

Capital Works Management Framework

# Procurement Strategy and Contract Selection



The suite of *Capital Works Management Framework* documents is available online [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au):

- The **Capital Works Management Framework policy document** describes the capital works management process and contains the policy requirements.
- **Guidelines** complement the policy document and expand on various aspects of the capital works management process, particularly in terms of best practice procedures. The Prequalification (PQC) System guidelines are also included in the *Capital Works Management Framework* suite of documents.
- **Policy advice notes** provide advice on particular policy issues and/or procurement processes relating to the planning and delivery of government building projects.
- The **Online Toolbox** provides online support to assist in the implementation of best practice planning and delivery of government building projects. It includes templates, flowcharts, guides, sample documents, and links to useful information.

## Procurement Strategy and Contract Selection

Second Edition

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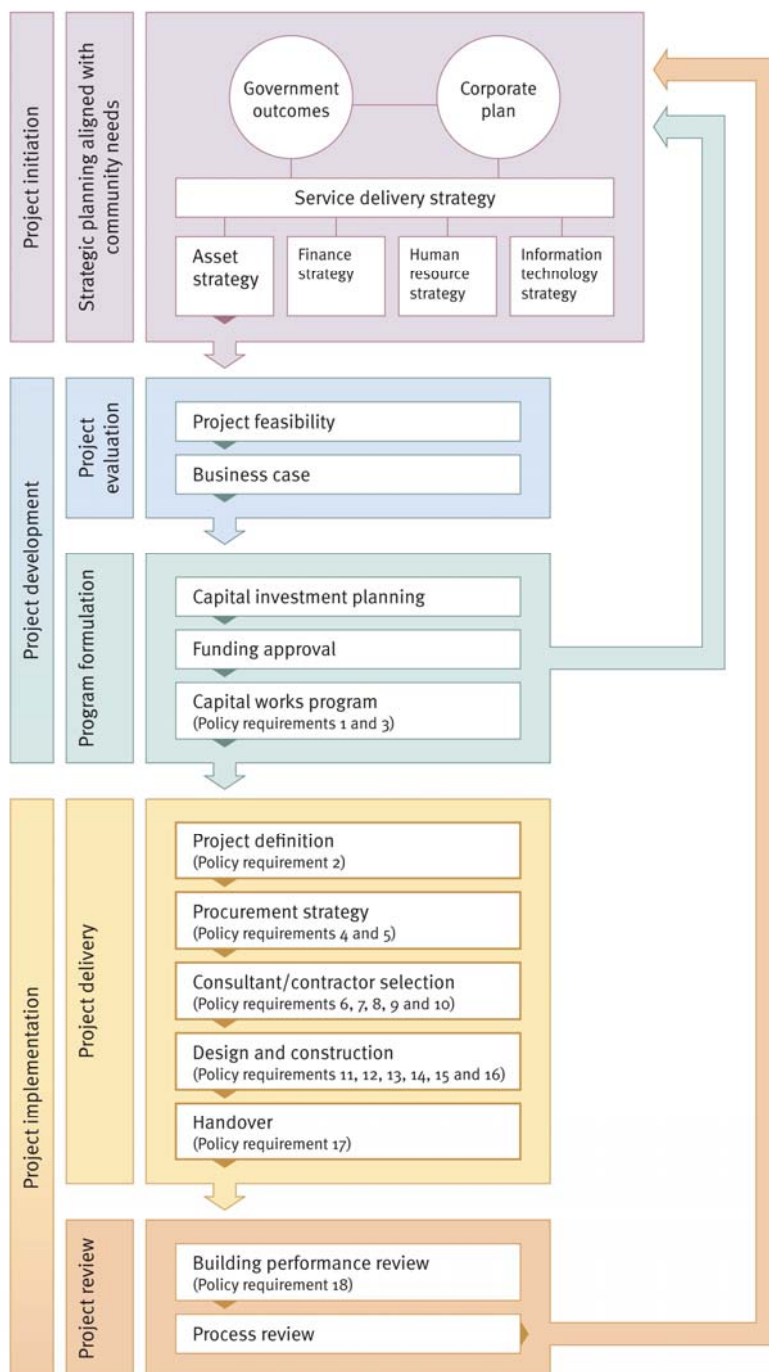
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## 1.0 Introduction

This guideline forms part of the *Capital Works Management Framework* (CWMF). The CWMF is the Queensland Government’s key policy for managing risks in the planning and delivery of building projects.

The guideline applies primarily to the project delivery phase of the capital works management process, which incorporates the project definition, procurement strategy, consultant/contractor selection, design and construction, and handover stages. The process, illustrated in Diagram 1, is a generic process that assists departments in adopting a strategic asset management approach to building projects.

Diagram 1: Capital works management process



Specifically, the guideline supports CWMF policy requirements 4, 5, and 10. Respectively, these require departments to:

- use standard contracts developed by the Department of Public Works on all government building projects
- consult and agree with the Department of Public Works on the selection of contracts for High Risk/Significant projects
- prepare a tender evaluation plan for all High Risk/Significant projects, and consult with the Department of Public Works on the proposed evaluation criteria and weightings to be used in the selection of consultants and contractors prior to calling tenders.

The guideline focuses on the method of selecting an appropriate procurement strategy and associated contracts that will:

- assist in securing planned project outcomes
- encourage the appropriate allocation of risk between industry and government
- reduce the risk of project duration and budget overruns
- reduce the likelihood of contractual disputes and litigation.

## 1.1 Objective

The objective of this guideline is to facilitate consistency in, and provide guidance to government departments regarding, selection of the most appropriate procurement strategies and contracts for government building projects.

## 1.2 Competencies for procurement strategy/contract selection

The selection of appropriate procurement strategies and contracts requires knowledge of:

- the key objectives of, and constraints on, the building project
- the risks (both typical and specific) that might impact upon or be encountered at each stage in the delivery of the project, and how best to deal with those risks
- the level of complexity of the project
- the key processes and activities that must be performed in delivering the project
- the available procurement strategies and contracts
- relevant CWMF policy requirements.

