



ARTICLE

# The importance of selecting an appropriate procurement and contracting strategy for your construction project

Project suspensions, cost overruns and project delays have increased due to the COVID-19 pandemic<sup>1</sup>. As restrictions in the Gulf Cooperation Council (GCC) ease and COVID-19 recovery continues, demand and competition for construction and infrastructure projects is rising. This poses greater uncertainty for the parties involved in the delivery of these projects who will likely be more risk and cost conscientious than ever before.

Adopting an appropriate procurement strategy that considers factors such as timeline, budget and financing, quality, risk and opportunities will assist parties in choosing the optimal contract form, which will have a major impact on the successful delivery of these projects.

At present, approximately \$303bn of planned construction and transport projects in the GCC are at the design stage and \$107bn at the tendering stage. This indicates a significant increase in market activity given the annual average value of construction contracts awarded in the GCC since 2016 has been \$61bn a year<sup>2</sup>.

## Key factors influencing the selection process

The selection of an appropriate procurement model is central to delivering the client's project on time and within budget. It is important to evaluate the project's structure carefully by considering factors such as:

- **The project objectives:** including the client's requirements.
- **Characteristics of the project:** the nature of the project, scope of work and client control.
- **Constraints:** budget and funding, Capex requirements, Opex requirements, timeframes, end-user requirements and exit strategy.
- **Risks:** delays, under budgeting, financial exposure, and reputational risks.
- **Capability:** in-house capabilities and relevant experience.

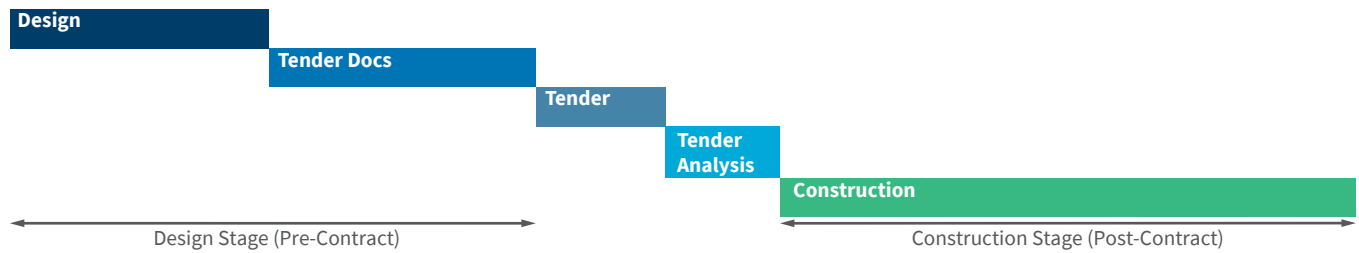
The Chartered Institute of Building (CIOB)'s publication 'Procurement in the Construction Industry'<sup>3</sup> considered the most commonly used models; we discuss a few of these below.

1 Gamil, Y., & Alhagar, A. (2020). The Impact of Pandemic Crisis on the Survival of Construction Industry: A Case of COVID-19. *Mediterranean Journal of Social Sciences*, 11(4), 122. <https://doi.org/10.36941/mjss-2020-0047>

2 <https://finance.yahoo.com/news/gulf-cooperation-council-gcc-construction-102200581.html>

3 David Hawkes, 'Procurement in the Construction Industry', CIOB, December 2010.

FIGURE 1: TRADITIONAL SINGLE-STAGE<sup>4</sup>



**Traditional single stage**

A traditional approach typically encompasses the involvement of a client, design team and a contractor who ultimately executes the works. The client will appoint a design/architectural firm to develop the design, which will then be tendered out to a list of prospective contractors.

This approach enables the client to obtain a design to their satisfaction, attribute the risk of the construction phase to the main contractor at a fixed price/lump sum, offering some certainty to the client of the overall cost of the project. Figure 1 above illustrates this process.

A major constraint of adopting such a route relates to the fragmentation of responsibility between the parties. The design team and construction team operate in silos, which results in a lack of coordination and issues arising around buildability. Furthermore, a significant amount of time is taken up during the design phase. An approach of this nature is not typically appropriate for projects that require certainty in the time for completion.

To avoid this siloed approach, a two-stage route may be more suitable. Engaging a contractor earlier on allows the professionals employed to develop the design and utilise a contractor’s expertise in construction to avoid issues with the project’s buildability<sup>5</sup>.

