



# **Two Stage Design and Construct Contracts – Guide to Collaborative Contracting**

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## GUIDE TO COLLABORATIVE CONTRACTING

### 1. PURPOSE

- (a) The Queensland Government’s two stage (design and construct) building construction contract templates published on the Queensland Government’s website are collaborative forms of contract. The term “collaborate” literally means to “work jointly”.
- (b) Under the Queensland Government’s two stage (design and construct) building construction templates, collaborative principles are incorporated through terms which require the parties to work jointly, co-operatively and in good faith, while facilitating meaningful early involvement of the contractor in the design process. However, the benefits that can be achieved through the collaborative contract terms will not be realised without effective contract management from the parties.
- (c) In this Guide, contract management refers to the functions and activities of the parties, in forming and performing a collaborative contract for delivery of a Queensland Government building construction project. It addresses functions and activities which may be carried out or overseen by the roles of project managers or contract administrators.
- (d) This Guide supports the successful delivery of Queensland Government building construction projects under its two stage (design and construct) building construction templates, by providing guidance about effective contract management, addressing key stages of the contracts, with the objective of ensuring that the benefits of the collaborative contracts are realised.

### 2. USE

- (a) This Guide should be read in conjunction with the Queensland Government’s two stage (design and construct) building construction templates currently published on the Queensland Government website, being:
  - Early Contractor Involvement (ECI) contract
  - Managing Contractor (MC) contract.
- (b) This Guide is not a comprehensive “how to” manual for contract management, nor does it address every contractual requirement. Instead, it describes a collaborative contract management approach in respect of the key stages of delivering a project under the Queensland Government’s two stage (design and construct) building construction templates.
- (c) This Guide assumes that its users have foundational knowledge, skills and experience in the delivery, and more particularly the contract management, of Queensland Government building construction projects.
- (d) The guidance provided should be considered for suitability and adapted for each project, in accordance with specific project requirements.
- (e) This Guide does not form part of any contract for the delivery of a Queensland Government building construction project. While every effort has been made to ensure its accuracy, completeness and alignment with the Queensland Government’s two stage (design and construct) building construction templates, the Guide must not be relied upon by any party and no Claim shall arise from it.

### 3. INTERPRETATION

(a) Generally:

- Words or phrases used in this Guide that have a defined meaning are capitalised.
- Words or phrases with a defined meaning have the meaning given to them in this Guide, or otherwise have the meaning given to them in the Queensland Government's two stage (design and construct) building construction templates.

(b) The following words or phrases used in this Guide, in either their singular or plural form, have the meaning given to them as follows:

- **Two Stage Contract** is used to refer to either one or both of the two stage (design and construct) building construction templates published on the Queensland Government website.
- **Contractor** is used to mean either the Managing Contractor or the Contractor or both, as those terms are defined in the Two Stage Contracts.

### 4. OVERVIEW

#### 4.1 Collaborative Contracting Models

- (a) The term “collaborative contracting” describes a wide and flexible range of approaches to managing the relationship between a project owner and other project participants, based on a recognition that there can be mutual benefit from a more collaborative relationship.
- (b) The Two Stage Contracts sit on the spectrum of collaborative contracting models. Towards the less collaborative end of the spectrum, contracts are often single stage and risks are generally allocated to a particular party, with pricing fixed at commencement of the contract. At the other end of the spectrum, all commercial risks and rewards are shared in what is typically a multi-staged process.
- (c) Unlike single stage design and construct contracts, where the Contractor provides a fixed price to deliver the Principal's scope and quality within a fixed time, the Two Stage Contracts require the Principal and the Contractor to collaborate to optimise cost, time, scope and quality outcomes, within stipulated constraints.
- (d) The Two Stage Contracts strike a balance between leveraging the benefits of collaborative contracting while ensuring the objectives of government, including demonstrated value for money, are achieved.
- (e) Value for money has traditionally been demonstrated through the competitive tendering process, where tenderers are required to respond to, and make commitments about, both price and non-price criteria for the delivery of the project.
- (f) Under the Two Stage Contracts, value for money is achieved through a combination of competitively tendered components and appropriate constraints on commitments following the collaborative work of the parties.
- (g) **Table 1** provides a broad overview of project delivery under the Two Stage Contracts. A comparison of the cost features of the Two Stage Contracts is set out in **Table 2**.

