



Enlightened Client's Journey to Project Quality and Compliance Detailed Notes

Procurement of main contractors – Commonly used options

These notes examine the main, most common options available to you and your team of consultants and advisers in procuring a main contractor for your project. We recommend that unless you are an enlightened client you obtain advice from your consultants, client and legal adviser on choosing your procurement strategy. You will need to determine the scope of the choices available to you and which procurement route is most likely to deliver your desired outcomes. Most of the time clients will get advice on procurement matters from their cost consultant or quantity surveyor. The problem with that is a quantity surveyor will traditionally look for lowest cost, and sometimes ignore the wider quality and value piece. This is where a client adviser independent of the consultant team can be particularly helpful.

Let's now move to exploring the main procurement options and their benefits and concerns with regard to time, cost and of course quality and compliance. First, the Traditional or Design-Bid-Build approach.

Traditional or Design-Bid-Build

This is a commonly used method of procurement and is suitable for all clients, including the inexperienced. It can be used for complex projects and where functionality, quality and aesthetics are prime objectives. It can provide good time predictability (although it is slower overall than other approaches) and cost certainty. It is not suitable for projects where speed is of the essence.

It works, with you the client, developing the business case for your project, providing a brief and budget and appointing a team of consultants to undertake a full design and prepare the documentation needed for tendering by a main contractor. You then appoint, with the advice of your client adviser and other consultants, the main contractor for your project through a singlestage competitive tendering process to construct the works to the design, by the contract completion date and for the agreed price.

This sounds straightforward, but it illustrates a major downside of this approach – the deliberate exclusion of the main contractor from the design process. This means that the main contractor or specialist contractors are deliberately excluded from inputting their expertise to identify gaps or flaws in the design and advice on production and supply issues, and buildability.

Provided the appropriate design team and main contractor are appointed, this route can help deliver a project to time, cost, and quality closely aligned with your desired outcomes. From a quality perspective it allows you as the client to maintain influence over the design of the building for longer, so ensuring that it closely matches your vision for the project and its desired outcomes. As changes are relatively inexpensive during the design stage it offers you the opportunity to change your mind about aspects of the design as it progresses. But for this you carry greater risks, and costs may be uncertain and prove to be prohibitively expensive when the completed design is finally presented to contractors to tender as a *fait accompli* without any main contractor input.

Usually much of the work is sub contracted by the main contractor to specialist firms but the main contractor remains liable for the delivery of the project. The consultants set up and administer the contract on your behalf and advise on aspects associated with design, progress, quality and stage payments, which must be paid by you the client.

Your exposure to risk in this approach will increase where the design phase is rushed or underfunded, or where unreasonable time targets are set, or where the tender documents are not fully completed, or if the main contractor is appointed on the basis of lowest price rather than best value. Problems can arise too if the main contractor is given insufficient time to understand the



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tender documentation. Inviting a large number of contractors to tender can also reduce their incentive to allocate expensive resources to fully understand the project and your desired outcomes. This shows that this approach, and indeed all other procurement approaches, are not entirely risk free. You, as the client, will bear the consequences of the risks if, for example, your new building is not available for use at the agreed completion date or if it turns out not to satisfy your needs and meet your desired outcomes.

Design and build

There is another commonly used approach, known as Design and Build, that provides relative speed advantages over the Traditional Design-Bid-Build route and reduces your risk through more cost certainty. In this approach, the design will usually be the responsibility of the main contractor using either in-house designers or employing consultants to carry out the design. Consequently, you as the client will lose some influence over the design process and the design may drift away from your objectives and desired outcomes.

Some would argue, the quality of the design and the performance of the final building is more likely to be compromised than if you adopt the Traditional approach. The quality of the concept design may suffer as the main contractor and their supply chain may be more concerned with production efficiency, meeting time and cost constraints, shedding risks, and generating a profit rather than focusing on the aesthetics, quality and functionality of the building.

It can be suitable for all clients, including inexperienced clients, and particularly those seeking to maintain some degree of distance from the risks associated with a project and wanting greater cost certainty and faster construction. It is less suitable for an uncertain or not fully developed client brief or for complex buildings.

