



Willis



Construction Contracts
Insurance Coverage Aspects
October 18, 2005

First Question:

- **What is the scope of work?**

The answer dictates all else that follows including:

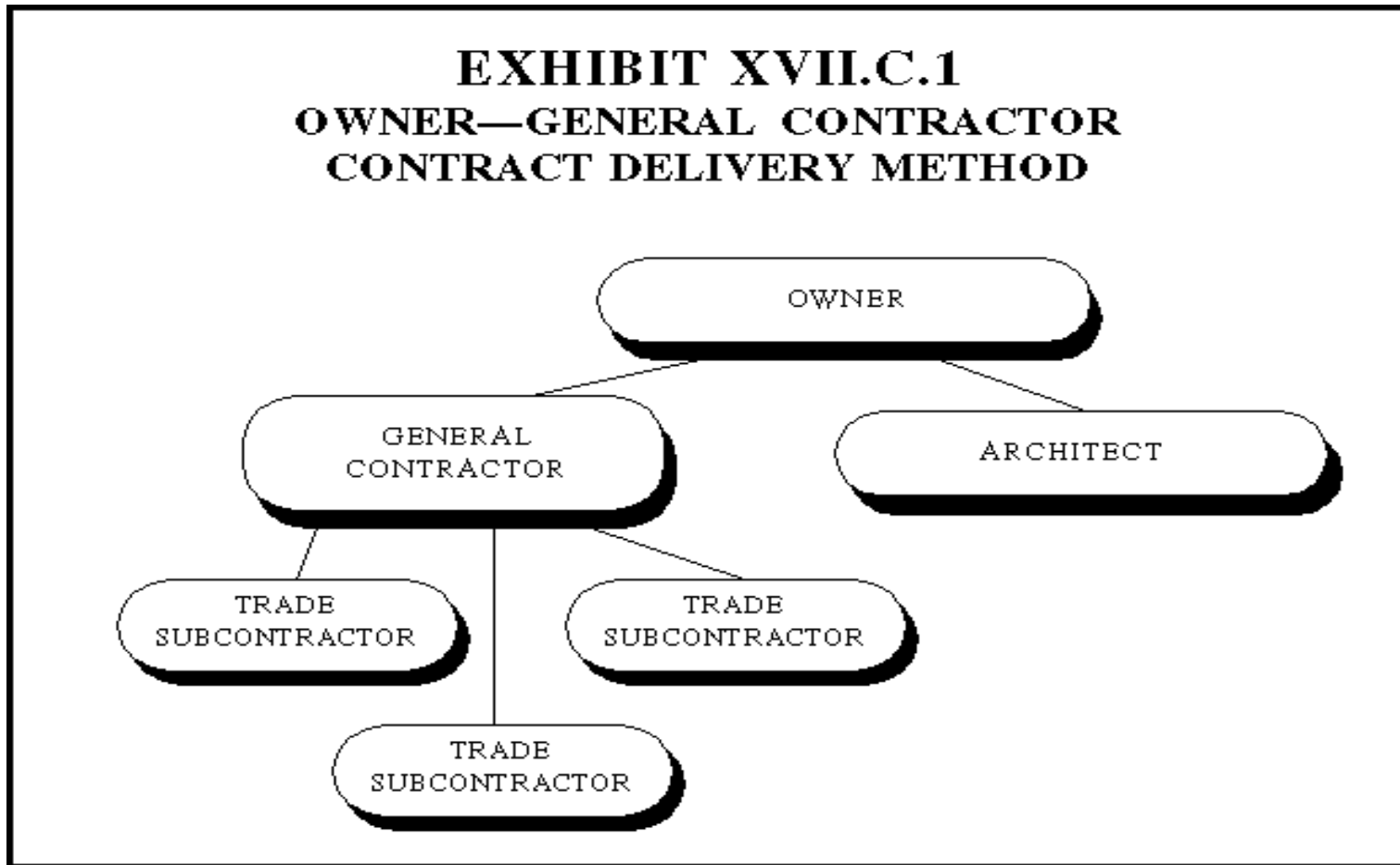
- Type of contract
- Liability exposures
- Risk Management controls
- Coverage/Limit requirements

What method and type of contract are you dealing with?