**TABLE 1 – Overview of the Two Stage Contracts**

<p><b>Tender Documents</b></p> <ul style="list-style-type: none"> <li>• Prepared by the Principal and its consultants.</li> <li>• Comprises four discrete volumes: Tender Requirements, Conditions of Contract, Schedules and Project Brief.</li> <li>• Stipulates the Principal's budgeted allowance for: <ul style="list-style-type: none"> <li>○ Construction Work under the MC contract (Project Construction Cost Estimate), or</li> <li>○ delivery of the project under the ECI contract (Project Cost Estimate).</li> </ul> </li> <li>• Stipulates the Principal's target Date for Practical Completion.</li> <li>• Describes the Principal's project requirements including performance, scope, quality, functional and technical requirements in the Project Brief.</li> </ul>
<p><b>Tender</b></p> <ul style="list-style-type: none"> <li>• Tenderers offer their fees, management team (supported by a costed methodology), consultant team, and respond to non-price criteria.</li> <li>• Tenderers do not tender the cost of performing: <ul style="list-style-type: none"> <li>○ Construction Work under the MC contract (Guaranteed Construction Sum), or</li> <li>○ the work of delivering the project under the ECI contract (Contract Sum).</li> </ul> </li> </ul>
<p><b>Contract Award</b></p> <ul style="list-style-type: none"> <li>• Principal accepts a Tender by way of letter of acceptance of tender, subsequently formalised by deed.</li> <li>• Contractor is initially engaged to perform Stage One only.</li> </ul>
<p><b>Stage One</b></p> <ul style="list-style-type: none"> <li>• Early contractor involvement stage.</li> <li>• Contractor engages its consultant team and works collaboratively with the Principal to determine the optimum solution for the project in terms of cost, time, scope and quality, that will satisfy the Principal's requirements.</li> <li>• Contractor undertakes Design Work and may undertake Documentation Work and Early Works if directed by the Principal's Representative.</li> <li>• Contractor prepares the GCS Offer / Stage Two Offer.</li> </ul>
<p><b>GCS Offer (MC contract) / Stage Two Offer (ECI contract)</b></p> <ul style="list-style-type: none"> <li>• Made during Stage One following a written request from the Principal's Representative.</li> <li>• Must be in accordance with the requirements of the Contract.</li> <li>• Must include (at minimum) a Guaranteed Construction Sum / Contract Sum, the Date for Practical Completion, a revised Project Brief, the "point in time" Design Work and list of performance warranties.</li> <li>• The Principal must accept or reject the GCS Offer / Stage Two Offer.</li> </ul>
<p><b>Stage Two</b></p> <ul style="list-style-type: none"> <li>• Stage Two is incorporated into the Contract only if the Principal accepts the GCS Offer / Stage Two Offer.</li> <li>• Contractor completes all remaining Design Work and the Principal's Representative approves the Developed Design.</li> <li>• Contractor completes the Documentation Work and Construction Work.</li> <li>• Final accounting is undertaken following maintenance and defects liability periods.</li> </ul>

**TABLE 2 – Overview of cost features of the Two Stage Contracts**

<b>Managing Contractor contract</b>	<b>Early Contractor Involvement contract</b>
Integrates early contractor involvement seamlessly into a single contract, with tendered fees and a guaranteed maximum price for Construction Work.	Integrates early contractor involvement seamlessly into a single contract, with a lump sum price for full delivery of the project.
Secures, upon contract award, competitively tendered fees, including fees of Consultants, and commitments to appropriate constraints on adjustments to those fees and the cost of Construction Work.	Secures, upon contract award, competitively tendered fees, including fees of Consultants, and commitments to appropriate constraints on the lump sum price, inclusive of the fees.
During Stage One, the Contractor must work to ensure that the guaranteed maximum price for Construction Work, referred to as the Guaranteed Construction Sum (or GCS), will not be greater than the Principal's budgeted allowance, referred to as the Project Construction Cost Estimate (or PCCE).	During Stage One, the Contractor must work to ensure that its lump sum price (inclusive of all fees) for delivery of the project, referred to as the Contract Sum, will not be greater than the Principal's budgeted allowance, referred to as the Project Cost Estimate (or PCE).
If Stage Two proceeds, Construction Work is performed under competitively tendered Subcontracts and the Contractor is paid the fees, plus the actual cost of the subcontracted work (minus stipulated exclusions) up to the Guaranteed Construction Sum.	If Stage Two proceeds, the Contractor delivers the project and is paid the Contract Sum.
Suited to very complex projects, where early contractor involvement is beneficial, where sharing of the cost risk of Construction Work is warranted following the collaborative work of the parties during Stage One.	Suited to complex projects where early contractor involvement is beneficial, where the cost risk of delivering the project is reasonably quantifiable as a lump sum following the collaborative work of the parties during Stage One.

## 4.2 Organisational Capability Requirements

- (a) The full benefits of the Two Stage Contracts will be realised where the Principal and the Contractor have the organisational capability to effectively manage early contractor involvement and incorporate, where appropriate, innovative and value engineered solutions.
- (b) Core competencies in project and contract management, and a working knowledge of relevant Queensland Government policies and applicable legislation, are fundamental to the successful delivery of any Queensland Government building construction project. However, collaborative contracting also demands a shift away from the traditional hard dollar, risk allocated approach to the delivery of building construction projects.
- (c) Further, as a contracting model moves along the spectrum from the traditional hard dollar, risk allocated approach to a collaborative contracting model, the complexity of the contracting model typically also increases.

- (d) Under the Two Stage Contracts, the parties commit to the following behaviours:
- encouraging cooperation and innovation
  - establishing and maintaining an environment which encourages honest, open and timely sharing of information
  - sharing and transferring such behavioural aspects to all persons associated with the work under the Contract, to achieve a successful outcome in all respects
  - doing all things reasonably expected by the other party and by the Contract, and not impeding or restricting the other party's performance.
- (e) Under the Two Stage Contracts, the parties must not disregard or abandon the requirements of the Contract, but they are expected to perform the requirements of the Contract in a collaborative way.
- (f) As such, to successfully deliver a project under a Two Stage Contract, project participants need the knowledge, skills and experience to understand the requirements of the Contract in the context of the project, as well as the ability to apply those requirements in a way that is collaborative.

