

Practice Note

Collaborative procurement: Early contractor involvement

EXPLANATORY NOTE:



This Practice Note is a product of the Construction Industry Leadership Forum. It provides a principle-based strategy with options that are available to procuring agencies in response to the identified challenge. Implementation of options may necessitate change to existing government policy or procurement rules to give them broader application.

PRINCIPLE:

Procuring agencies will assess the early contractor involvement **(ECI)** procurement model as part of the procurement options analysis on complex major infrastructure projects, where there is significant unknown scope, risks or interfaces, or a need for accelerated delivery timeframes.

CURRENT CHALLENGE:

Key risks to successfully delivering major infrastructure projects under traditional delivery models include:

- » Bidding contractors often submit a price and schedule to achieve a stated “reference project” outcome that is described in the RFP documents, based on information provided which tends to have limitations associated with it.
- » The absence of a detailed understanding of project risks is a key challenge to provisioning for those risks in the price and schedule that is bid. This can result in pricing with insufficient contingency to properly manage risks if they arise, or an overstated contingency which reduces the project’s value for money proposition.
- » Where inadequately provisioned project risks manifest, one (or both) of the client and the delivery contractor will need to apply additional resources to deal with the risk. This has time and cost impacts for the project which can stimulate contractual claims and disputes which distracts parties (and diverts valuable resources) from delivering the project.
- » The competitive landscape inherent in traditional procurement discourages bidding contractors from sharing their insights, thinking and intellectual property on how best to tackle project risks and/or proposing alternative delivery solutions which may be of benefit to the client.

APPLYING THE ECI MODEL:

A single ECI contractor is selected based on a competitive process assessing fees/margins and agreed performance metrics. The ECI model typically comprises a two-stage process:

Stage	
1 (Planning stage):	During this stage, the contractor: <ul style="list-style-type: none">» should be engaged to:<ul style="list-style-type: none">> lead the design development to a sufficient stage for the contractor to commit to a price and program for the delivery of the project;> work with the client to identify, mitigate and apportion engineering and constructability issues and risks; and negotiate/finalise the contract and commercial terms for Stage 2.» is paid a fixed fee for services over a defined period, made up of preliminaries, profit and overheads, that is competitively tendered as part of the ECI selection process.
2 (Delivery stage):	During this stage project delivery commences, with key risks already identified and defined in Stage 1, allowing for a guaranteed contract price and program for the project, but including a KPI regime in order to share risks and rewards and designed to continue the collaborative and cooperative themes established during Stage 1.

BENEFITS OF ECI:

ECI is recognised as one way of mitigating the risks associated with traditional delivery models and for increasing certainty around project deliverables and construction methodology.

The key differentiators of ECI from other related collaborative contract forms, such as Alliancing and Managing Contractor, are the early design input benefitting project structure, cost and deliverability expertise and the right of the client to retain flexibility in the process to avoid contractor lock-in and uncompetitive pricing.

ECI can provide the opportunity for:

- » greater collaboration between client and contractor during the tendering period of a project delivery cycle. Collaborating earlier in the procurement process can “unlock” potential benefits and/or alternative delivery strategies which may not be explored until closer to or after contract award under a traditional procurement method;
- » a more informed understanding of project risks and potential mitigation measures to enable improved risk allocation and provisioning (should risks arise) providing increased certainty of outcome for the client;
- » greater transparency of pricing, including an ability to drive significant positive impacts to whole of life costs in exchange for small, upfront costs;
- » accelerated completion of the project through earlier alignment on project definitions and risks, acceleration of design development, procurement of long-lead items and greater front-end due diligence;
- » creating “legacy gains” for clients through developing improved client standards and specifications which can be utilised in future projects; and
- » a more productive use of the tender period.

CHALLENGES IN IMPLEMENTING THE ECI MODEL:

Capability

It is important that where an ECI process is undertaken, the client has sufficient capability, as there will be significant interactions with the contractor, to drive the right outcomes.

Value for Money

A proper analysis of procurement model options for public infrastructure projects must have regard to value for money (VFM) drivers. In considering VFM, the broader benefits of the ECI as listed above should be taken into account (e.g. not duplicating design effort, greater and earlier knowledge transfer). The benefits are relative to the potential for higher risk pricing. Under the ECI model, the more detailed risk analysis in Stage 1 may lead to higher than anticipated contingencies for Stage 2 pricing.

Contestability

Contestability is a fundamental driver underpinning the use of traditional competitive procurement processes and is often perceived as an impediment to the use of collaborative contracting methods such as ECI. This can be addressed through the competitive ECI selection process and ability for the client to discontinue with the ECI contractor if the terms for the delivery phase are not acceptable.

Misalignment of Outcomes

Different values and cultures, and different hierarchical structures and roles, often result in a reticence to use collaborative contracting methods such as ECI, because forming “one team” has the perception that the client’s requirements will not be met or will be ‘gold-plated’ where not required.

OPTIONS:

There is not a standardised ECI procurement model. An ECI approach will necessarily include some optionality around the appointment of a single contractor and can be applied flexibly to accommodate the circumstances of a project. The table below highlights some of the options that are available to the client in relation to specific components of the ECI process.

Component of the ECI process	Options
Approach to design management A highly interactive approach to design between client and ECI contractor is a key principle of the ECI approach.	The level of design developed by the client can vary: <ul style="list-style-type: none">» Option: ECI contractor inclusive of designer is accountable for design from commencement of Stage 1.» Option: Client engages a designer and retains responsibility for design development during Stage 1. ECI contractor provides advice in parallel as to deliverability. Client novates design to ECI contractor as a condition of Stage 2.

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<p>Structure</p> <p>Stage 1 provides an open book process to the build-up of pricing for the delivery stage to maintain transparency in assessing value for money.</p> <p>At the end of Stage 1, the ECI contractor provides a set of deliverables to enable the client to make an informed decision on continuing into delivery phase with the ECI contractor (an offer capable of being accepted by the client). Key deliverables include:</p> <ul style="list-style-type: none">» Contract price, which may be a lump sum offer, a guaranteed maximum price or a target cost depending on the chosen delivery model» Program» Agreed commercial terms» Agreed KPIs	<p>The client's approach to pricing can vary:</p> <ul style="list-style-type: none">» Option: The client and ECI contractor work together on the build-up of a cost plan to meet pre-identified budgetary requirements.» Option: The client instructs the ECI contractor on the incremental build-up of the cost plan and retains discretion on the overall project budget.
<p>Conversion of ECI process to delivery contract for Stage 2</p> <p>Key to proceeding to the delivery phase is having an offer capable of acceptance and sufficient certainty in project definition, under an agreed form of contract.</p>	<p>The ECI process will generally result in one of the following outcomes:</p> <ul style="list-style-type: none">» Option: Where the design, program and risk profile have been sufficiently developed and costed during Stage 1, continuing with the ECI contractor under a traditional delivery model such as construct-only or design and construct is appropriate for Stage 2.» Option: Where further design development and flexibility / transparency over subcontracting arrangements is desired, continuing with the ECI contractor under a relationship or collaborative delivery model with the existing ECI contractor with incentivised target costs and performance metrics may be more appropriate.» Option: Where the ECI deliverables do not meet the client's requirements, the client can reject the offer put forward by the ECI contractor and run an alternative competitive procurement process (using the design and other deliverables paid for in Stage 1).