

Women's Infrastructure Network Webinar

Alliance Contract Model Q & A

No.	Question	Answer
Market Considerations and Trends in Alliancing		
1.	How does the current government's introduction to the Community Benefits Agreement impact the introduction of the Alliance model in BC?	On the Cowichan District Hospital Project we are combining the Community Benefits Agreement with the Alliance model. There have been other Community Benefits Agreement projects procured without using the Alliance model. The Alliance model is one of several contract forms that Infrastructure BC is using. We will consider it for projects with and without the Community Benefits Agreement. We are keen to assess the effectiveness of the Alliance model after procurement and again after construction is complete and use that feedback to help determine when to best use the Alliance model.
2.	How likely do you think it is that the Alliance model will be continuously adapted as a model in the Canadian market given that it is so new? How long did it take for other countries to get comfortable with it until it became the "norm"?	There is a lot of interest across the country with regards to the Alliance model. It is likely that owners will customize the contract form, as we have seen for PPP contracts. In Australia, the Alliance model was first used in 1994 on the Wandoo Alliance, a project involving the construction of an offshore oil and gas platform. The Alliance model became heavily used by the late 1990s.
3.	The construction market in BC is quite unfamiliar with the alliance form of contract procurement. How will this method be broadcasted to and explained to the broader market?	Infrastructure BC has been very active making presentations to the BC Construction Association, all of the regional construction associations, the Association of Consulting Engineering Companies and having one on one meetings with most major contractors in BC.
4.	What are the main deterrents of using an alliance model? There seems to be a lot of pros so just wondering why it is not used more and if there are any hesitations to using it?	There are many positive attributes with the Alliance model, but no model is appropriate for all projects. For example, if the risks in a project can be well identified and costed, the additional management processes required to administer an alliance may not be warranted. One of the key requirements for a successful Alliance is adequate owner capacity and engagement. Not all owners can meet this requirement. There is also the consideration of owner risk tolerance.



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		In an Alliance contract the owner bears more risk than in a Design Build or PPP contract.
5.	Has the insurance industry and bonding industry expressed their willingness to cover this model?	Bonding has little relevance to the alliance model as there is no fixed price performance guarantee made by the private participants. Insurance is a complicated topic within the Alliance model. Infrastructure BC intends to access the global insurance market, where multiple insurers have provided coverage for Alliance projects.
6.	The Cowichan project in question will only attract the larger Design Builders positioned in Canada. Would you consider a consortium consisting of 2 or more design builders joining forces to compete for this project? This formula creates additional risk.	<p>The Alliance model actually allows many more contractors to participate in large projects such as the Cowichan District Hospital, much more than if the project were to be procured as a Design Build or a PPP. One of the key reasons for this relates to bonding. For a large Design Build or PPP project contractors have to have the financial strength to be able to provide bonding and/or parental company guarantees to secure their proposal. The Alliance contract is a target price contract and the RFQ for the Cowichan District Hospital has no bonding requirement.</p> <p>For an alliance model, more than one contractor could work together during the pursuit phase. When it comes to executing the Project Alliance Agreement, each would have to sign the contract individually, each as a Non Owner Participant (NOP).</p>
7.	How are these large projects financed under the alliance model? Does the Owner pay for the whole thing or are there various Lenders?	IBC and Minter Ellison know of no Alliance projects that have involved private finance.
8.	Is there any trend analysis or data around % of those who participate in an alliance project who go on to participate in subsequent alliance projects? As in, how many participants liked it enough to do it again...? Any data from Australia would be helpful.	<p>Experience shows that participants in alliances do tend to go on to participate in subsequent alliance projects as the model has been widely used by participants over a number of years.</p> <p>For example, rail authorities in Queensland, Australia, have used the model extensively for a wide range of projects both above and below rail over a 20 year</p>