## **5. PREPARATION OF TENDER DOCUMENTS**

### **5.1 Overview**

- (a) Project delivery under a Two Stage Contract is initiated with preparation of the Tender Documents.
- (b) Tender Documents for the Two Stage Contracts comprise four volumes:
- Volume 1: Tender Requirements, including Tender Form and Notice to Tenderers
    - standard Queensland Government Conditions of Tender, with Schedules to be completed by the Principal providing tender/project specific information
    - Tender Form, with project specific information to be inserted by the Principal (noting this form is to be completed and returned by Tenderers with their Tender)
    - Notice to Tenderers, to be completed by the Principal to bring particular matters to the attention of Tenderers (noting this notice cannot be relied upon by Tenderers and does not form part of the Contract).
  - Volume 2: Conditions of Contract
    - standard Queensland Government Conditions of Contract, with an Annexure to be completed by the Principal.
  - Volume 3: Conditions of Contract Schedules
    - includes both standard Queensland Government forms, and Schedules to be completed by the Principal stipulating project specific requirements.
  - Volume 4: Project Brief
    - to be completed by the Principal stipulating specific requirements for the delivery of the project.

## 5.2 Consultants

### *Minimum Consultancy Services:*

- (a) Under the Two Stage Contracts, the Contractor is responsible for engaging and managing Consultants to perform the Design Work and Documentation Work during both Stage One and Stage Two. While the consultancy services are therefore a matter for the Contractor, who must ensure that it delivers the project in accordance with the requirements of the Contract, there is provision in the Conditions of Contract Schedules of the Two Stage Contracts for the Principal to stipulate Minimum Consultancy Services. The Minimum Consultancy Services are a description of the minimum services to be performed by the nominated disciplines.
- (b) It is not mandatory for the Principal to do so, but if the Principal chooses to stipulate Minimum Consultancy Services, they should be limited to those matters that are important to the Principal in relation to the work to be performed by Consultants, noting that the Contractor will still be required to do all things necessary to properly perform the Design Work and the Documentation Work, including in relation to any consultancy services that may be needed in addition to the Minimum Consultancy Services.

### *Listed Consultants:*

- (c) To prepare the Tender Documents, the Principal may have engaged consultants to perform services in relation to the project, including to articulate the Principal's project requirements and prepare a preliminary design.
- (d) In certain circumstances, the Principal may wish to have the Contractor engage those or other consultants to perform the Minimum Consultancy Services, as well as any services in addition to the Minimum Consultancy Services. The Two Stage Contracts do not rely on novation to achieve this. Instead, the Tender Requirements for the Two Stage Contracts provide maximum flexibility to the Principal, by enabling the Principal to list one or (preferably) more consultants for each discipline, and Tenderers are required to select from the listed consultants and engage them to perform the Minimum Consultancy Services if awarded the Contract.
- (e) Where the Principal has previously engaged a listed consultant to perform services in relation to the project, the Principal may include in the Tender Documents details of the Principal's arrangements with the listed consultant, which may include the minimum fee payable to the consultant; however, the Contractor is not obliged to engage the consultant on equivalent terms.
- (f) Where the Principal has previously engaged a listed consultant who has been selected by the successful Tenderer, the Principal's engagement of the consultant must be concluded prior to award of the Tender, to enable the Contractor to engage the consultant and commence the work of Stage One without delay.
- (g) Note that where the Principal lists only one consultant for a discipline in the Tender Requirements, the Principal will be constraining the Contractor's autonomy to select its own consultant for the respective services. Consultants play an integral role in the delivery of the project and therefore, it is important to consider their ability to work collaboratively under the engagement of the Contractor and apply their knowledge, skills and experience to optimise the design solution for the project.



*Principal's consultants:*

- (h) Typically, the Principal will engage and retain a quantity surveyor and programmer to assist with monitoring, assessing and deciding upon cost and time related matters affecting the project during its delivery. In addition, while under the Two Stage Contracts the Principal's Representative may communicate directly with the Contractor's Consultants, consideration should be given to whether the Principal may benefit from its own consultants to support the technical capability of the Principal in any particular discipline or speciality. Where such engagement would be beneficial, the Principal may consider the merits of retaining a previously engaged consultant for ongoing advisory services in relation to the project, rather than listing that consultant in the Tender Requirements and requiring their engagement by the Contractor.

