



COUNTY PURCHASING: CONSTRUCTION PROCUREMENT

67th Annual V.G. Young School
for County Commissioners Courts
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- ▶Tiffany N. Leal
- ▶The Chapman Firm PLLC
- ▶3410 Far West Blvd.
- ▶Suite 210
- ▶Austin, Texas 78731
- ▶512.872.3836
- ▶tiffany@chapmanfirmtx.com

TODAY'S AGENDA



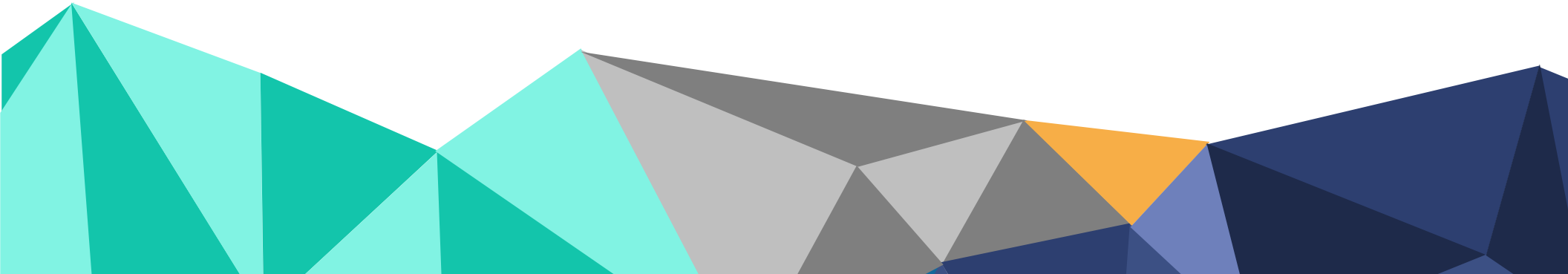
Procurement Basics

Who/What/When/Where/Why
Big Picture
Getting Started



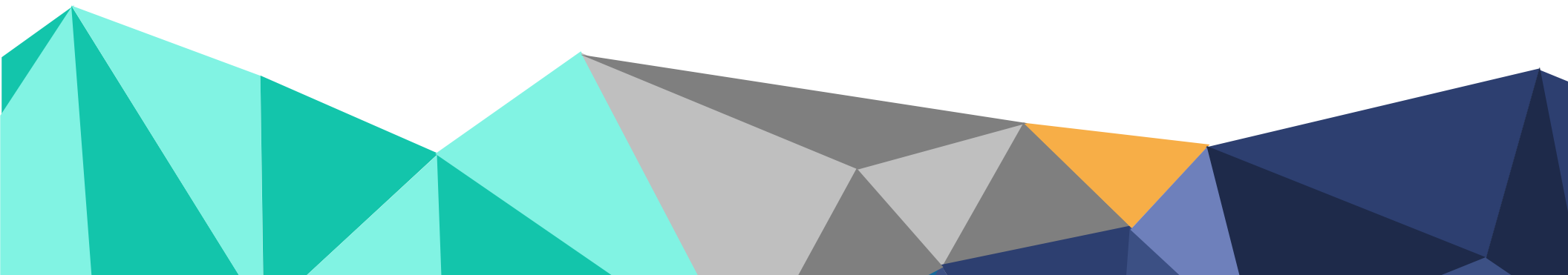
County Contracting for Construction

Statutory Framework
Legislative Updates



PROCUREMENT BASICS

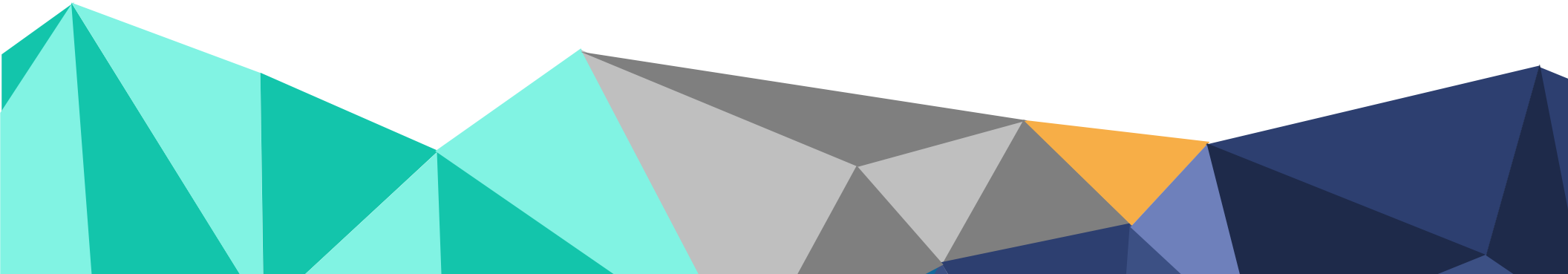
- What is Public Procurement?
- When is Public Procurement Required?
- Statutory Intent
- Failure to Comply



PROCUREMENT BASICS

WHAT IS PUBLIC PROCUREMENT?

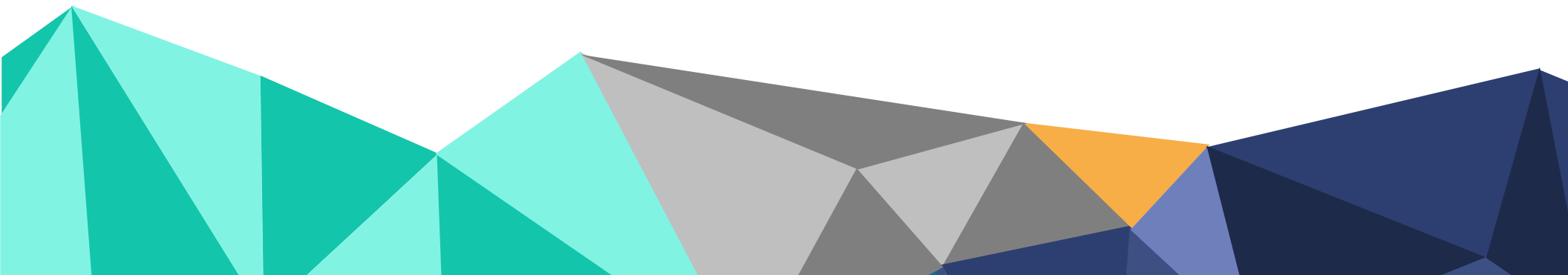
- The purchase of goods or services by a governmental entity and the legal framework governing the process.



PROCUREMENT BASICS

WHEN IS PUBLIC PROCUREMENT REQUIRED?

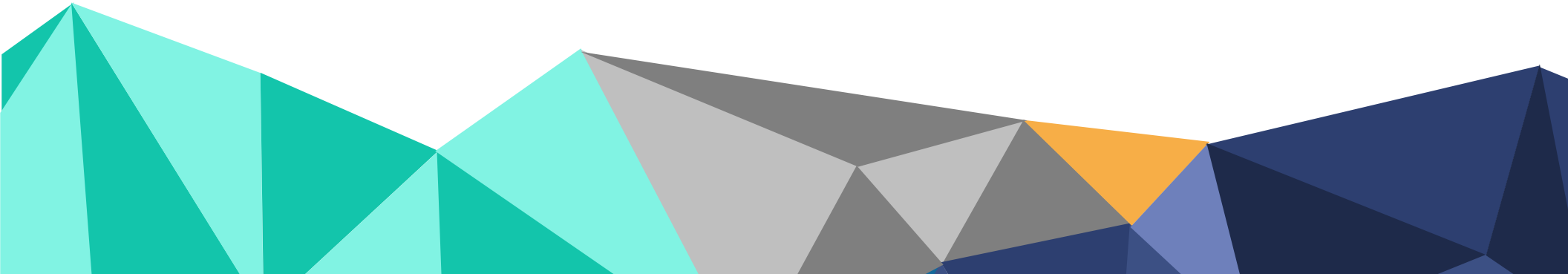
- Expenditures over \$50,000
- Public works contracts
 - Construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property



PROCUREMENT BASICS

STATUTORY INTENT

- Open, transparent government spending
- Dictates specific bidding requirements
- Ensure responsible use of public funds



PROCUREMENT BASICS

FAILURE TO COMPLY

- Void contract
- Officer or employee
 - Intentionally or knowingly makes separate, sequential, component purchases
 - Intentionally or knowingly violates this subchapter

