

Considerations for collaborative procurement and contracting

Effective collaboration allows contracting parties to work together to achieve a common outcome while recognising that each party has different commercial objectives.

In the procurement and delivery of infrastructure, collaboration can range from often used interactive tendering practices within traditional procurement processes, through to specific collaborative procurement and delivery models.

The conventional approach

Infrastructure is typically procured and delivered by a competitive tender process based on a scope of work and risk allocation sought by the client. A fixed price, timeframe, and risk allocation is then tendered, accepted, and contracted on.

There will always be a place for this model. It is low cost to procure and administer, the competitive process demonstrates value for money, and it offers certainty in price, programme, and risk allocation. If risk is fairly allocated, then the party allocated the risk can be left to manage it.

However, the limitations are well known.

The client plans and scopes work without meaningful input from its supply chain. The same is true of the basis of pricing, programme, and risk allocation.

Collaborative procurement and contracting seeks to smooth these rough edges. Interactive or two-stage procurement and relationship contracting are two categories of collaborative models that can better address challenges and enhance project outcomes.

Collaborative procurement

The primary purposes of collaboration during the procurement stage are to:

- Ensure that there is a project – both parties are largely aligned to ensure that there is a commercial framework and risk allocation that works for both parties; and
- Attempt to break down the silos to allow a better understanding of the client's requirements and the unique project characteristics.

Collaboration during procurement can occur regardless of the delivery model. And most clients will collaborate during the procurement stage to an extent. That can range from:

- Market testing to ensure that there is capability and capacity in the market to bid;
- Interactive tendering to help the client share information and knowledge held only by the client with tenderers and for tenderers to better understand the client's drivers as outlined in its tender requirements. This can range from interactive tender sessions to more structured processes where the client's scope is critiqued and key project plans are developed and assessed prior to tender submission; and
- Two stage procurement or early contractor involvement, during which the preferred contractor forms part of the client's design team during the tender process.

The latter two forms of collaboration seek to provide tenderers with an opportunity to better understand what is required of them and any unique project characteristics. This benefits both parties by improving the competitive position of the tenderer and delivering a better project outcome for the client.

In an ECI model, the added benefit is that the involvement of the contractor during the early design stages allow the contractor's proposed methodology to assist in key project decisions, in particular design and procurement/staging and to direct the project towards a more efficient design and delivery outcome.

Collaborative contracting

Collaborative contracting goes a step further and seeks to move away from a transactional relationship to more of a relationship model.

At the micro project level, increasingly larger and more complex construction projects demand that clients and contractors engage more collaboratively.

A project alliance under an alliancing model is often the first delivery model thought of when collaboration is mentioned. However, alliancing should not be the "default" position if a project is large and complex or structured collaboration is sought. The right delivery model for the project should be selected. If that is a more traditional 'build only' or 'design and construct' then by borrowing some alliance concepts, collaboration can be achieved through the effective governance of the parties' relationship. Elements include:

- **Alignment:** The selected contractor needs to have the expertise to direct a project towards a more efficient design and delivery outcome. Clients need to use this expertise and develop a commercial framework that aligns incentives;
- **Framing the relationship:** Developing a project charter at initiation to frame the parties' relationship, set appropriate behaviours, and outline how to resolve issues before they get out of hand. We've seen charters avoid disputes escalating above the project level and also retrofitted this structure to existing projects to reset the relationship;
- **An integrated team:** In an alliance "one contract" creates "one team". The traditional contracting model tends to create barriers, making collaboration difficult. An integrated project team can enable the team to better work together to prioritise work and focus on outcomes rather than shifting blame. This really requires co-location; and
- **Reasonable allocation of risk:** Clients should, as early as possible, determine a fair pricing model and risk allocation and transparently communicate these. An unrealistic expectation of pricing or risk allocation creates an expectation gap. This can result in the client failing to manage or mitigate a risk (having wrongly assumed the contractor would accept the risk), delay the project start date, lead to inefficient pricing, and/or create the wrong dynamic at the outset of the project. Risk should be allocated to the party best able to manage the risk *and* dimension that risk. Too often, clients think that the contractor is best placed to do so as their boots are on the ground.

At a macro level, long term, ongoing, and repeat relationships create a strong foundation for collaboration.

If there is the potential for future work or a degree of interdependency, parties tend to make decisions that result in improved project outcomes, sometimes at their short term individual disadvantage. However, traditional contracts create a relationship that endures for the duration of the relevant project only. That creates a mismatch in durations of the long term nature of the relationship and the short term nature of the contract.

Framework agreements and programme alliances seek to create some rigour around the collaboration that naturally occurs in longer term relationships. These contracts better define how the parties will collaborate and how the expected results of that collaboration will be measured, managed, and rewarded. They also enable longer term goals to be agreed, such as productivity improvements and sustainability targets, as the greater certainty of a programme of work allows the contractor to invest in its business. Investment in the business is not incentivised if the contractor is subject to the usual boom and bust cycle.



Nick Saxton
Special Counsel
 +64 9 367 8850
 nick.saxton@russellmcveagh.com

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