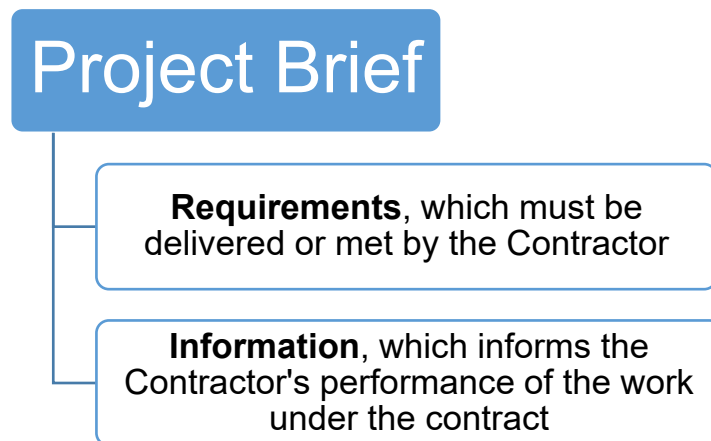
### 5.3 Project Brief

- (a) The Principal's performance, scope, quality, functional and technical requirements for the project are articulated to Tenderers and the Contractor in the Project Brief.
- (b) The Project Brief should comprise the following categories of documentation:
- Requirements
    - This is the part of the Project Brief which sets out the requirements for the project that are to be delivered or met by the Contractor.
    - Project requirements need to be specific and measurable, so that both the Principal and the Contractor can readily recognise when the requirement has been achieved, but they do not need to be prescriptive in respect of the design solution.
    - By describing the performance needs or the outputs that are to be achieved by the design, rather than prescribing the design solution, there is greater opportunity for innovation and value engineering.
    - However, in some cases, a prescriptive description of an aspect of the design solution will be appropriate; for example, where the Principal has a very specific requirement that can only be met in a certain way.
  - Information
    - While there will be specific and measurable requirements for the project which must be delivered or met by the Contractor, there will also be information in the possession of the Principal which will inform the Contractor when delivering the requirements, and this information should be made available to the Tenderers and Contractor.
    - It is recommended that any specific requirements for the project that must be delivered by the Contractor be identified from the information and clearly articulated as a project requirement.
    - Only information that will be informative to the Contractor in performing the work under the Contract should be provided to the Tenderers and Contractor for the purpose of having reasonable and proper regard to it when undertaking Design Work and Documentation Work.
    - If providing information to Tenderers or the Contractor for the purposes of informing the work that they are required to perform, the information should be reliable having regard to the purpose for which the information was created. This

requires the Principal to state in the Tender Documents the scope and purpose of the information provided, and to ensure that the information provided is sound and trustworthy to the extent of the stated scope and to achieve the stated purpose.

- (c) As part of the Project Brief, the Principal may also provide Tenderers and the Contractor with an early design response to the project requirements. The design response will invariably include solutions which have been chosen at the discretion of the Principal’s designer as well as those which have been specifically required by the Principal. Generally, it is recommended that any specific requirements of the Principal that have been captured in the design response are identified and articulated as specific project requirements in the Project Brief, and the balance of the design work can be provided for the Tenderers’ and Contractor’s information only. In this way, except for those things articulated as specific project requirements, compliance with the Principal’s early design response will not be mandatory, maximising the opportunity for innovation and value engineering during Stage One.
- (d) Accordingly, when compiling the Project Brief, the documentation, including any early design response of the Principal, should be clearly identified as either being a requirement for the project which must be delivered or met by the Contractor, or for information which the Contractor must have reasonable and proper regard to when undertaking Design Work and Documentation Work, as illustrated in Diagram 1.

**Diagram 1**



*Preferred Tenderer Tender Requirements:*

- (e) For particularly complex projects, there may be aspects of the Principal’s project requirements which cannot be adequately specified without very early engagement with the Contractor. For example, for a project that has a very constrained site, it may be necessary to understand the possibilities and limitations of the construction methodology, to inform the Principal’s project requirements. In such exceptional circumstances, there is an option to incorporate into the procurement process for the Two Stage Contracts, the Queensland Government’s Preferred Tenderer Tender Requirements.
- (f) The Preferred Tenderer Tender Requirements provide for the Preferred Tenderer to work with the Principal and the Principal’s consultants during the tender process, for a specified period and for which they will be paid a fixed cost, to further develop and refine specific aspects of the Principal’s project requirements, so that upon contract award and the commencement of Stage One, the requirements are clearly stated in the Project Brief.

- (g) Unlike other approaches to very early contractor involvement, the Preferred Tenderer Tender Requirements ensure that competitive tension remains while the Preferred Tenderer works with the Principal, and that the Preferred Tenderer remains motivated to collaborate fully with the Principal, knowing that in doing so it has good prospects of being awarded the Contract.