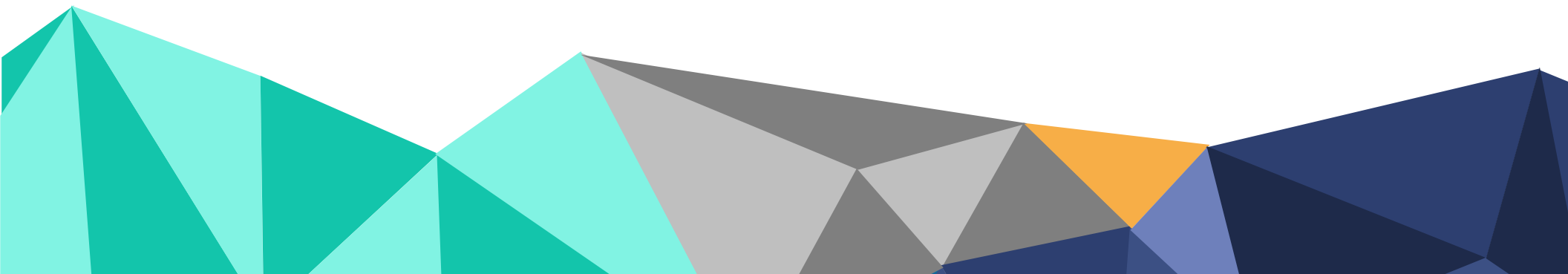


Class B
Misdemeanor

Class C
Misdemeanor

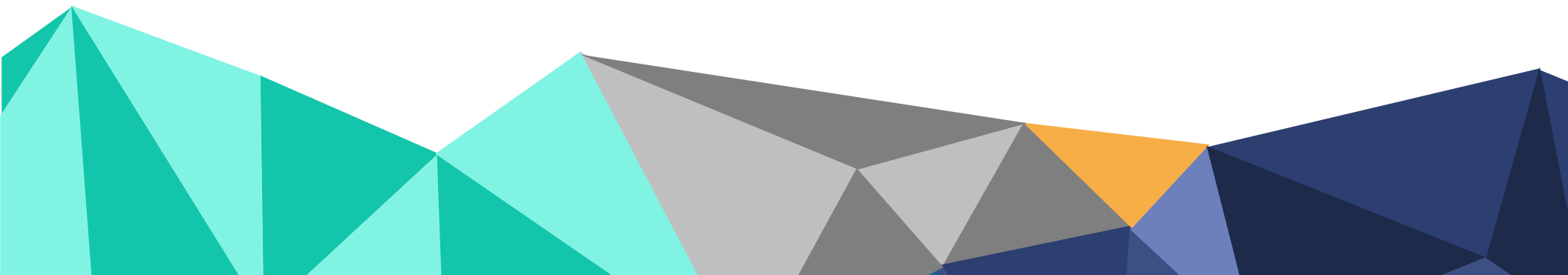
PROCUREMENT BASICS

- Texas Local Government Code
 - Chapter 262 – Counties
- Texas Government Code
 - Chapter 2254 – Professional and Consulting Services
 - Chapter 2269 – Alternative Project Delivery Methods
 - Chapter 2267 – Public and Private Facilities and Infrastructure



EXEMPTIONS

- Public calamity to preserve public property
- Necessary to protect the public health or safety of residents
- Sole source
- Exemptions should be RARE



STAGES OF A CONSTRUCTION PROJECT

Pre-Design Phase

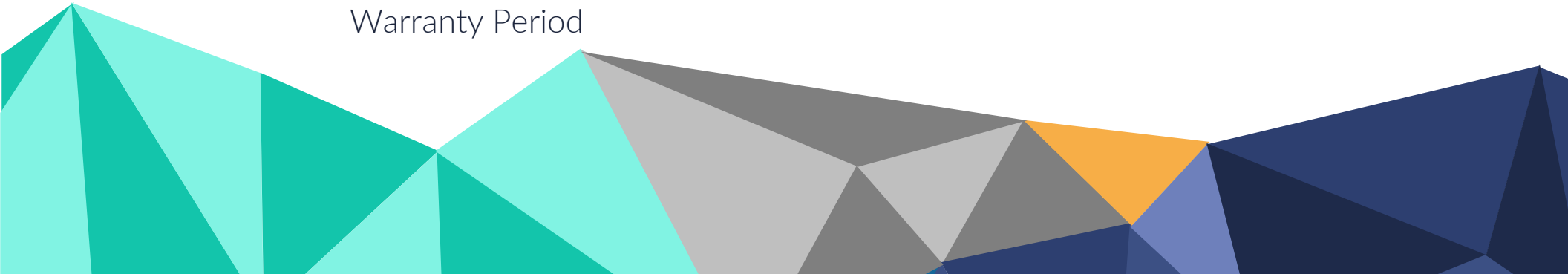
- Programming
- Funding source

Design Phases

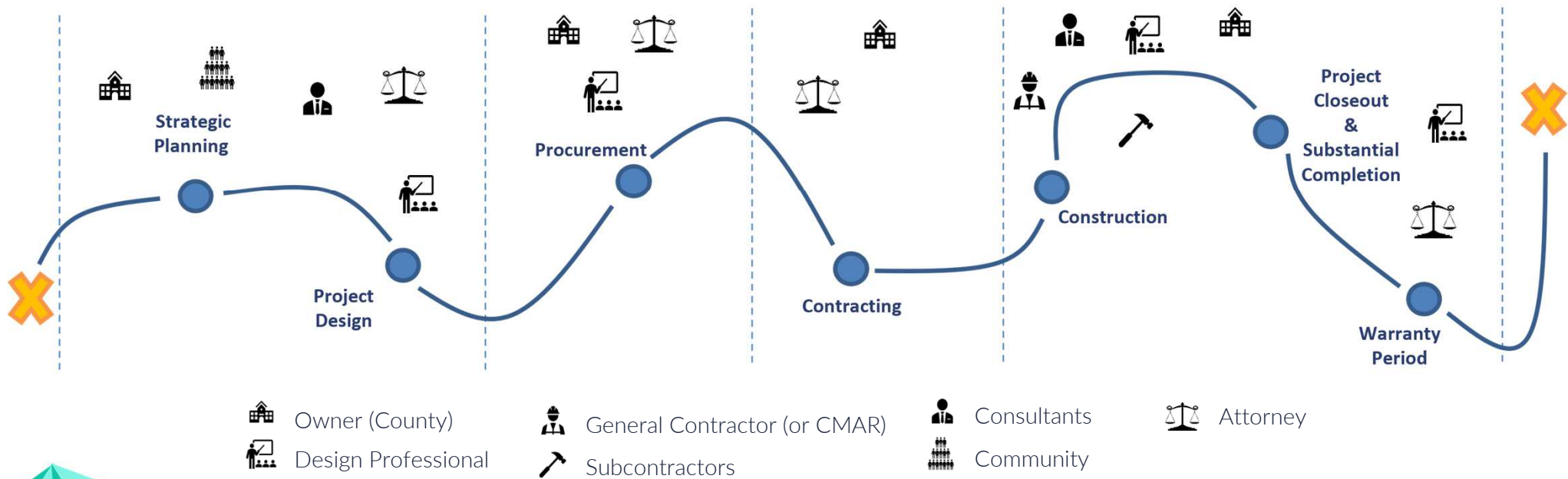
- Schematic Design
- Design Development
- Construction Documents
- Bidding (Procurement)

Construction Phase

- Notice to Proceed through Final Completion (Close-out)
- Warranty Period



BIG PICTURE: CONSTRUCTION PROCESS



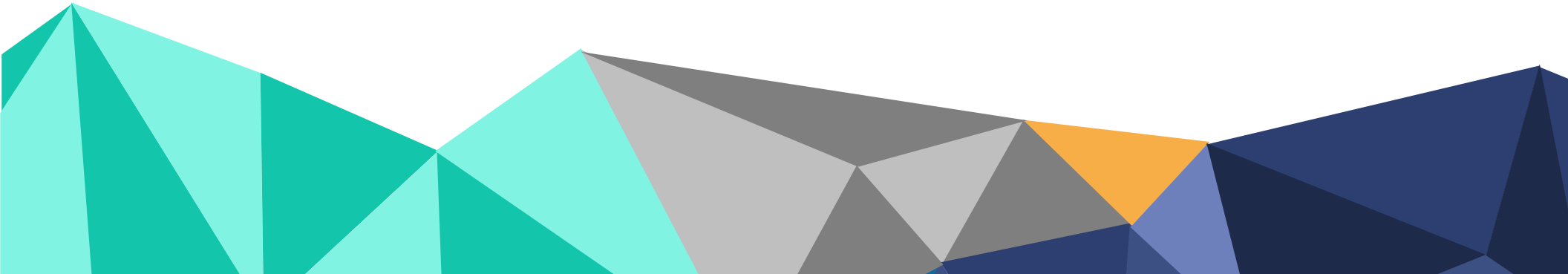
BIG PICTURE: Key Players in a Construction Project

- Owner – County
- Design Professional(s)
 - Architect/Engineer(s)
 - Subconsultants (Geotech, MEP, civil, structural)
- Contractor
 - General Contractor/CMAR/Design-Build
 - Subcontractors



