Jenna Hicken MRICS
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Alliancing Contracts - Information and Guidance

South East Consortium
Building 1092, Galley Drive, Kent Science Park
Sittingbourne, Kent, ME9 8GA

0208 036 0004
www.southeastconsortium.org.uk
info@southeastconsortium.org.uk

South East Consortium

Author: Jenna Hicken
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For more information contact:
Ellie Park
Marketing & Communications Partner

ellie.park@southeastconsortium.org.uk
Tel 020 803 62948
Mobile 0784 150 5537

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We've designed this guide for customers and contractors. It walks you through the background of Alliancing Contracts through to current best practice. It's been written for those who want to develop an introductory understanding of Alliancing Contracts and how our sector uses them.

Depending on your knowledge level you can filter through the introductory information straight to what's relevant to you.

Content includes –

A Background to Alliancing Contracts

Alliancing contracts emerged in the UK in the early 1990's due to a general dissatisfaction with more traditional types of procurement methods and contracts.

BP were one of the first major clients to use alliancing concepts and were at the forefront of the movement. They were seeking a way to reduce costs and risk in its North Sea operations. BP established a new form of relationship between the client and their contractors, focusing on utilising skills, expertise and resources from all parties. BP's alliancing contract involved complete open book accounting; sharing all uninsurable risks between the parties and developing a target cost which was generated by the whole team.

Since then, the alliancing model has been used on several major infrastructure projects in the UK. In particular, the introduction of "Project 13" (an enterprise model for infrastructure delivery) has been utilised by the likes of Network Rail, the Department for Transport and South West Trains on its £800m investment in Waterloo Station, National Grid on its £750m London Power Tunnels Project, and Anglian Water on its £400m Strategic Pipeline Alliance.

Alliancing is now being adopted by more clients, for varying projects, particularly in construction, as a way to reduce and share risks, share knowledge and expertise and achieve common goals for delivery of a successful project.

What is Alliancing?

The alliancing concept encompasses a range of contract models representing varying levels of collaboration and risk sharing, from basic commitments for the parties to partner, through to fully integrated pure alliancing models.

Broadly speaking, and in the context of construction and engineering projects, an alliance is an agreement providing that the parties to it will act in a certain way to achieve a common goal.

Pure alliancing tends to be a multi-party arrangement including the key stakeholders - client, contractor and professional team (Architects, Project Managers, Quantity Surveyors, Engineer etc.) and potentially also key subcontractors. Contracts used to take the form of a bespoke contract, or a standard form that had been heavily amended, including terms such as no allowance of claims generally between parties (Except for very strictly limited cases, e.g., wilful misconduct or statutory breach).

There are now standard forms of Alliancing contracts which cover the collaborative arrangements described previously.

Is Alliancing the same as Partnering?

The terms "partnering", and "alliancing" are often used interchangeably although they describe procurement approaches which are quite different, especially in the way they address the distribution of risk and reward between parties.

Partnering can be defined as a commitment by those involved in a project to work closely and cooperatively, rather than competitively and/or in an adversarial manner. It is a method which allows people to minimise or avoid conflict when they are engaged in a project.

Partnering arrangements can range from one-off agreements associated with a single project, to long term commitments (strategic partnering) between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of each of the participant's resources.

Partnering involves two or more organisations working together to improve performance of a project/contract through agreeing mutual objectives, devising a way for resolving any disputes and committing themselves to continuous improvement, measuring progress and sharing any gains.

The important distinction between partnering and alliancing is that where partnering aims and goals are agreed upon and dispute resolution and escalation plans are established, partners to the contract still retain their independence and may individually suffer or gain from the relationship.

However, in an alliance, the parties form a cohesive entity that jointly shares all risks and rewards based on an agreed method.

The essence of an alliance contract is more in the process than in the formal contract. An alliance contract does not solely rest on the legal clauses. Non-legal considerations such as trust, openness and a collaborative and constructive approach also play an important role.

The foundation lies in the approach to co-operation between the parties although a clear and transparent contract can assist to support this. The idea is to align the commercial interest of all the parties. In other words, it is to transform particular interests of each party into a “one-direction” approach, where interests are aligned towards common goals.

In an alliance, each party will share in the success or failure of the project and in decision making and risk management. This is achieved by the parties structuring their relationship to share the commercial risk and reward, so that it is in the interests of all parties to work together co-operatively and openly.

Alliancing is often described as a “risk embrace” culture under which the parties seek to better manage risks by embracing them rather than trying to transfer them and then working together to manage them within a flexible project delivery environment. It can create a strong synergy between partners to deliver a complex project more effectively than with traditional procurement and delivery types.

The contractual basis of alliancing is well suited to achieving a quick start on projects. Alliancing gives the group flexibility to react, change and adapt to difficulties with minimum delay. It also allows capacity for clients to deliver a large project in a tight timeframe.

Traditional contracts can work well when a project is straightforward, simple and has few unknowns, however they can be difficult if attempting to allocate risk and commercial frameworks to more complex projects. This also affects the appetite of contractors to bid for projects of this nature, where the bulk of the risk is placed upon them.

Alliances are well suited to more technically complex projects or when it is difficult to accurately define the finished product. Alliances may also be appropriate when there is likely to be a long-term relationship, allowing parties to develop a relationship and build trust.

By having one alliance contract, all parties are working to the same outcomes and are signed up to the same success measures.

Typically, risks are shared across all parties and any gain or pain is linked with good or poor performance overall and not the performance of individual parties. In turn, this incentivises parties to work together to achieve common goals.

An alliance contract seeks to move away from the traditional adversarial approach in which parties are first of all competitors.

Alliance contracts involve a collaborative process which aims to promote openness, trust, risk and responsibility sharing and the alignment of interest between clients and contractors. The focus is on the best arrangement for project delivery rather than on the self-interest of each individual party, which is typical of traditional contracts.