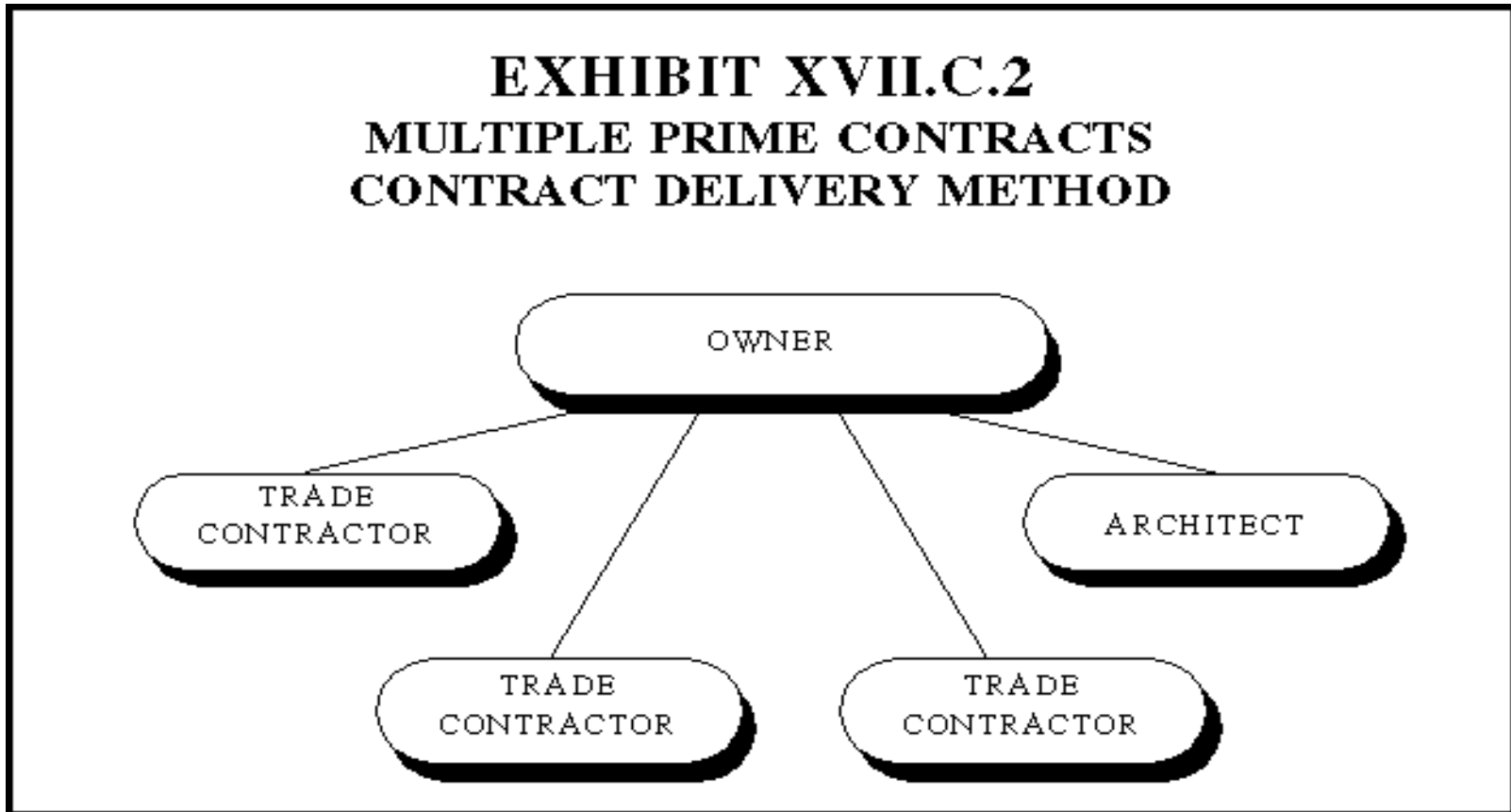
- General Contractor/Subcontractor Contract
- Multiple Prime Contract
- Construction Management Contract
- Design Build Contract



