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## Defence Scope

This Better Practice Guide (BPG) should be considered better practice guidance for Defence staff conducting procurement processes for the acquisition of major capital equipment and major sustainment activities.

## Authority

Procurement BPGs do not create new mandatory procurement policy. All Defence mandatory procurement policy is contained in either the *Defence Procurement Policy Manual* or *Departmental Procurement Policy Instructions*. Within CASG, additional mandatory procurement policy is contained in *Functional Policies (Procurement)*. Any mandatory procurement guidance referred to in this BPG is sourced from appropriate legislation and mandatory Commonwealth and Defence policy.

## Monitor and Review

This BPG will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

[procurement.policy@defence.gov.au](mailto:procurement.policy@defence.gov.au)

## Note to Defence Staff and External Agencies

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This publication should be attributed as the Better Practice Guide – Offer Definition and Improvement Activities.

## Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the [It's an Honour](https://www.defence.gov.au/itsanhonour/) website.

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## Introduction to Collaborative Contracting

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### Context

1 Collaborative contracting can offer immense benefits in capability realisation. This better practice guide applies to all acquisition and Sustainment activities where the procurement risks warrant a collaborative approach. This guide should be used where CASG interacts with industry and other agencies across the complete acquisition and sustainment lifecycle. Whilst this Better Practice Guide is a CASG initiative, this guide may also be applicable to non-material and estate procurement.

2 This BPG forms part of Defence's procurement policy framework, which includes the Defence Procurement Policy Manual, Complex Procurement Guide and other BPGs. This BPG is provided as guidance only and does not contain any mandatory requirement and is designed to be read in conjunction with other documents in the framework.

### Purpose

3 The purpose of this better practice guide is to provide a coherent and consistent process for CASG to implement collaborative contracting initiatives by:

- a. identifying when to use collaborative contracting approaches;
- b. providing better practice guidance, templates, and techniques for implementing collaborative contracts;
- c. identifying opportunities for continual improvements in collaborative contracts; and
- d. ensuring collaborative contracts are fully compliant to the CASG governance environment.

### Background

4 Defence has embarked upon various forms of collaborative contracting initiatives including partnering, alliance contracts, strategic partnering arrangements, and Integrated Support Contracts. Consistent with other public and private sector organisations, CASG has gained enormous benefit from implementing collaborative contract arrangements. The business case for investing in collaborative contract arrangements is robust and CASG has captured many lessons learned from the substantial number of collaborative contract arrangements over the past decade.

5 Whilst the benefits of collaborative contracting initiatives are widely recognised as key enablers for delivering value for money, there is no comprehensive framework for selecting and implementing such initiatives within the CASG acquisition and sustainment lifecycle. More recently, the 2016 Defence White paper recognises that industry is now a Fundamental Input into Capability (FIC) and:

*"Defence's ability to be a smart buyer relies on a stronger relationship with Australian defence industry to provide expertise in managing projects."*

6 Furthermore, the Defence Industry Policy Statement recognises that future Defence procurement will be, '[underpinned by] a strategic contracting approach through *collaborative relationships* with industry'.<sup>1</sup>

7 CASG recognises the critical need for collaborative relationships in the procurement lifecycle and has established the Collaborative Contracting Initiative (CCI) with the aim to "enhance value for money outcomes in high complexity acquisition and sustainment projects through the identification, development and implementation of collaborative contracting approaches across the procurement lifecycle". This better practice guide is a key outcome of the CCI to ensure CASG delivers timely and cost-effective capability to end-users through better collaboration with industry and other partners.

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<sup>1</sup> Defence Industry Policy Statement (2016) p64.



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## About this guide

8 This BPG provides CASG officials with a framework for identifying when collaborative contracting approaches should be used, and tools and techniques for implementing collaborative approaches across the complete acquisition and sustainment lifecycle. This guide does not supplant existing CASG procurement policy, rather this guide provides supplementary guidance for implementing *better practice* in the domain of collaborative contracting.

9 The guide is structured sequentially as follows:

- a. what is collaborative contracting,
- b. what are the benefits of collaborative contracting,
- c. what are the risks of collaborative contracting,
- d. when should collaborative contracting approaches be used (and not used),
- e. what are the collaborative contracting options and attributes available to CASG,
- f. how to implement collaborative contracting, and
- g. case studies to illustrate the principles of collaborative contracting.

Collaborative contracting approaches should be considered where core acquisition and sustainment risks are high or medium-high. Where core acquisition and sustainment risks are medium-low or low then collaborative contracting approaches should only be considered where potential benefits exceed the assessed cost and risks of implementation.

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## What is Collaborative Contracting?

10 Collaborative Contracting refers to business relationships where *parties work together to achieve common outcomes*. Two useful definitions are provided below:

*'In the contracting context, collaboration occurs when two or more participants work together to achieve a common outcome whilst recognising that each party has different business objectives.'*<sup>2</sup>

*'A Business Collaboration is an agreement between firms to do business together in ways that go beyond normal company-to-company dealings, but fall short of a merger or a full partnership.'*<sup>3</sup>

11 Some authors use the term collaborative contracting to describe the *procurement or contract approach*. For example; Early Contractor Involvement, Managing Contractor approaches, Partnering, and Alliances are sometimes defined as 'collaborative contracts'. This perspective reflects the fact that these forms of procurement system are more likely to promote and foster positive relationships and collaboration when compared to traditional contracts. By way of contrast, traditional contracts are typically:

- a. price driven or market oriented;
- b. emphasised by arms-length, autonomous relationships; and
- c. underpinned by inflexible, standardised processes and contracts.

12 For CASG, collaborative contracting refers to a process rather than a specific form of contract. Most important is the recognition of the features of the relationship which typically include:

- a. mutual goals;
- b. joint maximisation of benefit;
- c. long-term arrangements;
- d. parties working in good faith;

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<sup>2</sup> Victorian Government, Inter-Jurisdictional Steering Committee for Alliances & Traditional Contracting Guidance Note No 6 "ECI and Other Collaborative Procurement Models" (2014).

<sup>3</sup> South Australian Government 'A Guide to Business Collaborative Contracting' (2012).

- e. transparency;
- f. fair and timely disputes and issues resolution;
- g. prudent risk taking;
- h. inventiveness;
- i. fairness; and
- j. common-sense.

These features are closely aligned to former CASG studies into collaborative contracts.<sup>4</sup>

13 Consistent with these studies and better practice, this better practice guide adopts the following definition of collaborative contracting:

*“Collaborative contracting is where parties work together to achieve common outcomes. Collaborative contracts are underpinned by parties working together in good faith, focussing on fixing problems and not blame, managing risk equitably and jointly where appropriate, promoting transparency, and avoiding disputes.”*

14 It is important to recognise that collaborative contracting represents a *spectrum* of approaches whereby there are varying levels of collaboration in all business relationships. The above definition represents collaboration to the maximum extent practical. CASG Defence officials may select less collaborative contracting approaches depending upon the risks and activities at hand.

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<sup>4</sup> See e.g. IACCM ‘Becoming a Smart Buyer’ (2015); IACCM ‘Guidance Document: Relational Contracting’ (2015); J. Davies ‘Behavioural Strategic Performance Measures - Evaluation and Recommendations’ (2014); IACCM “Case Study - Relational Contracting: Naval Ship Maintenance” (2013) at <https://www2.iacm.com/resources/?id=7335&cb=1405976080>

## Chapter 1

### Choosing Collaborative Contracting

*“Virtually all of the collaborative projects out-performed most defence projects” - UK NAO Good Governance ‘Measuring Success Through Collaborative Working Relationships’ (2006).*

#### The Benefits of Collaborative Contracting

1 There is universal acceptance that collaborative contracting can deliver superior benefits in terms of cost, schedule, and quality outcomes. Some of the tangible benefits to consider when considering collaborative contracting approaches include:

- a. superior cost, schedule, and quality outcomes;
- b. more effective risk management opportunities;
- c. better goal alignment;
- d. improved transparency and less surprises;
- e. dispute minimisation;
- f. reduced transaction costs;
- g. enhanced flexibility and responsiveness;
- h. increased likelihood for industry participation;
- i. increased prospects for repeat business;
- j. improvements in skills and knowledge transfer between parties to the contract; and
- k. enhanced personal satisfaction for all project parties.

These benefits have the potential to deliver best value to CASG; however, implementing collaborative contracting arrangements can incur additional cost and risks.

#### The Cost and Risks of Collaborative Contracting

2 Whilst CASG Defence officials should recognise the benefits of collaborative contracting, they should also be aware of the associated costs and risks. Collaborative contracting may incur the following additional costs:

- a. increased efforts in supplier evaluation and selection;
- b. increased efforts in monitoring contract relationships;
- c. greater involvement of executive leaders in procurement activities; and
- d. greater costs associated with bespoke contract development and negotiation.

3 In addition to the additional potential costs incurred with collaborative contracting, the following risks also emerge from such approaches:

- a. opportunistic behaviours from suppliers;
- b. perceived biases in supplier evaluation where an emphasis is made on more subjective evaluation criteria;
- c. supplier *lock-in* on longer term contracts; and
- d. potential CASG cultural incompatibility with collaborative contracting approaches.

A summary of some of the costs and risks of collaborative contracting that Defence officials should consider are included at Table 1 below.

**Table 1 – Collaborative Contracting Costs and Risks**

Collaborative Contracting Cost or Risk	Consequence
--	-------------

Increased effort in supplier evaluation	Increased source selection costs and duration.
Greater contract monitoring effort	Increase costs associated with data collection, reporting and corrective action.
Executive leader participation	Diversion of critical Defence resources to the project. Risks with lack of availability of key executives.
Cultural alignment	Costs of workshops and training to align parties to a collaborative culture.
Additional contract development costs	Additional legal and project management oversight for the development of bespoke contracts and negotiations.
Cost Investigation	Where gainshare/painshare or target cost remuneration is contemplated then the costs of independently estimating these costs should be considered.

With the benefits, costs, opportunities, and risks identified for collaborative contracting, this guide now identifies when collaborative contracting approaches should be used.