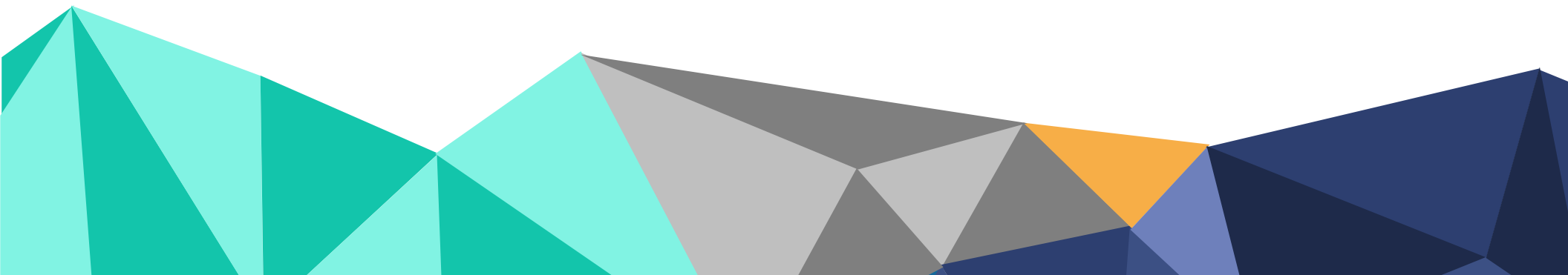
CONSTRUCTION DELIVERY METHOD

The process by which the County advances a construction project from conception to project close-out is called a construction delivery method.



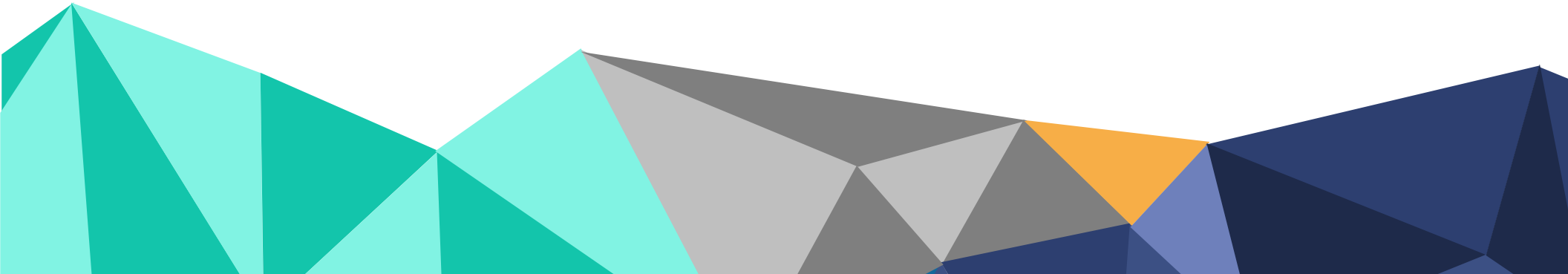
GETTING STARTED

- Where is the County in the construction process?
- Who is on the Construction Team?
- Variables: Time/Price/Quality (Sophistication)



CONTRACTING WITH DESIGN PROFESSIONALS

- Gov't Code Chapter 2254 – Request for Qualifications
- Gov't Code Chapter 2269 – “on or before the selection of [CONTRACTOR], the government entity shall select or designate an architect or engineer to prepare the construction documents for the project.”
- Tex. Local Gov't Code Sec. 271.904
 - Indemnification must comply with the statute
 - Sets out statutory Standard of Care



CONTRACTING WITH DESIGN PROFESSIONALS

- Government Code Chapter 2254
 - Architect, Landscape Architect, Land Surveyor, Professional Engineer, Interior Designer
- May not use competitive bids
- Selection based on
 - Demonstrated Competence
 - Qualifications to Perform Services Sought
- Price not discussed or defined until design professional has been selected



Architects

22 Tex. Admin. Code Sec. 1.147

An Architect shall neither submit a competitive bid to nor solicit a competitive bid on behalf of any governmental entity that is prohibited by the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids. For purposes of this section, the term "competitive bid" means information which specifies the fee charged by an Architect for a professional service, including information from which such fee may be extrapolated or indirectly determined. An Architect may disclose to a governmental entity the fee for a professional service, including information found in a fee schedule, only after the governmental entity has selected the Architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act.

22 Tex. Admin. Code § 1.147

Engineers

22 Tex. Admin. Code Sec. 137.53

(a) A licensed engineer shall not submit or request, orally or in writing, a competitive bid to perform professional engineering services for a governmental entity unless specifically authorized by state law and shall report to the board any requests from governmental entities and/or their representatives that request a bid or cost and/or pricing information or any other information from which pricing or cost can be derived prior to selection based on demonstrated competence and qualifications to perform the services.

(b) For the purposes of this section, competitive bidding to perform engineering services includes, but is not limited to, the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.

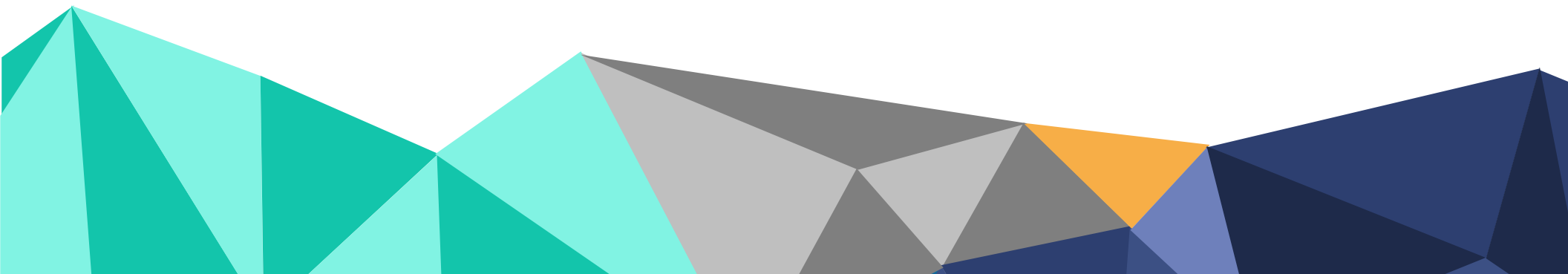
(c) This section does not prohibit competitive bidding in the private sector.

22 Tex. Admin. Code § 137.53

Professional Rules prohibit design professionals from competitive bidding for governmental entities.

PROCUREMENT METHODS FOR GOODS & SERVICES

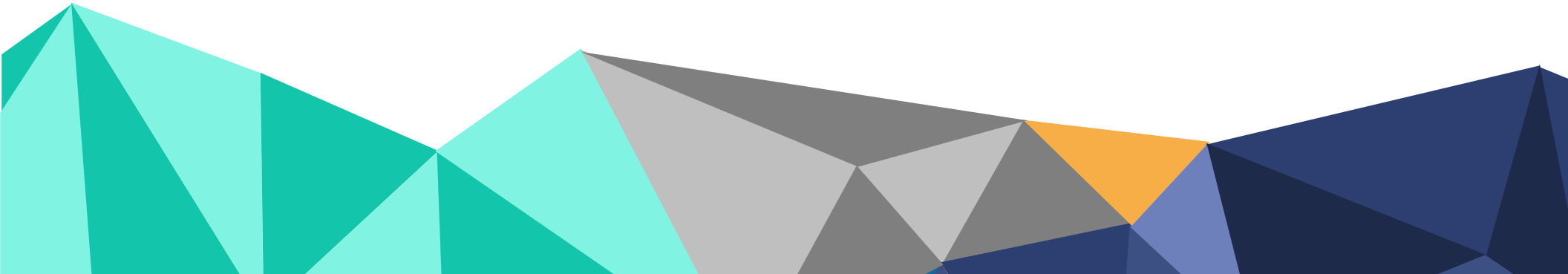
- Traditional Public Procurement
 - Design/Bid/Build
 - Pure Competitive Bidding
 - Lowest Responsible Bidder Wins
- Alternative Delivery Methods
 - Allows Consideration of Subjective Criteria
 - May facilitate speedier completion



Local Government Code

CHAPTER 262 PROCUREMENT

- Governs Counties
- Allows Competitive Bidding or Competitive Sealed Proposals
- Must state method in request
- Competitive bidding requires lowest responsible bidder
 - Lowest and best bid
 - Safety record considered



CHAPTER 262 PROCUREMENT

- Allows for Alternative Multistep Competitive Proposal Procedure
 - If detailed specifications for item impractical
 - RFP– same notice as competitive bidding
 - No Pricing
 - Open and evaluate for qualifications
 - Solicit, by mail, pricing from qualified bidders
 - Within 30 days, price and negotiate