Most traditional method of contract design

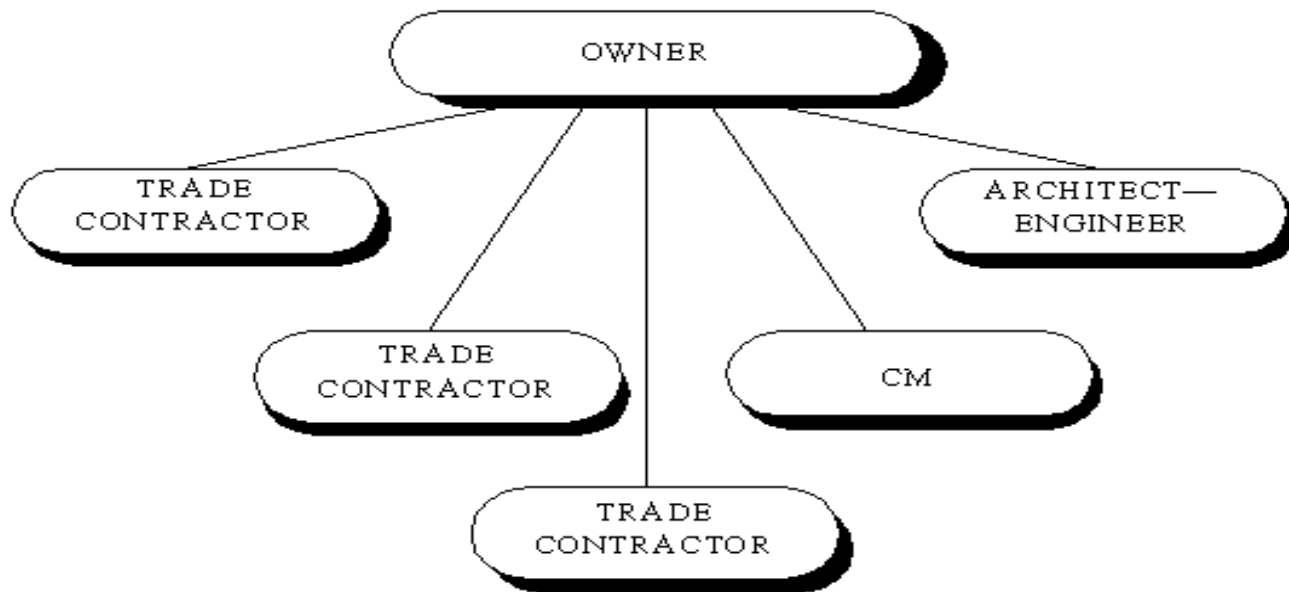


Owner deals direct with subcontractors



Combines GC and Multiple Prime contract elements

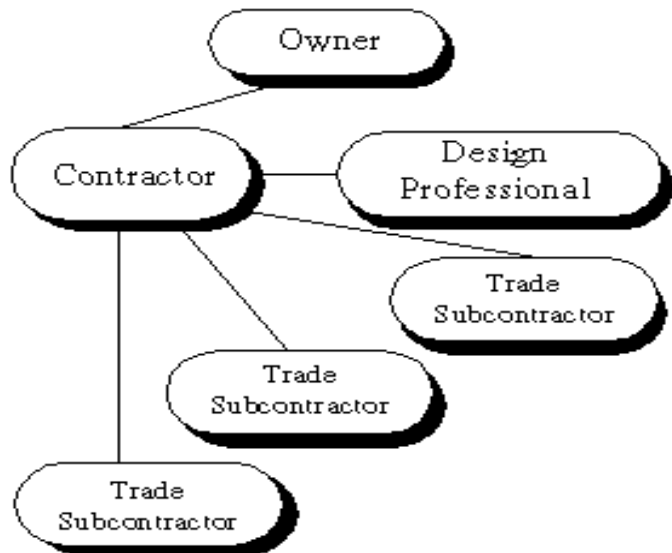
**EXHIBIT XVII.C.3
PURE CONSTRUCTION MANAGEMENT
CONTRACT DELIVERY METHOD**



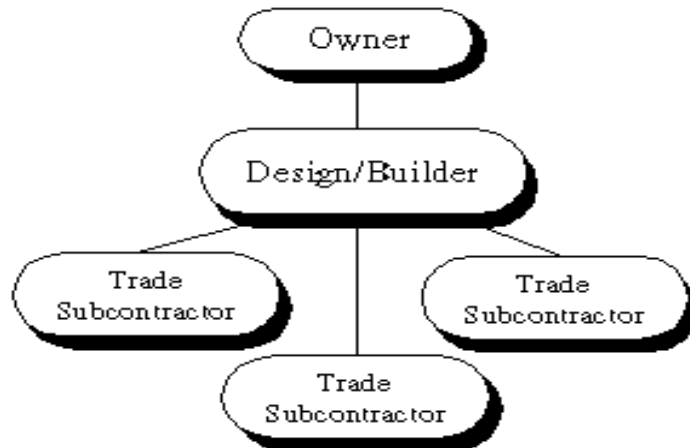
Contractor designs and builds project with the goal of saving time (and money)

EXHIBIT XVII.C.4 DESIGN-BUILD CONTRACT DELIVERY METHODS

Outside Design Capability

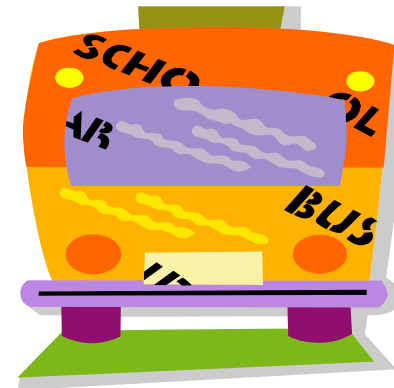
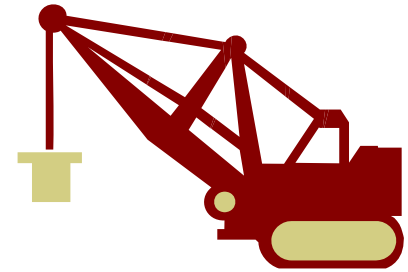


In-House Design Capability



Key Coverages

- General Liability
- Pollution Liability
- Automobile Liability
- Professional Liability
- Builders Risk



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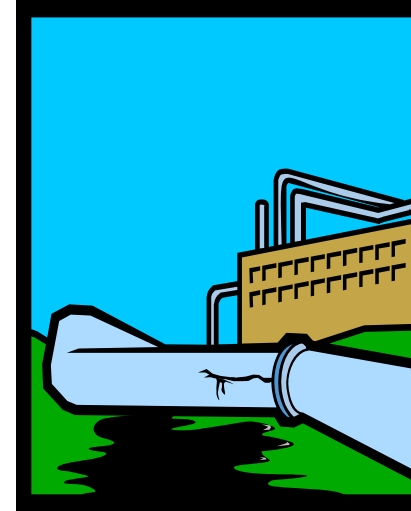
General Liability

- Occurrence Form
- Additional Insured Wording
- Pollution Exclusion
- Mold Exclusion/Coverage
- Silica Exclusion – the new “Asbestos” exclusion
- XCU Exposure vs. Subsidence
- Independent Contractor coverage-GC responsible for acts of all subcontractors
- Primary & non contributory wording
- Maritime Employers Liability



What's the scope of work?

- Contractor's Pollution Liability
 - Provides pollution liability for claims arising from materials brought to the jobsite, as well as for pollution claims arising after project completion.
 - Mold coverage may or may not be offered
- Environmental Impairment Liability
- Pollution Legal Liability



Requirements based on scope of work.

- \$1,000,000 Combined Single Limit
- Are they hauling debris and/or hazardous materials? If yes:
 - Require CA9948 be endorsed to the policy
 - Pursue an auto extension of coverage onto a Pollution policy.
 - MCS 90 or MCS 82 may also be required.



What's the scope of work?