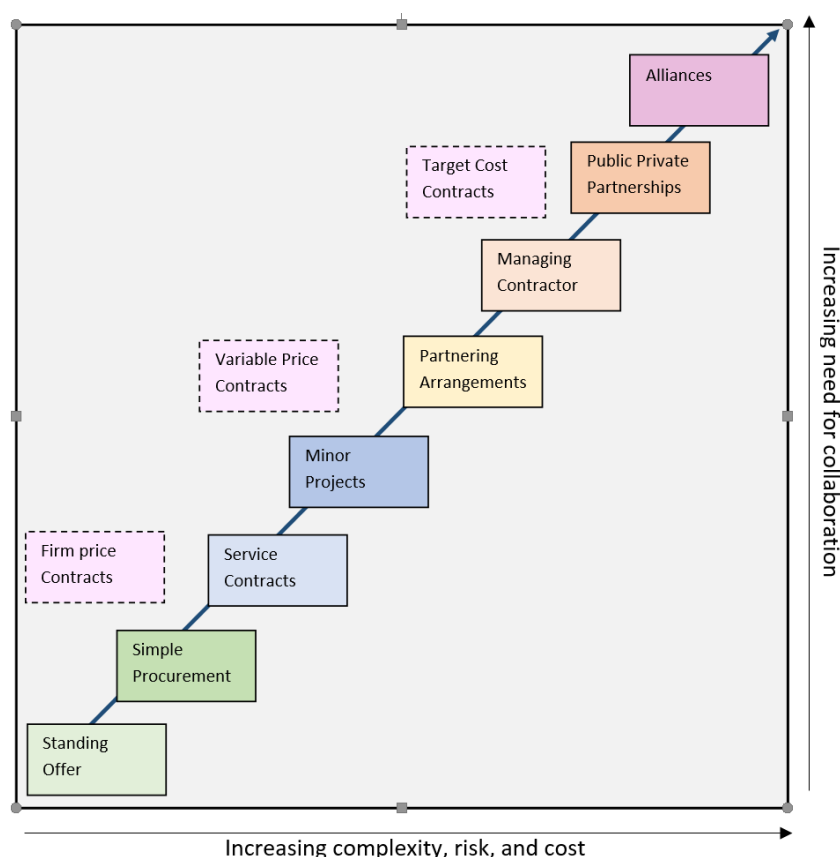
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### When to Use Collaborative Contracting Approaches

4 Collaborative Contract approaches are used in complex procurements where core acquisition and sustainment risks are sufficiently high. Collaborative Contracting approaches are only selected where they demonstrate that they are the best option for delivering value for money. It is important to revisit the value proposition for using collaborative contracting approaches continually during the procurement lifecycle.

5 As this guide previously states, collaborative contracting exists as a spectrum with varying levels of collaboration. At one extreme, CASG may adopt traditional purchasing with minimal levels of collaboration. Conversely, CASG could pursue a highly collaborative *project alliance* with joint decision making, gainshare/painshare arrangements, and a no blame/no liability framework. In between these two extremes are varying levels of collaborative contracting. Figure 1 illustrates this principle from the perspective of contracting approaches.





**Figure 1 – Varying levels of collaboration are associated with different contract approaches<sup>5</sup>**

*“Collaborative Contracting approaches will generally only be used for higher risk procurement. It is unlikely that low risk minor projects will warrant a collaborative approach.”*

The following section provides a methodology for selecting when to pursue varying degrees of collaborative contracting approaches.

## Collaborative Contracting Selection Process

### New Projects or Programs

6 Identifying opportunities to invest in collaborating contracting approaches begins at the start of a project or program. In parallel with development of the Project Execution Strategy (PES), prior to Gate 0, a smart buyer decision making process will be undertaken.<sup>6</sup> The PES includes a risk assessment against the following eight *Core Acquisition Risk Categories* and seven *Core Sustainment Risk Categories* as illustrated in Table 2. This risk assessment will inform the need or otherwise for collaborative contracting approaches for inclusion in the PES:

**Table 2 – Core Acquisition and Sustainment Risk Categories<sup>7</sup>**

Core Acquisition Risk Categories	Core Sustainment Risk Categories
Requirements	In-Service Requirements
Technology	Obsolescence
Schedule	Commercial
Commercial	Fundamental Inputs to Capability

<sup>5</sup> Note that there are a spectrum of PPP approaches including BOO, BOOT and BOM which will require varying degrees of collaboration. Likewise, there are several forms of alliance including pure alliances and hybrid alliances. Depending on the form of PPP and alliance selected, the relative need for collaboration between these two options could change.

<sup>6</sup> Capability Life Cycle Detailed Design (2016)

<sup>7</sup> Smart Buyer – Detailed Design (2016) pp6-9.

Project Integration	Financial
Defence Integration	Strategic
Financial	Operational
Strategic	Industry
Industry	

7 In addition to the assessment of core acquisition and sustainment risks, the need for collaborative contract approaches will be influenced by:

- a. The capacity and capability of CASG project staff to embrace collaborative contracting principles; and
- b. The capacity and capability of Industry to embrace collaborative contracting principles.

8 Consistent with CASG's Smart Buyer approach, there are no rules for when collaborative contracting approaches should be adopted.<sup>8</sup> The following guidance is provided to indicate when collaborative contracting approaches should and should not be considered.

9 **When Core Acquisition and Sustainment Risks are *High or Medium-High*.** Collaborative contracting approaches should be considered when core acquisition and sustainment risk categories are high or medium-high.<sup>9</sup> In particular, collaborative contracting should be considered to mitigate the following acquisition risks

- a. Requirements,
- b. Technology,
- c. Schedule,
- d. Commercial,
- e. Finance, and
- f. Project integration.

10 Likewise, collaborative contracting should be considered to mitigate the following sustainment risks

- a. In-service requirements,
- b. Commercial,
- c. Fundamental Inputs to Capability,
- d. Financial, and
- e. Operational.

11 Collaborative contracting approaches are required to be tailored to the capabilities of both CASG and industry. A partially collaborative approach may be required where CASG and Industry do not have the capacity or capability to embark on a fully collaborative approach.

12 **When Core Acquisition and Sustainment Risks are *Medium-Low or Low*.** Where the core acquisition and sustainment risks are medium-low or low, then collaborative contracting approaches should only be considered where the potential benefits are likely to exceed the cost and risks of implementation.

13 Where Defence officials decide that collaborative contracting approaches are not warranted then this guide no longer applies.

<sup>8</sup> "[The decision making framework] is not a rules-based process but one designed to make best use of good judgement, the available information and experience. It aims to get project leaders to ask the right questions at the early stages of a project to help ensure effective project execution plans are developed". Ibid, p 3.

<sup>9</sup> See e.g. Smart Buyer Detailed Design p21 "For the **highest risk programs**, project teams should consider the full range of delivery options, including the use of alliancing or delivery partners, given the challenge of resourcing these once-in-a-generation projects purely using internal resources."

**Example – Project Air 5349 Phase 3 EA-18G Growler Aircraft**

*“The EA-18G is being procured under Foreign Military Sales Arrangements. The project as a whole was categorised as ACAT II with ‘Complexity’ and ‘Operation and Support’ elements ranked as high risk”*

Air 5349 aims to provide an Airborne Electronic Attack Capability based on the EA-18G Growler aircraft. The implementation of this project will be primarily through Foreign Military Sales arrangements. Whilst the project incorporated several high risks, the potential for pursuing collaborative contracting initiatives under FMS arrangements was significantly constrained. Defence officials should therefore only consider collaborative contracting approaches for those aspects of a project where CASG can influence the procurement methodology and contract approach. *Consistent with a smart buyer model, flexibility is required for Defence officials to exercise their judgement as to when collaborative contracting initiatives should be pursued.*

**Existing Projects or Capabilities**

14 Other than for new projects or programs, opportunities may arise to seek collaborative contracting initiatives with existing relationships. For example, a strategic supplier involved in sustainment may be approaching contract renewal or options for extension. Similarly, collaborative contract approaches may be required where new suppliers take responsibility for sustainment. Defence officials should consider the application of collaborative contracting approaches in such circumstances where:

- a. annual contract values are high;
- b. the contract duration is sufficiently long enough to justify the investment in collaborative contract arrangements;
- c. There is high strategic importance in the relationship with the suppliers;
- d. competition or substitution opportunities are low or non-existent; and
- e. multiple parties are involved in capability delivery.

15 Where existing contracts or renewed contracts exhibit these features, then Defence officials should consider the application of collaborative contracting approaches.

## Chapter 2

# Collaborative Contracting Attributes

### Overview

1 Collaborative Contracting exists as a spectrum, as illustrated in Figure 1. Consistent with the Defence Procurement Policy Manual, Defence officials are required to:

*Select the most appropriate procurement process that is commensurate with the scope, scale and risk of the procurement [to] help Defence officials achieve value for money.<sup>10</sup>*

2 There is greater scope for collaboration where contracts are selected that encourage equitable risk management, joint objectives and remuneration strategies that encourage innovation and the pursuit of *best for project* outcomes. This chapter explores the various attributes of collaborative contracts and when they should be used. Better practice collaborative contracting often includes:

- a. joint decision making;
- b. partnering charters;
- c. target cost or gainshare/painshare remuneration;
- d. no blame/no-liability frameworks;
- e. jointly managed program risk;
- f. transparency and open book financial reporting;
- g. fair and timely dispute resolution processes;
- h. shared financial, configuration management, and decision support systems;
- i. agility and flexibility; and
- j. senior executive participation.

3 The application of these collaborative attributes will be contingent upon the core acquisition and sustainment risks. Defence officials should have regard to the incorporation of each collaborative contract attribute as a means to mitigate the core acquisition and sustainment risks as illustrated in Table 3.

**Table 3 – Collaborative Contract Attributes Mitigating Core Acquisition and Sustainment Risks**

		Collaborative Contract Feature								
		Joint Decision making	Partnering Charters	Gainshare/ painshare	No blame/No liability	Jointly Managed Risk	Transparency Open Book financial reporting	Shared Systems	Agility and Flexibility	Senior Executive Participation
Core Acquisition Risks	Requirements									
	Technology									
	Schedule									
	Commercial									
	Project Integration									
	Defence									

<sup>10</sup> Defence Procurement Policy Manual (April 2017), p 18.