Key Alliancing Approaches

Business Approach

• Alliancing aligns the commercial interests of the participants and is geared towards the successful business outcome of the project (agreed at the outset of the project).

Open Communication

• Foundations of alliancing are based on "non-legal" concepts, such as mutual goals, respect, openness and honesty.

• Open information sharing often includes open book accounting to allow for accurate figures for forecasts, profits, costs and expenses to be freely available to all parties.

Pain share / gain share

• The most significant difference is that all uninsurable risks under the project are shared collectively by the participants.

• Participants equally share the financial rewards, which are linked to the overall project performance.

No blame culture

• Apart from a few exceptions (such as wilful default or insolvency), each party is released from liability under the project and there will be no right to claim for losses arising from certain events such as delay, defective work and design, which are the cause of a significant number of disputes under traditional contracts.

• An effective dispute escalation or avoidance management regime is key, particularly as alliancing contracts usually do not include traditional dispute resolution provisions.

Innovation and continuous improvement

• Alliancing agreements allow for a far greater degree of flexibility compared to more traditional contracts, adopting to any changes or issues which may not have been evident at the outset of the project.

• Longer term projects can benefit from more flexibility to respond to the changing times and market conditions.

Skills and expertise

• One of the key steps to success in an alliancing agreement is for all participants to recognise and acknowledge the skills and expertise of the other members of the alliance.

• For most parties, working so closely with other contractors will represent a fundamental commercial shift from how they operate under traditional contracting methods, where other contractors are kept at arm's length under separate contracts.

Standard Forms of Alliancing Contracts

Framework Alliance Contract – FAC-1

FAC-1 works as a framework contract, combining the workflow of a framework, with the relationships, values and processes created by an alliance.

FAC-1 includes the following key provisions:

• A multi-party structure of 'Alliance Members'.

• Agreed 'Objectives, Success Measures, Targets' and 'Incentives'.

• Structure for the awarding of work, under a 'Direct Award Procedure' and/or 'Competitive Award Procedure' and under standard form 'Orders'.

• Process for seeking 'Improved Value', 'Supply Chain Collaboration' and other agreed 'Alliance Activities', all set out in an agreed 'Timetable'.

• Management of risks and dispute avoidance with a 'Risk Register', joint governance and ADR.

Term Alliance Contract – TAC -1

This is a term alliance agreement, based on the principles of FAC-1.

• TAC-1 closely follows the previous TPC2005 Term Partnering Contract but introduces more alliancing principles of transparency and collaboration.

• It includes many of the provisions found in FAC-1, such as agreed 'Objectives, Success Measures, Targets' and 'Incentives', as well as order procedures appropriate to the term contract.

• There is also a Risk Register and early warning process, along with an agreed timetable for seeking improved value.

Alliance Contract - NEC-4

The NEC's first Alliancing Contract was designed for use on major projects for longer term collaboration.

All parties in the work package sign up to the same alliance contract, including any key subcontractors (which are then treated equally as members of the alliance).

Adapting the NEC option X12 and bringing it to the heart of the contract, the alliance members agree on the following:

• Collaborative objectives, common systems and processes (set out in the Implementation Plan and the Programme).

• An Alliance Board, which consists of a representative from each member, tasked with making decisions, agreeing work and resolving disputes.

• An Alliance Manager (like a typical NEC Project Manager).

• Dispute resolution mechanisms are very restrictive, focusing on internal resolution. There is no process for litigation or arbitration, distinct from other forms of alliance contracts.

Considering the use of Alliancing Contracts

Here are some key points to consider when deciding whether to use an alliancing contract:

Governance and behaviour

• The organisation will need to have a clear governance procedure and ensure that there is a suitable alliance board capable of making sensible, pragmatic decisions

•There is commitment from each organisation at the highest levels.

Risk and liability profile

• There needs to be an agreed proportion of liability and a no claims approach to liabilities

• Consider appropriateness on higher risk projects, with a greater degree of variables.

• To what degree variations or compensation events (e.g., for change in law or force majeure) are catered for

• Caps on liability and exclusions of liability

Dispute resolution

• A "true" alliance anticipates minimal disputes, but projects don't always go to plan.

• How will the escalation process work within each organisation?

• What is the mechanism for a final binding decision

Pricing

• Will the project be a lump sum or cost reimbursable

• Are there any pre-agreed profit elements or any specific deductions (e.g., for defects)

• How will the pain/gain share work, tying into the project deliverables

Supply chain

• How will supply chain contracts be entered into
• Will they be managed so they sit with the upstream alliancing values and objectives?

Termination

• What are the termination rights and how will this be managed

• Will there be any compensation payable

• Will the alliance be preserved for non-defaulting members

If approached properly, alliance contracting can offer an innovative alternative to parties wanting to establish more long-term, collaborative, and flexible relationships.

What is SEC Doing in Relation to Alliancing?

SEC is keen to follow the recommendations set out in “Constructing the Gold Standard” report by Professor David Mosey and we have created an action plan of items we will be working on.

We have been working hard on completing points within the action plan and have already made great steps in achieving the actions that have been set out.

SEC has included the alliancing terms from the FAC-1 standard form in our Framework Agreement to embrace improved value and supply chain collaboration, along with other alliancing activities.

SEC are also encouraging the use of alliancing agreements as part of Call Off Contracts from our frameworks. We are educating clients on the use of alliancing agreements and working with our partners to promote the use of alliancing contracts.

SEC will also work to include additional terms of alternative dispute resolution (ADR) into the standard amendments we have written that are available for clients to use within their contracts. Further to this, SEC will promote this to clients via our website, social network and look at how our training programme can also support ADR.

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