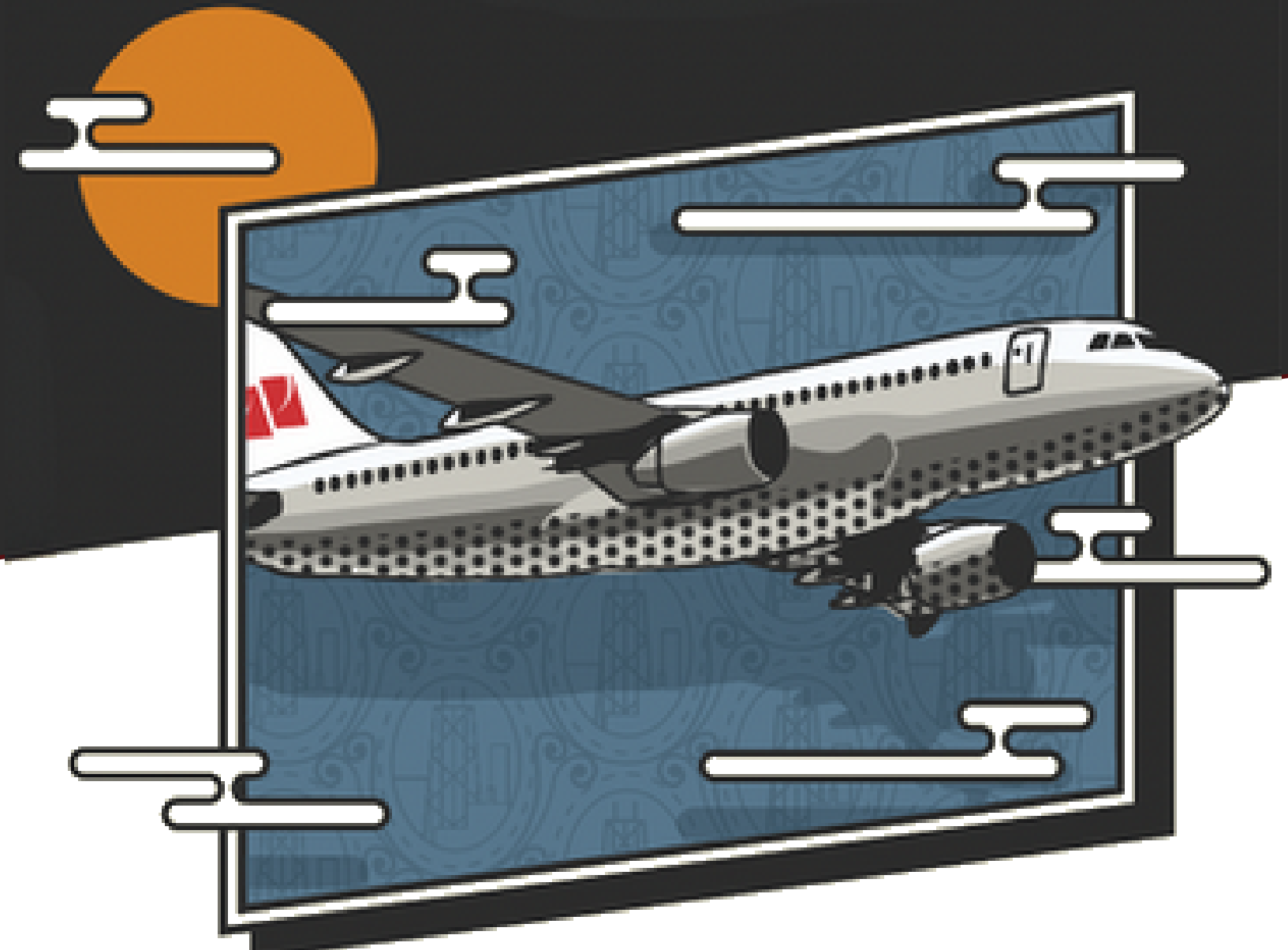




40th Annual  
Airport Law Workshop



Session No. 22

# Procurement and Delivery Methods for Federally and Non-Federally Funded Projects

# Speakers

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**Jessie Di Gregory**



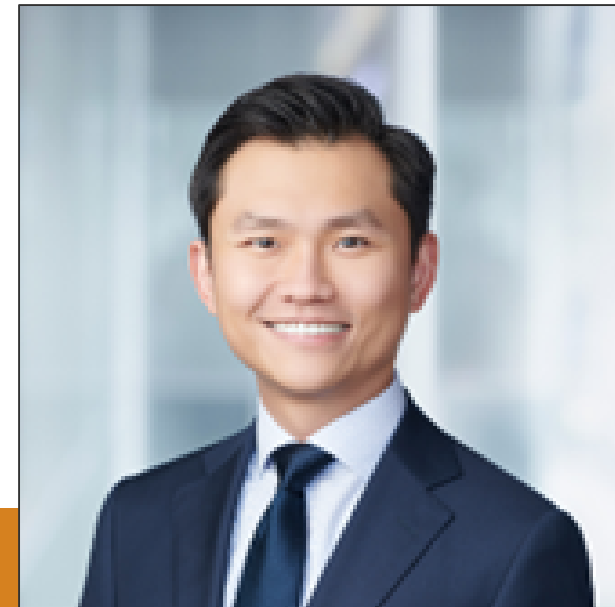
Senior Attorney,  
Airports & Environmental Division,  
Office of the Chief Counsel,  
FAA

**Courtney Adolph**



Manager,  
Airports & Environmental Division,  
Office of the Chief Counsel,  
FAA

**Viktor Zhong**



Associate Attorney,  
Infrastructure, Major Projects, P3s,  
and Alternative Delivery  
Kaplan Kirsch LLP

**Lovely Bonhomme**



Associate Attorney,  
Infrastructure, Major Projects, P3s,  
and Alternative Delivery  
Kaplan Kirsch LLP