	Integration									
	Financial									
	Strategic									
	Industry									
Core Sustainment Risks	In-Service Requirements									
	Obsolescence									
	Commercial									
	FIC									
	Financial									
	Strategic									
	Operational									
	Industry									

Significant impact on Risk
  Medium impact on Risk
  Marginal impact on Risk

4 Each of these attributes are explored below with guidance upon where they should be used, the risks associated with each attribute, and any associated CASG governance constraints.

### Joint Decision Making

5 Joint decision making encourages collaboration, reduces adversarial behaviours, and allows for greater agility and responsiveness in commercial dealings. Joint decision making is a common feature of project alliances and other highly collaborative contract arrangements.<sup>11</sup> It is important to recognise that joint decision making does not apply to the whole scope of a project, rather joint decision making should only apply to the scope of work under contract (the acquisition boundary). Defence officials should consider joint decision making where the following project attributes are present:

- a. Project success requires very close interaction between CASG and suppliers;
- b. Risks and uncertainty are high in both design and implementation phases; and
- c. Agility and flexibility is required (for example, where there are significant Government Furnished Equipment/Facility/Information dependencies).

6 Joint decision making can introduce substantial governance risks, hence it is important to ensure that the scope of joint decisions are within Management's levels of delegations.

7 Joint decision making should not unnecessarily fetter CASG decision making. In some projects, CASG may require a 'casting vote', 'deadlock breaking', or 'reserved power' mechanism to resolve any disagreements. Care should be taken when considering Commonwealth reserved powers. Where the Commonwealth makes a unilateral decision, this could involve risk take back and thwart any risk sharing initiatives.

8 When exploring contracting approaches, joint decision making does not necessarily require all decisions related to the scope of work under the contract to be made jointly. Defence officials may want to limit the scope of joint decisions to only those aspects of the scope of work that involve high risks requiring joint management.

<sup>11</sup> Australian Government 'National Alliance Contracting Guidelines - Guide to Alliance Contracting' (2015).



### Example - AIR5333 Vigilare Air Defence Ground Environment

*“This project was successfully remediated by adopting joint decision making for implementing minor technical variations through a Joint Program Review Board between Defence and the prime Contractor.”*

Project Air 5333 Phase 1 Vigilare aimed to provide the RAAF with an enhanced Air Defence Ground Environment command, control and communications capability. The project was characterised by significant risks associated with multiple dependencies (Government Furnished Equipment, Facilities and Data), very high development risks, and requirements instability. The project was initially implemented in a traditional fashion between Defence and the Prime Contractor. Significant delays and cost overruns were experienced and the project was eventually included on the projects of concern list.<sup>12</sup> Remediation of the project involved a change in governance arrangements with the establishment of a customer/supplier Program Review Group and Program Review Board. This allowed for joint decision making for the allocation of costs for minor changes to technical requirements. This provided significant improvements in responsiveness, improved relationships, and much faster capability delivery.

Where Defence officials are facing projects with high customer configuration management risks, then joint decision making offers a means to avoid numerous and costly contract change proposals.

### Partnering Charters

9 Partnering is a process to *facilitate cooperation between Defence, its contractors and their subcontractors*. The partnering charter is not legally binding and exists to encourage cooperation, minimise disputes, and align the parties to achieve 'best for project' outcomes. Defence officials should consider the use of partnering arrangements for complex projects or where there are multiple parties involved in capability delivery.

#### Example – ANZAC Frigate Group Maintenance Contract

*“Defence and Industry are sustaining the ANZAC FFH fleet through a collaborative Group Maintenance Contract. This relationship is underpinned by a partnering charter.”*

In 2012 Defence and Industry entered into a Group Maintenance Contract for repair and overhaul of the ANZAC fleet. This collaborative relationship has contributed to cost savings in excess of 20% when compared to business as usual approaches within CASG. Defence and Industry share a common enterprise charter which embraces many of the attributes identified in this Better Practice guide as follows:

**OUR MISSION:** ANZAC SPO will sustain the ANZAC Class to fight and win at sea.

**OUR VISION:** ANZAC SPO is committed to sustaining the ANZAC Class at a world's best practice level delivering a superior platform for the next thirty years.

We agree that to be successful in meeting our mission and vision we must work together and uphold the following:

**Communication.** Open, effective and timely communication to ensure knowledge exchange and informed decision making across all stake holders to enable delivery of certified FFH vessels to Navy to meet operational and strategic requirements safely.

**Joint Working.** Integration of enterprise skills, experience and resources to achieve the successful development and delivery of mutually agreed project objectives in a harmonious and transparent working environment.

**Mutual Objectives.** Enterprise Collaboration to achieve joint working project objectives.

**No Blame Culture.** A no blame culture exists when all personnel are welcomed to raise all, and any issue with the knowledge of being treated fairly and without fear of retribution for raising the issue.

<sup>12</sup> <http://www.minister.defence.gov.au/2011/02/01/minister-for-defence-minister-for-defence-materiel-projects-of-concern-update/>

**Accountability & Responsibility.** We are accountable for our actions and will respect the boundaries of our scope of work.

**Problem Solving.** In a no blame culture, problems are solved collaboratively to ensure we minimise consequences.

**Continuous Improvement.** To create a culture which works to cultivate creativity and one where there is mutual benefit in being able to realize innovative initiatives which contribute to operational excellence and continuous improvement across all facets of the enterprise and its boundaries

**Share Success and Challenges.** Create a culture where all parties are engaged at all levels to celebrate the successes and stand together through the challenges

**Performance Measurement.** The ability to record monitor and analyse performance management as it relates to operational capability to meet the shared objectives. So that we can identify both excellence and opportunities for improvement thereby ensuring operational success and a platform for continuous improvement

The commitment to the partnering principles provides a joint vision to all of the program participants and has generated substantial benefits. Defence officials should contemplate partnering charters where multiple parties are involved in capability delivery or where success is contingent upon a shared vision.

10 Whilst partnering charters do not normally have any binding force, since they are separate to the head contract, Defence officials may wish to import some project partnering principles into contracts. Appropriate partnering principles that could be included in head contracts include:

- a. dispute resolution mechanisms,
- b. transparency requirements,
- c. express duties of co-operation, and
- d. express good faith provisions.<sup>13</sup>

11 Defence officials should consider how performance against the behavioural expectations set out in the charter will be monitored. One option is to formally review progress as part of regular contract review meetings (refer paragraph 5.10).

### Implementing Target Cost or Gainshare/Painshare Remuneration

12 Remuneration strategies can be crafted to encourage collaboration and avoid adversarial behaviours. Defence officials should recognise that certain styles of remuneration strategies can encourage unwanted behaviours. For example, under firm price contracts there could be an incentive for suppliers to seek cost escalation through contract change proposals and 'hide behind the contract' to minimise their risk. Conversely, under cost reimbursement arrangements, there may be little incentive for suppliers to seek innovation or cost control in capability delivery.

13 Consistent with collaborative contracting approaches, remuneration strategies that seek to share risks can often lead to a more equitable management of risk, foster more positive relationships, and incentivise CASG and suppliers to deliver superior outcomes. Remuneration strategies that employ gainshare/painshare arrangements aim to create an environment where either all parties to the contract win or they all lose.

14 Defence officials should be aware that a focus on gainshare/painshare remuneration alone can create adverse effects. Where parties are solely focussed on cost controls to maximise profits, then sacrifices could be made against other critical project success factors such as quality and schedule. Other non-price outcomes may also suffer if an unhealthy emphasis is placed on price outcomes alone. Non-price outcomes that could be jeopardised include environmental and safety objectives. Consequently, any target cost or gainshare/painshare remuneration strategy should allow for cost adjustments if other project key success factors are not achieved.

Example – SEA4000 Air Warfare Destroyer

<sup>13</sup> This is arguably redundant for the Commonwealth but it could have greater consequences for suppliers.

*“SEA 4000—Air Warfare Destroyer (AWD) Program aims to design, build and deliver three Hobart-class guided missile destroyers (DDGs) and their Support System to the Royal Australian Navy”*

SEA 4000 aims to deliver the Royal Australian Navy with three Air Warfare Destroyers. The project involves multiple parties, significant quantities of Government Furnished Equipment, and significant design risks. A Project alliance was established to implement this project using a cost-plus-incentive-fee arrangement whereby the parties are paid direct project costs, and incentive fees which vary according to the parties' collective cost and schedule performance relative to a Target Cost Estimate.<sup>14</sup> Whilst supplier profits are at risk, suppliers will be reimbursed all direct costs. Such strategies are more likely to foster collaborative behaviours when compared to firm fixed price arrangements.

Defence officials should contemplate gainshare and painshare arrangements where a significant proportion of project risks need to be shared.

15 When considering gainshare/painshare arrangements, Defence officials are required to consider the following:

- a. Placing an amount of the contract value at risk for suppliers that exceeds that supplier's profit margin may result in risk-averse behaviour by that supplier;
- b. Where suppliers cannot collectively manage risks they should not be liable for any cost increases or decreases resulting from that risk (as observed by the ANAO)<sup>15</sup>;
- c. Target cost remunerations strategies should make allowances for other key success factors such as schedule and quality. Where these non-price targets are not met than then target fees or profits should be adjusted accordingly<sup>16</sup>;
- d. Establishing a process to ensure the integrity of the target cost. Strategies such as introducing price competition for target cost development<sup>17</sup>, independent auditing, and benchmarking need to be considered to ensure target costs are realistic; and
- e. Where gainshare/painshare remuneration is being contemplated, that remuneration strategy should only apply to those aspects of the contract that warrant such an approach. For example, gainshare/painshare remuneration may be suitable for design activities but not necessarily for implementation.

### Pursuing no blame and no-liability frameworks

16 No blame and no liability frameworks aim to reduce disputes and focus parties on 'fixing the problem and not the blame'. Additional advantages arise from such strategies since suppliers are far less likely to include unnecessary contingency or management reserve in their bids or target costs.

