

CONTRACTING MODELS FOR CAPITAL ASSETS – A TEASER!



Nick Tamburro
 Director, Commercial Division
 Victorian Department of Treasury and Finance

Major capital projects provide for very exciting procurement exercises. If you represent a public sector client, the professional journey can take you from Business Case development, where the merits and challenges of your project justifying funding are fully explored, to tendering, contract awarding, construction, commissioning and finally operating.

Governments seek to achieve a very broad range of social, environmental and economic objectives on behalf of their communities. This results in an equally broad diversity of capital projects, for which there are a number of mature and emerging contracting models that can cater well to this diversity on a ‘fit-for-purpose’ basis. The selection of the best contracting model for any one project, normally done through an options analysis documented in a Business Case, requires a careful and knowledgeable analysis of the project characteristics and risks. The following table summarises some of the distinguishing features of three main contracting models used in the public sector.

Off course, like all things worth our close attention and study, it is not as simple as this table may suggest. Indeed there are

other models we could list and for each main model there are many variants. For example, what is commonly described as traditional contracting has well established variants such as Lump Sum Construct (or “Construct Only”), Schedule of Rates, Design and Construct, Engineering, Procurement, Construction and Management, Cost Plus etc.

The Public Private Partnerships contracting model also has such variants as Build Own Operate Transfer (BOOT), Design Build Finance Operate (DBFO) etc. To add further complexity to the picture, there are different (significant) positions that can be agreed upon for financial exposure to specific risk events.

In the case of Alliancing, government policy supports full price competition in the selection of the winning bidder, although in the past non-price

competition was the popular variant. Interestingly, Alliancing, which has the core principle of “no blame no litigation”, is currently used for projects only in Australasia and only in the public sector, although the model was developed in the petroleum and mining sectors.

In addition to all this richness of possibility, I would expect that some readers will take exception to some of the above descriptions. And perhaps with some good cause as there is no agreed textbook on this. For example, is Early Contractor Involvement a variant most like an alliance or like a traditional model? Where does Managing Contractor fit in? I know some people would disagree with my answer (which I won’t reveal here as it needs to be a discussion for another time!).

Some distinguishing features of three contracting models

	Alliance	Traditional	Public Private Partnerships
<i>What for</i>	Mostly infrastructure	Buildings and infrastructure	Mostly infrastructure
<i>About risks</i>	Not all risks can be satisfactorily dimensioned upfront and are best managed jointly	A clear and enforceable risk allocation	A clear and enforceable risk allocation
<i>Who takes what risks</i>	Risks exposure “shared” (normally the Government’s financial exposure is uncapped; the private parties have capped exposure)	For D&C - The contractor takes risks associated with design and construction and particularly the interface between design and construction	Consortium exposed substantially to risks of design, construction, capital assets ownership and service KPIs (& in a few projects demand risk)
<i>Who owns the asset</i>	Following construction, the Government owns and operates the facility	Following construction, the Government owns and operates the facility	Government is purchasing services; assets tend to be on the public balance sheet. Often payments made only upon delivery of services

And excitingly, new contracting models and variants are being developed as you read the *Procurement Professional*.