Project Delivery.

Which method is right for your project?

Delivering a successful project requires more than just a concept, it demands meticulous planning, strategic execution and the selection of the right delivery method. In the Construction Industry, choosing the right project delivery model can mean the difference between success and costly delays or worse. From Construct Only, Design and Construct, Construction Management, Managing Contractor/Engineering, Procurement and Construction Management (EPCM), to Engineer, Procure and Construct (EPC) models, each method has unique advantages and challenges.

In this article we discuss Project Delivery including project terminology, pricing options, standard form contracts and a brief exploration of common project delivery methods, plus more complex Alliance Contracting and Financed Projects.

The terminology

<u>Who?</u>

There are many variations when it comes to contracts and project delivery methods but for most projects, and present purposes, the Client will usually be called the “principal”, “employer” or the “owner”. The Main Contractor will be called the “Contractor”, “Builder” or the “EPC Contractor”. The “Principal’s Representative” will be called “Superintendent”, “Engineer”, “Contract Administrator”, “Employer’s Representative” or “Architect”.

Other “who” terminology includes Consultants, Sub-contractors, Suppliers, Maintenance Contractors and Financiers/Lenders.

<u>Contract Types</u>

In Project Delivery, there are typically two types of contract – Standard Form and Bespoke Contracts. Standard Form contracts typically take the form of Australian Standard Contracts which are then adapted to suit the project being undertaken. Bespoke Contracts are contracts that are developed for a particular entity (like a Principal) or for an individual project and usually only used for by that entity or for that project. In all instances, there should be a contractual relationship between all parties that will be working on a project, including for example, contractors, consultants, sub-consultants and sub-contractors.

<u>Pricing Structures</u>

The Contract will specify the pricing structure for the project. The most commonly used pricing structures include Lump Sum, Cost Plus, Schedule of Rates, Bill of Quantities and Guaranteed Maximum Price. The pricing structure that is used on a project will usually be dependent on the type of project and the common practice for pricing in the relevant market or industry.

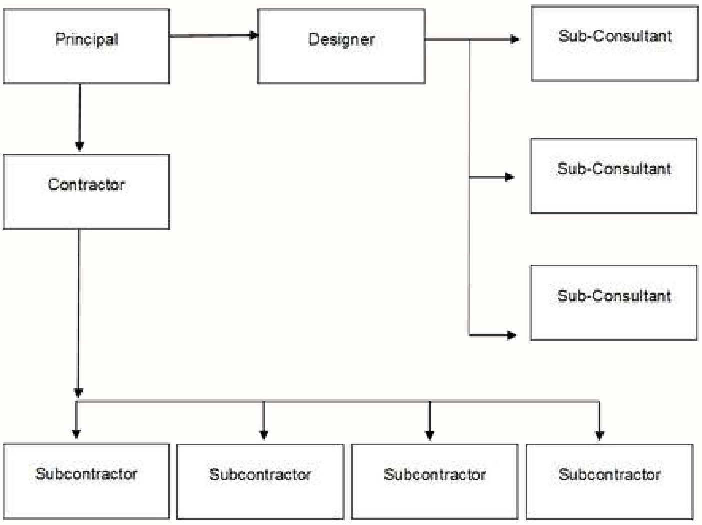
Traditional contract methods

<u>Construct Only without Contract Administrator</u>

The most simple contract structure is often referred to as Construct Only. This is where the Principal provides the completed design to the Contractor to construct and the Contractor only takes the risk for the proper construction of the project according to the design. If the design is inadequate or changed, that is the Principal’s risk. This type of project is often delivered via Standard Form Contracts, namely the AS2124-1992 or AS4000-1997. However, in recent times, there has been an increasing trend for Principals to use bespoke contracts.