However, no-liability frameworks can introduce additional insurance risks and advice should be sought from the Commercial Division when contemplating such an approach.

17 No blame and no liability frameworks are used extensively in alliance contracts. These features prevent a party seeking damages from the other party except for wilful default. Whilst no blame and no liability frameworks can be broadly applied across the whole of the contract works, as is the case in project alliances, a more pragmatic approach can be adopted such that no blame or no liability provisions only apply to those activities where risk sharing is more appropriate. Examples of where no blame or no liability could be contemplated include:

- a. acts or omissions of Integrated Product Teams or for jointly made decisions,
- b. liability for any rework associated with Government Furnished Equipment or third party suppliers, and
- c. acts or omissions for risks that are not under the control of the parties.

<sup>14</sup> ANAO Audit Report No.22 2013–14 'Air Warfare Destroyer Program' [9].

<sup>15</sup> "If a key industry participant is not party to an alliance arrangement, a rigorous approach is needed to ensure that the products and services they provide will match the construction strategies applied by the alliance." *ibid*

<sup>16</sup> Guidance on linking non-cost performance objects to remuneration is available at: 'DMO Performance based Contract Centre of Expertise Fact Sheet 2: Performance Measures'.

<sup>17</sup> The competitive TOC alliance is an example of this approach. See e.g. Australian Government 'National Alliance Contracting Guidelines - Guide to Alliance Contracting' (2015) p 38.

18 Defence template contracts do not generally allow for risk sharing with an emphasis on limitation of liability and indemnities.<sup>18</sup> Adjustment of the ASDEFCON core liability provisions may therefore be required if no liability frameworks are being contemplated. In such circumstances, Defence officials are required to seek appropriate legal advice.

**Example – Unintended Commercial Consequences: JP2070 Lightweight Torpedo**

*“JP2070 Djimindi Lightweight Torpedo Project was delivered under alliance arrangements under a ‘no litigation’ framework. This contractual provision had adverse, unintended consequences.”*

JP2070 sought to provide RAN and RAAF platforms with an updated torpedo system. This project was managed under a project alliance where, “the parties agreed not to resort to litigation to resolve issues, that is, no fault and no blame except in very limited circumstances”.<sup>19</sup> An unintended consequence of this approach was that the Commonwealth was precluded from pursuing termination for convenience. Typically, alliance contracts with no blame/no liability provisions preserve the right for the owner to *terminate for convenience*. Defence officials should ensure that any no blame/no liability provisions do not attract unintended consequences or fetter future decision making.<sup>20</sup>

19 In summary, Defence officials should only contemplate no blame and no liability provisions for those activities where risks are not under the control of the parties or where risks are being shared. Where no liability arrangements are being contemplated, Defence officials are required to seek appropriate legal advice.

## Jointly Managing Program Risk

20 Collaboration is more likely to occur where parties work together and jointly manage program risks. Joint identification and management of risks provides:

- a. greater scope for innovation;
- b. greater avoidance of surprises and disputes;
- c. avoidance of duplication with a holistic approach to risk management;
- d. less likelihood of ‘risk take back’<sup>21</sup>;
- e. reduced contingency or management reserve; and
- f. clearer allocation of accountabilities.

21 Jointly managing risk does not imply that all risks are jointly owned, rather joint risk management ensures that all risks are adequately managed and it may be more prudent to share these risks if neither party has complete control of them.

22 Joint management of risk can be pursued in both the pre-contract and post-contract phases. Pre-contract, parties may *workshop* project risks and explore who would be best able to manage those risks. The Early Contractor Involvement approach is an example of this strategy whereby the customer and supplier adopt ‘negotiated risk transfer’ prior to entering into a head contract. Offer Definition and Improvement Activity (ODIA) also provides an opportunity for earlier identification of risks and consideration of who should manage those risks prior to contract execution.<sup>22</sup> Joint risk management may also be conducted post-contract whereby parties jointly identify and manage project risks. This latter approach is less suitable for firm priced arrangements since suppliers would have included risk contingency in their tendered bids. Joint management of risk post-contract is therefore more suitable for cost reimbursement arrangements and target cost or gainshare/painshare approaches.

23 Defence officials should contemplate joint management of risk where:

- a. there are many project risks that are difficult to assign to one party;

<sup>18</sup> ASDEFCON (Strategic Materiel) cl 8.5.

<sup>19</sup> ANAO Audit Report No.37 2009–10 Lightweight Torpedo Replacement Project (2010) [3.2]

<sup>20</sup> See e.g. Legal Practice Guide Number 4 “Termination for Convenience Clauses”.

<sup>21</sup> See e.g. Victorian Government “Risk Allocation and Contractual Issues” issue 1 (2001) [4.5] “Unintentional Take-Back. To achieve value for money, government must also ensure that the risk allocation for which it is paying is effective. There is little point in government paying a premium to the private party to accept design risk, for example, if government approvals at critical design stages effectively result in government taking back some of the risk”.

<sup>22</sup> DPPM opcit Ch 3 [46]; see also Exposure Draft - ODIA Better Practice Guide (2016)

- b. neither party has the internal skills or capacity to identify all project risks;
- c. risks are beyond the control of one party; and
- d. the scale and complexity of the project warrants such an approach.

**Example – AP-3C Accord**

AP-3C Orion Through Life Support (TLS) and capability upgrades are delivered under a collaborative *Accord* agreement. This arrangement incorporates a Joint Management Office (JMO) comprising Defence and industry participants. The JMO provides project governance and collectively allocates risks to the parties best able to manage those risks. This holistic approach to risk management ensures accountability for outcomes, flexibility, and cost reductions.

Defence officials should consider joint risk management where risk transfer is not suitable and traditional contract approaches are not applicable.

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**Transparency and open book financial reporting**

*“Be proactive. Don’t let minor issues become major ones.” – DMO ‘Short Guide to Contract Management’ (2004).*

24 Trust is a feature that underpins collaborative contracting. Trust is promoted through transparency and the ability to demonstrate all parties to the contract are being treated fairly. These objectives may be achieved through:

- a. open and honest communication at all levels within a project,
- b. open book financial reporting, and
- c. obligations to promptly report issues and disputes (early warning).

**Commonwealth policy**

“Procurement should facilitate accountable and transparent decision making” Commonwealth Procurement Rules [4.4]

25 Note that procurement officials are required to consider confidentiality arrangements when considering transparency obligations.<sup>23</sup>

26 The need for open and honest communication may be included in a partnering charter, facilitated through a communications plan, or even be included as an express requirement in the conditions of contract. For example, there may express requirements to report material changes in risk within a certain time limit. More importantly, open and honest communication is fostered by a positive culture where parties are encouraged to share information and avoid ‘shooting the messenger’. This is far more likely to occur where customer and supplier teams are co-located.

27 Open book financial reporting allows for full transparency of costs. Open book financial reporting is not normally associated with firm priced contracts, but is often required in target cost and cost reimbursement arrangements. Open book financial reporting allows for verification of costs and dispels any perceptions of ‘opportunistic behaviours’ or ‘price gouging’.

28 Defence officials should contemplate open book financial reporting for all cost reimbursement and target cost contracts. The process for implementing open book financial reporting should be as unobtrusive as possible whilst remaining ‘auditable’.

**Example – RAF Engine Affordability**

*“The RB199 Engine transformation project utilised open book cost modelling allowing the customer and supplier to explore cost saving initiatives.”*

“The joint RAF - Rolls Royce, RB199 Operational Contract for Engine Transformation Project was established using a joint, open book, cost model enabling both sides to address affordability issues and foster an increased overall awareness of project issues. The project goes further than a traditional gain-share relationship with maintenance and overhaul carried out by RAF personnel under the management of a Rolls Royce team leader. The project is a success. Engine availability has improved

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<sup>23</sup> Commonwealth Procurement Rules (2014) [7.22]



and averaged virtually 100 percent over the first 6 months of the project. Closer working has meant that the overall numbers of engines requiring repair has reduced significantly and the resources required to support the engines at RAF Marham has reduced significantly.<sup>24</sup>

Where Defence officials are contemplating open-book financial reporting, this is to be included in the Request for Tender documents and be aligned to the Project Execution Strategy.

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### Dispute and Issues Resolution

29 Better practice dispute and issues resolution for collaborative contracting recognises that disputes and issues should:

- a. be resolved at the lowest level;
- b. be resolved in a timely fashion;
- c. be dealt with fairly and equitably; and
- d. rely upon alternate dispute resolution mechanisms to the maximum extent possible where resolution cannot be achieved internally.

30 These features may be included in a partnering charter, or as express terms in the contract itself. Default ASDEFCON provisions incorporate scope for using arbitration, should the parties be unable to resolve a dispute in good faith.<sup>25</sup> Where greater collaboration is required then Defence officials may need to consider:

- a. mediation,
- b. conciliation, and
- c. expert determination.

31 Dispute and issues management is intricately linked to the need for transparency. Dealing with issues promptly will ensure issues do not 'fester' and become an impediment to positive collaborative relationships.

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### Shared Systems

32 Shared systems promote greater collaboration with fewer risks associated with configuration management, financial reporting, and communication errors. Shared systems also reduce duplication and costs, especially with Business to Business systems and processes. Where buyers and suppliers share systems they become more integrated and more interdependent.<sup>26</sup> Defence officials should contemplate the use and promotion of common systems to the maximum extent practical.

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### Flexible and Agile Contracts

33 A significant barrier to being a smart buyer and fostering collaboration is rigid and inflexible contract structures. Partners in a commercial relationship will not be able to embark upon collaborative endeavours if the terms and conditions of that commercial relationship unnecessarily constrain performance and thwart innovation. Where collaborative arrangements are being contemplated, Defence officials should contemplate agile, evolutionary contracts such as:

- a. Incremental Acquisition. Incremental acquisition is used when requirements are mature but the requirements do not need to be delivered in one single tranche. Incremental acquisition allows for Defence and industry to work collaboratively to define what level of capability can be delivered in certain timeframes.
- b. Spiral Development. Spiral development is used where requirements are volatile or unknown. Spiral development allows for requirements to be progressively refined during multiple design and build phases.<sup>27</sup> Spiral development avoids the big-bang approach of traditional contracts, allowing Defence and industry to better deal with emergence and complexity.

