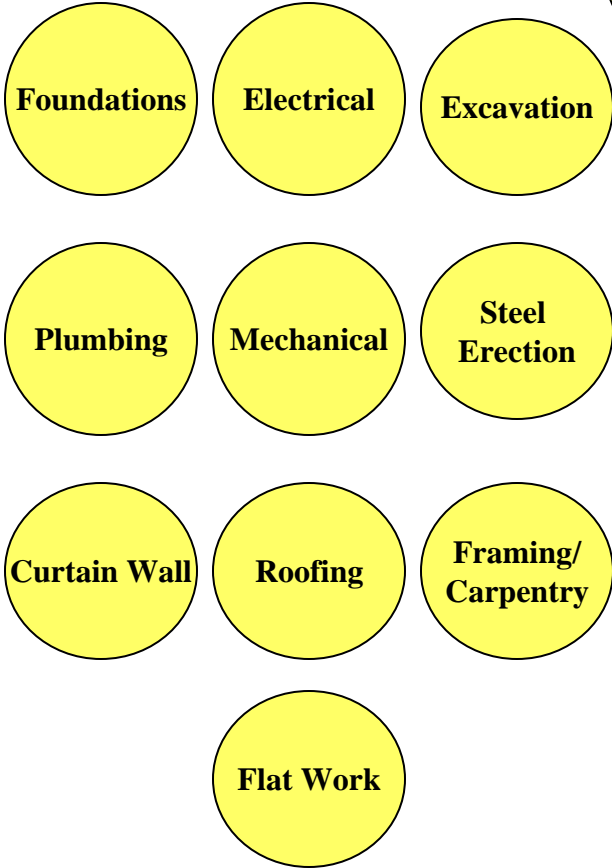
Planning, land use
Architecture
Engineering
Code Compliance
Life Safety
Specialty Designs



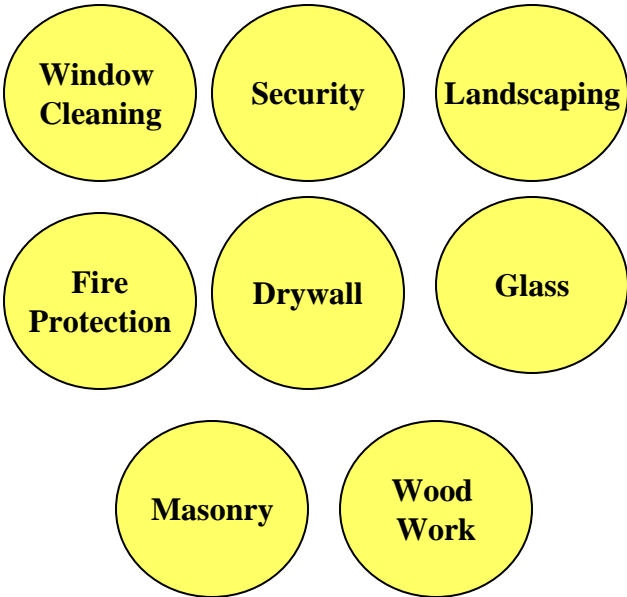


Cost estimating
Scheduling