## 1.3 Scope

This guideline provides an overview of the procurement strategies and contracts that may be used on government building projects and guidance as to their application. It emphasises the need for early selection of the procurement strategy and for flexibility after the selection has been made. The guideline also explains why these aspects are critical to securing planned project outcomes.

This guideline does not apply to government building projects to be procured using a public private partnership (PPP) strategy covered under the *Value for Money Framework* administered by the Department of Local Government and Planning (refer to this department's website for further information: [www.dlgp.qld.gov.au](http://www.dlgp.qld.gov.au)).

## 1.4 Key definitions

Before selecting procurement strategies and contracts for building projects, it is important to understand the difference between these terms. In the context of this guideline:

- ‘**procurement strategy**’ refers to the process used to take a building project from its early planning phases to completion and occupation by the building’s users
- ‘**consultancy contract**’ means the written agreement between either the principal and a consultant or the building contractor and a consultant, for the delivery of consultancy services (such as design, documentation, cost planning and project scheduling) related to a building project
- ‘**building contract**’ means the written agreement between the principal and the contractor for the construction of the project. The terms of the agreement may provide for the design and documentation of the project by the contractor, and may also include ongoing maintenance obligations.

## 1.5 Other relevant documents

- *Advancing Government Priorities through Non-Price Criteria used for Tender Evaluations* (CWMF policy advice note, Department of Public Works) [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)
- *Construction Tender Evaluation: Best Value Not Lowest Price* (CWMF policy advice note, Department of Public Works) [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)
- *Consultant PQC Invitation and Selection Process* (CWMF guideline, Department of Public Works) [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)
- *Contractor PQC Tendering and Selection Process* (CWMF guideline, Department of Public Works) [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)
- *Relational Procurement Options: Alliance and Early Contractor Involvement Contracts* (Better Purchasing Guide, Department of Public Works) [www.qgm.qld.gov.au](http://www.qgm.qld.gov.au)
- *Supply Strategy Development* (*Project Assurance Framework* guideline, Department of Local Government and Planning) [www.dlgp.qld.gov.au](http://www.dlgp.qld.gov.au).

## 2.0 Achieving value for money

In accordance with the *State Procurement Policy*, procurement strategy and contract selection for government building projects is required, among other things, to achieve value for money. This is reinforced by the *Project Assurance Framework*, which notes the importance of value for money in setting the foundation for effective project management across the Queensland public sector.

Achieving value for money typically involves comparing alternatives for the supply of goods and services to get the best mix of quality and effectiveness for the lowest cost over the required term. Importantly, it involves an appropriate allocation of risk, making the selection of a suitable procurement strategy and contract a critical factor in determining whether value for money is achieved.

Assessing value for money involves more than a consideration of price alone. Other factors to be considered include:

- compliance with relevant CWMF policy requirements
- contribution to the advancement of government priorities
- cost-related factors such as whole-of-life and transaction costs
- non-cost related factors such as fitness for purpose, and the quality, service and support offered by the tenderers
- sustainability requirements and/or targets.

In terms of building procurement, there are a number of strategies that typically contribute to value-for-money outcomes, including:

- optimising risk allocation between the parties
- using performance specifications, where appropriate, to encourage maximum innovation
- ensuring the flexibility to secure scope changes at a reasonable cost
- using incentives to reward 'better than business as usual' outcomes
- setting an appropriate contract period
- ensuring participants have the required skills and capabilities to deliver the planned project outcomes
- adopting a procurement strategy appropriate to the complexity of the project.

The impact of these strategies on the achievement of value for money will depend upon the nature and specific circumstances of each building project. Departments should adopt the strategy/strategies that can best achieve value for money and ensure probity and accountability.

## 3.0 Procurement strategy selection

### 3.1 When to select a procurement strategy

As a project moves through the phases identified in the capital works management process (illustrated in Diagram 1), knowledge of the project increases. During the project development phase (i.e. project evaluation and program formulation), decisions should be made about the type of building that is required, when it is needed, and what funds might be available to build it. This is the ideal time to consider the procurement strategy or strategies that might be best suited to deliver the required project outcomes. The project development phase is also the time to identify bundling opportunities (see section 3.3 for further information).

By the time the project reaches the project delivery phase, project knowledge will be at a level where a preferred procurement strategy can be readily identified.

## 3.2 Factors that influence procurement strategy selection

Before selecting the procurement strategy for a government building project, whether at a strategic or detailed level, it is necessary to first identify the factors which will determine the most suitable procurement strategy for the project. These factors are:

- the key objectives and constraints of the project
- the risks that may arise during the delivery of the project and how those risks might best be dealt with
- the level of complexity of the project.

In order to meet the Government's objective of achieving value for money, the above factors that influence procurement strategy selection must be considered together with the factors that drive value for money (as covered in section 2.0).

The following subsections provide further details on the factors influencing procurement strategy selection.

### 3.2.1 Key objectives and constraints

The key objectives of each project will be identified during the project definition stage of the capital works management process, as a precursor to procurement strategy selection. The objectives generally relate to:

- scope (i.e. what is to be delivered) together with any required provision for flexibility in this regard
- cost, including whole-of-life and transaction costs
- time, including an appropriate allowance for the contract period
- quality, including fitness for purpose considerations
- sustainability, including social, economic and environmental aspects
- innovation, encouraged through the use of performance, rather than prescriptive, specifications
- community or stakeholder needs and expectations
- contribution to the advancement of government priorities
- 'better than business as usual' outcomes, encouraged through performance incentives.

Constraints are aspects of the project that limit, restrict or otherwise impact upon the project objectives in some manner. Constraints are typically unique to each project and may include:

- time constraints
- budget constraints
- physical constraints
- availability of resources, including labour resources
- skills, capability and capacity of the project participants to deliver the planned project outcomes
- market or industrial conditions
- policy requirements.



The objectives and constraints of each building project are frequently interdependent, and will therefore need to be considered concurrently. This approach will highlight the objectives and constraints that critically impact upon the planned delivery of the project and facilitate the selection of the most suitable procurement strategy. In some cases, however, it will be clear that one objective or constraint takes precedence over all others due to its critical impact upon project outcomes (for example, a constraint to complete a new school building before the commencement of a new school year). This critical objective or constraint should then be used to determine the most suitable procurement strategy for the project.