**Design and build**

This approach has three main elements:

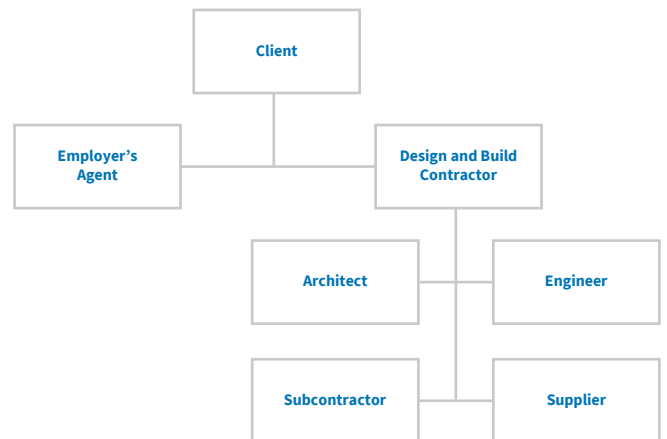
- (1) An organisation undertakes the responsibility of both the design and construction.
- (2) The cost is typically arranged on a lump sum fixed fee basis.
- (3) The project is designed and constructed to the specifications and requirements of the client.

The client provides high-level drawings that are tendered out with its requirements. The contractor subsequently issues proposals and develops a design that meets the client’s requirements and satisfaction; the works are then executed in accordance with those requirements.

This approach results in the client transferring most of the risks of design and construction onto the contractor. However, finalisation and approval of the design may take longer than expected where the client’s expectations are not clearly defined and changes to the agreed design will commonly lead to delays.

The typical relationship can be seen in Figure 2 below:

FIGURE 2: DESIGN AND BUILD STRUCTURE<sup>6</sup>



**Collaborative approaches**

Collaborative approaches, such as alliances and partnering, are not new to the construction industry. However, they have not been as widely adopted as the approaches discussed above. Their main use is primarily concerned with stimulating collaborative relationships and enhancing the performance of projects. Adopting a collaborative approach moves away from the traditional adversarial methods and focuses on the best arrangement for project delivery.

<sup>4</sup> Brian Greenhalgh and Graham Squires, *Introduction To Building Procurement*, Spon Press, 2011, page 95.

<sup>5</sup> RICS Professional Guidance, UK, *Tendering Strategies* 1st Edition, 2015.

<sup>6</sup> Ibid 4, page 137.

The words ‘alliancing’ and ‘partnering’ are often used interchangeably. Granted that both are procurement approaches for project delivery, the two vary in how they address risk and reward. Strictly speaking, the partners in a project partnership retain more independence and may “*individually suffer or gain from the relationship*”<sup>7</sup>.

However, in an alliance, a cohesive entity is formed and the parties share both the risks and rewards “*based on an agreed formula*”<sup>8</sup>. This approach can be achieved through the incorporation of a Special Purpose Vehicle (‘SPV’), where the parties have a share in the project. This can also be accomplished through a quasi-alliance without a formal SPV.

A project partnership will involve a project partnering contract such as the PPC2000 (standard contract form for project partnering) bringing the different parties in the project team together under one multi-party contract. Furthermore, it is intended to cover the entire procurement process, envisaging and providing for early contractor involvement prior to start on site<sup>9</sup>.

For any project, the form of contract selected will be heavily dependent on the agreed procurement model. The construction industry is awash with contract forms including, among others, the Joint Contracts Tribunal (JCT) and the New Engineering Contract (NEC). However, in the Middle East, the Fédération Internationale des Ingénieurs-Conseils suite of contracts is the most common.

### **Fédération Internationale des Ingénieurs-Conseils (FIDIC)**

The FIDIC forms of contract have been in use in the Middle East since the 1970s<sup>10</sup> and are considered as the international standard.

The adoption of the FIDIC forms by public and private sectors in the GCC vary. Construction contracts in the private sector in the Kingdom of Saudi Arabia are typically based on FIDIC forms of contract with their particular conditions amended, whereas the public sector relies on the Standard Conditions for Public Works<sup>11</sup>. In contrast, construction contracts in the United Arab Emirates are predominately based on the FIDIC suite of contracts. However, it must be noted that the FIDIC forms are

typically amended in the region giving greater control to the Client and transferring risks from the Employer to the Contractor<sup>12</sup>.