Construction means, methods, sequences and techniques
Obtain permit when ready
Building standards
Materials
Safety
Form of compensation
Quality control and assurance

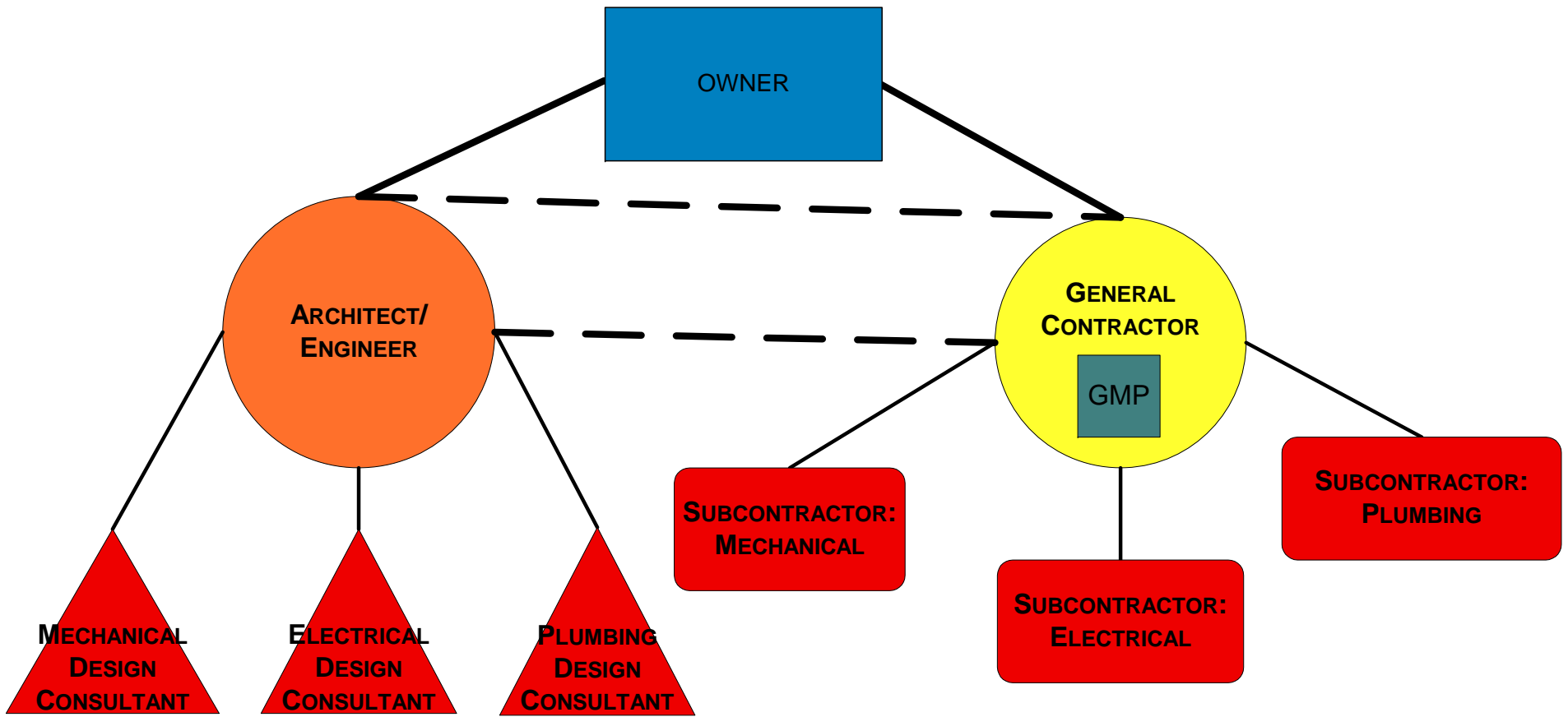
Bonding-No
Guarantee's-No
Express and implied warranties