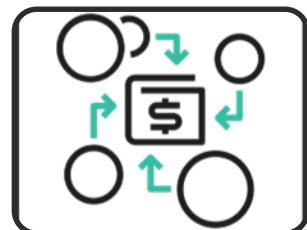
# Agenda



Delivery Methods & Contract Structure



Procurement Considerations



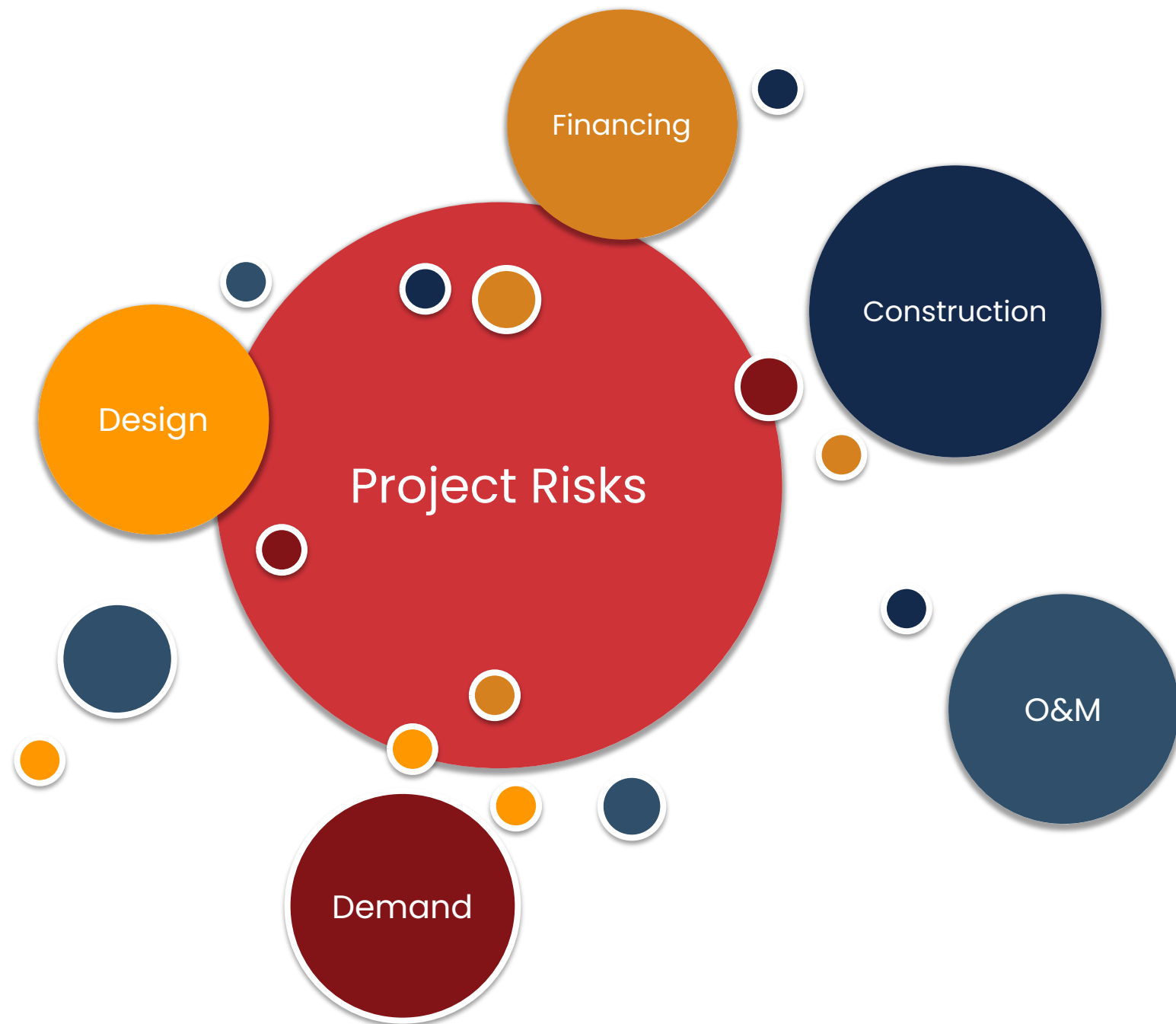
Funding & Compliance



Federal Funding Priorities

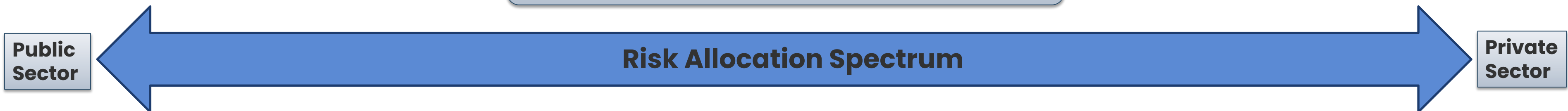
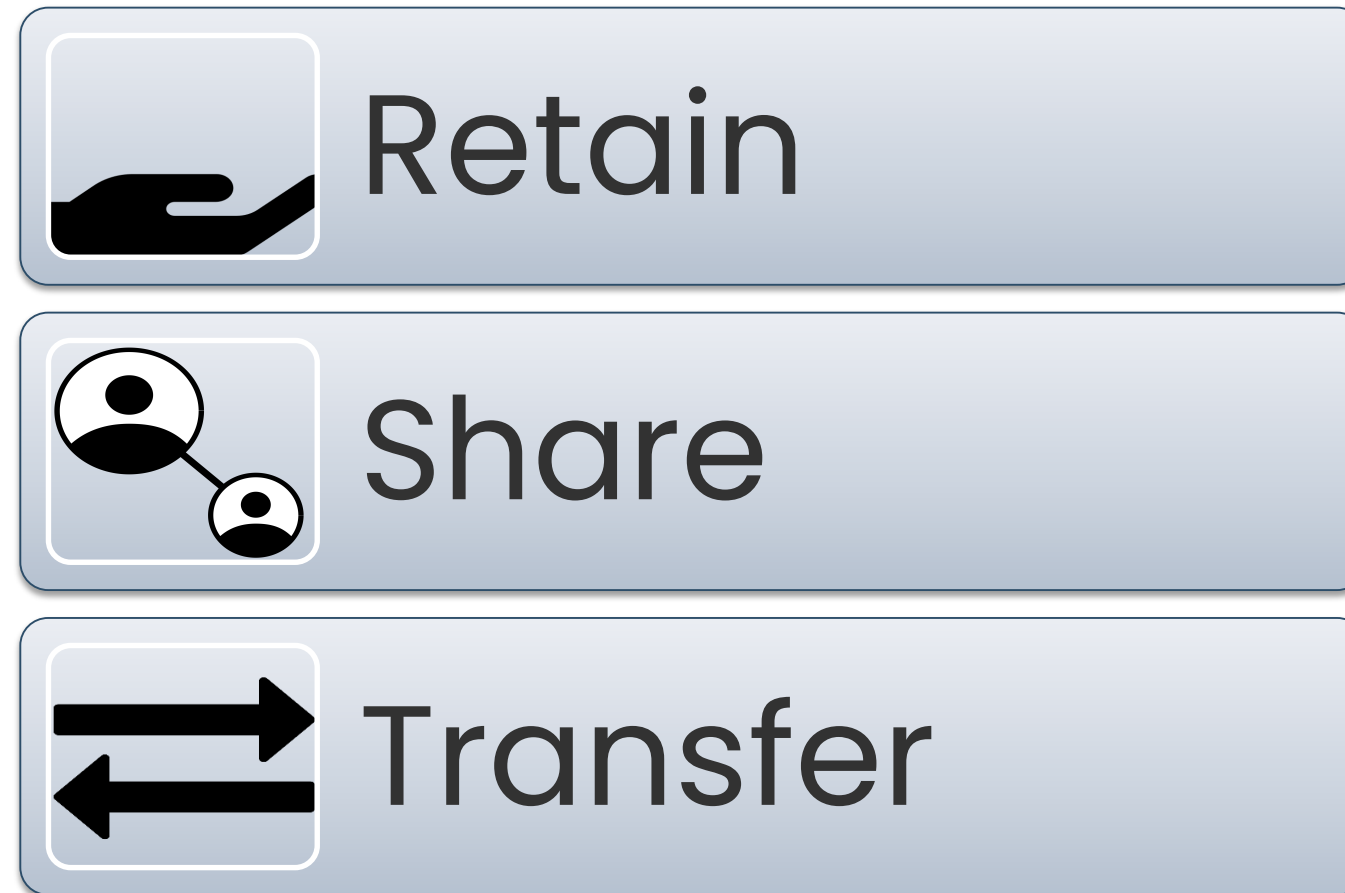
# What is a Project Delivery Method?

## An overview



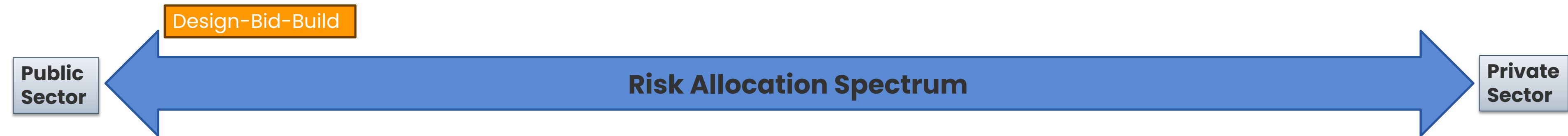
# Project Delivery Methods

Tools for Successful Projects



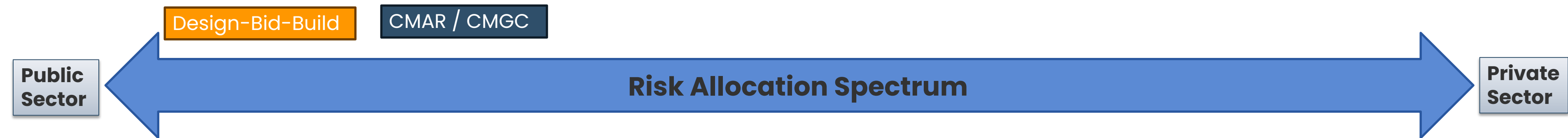
# Project Delivery Methods

## Design-Bid-Build



# Project Delivery Methods

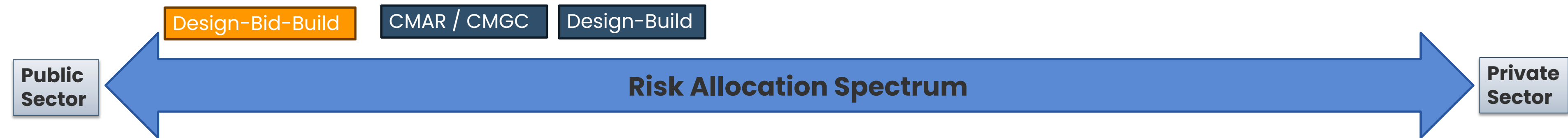
## Construction Manager at Risk





# Project Delivery Methods

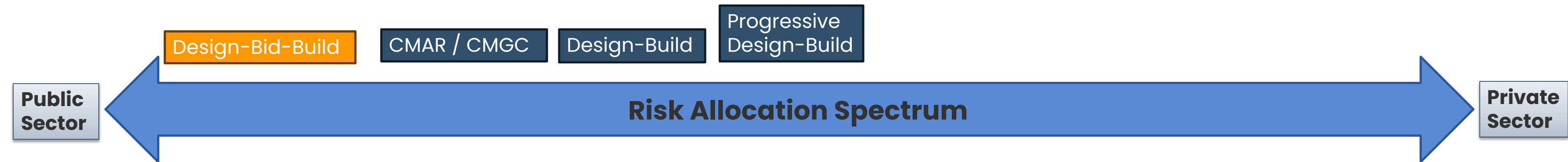
## Design-Build (DB)





