# Recent developments in contract procurement models

**5**<sup>th</sup> Annual Contract Management Masterclass

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#### Overview

#### 1. Introduction

- The current environment
- Alliancing recap

### 2. Early Contractor Involvement

- Overview
- A two stage approach
- Traps
- Tips

### Overview (cont)

- 3. Alliancing under the microscope (2009 Victorian Benchmarking Study)
  - The review
  - The recommendations
  - The future

### Overview (cont)

- 4. Integrated Project Delivery a potential US import?
  - What is it?
  - IPD generally and how does it work?
- Integrating construction & operation obligations – Integrated Agreement vs. Interface Agreement

The current environment

- Recent shift away from alliancing
- Growth of ECI model
- Alliancing Benchmarking Report 2009

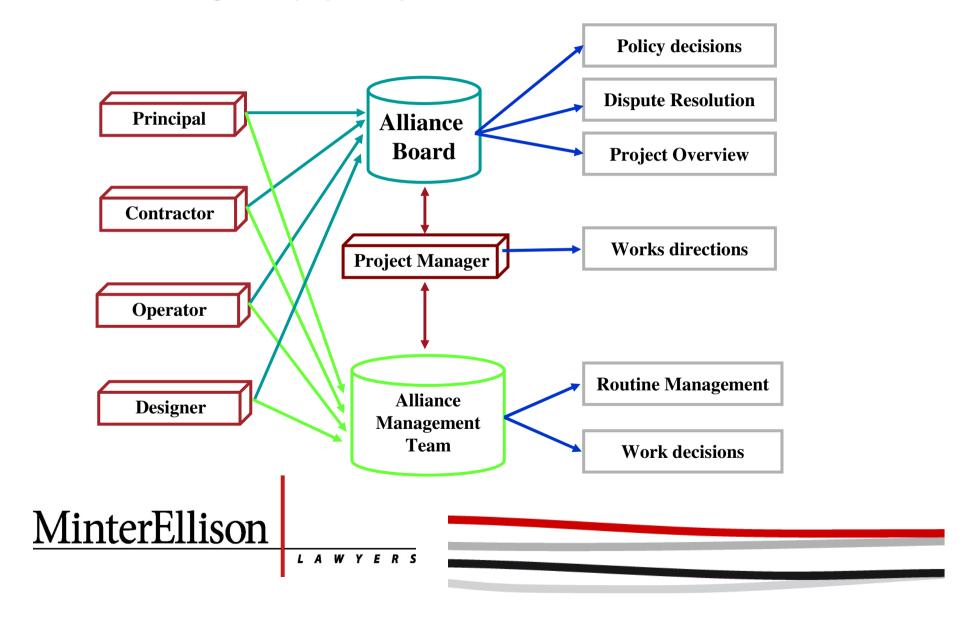
## 1. Introduction Alliancing recap

#### Alliance concepts

- Principal, contractor and designer all parties to the one project agreement
- Non-adversarial and no-blame culture
- Best-for-project focus joint leadership, governance and delivery of the project
- Most risks are collectively shared and managed by all parties (subject to gain-share / pain-share)
- Objective is 'win-win' or 'lose-lose'



Alliancing recap (cont.)



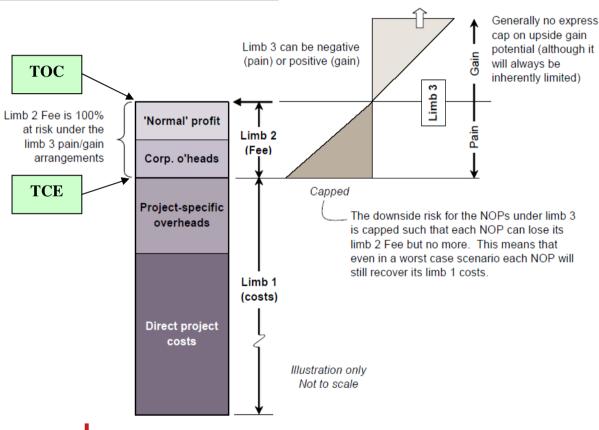
Alliancing recap (cont.)

#### Compensation framework

- Joint development of a Target Outturn Cost (TOC)
- Contractors get paid:
  - costs as incurred (including project overheads as a lump sum)
  - lump sum fee for corporate overheads and profit
  - gainshare / painshare incentive

Alliancing recap (cont.)

#### Compensation framework



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LAWYERS



**Risk perceptions** 

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Alliancing recap (cont.)

#### Suitable projects for alliancing

- Complex project
- Lump sum not suitable
- Principal's requirements subject to change
- To much risk for sole contractor
- Staging requirements



Alliancing recap (cont.)