“Constructability” issues
Value engineering
Identification, selection and management of trades
Performance of punch lists
Issues RFI's
Issues Change Orders
Prices changes



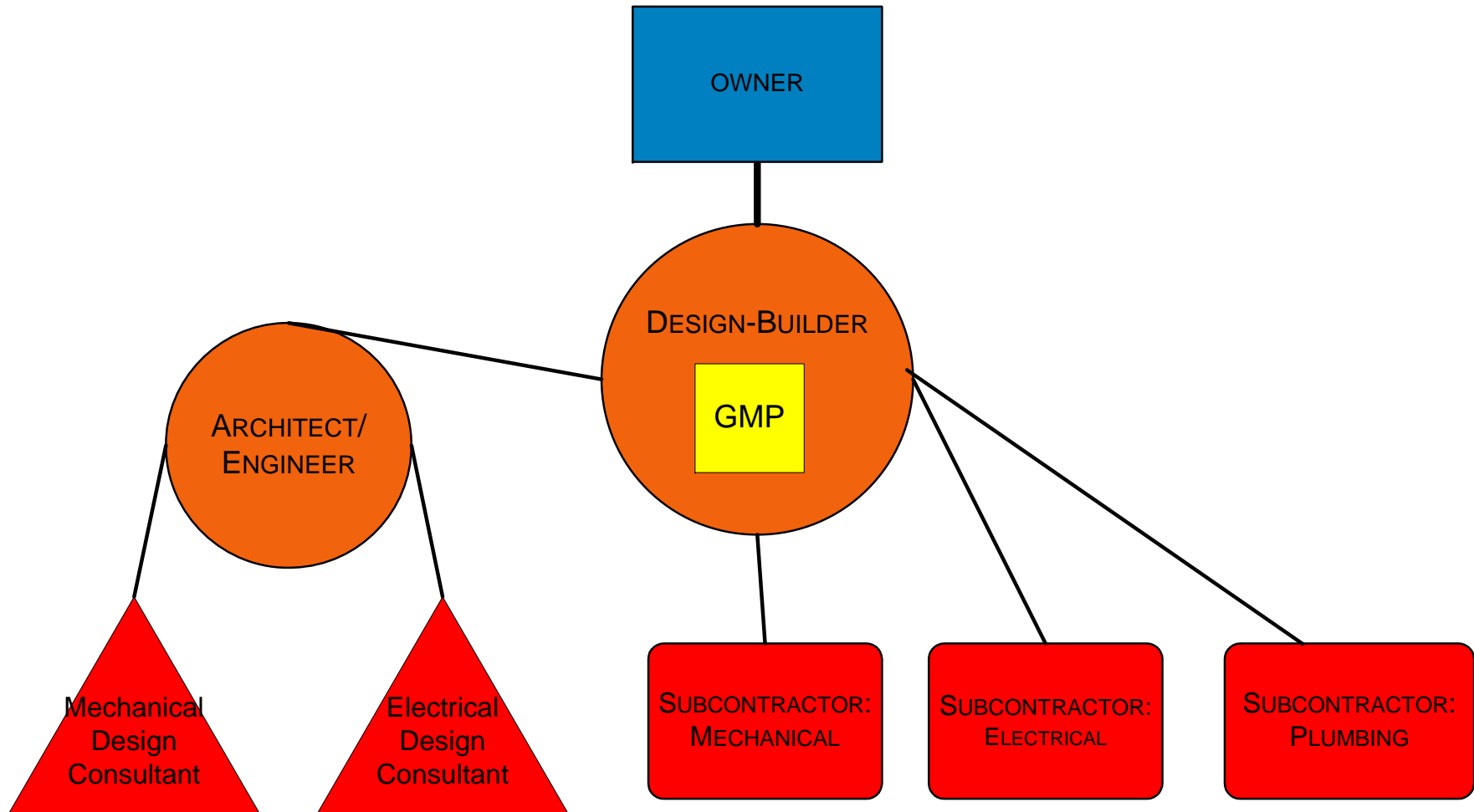