### **3.2.2 Risks**

The second factor that may influence selection of a procurement strategy is the risk associated with the building project. In the context of this guideline, risks are events, both known and unforeseen, that might occur during the delivery of a building project and which will usually adversely affect the project outcomes.

The nature of the risks to the project, and their impact on project outcomes if they occur, are often determined by the key objectives and constraints of the project. For example, if a project has a particularly tight timeframe for completion, delays to the construction program will be a risk to securing the timely completion of the project. Once the key objectives and constraints of the project have been defined, the risks can also be identified.

Responsibility for managing or mitigating particular risks is broadly determined by the procurement strategy adopted for the project. (For example, where the procurement strategy is 'design and construct', the risk of design errors is, in general terms, passed to the contractor.) Therefore, departments should consider and determine the most suitable method to deal with the identified risks prior to selecting a procurement strategy for the particular project.

As a guiding principle, responsibility for managing a particular risk should be allocated to the party best able to deal with that risk. Inappropriate risk allocation is likely to result in project budget overruns (as contractors can reasonably be expected to make allowances in their tenders for the risks for which they are responsible) and increase the likelihood of contractual disputes and litigation.

### **3.2.3 Level of complexity**

The level of complexity of a project must be considered when selecting an appropriate procurement strategy. The complexity of a project is determined by a combination of factors, including:

- the size of the project
- the duration of the project
- the scope of the project
- the number of stakeholders involved
- the level of technology to be incorporated in the project
- the degree of innovation required by the client
- market conditions.

While contractually complex procurement strategies may sometimes be required for complex projects, the additional resources needed to administer a complex strategy are likely to be wasted if a simple strategy can achieve the same outcomes. The inappropriate selection of a complex procurement strategy can also lead to unsatisfactory project outcomes in terms of cost, as tenderers may make allowances in their tenders for additional administration costs and the possibility of contractual disputes which might otherwise not have arisen.

### **3.3 Selecting the procurement strategy**

Having defined the key objectives and constraints of the building project, identified the risks, broadly determined the preferred risk allocation and identified the level of complexity of the project, the procurement strategy can be selected.

The procurement strategy best suited to the project will be the one that best aligns with the key objectives and constraints of the project, that deals most appropriately with the identified risks, and that suits the level of complexity of the project.

[Attachment 1](#) provides an overview of the features of the procurement strategies generally used for government building projects and is intended to assist departments to make informed choices from these procurement strategies for their projects. The strategies include:

#### **Traditional Fully Documented – Lump Sum**

The principal engages consultants to design the building project and prepare documentation which fully describes the work to be undertaken. The contractor then constructs the building project in accordance with the project documentation prepared by the principal's consultants, for the agreed lump sum price. This procurement strategy is best suited to projects where there is a high degree of certainty regarding the specific project requirements.

#### **Design and Construct – Lump Sum**

The principal engages consultants to prepare a detailed project brief which defines the scope, quality and functionality requirements of the building project. The contractor then completes the design of the project, prepares construction documentation, and constructs the project for the agreed lump sum price. This is an effective procurement strategy where the need to achieve defined time and cost outcomes outweighs the need for quality.

#### **Managing Contractor – Design and Construction Management**

Typically, this is a two stage procurement strategy that provides for early contractor involvement. Prior to stage 1, the principal engages consultants to prepare a project brief, which includes a budget estimate and estimated time for completion of the project. During stage 1, the managing contractor works collaboratively with the design consultants and the principal to revise the project brief and refine the design to meet budget and time constraints. Prior to stage 2, the managing contractor makes an offer to the principal based on the revised project brief. If the offer is accepted, stage 2 commences and the managing contractor completes the design and manages the construction of the project. This procurement strategy is best suited to major or significant projects where there is some uncertainty regarding the specific project requirements.

## Alliance

This procurement strategy also provides for early contractor involvement. An alliance is formed between key project participants, including the principal and contractor. All partners in the alliance are collectively responsible for all aspects of the delivery of the project. The alliance is generally structured so that commercial risks and rewards are shared by the alliance partners. It is best suited to complex, high risk projects where alternative strategies for risk allocation will be ineffective.

## Bundling

Bundling is a program management strategy that involves the delivery of a number of projects (in some cases, for a number of departments) under a single contract. Bundling can be particularly effective at times when the labour market is under strain, or for the delivery of multiple projects in remote or regional locations. Although not a complete procurement strategy in itself, bundling must be considered by departments, in consultation with the Department of Public Works, for medium and lower value projects (estimated to cost between \$0.5 million and \$20 million) in accordance with CWMF policy requirement 1.

### 3.4 Confirming the procurement strategy

For some building projects, certain objectives and constraints may be difficult to identify, or may be subject to change over time. As a consequence, the identified risk management strategy (and hence the procurement strategy), while previously well aligned with the key objectives and constraints, may become unsuitable for the project. In such cases, an alternative procurement strategy should be selected and implemented.

Where there is a degree of uncertainty surrounding the key objectives and constraints of the project, the project team must remain flexible in order to rapidly address any misalignment between these objectives and constraints and the selected procurement strategy. To facilitate such flexibility, it is necessary to monitor the key objectives and constraints as the project progresses and be prepared to adjust the procurement strategy accordingly.

## 4.0 Contract selection

Having determined an appropriate procurement strategy for the building project, the relevant officer(s) can select the contract(s) from those listed under the heading of 'generic contracts' in [Attachment 1](#).

The optimum building contract for a particular project will:

- be suitable for use with the chosen procurement strategy
- be in alignment with the key objectives and constraints of the project
- deal most appropriately with the identified risks
- be suited to the level of complexity of the project.

