



PELLINGS-WHAT NEXT FOR PROCUREMENT? FAC-1 BRIEFING PAPER

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What is the FAC-1 Framework Alliance Contract?

FAC-1 is a versatile standard form framework alliance contract which:

- enables clients and other team members to obtain better results
- helps to integrate a team into an alliance
- helps to obtain improved value through agreed joint activities
- works in any sector and in any jurisdiction.

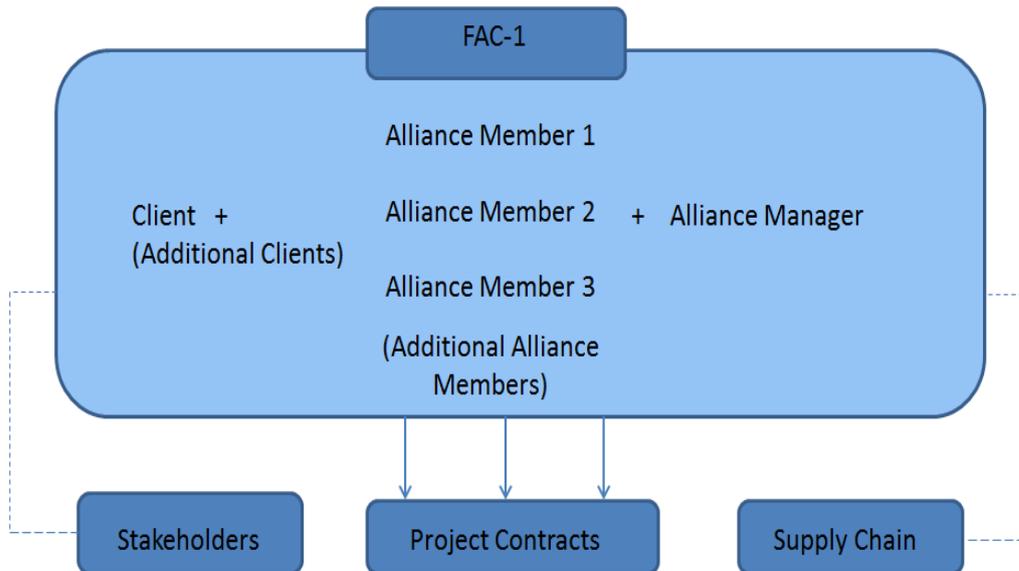
A framework alliance creates the connections and systems that support a collaborative culture and that ensure it achieves improved results. Many good frameworks have used alliance systems to enable major cost savings and other improved economic and social value, but good framework contracts developed for individual clients are bespoke and confidential. The **FAC-1** Framework Alliance Contract is a published standard form supported by open source guidance.

FAC-1 is a new type of contract, designed to help plan and integrate any number of related two-party contracts and/or related projects for works and/or services and/or supplies. It is endorsed by the Construction Industry Council and by Constructing Excellence. **FAC-1** can be purchased in hard copy or on-line from the Association of Consultant Architects (**01959 928412**, email: office@acarchitects.co.uk) and in hard copy from bookshops. Further guidance on the use of **FAC-1** is available at www.allianceforms.co.uk.

FAC-1 sets out:

- a multi-party structure of “*Alliance Members*” including a “*Client*”, an in-house or external “*Alliance Manager*” and any combination of other *Alliance Members*, with the facility to add “*Additional Alliance Members*” (clauses 1 and 3 and Appendix 2)
- why the framework alliance is being created, stating agreed “*Objectives, Success Measures, Targets*” and “*Incentives*” (clause 2 and Schedule 1)
- how work will be awarded to *Alliance Members*, under a “*Direct Award Procedure*” and/or “*Competitive Award Procedure*” and under standard form “*Orders*” (clauses 4, 5 and 7, Schedule 4 and Appendix 3)
- flexibility to use **FAC-1** with agreed “*Template Project Documents*” that include any one or more forms of *Project Contract* (clause 5 and Schedule 5)

- how the *Alliance Members* agree to seek “*Improved Value*”, working together through “*Supply Chain Collaboration*” and other agreed “*Alliance Activities*” in accordance with an agreed “*Timetable*” (clause 6 and Schedule 2)
- how the *Alliance Members* will manage risks and avoid disputes using a shared “*Risk Register*”, “*Core Group*” governance, “*Early Warning*” and options for an “*Independent Adviser*” and alternative dispute resolution (clauses 1, 3.3, 9 and 15 and Schedule 3)
- flexibility to include particular “*Legal Requirements*” and “*Special Terms*” required for any sector and in any jurisdiction (clause 13 and Schedule 6).



