



Government of **Western Australia**
Department of **Treasury**

Strategic Asset Management Framework

Alliance Contracting Policy



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Introduction

Governments aim to achieve a broad range of social, environmental and economic objectives on behalf of their communities through the delivery of capital and non-capital programs. Capital infrastructure projects can be delivered using a number of different procurement methods, which should be selected and applied based on a thorough analysis of project characteristics and risks. Further guidance on procurement planning is available in the Business Case module as part of the Strategic Asset Management Framework (SAMF).

In alliances, the State agency delivering the project works collaboratively with private sector parties in procuring major capital assets, and agrees to take uncapped risks and share opportunities¹. The use of alliance contracting is appropriate when it can be demonstrated that an alliance approach will deliver value for money over other alternatives.

The purpose of this policy is to establish the principles, governance and approval framework to be applied by agencies using the alliance delivery method, and to consolidate the positive outcomes of alliance contracting to ensure it is applied appropriately. The key benefits of alliance contracting include that the parties are incentivised to work co-operatively to complete the project within the time and budget forecasts in the approved business case and/or project definition plan (PDP), to find the best solutions for the project (rather than solely their own interests) and to work quickly and collaboratively to resolve issues as they arise. Agencies are using alliance contracting to capitalise on such benefits.

This policy is underpinned by the following principles:

- Governments should ensure public accountability and transparency, and protect the public interest.
- Each project should achieve value for money in line with business case/PDP commitments.
- Market engagement for each project should be efficient and effective.

The application of these principles assists in further developing the alliance delivery method as one of the key procurement strategies that government agencies can use to deliver select infrastructure projects.

¹ In alliancing, the project team is integrated. It is required to act in good faith, with integrity, keep to certain principles (such as 'no blame') and make unanimous decisions and recommendations on all key project issues. The concept of the collective assumption of risk applies in alliance contracts where the alliance participants bear all risks equitably (although not equally regarding financial consequences).

Policy Statement and Application

Value for money is the key driver of all procurement decisions, including the use of alliance contracting to deliver and/or operate infrastructure. For complex projects with high risks which cannot be fully dimensioned, alliancing can potentially offer the best procurement strategy to achieve the Government's investment objectives. The alliance approach allows such risks to be worked through collaboratively as the project develops.

The planning and implementation of all alliance contracting by agencies should be consistent with this alliancing policy² and the broader SAMF of which this policy is a part.

It is also important for all agencies contemplating alliance contracting to benchmark their planning and procurement practices against other relevant policy and practice guidelines, including the National Alliance Contracting Guidelines³.

² This policy applies to alliance contracting for the government sector. For convenience, the reference to 'agency' is used to mean any government-owned entity, including departments. In the alliance contracting context, the agency is commonly referred to as the 'owner'.

³ Released by the Commonwealth Government Department of Infrastructure and Transport in July 2011.

Policy Principles

The following principles underpin the Government's support for alliance contracting.

Public Accountability and Public Interest

Ensuring Public Accountability for Project Delivery

Agencies and their public officials are accountable for the use of public funds and the consequences flowing from their use, and for successful project delivery. This accountability is best demonstrated by agencies working to clear objectives in a transparent way, accepting responsibility for their decisions and actions, striving to make the best use of public resources, and submitting themselves to appropriate scrutiny⁴.

One of the risks with alliance contracting is that the adoption of a collaborative or a best for project approach to commercial negotiations or conflict resolution may not always be enough for agencies to satisfy public standards of accountability. In addition, it is important for agencies to always maintain an equal, balanced relationship with the private sector alliance participants. If an agency forms relationships with these alliance participants which are too familiar or lopsided, the benefits that should be gained from a collaborative approach to project delivery could be put at risk. For example, the benefit might be lost when the agency depends too heavily on the private sector proponent for information and advice, when the agency is 'captured' by them, or when the agency's responsibility to Government is compromised by this dependency⁵.

It is important for an alliance contract to have a governance framework that clearly identifies the roles and responsibilities of all alliance participants. In particular, a clear distinction needs to be made between the 'owner', and the 'non-owner participants' who are part of the alliance. The owner entity with ultimate accountability (which can be a Minister, the departmental head, the agency's Board etc) may delegate certain limited responsibilities to its nominated representatives in an alliance.

⁴ Paraphrased from the Victorian *Public Administration Act 2004*.

⁵ These matters are discussed in *Guidelines for Managing Risks in Direct Negotiation*, NSW Independent Commission Against Corruption (ICAC), 2006.