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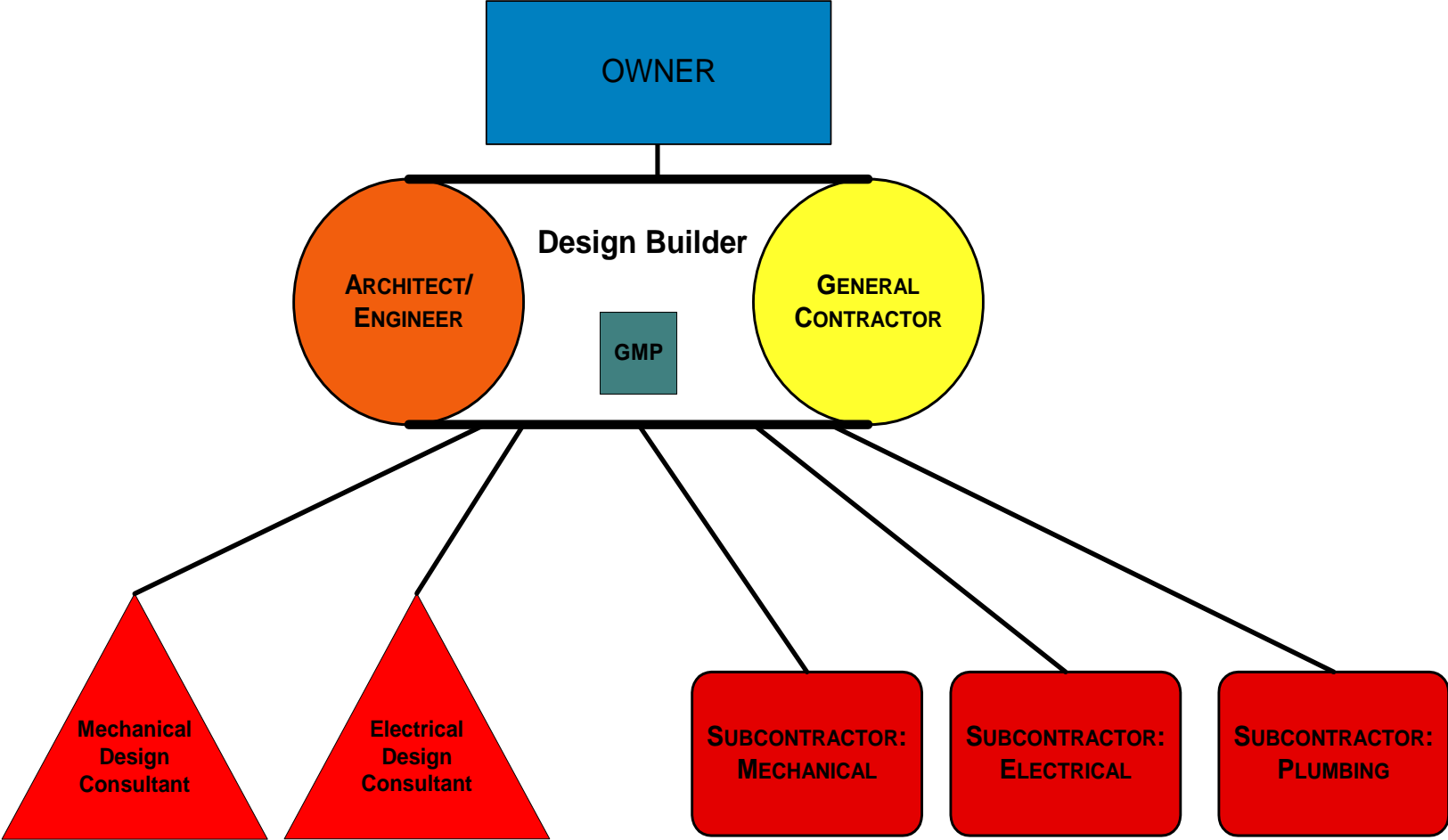
TRADITIONL: DESIGN - BID/NEGOTIATE - BUILD w/GMP



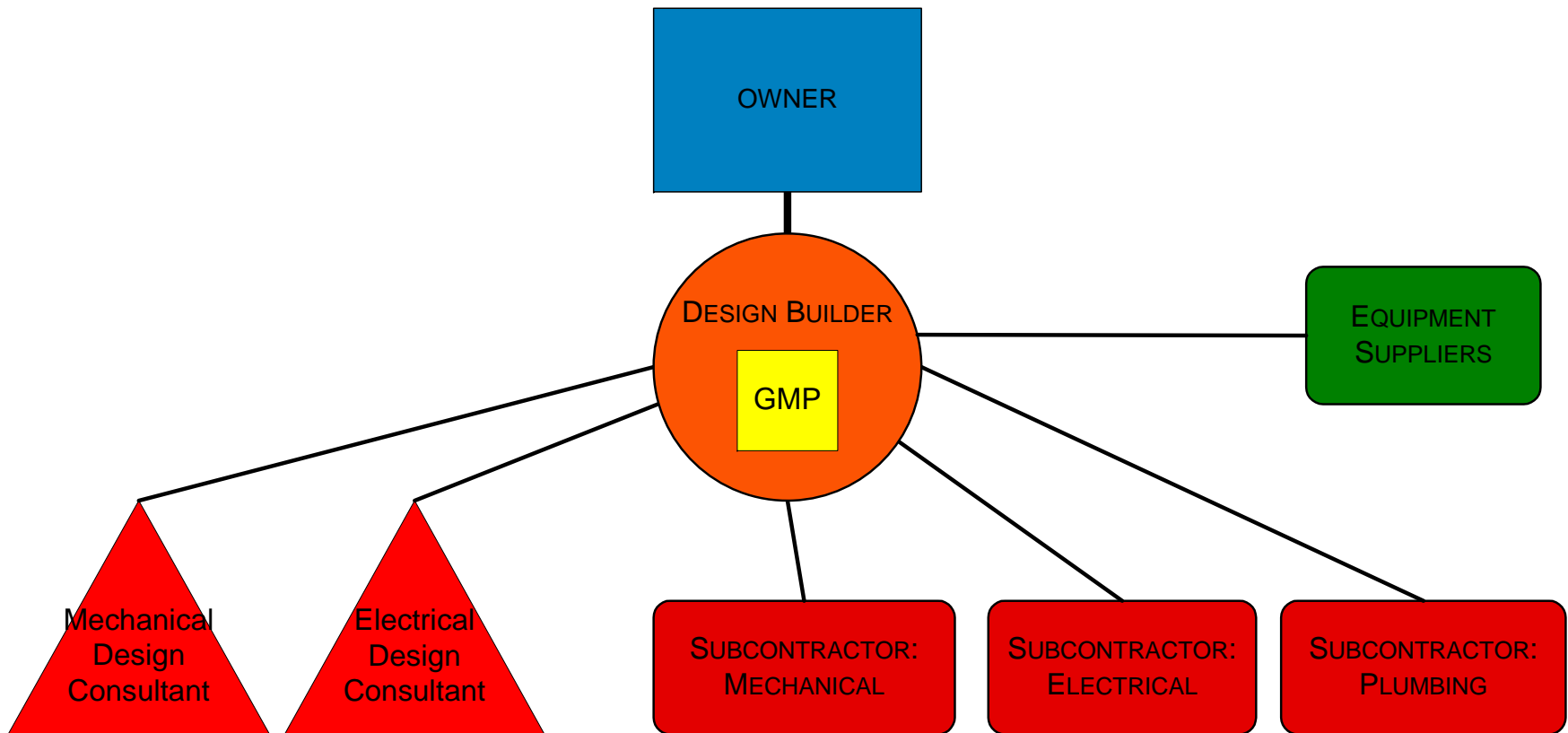
DESIGN-BUILD
GENERAL CONTRACTOR AS DESIGN-BUILDER W/