There are two CWMF policy requirements that need to be considered when selecting the optimum building contract, namely:

- **policy requirement 4** – departments must use standard contracts developed by the Department of Public Works for all government building projects, and these contracts must not be amended in any way without prior consultation and agreement with the Contract Services unit of the Department (Contract Services unit will specifically tailor a contract to a particular project or application where the circumstances require it)
- **policy requirement 5** – departments must consult and agree with the Department of Public Works on the selection of building contracts for all High Risk/Significant (HRS) projects (further information regarding the selection of contracts for HRS projects can be found in section 6.0).

The Department of Public Works' building contracts are specifically intended for use on government building projects and align with one or more of the procurement strategies outlined in section 3.3. The contracts are generic in nature but typically contain sections which must be completed with project-specific details by (or on behalf of) the principal before tenders are called.

The suite of standard contracts also includes two consultancy contracts, one for small consultancies and the other for large consultancies. CWMF policy requirement 4 applies equally to these contracts. The standard consultancy contracts also contain sections which must be completed with project-specific details by (or on behalf of) the principal before offers are invited.

To view the Department of Public Works' current building and consultancy contracts and obtain guidance material on their application and usage, refer to the Department's [website](#).

The Department of Public Works' contracts typically include conditions of tender, which should be followed rigorously as part of the contractual process. These conditions often incorporate schedules to be completed with project-specific details by (or on behalf of) the principal before tenders/offers are invited. The conditions may also provide for contractor selection using price, or a combination of price and non-price, criteria (consultant selection will always involve both). Further details on the use of non-price criteria in the selection of contractors and/or consultants are included in section 5.0.

## 5.0 Use of non-price criteria

Where both price and non-price criteria are to be used as the basis for a tender evaluation, the non-price evaluation criteria and the weightings given to those criteria need to be set out in the appropriate schedule in the conditions of tender. Offerors/tenderers will then be required to respond specifically to the matters put to them in the non-price criteria when preparing their offers/tenders.

While the contract will allocate responsibility for certain risks and requirements to the consultant or contractor, it is useful to understand the means by which each offeror/tenderer proposes to manage those risks and/or meet those requirements before a consultant/contractor is selected.

Effectively drafted and appropriately weighted non-price criteria will elicit responses directly addressing the risks that are to be managed by the consultant/contractor. In responding to the non-price criteria, each offeror/tenderer details the commitments they will fulfil once the contract has been awarded.

A set of effectively drafted and appropriately weighted non-price criteria can be a powerful tool that provides the offer/tender evaluation team with the opportunity to identify which offeror/tenderer will best deliver the planned value-for-money and project outcomes. Among other things, non-price criteria can assist the evaluation team to identify: the particular competencies of each offeror/tenderer that are relevant to the project; and the way in which each offeror/tenderer intends to address any nominated government policy requirements (e.g. requirements of the *Local Industry Policy* or the *Indigenous Employment Policy*).

Where the building project is a High Risk/Significant project, validation of non-price criteria and the weightings allocated to those criteria must be sought from the Department of Public Works prior to calling tenders. Further information regarding this process is provided in section 6.0.

The CWMF policy advice note, *Advancing Government Priorities through Non-Price Criteria used for Tender Evaluations*, provides additional information concerning non-price criteria and government priorities.

## 6.0 High Risk/Significant (HRS) building projects

Policy requirement 5 of the CWMF requires that the selection of building contracts for all HRS projects (as defined in Attachment 5 of the CWMF) must be undertaken by departments in consultation and agreement with the Department of Public Works. To assist departments in this regard, the Department of Public Works has established a Contracts Committee to assess proposals related to the procurement of HRS projects.

The Contracts Committee is tasked with taking a broad view of government building procurement, giving consideration both to matters specific to the particular project before them and matters that concern whole-of-Government and industry.

Departments are encouraged to make written submissions to the Contracts Committee at any stage of their HRS project. Such submissions are best made progressively, initially outlining the strategic procurement strategy for the project and then later detailing the selected procurement strategy, building contract and, where appropriate, non-price criteria and weightings.

Submissions may seek the Contracts Committee's endorsement of a proposed procurement strategy and/or contract; alternatively, they may seek guidance or direction. Submissions may take any form, but must provide sufficient information to enable the committee members to properly consider all relevant issues relating to the proposal. To assist in this regard, a Contracts Committee submission template is provided in [Attachment 2](#).

Submissions may be forwarded to the Contract Services unit of the Department of Public Works for consideration by the Committee. While the Contracts Committee sits on a regular basis, there is provision to consider urgent submissions.