Irrespective, owners cannot delegate their accountability to the State for delivering agreed investment outcomes. These outcomes should be fully articulated in the business case and PDP and include both the longer term delivery of the service benefits to the community and the capital project that the owner considers is required to enable the benefits to be realised. It is also important for the legal framework to preserve the owner's capacity to assert and enforce the State's rights.

Making Sure the Public Interest is Protected

An agency may have satisfied the public interest⁶ in managing the public funds used to deliver an alliance project efficiently, economically and effectively, but it is also important that the agency is actually 'seen' to have achieved this. This means that the agency should, independently from the alliance, verify and ensure that the public interest is being protected throughout the life of the alliance.

Alliance contracting relies on parties acting with the highest levels of integrity and having open and transparent information sharing about opportunities and risks for optimising the Government's agreed outcomes. Alliancing usually incorporates the 'open book' principle and, for this to be effective, it is important for agencies to have advisers who are able to fully understand and provide advice on the open book details, independently of the alliance. The agency will benefit from this independent advice by having clear project specifications, accessing benchmarking data and understanding how project costs have been developed. The benefits of early engagement and information sharing will also be felt during the project delivery stage by providing a common basis for the early identification of emerging problems and the implementation of corrective measures.

Before making any commitments to proceed, or signing any form of contract with any preferred party, the agency should satisfy itself that the final (or negotiated) tender proposal is cost effective, that the total price is consistent with best-in-market values and that the project deliverables are consistent with the approved business case. It is important that the State's legal position and its commercial exposure are always transparent and well understood by the agency.

⁶ The NSW Ombudsman (in Public Sector Agencies fact sheet No.16, June 2005) described the concept of the 'public interest' as referring to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens. It is generally recognised that the phrase is incapable of precise definition, as there is no single and immutable public interest.

Ensuring Government Approvals are in Place

In addition to the general processes for approving infrastructure projects that apply to each Government department and agency, this policy requires a further approvals process to be followed for:

- all project alliance contracts (irrespective of the value of the contract); and
- any program alliances (including alliances for ongoing operations and maintenance).

This approvals process requires the endorsement of the agency's Portfolio Minister at each of the following stages:

- on completion of the procurement plan, before the start of formal market engagement activities, tender processes and the public release of tender documents; and
- before executing contracts and any other forms of agreements with preferred alliance parties.

The approvals process required by this policy is shown in **Appendix A** at the end of this document.

Value for Money

Preparing the Business Case and Project Definition Plan in Line with Government Guidelines

Government relies on a comprehensive and robust business case and PDP from the agency, with clear and transparent assessments of the proposed investment and the procurement strategy, so it can decide whether to support any one investment proposal against competing priorities for public resources. The business case and PDP should be prepared by agencies in accordance with SAMF.

Any recommendation to proceed with an alliance procurement strategy to deliver the proposed investment must be supported by a robust procurement options analysis.

Where an agency intends to establish a program alliance⁷, this policy still requires the agency to show the superior case for using alliance contracting to deliver the project(s) and for selecting the program alliance approach.

Articulating and Reporting on the Value for Money Proposition

It is necessary for the agency to articulate both the price and non-price elements of the value for money proposition in the business case, including:

- the service delivery benefits;
- relevant service delivery and capital budgets developed on a whole-of-life basis; and
- cost contingencies for risks, and the assumptions underlying them.

The business case (as refreshed by the PDP) and the value for money proposition therein, represent the agreement between the agency and the Government. The approved business case and PDP will subsequently direct and benchmark planning, negotiation and implementation activities for the alliance.

Within six months after the alliance completes the project, the agency should provide the Minister with a value for money report on outcomes achieved by the alliance. This should be in the form set out in the National Alliance Contracting Guidelines.

Ensuring Symmetry of Capability and Capacity

A key value for money driver and critical requirement for effective procurement is the agency's ability to effectively negotiate and manage commercial issues with the private sector. To protect the public interest and achieve optimal value for money outcomes, agencies should make sure that they have, and are able to apply, sufficient capacity and capability to conduct alliance contracting. In particular, it is important for the agency to apply commercial good sense to all procurement activities.

⁷ A program alliance is a series of discrete projects or work packages delivered under a single 'umbrella' alliance agreement.

The agency should ensure that efficient and effective market engagement occurs throughout the planning, evaluation, implementation and post-delivery phases of the alliance project. Appropriate mechanisms should be put in place upfront to ensure the agency is able to fully benefit from a collaborative approach, and does not suffer any disadvantage from a mismatch to the capacity and capability of non-owner participants from the private sector.