#### **5.4 Project Construction Cost Estimate / Project Cost Estimate**

- (a) The Conditions of Contract Annexures to the Two Stage Contracts require the Principal to state its budgeted allowance for certain components of cost:
- under the MC contract, the component is limited to the cost of Construction Work and is referred to as the Project Construction Cost Estimate (or PCCE).
  - under the ECI contract, it is the full cost of delivering the project and is referred to as the Project Cost Estimate (or PCE).
- (b) Ideally, the Principal's budgeted allowance should take proper account of all potential cost impacts associated with the progression from the Principal's project requirements stipulated in the Project Brief to a resolved design solution, and further, through documentation to construction.
- (c) When considering the Project Construction Cost Estimate or the Project Cost Estimate, it should be kept in mind that:
- the Project Construction Cost Estimate or the Project Cost Estimate is derived from the Principal's budget allocation for the project, and as such it should be regarded as being fixed. It represents the maximum available funds for the Project.
  - during Stage One, the Principal may revise the Project Construction Cost Estimate or Project Cost Estimate, but is under no obligation to do so, especially since this may require the sourcing of additional funding, which may not be available.
  - any revision of the Project Construction Cost Estimate or Project Cost Estimate must occur prior to receipt of the GCS Offer or Stage Two Offer.
  - when making its GCS Offer or Stage Two Offer, the Contractor must offer a price for the respective components which is not greater than the Principal's budgeted allowance, being the Project Construction Cost Estimate or Project Cost Estimate. Failure to meet this obligation is a substantial breach of the Contract.
- (d) Given the significance of the Contractor's obligation not to exceed the Principal's budgeted allowance, the Tender Requirements provide that, by submitting a Tender, the Tenderer warrants that the Tenderer has satisfied itself of the adequacy and sufficiency of the Principal's budgeted allowance for the performance of the respective work required under the Contract, having regard to the Tender Documents.
- (e) To maximise the efficient delivery of Stage One, the Principal should be similarly satisfied of the adequacy and sufficiency of the budgeted allowance that is stipulated in the Tender Documents for the delivery of the project requirements, before calling for Tenders.
- (f) However, it is important to note that during Stage One, the Contractor is required to work collaboratively with the Principal to refine the Principal's project requirements through innovation and value engineering and deliver, as part of its GCS Offer or Stage Two Offer, a revised Project Brief.

- (g) Accordingly, by submitting a Tender, the Tenderer is backing its own ability to bring innovation and value engineering expertise to the project during Stage One, to propose a design solution that is within the Principal's budget and deliver to the Principal a GCS Offer or Stage Two Offer that meets the requirements of the Contract.

## 5.5 Date for Practical Completion

- (a) The Conditions of Contract Annexures to the Two Stage Contracts require the Principal to insert the Date for Practical Completion. However, by definition, the Date for Practical Completion is the last day of the period of time for Practical Completion provided in the accepted GCS Offer or Stage Two Offer. It is only if there is none that the Date for Practical Completion stipulated in the Annexure will become the Date for Practical Completion.
- (b) Accordingly, establishing a Date for Practical Completion is part of the collaborative work required of the parties during Stage One. Generally, the Two Stage Contracts do not mandate that the Contractor must provide a Date for Practical Completion that is no later than the date stipulated by the Principal, to maximise opportunity for innovation and value engineering to ensure that the project completion time is balanced in relation to other project requirements or constraints.
- (c) Where project completion time is a priority, it is possible for the Principal to stipulate in the Project Brief a requirement that the Date for Practical Completion must not be later than the Date for Practical Completion stated in the Annexure. However, in doing so, the Principal will be introducing a constraint which may restrict or eliminate certain innovations or value engineered solutions that may otherwise have been available to balance competing project requirements, such as those related to cost, quality or scope. Care must also be exercised to ensure that the stipulated date is realistic.

## 5.6 Project Advisory Group

- (a) The establishment, composition and functions of the Project Advisory Group (PAG) provide a governance structure for the project which facilitates collaborative decision-making. The requirements and functions of the PAG are set out in detail in the Two Stage Contracts, but broadly, the PAG is responsible for monitoring, deciding and advising on all aspects of the work under the Contract. Decisions of the PAG require unanimous agreement, and if unanimous agreement cannot be reached, the matter must be decided by the Principal's Representative.
- (b) Given the requirement for unanimous agreement for decisions of the PAG to be taken forward, consideration should be given to the number of its members, to ensure its effectiveness as a decision-making body.
- (c) While the Principal's Representative and Contractor's Representative are mandatory members of the PAG, there is opportunity to include other key project stakeholders or decision-makers from both parties. Given the decision-making function of the PAG, it is important that its members have the appropriate delegation and authority to make decisions.

## 6. STAGE ONE

### 6.1 Overview

- (a) The primary project objective of Stage One is:

***for the Contractor to work collaboratively with the Principal to produce a GCS Offer or Stage Two Offer that meets the requirements of the Contract and is likely to be accepted by the Principal, so that Stage Two of the Contract proceeds.***

- (b) Stage One of the Two Stage Contracts is the stage during which the Contractor undertakes Design Work to advance the design for the project, and may undertake Documentation Work and Early Works if directed by the Principal's Representative.
- (c) The Contractor must engage the consultants nominated in the Contractor's Tender, as well as any other consultants required by the Contractor to perform the Design Work, and must carry out the activities required to be performed during Stage One, as described in the Conditions of Contract Schedules.
- (d) During Stage One, the Contractor is required to work collaboratively with the Principal to optimise outcomes in relation to the following interdependent constraints:
  - Cost
    - with the obligation to provide a Guaranteed Construction Sum or Contract Sum that is not greater than the Principal's respective budgeted allowance, being the Project Construction Cost Estimate or Project Cost Estimate respectively. This is not simply a guideline. It represents the maximum available funds.
  - Time
    - with the objective of arriving at a Date for Practical Completion that will be acceptable to the Principal.
  - Scope and quality
    - with the objective of specifying all of the project requirements in a GCS Offer Project Brief or Stage Two Project Brief that will be acceptable to the Principal.
- (e) The Two Stage Contracts provide for the Principal's Representative to direct Variations to change the Project Brief or incorporate alternative design solutions during Stage One. However, the Principal is not obliged to adjust the Principal's budgeted allowance as a result. Additionally, the Contractor may request a change to the Project Brief and the Principal's Representative may approve or reject the request at their discretion.
- (f) The Two Stage Contracts require the Principal to request that the Contractor provide the GCS Offer or Stage Two Offer, with the timing of the request at the discretion of the Principal, and the Contractor must then provide the GCS Offer or Stage Two Offer within the time stipulated in the Contract.
- (g) Stage One concludes when the Contractor has provided a GCS Offer or Stage Two Offer that meets the requirements of the Contract and the Principal has accepted or rejected it.