## Attachment 1: Overview of procurement strategies

### Traditional Fully Documented – Lump Sum

Description	Tender process, cost and payments	General risk profile	Variants	Performance summary
<p><b>Roles</b></p> <ul style="list-style-type: none"> <li>Principal engages consultants and prepares the project brief, schematic design, developed design and contract documentation.</li> <li>Contractor carries out the construction.</li> </ul> <p><b>Relationship between parties</b></p> <ul style="list-style-type: none"> <li>Potentially adversarial.</li> <li>'Zero sum' mentality (i.e. 'your gain is my loss').</li> </ul>	<p><b>Tender process</b></p> <ul style="list-style-type: none"> <li>Tenders called after design and documentation is complete.</li> <li>Lump sum price offered by tenderers.</li> <li>Competitive.</li> <li>Evaluated on 90 - 100% price criteria, 0 - 10% non-price criteria.</li> </ul> <p><b>Cost prior to tender</b></p> <ul style="list-style-type: none"> <li>Principal is responsible for ensuring that the design can be built within the budget.</li> </ul> <p><b>Cost and payments post tender</b></p> <ul style="list-style-type: none"> <li>The accepted lump sum becomes the contract sum, subject to adjustment for variations to the contract documents and claims.</li> <li>Contractor is paid on a regular basis for work completed, up to the value of the adjusted contract sum.</li> <li>Final cost is highly dependent upon the quality of the contract documentation prepared by the Principal.</li> </ul>	<p><b>Risks allocated to the Principal</b></p> <ul style="list-style-type: none"> <li>That the design meets the project brief.</li> <li>That the contract documentation reflects the design.</li> <li>That the contract documentation is complete, unambiguous, accurate and suitable for the purpose of construction.</li> </ul> <p><b>Risks allocated to the Contractor</b></p> <ul style="list-style-type: none"> <li>That the materials and workmanship are in accordance with the contract documentation.</li> <li>That completion of construction will be within the allocated time.</li> <li>That the cost of construction will be within the adjusted contract sum.</li> </ul>	<ul style="list-style-type: none"> <li>Tenderers can be required to offer a schedule of rates in lieu of a lump sum.</li> </ul>	<ul style="list-style-type: none"> <li>Predominantly used for projects where there is a high degree of certainty about project requirements.</li> <li>Success is highly dependent upon the adequacy, completeness and accuracy of the contract documentation.</li> <li>Difficult to control time and cost outcomes where contract documentation is inadequate or variations are needed.</li> <li>Claims are common.</li> <li>Will normally deliver the lowest initial contract sum following tender call, but not necessarily the lowest final cost.</li> <li>Not well suited to fast tracking the project. It is normally costly to do so.</li> </ul>
<p><b>Scope</b></p> <ul style="list-style-type: none"> <li>Scope is precisely specified in the contract documents.</li> <li>Scope can be varied, but not beyond the original intent of the contract documents, and any variations will normally give rise to a contract sum adjustment and extension of time.</li> </ul>	<p><b>Design/quality</b></p> <ul style="list-style-type: none"> <li>Quality of materials and workmanship is fully specified in the contract documentation.</li> <li>Contractor has very limited capacity to have input into the design or 'buildability' of the project.</li> <li>Defects liability period of 6 to 12 months, depending on nature of project, with no real benefit in adding further maintenance responsibilities.</li> </ul>	<p><b>Time</b></p> <ul style="list-style-type: none"> <li>Design and documentation must be completed before construction can commence, making it potentially the longest duration procurement strategy available.</li> <li>Most delays will give rise to extensions of time for the completion of construction.</li> </ul>	<p><b>Administration</b></p> <ul style="list-style-type: none"> <li>Principal must appoint a Superintendent to act honestly and fairly in administering the contract.</li> <li>Contract administration is not overly complex.</li> </ul>	<p><b>Generic contracts</b></p> <ul style="list-style-type: none"> <li>AS2124 with Special Conditions</li> <li>AS4305 with Special Conditions</li> <li>DPW Medium Works</li> <li>DPW Minor Works</li> <li>DPW Small Scale Minor Works</li> <li>General Conditions of Contract for Consultancy Services (long and short forms are available).</li> </ul> <p>(Note: DPW is the abbreviation for Department of Public Works)</p>

**Design and Construct – Lump Sum**

Description	Tender process, cost and payments	General risk profile	Variants	Performance summary
<p><b>Roles</b></p> <ul style="list-style-type: none"> <li>Principal engages consultants and prepares detailed project brief (which defines scope, quality and functionality requirements) and may complete part of the design.</li> <li>Contractor completes the design and construction documentation, and carries out the construction.</li> </ul> <p><b>Relationship between parties</b></p> <ul style="list-style-type: none"> <li>Potentially adversarial.</li> <li>'Zero sum' mentality (i.e. 'your gain is my loss').</li> </ul>	<p><b>Tender process</b></p> <ul style="list-style-type: none"> <li>Tenders called after project brief is complete, and before design is commenced (if no design provided by Principal).</li> <li>Design solutions and lump sum price offered by tenderers.</li> <li>Competitive.</li> <li>Costly to tenderers.</li> <li>Typically evaluated on 70% price criteria, 30% non-price criteria.</li> </ul> <p><b>Cost prior to tender</b></p> <ul style="list-style-type: none"> <li>Principal is responsible for ensuring that the requirements of the project brief can be met within the budget.</li> </ul> <p><b>Cost and payments post tender</b></p> <ul style="list-style-type: none"> <li>The accepted lump sum becomes the contract sum, subject to adjustment for variations to the project brief and claims.</li> <li>Contractor is paid on a regular basis for work completed, up to the value of the adjusted contract sum.</li> <li>Final cost is dependent upon the adequacy of the project brief (i.e. if the brief does not adequately define the requirements of the project, it is likely there will be a need for variations, and therefore additional cost).</li> </ul>	<p><b>Risks allocated to the Principal:</b></p> <ul style="list-style-type: none"> <li>That the project brief adequately describes the project requirements.</li> </ul> <p><b>Risks allocated to the Contractor</b></p> <ul style="list-style-type: none"> <li>That the design and construction documentation meet the project brief.</li> <li>That the construction documentation is suitable for the purpose of construction.</li> <li>That the materials and workmanship are in accordance with the construction documentation.</li> <li>That completion of design, documentation and construction will occur within the allocated time.</li> <li>That the cost of design, documentation and construction will be within the adjusted contract sum.</li> </ul>	<ul style="list-style-type: none"> <li>The Principal may complete the design, such that the Contractor is only required to document and construct the project.</li> <li>The Principal's consultants may be nominated to the Contractor with the expectation that the Contractor would engage them.</li> <li>There may be some benefit in making the Contractor responsible for maintenance as an incentive for the Contractor to be proactive in achieving a low-maintenance outcome during the design and construction of the project.</li> </ul>	<ul style="list-style-type: none"> <li>Predominantly used for projects where there is a high degree of certainty about project requirements.</li> <li>Used where time and cost outcomes outweigh the need for quality.</li> <li>Quality outcomes are dependent upon the adequacy of the project brief and how it is (or can be) interpreted; therefore, quality is often difficult to control.</li> <li>Claims are common, particularly concerning quality.</li> </ul>
<p><b>Scope</b></p> <ul style="list-style-type: none"> <li>Project brief defines the scope of the project, typically by specifying functional and performance requirements.</li> <li>Scope can be varied, but not beyond the original intent of the project brief, and any variations will normally give rise to a contract sum adjustment and/or extension of time.</li> </ul>	<p><b>Design/quality</b></p> <ul style="list-style-type: none"> <li>Project brief defines the quality of the project, typically by specifying performance requirements.</li> <li>Contractor has significant ability to influence the design and 'buildability' of the project.</li> <li>Defects liability period is typically 12 months.</li> </ul>	<p><b>Time</b></p> <ul style="list-style-type: none"> <li>Design and documentation can be completed concurrently with construction, making it most likely the shortest duration procurement strategy available.</li> <li>Opportunities for extensions of time are generally limited. (Note: variations to the project brief will normally give rise to extensions of time.)</li> </ul>	<p><b>Administration</b></p> <ul style="list-style-type: none"> <li>Principal must appoint a Superintendent to act honestly and fairly in administering the contract.</li> <li>Principal often requires audit design consultants to ensure compliance with the project brief.</li> <li>Contract administration is not overly complex.</li> </ul>	<p><b>Generic contracts</b></p> <ul style="list-style-type: none"> <li>AS4300 with Special Conditions</li> <li>AS4305 with Special Conditions</li> <li>DPW Medium Works with Design</li> <li>DPW Minor Works with Design</li> <li>General Conditions of Contract for Consultancy Services (long and short forms are available).</li> </ul> <p>(Note: DPW is the abbreviation for Department of Public Works)</p>

