

# **Guide Note**

## **Overview: Form of Contract**



**Queensland**  
Government

# 1.0 Introduction

This guide note provides an overview of the various contract forms.

# Overview – Form of Contract

## Traditional Fully Documented – Lump Sum

Description	Tender process, cost and paym	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>Reliant on comprehensive design and documentation, otherwise it can potentially be 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 mainly on price criteria, with limited 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 against a Bill of Quantities.</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 required.</li> <li>Claims are common, where design and documentation is incomplete, or the scope is varied.</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 as the design and documentation is required to be complete prior to tender.</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 12 months.</li> </ul>	<p><b>Time</b></p> <ul style="list-style-type: none"> <li>Design and documentation must be completed prior to tender, making it potentially the longest duration before procurement of the Contractor and commencement of the works on site.</li> <li>Beneficial where long MID processes can run concurrently to the design and documentation</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>BCM contract</b></p> <ul style="list-style-type: none"> <li>AS2124 with Special Conditions</li> <li>Medium Works</li> <li>Minor Works</li> </ul>

## 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 the 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 comprehensively 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> </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 design control to remain with the Principal.</li> <li>Quality outcomes are dependent upon the adequacy of the project brief and how it is (or can be) interpreted; therefore, quality may be difficult to control.</li> <li>Claims are common, particularly concerning quality.</li> </ul>
<b>Scope</b>	<b>Design/quality</b>	<b>Time</b>	<b>Administration</b>	<b>BCM contracts</b>
<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>	<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>	<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>	<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>	<ul style="list-style-type: none"> <li>AS4300with Special Conditions</li> <li>Medium Works with Design</li> <li>Minor Works with Design</li> <li>General Conditions of</li> </ul>

# 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 estimated and estimated completion time.</li> <li>During Stage One, the Managing Contractor (MC) has the option to engage 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>'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>
<b>Scope</b>	<b>Design/quality</b>	<b>Time</b>	<b>Administration</b>	<b>BCM contracts</b>
<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>	<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>	<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>	<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>	<ul style="list-style-type: none"> <li>Managing Contractor Two Stage Design and Construction Management (Negotiated GCS)</li> </ul>

# Alliance

Description	Tender process, cost and payme	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>
Scope	Design/quality	Time	Administration	BCM contracts
<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 payment	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> <p>Used in conjunction with one of the other procurement strategies described previously.</p> <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>
Scope	Design/quality	Time	Administration	BCM contracts
<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 project may be affected by other projects within the bundle.</li> <li>Where bundling is sequential, a complex time regime may be required.</li> <li>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>