GUARANTEED MAXIMUM PRICE



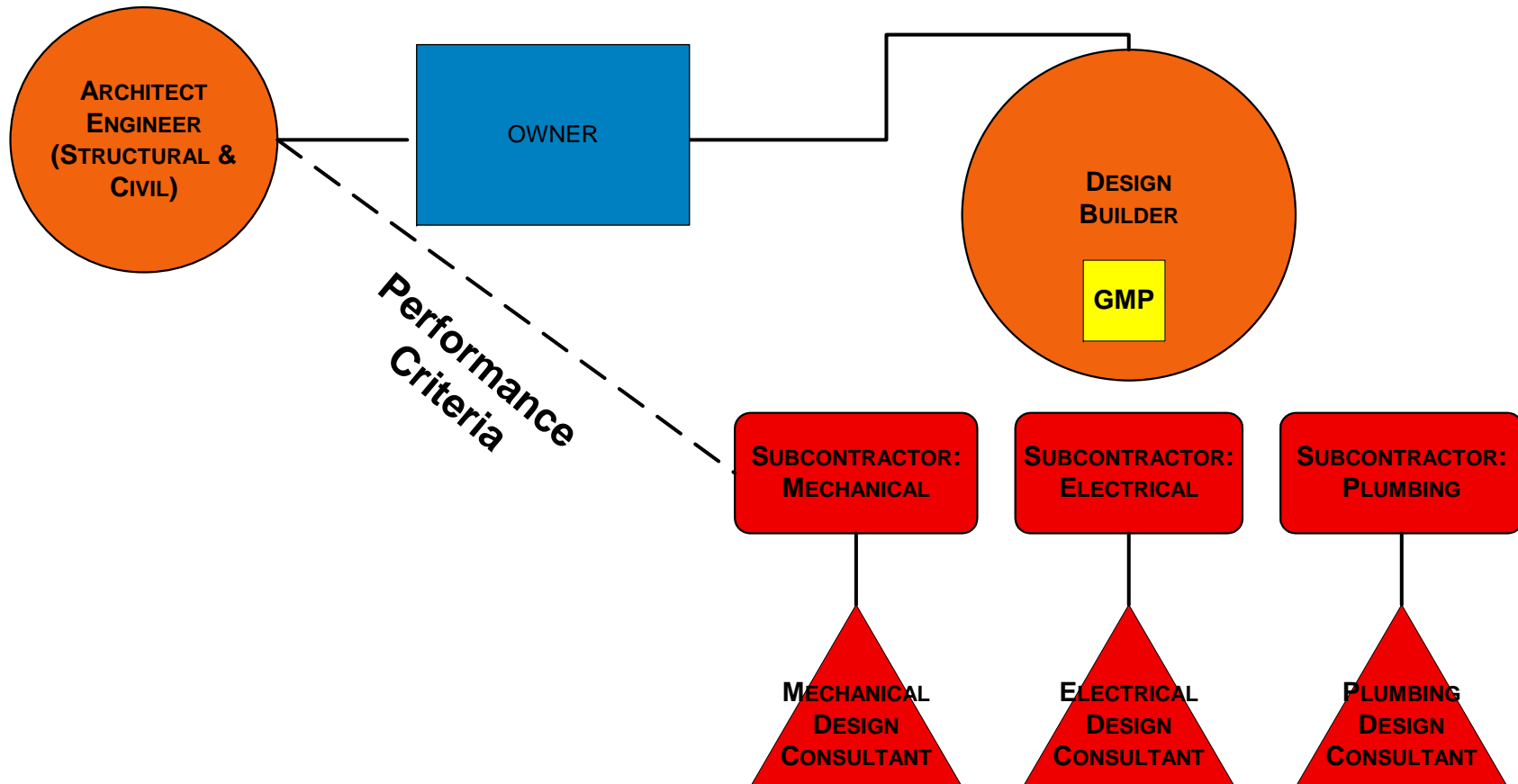
**DESIGN - BUILD
JOINT VENTURE OF PRIME DESIGNER AND GENERAL CONTRACTOR AS
DESIGN-BUILDER**



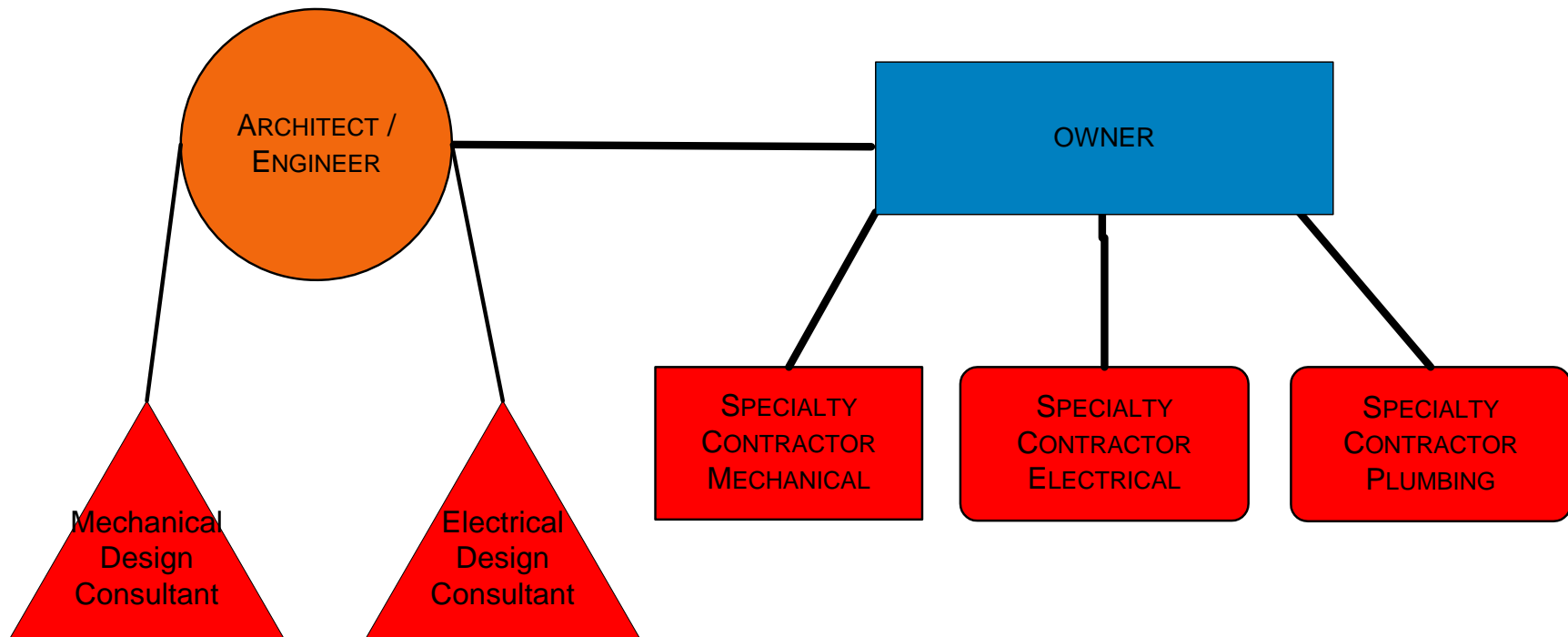