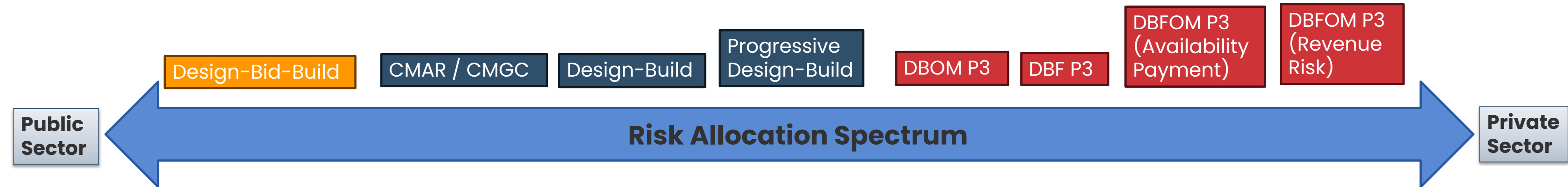
# Project Delivery Methods

## Progressive Design-Build (PDB)



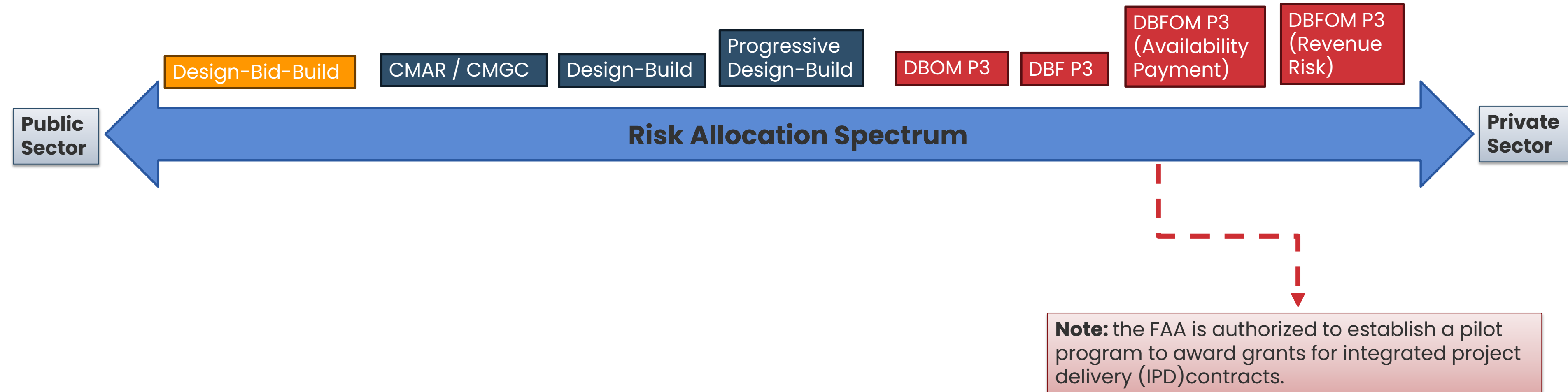
# Project Delivery Methods

## Public-Private Partnerships (P3s)



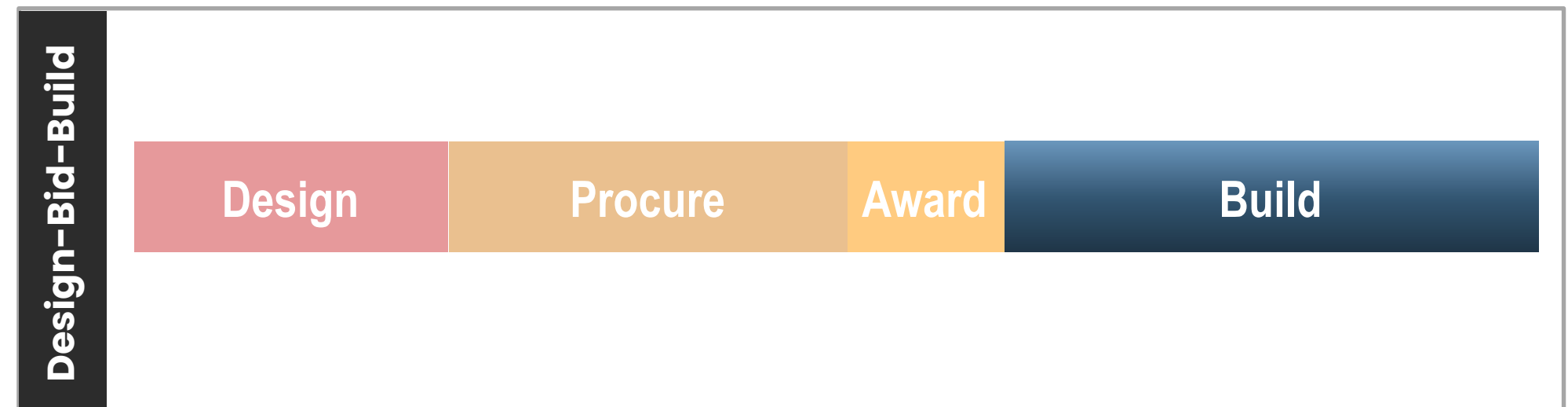
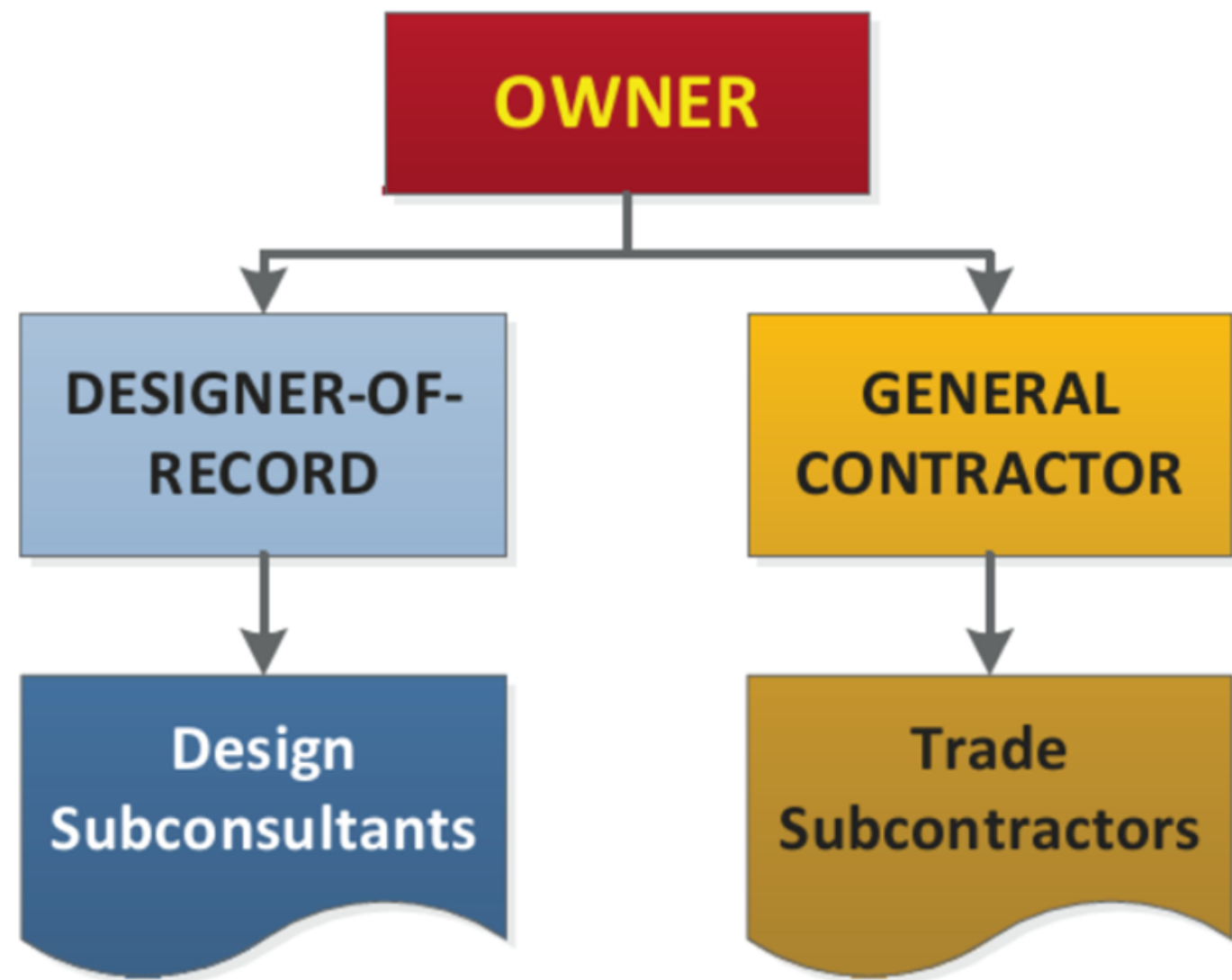
# Project Delivery Methods