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<sup>24</sup> UK NAO Good Governance 'Measuring Success Through Collaborative Working Relationships' (2006) p 7.

<sup>25</sup> See e.g. ASDEFCON (Strategic Materiel) CI 12.1.3.

<sup>26</sup> See esp. CASG Report "Becoming a Smart buyer" (2015).

<sup>27</sup> Better Practice Guide "Procurement Delivery Models" Exposure Draft (2015) ch7.

- c. Other agile contract options include Cost as an Independent Variable (CAIV). CAIV approaches allow for trade-offs between key system goals and production cost during the design and development of weapon systems. CAIV emphasises affordability in acquisition activities so long as flexibility exists in system or capability performance.

34 In addition to agile acquisition strategies, processes to allow for rapidly responding to emergence should be incorporated into the contract. Lengthy and costly processes for implementing change are unlikely to promote positive behaviours. Appropriate change processes and delegations need to be considered when embarking upon collaborative ventures.

35 For further information on evolutionary acquisition refer to the Procurement Delivery Model Better Practice Guide.

## Leadership

36 Effective leadership is a key success factor for collaborative contracting as observed by the UK NAO:

*Every case study ranked leadership as the most important factor in developing collaborative relationships.<sup>28</sup>*

37 Collaborative contracting work best where senior leadership is involved and all leaders display the required values needed for collaboration. When collaboration is required, Defence officials should explore governance systems that encourage senior leadership participation. This could involve:

- initiation workshops with senior leaders to set the tone of the relationship and align values;
- implement monthly progress reviews by the senior leadership team; and
- monitor senior leadership participation and take corrective action where necessary.

38 Challenges can arise in strategic projects where the tenure of Defence Senior leadership is substantially less than the duration of a project. Appropriate succession plans and business continuity plans should be considered in such circumstances.

## Collaborative Contract Features

Table 4 below summarises where each collaborative contract feature should be used for traditional, partly collaborative, and fully collaborative contracts.

**Table 4 - Contract Features and Where They Should be Used.**

Contract feature	Traditional	Partly Collaborative	Fully Collaborative
Joint Decision Making	Generally not required	Joint Decision making for some aspects of the project (for example a Joint Configuration Control Board for technical issues)	Most aspects of the acquisition boundary involve joint decision making. The Commonwealth may reserve a casting vote to avoid deadlocks.
Implementing Partnering Charters	Not required	Non-binding partnering charter	Some or all of the partnering principles are imported into the head contract
Implementing target cost or gainshare/ painshare remuneration	Combination of Firm Price or Cost reimbursement	Cost reimbursement or Fixed Fee	Target cost or incentive fee
Pursuing no blame/no-liability	Limited to acts or omissions of the	Indemnification for jointly made decisions	No Blame/no litigation except in limited circumstances (e.g.

<sup>28</sup> UK NAO Good Governance 'Measuring Success Through Collaborative Working Relationships' (2006) p 8

frameworks	Commonwealth as per ASDEFCON		wilful default, insolvency, or where prescribed by legislation)
Jointly managing program risk	No requirement for jointly managed risks	Some joint management of risk for components of the project	Significant joint management of risk with joint risk registers, negotiated risk transfer following ODIA
Transparency and open book financial reporting	Open book reporting limited to CCPs and cost reimbursement elements.	Project principle to report issues in a timely fashion  Open book reporting limited to auditing and review	Project costs are fully open and parties work collaboratively to seek innovation and pursue cost control.  Positive duty to be open and transparent with “no surprises”
Fair and timely dispute resolution processes	Duty to negotiate issues in good faith and then seek arbitration when necessary	Inclusion of dispute escalation process with senior leadership involvement	More collaborative approaches mandated before arbitration including mediation, conciliation and expert determination
Encourage shared financial, configuration management and decision support systems	Shared systems and processes are at the minimum necessary	Parties seek common systems and process where practical.	The parties adopt shared systems and processes to the maximum extent possible. Customer or supplier systems are used on a ‘best for project’ basis
Promote Agility and flexibility in the relationship	Traditional contracts are used which adopts a waterfall development lifecycle and where contract change proposals are dealt formally on a case by case basis.	The parties adopt multi-stage approaches such as evolutionary acquisition or spiral development so that risks are quantified as early as possible and agility is promoted in the relationship	The acquisition strategy is highly agile and allows the parties significant discretion to achieve program objectives. The parties are able to trade off non-critical capability against cost. Alliances or similar arrangements are used. Key leaders have the necessary delegations to implement change in a rapid fashion
Encourage senior executive participation.	Senior leader involvement is minimal and limited to mandatory acts where financial delegations ,make their presence essential	Senior leaders meet regularly to review progress and seek innovative solutions.	Senior leaders are fully engaged and meet regularly with the customer and supplier teams to promote a shared vision and lead by example

Consistent with a smart buyer approach, this table is a guide only and the judgement of individual Defence officials is required when assessing the need for collaborative contract features.

## Chapter 3

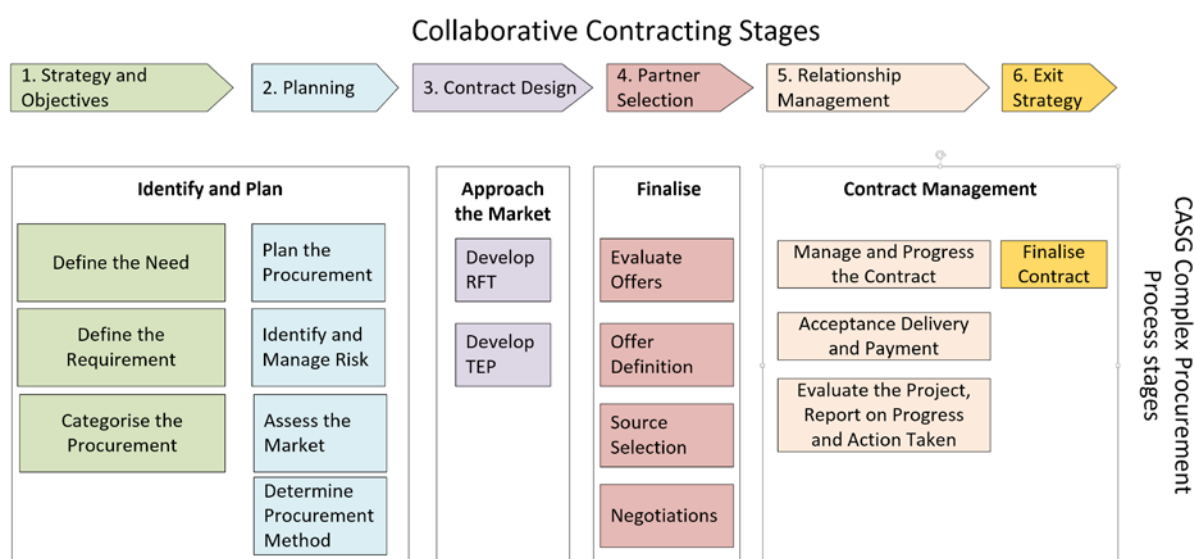
# The Collaborative Contracting Process

### Overview

1 The Collaborative Contracting process is fully integrated into the CASG procurement process. There are six steps in the collaborative contract process as follows:

- a. **Strategy and Objectives.** Identify opportunities for collaboration and initial risk assessments. Identify the relationship objectives and the value proposition for collaborative contracting.
- b. **Planning.** Review project risks. Explore the capability for CASG and industry to embark upon collaborative contract initiatives. Validate the need for collaborative contracting. Finalise the acquisition and sustainment strategy and relationship management plan at Annex C.
- c. **Contract Design.** Develop the RFT package with the specific collaborative contract features. Establish the collaborative partner evaluation criteria and process.
- d. **Partner Selection.** Evaluate and select partners.
- e. **Relationship Management.** Implement the governance framework. Monitor the relationship. Seek continual improvement.
- f. **Exit Strategy.** Ensure business continuity. Update lessons learned.

These steps are integrated into the CASG Procurement process as illustrated in Figure 2 below.



**Figure 2 –Collaborative Contracting Stages integrated into the CASG Complex Procurement Process**

### Step 1 - Strategy and Objectives

2 In this step, the Defence officials will evaluate the project to establish whether collaborative contracting approaches are suitable. This step is undertaken in conjunction with defining the procurement needs and requirements. In this stage Defence officials should:

- a. review the project risks and issues during development of the Project Execution Strategy;<sup>29</sup>
- b. conduct a preliminary assessment of customer and supplier capability to embark upon collaborative contract arrangements (the CASG Contract Maturity Model – *Relationships*)

<sup>29</sup> A risk analysis is included in the PES, vide Interim Capability Life Cycle Manual (2016) p 79.

attribute may be used for this purpose. An extract evaluation checklist is included at Annex D to this BPG);

- c. conduct a detailed assessment of collaborative contract risks, issues and opportunities;
- d. conduct a suitability assessment for embarking upon collaborative contract arrangements; and
- e. update business cases with the value proposition for embarking upon collaborative contract approaches.

3 Where there is a strong indication of the need for collaborative contracting approaches, then Defence officials may develop a draft relationship management plan.

4 For major projects it may be desirable to negotiate both acquisition and sustainment contracts in parallel. In which case, the steps listed below will apply to both acquisition and sustainment phases. Nonetheless, Defence officials should be cognisant of both core acquisition and sustainment risk profiles. The risk profiles in these two phases may vary considerably. Consequently, the depth of collaboration required in acquisition and sustainment may be very different. Such differences should be identified in the Relationship Management Plan.

#### **When**

- When the core acquisition and sustainment risks are identified.
- During development of the Project Execution Strategy.

#### **Inputs**

- Draft Project Execution Strategy.
- CASG Contract Maturity Model Assessment.
- Drivers Risks Assumptions and Issues Log (DRAIL).

