



# COLLABORATIVE CONTRACTING

BCCR Roundtable May 17, 2023

## **Event Objective**

to support learning and dialogue between owners, consultants, general contractors, legal and others in the construction industry on collaborative project delivery models.

Thank you to our sponsors PwC Canada, RAM Consulting  
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## Event Overview

The British Columbia Construction Roundtable (BCCR) held a roundtable on May 17, 2023, with 115 participants representing owners, consultants, contractors and legal from the Vancouver Construction Industry. BCCR roundtable events aim to engage the industry in a robust discussion, explore issues, and discuss opportunities and trends on topics affecting the construction industry.

Phil Murray, Hatch's Global Director of Management & Delivery in Infrastructure, Anton Ricafort, Innovation Director for Acciona in the Americas and David Hubner, Vice President at Infrastructure BC, offered their knowledge and experience working under and with collaborative contracting models, each highlighting perspectives and benefits. This was followed by facilitated round table conversations to encourage cross-industry dialogue.

The Collaborative Contracting Roundtable Discussion was preceded by an educational session on April 27, 2023, led by Brian Maksymitz, Lead Consultant with Better Projects Incorporated. In this session, Brian explained the pros and cons of some of the emerging contract procurement models for collaborative projects and how and why these models can result in superior project outcomes.



## Introduction

With the construction industry facing increasing local, regional, national and global challenges, such as cost escalation, labour shortages and scarce materials, the need to innovate and improve project delivery is key to successfully delivering projects. Stakeholders are increasingly recognizing collaborative project delivery methodologies as key to improving construction project performance.

Collaborative project delivery is known for accelerating project schedules, reducing costs, improving risk management, and decreasing the likelihood of litigation in the construction industry. With such benefits, it is no surprise that construction professionals, owners and contractors aim to increase collaboration in project delivery models. Common elements of working collaboratively are demonstrating transparency and creating alignment between owners, contractors and consultants.

## Defining Collaborative Contracting?

Collaborative Contracting is an approach to contracting and procurement that emphasizes cooperation, partnership and shared risk and reward between the groups involved in executing projects. It involves establishing a mutually beneficial relationship and working together to achieve common goals. Other terms often used in industry include collaborative procurement or collaborative agreement.

Collaborative Contracting is used to identify risk and allocate risk in a cost-effective manner. Early conversations facilitate better allocation of project risks. Owners often have more knowledge than they share, while contractors may overestimate their ability. Understanding each other's perspectives reduces risk. Mechanisms for understanding the unknown aspects of a project help mitigate risk. Aligning interests in an alliance is crucial for the success of the collaborative model. Pain/gain sharing is practical when all parties understand the project and its underlying risks. It is worth noting contractors typically face higher risk allocation in a collaborative project delivery compared to traditional design-bid-build (DBB), but the collaborative period allows for a better understanding and mitigation of the risks.

Additional education is needed to adapt to growing collaborative models, including understanding their complexities and challenges. Collaboration does not solve all problems but provides a better understanding and helps work toward project objectives. Transparency and openness facilitate aligning objectives between owners and contractors.

## How does Collaborative Contracting differ from traditional contracting?

In the context of project delivery in the construction industry, the term "traditional" often refers to a conventional approach, such as the design-bid-build (DBB) method. It is a sequential process where each phase of a project, including design, bidding, and construction, is carried out separately and sequentially.

Typically, a traditional approach is characterized by a clear separation between the design and construction phases, with limited collaboration between the design team and the contractor during the design process. The design is typically completed before construction begins, which can limit opportunities for incorporating feedback, value engineering, and cost-saving measures. While the traditional approach offers a well-defined and linear process, it may have limitations in terms of flexibility, efficiency, and adaptability to changes. In many projects, issues or conflicts with the design arise during the construction phase, leading to delays, change orders, and additional costs.

Traditional models, including design-bid-build (DBB) and construction management (CM), lack effective early collaboration from all parties involved. Traditional models enable adversarial relationships and often exclude key players, such as key subcontractors. This limits the ability to collaborate across the value chain which poses risks for owners.

Alliance models are particularly suitable when project definition is limited or unclear. They allow for the creation of a virtual organization that functions as one integrated team, sharing risks and employing performance incentives to encourage better contractor performance.

**Alliances Models**  
enable the  
identification and  
management of  
risks by the party  
best suited to  
handle them.