## Integrated Project Delivery (IPD)



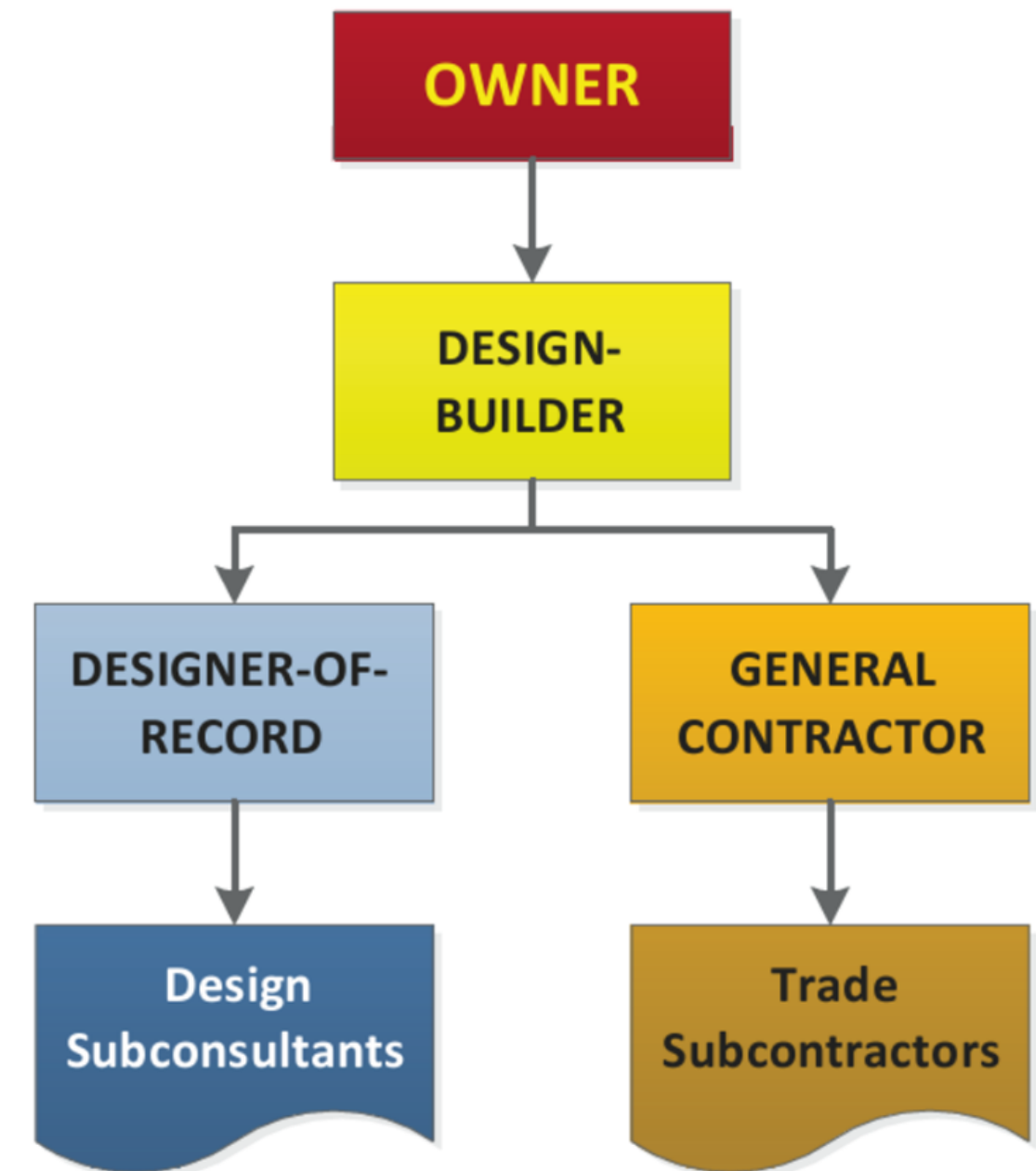
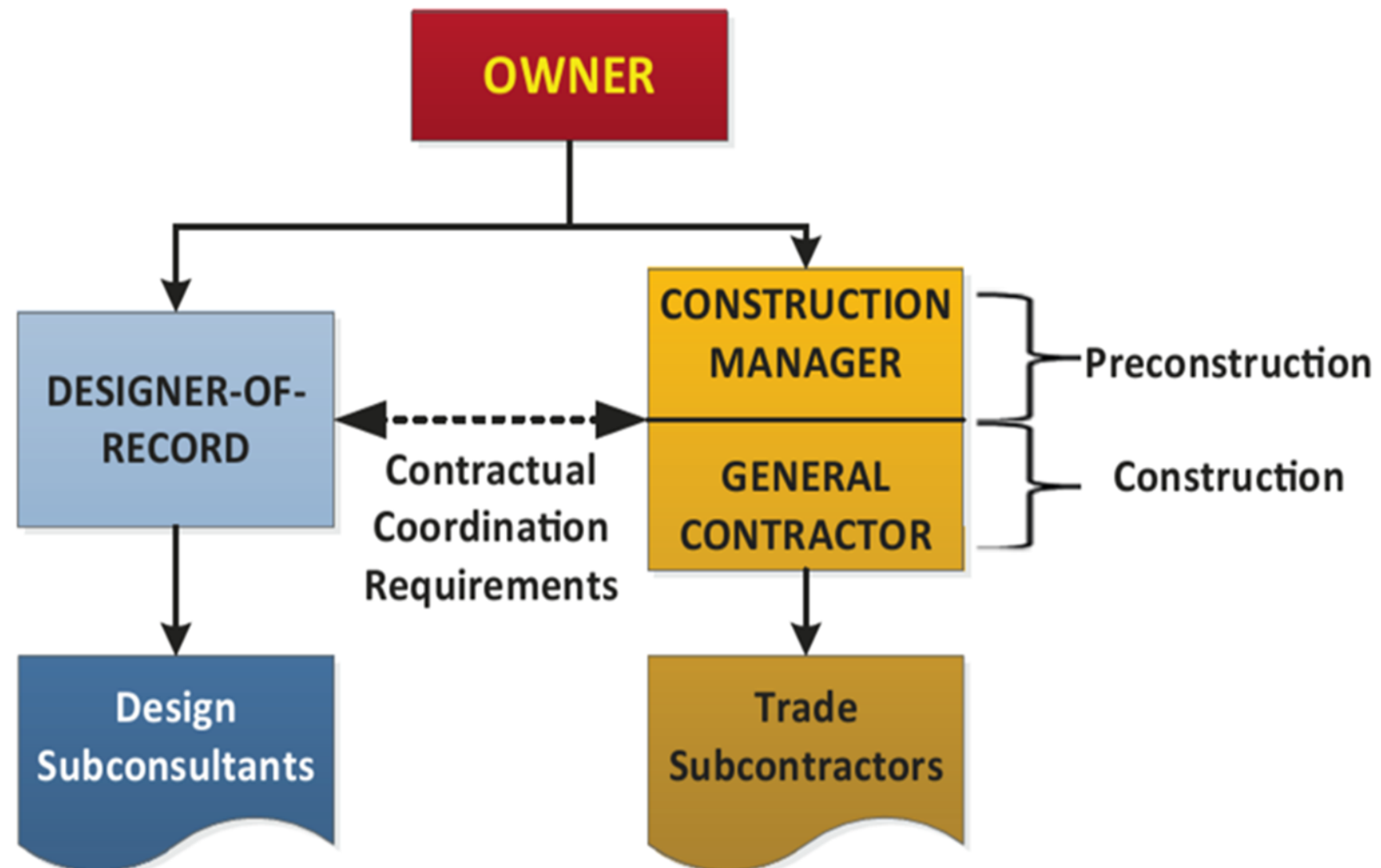
# Design-Bid-Build