Design/Build Professional provided two ways:



1. Limited professional liability coverage for BI and PD only is included in the unendorsed ISO CGL form; however,
 - Most carriers will exclude by endorsement
 - If you can buy it back will not provide coverage for economic loss but BI and PD only

2. Written on a separate policy.

Advantages:

- Will cover BI/PD and, economic loss
- Provides a separate set of limits protecting the CGL and Umbrella policy limits

Disadvantages:

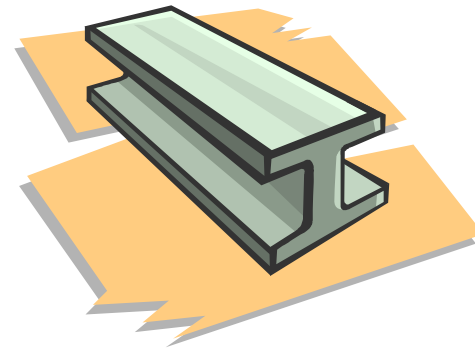
- Premium cost
- Claims made form requires consideration of purchasing an Extended Reporting Period

Architects & Engineers Errors & Omissions coverage:

- Written on a separate policy with separate limits
- Claims made coverage forms
- Specific to the design aspect of work only
- Usually written for low limits, i.e., \$1,000,000 to \$2,000,000
- Same carriers tend to write both coverages

Builders Risk

- Covers labor and materials for project
- Purchased by owner or GC for the benefit of owner GC and subs
- Combines interest of all parties and helps avoid delays establishing fault, loss adjustment and procedural delays between carriers
- Coverage may or may not include Flood and Earthquake
- Primary goal is to get project back on track as soon as possible

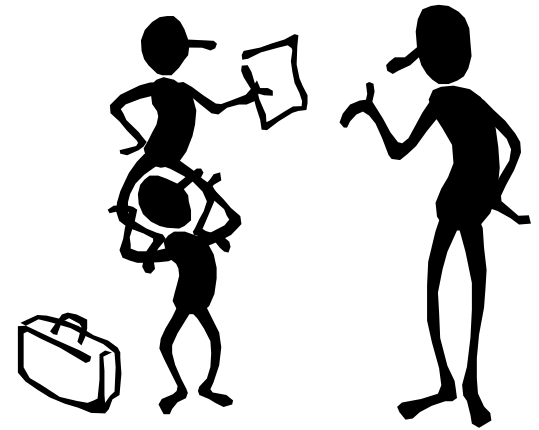


Minimum limit requirements depend on a number of factors:

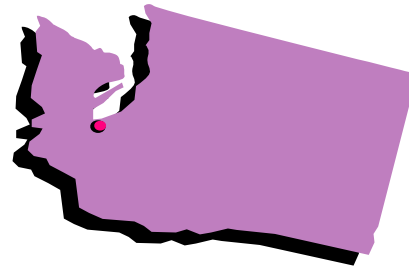
- **Scope of Work**
- **Size of the project**
- **Location of project**
 - Tower crane collapse
 - Building structural collapse
 - Explosion
 - Falling materials
- In setting limits outline a minimum acceptable limit of liability rather than specifying a CGL limit of \$XXXX and an excess liability limit of \$XXXX.
- **Carrier Solvency – AM Best A- VII or better**

Additional Insured Status

- Extends rights and coverages from “lower tier” parties to “upper tier” parties.
- Approach varies based on:
 - Carrier
 - Type of work
 - Type of contractor
 - Jurisdiction
- Request broadest terms (see handout):
 - Primary/Contributory protection, “who will respond first?”
 - Additional insured coverage to apply to both, ongoing operations and completed operations



- Caveat:
 - Statutes influence actual enforceability of some of these endorsements
 - “Walsh vs. Mutual of Enumclaw” in Oregon essentially nullified additional insured endorsements in that state



Summary

- Scope of work – Get to the ball first!
- Type of contract – find the right one for your needs
- Coverages – adequate coverage ensures risk transfer.
- Limits – make them applicable to the project
- Insurance is a risk transfer tool. Let it do the work for you.