#### **Outputs**

- Detailed Project Execution Strategy (Industry Approach, and Procurement Approach sections).
- Business Case with content on the need for collaborative contracting approaches.
- Updated DRAIL (identifying initial collaborative contract risks, issues and opportunities).
- Draft Relationship Management Plan.

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## **Step 2 - Planning**

5 In the planning stage, Defence officials conduct detailed planning for collaborative contracting including:

- a. review risks and opportunities to validate the need for collaborative contracting;
- b. conduct market analysis to ensure industry has the capacity and appetite to embark upon collaborative contracting approaches (analyse industry past experience and company scorecard results);
- c. examine CASG's internal capability to embark upon collaborative relationships. This includes assessment of strengths and weaknesses. Defence officials should refer to the CASG Behavioural Evaluation Standard Operating procedure for further guidance;
- d. appoint a collaboration leader (this may be the Sponsor, Senior Responsible Officer, Project Director or a dedicated relationship manager);<sup>30</sup> and
- e. develop a strategy to ensure the CASG project team has the requisite skills, culture and resources to embark upon collaborative contract approaches. This may include staff development and recruitment.<sup>31</sup>

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<sup>30</sup> Ibid [8.4.4]



6 Should resource or skills constraints prevent the CASG project team from embarking upon a collaborative contracting approach, or if the market analysis reveals that industry is unable to embark upon a collaborative contracting approach then the project business case may need to be revisited to adapt the breadth and scope of collaboration that is achievable.

**When**

- When planning the procurement and determining the procurement method.
- Prior to developing the RFT documents.

**Inputs**

- Detailed Project Execution Strategy.
- Approved Acquisition Business Case.
- List of likely industry participants.
- Company Scorecards (Relationship and Behaviour SPM scores).

**Outputs**

- Integrated Product/Project Management Plan (with roadmap to ensure CASG can embark upon collaborative contracting).
- Market analysis (refer to the CASG Behavioural Evaluation Standard Operating procedure for further guidance).
- Relationship Management Plan.

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**Step 3 - Contract Design**

7 In this step, Defence officials design the collaborative contracting framework to ensure benefits are realised within a value for money framework. Defence officials will tailor draft contracts on a case by case basis to match the level of collaboration against the project risks and opportunities. Each of the collaborative contract features identified in chapter 5 of this guide should be examined to assess their suitability for inclusion. Once the contract is designed then Defence officials should examine the most appropriate method for evaluating tenders. Refer to the Complex Procurement Guide and Tender Evaluation in Complex Procurement Better Practice Guide for further information on tender evaluation. Early Industry engagement should be considered to ensure both industry and CASG are capable of embarking upon collaborative approaches.

8 Officials should engage with the CASG Commercial Centre of Expertise to ensure the proposed collaborative contract arrangements and procurement method are compliant with the CASG governance environment. Early Industry engagement should be pursued to the maximum extent practical.

9 Step 3 incorporates the following activities:

- a. determine the most appropriate contract method to achieve the collaborative contracting objectives;
- b. determine the most appropriate procurement method to achieve the collaborative contracting objectives;
- c. establish suitable Behavioural Performance Measures in accordance with DMO PBC Centre of Excellence (CoE) - Fact Sheet 2; and
- d. define the partner selection criteria that will complement the CASG project team.

10 Guidance for the development of evaluation criteria and processes is available in the Draft DMO Performance Based Contracting Standard Operating Procedure (DMO PBC SOP) Behavioural Assessment Methodology (2015).

**When**

- When developing the request documentation and draft contract.

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<sup>31</sup> ISO11000 [8.4.2]

## Inputs

- Approved DRAIL.
- Approved detailed Project Execution Strategy.
- Product Delivery Agreement<sup>32</sup> with acquisition and sustainment metrics.
- Market Assessment.

## Outputs

- Draft Conditions of Contract.
- Partner selection evaluation criteria.
- Sample partnering charter.
- Approved Tender Evaluation Plan (TEP).
- Industry Briefings.
- Legal Process and Probity Plan.
- Endorsement to Proceed.

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## Step 4 - Partner Selection

11 Partner selection seeks to ensure that the preferred partner is able to embark upon collaborative contracting whilst still meeting the technical, schedule and quality requirements of the project at hand. Evaluation of suppliers is required to be conducted in accordance with the DPPM. In this stage, CASG will:

- evaluate responses in accordance with the TEP;
- conduct the evaluation including workshops and interviews;
- conduct ODIA where appropriate
- undertake Supplier Relationship Management training and education;
- agree to the Relationship Management Plan with the supplier; and
- complete the Source Evaluation Report.

12 Guidance for conducting evaluations for collaborative contracting approaches is available in the CASG Performance Based Contracting Standard Operating Procedure (CASG PBC SOP) Behavioural Assessment Methodology (insert link) –When

- Prior to developing the Source Evaluation Report.

## Inputs

- TEP.
- Evaluation scenarios and worksheets (if required).
- Tender Responses (including feedback on any proposed partnering principles).

## Outputs

- collaborative Contract TEWG report<sup>33</sup>.
- assessment of supplier attitudes and behaviours in accordance with PBC SOP 004.
- workshop outcome report (including an updated partnering charter).
- Source Evaluation Report.
- agreed Relationship Management Plan (including an exit strategy).

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<sup>32</sup> The 'Product Delivery Agreement' appears to replace MAAs /MSAs (refer Interim Capability Life Cycle Manual (2016)).

<sup>33</sup> This could be a separate TEWG or part of the Commercial/Contracting TEWG.

- agreed partnering charter.
- signed contract.

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### Step 5 - Relationship Management

13 Relationship Management begins after contract signature and aims to ensure the parties are committed to the program objectives, continue to create value, seek continual improvement, and maintain positive relationships throughout the project. This step involves:

- a. confirming project objectives and joint success factors;
- b. implementing the contract governance structures (which may include some joint governance arrangements);
- c. establishing joint communication strategies;
- d. establishing joint risk management frameworks;
- e. establishing joint issues resolution processes;
- f. implementing performance monitoring;
- g. jointly developing and managing a Continual Improvement and Efficiency Plan;
- h. regularly convening to confirm key performance measures;
- i. conducting regular evaluations of business relationships and behaviour;
- j. ensuring disputes and issues are resolved at the lowest level practical;
- k. monitoring the communication strategy to ensure openness, transparency and a culture of 'no-surprises'; and
- l. encouraging collaboration at all levels of the business relationship.

Guidance on performance monitoring of the business relationship and party behaviours is available in the report "Behavioural Strategic Performance Measures - Evaluation and Recommendations" (2014)

#### When

- Immediately after contract signature.

#### Inputs

- Signed Contract.
- Jointly agreed Relationship Management Plan.

#### Outputs

- Joint Communications Plan.
- Joint Risk and Issues Register (if applicable).
- Confirmed governance and management structures (updated PMPs).
- Performance reporting system.
- Agreed partnering charter (if applicable).
- Joint Continual Improvement Plan.
- Relationship performance evaluations.
- Joint Corrective action plans (if required).
- Disputes and issues metrics.
- Relationship performance evaluations.

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### Step 6 - Exit Strategy

14 If the parties wish to disengage from the relationship, then an exit strategy is required. This process should be identified in the Relationship Management Plan as early as possible so that contracts reflect agreed processes, business continuity is retained, future opportunities for collaboration are identified, and lessons learned are captured. In this stage Defence officials should:

- a. implement the exit strategy in good faith in accordance with agreed commercial terms;
- b. develop a strategy for ensuring business continuity; and
- c. capture lessons learned from the relationship.

**When**

- At contract completion, termination, or agreement to disengage.

**Outputs**

- Lessons Learned Register.
- Business Continuity Strategy.

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**Conclusions**

15 Collaborative Contracting approaches can deliver substantial benefits to CASG. Defence officials need to assess the scope for collaborative approaches on a case by case basis in light of core acquisition and sustainment risk, CASG capabilities, and industry capabilities. The attributes of collaborative contracting identified in this better practice guide offer an effective means to mitigate the core acquisition and sustainment risks, however, these collaborative contracting approaches can introduce new risks in themselves. Consequently, the Project Execution Strategy is required to clearly identify both the costs and benefits of collaborative contracting approaches based upon this better practice guide.

16 Whilst collaborative contracting approaches can make a substantial contribution to project success, it is important to recognise that collaborative contracts will not normally mitigate against poor project management, commercial and systems engineering practices and they should not be ignored as important key success factors.

## Collaborative Contracting Checklist

Stage	Activity	Check
Strategy and Objectives	Review Project Core Acquisition and Sustainment Risk Categories	
	Conduct a preliminary assessment of CASG's capability to embark on collaborative contracting arrangements using the CASG Contract Maturity Model for that Project office	
	Conduct a preliminary assessment of Industry's capability to embark on collaborative contracting arrangements using the guidance from the CASG Report 'Better Practice Behavioural Assessment Methodology -A Guide to Evaluating Supplier Behaviours in Acquisition and Sustainment' (2015)	
	Conduct a suitability assessment for collaborative contracting arrangements using a combination of the Core Acquisition and Sustainment Risk Categories and collaborative potential of CASG and Industry	
	Update business cases with the value proposition for embarking upon collaborative contract approaches	
Planning	Review risks and opportunities to validate the collaborative contract approach	
	Conduct market analysis to verify that industry has the capacity to embark upon collaborative contracting approaches.	
	Validate the CASG project office's internal capability to embark upon collaborative relationships.	
	Develop a relationship improvement plan/strategy if necessary to address any CASG relationship management shortfalls	
	Appoint a collaboration leader	
Contract Design	Determine the most suitable procurement method to foster collaborative arrangements and update the Project Execution Strategy if needed	
	Determine the most suitable contract method to foster collaborative arrangements	
	Define the partner selection criteria (refer to CASG Report 'Better Practice Behavioural Assessment Methodology -A Guide to Evaluating Supplier Behaviours in Acquisition and Sustainment' (2015))	
	Develop Request documentation/Draft Contract	
Partner Selection	Evaluate Responses in accordance with TEP	
	Conduct Workshops and interviews if necessary (with or without Offer Definition)	
	Conduct negotiations with an aim to foster collaboration	
	Conduct Supplier Relationship Management training	
	Agree to a Relationship Management Plan (including an exit strategy)	
	Complete the Source Evaluation Report	
Relationship Management	Confirm project objectives and joint success factors	
	Implement the contract governance structures	
	Establish joint communication strategies	
	Establish joint risk management frameworks	
	Establish Joint issues resolution processes	
	Implement performance monitoring	