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		period. Similarly, Non Owner Participants are frequently involved in those alliances.
9.	Any particular thoughts re impact of Alliance model for lenders (neutral, positive, negative)? Anything to think about?	IBC and Minter Ellison know of no Alliance projects that have involved private finance.
10.	How important is Alliance experience in the selection process considering the fact companies have minimal Alliance experience within Canada?	In interacting with national contractors in Canada I was surprised and impressed at the depth of experience contractors had in various forms of collaborative contracting (e.g. Integrated Project Delivery, Alliance, Progressive Design Build, Early Contractor Involvement). Collaborative contracting, including Alliance, is only one of many criteria used to shortlist proponents. I encourage you to look at the RFQ for the Cowichan District Hospital, which outlines the selection criteria. This can be found at www.BCBid.gov.bc.ca until the RFQ closes, after which you can find it on the Infrastructure BC website.
11.	What will Partnerships BC criteria be for choosing to go with an Alliance Contract Model?	For every project Infrastructure BC performs a qualitative and quantitative analysis of different contract forms. The pros and cons of different contract forms are summarized for decision makers (elected officials) and they make the final determination.
Alliances vs. Other Delivery Models		
12.	How does Alliance differ from the Integrated Design Process (IPD)? What are the main differences in risk allocation between Alliance and IPD?	IPD is very similar to Alliance after the contract is executed. They are fundamentally different during the procurement process in a competitive alliance. The competitive alliance procurement maintains competitive tension between two teams for an extended period time, allowing the owner to evaluate design, price and suitability of people after working with each of them during the procurement period.
13.	How does the alliance model compare to PPP? Further, how does alliance procurement compare to PPP procurement, specifically advisory/procurement costs?	The Alliance and PPP models are very different. PPP contracts spend a lot of time precisely allocating risk to a particular party. Alliance contracts have the premise that all risks are shared. PPPs allow either party to take legal action against the



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		<p>other. Alliance contracts include a clause that prevents participants from taken legal action against each other except in certain narrow circumstances.</p> <p>Procurement costs are similar for both owner and private sector participants. After contract execution, owner advisory costs are reduced as there is only one team, the Alliance. This is in contrast to a Design Build type procurement, where after contract execution the owner retains a shadow technical team in addition to the technical team retained by the Design Builder.</p>
14.	Is there a model where not ALL risks are shared, but just the ones where there is a shared interest, or no control (e.g., stakeholder engagement, geotechnical, etc.)? So, some of the risks are shared, and others are allocated appropriately?	What you describe is the risk allocation in a typical Design Build contract that Infrastructure BC uses on major infrastructure projects. This has proven effective on many projects, but can be adversarial and in many cases contractor and owner don't work together for the benefit of the project, they work to protect their interests. If the risks are not shared collectively in an Alliance, there is a risk the participants will revert to adversarial behaviour.
Procurement Process		
15.	During initial procurement how will the Owner evaluate and award the work to the Design Builders in advance of implementing the Alliance model described to-date?	I encourage you to look at the RFQ for the Cowichan District Hospital, which outlines the selection criteria. This can be found at www.BCBid.gov.bc.ca until the RFQ closes, after which you can find it on the Infrastructure BC website.
16.	Are the Alliance Participants compensated for their early participation? Does the Owner start reimbursing direct costs for the contractor starting at the beginning of the RFP? Are payments made to the team that does not make it to the PAA phase (i.e. the losing 'finalist')?	For the Cowichan District Hospital procurement, there is no partial compensation for participating in the RFQ or first phase of the RFP, as they require low levels of effort from market participants and there is no design development. For the two bidders that participate in the Alliance Development Agreement phase, there is a substantial partial compensation for both the successful and unsuccessful bidders. The owner doesn't make any payments to the bidders until the Alliance Development Agreement phase is completed. This is consistent with the approach that is taken in many Australian projects.
17.	Are the same criteria being evaluated multiple times in this process? E.g. experience and capability?	In some categories yes and in some categories no. I suggest you look at Table 3 on page 20 of the Cowichan District Hospital RFQ. This can be found at



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18.	<p>One of the big negatives of current P3/DB proposals is the cost to develop a proposal, e.g., it can cost \$10M to bid a \$1B project. Do you expect your proposed RFQ/RFP process will be less costly?</p>	<p>The RFP phase of P3/DB and alliance projects are all costly to pursue. I don't see a material difference between the models. We have been looking to increase our levels of partial compensation on all large projects. One of the benefits of the competitive alliance procurement from the private sector perspective is that only two bidders are involved in the Alliance Development Agreement phase, where significant costs are expended. This, combined with the partial compensation of bid costs for both the successful and unsuccessful bidders makes the procurement model more attractive to the market.</p>
19.	<p>How long does the entire alliance procurement process take from beginning to end? What is normally the timeline for each stage of an alliance project?</p>	<p>For the Cowichan District Hospital the procurement process is similar in terms of length to a Design Build/PPP, perhaps slightly faster. We issued the RFQ in late December 2020 and are targeting the Alliance Development Agreement phase submissions in December 2021. For the Cowichan District Hospital project you can find the timeline for each stage in Section 3.4 of the RFQ.</p> <p>Although this provides a guide in respect of the procurement process, the timeline for each stage of an alliance project is very project dependent. In our experience on large public infrastructure projects, the procurement process from the release of EOI documentation to execution of the PAA is generally in the order of 18 months.</p>
20.	<p>What level of design development do your two shortlisted proponents reach in the ADA Phase?</p>	<p>To reach the ADA phase, there is no design work required. At the end of the ADA phase, we would be expecting a level of design consistent with that of a Design Build procurement.</p>
<p>Commercial Framework and Considerations</p>		
21.	<p>Is the "weight" of the decision of each of the participants decided through the Alliance Partnership, or by the Owner?</p>	<p>During the procurement phase, the evaluation criteria and their weighting are determined by the owner. After the Alliance Agreement is executed, decisions are</p>