the Traditional Approach to Project Delivery



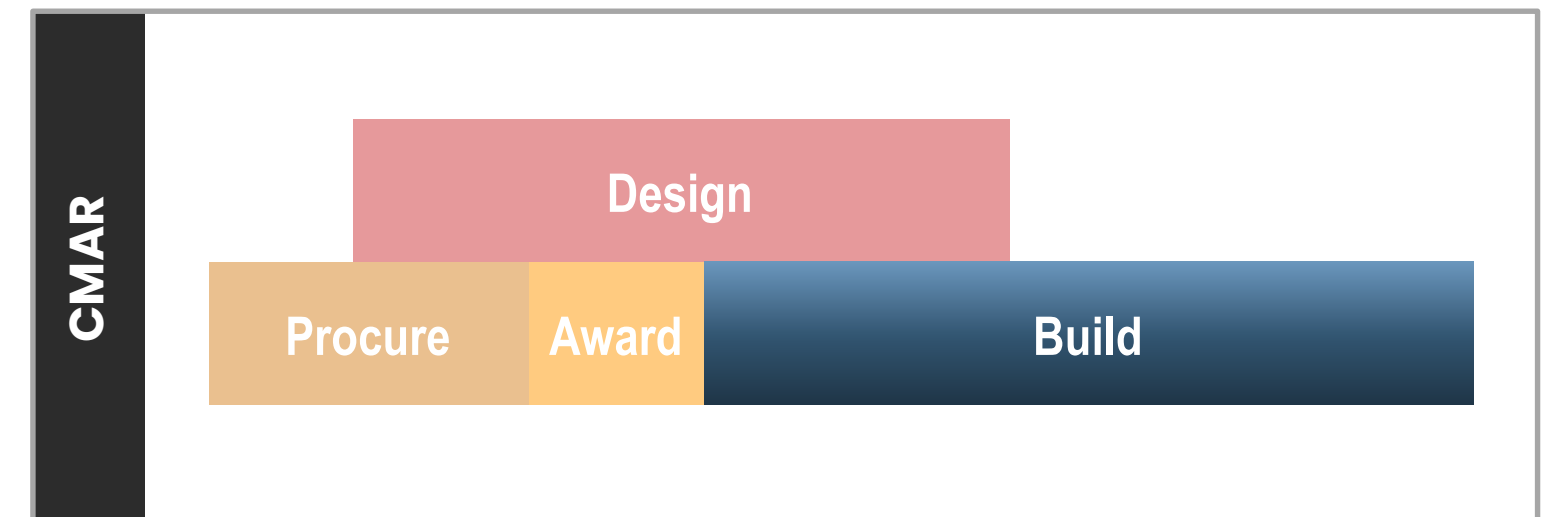
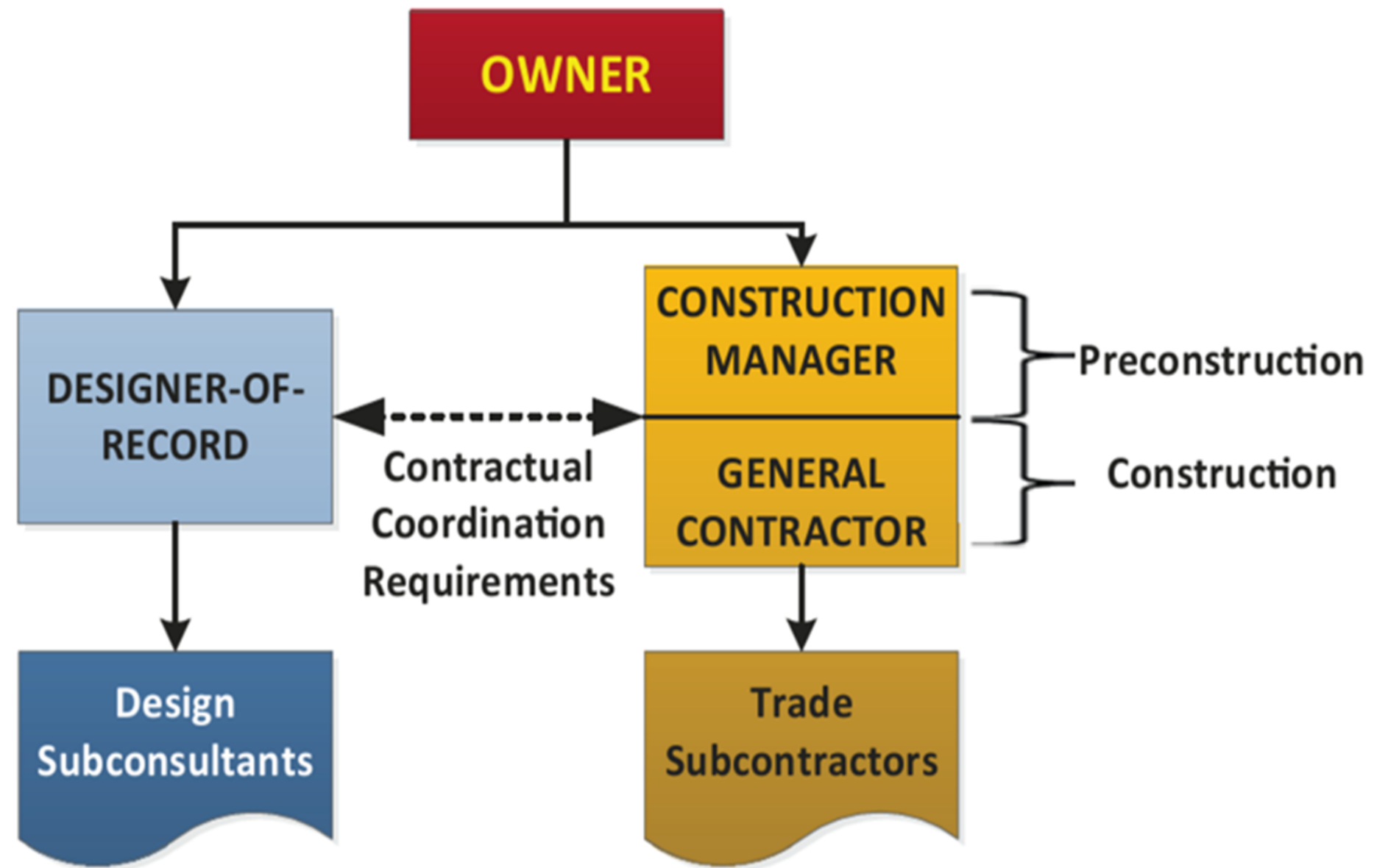
# Construction Manager at Risk, Design-Build, and Progressive Design-Build

## the New Approaches to Project Delivery



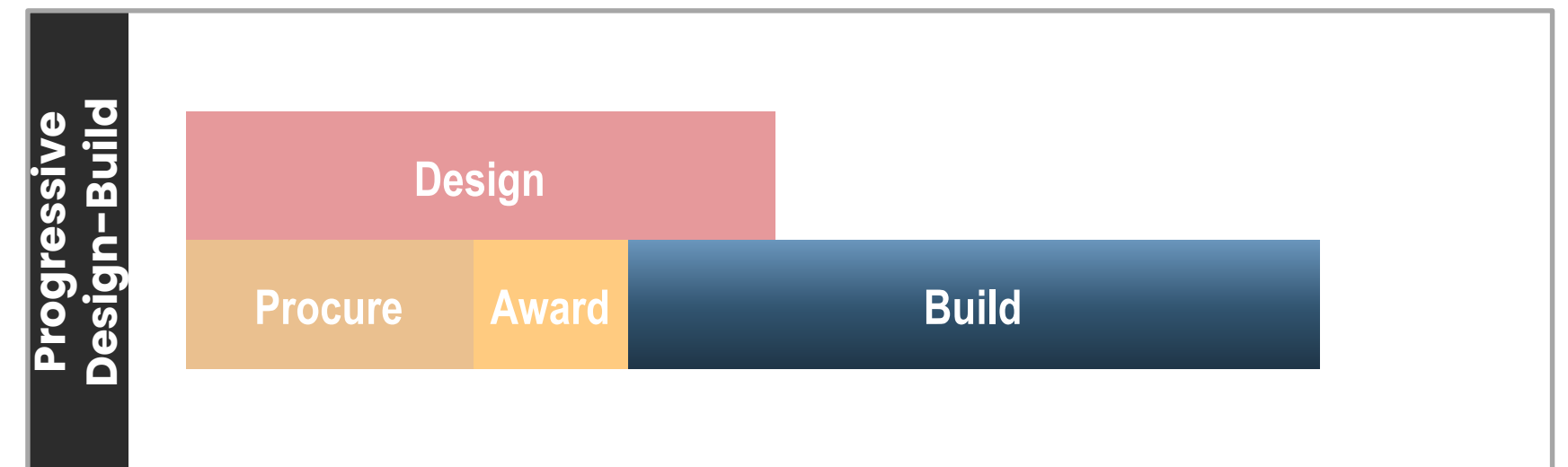
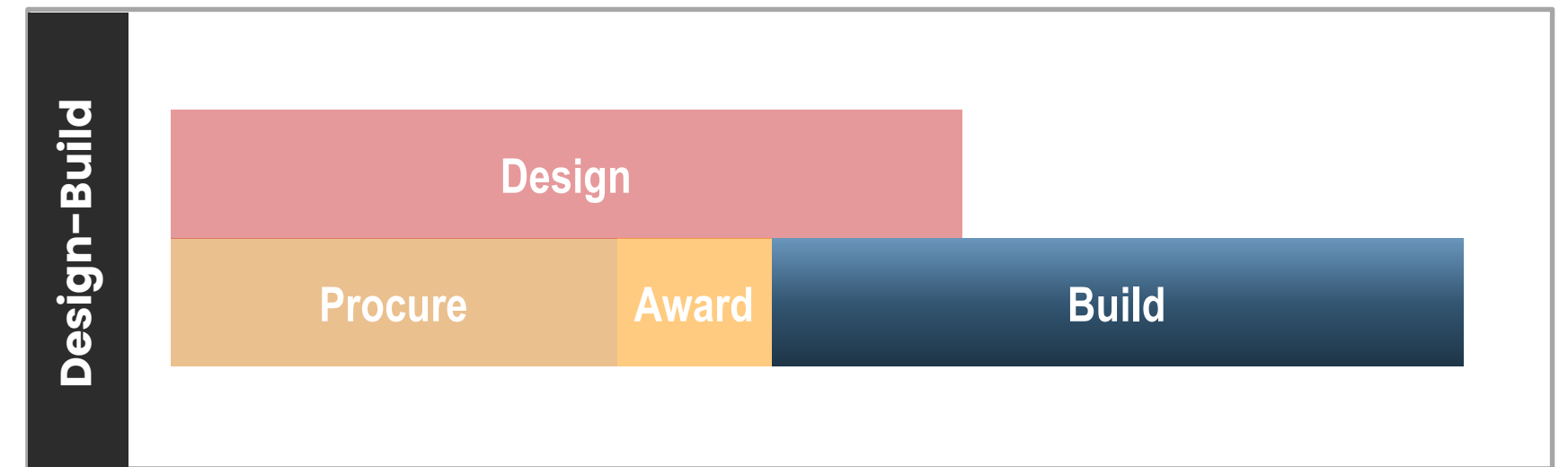
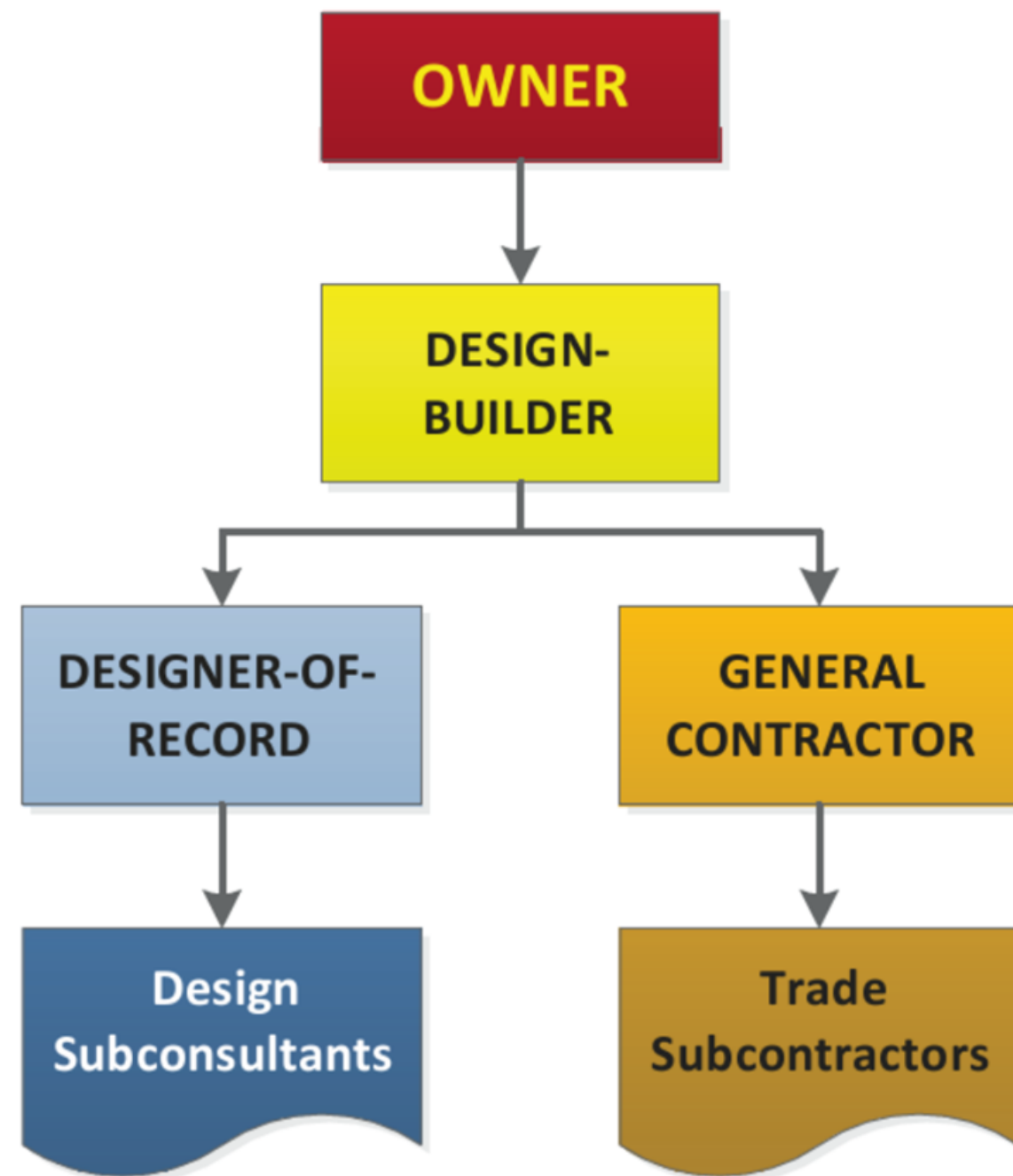
# Construction Manager at Risk