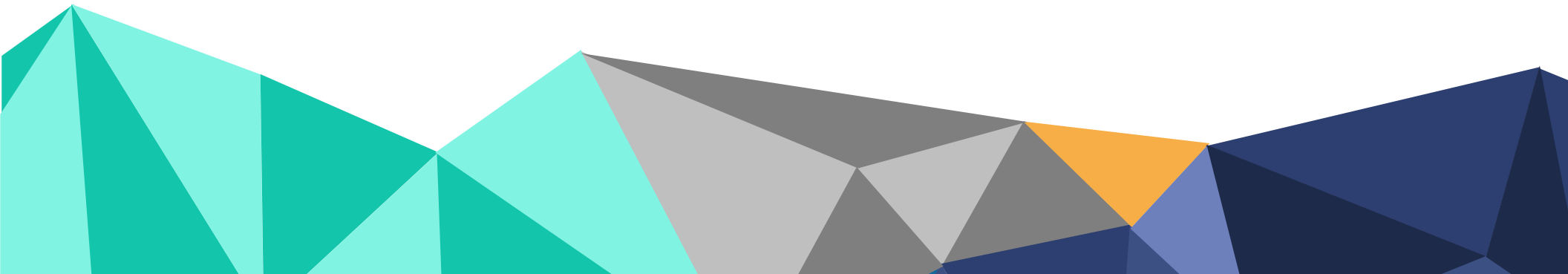


AWARD OF CONTRACT TRADITIONAL METHOD

- No Longer Lowest Bid Automatically
- Lowest Responsible or Best Value Wins
 - Statute Contains 8 Criteria for Evaluation
 - Owner May Add Other Relevant Factors
- Owner Must State in Advertisement for Bid that Project will be Awarded to:
 - Lowest Responsible Bidder; or
 - Bidder Who Provides the Best Value

CHANGE ORDER AUTHORITY

- \$50,000 or less, the grant of authority may be made by council or commission (\$100,000 if population >240,000)
- Additive change order maximum of 25% of original contract value
- Deductive change order maximum of 18% of original contract value for counties (262) or 25% for municipalities (252) without contractor's consent



COMPETITIVE BIDDING – LOWEST RESPONSIBLE BIDDER

- Traditional Pure Competitive Bidding
- Lowest Responsible or Best Value Wins
- Entitled to reject any and all bids
- To consider safety record, Owner must include in advertisement:
 - Written definition and criteria to determine safety record
 - Notice that safety record may be considered



COMPETITIVE BIDDING – LOWEST RESPONSIBLE BIDDER

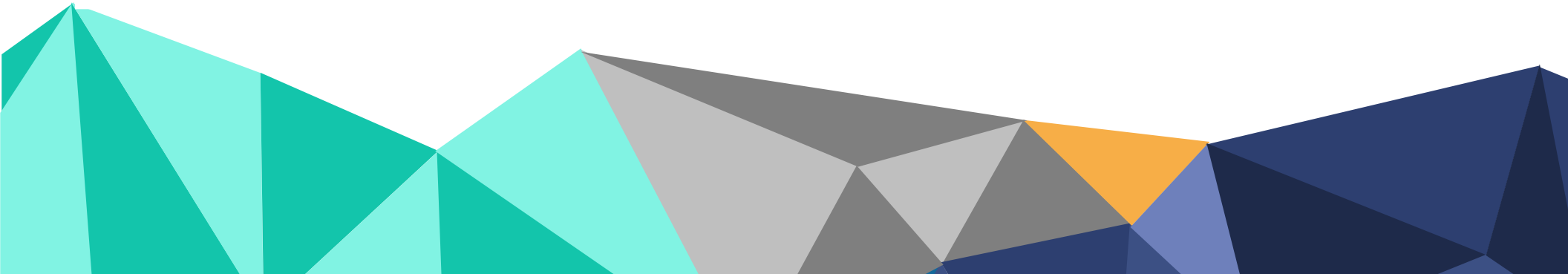
- Owner must select or designate an A/E to prepare construction documents
 - May be in-house or outside professional
- Owner must prepare an RFP with
 - Construction documents
 - Estimated budget
 - Project scope
 - Estimated completion date



Government Code

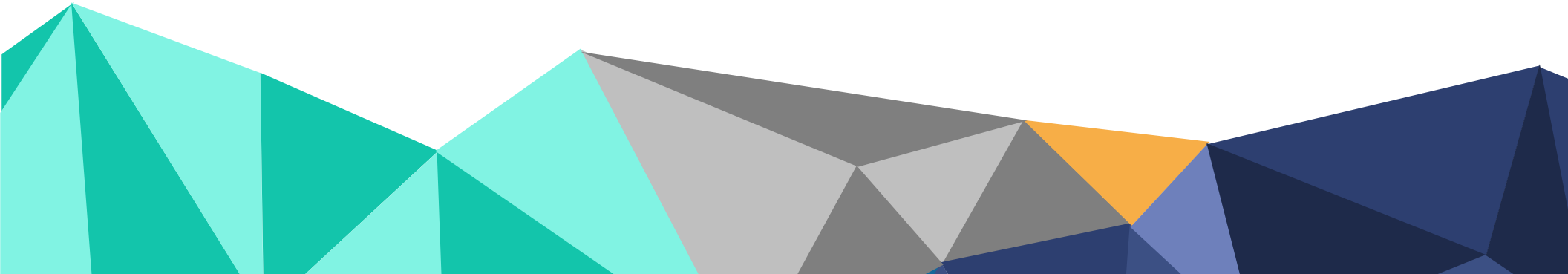
CHAPTER 2269 DELIVERY METHODS

- Competitive Bidding – Lowest Responsible Bidder
- Competitive Sealed Proposals
- Construction Manager Agent
- Construction Manager At-Risk
- Design-Build (buildings/civil engineering)
- Job Order Contracting



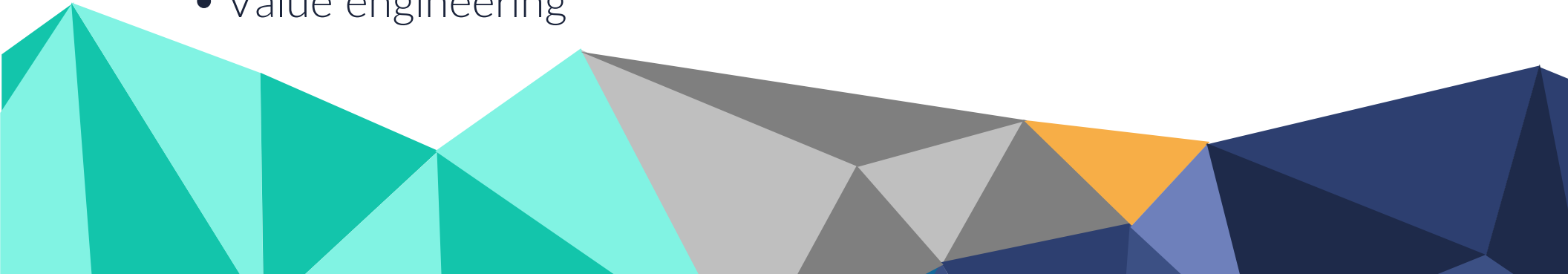
CH. 2269 DELIVERY METHODS

- Commissioners Court must authorize Alternative Delivery Method
- Evolved over several legislative sessions
 - Gradually expanded
 - Some differences between horizontal (civil engineering) and vertical (buildings) projects



DIFFERENCES WITH ALTERNATIVE PROJECT DELIVERY METHODS

- Allows Consideration of Subjective Criteria
 - Provides Flexibility to Owner
 - Allows Contractors to compete on more than just price alone
- May facilitate speedier completion or lower costs
 - Allows for multi-phased construction
 - Can begin work before design complete
 - Value engineering

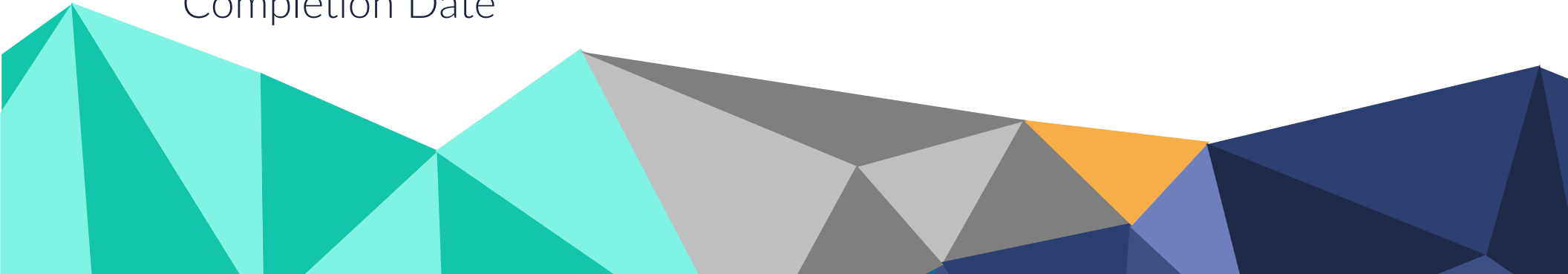


BEST VALUE CONSIDERATIONS

- Purchase Price
- Reputation of Bidder
- Quality of Bidder's Goods or Services
- Extent to Which Bidder's Goods or Services Meet Entities' Needs
- Past Relationship With Entity
- Impact on Entity to Comply with Laws & Rules Relating to HUBs
- Long-term Costs to Entity
- Any Other Relevant Factor*