In terms of process, the main contractor tenders against a client brief and will often follow an initial concept design prepared by consultants appointed to advise you the client. The design will be developed by the main contractor and the works will be completed, usually for a fixed price. The main contractor carries more risk than in the Traditional approach and this will be reflected in the tenders, which may be higher than in the Traditional approach. Tendering costs are also more expensive because the main contractor has to develop an outline design and a detailed price but tender lists will probably be shorter than for Traditional contracts.

Another advantage is that the Design and Build approach gives you as the client a single point of contact with the project team. But you have to commit to the cost of construction, as well as the cost of design, much earlier than with the Traditional approach. Whilst much of the risk is shifted to the main contractor, it is important that design liability insurance is maintained to cover that risk. And bear in mind, that at the end of the day it is you as the client who faces the major consequences of the risks. Also in this approach, any changes made by you during design and especially construction can be expensive, because they affect the whole of the Design and Build contract, rather than just the design team costs.

There are variations on this approach that provide some benefits to you as a client, such as Develop and Construct. Here as the client, you have the design prepared to concept or scheme design stage and the main contractor takes on 'finishing off' the design and undertaking the construction. The main contractor may re-employ the original designers to complete the design. This is known as Novation and can go some way to address the quality of design concerns associated with this approach.

Novation works with a design team being appointed by the client to carry out initial studies to prepare a concept and a detailed design up to a certain point. A main contractor is then appointed to carry out or complete the design and construct the works, with the design team being novated to work for them. This can be beneficial to clients in that it's a bit like having your cake and eating it as continuity is maintained between pre-tender and post-tender design whilst leaving sole responsibility for designing and constructing the project and the associated risks, to the main contractor. It also gives the impression that the consultants have worked for the main contractor throughout the project. This approach is particularly suitable for risk-averse clients who require cost and time certainty whilst maintaining more influence over quality.

There is a refinement to the Traditional and Design and Build approaches, which involves a two-stage tender process.



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Two-Stage Tendering

Main contractors tender on the basis of a partially developed consultant's design (called a Stage 1 tender). A preferred contractor is selected and then assists with the final development of the design and tender documents, against which tenders for the construction works are prepared (Stage 2 tender).

This approach means that the preferred contractor has a greater understanding of the project and what is valuable to you as the client. This may result in an increase in overall price and a less certain completion date as a result of the main contractor's growing understanding of you as the client and your project and its challenges and complexities. As a counter to this, the greater the main contractor, and supply chain involvement, and their growing understanding of you and your needs over a longer period of time, is likely to increase the likelihood that time, cost and quality requirements are more realistically established and achieved.

It can be used to appoint the main contractor earlier both in the Traditional and the Design-Bid-Build approach. It may also be adopted in a Design and Build approach where the client's requirements are not yet sufficiently well developed for the contractor to be able to calculate a realistic price. In this case, the contractor will tender a fee for designing the building (or completing the design) along with a schedule of rates that can be used to establish the construction price for the second stage tender.

As discussed in other Detailed Notes, the early involvement of a main contractor should improve the buildability and cost-certainty of the design as well as creating a better integrated project team, increasing understanding of the client's requirements, and providing an effective link with key specialist and trade contractors and material and component suppliers. It can also reduce the likelihood of disputes as a longer period of familiarity with the project can foster better inter-organisational and personal relationships as well as a reduction in learning curves.

It enables you the client to transfer design risk to the contractor, however you can lose some influence in the project as the main contractor becomes embedded in the team and competition is less of a threat to them. However, whilst tender prices for Two-Stage contracts may initially be higher than Single-Stage tenders, which are subject to full competition, evidence shows that final accounts tend to include fewer variations and fewer claims in the Two-Stage approach.

Management Approaches: Construction Management and Management Contracting

If speed of project delivery is a priority for you, faster construction can be achieved through Management Contracting or Construction Management, the so-called Management Approaches.

In these approaches, a management contractor or construction manager undertakes the management of the works for a fee, having in effect the same relationship with you the Client as your architect or any other consultant. However, they are not widely used for a number of reasons including the

uncertainty of cost until completion of the project and these routes are seen as more appropriate for, and indeed over used, by some highly experienced, frequent and enlightened clients. Consequently, they are not recommended for the inexperienced.