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		made by consensus. Every signatory to the Alliance Agreement has an equal voice in reaching a consensus (unanimous) decision.
22.	What attributes are you looking for with individuals populating the ALT and AMT?	ALT: accountability, leadership and ability to reach consensus. Members are executives from all of the participants. AMT: leadership, ability to meet objectives, select the wider team and forecast performance to the ALT.
23.	How does the contractor/designer break even on costs if overheads are not included in Limb 1?	Alliance specific overheads are included in Limb 1. Corporate overheads are not included in Limb 1. The rationale for all overheads not being included in Limb 1 is that the private participants should have a small amount at risk. Otherwise it becomes a risk free proposition for the private participants.
24.	Can you provide examples of Alliance-specific overheads?	As stated above, Alliance specific overheads are included in Limb 1 and reimbursed as Reimbursable Costs. These may include certain on-site overhead costs (e.g. supervisory personnel).
25.	Where would project contingencies fall? In Limb 1 or Limb 2?	Project contingencies, to the extent included, will sit outside limb 1 and limb 2. The TOC is made up of Limb 1 reimbursable costs; limb 2 project overheads; a separate amount for contingencies; and a separate amount for corporate overhead and profit. If the AOC is higher than the TOC, then the NOPs will not receive any amount of the contingency. If there AOC is less than the TOC, then the NOPs will (in effect) be paid a proportion of the contingency. This can be seen in the slides made available.
26.	Does the designer have an equal say in decisions in the AMT given that they have less at risk in absolute financial terms?	After the Alliance Agreement is executed, decisions are made by consensus. Every signatory to the Alliance Agreement has an equal voice in reaching a consensus decision.



No.	Question	Answer
27.	Can you just explain abbreviations, NOP, TOC, AOC and ADA?	<p>NOP – Non Owner Participant. This refers to the contractor(s) engaged by the Project Owner to deliver the works under the Project Alliance Agreement (PAA).</p> <p>TOC – Target Outturn Cost. This refers to the sum of the estimated costs to carry out the works under the PAA, as agreed by all participants prior to the execution of the PAA.</p> <p>AOC – Actual Outturn Cost. This refers to the total sum of reimbursable costs actually incurred by the participants in carrying out the works under the PAA.</p> <p>ADA – Alliance Development Agreement. This refers to the agreement between the Project Owner and NOP proponents which governs the process prior to the execution of the PAA. Under the ADA, the NOP proponents develop their proposal for the works, including the design and construction solution and the Target Outturn Cost.</p>
28.	What is the gain share/pain share percentage to the direct cost/TOC?	<p>The approach to the sharing of any underrun or overrun is one of the commercial factors to be decided by the owner. Typically, the gain share/pain share percentage for actual cost overruns or underruns in relation to the Target Outturn Cost is 50/50 between the Owner and Non Owner Participants. However, there may be variations to this approach. For example, the parties may choose a different 'split' (e.g. 60/40). There may be a 'flat spot' in which the participants agree that the first part of any underrun or overrun is not included in the pain/gain calculations. There may also be limits on the total 'pain' (typically limited to the NOPs fee) or 'gain'.</p>
29.	How would the ALT address liquidated damages?	<p>Given that the participants take collective responsibility for delivering the Project, and release each other from claims, there is usually no LD provision in an Alliance contract. However:</p> <ul style="list-style-type: none"> • ability to reach milestone dates will usually be a KPI and therefore impact on the pain share/gain share regime; • some alliance documents also provide that if the participants fail to reach practical completion by the date for practical completion, all costs incurred by the Non Owner Participant in connection with the delay will be 'Owner's