COMPETITIVE BIDDING – LOWEST RESPONSIBLE BIDDER

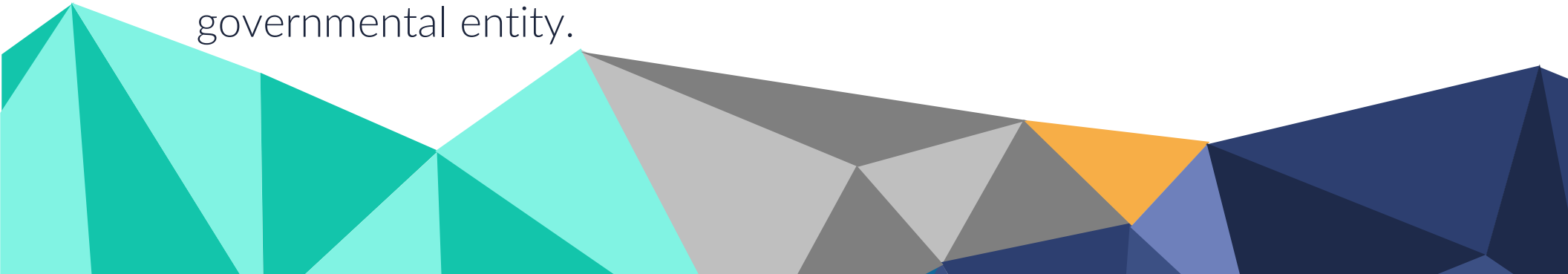
- Similar process as under 262
- Entitled to reject any and all bids
- To consider safety record or any other factor, Owner must include notice procurement documents.
- A/E Prepare Construction Documents
- Request for Bids must include CDs, Estimated Budget, Scope, Completion Date



COMMISSIONERS COURT BEST VALUE DETERMINATION

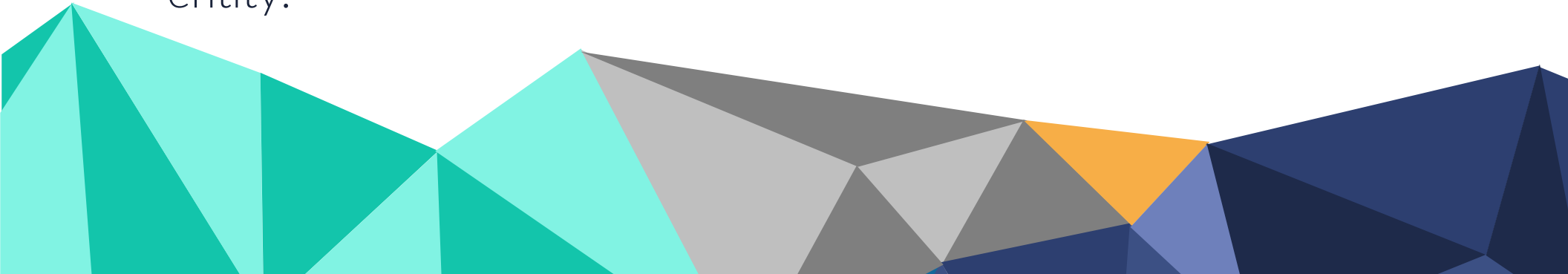
Sec. 2269.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

(a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.



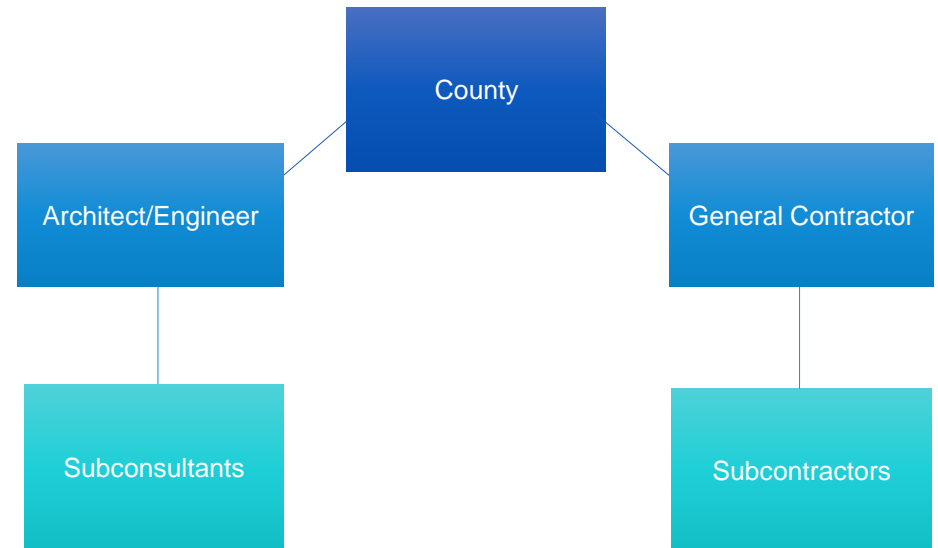
COMPETITIVE SEALED PROPOSAL

- Procurement method where County:
 - Requests proposals
 - Ranks the offerors
 - Negotiates with and then contracts with selected offeror
- Commissioners Court must first make determination that Competitive Sealed Proposals that provides best value for the entity.



DESIGN-BID-BUILD

- “Traditional” Method:
 - Architect Designs Project
 - General Contractor Bids Project
 - Subcontractors Build Project
- Generally Procured Using:
 - Competitive Bidding or
 - Competitive Sealed Proposals



COMPETITIVE SEALED PROPOSAL

- County must select or designate an A/E to prepare construction documents
 - May be in-house or outside professional
- County must prepare a Request for Proposal with:
 - Construction Documents
 - Selection criteria & weighted value for each
 - Estimated budget
 - Project scope
 - Estimated completion date
 - Any other relevant factors listed in the RFP

CSP WEIGHTED SELECTION CRITERIA

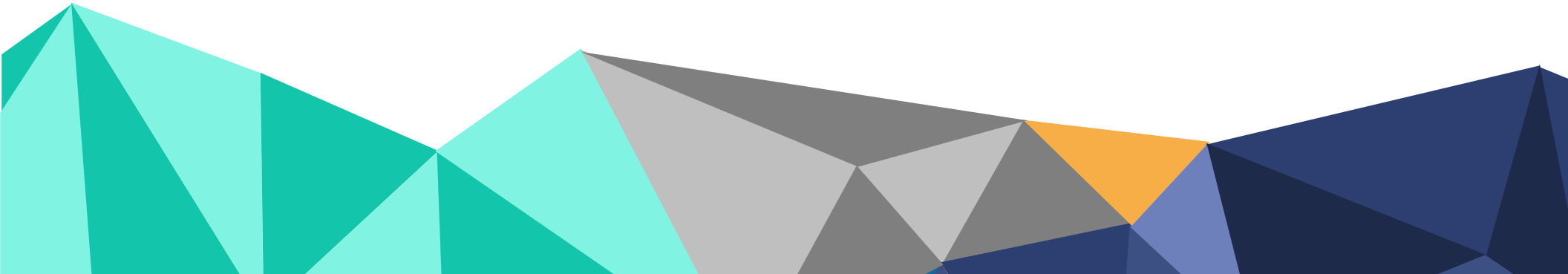
- Civil Works – Cost must be 50% weighted value.
- If governing body determines lower weighted value is in “public interest,” then not less than 36.9%.

(c) Except as provided by Subsection (d), for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.

(d) If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria.

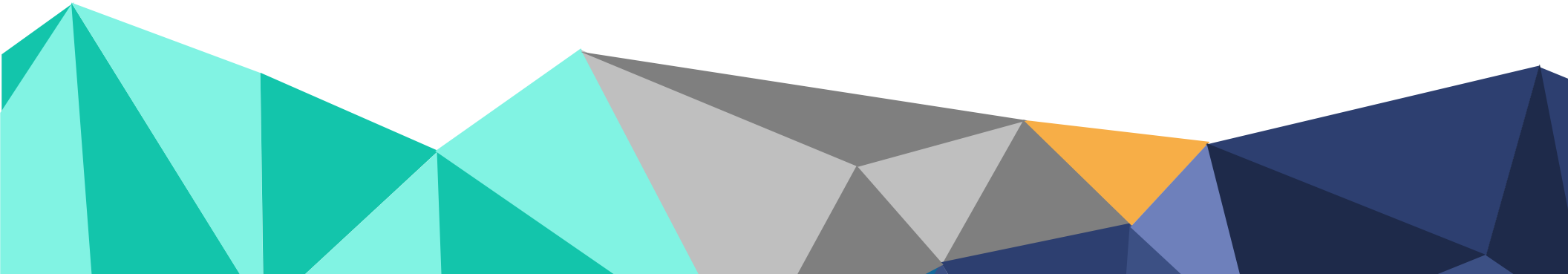
COMPETITIVE SEALED PROPOSAL

- Proposals must be opened publicly with names and monetary proposal read aloud
- Within 45 days, County must evaluate & rank each proposal and select “best value” based on the selection criteria and ranking.