Negotiation

This is a well-established form of procurement amongst private sector clients. The client and a preferred contractor enter a contract through direct Negotiation. Its use in the public sector is of course currently problematic because of its procurement and commercial constraints – barriers that will need to be removed if the sector is to share the benefits of Negotiation.

Negotiation is ideal where the work is of a unique nature and where you, the client, is confident that there is only one main contractor suitable to undertake the work, or where you have a strong preference to use a particular main contractor who has performed well and demonstrated collaborative behaviours in your previous projects.

Integrative Negotiation or Integrative Bargaining or Interest-based Bargaining, or Win-win Bargaining refers to a negotiation strategy in which parties collaborate to find a 'win-win' solution to deliver a project. It focuses on developing mutually beneficial agreements based on the interests of the parties. The alternative form of negotiation, Distributive Bargaining, where both sides try to gain control of a limited amount of resource is considered a 'win-lose' negotiation where one side's gain equals the other side's loss and is seen as inappropriate in forging a compact between you the client and a main contractor in delivering quality outcomes.



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The keys to unlocking mutually beneficial project outcomes through Negotiation include having the obvious technical knowledge and 'hard' design and construction skills. But 'soft' skills are very much needed too, including emotional intelligence, listening, persuasion, planning, collaborating and co-creating. Understanding and deploying these skills and attributes are the first steps to becoming an effective negotiator.

Frameworks

There are also Frameworks you might consider as your procurement strategy. Rather than procure their products and services on the basis of individual projects some large and frequent clients of construction have the volume and continuity of construction work necessary to establish a Framework, or longer-term agreements, with a small number of preferred consultants and main contractors.

Although initially designed for regular and frequent clients they are also available now to infrequent and inexperienced clients through framework providers, who can help them to procure goods and services from a list of pre-approved suppliers, with agreed terms and conditions and legal protections already in place.

The organisations offering Frameworks provide infrequent clients with access to:

- The knowledge and experience of procurement processes and contracts
- Demonstrated technical expertise coupled with a commitment from framework members to providing better project outcomes
- Fast, proven and legally compliant procurement processes and procedures
- A focus on adding value for clients, suppliers and communities through social value

Given that the framework members have been through an extensive and robust selection process they should be in a position to design and deliver your project to the required quality and meet your objectives and desired outcomes. Also, good Frameworks go a long way to eliminating or mitigating the risks in projects whilst also offering significant benefits. For example, if you are a one-off or irregular client of the industry you are unlikely to have much influence over main contractors. Good framework providers give you access to the influence or leverage they have over contractors by providing regular and steady flows of valuable construction work. In other words, framework providers are able to influence the behaviour of main contractors and to some extent how they in turn interact and do business with their suppliers through their Supply Chain Management (SCM) strategies. In this way the very best value for your project residing in the supply chain can be unlocked for your benefit.

But additional value comes at a cost, as good Frameworks don't mean lowest price. Although they may not provide the lowest price for your project, they can give good overall value and greater certainty that the "entry" or tender cost ends up close to the actual or outturn or final cost of your project. This is an important consideration bearing in mind the need to keep within the budget allocated for your project. Another benefit is that Frameworks enable a quick and easy route to engaging with contractors and their suppliers and if done in the early project stages main contractors and their supply chain partners can help in framing the project, developing a business case, and with bids for funding.

But beware, not all Frameworks are the same. What constitutes best value is very different for every client so you need to speak to framework providers to get a sense of whether their values mirror those of your organisation, particularly in relation to cost/quality, social and environmental benefits. You should also look at the framework providers motivation for doing business and their business models. For example, some providers are ultimately local authority directed organisations who are not in this just to make some quick profits. Talk directly to framework providers but be aware that Frameworks are becoming increasingly commercialised and many are now led by the private sector for commercial gain.

All the procurement options in these detailed notes do not necessarily provide the more transformative approaches to building design and construction that you as an enlightened client may be seeking. For more radical approaches see the separate Detailed Notes.