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		<p>Reimbursable Costs' for the purposes of calculating the Actual Outturn Cost. This increases the risk that the Actual Outturn Cost will be greater than the TOC, which further impacts on the amount of gainshare/painshare</p>
30.	<p>As part of the evaluation process, you mentioned that behaviour was evaluated. How is this done?</p>	<p>Behaviour is evaluated through the interactions that occur between the owner and Non Owner Participants during the procurement phase. Many of these are scenario based and include workshops for both the Alliance Management Team members as well as the Alliance Leadership Team members.</p>
31.	<p>Would Key Personnel provisions be typical in an alliance agreement? (i.e. no right to remove designated personnel without approval from Owner)</p>	<p>Yes. Usually the NOPs must provide the key personnel to carry out the alliance activities. The difference in the Alliance context is that If any of the key personnel are to be replaced, this is a decision that is made by the ALT and alliance manager, rather than by the Owner.</p>
32.	<p>How long is the defect correction period?</p>	<p>For the Cowichan District Hospital, the defect correction period is expected to be two years, which is the same as what is currently in place for Infrastructure BC's Design Build Agreement. It is typical for Alliances to have standard defect correction periods, noting that under the Alliance regime, the NOPs will be paid for the work they do to rectify defects and this will impact accordingly on the painshare/gainshare.</p>
33.	<p>How does the payment mechanics work? Are there progress payments?</p>	<p>The time periods for making progress claims and payments are often similar to the times for payment in more traditional models. The difference is with the amounts that are claimed.</p> <p>The NOPs are paid reimbursable costs, together with their corporate overhead and margin, on a regular basis (e.g., monthly) provided that if the Project is in the territory of a cost overrun, there may be an ability for the Owner to withhold part of the payments to reflect the overrun.</p> <p>Upon the practical completion, the NOPs will be paid an interim risk and reward amount. The final risk and reward amount will be paid upon the final completion (i.e., when the NOPs have complied with all of their obligations relating to the</p>



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		alliance activities including the rectification of the defects arising or during the deflection correction period).
34.	Many times, the individuals involved during a bid phase aren't on the execution phase. How will the behaviour assessments take this into account?	The owner will stress that the individuals involved in the bid phase must be the same individuals as those that will be involved in the execution phase. The behaviour assessments will be based on construction period scenarios.
35.	Is the preferred proponent locked into its TOC price that was developed in the proposal phase or does that get revisited and refined in project execution?	The Preferred Proponent does not get a chance to adjust the TOC after the Alliance Agreement is executed, unless there is an adjustment event provided for in the Alliance contract, e.g., a significant scope change by the Owner.
36.	Is the Alliance a legal entity, and can it enter into sub-contracts with all of the trades necessary for the project?	<p>No. The participants usually enter into the alliance contract in their own capacity and the Alliance is not a separate legal entity. The NOPs may (but do not need to) form a separate legal entity. It is typical to have a number of separate entities all form part of the Alliance.</p> <p>The participants in the Alliance can enter into any contracts in their own capacity, for example the NOPs will enter into agreements with the relevant trade contractors. The NOPs then claim those costs as part of their reimbursable costs. The Alliance will develop a detailed procurement policy to manage the approach to procurement.</p>
37.	Mark: In the painshare discussion, you mentioned that there are targets for things like stakeholder satisfaction. How do you make that measureable?	Stakeholder satisfaction would be measured through surveys of multiple stakeholders. The exact process and measures would be determined between the owner and each bidder. It is possible that the process and measures might differ slightly between bidders.
38.	Are there any exclusions to the waiver of claims?	<p>Traditionally, Wilful Default has been the most common exclusion to the no-blame framework.</p> <p>In the more recent National Alliance Template (Australia), additional exclusions to the no-blame framework include:</p>



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		<ul style="list-style-type: none"> • a claim for breach of law (including any prosecution brought against a participant by a government agency); • a participant's insurer exercising a right of subrogation against another participant; and • a failure by a participant to make a payment under an indemnity under the Agreement.
39.	Are construction means-and-methods exclusively owned and managed by the contractor in an Alliance model, or is the input of the owner greater than under traditional design-bid-build contracting?	The construction means and methods, as well as issues such as quality and safety are owned by the Alliance as a collective (i.e. owner and Non Owner Participants). All decision making is by consensus on a best for project basis.
40.	How are the costs agreed to in an equitable manner by all parties?	The limb 1 costs are all audited by a third party and paid by the owner. Limb 2 and Limb 3 costs are paid based on measurable performance.
41.	Is willful default the only exception to pursuing other parties for losses? Has willful default happened on an alliance before?	<p>While willful default has been one of the very few exceptions, the parties may expand the exceptions in the Alliance contract.</p> <p>In the more recent National Alliance Template (Australia), additional exclusions to the no-blame framework include:</p> <ul style="list-style-type: none"> • a claim for breach of law (including any prosecution brought against a participant by a government agency); • a participant's insurer exercising a right of subrogation against another Participant; and • a failure by a Participant to make a payment under an indemnity under the Alliance agreement. <p>There are also other exceptions such as assignment of the contract or change in control by the participant without the Project Owner's consent,</p>
42.	How do you ensure the TOC represents value for money?	The competitive alliance involves two consortiums competing on price and non-price factors. This provides market pricing. In terms of value for money,