## The different perspectives on Collaborative Contracting:

### Consultants Perspective

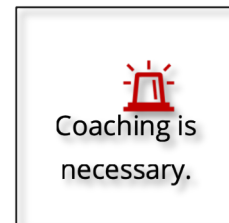
The Consultant's perspective is that Collaborative Contracting can increase value to the project owner. It can minimize inefficiencies and eliminate unnecessary expenditures. Collaborative Contracting strives to achieve the highest level of productivity and effectiveness during all project phases.

It is possible for conflicts and disagreements to arise during a Collaborative Contract; therefore, this model is not applicable for every project. It can address the complexities of operating within existing facilities or brownfield sites. It is critical that the owner actively participate during all stages of the project. It can lead to better results and measurable sustainability metrics like LEED (Leadership in Energy and Environmental Design) and GHG (Greenhouse Gas) emissions. Ultimately, the benefit of the model is to foster a collaborative environment that reduces the likelihood of legal disputes and strives for improved predictability and certainty in terms of project costs and schedules.

Lessons learned:

- Recognizing the value of capturing and applying lessons learned from past projects.

- Start earlier, even at the EA stage. Advocating for early involvement and application of these principles, even during the Environmental Assessment stage.
- Coaching is necessary. Recognizing the need for coaching and guidance to foster effective collaboration.
- Call out bad behaviour when it happens. Encouraging the identification and resolution of detrimental conduct within the project team.
- Management needs to be hands-on. Highlighting the importance of active and involved project management.
- Empower the team to make decisions at the project level. Granting authority and autonomy to the project team for decision-making.
- Community can be a partner, too. Recognizing the potential for the community to contribute as a project partner.



## General Contractors Perspective

From a contractor's perspective, collaborative contracting can offer several advantages and opportunities for successful project delivery. There are many lessons learned that can be leveraged from successful implementation of these principles in the United Kingdom (UK) and Australia.

### Lessons Learned:

- Allows for harnessing innovative approaches and technological advancements from the construction industry.
- It is important to align project goals with the principles and objectives of collaborative project delivery.
- Promote a common set of principles and values among project participants and improve risk management and allocation through collaborative practices.
- Leverages diversity of experience by capitalizing on the diverse range of experiences and expertise among project team members.
- Takes advantage of early contractor involvement (while ensuring the contractor can be compensated)
- From a contractor's perspective, the challenges are establishing effective project governance structures and building (and sustaining) a unified and collaborative project team culture. It can take time to define and assign project responsibilities. Given the newness of the model, there is limited experience and familiarity with these practices in the North American context.

## Owner Perspective

Owners have similar objectives and benefits as consultants and contractors. The term collaborative project delivery is prioritized over collaborative contracts, emphasizing the importance of people, trust, and transparency. Delivery models or contracts alone cannot guarantee collaboration; they can only create an opportunity for it.

Collaboration requires active participation from all parties involved in the project. And from an owner's perspective, it's critical that the procurement of a collaborative partner involves careful selection and evaluation of the contractor's track record of collaboration, communication skills, willingness to share information, and past project successes.

Lessons learned:

- Clear project objectives: Clearly articulate project requirements, goals, and expectations to avoid misunderstandings and hindered collaboration.
- Early contractor involvement: Engage the contractor early during design development for better collaboration and project outcomes.
- Robust selection process: Implement a thorough selection process to ensure the right contractor is chosen for collaboration.
- Trust and communication: Build trust and maintain open communication with the contractor to foster collaboration and problem-solving.
- Clearly defined roles and responsibilities: Define roles and responsibilities to minimize conflicts and ensure understanding of obligations.
- Mutual risk sharing: Assess and allocate risks based on contractor capabilities, experience, and resources for shared ownership and project success.
- Lessons learned and continuous improvement: Capture and apply insights from past collaborative contracts to enhance future processes, improve collaboration strategies, and enhance project outcomes.

## What are the key features of Collaborative Contracting?

There are several key features which form the building blocks of a collaborative contracting model.

- **Joint goal setting:** The buyer, consultant, and contractor work together to define shared objectives and outcomes. This collaborative goal-setting ensures that parties are aligned and committed to achieving the desired results.

- **Open communication:** Effective communication is essential in collaborative contracting. The parties openly share information, concerns, and challenges, fostering transparency and understanding.
- **Shared risk and reward:** Collaborative contracts often involve risk-sharing mechanisms. Both the buyer and supplier share the risks associated with the project or engagement. Similarly, they also share the rewards or benefits that result from successful collaboration.
- **Performance-based incentives:** Collaborative contracts often include incentives to motivate the supplier to achieve and exceed agreed-upon targets. These financial or non-financial incentives are designed to encourage high-quality performance and continuous improvement.
- **Relationship management:** Collaborative contracting places a strong emphasis on relationship management. The parties invest in building and maintaining a trusting and mutually beneficial relationship. This involves regular meetings, joint problem-solving, and building rapport between key individuals involved in the contract.