The application of adequate resources to the project will put the agency in a better position to achieve the benefits of the alliance delivery method. By involving people with the requisite experience in managing the project, the agency is likely to achieve better alignment between the alliance participants, and therefore more robust decision-making processes within the alliance. The agency should provide people with sufficient seniority and expertise to provide active leadership in the alliance.

Using External Advisers and Service Providers

In alliance contracting, agencies generally agree to take uncapped project risks and share opportunities. Therefore, to protect the public interest, it is important for the agency to maintain active commercial engagement and be ready to participate in a large number of commercial decisions for the life of the alliance. It is in both the agency's and non-owner participants' interests that the owner brings appropriate commercial expertise and authority to the alliance. The process of allocating resources to establish and implement an alliance contract requires the agency to adopt a multi-disciplinary approach. For example, the agency will need to ensure that the proposed alliance contract has been fully considered from a commercial perspective, as well as from a technical perspective.

Agencies may use external advisers (contractors or consultants) and service providers to assist with planning and engaging with alliance proponents. However, it is important for public officials to ensure that they maintain the key leadership and decision-making roles for the alliance project. The agency should be conscious that suppliers, external advisers and service providers in the market may otherwise be able to shape the alliance approach, structure and arrangements in ways that are not in the agency's or the public's interest. Given that the agency will ultimately be accountable for protecting the public interest, public officials should take the lead in first making any recommendation to undertake a project through alliancing, and second, in deciding on the best way to structure a specific alliance to achieve the State's investment objectives.

Efficient and Effective Market Engagement

Ensuring an Efficient and Effective Procurement Process

The Government will only allocate public resources to procurement processes that add optimal value to the public interest, and will seek to ensure that these procurement processes promote the efficient use of resources from participating private parties. As such, it is important that an agency only start a market engagement process that has already obtained Government approval.

Procurement processes are best selected and tailored to deal effectively and efficiently with the known complexities and risks of a specific project, and in order to optimise value for money outcomes. Alliance contracting should only be selected after a robust analysis has been undertaken to determine whether it is the most appropriate procurement method in the circumstances. Where the Government approves a recommendation to proceed with alliance contracting, the specific strategy and structuring of the alliance should be detailed before approvals for market engagement are sought.

As part of the market engagement process, agencies should make clear to the alliance proponents when the alliance will formally begin (including the agreed principles such as 'no blame', 'good faith' and 'best for project'). The formal alliance should only start once the commercial negotiations have finished and the project alliance agreement has been executed by both parties.

Ensuring Effective Competition and Contestability

Competition and contestability are the standard requirements for selecting Government suppliers. These requirements are the foundation stone of public procurement. They strengthen incentives to innovate, ensure that resources are allocated efficiently, and provide the most effective way of driving, achieving and demonstrating value for money. Although alliances rely on collaboration between the alliance participants once the alliance is established, it is still important for competition and contestability to be applied to the procurement of alliance contracts, including to the selection of Government advisers, non-agency parties in an alliance and service providers who are not part of an alliance.

Consistent with Government procurement policy and the need for accountability, agencies must ensure that the process for selecting alliance parties incorporates efficient and effective competition, contestability and transparency for maximising value for money outcomes. Any departure from price competition being a key tender selection criterion for a proposed alliance project or program needs to be supported in the business case, PDP and/or procurement options analysis, and endorsed by the Portfolio Minister in an approved procurement plan⁸.

Also consistent with Government procurement policy is the need to ensure contestability and promote new market entrants. This means that potential bidders should have the opportunity to participate in a tender process even if they have no prior experience with alliance contracting.

Engaging the Market under Constrained Conditions

Governments striving to respond to compelling community needs may set priorities that require a project to be completed in the fastest possible time. The collaborative processes in the alliance delivery method may, in select cases, allow the project to commence earlier than an alternative procurement methodology. However, there may be a cost premium associated with this early start, and therefore it is important for the business case and/or procurement options analysis and plan to fully alert Government decision-makers to this premium.

The business-as-usual approach to project delivery should be to determine what is best for the State and for the project. Accordingly, this policy does not support alliance contracting as the default approach to delivering an infrastructure project. Agencies should ensure that alliancing is used when it is the best procurement strategy to achieve the Government's investment objectives and has the best potential to offer value for money, and not when the business case has been inadequately planned, simply because significant time pressures apply to project delivery, or when the project's scope is poorly defined.

Ensuring Appropriate Training for Public Officials

Agencies should ensure that public officials who participate in an alliance team or leadership group are appropriately trained and supported.

⁸ Detailed guidance on how agencies should apply price competition in alliance contracts is contained in the National Alliance Contracting Guidelines.

Appendix A: Alliance Tasks and Approvals