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		Infrastructure BC intends to publish a value for money report at the conclusion of construction.
43.	How does the Owner incentivize innovation in an open book arrangement?	Limb 2 and Limb 3 are both based on performance. The Non Owner Participants are incentivised to perform so they can achieve or improve upon Limb 2 targets.
Lessons Learned		
44.	In placing the design process within the delivery model (as with ADP/IDP) - what are some tactics you've practiced to exercise the positive tension between designer and builder to get the best design as well as the best price?	These issues are managed through the procurement process, where there are various workshops between the Owner and proposed participants to interrogate design solutions and to 'build up' the target outturn cost proposed by the bidders for the project.
45.	Can you elaborate on how easy or difficult it is to enforce "good faith" and "collaborative behaviours"? Do you use the contractual provisions to do so?	The requirement to act in "good faith" is expressly written in to the Alliance Contract, however the success of the Alliance will depend on choosing the right team and establishing the right behaviours. The Alliance model also has 'Wilful Default' as an exception to the "no blame" framework, which is a strong disincentive to poor behaviours.
46.	If all costs and overhead are reimbursed, does the risk of the contractor walking away go up? Has that happened on previous alliance projects?	In our experience, the fact that the NOPs are being reimbursed their actual costs means that although they are not making a profit, their losses are limited to overheads, and as such the losses are lower than on a traditional model, making it less likely that the NOPS will walk away from the Project. There is also a legal disincentive – walking away may be taken to be an act of bad faith, opening the door to claims from the Owner.
47.	The alliance model seems to hinge on the assumption that the Owner team has the sophistication and capacity to deliver the project in step with their private sector partners. Can you share some lessons learned on how to set up Owner organizations to be ready to deliver at private-sector speeds?	The Alliance model does hinge on the Owner having the capacity to deliver Projects, and indeed this is one factor to be carefully considered by Owners when deciding whether to embark on this model.



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48.	The first slide showed that it is beneficial to initiate an Alliance early on in the project (planning and concept design). How can you have two teams working competitively at this early stage to include target cost in evaluation (would be very expensive)?	The Owner will be reimbursing the parties costs up to a certain cap. While it is more expensive than only engaging one team, the competitive tension is likely to benefit the project in the long term, e.g., lower TOC and better design.
49.	Julie: Have you ever seen an alliance model go wrong?	I have not seen an Alliance go wrong in the sense of the Alliance itself being subject to big claims between the participants. There is the potential for the NOPs to be the subject of claims, for example claims from the trade contractors, and these need to be carefully managed.
Alliance Experience in Australia		
50.	How many vertical infrastructure projects (building, hospitals, etc.) have been built in Australia using the Alliance Model? How many vertical infrastructure have been built in Australia compared to horizontal projects? What has been the experience on these projects?	The Alliance model has been used successfully for vertical infrastructure projects in Australia (in particular in the state of Victoria) and New Zealand. It has also been successfully used in the mining industry for buildings such as processing facilities.
51.	Australia was extremely successful in bringing in international talent and embracing both local and international experience to accelerate innovation in construction. It feels like Canada obsesses with local experience and doing things the same way at the expense of innovation. Can you share insights on how Australia overcame labour shortages and skills gaps during a huge infrastructure boom?	Australia did bring in international experience to accelerate innovation, but also had a number of Government organizations that were willing to take a 'leap of faith' and commit to use and improve the Alliance model over a long period of time. This approach facilitated learning within Australia. Australia also relied on the use of Alliance facilitators that were advocates for the model and were able to provide support with establishing (and running) Alliances even if the people involved had limited experience
52.	As a percentage, approximately how many public infrastructure projects in Australia are Alliance?	It is difficult to establish recent data at this level of detail, however there were a significant number of projects delivered by Alliance throughout the 2000's and we are experiencing a trend of increased use of the Alliance model in Australia again currently, in particular to deliver rail and road projects.

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53.	How does insurance industry in Australia look at this Alliance model, especially the liability insurance? Pain share is a type of contractual liability and usually it is excluded from the liability policy.	Given that the Alliance model excludes liability as between the parties (except for specific carve outs for Wilful Default), parties typically take out 'alliance specific' insurances. For instance they take out public liability policies that cover each of the participants. Insurers in Australia were closely involved in the development of policies suitable for the Alliance context, in particular Alliance specific professional indemnity insurance. This (more expensive) policy operates as a first party policy, allowing the Alliance participants to make a claim on the insurance without having to bring a claim against each other.



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