

1 FORMS OF CONSTRUCTION CONTRACT

1.1 FIXED PRICE CONTRACTS

1.1.1 DESCRIPTION

- Principal and contractor agree to perform works for a fixed price, the Contract Sum (regardless of the actual cost being more or less than this value).
- However, it is **rare** that fixed price contracts are performed for the exact amount (Contract Sum) originally agreed to.
- Contractor takes all the risk as to the ultimate sum of the project.

1.1.2 CONTRACT SUM ALTERATIONS

Several ways alterations may occur.

Principal fails to;

1. Deliver the site on time
2. Deliver exclusive access to the site
3. Provide detailed contract drawings or specifications required
4. Drawings and specifications are incomplete

Alternatively,

1. Site conditions differed than as described in the contract
2. Material on site was different than as described in the contract
3. Works performed were different to those described in the contract.

1.1.3 FIXED PRICE CONTRACTS VS TURNKEY CONTRACTS

Turnkey contract is like an end user consumer purchase.

- A fixed price is agreed on to be paid on the completion of the project to a **specified standard**.
- The Principal does not partake in anyway in the actual performance of works
- The Principal is invited to inspect works at completion for judgement
- Once satisfied, the Principal receives a 'key' in exchange for the contract sum.

Unlike fixed price contracts, the contract sum is not adjusted continuously.

1.2 Cost Plus

1.2.1 DESCRIPTION

- Principal pays the cost price of the works only.
- Contractor receives an agreed upon fee or percentage of the cost sum.
- Contractor bears no risk as to the cost of works.

1.2.2 BENEFITS

- Flexibility for Principal to reduce or increase works based on budget
- Contract sum not adjusted, but contracted works required are

1.2.3 COST CONTROLS

Capping

- Overall cap on maximum price

Trade Contracts

- Principal enters into agreement with a Principal contractor
- Principal contractor then subcontracts works to multiple contracts for job specific works at a fixed cost.
- Gives the Principal the benefit of fixed price contracts without entering into a fixed price contract themselves.

Conditions of trade contracts:

- Fixed priced
- Conditions agreed between Principal and contractor
- Open tender
- Approval processes
- Should provide adequate security for performance of contract or liquidated damages to compensate Principal

Incentives:

- Bonuses and penalties
- Cap on total cost
- Targets would be developed by the Principal, assisted in some instances by the contractor
- Incorporated into the cost plus contract

1.3 Design & Construct Contract/Design Build Operate

1.3.1 DESCRIPTION

- Contractor to tender on completion of detailed design and the works described in the design brief.

1.3.2 BENEFITS

- May reduce the overall cost of the project due to the streamlined efficiencies between design and construction phases
- Principal benefits from experience of contractor in construction

1.3.3 RISKS

Contractor bares risks in relations to

- Compliance with design brief
- Design warranties to the adequacy of design
- Design approval by the relevant authorities

Principal bares responsibility for the adequacy of design brief, the contractor bares it for the detailed design

- Principal project requirements is a written summary or outline of the requirements for works described including

- Purposes for which works are intended
- Principals design, timing and cost objectives
- Include preliminary design
- Discrepancies between design brief and detailed design
 - If there is ambiguity in design brief, Principal is charged for variations
 - If not met to the standards of the design brief, no charge for variations
- Review of design is not a contractual obligation and does not relive the contractor from errors

1.3.4 WARRANTIES

Design warranties are usually included by the contractors

- AS4300 Clause 4.1

1.3.5 PERCEIVED DISADVANTAGES OF NOT DOING A D&C

- Vision is lost between designer and contractor
 - However in practice the detailed design combined with the superintendent and contractors skill means this is not true and the vision is usually maintained

1.4 Design Build operate Contract

1.4.1 DESCRIPTION

The objectives for the delivery of a Design Build Operate (DBO) project are:

1. Contractor to design and construct the Works and deliver the Facility to the Principal by the Date for commercial operation
2. Principal to obtain control and ownership of the Facility on achieving Commercial Operation;
3. Contractor to operate, manage and maintain the Facility from Commercial Operation and Services for contract terms

1.4.2 CONTRACTOR'S OBLIGATIONS

- Perform the design and construction work
- Execute the construction works in a professional, efficient, cost effective, safe and environmentally responsible manner
- Operate and maintain the facility
- Apply for all government approvals
- Be responsible for industrial relations
- Obtain all services at or in the vicinity of the site
- Prepare and submit for the approval of the principal's representative an operation and maintenance manual
- Provide to the principal a complete, accurate and correct set of "as executed" drawings.

1.4.3 Principal's obligations

- Provide the design brief
- Make available to the contractor data on climatic, hydrological and general conditions relating to the site
- Be responsible for acquiring and providing legal and physical possession of the site
- Make timely payment to the contractor of all amounts due