adopting Early Contractor Involvement



# Design-Build and Progressive Design-Build

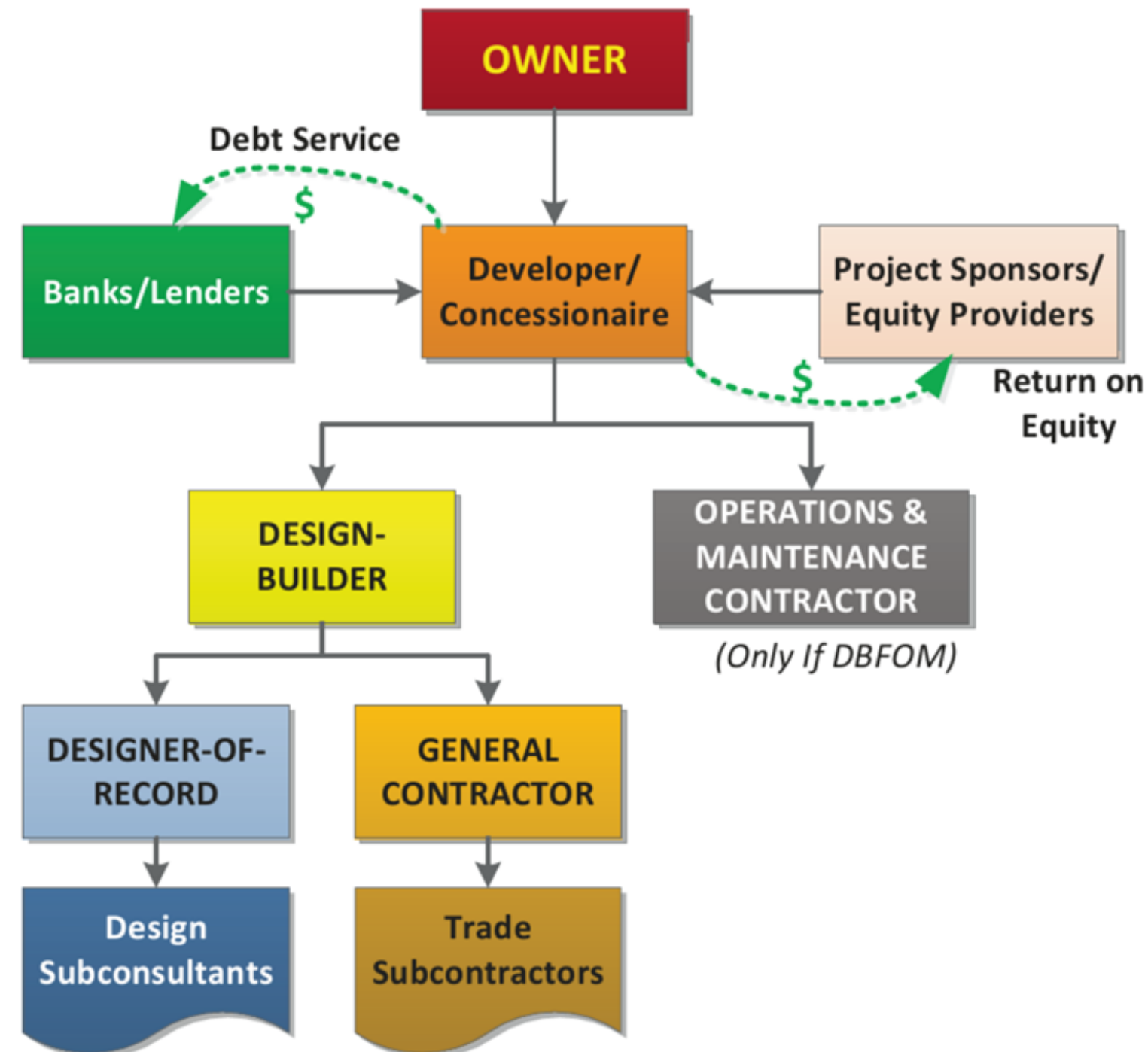
“fast-tracking” the Project Schedule





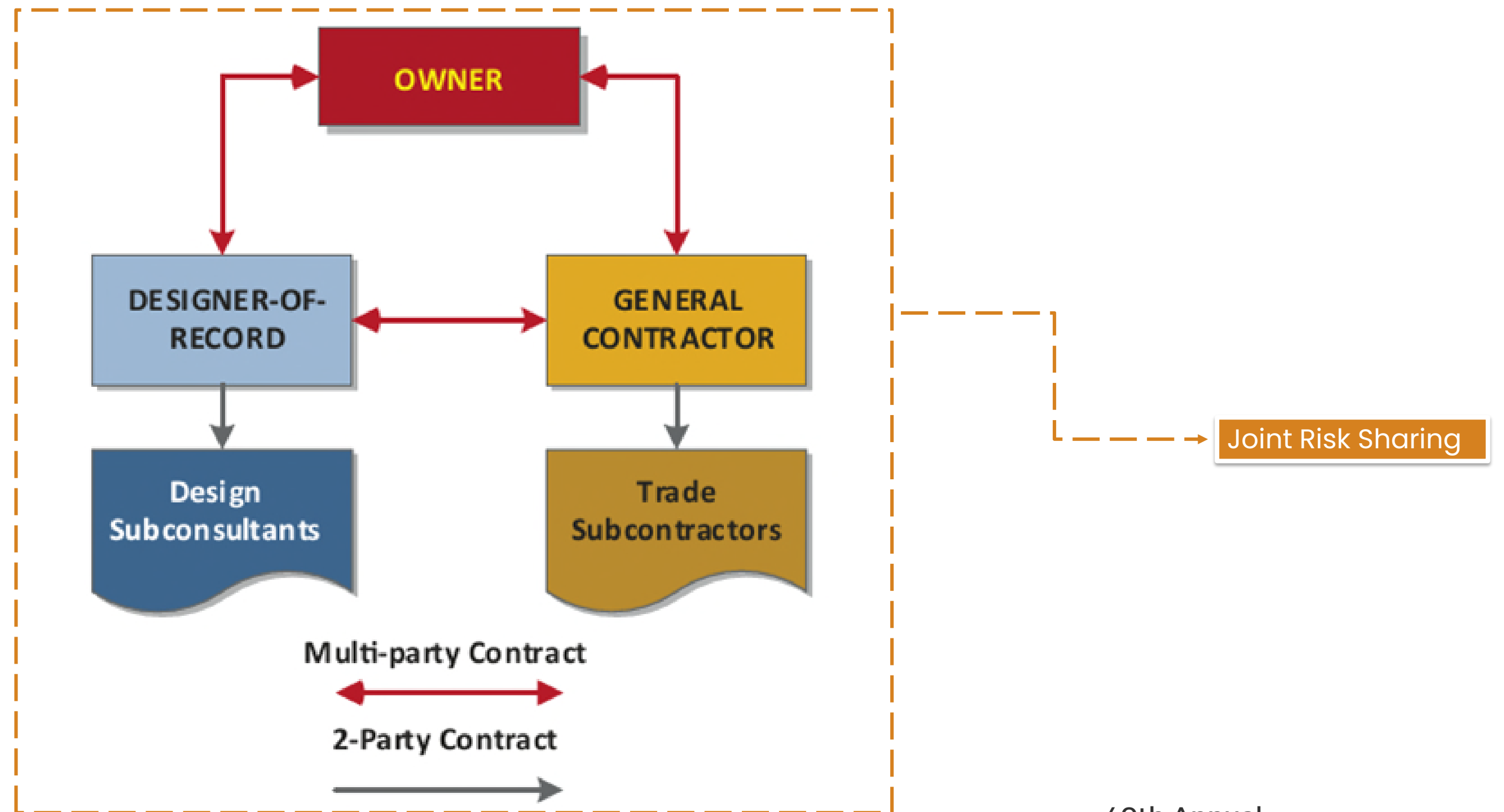
# Public-Private Partnerships (P3s)