#### When alliancing is not suitable

- Small projects
- Project is straightforward and fully designed
- Lack of administrative framework
- Parties are unwilling to adhere to 'open book' policy, work collaboratively, share a joint view in respect of risk management or agree on a methodology to resolve disputes



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### 2. Early contractor involvement Overview

- First developed by UK Highways Authority
- Introduced by the Queensland TMR in 2005

## 2. Early contractor involvement Overview (cont.)

- Early contractor involvement = contractor works with principal in initial stages of project and develop detailed plan for project
- Contractor is engaged very early during project development
- Principal and contractor collaboratively develop design and price
- Once price is agreed, project is delivered through a traditional contract

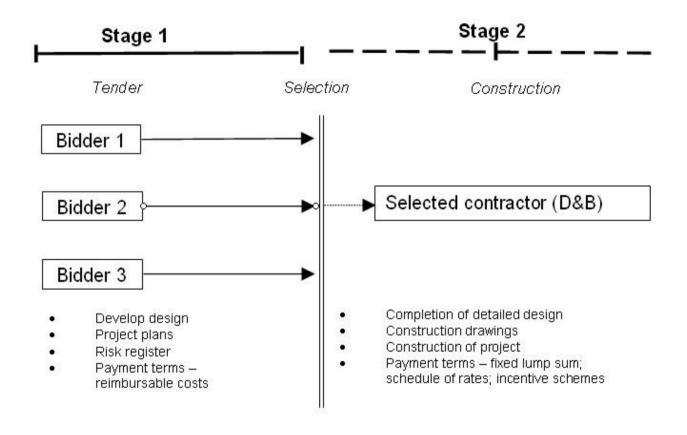


## 2. Early contractor involvement A two staged approach

- Stage 1 is focussed on the establishment of a relationship framework between the two parties
- Stage 2 is broadly similar to a D & C contract in that the contractor completes the design & constructs the works

### 2. Early contractor involvement

A two staged approach (cont.)



# 2. Early contractor involvement The traps

- Tender costs
- Involvement of senior staff
- Potential loss of innovation
- Too early
- Too many cooks
- Higher prices / finance
- Uncertainty

# 2. Early contractor involvement The tips

- Price
- What is the contractor's experience?
- Independent engineering advice
- Owner resourcing
- Parameters
- Probity / audit
- Critical evaluation
- Beware the low cost tender

### 3. Alliancing under the microscope

Competitive processes and tighter business cases following the 2009 Victorian Benchmarking Study

("In Pursuit of Additional Value: A benchmarking study into alliancing in the public sector")



### 3. Alliancing under the microscope The review

- Commissioned by the state treasuries of NSW, QLD, WA & Victoria
- Evans & Peck and the Uni. of Melbourne
- Published by the Victorian Department of Treasury & Finance
- Review of alliance performance in Australia
- Survey of alliance participants



### 3. Alliancing under the microscope The recommendations

- Six key policy recommendations
- More focus on value for money (VFM) outcomes needed

# 3. Alliancing under the microscope The recommendations (cont.)

- No 1 Retention of alliancing
- No 2 Procurement selection guide
- No 3 Common policies / guidelines

## 3. Alliancing under the microscope The recommendations (cont.)

- No 4 The role of government
- No 5 Business cases
- No 6 Competitive process development

### 3. Alliancing under the microscope The future

- Standardisation of guidelines
- Better decision making tools
- A harder business case
- Further scrutiny by Treasuries

## 4. Integrated project delivery A potential US import? What is it?

'A project delivery method or approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to reduce waste and optimize efficiency through all phases of design, fabrication and construction.'

American Institute of Architects California Council (AIA) 'A working definition – Integrated Project Deliver', 2007 available at http://www.ipdca.net/images/Integrated%20Project%20Delivery%20Definition.pdf at page 1.



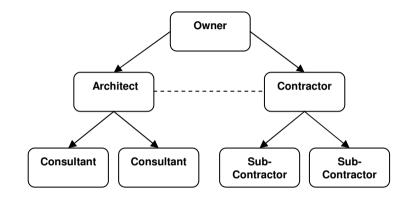
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## 4. Integrated project delivery IPD generally

- Complete integration of teams
- Collaborative approach
- Catalyst is new technology (BIM)
- Two types of agreements
  - transitional form agreements
  - single purpose entity agreement

# 4. Integrated project delivery IPD generally (cont.)

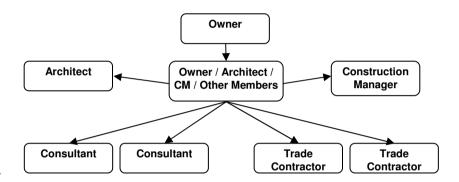
- Transitional form agreements
  - 'usual' agreements between parties; <u>plus</u>
  - 'common' set of general conditions with duties of all participants integrated for each phase of project
- Usually GMP
- Common proceedings





# 4. Integrated project delivery IPD generally (cont.)

- Single purpose entity
  - limited liability company
  - licensing laws an issue
  - alliance style compensation framework (with TOC)
  - no-sue except for wilful misconduct



### 5. Integrating construction & operation obligations Integrated agreements vs interface agreements

- Integrated construct and operate agreement vs separate construct and operate agreements
- An integrated agreement might not be possible
- Interface agreement allows participants a greater autonomy in coordinating & regulating their relationships
- Horizontal structure of contractual relationships
- Allows principal to focus on outcome

- 5. Integrating construction & operation obligations Integrated agreements vs interface agreements (cont.)
  - Interface agreements often contain clauses regarding:
    - statement of requirements
    - indemnities
    - design review
    - liability cap
    - claims management / dispute resolution

### Summary

- Alliancing landscape has changed
- Benchmarking study may lead to greater standardisation and competitive processes
- New project delivery models are being developed (mostly evolutionary)
- Identify project objectives and find the model most likely to deliver them



### Questions?

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