DESIGN-BUILD WITH GENERAL CONTRACTOR POSSESSING
REQUIRED DESIGN CAPABILITIES IN-HOUSE
(ENGINEER PROCURE & CONSTRUCT "EPC")



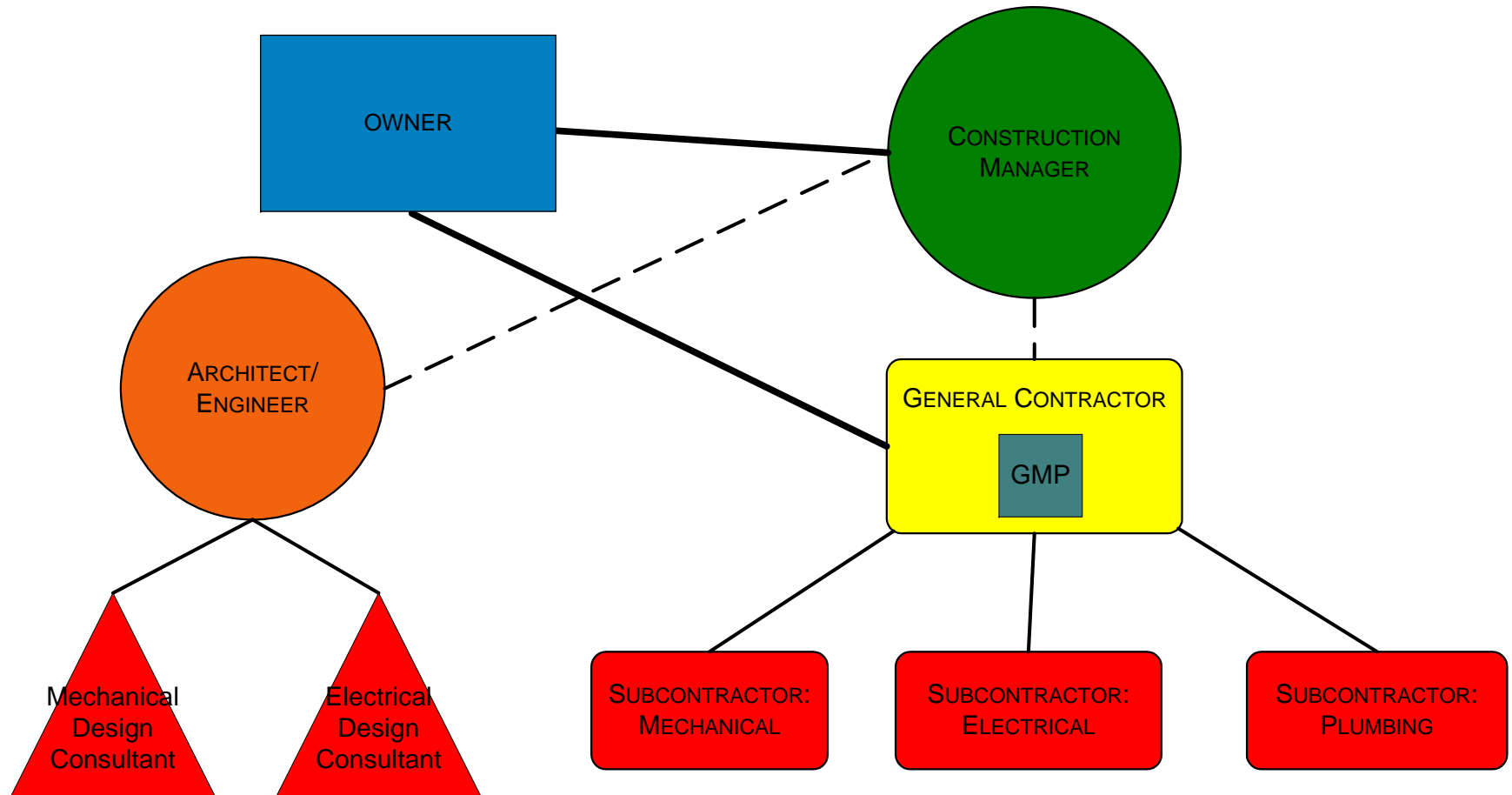
DESIGN - NEGOTIATION - BUILD WITH MEP SUBCONTRACTOR DESIGN BUILD



OWNER PROCURED DESIGN WITH MULTIPLE - PRIME CONTRACTORS



CONSTRUCTION/PROJECT MANAGER [OWNER'S REPRESENTATIVE (AGENCY CM) WITH GURANANTEED MAXIMUM PRICE



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Typical Projects

- Solar Energy Research Institute – 1979
- Tenth Circuit Court Building Remodel - 1998
- Aurora Municipal Center - 2002
- Webb Civic Center Office Building - 2000
- Denver Convention Center Hotel – 2003
- \$500,000 Single Family Residence - 2004