including Financing, Operations, and/or Maintenance in the Project



# Integrated Project Delivery (IPD)

an Up-and-Coming Approach to Project Delivery



# Funding and Financing Airport Capital Projects

## Federally Funded vs. Non-Federally Funded



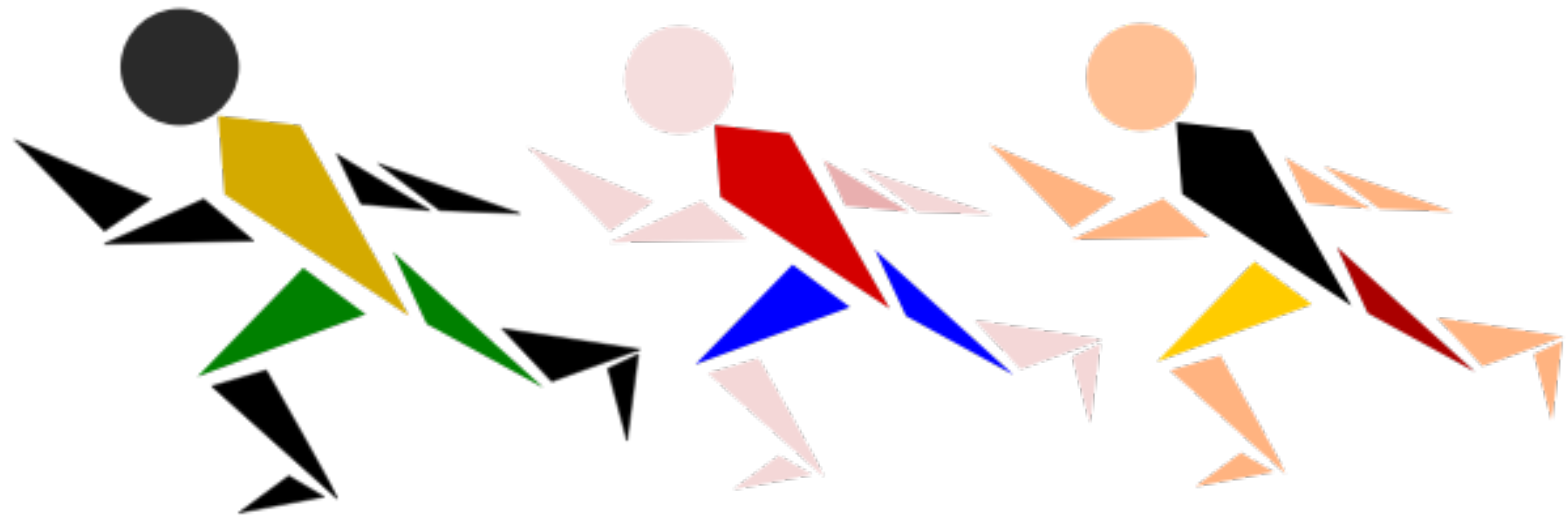
**Remember**, it's not easy being green!

Using **federal funds** requires adherence to all applicable federal requirements, including the Grant Assurances.

# Full and open competition

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**Full and open competition**, both a best practice and a federal requirement (2 C.F.R. § 200.319):



- Clear and accurate **technical requirements**
- Identify all **evaluation criteria**
- Ensure **adequate number of offerors**
- Avoid unduly limiting or restricting competition, for example:
  - unnecessarily restrictive requirements
  - excessive bonding requirements
  - organizational conflicts of interest
  - requiring “brand name” products

# Procurement approach

Traditional project delivery

Procurement Method	Key Features and Selection Criteria
Sealed bids (Invitation for Bids)	<ul style="list-style-type: none"><li>• IFB issued with complete design</li><li>• Firm fixed-price contract (lump sum or unit price)</li><li>• Select the responsible bidder with lowest price</li></ul>

# Procurement approach

## Alternative project delivery

Procurement Method	Key Features and Selection Criteria
Competitive proposal (Request for Proposals)	<ul style="list-style-type: none"><li>• Evaluation and selection based on “best value” (including price and other evaluation factors)</li></ul>
Two-step competitive procurement (RFQ + RFP)	<ul style="list-style-type: none"><li>• Step 1: short list proposers based on qualifications</li><li>• Step 2: award contract based on “best value”</li></ul>

# Procurement approach

A/E professional services

For architectural/engineering professional service contracts, e.g. as part of a traditional design-bid-build or CMGC/CMR delivery,

Procurement Method	Key Features and Selection Criteria
Qualifications based (Request for Qualifications)	<ul style="list-style-type: none"><li>• Evaluation based on qualifications only</li><li>• Required method for A/E professional services if federally funded (Brooks Act) – price cannot be an evaluation factor</li></ul>



# Procurement approach

## Innovative Procurement

**Balance confidentiality and  
fairness in competition!**

### **Early outreach:**

- Market soundings
- Draft solicitation documents

### **Pre-proposal submission:**

- Alternative technical concepts
- One-on-one meetings



# Procurement requirements and best practices

## Policies and records

- Develop, document, and follow **standard procurement procedures** for your agency
- **Maintain records** on procurement:
  - rationale for the method of procurement,
  - selection of contract type,
  - contractor selection, and
  - the basis for the contract price





# Procurement requirements and best practices

## Practice tips

- Provide notice of **required contract provisions**
- Harmonize local/federal requirements
- Educate staff and board about federal procurement and contracting requirements
- Engage advisors (technical, legal, and financial) early
- Consult the FAA when in doubt





# Procurement and Delivery Methods

## Federal Requirements

Presented to:

40<sup>th</sup> Annual Airport Law Workshop

By:

Courtney Adolph and Jessie Di Gregory,  
FAA Office of the Chief Counsel

Date:

October 9, 2024



**Federal Aviation  
Administration**

## **Airport Funds Administered by the FAA**

- **Airport Improvement Program – federal financial assistance**
- **Bipartisan Infrastructure Law Grants –federal financial assistance**
- **COVID-era Grants (e.g., CARES, CRSSA, ARPPA) – closing out**
- **Passenger Facility Charge Funds – local funds**



# Bipartisan Infrastructure Law Grants for Airports

## \$15 billion in airport infrastructure funding

- **Airport Infrastructure Grants (AIG)** – approximately \$2.89 billion per year through Fiscal Year 2026
- **Airport Terminal Program (ATP)** – approximately \$1 billion per year through Fiscal Year 2026



# BIL and Terminal Construction

- **Terminals are eligible for federal awards under BIL.**
- **Before BIL's passage, the only source of FAA-administered terminal funding for most airports was PFCs.**
- **Terminal Construction using BIL funds must comply with 2 CFR Part 200, unlike terminal construction funded with PFCs.**





## 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for *Federal Awards*

**Purpose:** deliver “better outcomes on behalf of the American people while simultaneously reducing administrative burden and the risk of fraud, waste, and abuse.”

79 Fed. Reg. 78,589 (Dec. 26, 2013)



## **2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for *Federal Awards***

**Applicability:** 2 CFR Part 200 applies to *all federal financial assistance*

- This includes all AIP and BIL grants, regardless of whether they are used for airside improvements, terminal construction, or other eligible uses.
- PFCs are not subject to the regulation.