### Managing Contractor – Two Stage Design and Construction Management Negotiated GCS

Description	Tender process, cost and payments	General risk profile	Variants	Performance summary
<p><b>Roles</b></p> <ul style="list-style-type: none"> <li>The Principal engages consultants to prepare the project brief, which includes budget estimate and estimated completion time.</li> <li>During Stage One, the Managing Contractor (MC) typically engages the Principal's consultants and works collaboratively with the Principal to revise the project brief and refine the design to meet budget and time constraints.</li> <li>At the end of Stage One, the MC submits an offer consisting of a revised project brief, Guaranteed Construction Sum (GCS), time for completion, and possibly adjustments to the MC's tendered Stage Two fees (to the extent allowed by the contract).</li> <li>If the offer is accepted, Stage Two commences and the MC completes design and construction documentation, calls tenders for and lets subcontract trade packages, and manages construction. If not, the contract ends.</li> </ul> <p><b>Relationship between parties</b></p> <ul style="list-style-type: none"> <li>Relationship based (rather than adversarial); objectives are aligned to encourage win/win solutions.</li> <li>Parties must act in good faith.</li> </ul>	<p><b>Tender process</b></p> <ul style="list-style-type: none"> <li>Competitive tenders (i.e. for design, documentation and construction fees, on and off site overheads and profit, based on Principal's project brief) for each stage.</li> <li>Typically evaluated on 30% price criteria, 70% non-price criteria.</li> </ul> <p><b>Cost and payments for Stage One</b></p> <ul style="list-style-type: none"> <li>The MC is progressively paid the tendered Stage One fees.</li> </ul> <p><b>Cost and payments for Stage Two</b></p> <ul style="list-style-type: none"> <li>The MC is progressively paid the tendered Stage Two fees, which may have been adjusted in the MC's offer (made at conclusion of Stage One).</li> <li>The MC is progressively paid for the Actual Construction Sum (ACS), up to the accepted GCS.</li> <li>The Principal uses cost consultants to audit the ACS.</li> <li>Where, at completion, the ACS is less than the GCS, the MC is typically entitled to a bonus share of the difference.</li> <li>The GCS may be adjusted in accordance with the contract, including for variations to the revised project brief.</li> </ul>	<p><b>Risks allocated to the Principal</b></p> <ul style="list-style-type: none"> <li>That the project brief adequately describes the project requirements.</li> </ul> <p><b>Risks allocated to the MC</b></p> <ul style="list-style-type: none"> <li>That the scope contained in the revised project brief can be built within the GCS offered, and within the time offered.</li> <li>That the design meets the revised project brief and is suitable for its purpose.</li> <li>That the construction documentation meets the final design and is suitable for the purpose of construction.</li> <li>That materials and workmanship are in accordance with the construction documentation.</li> <li>That completion of construction occurs within the allocated time.</li> <li>That the ACS is within the GCS.</li> </ul>	<ul style="list-style-type: none"> <li>As this strategy features a high degree of flexibility, contracts can be tailored to suit individual project needs.</li> <li>There are opportunities for incentives to encourage better than normal performance.</li> <li>The MC may obtain its own consultants, rather than engaging those used previously by the Principal.</li> <li>Long term maintenance obligations can be added to the contract.</li> <li>'Single-stage' option (i.e. preferred tenderer offers a GCS, time for completion, revised project brief, and design (using Principal's consultants) as a consolidated tender which may then be accepted by the Principal.</li> <li>'Document and construct' option (i.e. the Principal completes design and the MC documents and manages construction).</li> <li>'Construction management' option (i.e. the Principal completes design and documentation and the MC manages construction).</li> </ul>	<ul style="list-style-type: none"> <li>Used for major or complex projects.</li> <li>Can be effective where there is some degree of uncertainty about project requirements.</li> <li>Provides for early contractor involvement.</li> <li>Incorporates many of the principles and benefits of alliance contracting on more typical commercial terms.</li> <li>Gives reasonable certainty of time, cost and quality outcomes.</li> <li>Claims and disputes are minimal.</li> </ul>
<p><b>Scope</b></p> <ul style="list-style-type: none"> <li>During Stage One, scope is defined in project brief prepared by the Principal; during Stage Two it is defined in the revised project brief prepared by MC collaboratively with the Principal.</li> <li>Capacity to balance scope against cost during Stage One.</li> <li>During Stage Two, variations may give rise to adjustments to the GCS and extensions of time.</li> </ul>	<p><b>Design/quality</b></p> <ul style="list-style-type: none"> <li>During Stage One, design/quality is defined in project brief prepared by Principal; during Stage Two, it is defined in revised project brief prepared by MC collaboratively with the Principal.</li> <li>Capacity to balance quality against cost during Stage One.</li> <li>MC has significant ability to influence design and 'buildability' of the project.</li> <li>Defects liability period of 12 months.</li> </ul>	<p><b>Time</b></p> <ul style="list-style-type: none"> <li>Design must be largely completed before documentation and construction can commence.</li> <li>Capacity for early works (i.e. for commencement of work on site during Stage 1).</li> <li>Opportunities for extensions of time are generally limited. (Note that variations to the project brief may give rise to extensions of time.)</li> </ul>	<p><b>Administration</b></p> <ul style="list-style-type: none"> <li>Principal appoints Principal's Representative to administer the contract in good faith.</li> <li>Principal requires cost consultants to audit ACS and may require audit design consultants to ensure compliance with the revised project brief.</li> <li>Relatively complex to administer.</li> </ul>	<p><b>Generic contracts</b></p> <ul style="list-style-type: none"> <li>Managing Contractor Two Stage Design and Construction Management (Negotiated GCS)</li> <li>Managing Contractor Single Stage Design and Construction Management (Negotiated GCS)</li> <li>General Conditions of Contract for Consultancy Services (long and short forms are available).</li> </ul>