COMPETITIVE SEALED PROPOSAL

- Attempt to negotiate with highest ranked
 - May discuss options for scope or time modification and any associated price change
 - Not restricted to diminished value or time
- If negotiations unsuccessful, may formally terminate and move down list until a contract is reached or all proposals are rejected



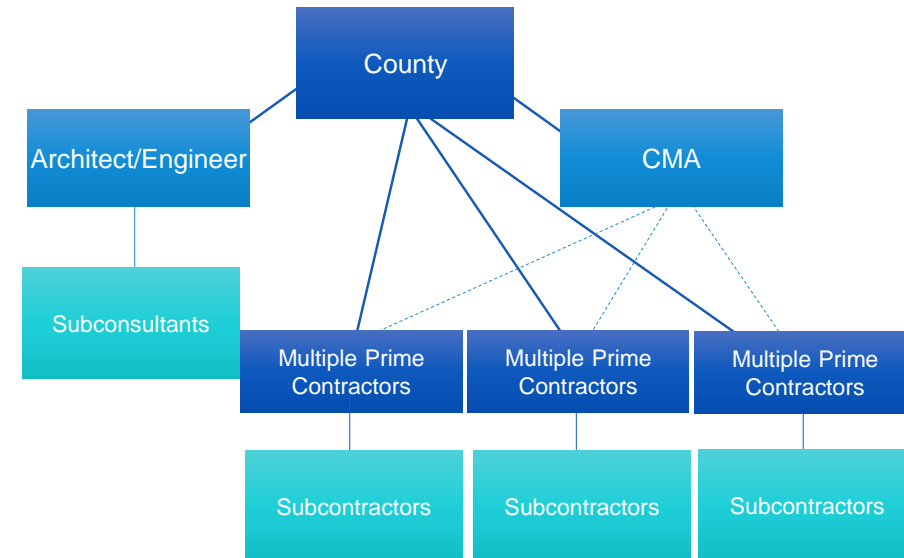
CONSTRUCTION MANAGER - AGENT

- Best described as a Construction Consultancy
- CM-Agent does not design or build the Project
- CM-Agent serves as agent for Owner
 - Oversees design process with A/E
 - Construction management
 - Facilitates budgeting
- Represents Owner in fiduciary capacity



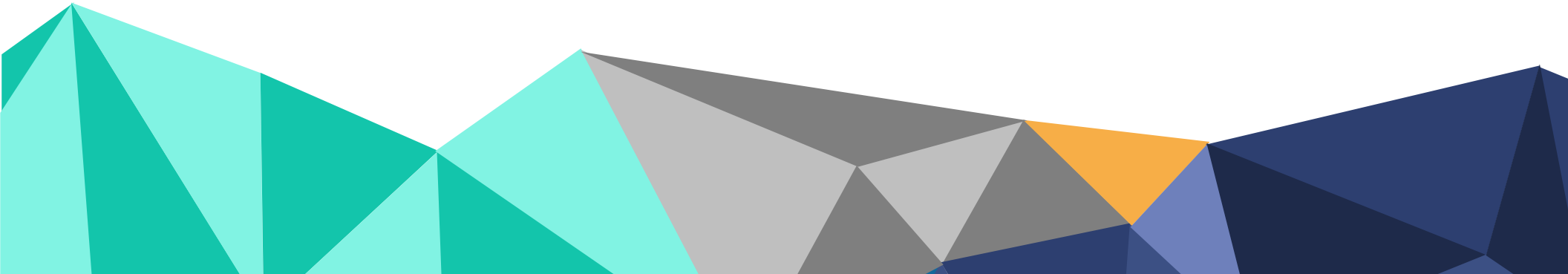
CONSTRUCTION MANAGER-AGENT ("CMA")

- County contracts directly with multiple prime contractors
- CMA administers & manages Contract
- A/E designs project with CMA input:
 - Value engineering – costs
 - Schedule considerations
 - Constructability
- Generally Procured Using:
 - Competitive Sealed Proposals



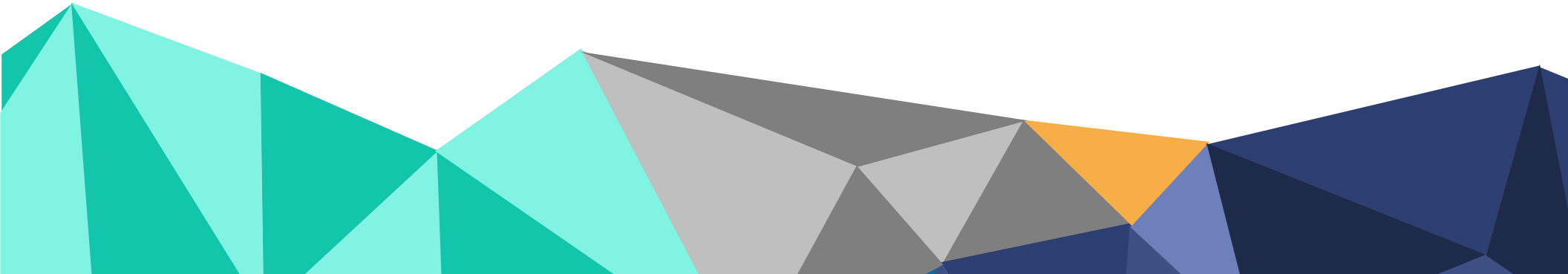
CONSTRUCTION MANAGER - AGENT

- Works as consultant during design phase
 - Helps with material selections
 - Estimating
 - Scheduling
- Qualifications-based procurement in the same manner as A/E under Section 2254.004
- Generally, prices pre-construction work as fixed fee or percentage



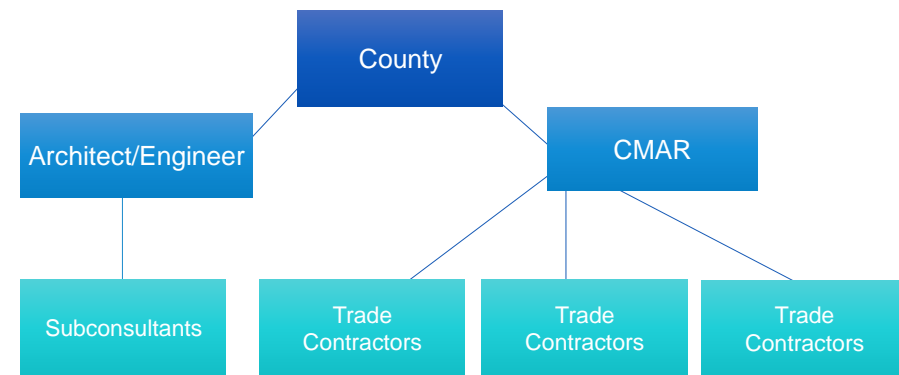
CONSTRUCTION MANAGER AT-RISK

- Essentially a general contractor who provides input during design phase
- Potential to save time/money – Value Engineering
 - Cost savings may be returned to Owner (or split as incentive)
- Guaranteed Maximum Price (“GMP”)
- CMAR Fee (% of Construction Costs)
- County must hire A/E to perform design
 - Design professional may not serve as CMAR



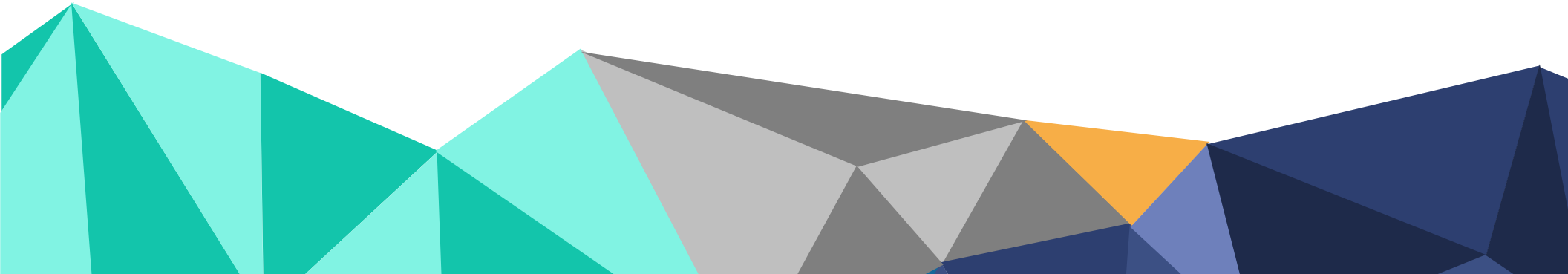
CONSTRUCTION MANAGER-AT-RISK ("CMAR")