	Jointly develop and manage a Continual Improvement and Efficiency Plan	
	Regularly convene to confirm key performance measures	
	Conduct regular evaluations of business relationships and behaviour	
	Ensure disputes and issues are resolved at the lowest level practical	
	Monitor the communication strategy to ensure openness, transparency and a culture of 'no-surprises'	
	Encourage collaboration at all levels of the business relationship.	
Exit Strategy	Implement the exit strategy in good faith in accordance with agreed commercial terms	
	Develop a strategy for ensuring business continuity	
	Capture lessons learned from the relationship	

## Case Studies

### Case Study 1 – FFG Enterprise

*“It demonstrates the Government’s commitment... to apply innovative contracting practices to get the best outcome for the Navy, for industry and for every Australian taxpayer.”*

– David Johnston (Minister for Defence; September 2013 – December 2014), 6 July 2014

1 The Guided Missile Frigate (FFG) Systems Program Office (SPO) is responsible, under Materiel Sustainment Agreement (MSA) Product Schedule (PdS) CN01, for delivering a materially seaworthy Adelaide class FFG capability to satisfy the Royal Australian Navy’s requirements for operational availability through to their withdrawal from service.

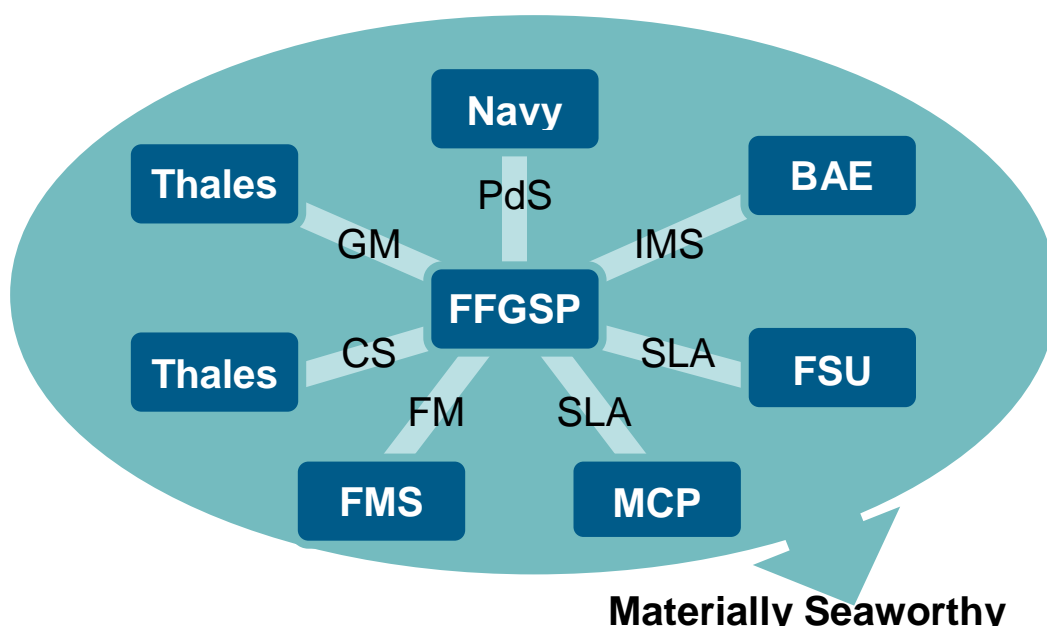
2 Prior to 2014, FFG SPO acquitted this responsibility through in-house planning and life-cycle management activities, while operating a more traditional supplier engagement model and contractual relationship. Maintenance activities were contracted on a non-recurring per-event tendering basis with maintenance work segregated from ship repair. This operating model made it difficult to align and leverage the capabilities of all stakeholders and often resulted in less than optimal performance and output. This ultimately resulted in escalated costs, reduced availability of ships, and poor supplier relationship management.

3 Building upon the lessons learned from the ANZAC Frigate group maintenance contract,<sup>34</sup> FFG SPO recognised that a more collaborative approach with industry offered the potential to significantly increase the value for money proposition for the delivery of services; reducing overhead and costs whilst simultaneously improving fleet availability. FFG SPO and industry embarked upon collaborative contracting arrangements and governance frameworks to support the common goal of delivering, ‘materially seaworthy FFGs to meet the Navy mission on time, every time’.

4 This new collaborative FFG supplier management operating model was christened the FFG Enterprise – an organisation consisting of specific stakeholders; including:

- a. Navy;
- b. FFG SPO;
- c. Fleet Support Unit (FSU);
- d. Combat Systems Support (CSS) contractor (Thales);
- e. G2 Group Maintenance Contract (GMC) (Thales);
- f. Integrated Materiel Support (IMS) contractor (BAE); and
- g. Maritime Cross Platform SPO.

<sup>34</sup> <http://www.defence.gov.au/dmo/NewsMedia/DMOBulletin/archive/2013-Issue-5/GroupMaintenanceContractingSuccess#sthash.ev6oJGvz.dpuf>



5 In 2014, key stakeholders in the FFG capability established the FFG Enterprise in order to best execute mutual contractual obligations and deliver a materially seaworthy capability in accordance with the outputs under MSA PdS CN01; including:

- a. **materiel availability** – the provision of the FFG capability for RAN use, at the agreed specification and configuration baseline, which is seaworthy and delivers the required Materiel Ready Days (MRDs);
- b. **sustainment efficiency** – both the use of funds available and the actions to improve cost-effective use of those funds; and
- c. **materiel confidence** – actions to ensure the FFG capability will remain available at its agreed rate of performance specification through to its withdrawal from service.

6 This is a collaborative program between Navy, Capability Acquisition and Sustainment Group (CASG) and industry to provide a high performing Asset Management System. The FFG Enterprise is a fundamental shift in how the Commonwealth sustains military capability and how Australian industry approaches collaborative development of a total asset management framework in order to generate value for all stakeholders.

7 The FFG Enterprise conducts itself in a relational contract style, underwritten by the FFG Enterprise Charter and underpinned by leadership and good governance. The FFG Enterprise Charter is a collaboratively written document, with a mission, vision, and the eight following FFG Enterprise best practice attributes:

- a. **instilling the common purpose** – an undertaking for all members of the FFG Enterprise to cascade mutual Enterprise objectives with a clear line of sight to achieving the FFG Enterprise mission;
- b. **optimising relationship performance** – an undertaking for the FFG Enterprise governing structure to foster an environment of recognition, proactive dispute prevention and team retention;
- c. **championing problem solving** – an undertaking for all members of the FFG Enterprise to be empowered to work collaboratively to openly and honestly raise, discuss, record and resolve problems; and wherever possible ‘*solve tomorrow’s problems today*’;
- d. **instilling a ‘no blame’ culture** – an undertaking for all FFG Enterprise members to deliver solutions as ‘one team’ while being accountable for their actions as the team acts, learns, and improves as individuals and an Enterprise;

- e. **fostering joint working** – an undertaking for the FFG Enterprise to achieve a collaborative culture through integration that streamlines policies and processes;
- f. **enhancing communication** – an undertaking for all members of the FFG Enterprise to communicate openly and effectively through proactive, honest, and regular interactions;
- g. **promoting continuous improvement** – an undertaking for the FFG Enterprise to encourage identification and implementation of improvements through all levels of the Enterprise; and
- h. **embracing gain sharing arrangements** – an undertaking for the FFG Enterprise to collectively recognise individual and group success and share in mutual benefits.



8 The FFG Enterprise framework captures many of the collaborative contracting attributes in this better practice guide including:

- **Joint goals linked to Enterprise outcomes** – industry partners have become active and integral parts of the life-cycle management of the capability; indeed, leading many of the efficiencies subsequently generated;
- **Transparency through early warning processes and joint communication plans** – the FFG Enterprise Governance Board (FEGB) provides an Enterprise level assurance function. Unlike other governance boards within Defence, the FEGB includes contractors as board members, enabling unprecedented influence and representation. This has allowed full representation in the strategic management level decision making sphere, contributing to more informed and risk based decisions on capability and life-cycle management.
- **Performance based contracting incorporating price and non-price key performance indices** – the FEGB has established performance measures to assess the health of the FFG Enterprise and its alignment to the Charter, driving a culture of 'Best For Program'. These measures recognise the importance of

contractual obligations to deliver output, while encouraging and rewarding a collaborative approach to improve the material state of FFGs;

- **Joint decision making with the collaborative development of Contract Change Proposals (CCPs)** – the FFG Enterprise has created an integrated workforce focused on building relationships and enabling personnel to collaborate and identify opportunities to improve the performance of the Enterprise. Staff within all stakeholders understand the strategic objectives, and are empowered to seize initiatives and positively influence the organisation.
- **Shared business to business systems and processes** – the industry members of the FFG Enterprise are commercial competitors with no binding agreements directly between them. To overcome this paucity of inter-organisation contracts, Business To Business (B2B) processes were developed to ensure that responsibilities, and interfaces, for each organisation were defined and capabilities aligned.

9 In addition to implementing a commercial framework to foster collaboration, FFG SPO and its industry partners have pursued activities to align each stakeholder's culture and behaviours, and develop trust. By way of example, FFG Enterprise personnel have undertaken common training (the Maritime Systems Division (MSD) endorsed Supplier Relationship Management (SRM) training) to enable the alignment of FFG Enterprise-wide efforts in supplier performance management and, in turn, improve business outcomes for Navy. The training results in successful participants being awarded formal certification through the International Association for Contract and Commercial Management (IACCM), and also ensures common understanding of the desired intent, outcomes, and collaborative behaviours that underpin the FFG Enterprise.