## What are keys to success for Fostering a Collaborative Team Culture?

There are a few critical elements, if done well, can make a significant difference in developing and sustaining a collaborative culture.

1. **Decisive decision-making:** Having a decisive person or group that can make decisions in a timely manner is important to avoid getting stuck in analysis paralysis. This ensures progress and keeps the project moving forward.
2. **Simplifying technical information:** Owners have varying levels of technical expertise, so it is crucial to communicate options, issues, problems, solutions, etc in a manner that can be understood. This helps maintain effective communication and ensures that all parties have a clear understanding of the choices and implications involved.
3. **External facilitation:** Engaging an external consultant to facilitate regular conversations between the contractor, owner, and consultant can be beneficial. These sessions allow for ongoing assessment of what is working well and what areas need improvement, fostering open dialogue and problem-solving.
4. **Encouraging open communication:** Creating an environment where everyone feels comfortable speaking up is essential for collaborative models. This encourages the sharing of diverse perspectives, ideas, and concerns, leading to better collaboration and decision-making.



## What are different types of Collaborative Contracting?

The high-level project delivery options for collaborative contracting which all include early contractor involvement include:

**Design Assist CM:** Design Assist Construction Management (CM) involves engaging a construction manager early in the design phase to provide input on constructability, cost estimates, and value engineering. The construction manager works collaboratively with the design team to optimize the design and ensure it aligns with budget and schedule requirements.

**Design Assist RFP:** Design Assist Request for Proposal (RFP) is a procurement method where the owner issues an RFP for a project that is partially designed. The RFP invites contractors to provide input on the remaining design and propose solutions to complete the project scope. The selected contractor collaborates with the design team to finalize the design and execute the construction.

**Progressive Design-Build:** Progressive Design-Build (PDB) combines elements of design-build and traditional design-bid-build. The owner selects a contractor based on qualifications, and the contractor collaborates with the design team to develop the project's initial concept. The design and construction phases overlap, allowing for iterative refinement and increased collaboration.

**Integrated Project Delivery (IPD):** Integrated Project Delivery is a collaborative approach where key stakeholders, including the owner, architect/designer, and contractor, form an integrated team early in the project. They enter into a multi-party agreement and work together to achieve project goals, share risks and rewards, and foster open communication and decision-making.

**Alliance:** An alliance is a collaborative contractual arrangement between multiple parties involved in a project, such as the owner, architect/designer, and contractor. The goal is to foster teamwork, shared responsibility, and cooperation throughout the project's lifecycle. An alliance focuses on a cooperative approach rather than adversarial roles and promotes integrated team structures and open communication.

## What are the potential challenges with Collaborative Contracting?

While collaborative contracting methods offer numerous benefits, there are potential downsides or challenges associated with these approaches. Here are some considerations:

- **Increased complexity:** Collaborative contracting involves more stakeholders, complex contractual agreements, and shared responsibilities. Managing these complexities requires effective communication, enhanced coordination, and collaboration among all parties involved. Failure to manage these complexities can lead to confusion, delays, and disputes.



- **Potential for increased costs:** Collaborative contracting often involves early involvement of contractors or other stakeholders, which can lead to increased costs during the design phase. On larger and more sophisticated owner teams, additional time and resources may be required for collaborative activities, such as design reviews, value engineering, and decision-making processes. It's essential to carefully manage costs and ensure that the added value justifies the increased expenses.
- **Decision-making challenges:** Collaborative contracting requires active participation and consensus among multiple parties. Balancing differing perspectives, priorities, and objectives can be challenging and may lead to delays or difficulty in reaching agreement on critical project decisions. Effective communication, clear roles, and conflict resolution mechanisms are essential to address decision-making challenges.
- **Legal and contractual complexities:** Collaborative contracting methods often involve unique contractual arrangements and legal frameworks. Parties must carefully negotiate and draft contracts to clearly define roles, responsibilities, and risk allocation. Ambiguities or gaps in the contract can create disputes and legal uncertainties. To enter a truly collaborative contract, parties have to be brave enough to take the leap of faith that they cannot generally sue each other if matters go wrong. 'No claims' clauses provide a contractual method of doing this.
- **Limited control over project outcomes:** Collaborative contracting places a significant emphasis on shared responsibility and decision-making. While this can lead to improved project outcomes through collective expertise, it also means that the owner may have less direct control over certain aspects of the project. Balancing the need for collaboration with maintaining project control and meeting specific objectives requires careful management.
- **Lack of experience and familiarity:** Collaborative contracting methods may be relatively new or unfamiliar to some project participants. Lack of experience or understanding can hinder effective implementation and may require additional training, support, or external expertise to ensure successful project delivery.