- A/E designs project with CMAR input:
 - Value engineering – Cost Savings
 - Schedule considerations
 - Constructability review
- CMAR provides GMP to County
- CMAR bids & contracts with trade contractors for each scope of work



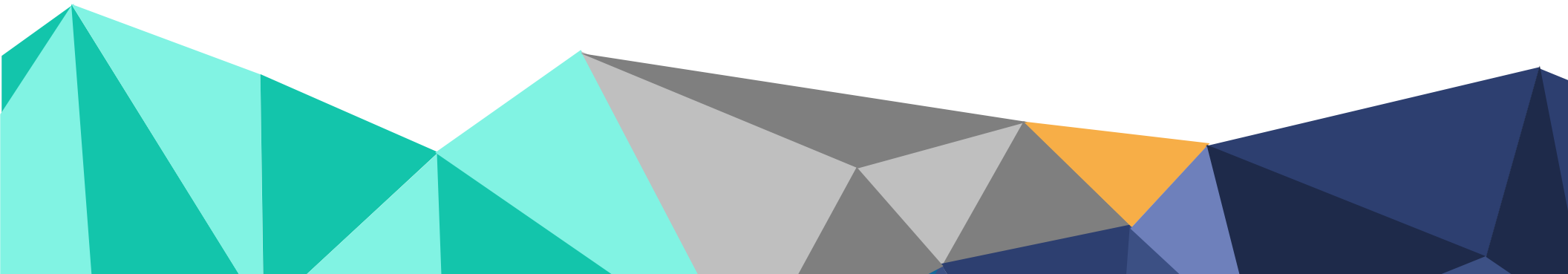
HIRING A CMAR

- One or Two Step Process
- Both require County to publish notice
- One-step uses only Request for Proposals (RFP)
- Two-step uses a Request for Qualifications (RFQ)
 - then RFP for 5 or fewer respondents



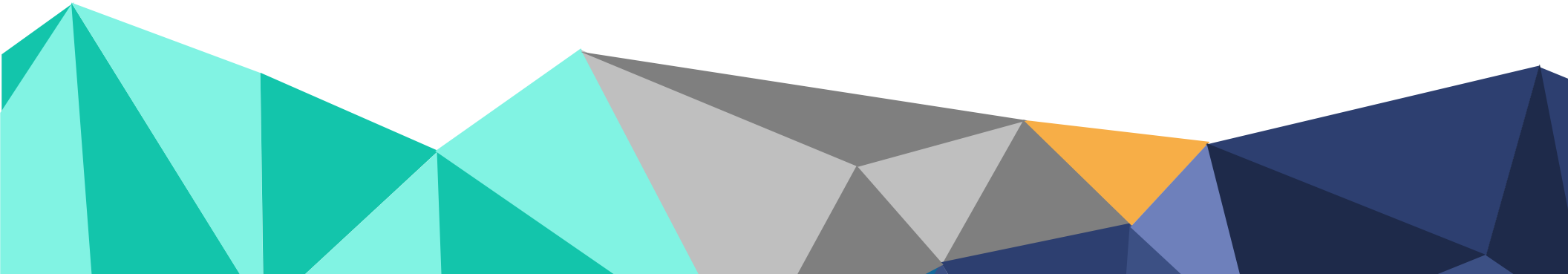
ONE-STEP CMAR PROCESS

- RFP issued
 - Must include project site, scope, schedule, selection criteria, weighting, budget, time and place for opening proposals
 - Any other information to assist owner in evaluating offerors
 - Fees and prices for general field conditions
- County ranks and selects based on best value



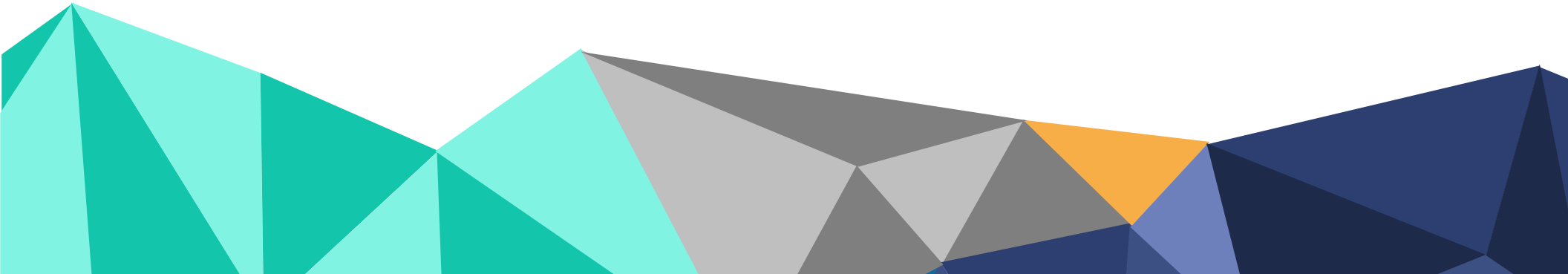
TWO-STEP CMAR PROCESS

- Step 1: RFQ Issued with selection criteria
 - No fees or prices
 - Evaluate, narrow to 5 or fewer offerors
- Step 2: RFP requesting fees and prices
- County ranks and selects based on best value



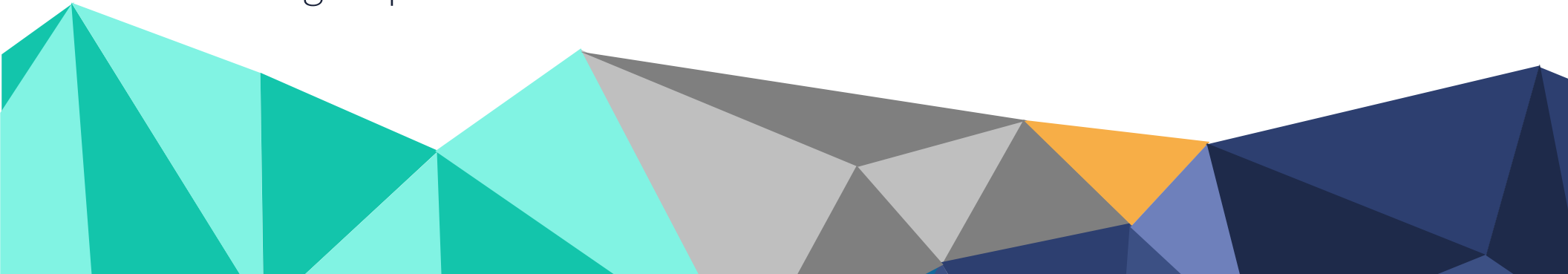
CMAR CONTRACT

- County negotiates with highest ranked respondent
- If no agreement, formally end negotiations and move on to next until a contract is reached or all proposals are rejected
- If agreement, enter into CMAR contract
 - Negotiate CMAR Fee % and general conditions costs
 - Cost for Preconstruction Services
 - No full Construction Cost at outset
 - End of design phase enter into GMP Amendment



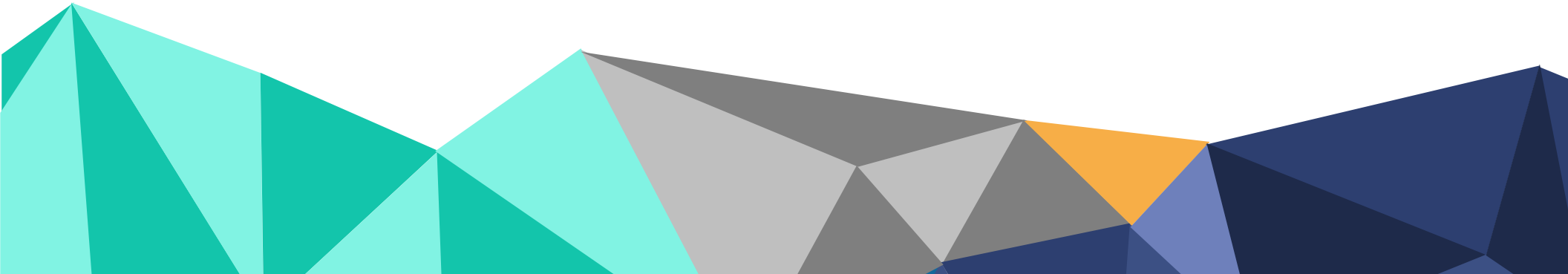
CMAR PERFORMANCE

- CMAR must comply with state laws for procurement to bid scopes
- Owner may reject bidders
 - CMAR must share bidder info with Owner and A/E
 - If Owner rejects bid and directs alternate, it must compensate CMAR for any cost overage
 - CMAR may bid for self-performance of scopes
- Bonding required in amount of estimate