## 6.2 Design Work

- (a) During Stage One, the Contractor engages and manages the Consultants to carry out Design Work. Design Work is the work undertaken or managed by the Contractor in response to the Project Brief, which describes the scope, functionality and quality standards for the project that will then be documented, constructed and handed over to the Principal if Stage Two proceeds.
- (b) During Stage One, the Contractor will advance the design for the project to inform the GCS Offer or Stage Two Offer, and in doing so, is required to work collaboratively with the Principal to investigate and consider reasonable options and alternatives that will satisfy the Principal's requirements for the project.

- (c) Stage One therefore demands effective and efficient stakeholder management by the Principal, to ensure that the Principal's requirements for the project are clearly communicated to the Contractor in a timely way. To achieve this, it may be necessary for the Principal to retain its own technical advisors, to provide advice to the Principal and its stakeholders about matters relevant to the scope, functionality and quality requirements for the project.
- (d) The Two Stage Contracts prescribe only one design approval milestone, which is the completion of Developed Design, defined as being the stage when, in the opinion of the Principal's Representative, the scope, functionality and quality standards of the Works are specified with sufficient particularity.
- (e) Appropriately, under the Two Stage Contracts, the Contractor is required to warrant that the Developed Design has been prepared in accordance with, and meets the requirements of, the GCS Offer Project Brief or the Stage Two Project Brief, and is suitable, appropriate and adequate for the purpose stated in the GCS Offer Project Brief or Stage Two Project Brief, each of which are provided at the end of Stage One.
- (f) Accordingly, Developed Design should not be achieved earlier than acceptance of the GCS Offer or Stage Two Offer. This ensures that the innovation and value engineering achieved through the early contractor involvement and collaborative work of the parties during Stage One are incorporated into the Contract and delivered in Stage Two. Conversely, requesting that the Contractor provide the GCS Offer or Stage Two Offer very early in Stage One not only removes the scope for innovation and value engineering, but may also result in the Contractor pricing or excluding risks that might otherwise have been addressed as part of the work of Stage One.
- (g) The progression of the whole of the Design Work and Documentation Work may not be sequential. Where Early Works are directed by the Principal's Representative, the design and documentation of the related Construction Work will need to be completed in advance of the balance of the design and documentation for the project.

### 6.3 Early Works

- (a) Early Works are essentially components of Construction Work that are directed by the Principal's Representative to be performed by the Contractor during Stage One of the Contract. The Principal should consider the benefits and risks of performing Early Works, before they are directed.
- (b) The benefits of undertaking Early Works include:
  - early commencement of Construction Work which may reduce the overall time to project completion
  - early identification and treatment of risks, which may inform the GCS Offer or Stage Two Offer and the extent to which further innovation or value engineering may be needed for the Contractor to produce a GCS Offer or Stage Two Offer that meets the requirements of the Contract.
- (c) The risks associated with undertaking a significant amount of the Construction Work as Early Works include:
  - performance of the related component of Construction Work before Completion of Stage One means that there is no longer opportunity for further innovation or value engineering of that component
  - without astute design and cost management by the Contractor, the requirement for the Contractor to produce a GCS Offer or Stage Two Offer that includes a Guaranteed

Construction Sum or Contract Sum that is not greater than the Principal's respective budgeted allowance may become incrementally more difficult.

#### **6.4 Early involvement of Subcontractors**

- (a) The Two Stage Contracts contemplate that Consultants will be engaged to perform Design Work and Documentation Work, and Subcontractors will be engaged to perform Construction Work through a competitive tendering process.
- (b) Where, if awarded the Contract, a Tenderer wishes to involve preferred Subcontractors during Stage One, the Tenderer must identify those Subcontractors in its Tender, to ensure the approach is considered in a competitive environment. Early involvement of Subcontractors in the Design Work can be achieved in this way.
- (c) However, Stage One is the stage during which innovation and value engineering may result in changes to the Principal's project requirements, and it is therefore important that a preferred Subcontractor is not responsible for determining and pricing the requirements, design, documentation and construction of an element of the Construction Work. In most circumstances, the Contractor should be required to retain a consultant to carry out the Design Work and Documentation Work, which may be informed by the early involvement of the preferred Subcontractor.