10 The FFG Enterprise has seen these soft skills result in measurable 'hard' outcomes, including a joint submission from the FFG SPO and Thales Australia (the GMC FFG Enterprise industry partner) placing second in the world for the 2016 IACCM Excellence in Contract Management Award.

11 The FFG Enterprise operating model has enabled maximum utilisation and alignment of existing capabilities across stakeholders, created a robust assurance framework, empowered the workforce to self-generate a learning culture and continuous improvement ethic, and focused efforts on the outcome and delivery of capability. Commonwealth resources have been refocused towards providing effective governance, and transactional overheads that previously formed barriers between contractors and the ship have been removed with all organisations now focused on output.

## Case Study 2 – Wedgetail Sustainment Arrangements

12 The Royal Australian Air Force took delivery of six Wedgetail Aircraft commencing in 2010. This was a first of type aircraft with no prior operational history. A consequence of the novelty of the platform was that there was no reliable cost data available to establish reliable sustainment cost estimates. Furthermore, performance measures for the capability, such as availability and maintainability were difficult to quantify. The program team recognised that traditional contracting approaches with significant cost risk transfer to suppliers would be inappropriate. Consequently, a collaborative contracting approach was sought to facilitate transparency, align goals, maximise flexibility, share risks, and best deliver value for money.

13 A key objective of this new arrangement was to align the interests of all parties and incentivise desired behaviours. More specifically, a smarter way of doing business was needed to drive cost reduction and mission availability.

14 The agreed sustainment contract for the Wedgetail fleet was underpinned by partnering principles and the following key commercial arrangements:

- a. A Joint Management Framework committed to 'best for capability' outcomes,
- b. Financial reporting through Earned Value Management and supplementary data with invoicing,
- c. Risk sharing through the use of a target cost incentive fee adjusted against key performance measures such as availability,
- d. A Joint Risk Management board, and
- e. Co-located customer and supplier teams.

15 The sustainment contract was negotiated for sufficient duration to allow the parties to establish positive relationships and demonstrate continual improvement. The program was a success resulting in significant cost reductions, superior capability delivery, and no disputes. These benefits were largely attributed to the following collaborative contracting features.

**Joint Decision Making.** Joint decision making was implemented through a Joint Management Team. For decisions related to how the capability was to be delivered, there were no casting vote or other customer reserved rights. This approach was selected to ensure accountability for outcomes were shared between the Commonwealth and the prime contractor. A separate change management board was also implemented to manage the Wedgetail baselines. The board structure involved appointment of a Commonwealth chair during the requirements definition stage with a prime contractor representative appointed as the chair during requirements delivery. This process avoided adversarial behaviours and fostered responsiveness.

**Joint Management.** Joint management teams were established within each of the value to identify risk and develop optimised solutions that balanced capability and cost outcomes. Performance (downtime and mission success) was monitored on a daily basis, with performance shortfalls attributed to each value stream, and attributed transparently to each organisation within the value stream, for immediate remediation under the joint management framework. Colocation of Commonwealth and supplier teams was aggressively pursued assisted this behaviour. Each value stream shared a common working environment and shared a common identity.

**Shared Risks.** Wedgetail sustainment was based on a cost plus incentive fee remuneration mechanism. This placed supplier Return on Investment (ROI) at risk should actual costs exceed target costs- by the same token expenditure below the target increased ROI. To make this arrangement equitable and reduce disputes, the prime contractor was responsible for the full scope of AEW&C support unless explicitly excluded by contract. Difficulties in establishing a suitable target cost for this first of type capability resulted in an approach whereby the actual costs achieved for a suitably "stead-state" period would become the target cost for subsequent periods. This initiative encouraged continuous improvement and innovation. Since there were several strategic suppliers involved in Wedgetail sustainment, risks were also transferred to some of the prime contractor's sub-contractors to ensure enterprise behaviours were encouraged at all relevant levels of the supply chain.

**Transparency.** Wedgetail sustainment involved cost data sharing and principles of no-surprises. One of the key benefits of having co-located engineering and commercial teams on Wedgetail sustainment was that both the customer and supplier had full visibilities of issues and problems as they arose.



Further transparency was also achieved through the supplier inviting the Commonwealth to supplier management meetings.

**Flexibility and Responsiveness.** Wedgetail sustainment arrangements required flexibility and agility to foster responsiveness. The supplier was allocated a budget to expend on a number of adhoc sustainment services (within a system of reasonable constraints) without the need for time consuming 'survey and quote' arrangements. An 'all in' approach to capability delivery was adopted so that any detailed survey and quote adjustments did not affect incentive fees. Furthermore, the supplier was allowed the flexibility to allocate resources on a best for capability basis. This approach encouraged timely delivery and the most efficient use of resources.

**Wedgetail sustainment proved highly successful.** Costs were significantly below expectations, disputes were eliminated, and end-user needs were well accounted for. The partnering approach selected was backed up by a commercial framework that encouraged risk sharing, innovation, and continual improvement.

Though Wedgetail sustainment arrangements delivered many benefits, several lessons learned were observed in the program. These lessons were largely attributed to expectation management associated with financial reporting. A key observation made was that the fidelity of open book financial reporting should be balanced against commercial realities. Where an overseas parent company is involved in capability delivery, the detail of financial reporting may be less than that associated with a local subsidiary. Consequently, a tailored approach may be needed in open book reporting. Similarly, budgeting expectations need to be suitably managed. Under a target cost approach, budgeted funds may not be expended in any given financial year. To this end, financial managers should be appropriately engaged to deal with any cost variations.

## Relationship Management Plan – Content Guide<sup>35</sup>

Drafting guidelines: The development of the Relationship Management Plan commences during the procurement planning stage with a draft of the plan included in the request documentation. The Relationship Management Plan should be tailored to reflect the agreed collaborative contracting approach. For example, if the commercial framework between CASG and suppliers excludes joint risk management then this content should be omitted from the Relationship Management Plan.

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### Project Background

#### 1.1 Project Overview

This section should provide an overview of the project, identifying the materiel system, broad capability requirements, and schedule expectations.

#### 1.2 Objectives and Roles

This section should clearly identify the project objectives and who is responsible for delivering these objectives. Some roles may be clearly assigned to either CASG, or other defence agencies such as Estate & Infrastructure Group or Chief Information Officer Group. Other objectives may be shared between CASG and suppliers.

#### 1.3 Visions, Values and Behaviours

This section should identify the vision values and behaviours. Depending upon the level of collaboration required, this section may replicate a partnering charter or specific collaborative features agreed to by the parties such as 'best for project' outcomes, joint decision making, or transparency.

#### 1.4. Governance

This section should clearly identify any governance constraints applicable to CASG and suppliers. This may require clear identification of delegations, exclusion of agency arrangements, or prohibitions on fettering future executive action.

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### Relationship Management

This section identifies how the relationship will be implemented, measured and corrected through the life of the contract. Sections that are not relevant to the collaborative contracting approach adopted should be deleted.

#### 2.1 Executive Management and Leadership

This section should identify the project sponsors or senior responsible officers and reinforce their commitment to the collaborative contracting arrangements.

#### Joint Objectives

This section should restate the project objectives as they apply to the CASG/Supplier acquisition boundary. These objectives should be clearly linked to the overall project objectives. The use of multiple contracts will require a more thorough assessment of joint objectives.

#### 2.3 Joint Management Team

This section should identify the joint management team, and their roles and responsibilities for delivering the joint objectives. The Joint Management team should be consistent with CASG's Acquisition Relationship Management Plan and the supplier's Project Management Plan.

#### 2.4. Knowledge Management

This section should identify joint processes to manage information flow between the parties. This should explore opportunities for using shared systems and processes.

#### 2.6. Communications Management

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<sup>35</sup> Adapted from ISO 11000 Collaborative Business Relationships.

This section shall describe how the joint management team will provide effective communications to ensure that all stakeholders (internally and externally) are appropriately informed.

### **2.7. Joint Risk Management Approach**

This section shall identify what category of risks will be jointly managed. This section shall identify the scope of any joint risk logs, joint contingency, and joint risk management approaches consistent with the agreed commercial framework.

### **2.8. Relationship Performance Measurement**

This section shall describe how relationship health will be monitored and reported. This section should consider the use of both internal and external audits. This section should also identify when and where reviews should be undertaken.

### **2.9. Innovation and Continual Improvement**

Consistent with the Supplier's Performance Improvement Plan, this section will identify opportunities and processes for jointly implementing continual improvement and efficiency gains and how the all parties benefit from such initiatives.

### **2.10. Disputes and Issues Management**

Consistent with the agreed commercial framework, this section should identify strategies to ensure disputes and issues are resolved at the lowest possible level and to ensure issues are promptly reported.

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## **Exit Strategy**

### **3.1 Joint Exit Strategy**

Consistent with the agreed commercial framework, this section shall define the process by which the parties can jointly exist within the commercial framework.

### **3.2 Transition and Business continuity impacts**

This section describes how the parties can maximise the likelihood of preserving positive relationships and ensure business continuity when an exit strategy is implemented.

## CASG Contract Maturity Model Scoring Guidance – Relationship Management

The following extract is taken from the CASG commissioned report “Becoming a Smart Buyer” (2015). This report provides a Contract Maturity Model framework for CASG to rate internal capacity to embark upon collaborative contracts. Completion of this contract maturity model will provide an indication to project officers and system program offices on their ability to embark upon collaborative contracts.

Key Area	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Relationship Management					
3.1 Suppliers favour your organisation because it "always keeps its promises", treats suppliers fairly, promotes trust, and minimises the cost of doing business					
3.2 Both parties openly discuss "interests and desired outcomes" throughout the procurement lifecycle commensurate with the strategic importance of the relationship.					
3.3 Each contracting party understands the other's goals and how to help achieve and quantify them					
3.4 The contract is viewed as a tool to plan and track business relationships					
3.5 Procurement practitioners are viewed as valued facilitators and integrators of stakeholder interests					