The FIDIC forms of contract have been designed and drafted for use on a wide range of project types. The decision on what form to select will depend on the nature of the works contemplated<sup>13</sup>.

Since its establishment in 1913, FIDIC has created and improved on its suite of contracts. The most used forms of the FIDIC family in the GCC are the Red and Yellow Book. The 1999 and 2017 editions are briefly discussed below, focusing on the crucial elements to consider such as:

- (1) Design responsibility;
- (2) Supervision of the works;
- (3) Payment; and
- (4) Allocation of risk.

### **Conditions of Contract for Construction (Red Book) 1999 and 2017**

The Red Book is recommended for building or engineering works designed by the Employer. The works are carried out by the Contractor in accordance with the design<sup>14</sup>.

The Engineer takes on the role of supervision and contract administration which also involves the certification of payments. The general conditions set out the risks allocated to the Parties, which include inter alia, insurances and each Party’s ability to foresee and mitigate circumstances relevant to each risk<sup>15</sup>.

### **Conditions of Contract for Plant and Design-Build (Yellow Book) 1999 and 2017**

The Yellow Book is recommended for the provision of electrical and/or mechanical plants and for the design execution of building or engineering works.

In contrast to the Red Book, the Contractor designs the works in accordance with the Employer’s requirements and executes the works, taking on the majority of the design responsibility, which may include a combination of civil, mechanical and/or construction works<sup>16</sup>. The Engineer plays a similar role to that under the Red Book.

7 Pertti Lahdenperä, ‘Making sense of the multi-party contractual arrangements of project partnering, project alliancing and integrated project delivery’, (2012) *Construction Management and Economics*, 30:1, 57-79

8 CMS, *Guide to Contract Alliancing in Construction*, December 2019.

9 CMS, *PPC2000 - A Practical Guide to using this Partnering Contract*, 2012.

10 Edward Sunna, Omar Al Saadoon, ‘FIDIC in the Middle-East’, 2007.

11 Kingdom of Saudi Arabia Public Works Contract Form

12 Aecom, ‘Middle East Property & Construction Handbook 2021.

13 [https://www.lexisnexis-com.ezproxy.rgu.ac.uk/uk/lexispsl/construction/document/391375/56C2-3Y71-F186-J3JW-00000-00/FIDIC\\_contracts\\_introduction](https://www.lexisnexis-com.ezproxy.rgu.ac.uk/uk/lexispsl/construction/document/391375/56C2-3Y71-F186-J3JW-00000-00/FIDIC_contracts_introduction)

14 Foreword – FIDIC Red Book 1999 and Notes FIDIC Red Book 2017.

15 [https://www.lexisnexis-com.ezproxy.rgu.ac.uk/uk/lexispsl/construction/document/391375/5N6B-C5W1-F186-J3BH-00000-00/FIDIC\\_contracts\\_introduction\\_to\\_the\\_Red\\_Book\\_1999](https://www.lexisnexis-com.ezproxy.rgu.ac.uk/uk/lexispsl/construction/document/391375/5N6B-C5W1-F186-J3BH-00000-00/FIDIC_contracts_introduction_to_the_Red_Book_1999)

16 Foreword – FIDIC Yellow Book 1999 and Notes FIDIC Yellow Book 2017.

Again, the general conditions set out the risks allocated to the Parties.

Several changes have been introduced into the 2017 editions of the Red and Yellow Books, the most significant among these changes are listed below:

- (1) Changes to the contract structure;
- (2) The role of the Engineer;
- (3) Risk allocation; and
- (4) Changes to dispute resolution.

Obtaining expert advice and input during the decision-making process for procurement and contracting strategies is crucial to a successful project.

### Construction Solutions

For more than 15 years, FTI Consulting has provided **multidisciplinary solutions** to complex challenges and opportunities in the Middle East. FTI Consulting professionals combine their unique depth of experience and local knowledge with the know-how of a global advisory firm. FTI Consulting has experience with the procurement and contract strategies listed above and currently works on various projects that are delivered using these methods.

To learn how FTI Consulting can help you to successfully execute your project, please feel free to contact us on the details below.

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