#### **6.5 GCS Offer Project Brief / Stage Two Project Brief**

- (a) As a result of the early contractor involvement during Stage One, the Principal's scope, functionality and quality requirements for the project may change to facilitate the incorporation of innovative and value engineered solutions. Consequently, the Contractor's GCS Offer or Stage Two Offer must include a revised Project Brief in the form of a GCS Offer Project Brief or Stage Two Project Brief, to incorporate any such changes.
- (b) The Contractor's Design Work, as completed at the point in time of making the GCS Offer or Stage Two Offer, should be included in the GCS Offer or Stage Two Offer to inform how the Guaranteed Construction Sum or the Contract Sum has been derived; however, the Contractor's Design Work should not form part of the GCS Offer Project Brief or the Stage Two Project Brief. Instead, any specific requirements that have been incorporated into the Design Work up to the date of the GCS Offer or Stage Two Offer that change the requirements of the Project Brief should be captured in the GCS Offer Project Brief or the Stage Two Project Brief.
- (c) In the event that the Principal accepts the Contractor's GCS Offer or the Stage Two Offer, the Project Brief will be replaced by the GCS Offer Project Brief or the Stage Two Project Brief. Therefore, the GCS Offer Project Brief or Stage Two Project Brief must restate all of the Principal's project requirements contained in the Project Brief, except where:
  - the requirement has been omitted, in which case the omission must be clearly identified within the GCS Offer Project Brief or Stage Two Project Brief
  - the requirement is new or changed, in which case the new or changed requirement must be clearly identified and incorporated into the GCS Offer Project Brief or Stage Two Project Brief.

### **7. GCS OFFER / STAGE TWO OFFER**

- (a) Following the written request from the Principal, the Contractor must provide the GCS Offer or Stage Two Offer within the time stipulated in the Contract. The GCS Offer or Stage Two Offer must meet the requirements of the Contract, including the specific requirements for the

GCS Offer or Stage Two Offer described in the Conditions of Contract Schedules, and typically includes the following categories of documentation:

- Cost
    - A Guaranteed Construction Sum that is not greater than the Project Construction Cost Estimate, or a Contract Sum that is not greater than the Project Cost Estimate.
    - This is typically supported by cost information such as a cost plan and trade package break up to demonstrate the basis upon which the Guaranteed Construction Sum or Contract Sum has been derived.
  - Time
    - The period of time for Practical Completion, from which the Date for Practical Completion will be determined.
    - This is typically informed by a program and methodology which demonstrates how Practical Completion will be achieved by the Date for Practical Completion.
  - Scope, functionality and quality
    - The GCS Offer Project Brief or Stage Two Project Brief, which describes the requirements for the work under the Contract, including the functional and technical requirements for the project.
    - This must be a comprehensive revision of the Project Brief, and must identify any differences between the requirements of the Project Brief and the requirements of the GCS Offer Project Brief / Stage Two Project Brief.
  - Design Work
    - The Design Work completed to the time of making the GCS Offer / Stage Two Offer, which records the Contractor's preferred design solutions, and has been produced in accordance with the GCS Offer Project Brief / Stage Two Project Brief.
  - Other requirements
    - The list of performance warranties that the Contractor will procure for specific items that are to be incorporated into the project if Stage Two proceeds.
    - Any other requirements described in the Conditions of Contract Schedules.
- (b) The Two Stage Contracts provide for the GCS Offer or Stage Two Offer to be made, and accepted or rejected, under the Contract. Accordingly, there is no scope for the Contractor to propose changes to the Conditions of Contract and Schedules as part of its GCS Offer or Stage Two Offer, and no capacity for the Principal to accept such changes, under the mechanisms of the Two Stage Contracts.
- (c) Under the Two Stage Contracts, the Principal is required to accept or reject the GCS Offer or Stage Two Offer. There is no stipulated timeframe within which the Principal must do so and the offer must remain open for acceptance until it is either accepted or rejected by the Principal. Nonetheless, the Principal must act within a reasonable time.
- (d) The time, scope and quality requirements for the project, as articulated in the GCS Offer or Stage Two Offer, should have been formulated in collaboration with the Principal during Stage One, and the costs are constrained by mandatory requirements in the Contract, such



that the Principal's consideration of the Contractor's GCS Offer or Stage Two Offer should require careful review and verification, but not consideration of any substantial new information. Accordingly, there should be no surprises in the GCS Offer or Stage Two Offer that might delay the Principal's assessment of it.

- (e) If the GCS Offer or Stage Two Offer is accepted, Stage Two is incorporated into the Contract. If the GCS Offer or Stage Two Offer is rejected, Stage One of the Contract is complete and the relevant provisions dealing with payments and Early Works will apply.
- (f) Given that, upon acceptance, the GCS Offer or Stage Two Offer establishes the requirements for the project in terms of cost, time, scope and quality, it is important that the Principal thoroughly reviews and verifies the adequacy, suitability and completeness of the GCS Offer or Stage Two Offer before it is accepted.
- (g) The GCS Offer or Stage Two Offer, as accepted by the Principal, is therefore an important document which describes the requirements for the project. Accordingly, upon acceptance of the GCS Offer or Stage Two Offer, the documents which comprise the offer and the Principal's acceptance of it should be collated, printed, bound and safely stored for future reference.

