

Championing collaboration in the construction industry

By Soh Lip San and Sathia Jagateesan

A TRADITIONAL construction contract, typically in the form of a fixed-price contract, clearly sets out each party's roles, responsibilities and risks. But this clear delegation can also lead to a "blame and claim" culture, especially in building and construction projects, where claims, disputes and adversarial behaviour are commonplace.

The recent experience of constructing a processing plant highlights this. Issues first arose over the constructability of a piping design prepared by the design consultants. The project's contractor, who had been hired under a "build-only" fixed-price contract, had no financial incentive to propose a solution to solve those design issues. Such a solution would only have increased its costs, without a corresponding increase in fees, which had been set in the contract.

Ironically, the consequential delays caused by the design issues meant that it was in the contractor's best interest to blame the design consultants and claim additional time and fees from the developer, instead of solving the problem collaboratively. This stalled the entire project and soured relations all around.

Many of these issues could have been resolved with a collaborative contracting model, which focuses on avoiding disputes and resolving issues early. The model recognises that everyone involved in a construction project benefits from a more cooperative working relationship.

Key features of a collaborative contract include:

- A contractual commitment between parties to cooperate, act in good faith and with a spirit of mutual trust and confidence.
- Payment arrangements that financially motivate parties to act in a way that is better for the overall project, such as "pain and gain" share arrangements, where parties share the wins and losses of developing the project.
- Risk management mechanisms that warn all participants early of potential issues that may arise. This allows solutions to be discussed and agreed upon before issues escalate further.

These features encourage effective collaboration to tackle the complicated design and technical challenges that are common in large, multi-disciplinary projects. Switching to collaborative contracting can also reduce costs associated with dispute resolution. These include fees for claims consultants and lawyers and other inconveniences caused by a contentious and protracted claims administration process.

Making the switch

Project owners and participants keen to explore collaborative contracts should first consider whether their projects are suitable for this model, as it is not intended for every type of construction project. In our view, collaborative contracts are more apt for large and complex projects. The value of such projects justifies the time, cost and resources needed to deploy the various protocols and procedures associated with the collaborative model.

This model can be considered for large public sector projects where the scope of work is subject to significant change after project commencement to address design and technical challenges, but recommend sticking to a traditional fixed-price model for the more conventional development of residential, office and commercial properties.

Parties must also formalise the open sharing of information, as this is key to ensuring a successful collaboration. Regular partnering workshops and early warning and risk registers, go a long way towards achieving this.

When setting up collaborative contracts, parties should also incentivise the successful completion of the project within time and cost. Doing so inculcates a commitment to performance and collaboration towards the successful delivery of the project. Contractual key performance indicators and equitable "pain and gain" share payment structures can help achieve these.

What Covid-19 could do

Collaborative contracts have found success in the United States, United Kingdom and Hong Kong. Despite its benefits, the model has not taken off in Singapore, largely because many parties are unfamiliar with it. However, it is heartening to note that some projects have adopted the model, among them Punggol Digital District project. The Building and Construction Authority and other professional bodies like the Singapore Academy of Law have also made efforts to inform and educate the industry about the benefits of collaborative contracting.

Covid-19 might accelerate the switch to a collaborative model, both in Singapore and the region. The disruptions and challenges the pandemic has posed have forced players to question long-standing assumptions of the way the industry operates. Collaborative contracting might just be the change it needs.

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