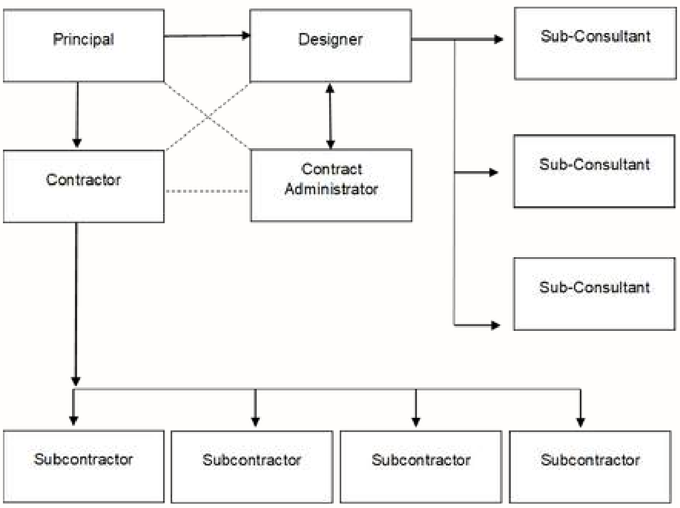
Construct Only without Contract Administrator

This is primarily due to the age of the above Standard Form contracts meaning that significant amendments are often required to bring them up to date with modern legislation and practices, so a bespoke contract can often cost a similar amount, but can be better tailored to the specific needs of the party or project.



Construct only contracts can also be delivered with the addition of a contract administrator being engaged to help the Principal and Designer with the administration of the contract and project. This is often very worthwhile for less experienced Principals, or Principals whose primary job isn't property development/project delivery.

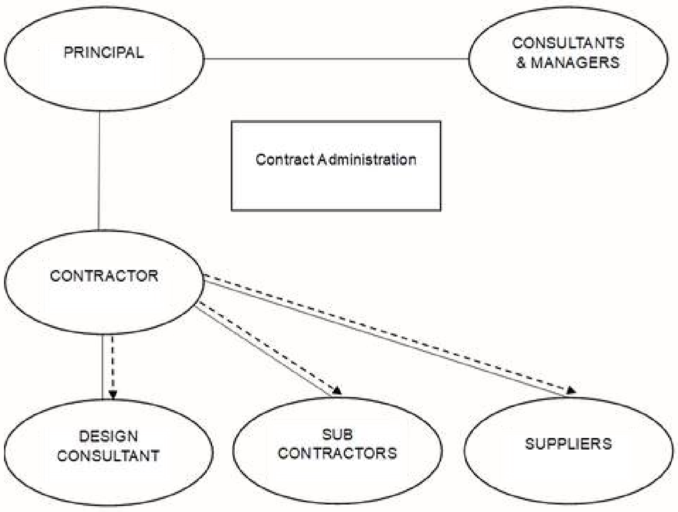
Construct Only with Contract Administrator



Design and Construct

The Design and Construct project delivery model is where the Contractor is responsible for both the design and construction of the Project. In this model, the Principal will provide the Contractor with a Project Brief, which will detail the Principal's Project Requirements for the design and construction. The Contractor is then responsible for developing the design in accordance with the Principal's Project Requirements and then constructing the design. This project delivery method may involve novation of preliminary design contracts from the Principal to the Contractor, or the Contractor taking over a partially completed design, and may require a consideration of fitness for purpose obligations for the Principal to ensure their interests are protected.