## 8. STAGE TWO

- (a) The primary project objective of Stage Two is:

***for the Contractor to construct the project so that it is free from defects and fit for its intended purpose as described in the GCS Offer Project Brief.***

- (b) Acceptance of the GCS Offer or Stage Two Offer is not the award of a new contract. Rather, through the mechanisms in the Two Stage Contracts, the work of Stage Two is incorporated into the original contract upon acceptance by the Principal of the GCS Offer or Stage Two Offer.
- (c) Stage Two of the Two Stage Contracts is the stage when all remaining Design Work, Documentation Work and Construction Work are completed. Given that the cost, time, scope and quality parameters for the project will have been clearly established following the Completion of Stage One, the Contractor should be able to proceed expeditiously with the work of Stage Two, which resembles that performed under a typical single stage design and construct contract, with some notable exceptions:
  - The Project Advisory Group continues to monitor, decide and advise upon all aspects of the work under the Contract, providing a forum for ongoing collaboration between the parties in the delivery of the project.
  - In the case of the MC contract, there are constraints on the Contractor in relation to the performance of Construction Work. The Principal's Representative must be provided with proposed Subcontract Tender Documentation and details of any subsequent modifications to it, and the Contractor must inform the Principal's Representative of any cost adjustments made to competitively tendered Subcontracts. The constraints on the performance of Construction Work are necessary to enable the Principal's Representative to properly determine the Actual Construction Sum and any Construction Bonus.
- (d) While the work of Stage One has a focus on the project requirements and design response to produce a GCS Offer or Stage Two Offer, a key focus of Stage Two involves auditing and verification by the Principal's Representative that the work performed by the Contractor complies with the requirements of the Contract. Accordingly, the Principal's Representative

may require advice from technical specialists, which may include designers, engineers, programmers and quantity surveyors, to properly perform the duties of the Principal's Representative under the Contract.

## **9. PAYMENT**

### **9.1 Generally**

- (a) Under the Managing Contractor contract, where Stage Two is incorporated into the Contract:
- The Contractor is entitled to payment of the Management Fee, On Site Overheads Fee, Consultants Fee and Off Site Overheads and Profit Fee, calculated or adjusted as provided for in the Contract.
  - In respect of Construction Work, the Contractor is entitled to be paid the Actual Construction Sum up to the Guaranteed Construction Sum. The Guaranteed Construction Sum is subject to adjustment in accordance with the Contract, for example due to a Variation directed by the Principal's Representative following achievement of the Developed Design.
  - The Actual Construction Sum represents the actual cost of performing the Construction Work and is predominantly made up of the amounts payable under Subcontracts; however, certain categories of costs are excluded from the Actual Construction Sum. Accordingly, to determine the amount payable to the Contractor in respect of Construction Work, the Principal's Representative must progressively monitor the accepted Subcontract sums and any valid adjustments to those sums to properly account for the Actual Construction Sum.
  - There may be other amounts due from one party to the other under the Contract.
- (b) Under the Early Contractor Involvement contract, where Stage Two is incorporated into the Contract:
- The Contractor is entitled to payment of the Contract Sum, which includes the cost of Construction Work and the Contractor's fees, as adjusted in accordance with the Contract; for example, due to a Variation directed by the Principal's Representative following achievement of the Developed Design.
  - There may be other amounts due from one party to the other under the Contract.

### **9.2 Incentivisation**

- (a) The Contractor's performance under each of the Two Stage Contracts is incentivised in different ways.
- (b) Under the Managing Contractor contract:
- The Contractor's performance during Stage Two is incentivised by the Construction Bonus and may be further incentivised by the optional Early Completion Bonus.
  - To receive the Construction Bonus, the final Actual Construction Sum must be less than the Guaranteed Construction Sum, in which case the Contractor will be entitled to a percentage of the difference between the two, up to a limit.
  - The Early Completion Bonus is optional. If it applies and the Contractor achieves Practical Completion earlier than the Date for Practical Completion, the Contractor will be entitled to payment of the Early Completion Bonus, calculated at a daily rate up to a limit.

(c) Under the Early Contractor Involvement contract:

- Given the lump sum nature of this contract model, it does not include incentives such as those included in the MC contract.
- Instead, the Contract Sum is appropriately constrained from commencement of the Contract, and serves to motivate Contractor performance from the outset. In formulating the Contract Sum during Stage One, the Contractor must work to ensure that it is not greater than the Principal's budgeted allowance for delivery of the project (Project Cost Estimate) provided in the Tender Documents. The Contract Sum is the total price payable by the Principal to the Contractor, which is inclusive of the cost of Construction Work and the Contractor's fees (which includes the fees of its Consultants), for the work of both Stage One and Stage Two.

## 10. CONCLUSION

The Two Stage Contracts provide the Queensland Government with collaborative contracting options for the delivery of Queensland Government building construction projects, and include lump sum and managing contractor alternatives. The Two Stage Contracts leverage the benefits of collaborative contracting while ensuring the objectives of government, including demonstrated value for money, are achieved. Successful delivery of projects under the Two Stage Contracts requires the knowledge, skills and experience to understand the requirements of the contract in the context of the project, as well as the ability to apply those requirements in a way that is collaborative. The information in this Guide addresses key aspects of the Two Stage Contracts, with the objective of ensuring that the benefits of the collaborative contracts are realised. However, this Guide is not a substitute for the contracts themselves and users of this Guide should ensure they read and understand the requirements of the Two Stage Contracts before they are used.

## **FOR FURTHER INFORMATION**

For further information on the use of the Two Stage Contracts, contact:

### **Contract Services**

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