**No Claims Clauses** provide a contractual method of limiting the parties' rights of action. The obligation is to put right defects until the final certificate has been issued. Once the final certificate is issued, claims cannot be brought.

It's important to note that while these downsides exist, many of them can be mitigated with proper planning, effective communication, coaching, and experienced project management. Collaborative contracting methods can offer significant advantages in terms of innovation, efficiency, and project outcomes when implemented successfully.

## What are some of the key benefits associated with Collaborative Contracting?

Benefits of collaborative contracting include improved project outcomes, reduced project risks, increased innovation, enhanced supplier performance, and cost savings. By working collaboratively, organizations can leverage the expertise and resources of their suppliers, leading to more successful and sustainable business relationships. Benefits of Collaborative Contracting include:

- **Enhanced Project Outcomes:** Collaboration, open communication, and shared goals improve project outcomes by leveraging expertise and resources.
- **Increased Innovation:** Diverse perspectives foster innovation, allowing for creative solutions and continuous improvement.
- **Risk Mitigation:** Shared risk and joint identification of risks lead to effective mitigation strategies and reduced issues or delays.
- **Cost Savings:** Early involvement of suppliers and value engineering drive cost efficiencies and savings.
- **Stronger Relationships:** Trust and effective communication foster long-term relationships and potential for future partnerships.
- **Continuous Improvement:** Post-project evaluations and lessons learned drive ongoing process refinement and performance enhancement.

It's worth noting that benefits vary based on project complexity, party commitment, and collaboration effectiveness. As well, collaborative contracting may not be suitable for all types of contracts or industries. It typically works best in situations where there is a need for long-term partnerships, complex projects, and a high degree of interdependence between the buyer and supplier.



Collaborative contracting may not be suitable for all types of contracts.

## Participant Quotes:

*"Early Contracting Involvement (ECI) can assist in presenting to boards potential costs of litigation and claims to boards to encourage informed decision-making."*

*"ECI can provide guidance on setting a reasonable minimum level of overhead profit in contracts."*

*"Delivery models or contracts can only create an opportunity for collaboration; not a guarantee."*

*"Collaborative models can build in off ramps to deal with challenges such as geotechnical issues when you are locked into a price."*

*"It allows for more collaboration between excavation contractor and general contractor."*

*"In a traditional DB the risk is not often allocated accurately."*

*"In a collaborative model it is less of an us vs. them approach."*

*"Coaching to encourage team members to fit into their new roles of working together. Consultants can't hide behind walls. Owners can't be dictators. Contractors can't just look at profit. There MUST be trust between parties."*

*"ECI can assist with improving risk allocation, claims culture, and having all entities as feeling they are working towards completing a project."*



## Conclusion

Alternative project delivery methods, such as design-build, progressive design-build, and integrated project delivery, have emerged in Canada in recent years to address some of the limitations of the traditional approach by promoting collaboration, early involvement of key stakeholders, and a more integrated and iterative process. Contracting often follows an adversarial or transactional model, where the buyer and supplier are pitted against each other and focus primarily on their own interests. In contrast, collaborative contracting in construction involves tailored contractual arrangements and collaborative practices to suit the specific project and stakeholders involved. The focus is on creating an environment that encourages collaboration, trust, and mutual success.

There is a significant interest from Owners, Consultants, and Contractors to use this model where it makes sense, and to embrace new ways of working. The benefits of collaborative contracting include enhanced project outcomes, increased innovation, risk mitigation through shared responsibility, cost savings through early involvement and value engineering, stronger relationships among project stakeholders, and a culture of continuous improvement.

## Acknowledgements

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Membership benefits include reduced registration at monthly breakfast sessions, seminars and other BCCR events and invitations to Member Only events. The monthly breakfast sessions allow you to network with colleagues and make new acquaintances in a relaxed environment. And if you can't attend a regular breakfast session, you can send a colleague

in your place for the member rate! Regular memberships are \$375; we also offer a reduced rate of \$200 for those Under 40.

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