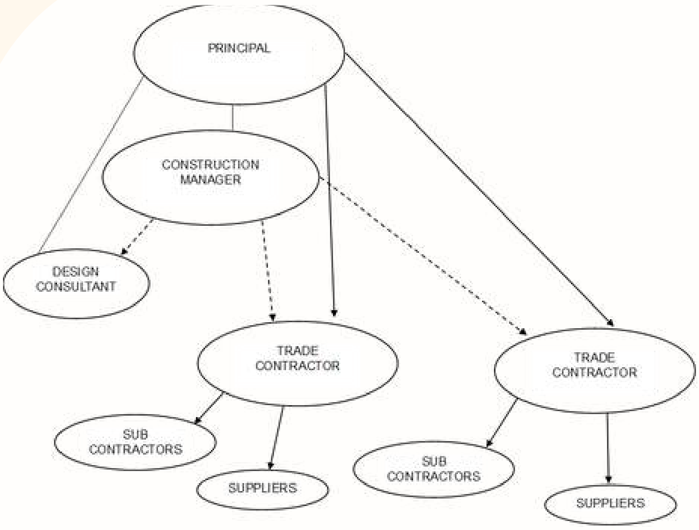
Often, Standard Form Contracts such as AS4300-1995 and AS4902-2000 are used for the delivery of Design and Construct projects. However, similarly to construct only contracts, there has been a shift in recent years to the use of bespoke contracts due to the ability to tailor the contract specifically to the project.



More complex project delivery models

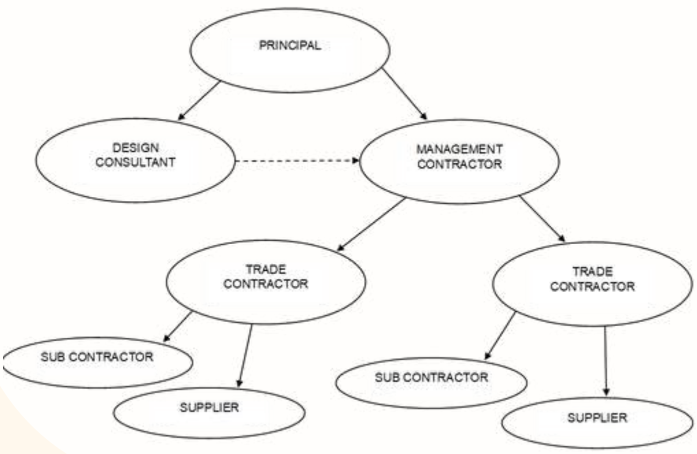
Construction Management

The Construction Management project delivery model is essentially a works package or project management form of delivery. Usually, the Construction Manager is paid a fixed fee or percentage margin to manage the project and the Principal will engage the Trade Contractors directly.The Construction Manager takes on the responsibility of ensuring the quality of the project, however, they usually don't take on any risk for time or budget. Often Construction Managers are engaged under a Standard Form contract such as an AS4916-2002.



Managing Contractor

The Managing Contractor model involves a Contractor being engaged as a managing contractor to organise and coordinate the works. This works similarly to a design and construct model, with the managing contractor responsible for engaging subcontractors to carry out the whole scope of the work. However, it differs from a design and construct model in that the Principal usually has a higher degree of control over which subcontractors are used, the managing contractor is usually engaged earlier than a design and construct contractor would be, and that early engagement is possible because the pricing is not usually on a lump sum basis. The Managing Contractor will instead be paid a mix of fixed amounts or rates and reimbursements, including a fixed amount or rate for the project management services it carries out. This increases the cost uncertainty for the Principal at contract entry, but means the Principal can benefit from early and continued collaboration with the Managing Contractor. This is especially useful for projects with complex design issues, where collaboration and the resulting possible innovation and efficiency is particularly desirable.



Engineering, Procurement and Construction Management (EPCM)

The Engineering, Procurement and Construction Management (EPCM) project delivery model is similar to the Managing Contractor model, in that the Contractor is responsible for managing the engineering, procurement, construction and management of the works. The EPCM Contractor will often contract with design subcontractors to assist with the engineering, procurement and management of the work, but then the Principal usually contracts directly with construction subcontractors (which is a key difference from the Managing Contractor model). Those construction subcontractors are then supervised by the EPCM Contractor as part of their scope of work. Commonly, the EPCM Contractor is paid a fixed management fee or percentage margin, and the actual costs for the different trade packages are incurred directly by the Principal.