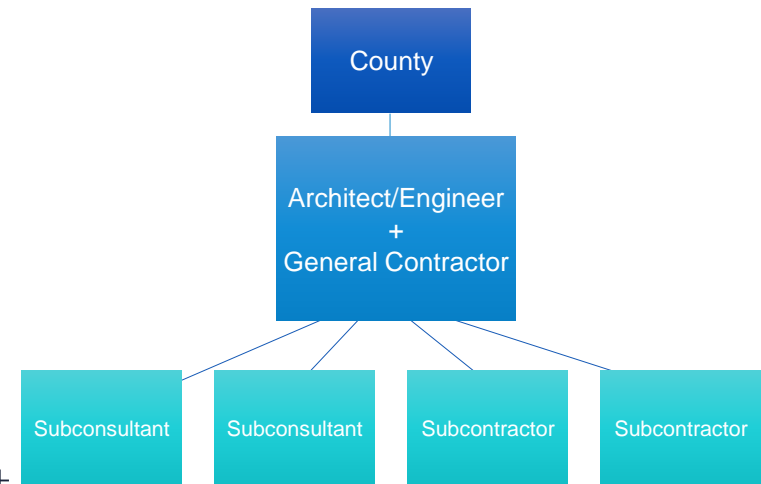
DESIGN-BUILD

- Owner contracts with one team to perform both design and construction
- Consolidates contracting process in the event of claims by owner
- Can provide efficiencies to schedule and delivery of final project
- Can provide cost savings if performed well
- Best used for highly technical or specialized projects



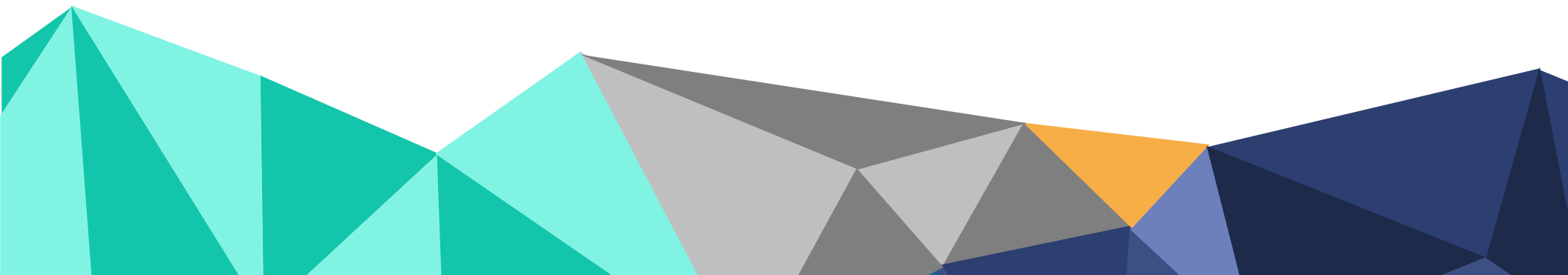
DESIGN-BUILD METHOD

- Single team designs and builds project:
 - Architect
 - Engineer
 - Contractor
- Design/Build firm contracts directly with subconsultants and subcontractors
- Requires County also have an “Independent Representative” Architect/Engineer
- Two Step Procurement



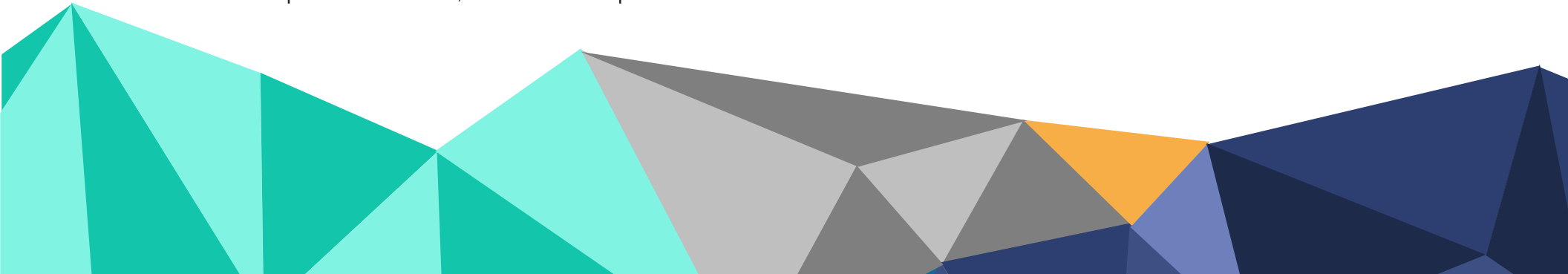
DESIGN-BUILD PROCESS

- Design-builder performs all design work for the project
- Design-builder may self-perform or may subcontract out all work
- Design-builder assumes all responsibility for both design and construction
 - Does not need to bid scopes of work like CMAR
- Guaranteed Maximum Price (“GMP”)
- Horizontal projects: limits based on population and number of projects.



DESIGN-BUILD – Request for Qualifications

- County issues RFQ
 - General project information
 - Project site, scope, budget, selection criteria
- County publishes Design Criteria Package
 - Specific project information:
 - Legal description of site, survey info, interior space requirements, cost & budget estimates, schedules, quality assurance, site development requirements, parking requirements, utility provisions, code requirements

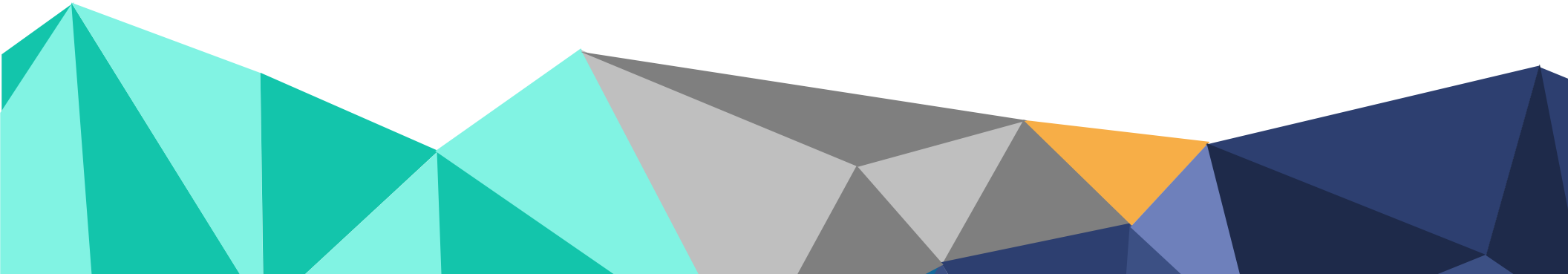


DESIGN-BUILD – Request for Proposals

- After receipt of responses to RFQ
- Select up to 5 respondents to submit proposals
 - Evaluate proposals
 - Can interview respondents
 - May request additional info not in RFQ
 - Demonstrated competence, safety and durability considerations, feasibility of project as proposed, ability to meet scheduling requirements, cost methodology
- Then negotiate with highest ranked firm
- If no agreement, end negotiations and move on to next until a contract is reached

DESIGN-BUILD

- Offerors are evaluated based on each offeror's
 - Experience
 - Technical competence
 - Capability to perform
 - Past performance of offeror's team
 - May NOT consider price
 - Costing Methodology \neq Price

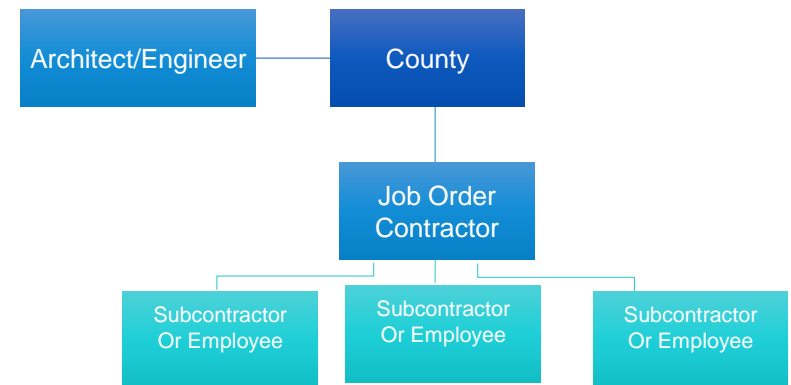


JOB ORDER CONTRACTING (IDIQ)

- Maintenance, repair, remediation, minor construction of a building that is of a recurring nature
 - Delivery times, type, and quantities of work indefinite
- Competitive Sealed Method
 - Job prices established through unit prices, or asking offerors to propose prices
 - Can award job contract to multiple contractors

JOB ORDER CONTRACTS

- Used for minor construction, repair, rehabilitation or alteration
- Used when work is of a recurring nature but delivery times, types, and quantities are indefinite
- Orders based on pre-priced tasks
- Statutory limits to uses





QUESTIONS

Thank you for attending.



Tiffany N. Leal

tiffany@chapmanfirmmtx.com

512.872.3836