## 2 CFR § 200.319. Competition.

**“All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner *providing full and open competition* consistent with the standards of this section and § 200.320.”**



## **§ 200.320 Methods of procurement to be followed.**

- The sealed bid method is preferred for construction.**
- It is difficult to “reverse-engineer” the competition required by this regulation.**



## Other Requirements:

- **Civil Rights and Disadvantaged Business Enterprises - required language for every AIP and BIL project.**

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The ([Selection Criteria: Sponsor Name]), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”



# Other Requirements:

[https://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/may\\_2023](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/may_2023)

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AP Contracts
<b>Access to Records and Reports</b>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<b>Affirmative Action Requirement</b>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<b>Breach of Contract</b>	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
<b>Buy American Preferences</b>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) Construction	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) Equipment/Building Projects	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<b>Civil Rights – General</b>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<b>Civil Rights - Title VI Assurances</b>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<b>Clean Air/Water Pollution Control</b>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<b>Contract Work Hours and Safety Standards</b>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<b>Copeland Anti-Kickback</b>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<b>Davis Bacon Requirements</b>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<b>Debarment and Suspension</b>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<b>Disadvantaged Business Enterprise</b>	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
<b>Distracted Driving</b>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<b>Domestic Preferences for Procurements</b>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<b>Equal Employment Opportunity</b>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<b>Federal Fair Labor Standards Act</b>	\$ 0	REQD	REQD	REQD	REQD	REQD	Info



## 2024 FAA Reauthorization

- **Sec. 723—Broadened Alternative Project Delivery provisions**  
**Changed title and substance of Section 47142 from “Design-Build Contracting” to “Alternative project delivery.”**
  - It directs the FAA to establish a program to award funds for projects using integrated project delivery methods.
  - The FAA is currently assessing the statutory requirements, Federal procurement regulations, and industry project delivery methods to establish program processes and guidance.
  - The FAA intends to issue a Program Guidance Letter (PGL) to formally establish the program by the statutory due date of February 10, 2025.



## 2024 FAA Reauthorization

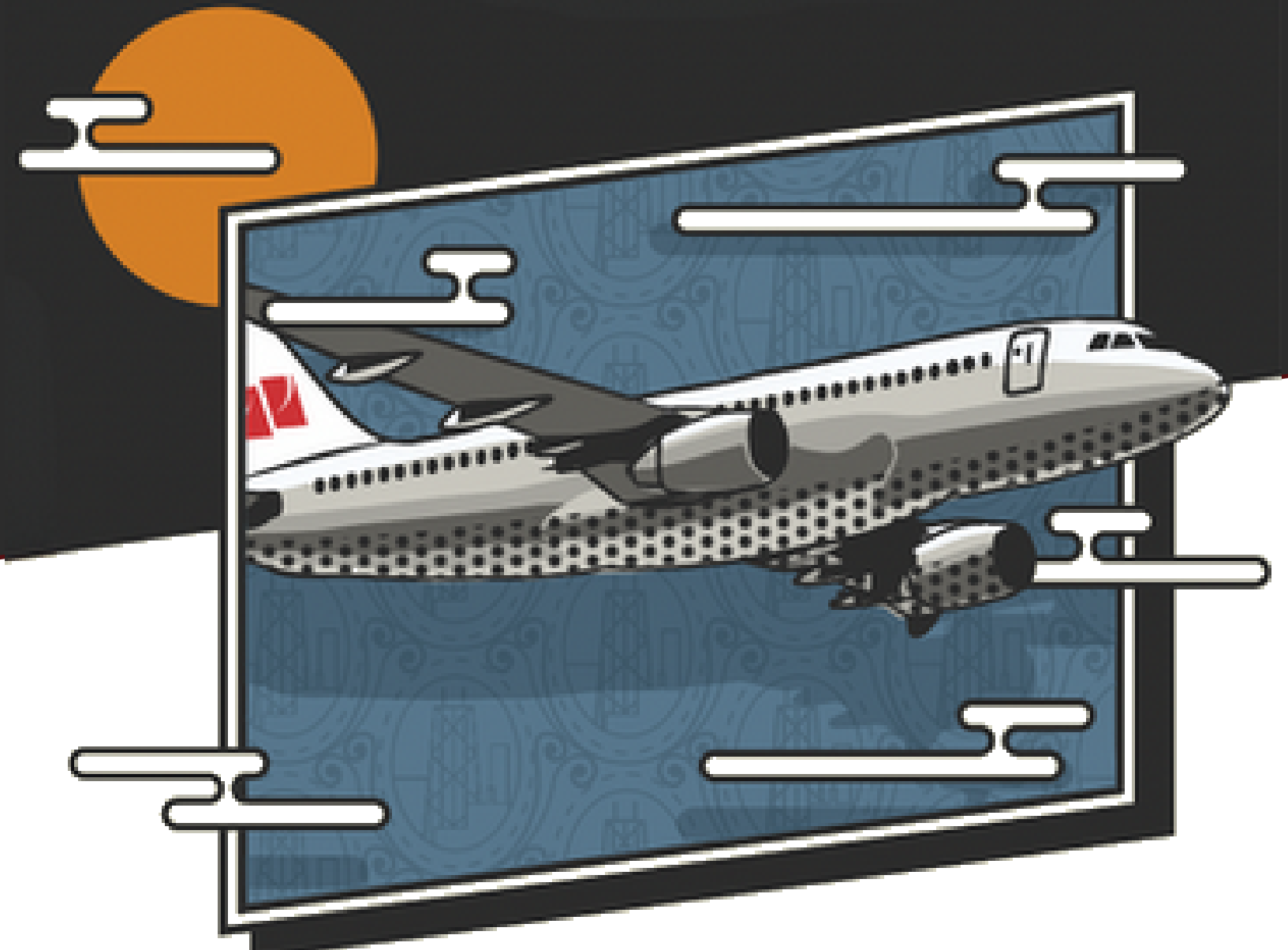
- **Sec. 758—Procurement Regulations Applicable to Multimodal Projects.** Addresses which procurement regulations apply to multimodal projects involving AIP or BIL funds.
  - All projects funded with federal financial assistance, regardless of mode, are subject to 2 CFR Part 200.







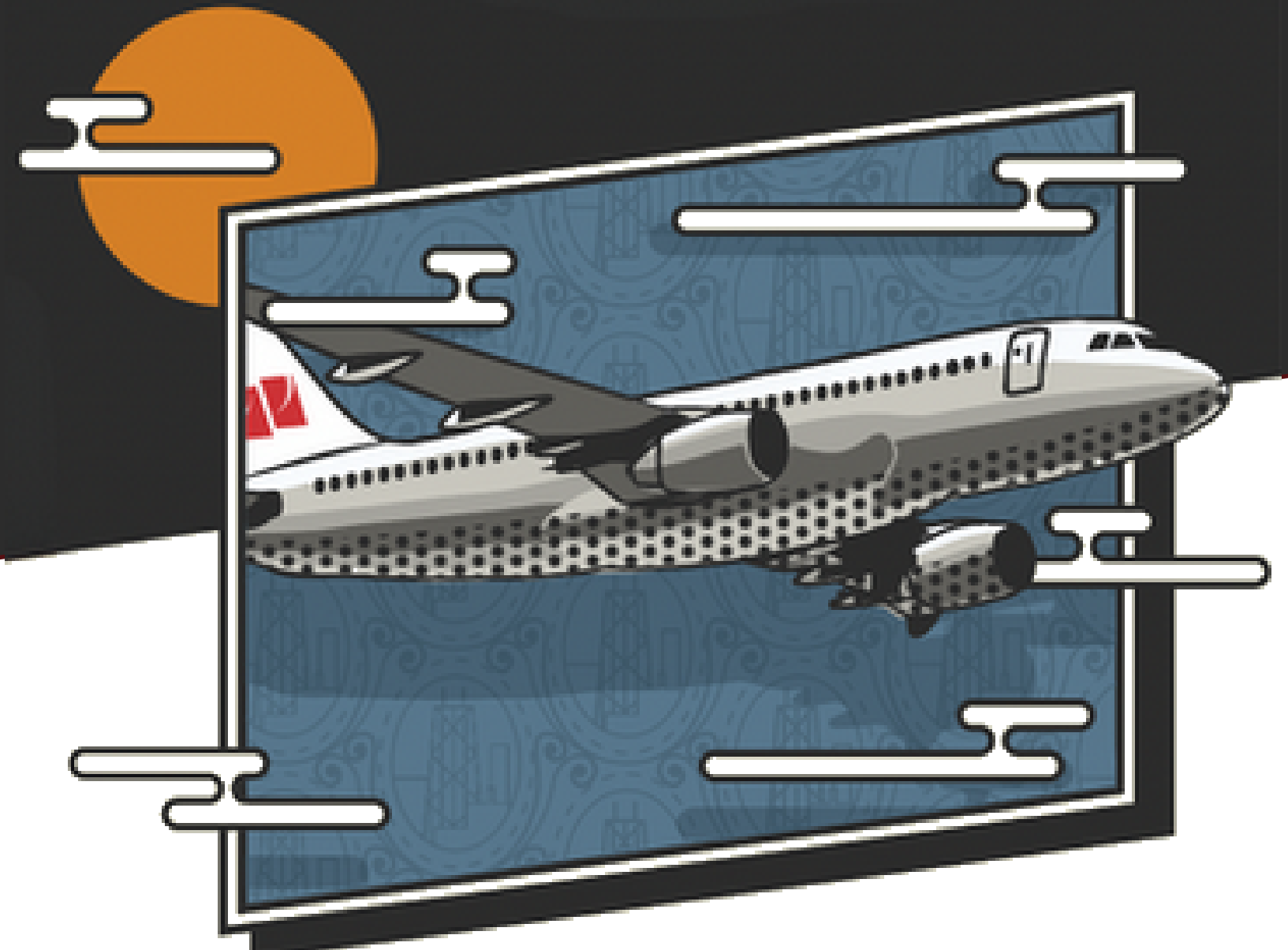
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THANK YOU!



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# QUESTIONS?