

Early Contractor Involvement

Construction Procurement Guidelines

October 2019

Overview

Early contractor involvement (ECI) is an approach to contracting that can complement either a traditional or novated design and build delivery model.

ECI can be used to gain early advice and involvement from a contractor into the buildability and optimisation of designs. It's suited to large, complex or high-risk projects because it affords an integrated team time to gain an early understanding of requirements, enabling robust risk management, innovation and public value.

ECI usually takes the form of a two stage approach to tendering.

First stage tender

The first stage tender documents should contain sufficient project information to enable tenderers to submit a tender response which will typically include:

- construction methodology, programme, and approach to the project including sub-contractor management and health and safety
- a response on how realistic the client's budget ceiling is and initial thoughts on achieving this
- identification of initial risks and opportunities for design and construction
- proposals for working with the design team to provide buildability, value engineering and supply chain input to the development of the design to achieve the budget ceiling specified for the project
- details of the proposed project team, both for the second stage tender process and during construction
- fixed preliminaries (site running costs) and fixed margin (covering off site overheads and profit)
- schedule of rates for common building elements (where there is sufficient information to develop this)
- pre-construction services fee for providing input to the design and tender services during the second stage tender process (unless specified by the client).

The first stage tender documents should provide early design information (eg concept or preliminary) and an indication of the client's budget limit. The documents should also include a pre-construction services agreement (PSA) detailing the services required to be provided by the contractor during the second stage tender, eg buildability, value engineering and supply chain advice, and input to the design and tendering services. The PSA will usually state that contract award will be conditional upon:

- satisfactory performance of the contractor during the second stage tender
- the contractor providing full cost transparency to the client through an open book approach
- agreement of a contract sum that is acceptable to the client (in public value terms), is below the specified cost ceiling, and without qualification.

Where the specified conditions are not met, the PSA will typically provide the client with the right to go back out to the market for tender. This ensures that competitive tension is maintained throughout the tender process. Where the contractor is not awarded the contract, it will be paid for its services in accordance with the PSA, to avoid any potential disputes over intellectual property.

Following the evaluation of the first stage tender proposals, a preferred contractor is appointed through execution of the PSA to go forward to the second stage tender process.



Preliminaries

Preliminaries are the site running costs required by the contractor for managing and maintaining it safely and securely. It will typically include allowances for the following:

- › management staff
- › fencing
- › site lighting
- › waste management
- › offices and consumables
- › noise protection
- › environmental controls
- › health and safety management
- › information and communications technology (ICT)
- › protective clothing
- › site transport
- › electricity and water
- › security costs
- › scaffolding
- › general plant
- › cranes.

Second stage tender

The second stage tender will involve the contractor working with the design team to provide input to the design and develop its tender price on an open-book basis in line with the PSA. The second stage tender will conclude upon award of contract, or when the client notifies the contractor that it will not be awarding a contract due to certain conditions of the PSA not being met.

For a traditional delivery model, the client and contractor will jointly agree how the project is to be split into work packages. Once the design is complete for each package, the client and contractor will jointly tender each package to the market on an open-book basis. Once the client is satisfied that the packages represent public value and are within budget, the contractor is awarded the contract to proceed to build, typically based on a [lump sum fixed price](#).

For novated design and build delivery models, the contract sum is essentially arrived at through a process of negotiation since the design will not be complete at the time of contract award. To ensure competitive tension, the process of negotiation is made on an open-book basis where the contractor's cost build-up for the project is fully transparent to the client's cost consultant. These costs can be subject to market testing to ensure that the total cost of the project represents public value. The contract may be awarded based on a lump sum fixed price where the client wants little or no involvement in the design process, and is willing to accept the risk premium that comes with design and build. Clients that want to be involved in a more collaborative arrangement with the contractor and its design team during the design phase to share any savings made through innovation in design, may choose to adopt a [guaranteed maximum price](#) arrangement.

At a glance - Early Contractor Involvement

Guidelines for use

An ECI model is attractive to contractors, due to the embedded relationship principles and overall collaborative approach. ECI is suited to large scale, complex or medium to high-risk projects, because it allows an integrated team time to gain an early understanding of requirements, which facilitates innovation and value for money. Clients should also consider this model in circumstances where:

- the project risks are difficult to quantify fully, and innovative approaches are needed to manage this
- project delivery timeframes are constrained
- they are interested in moving away from a transactional model towards a collaborative model, where there is insufficient capability or capacity to fully resource a relationship based model such as an alliance
- there's identified value in participating in a collaborative arrangement to drive innovative outcomes and knowledge transfer
- there's a need to obtain cost certainty while demonstrating transparency
- there are uncertain or complex design or construction interfaces, and flexibility in scheduling and delivery is required.

Potential benefits

- Improved cost and time savings can be achieved.
- Enhanced opportunities for innovation.
- A less transactional culture (with fewer variations and disputes), due to the inclusion of relationship principles and collaborative practices into the contractual arrangement.
- Improved integration of design and construction processes provides greater opportunity for optimising the design from a construction perspective, eg methods of construction, minimising waste and reducing health and safety risks.
- Earlier commitment of construction resources to the project.
- Earlier procurement of items with long lead times, such as steel and pre-cast concrete products.
- Good understanding of risk by all parties.

Points to note

- Strong leadership and support from the client are required throughout to develop a no-blame culture in the team, to achieve transparency and effective collaboration.
- Expertise and capability of the project manager and cost consultants are critical to helping the client adapt to working in an ECI environment.
- Where the client decides not to accept the open book negotiation offer, disruption to the project timelines can occur from re-tendering.
- High turnover of staff or major relationship breakdowns during the tender process can significantly impact performance.
- Public value is achieved using an open-book approach to accounting under the contract, and the ability to have the contractor's rates and margins independently verified.
- Competitive tension is maintained by setting clear conditions by which a contractor will be awarded a contract, eg achievement of a pre-determined cost ceiling.
- It is important that the contractor is paid for the services it provides during open-book negotiation, to secure commitment and ensure there are no intellectual property issues if the contractor isn't ultimately awarded a contract.