**Alliance**

Description	Tender process, cost and payments	General risk profile	Variants	Performance summary
<p><b>Roles</b></p> <ul style="list-style-type: none"> <li>• An alliance is formed between key project participants, which include the Principal and Contractor, and may include key consultants and trade contractors.</li> <li>• The alliance is responsible for all aspects of the delivery of the project.</li> </ul> <p><b>Relationship between parties</b></p> <ul style="list-style-type: none"> <li>• Relationship must be collaborative for the alliance to be effective.</li> <li>• There is a policy of ‘no blame, no disputes’ between the alliance partners.</li> </ul>	<p><b>Tender process</b></p> <ul style="list-style-type: none"> <li>• Tenders called from interested alliance consortia at the outset of the project.</li> <li>• Evaluated on 100% non-price criteria.</li> <li>• Often evaluated through workshops and interviews.</li> </ul> <p><b>Cost and payments</b></p> <ul style="list-style-type: none"> <li>• The process of establishing the alliance can be costly.</li> <li>• Principal pays all direct costs of the project (including alliance partners’ actual costs, profit and overheads), up to agreed target costs, after which the profit and overheads of all alliance partners are also used to cover costs on a pre-agreed basis.</li> <li>• The target costs typically include substantial contingencies.</li> <li>• The Principal’s costs cannot be capped if project costs exceed expectations.</li> <li>• Additional monetary incentives may be available for performance relative to key performance indicators (KPIs) determined by the alliance at the outset.</li> </ul>	<ul style="list-style-type: none"> <li>• Structured so that commercial risk and reward is shared and it is in the alliance partners’ business pecuniary interests to work co-operatively.</li> <li>• There are no claims, as costs are audited, and no disputes, as blame is not apportioned.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Pure alliances:</b> target costs agreed after tenderer selection; risks shared equally between alliance partners; decision making is unanimous; and liability is not distributed between partners.</li> <li>• <b>Competitive alliances:</b> similar to pure, except that two short-listed tenderers develop concept designs and target costs for the project before a final selection is made.</li> <li>• <b>Hybrid alliances:</b> departures from the pure/competitive alliance models include: using a deadlock breaking process (e.g. binding arbitration); allocating specific risks or responsibilities to individual alliance partner/s; retaining the liability of individual alliance partner/s; nominating exclusions to the no-dispute provisions.</li> <li>• <b>Program alliances:</b> a number of similar projects are awarded to the alliance and the target costs for subsequent projects are determined using the actual costs of the previously completed project.</li> </ul>	<ul style="list-style-type: none"> <li>• Suited to complex, high risk projects where it is difficult to transfer risk appropriately.</li> <li>• Effective where there is uncertainty about project requirements.</li> <li>• More commonly used for civil, infrastructure and mining projects.</li> <li>• Provides for early involvement of the Contractor.</li> <li>• Success depends heavily upon the attitudes and abilities of the alliance partners (and their individual representatives) to manage the project as a team, on a ‘best for project’ basis.</li> <li>• There is limited case history of building projects completed by alliance, so it is difficult to assess its successful use.</li> </ul>
<p><b>Scope</b></p>	<p><b>Design/quality</b></p>	<p><b>Time</b></p>	<p><b>Administration</b></p>	<p><b>Generic contracts</b></p>
<ul style="list-style-type: none"> <li>• Scope is defined in the project brief, but there is capacity to balance scope against cost and time requirements.</li> <li>• Scope can be varied, as determined by the alliance, with the cost of the variation being a direct cost to the project.</li> </ul>	<ul style="list-style-type: none"> <li>• Design/quality are defined in the project brief; however, input is possible from the Principal, Contractor and a range of other experts, to give design and ‘buildability’ advice and balance quality against cost and time.</li> <li>• KPIs may be used to encourage excellent quality.</li> <li>• Defects liability period applies to trade contracts, for durations as deemed appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• The process of establishing the alliance can be lengthy.</li> <li>• Design, documentation and construction can overlap.</li> <li>• Capacity for early works.</li> <li>• Provides flexibility to allow delays to be managed in ways other than by extensions of time.</li> </ul>	<ul style="list-style-type: none"> <li>• Principal’s representatives (and all other individuals) must be the best available for the project, in terms of both attitude and skill.</li> <li>• Legal support needed to establish the alliance.</li> <li>• Facilitator needed for workshops.</li> <li>• Cost consultants needed to validate target costs.</li> <li>• A probity auditor may be required.</li> <li>• Complex to establish/administer.</li> </ul>	<ul style="list-style-type: none"> <li>• No generic contract is available; a project specific contract must be drafted.</li> </ul>