These contracts have seen a rise in popularity recently in the major projects space, and are particularly useful where there are significant technical matters for the EPCM Contractor to assist with, but it is still preferable for the Principal to maintain a large amount of direct control over its construction subcontractors. This can make projects faster, reduce the risk premium charged by the contractor, and allow the Principal to make use of the EPCM Contractor's expertise at an earlier stage of the project than they otherwise could. The converse of that is that the Principal often bears more cost uncertainty, since the project costs won't be clearly known at the time the EPCM Contractor is engaged.

Engineer, Procure and Construct (EPC)

The Engineer, Procure and Construct or EPC project delivery model involves the engagement of a Contractor to undertake the engineering of the project, the procurement of construction contracts and the construction of the project. It is in that way similar to a design and construct model, but is used particularly for complex engineering projects – often where functionality is the emphasis over form or aesthetics. The focus of the principal's requirements is therefore often on performance criteria. We see these kinds of contracts (and EPCMs also) used for things like power stations, major plants, and mining infrastructure.

Alliance Contracting

Alliance Contracting, commonly known as Relationship Contracting, involves a conglomerate of parties joining together to deliver a project where the interests of the parties to the alliance are mutual. This type of delivery model is commonly used for large scale projects that have multiple parties interested in the successful delivery of the project. Under this model, there is a bespoke risk allocation between the parties compared to a traditional project, often with greater incentives for the parties built in - frequently referred to as painshare or gainshare.

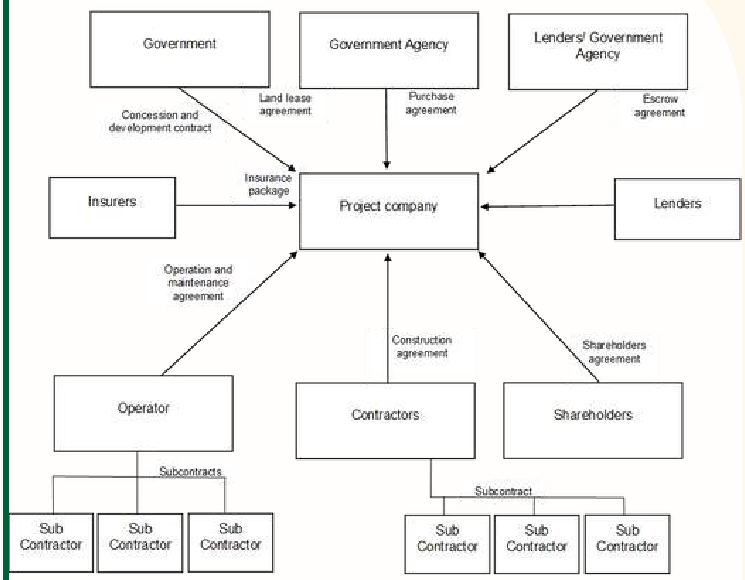
The Alliance Contracting model is typically delivered through bespoke contracts that are specifically drafted to suit the project being undertaken and the particular risk allocation between the parties. Alliance Contracting refers more to the relationship between the parties and the way the project is organised, rather than a particular contract structure being used – so can be used in conjunction with several of the other contract models discussed in this article.

Financed Project

The Financed Project form is a more sophisticated and complex approach to project delivery. In this model, there will usually be a project company that is established for the sole purpose of the project with multiple interested parties involved in the company. Due to the sophistication and complexities associated with this model, standard form contracts are not used, and a completely bespoke contract will be developed. Examples of this arrangement include BOOT (build, own, operate, transfer); BOO (build own, operate); DCFO (design, construct, finance, operate); and DCFM (design, construct, finance, manage).

These kinds of structures lend themselves well to no or low capital cost projects, where the deliverable (e.g. solar farm, recycling plant) can generate revenue and contribute to paying for itself over time.

Example of Privately Financed Project



We will be discussing all of these matters in more detail in our upcoming seminar series on 11 December 2024.

In the meantime, if you have any questions in relation to choosing the correct project delivery model for your project, please don't hesitate to reach out.

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