**Bundling**

Description	Tender process, cost and payments	General risk profile	Variants	Performance summary
<p>A bundled project is one that involves the delivery of a number of separate 'component' projects under a single contract.</p> <ul style="list-style-type: none"> <li>Used in conjunction with one of the other procurement strategies described previously.</li> <li>Available for projects valued between approximately \$0.5M and \$20M.</li> <li>Refer to CWMF policy requirement 1.</li> </ul> <p><b>Roles</b></p> <ul style="list-style-type: none"> <li>Where multiple departments are involved, a lead department must be appointed Principal under the selected building contract; other departments become stakeholders.</li> <li>Departments must consider how best to prepare contract documentation for component projects to ensure that, when the projects are bundled, the documentation is well coordinated, accurate, complete and unambiguous.</li> </ul> <p><b>Relationship between parties</b></p> <ul style="list-style-type: none"> <li>Where there is a number of different departments involved, stakeholder relationships often become complex.</li> </ul>	<p><b>Tender process</b></p> <ul style="list-style-type: none"> <li>Depends upon the procurement strategy and building contract selected.</li> </ul> <p><b>Cost prior to tender</b></p> <ul style="list-style-type: none"> <li>Departments must ensure that value for money can be achieved by bundling their project with other projects.</li> </ul> <p><b>Cost and payments post tender</b></p> <ul style="list-style-type: none"> <li>Payment regime depends upon the procurement strategy and building contract that is used for the bundled project.</li> <li>Depending upon the selected procurement strategy and building contract, costs for variations may be difficult to attribute to individual component projects.</li> </ul>	<ul style="list-style-type: none"> <li>Due to increased scope, the risk profile of the bundled project may be significantly different from the risk profiles of the component projects. This needs to be taken into account when selecting the most appropriate procurement strategy and building contract for the bundled project.</li> </ul>	<ul style="list-style-type: none"> <li>May incorporate component projects from a single department or multiple departments.</li> <li>'Sequential' bundling, which requires the sequential commencement and completion of each component project of the bundle.</li> <li>'Concurrent' bundling, which involves the simultaneous construction of all component projects of the bundle.</li> </ul>	<ul style="list-style-type: none"> <li>Suitable for use at times when there are labour market shortages, or for the delivery of multiple projects in remote or regional locations.</li> <li>Success depends upon the willingness of departments to participate proactively and positively in bundling opportunities.</li> <li>Has the potential to generate savings for government through bulk purchasing.</li> <li>Reduces competition between departments for resources.</li> <li>May negatively affect small to medium tier contractors, who are unable to compete for larger bundled projects.</li> </ul>
<p>Scope</p>	<p>Design/quality</p>	<p>Time</p>	<p>Administration</p>	<p>Generic contracts</p>
<ul style="list-style-type: none"> <li>Overall, scope is substantially increased due to the bundling of smaller component projects. This increased scope may impact upon the suitability of a particular procurement strategy or building contract, and the type of contractor capable of carrying out the project.</li> </ul>	<ul style="list-style-type: none"> <li>The approach to design and quality will depend on the procurement strategy and building contract selected.</li> <li>Defects liability period depends upon the procurement strategy and building contract selected.</li> </ul>	<ul style="list-style-type: none"> <li>Bundling opportunities need to be identified prior to the project definition phase of the project.</li> <li>Timely completion of a component project may be affected by other component projects within the bundle.</li> <li>Particularly where bundling is sequential, a complex time regime may be required.</li> <li>Particularly where bundling is concurrent, delays and their effects may be difficult to attribute to individual component projects.</li> </ul>	<ul style="list-style-type: none"> <li>Can be complex due to the increased scope of the bundled project, the increased number of stakeholders, and the need to attribute costs to each of the component projects.</li> </ul>	<ul style="list-style-type: none"> <li>No specific bundling contract is available; any of the generic forms may be suitable, but may require modification.</li> </ul>

## Attachment 2: Contracts Committee submission template

### Submission to the Contracts Committee

**Date of meeting** Insert date of Contracts Committee meeting.

**Subject** Describe the subject of the submission.

**Purpose** State the purpose of the submission.

#### Brief and issues

Provide a brief description of the project and any information that will assist the Committee in determining the most appropriate procurement strategy. Only issues considered relevant should be addressed. Information may include detail such as:

- project objectives
- stakeholders
- scope, including:
  - the project's various elements (e.g. new construction, refurbishment, additions, demolition, site infrastructure, early works packages)
  - a breakdown of the construction budget relative to its elements
  - the proposed staging or sequencing of work
  - any sketch plans/documentation that may assist the Committee
  - critical activities
- time considerations, including:
  - key milestones or critical activities
  - planning and approval timeframes
  - a fixed end date versus flexible timeframes
  - any time dependencies or influences from other projects
- budget (and possible funding issues) including:
  - most recent estimate
  - allowance for escalation
  - confidence level of estimate
  - any cash flow forecasts that may assist the Committee
- tender and evaluation process, including:
  - whether open or select tenders are being used (in accordance with the *Capital Works Management Framework* and PQC System guidance)
  - proposed evaluation criteria and weightings, including whether there are any non-price criteria
- constraints, including:
  - supply issues (e.g. market conditions)
  - site issues (e.g. site access)
- environmental issues (e.g. vegetation protection, contamination)
- cultural/heritage issues (e.g. all or part of site/building registered as culturally or historically significant)

- assumptions and givens
- policy considerations, including:
  - *Local Industry Policy*
  - *art+place policy framework*
  - *10% Training Policy (State Government Building and Construction Contracts: Structured Training Policy)*
  - *Indigenous Employment Policy*
  - requirements associated with workforce management on government building projects
  - requirements associated with occupational health and safety on government building projects
- current position, including:
  - the current stage of the project
  - any consultancy contracts that have been let
- other relevant information, including:
  - the likelihood of an adequate pool of eligible tenderers
  - any approved deviations from Government policy
  - expectations of the department sponsoring the project (e.g. with respect to sustainability/green rating outcomes)
  - external factors/stakeholder issues
  - public sensitivities
  - directions given by other government departments.

**Options and analysis**

Identify the procurement strategy options and analyse each of them, noting advantages and disadvantages.

**Recommendation**

Recommend a procurement strategy option. For project managers, provide confirmation that the department sponsoring the project has endorsed the recommendation.

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**Contact officer**  
[Name]  
[Position]  
[Work Unit]  
[Department]  
[Work telephone number]

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**Endorsement**  
*(officer with appropriate level of authority)*  
[Name]  
[Position]  
[Work Unit]  
[Department]  
[Work telephone number]

**Decision**

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Recommendation endorsed by Chair on behalf of Committee