Background to FAC-1

In 2012 a cross-industry Contract Form Working Party reported to the UK Government that “*the general lack of standard-form framework arrangements makes it difficult for clients to procure frameworks on a consistent basis*”. From 2013 a series of UK Government “*Trial Projects*” explored new models of procurement and found that audited savings and improved value were in part attributable to the frameworks and alliances supporting those new models. In 2015 the UK Infrastructure Client Group Alliancing Code of Practice recognised that “*A horizontal agreement between the respective partners capture(s) the principles within the commercial model, particularly those that jointly incentivise performance and create collaboration*”.

King’s College London Centre of Construction Law has created a new standard form based on successful prototypes and trials, developing **FAC-1** in consultation with 120 organisations. The list of Consultation Group members and details of **FAC-1** prototypes and users, plus news and useful links, are available at www.allianceforms.co.uk.

FAC-1 is a versatile standard form that has been reviewed and tested by clients, lawyers, consultants and contractors. It provides flexibility when completing the *Framework Alliance Agreement* and its Schedules, including the *Legal Requirements* and *Special Terms*, in order to reflect the legal requirements and specific needs of any sector in any jurisdiction.

Benefits of FAC-1

➤ Improved economic and social value in procurement and delivery

FAC-1 reduces significantly the cost, time and risk incurred by clients and bidders in drafting and reading bespoke documents. The **FAC-1** provisions follow closely the Ministry of Justice framework alliances established with multiple contractors and consultants, which achieved:

- *“Solid governance structure through a Strategic Core Group comprising representatives from the Ministry of Justice and the Alliance suppliers”*
- *“Standardised suite of processes and contract templates... used to ensure consistency and ease of use”*
- *“Early engagement of the supply chain... encouraged by the two stage approach”*
- *“Reduced operating costs estimated at £10 million, reduced burden on industry tendering of around £30 million and procurement risk mitigation of about £2 million”.*
(www.gov.uk/government/publications/government-construction-task-groups)

FAC-1 is also based on the SCMG £200 million multi-party housing framework alliance established by two clients with six main contractors and over 30 trades. This alliance achieved agreement of post-tender *“savings averaging 14%”* plus:

- *“Reduced risks, costs savings and time savings through accelerated constructor/supply chain briefing”*
- *“Subcontractor/supplier innovations in proposed new materials and specifications” and exchange of best practice between specialist competitors”*
- *“Improved repair and maintenance” and “more sustainable solution”*
- *“Development of opportunities for local tier 2/3 sub-contractors and suppliers ... across 30 different disciplines”*
- *“Additional employment and skills opportunities”*
- Lower bid costs for other Alliance Members, *“specifically £719 per million of turnover (under SCMG) as against £4,808 per million of turnover (under the comparable traditional bid)”*(<https://www.gov.uk/government/publications/procurement-trial-case-study-social-housing-refurbishment>).

➤ Transparency

FAC-1 states whether or not the *Client* offers any exclusivity or minimum value of work (clauses 5.6 and 5.7) and sets out the procedures that lead to award of work (Schedule 4). Under its multi-party structure the *Alliance Members* have a shared system of open performance measurement and rewards in agreed *Objectives, Success Measures, Targets and Incentives* (Schedule 1).

FAC-1 recognises the confidentiality of certain information, including submissions by *Alliance Members* for review only by the *Client* and the *Alliance Manager* (clause 13.3).

➤ Risk management

It is critical to create a system for joint management of risks by a framework alliance. The **FAC-1 Risk Register** in Schedule 3 is kept up to date by the *Alliance Manager*, for approval by the *Core Group* of agreed individuals (clause 9.4). The *Core Group* also acts as a forum through which *Alliance Members* can raise issues with each other in order to resolve problems before they become disputes (clauses 1.6, 1.7 and 15.1).

In assessing risks it is important for *Alliance Members* to understand how agreed *Objectives* and *Success Measures* affect the future award of work. **FAC-1** provides clarity (in Schedule 1 and clause 14.2) as to which *Targets* are so important that a failure to meet them will require urgent action and may ultimately determine whether a framework appointment may be terminated. It also includes an *Early Warning* system (clause 1.8) enabling notification to the *Core Group* of the reasons behind any issues or obstacles that are encountered.

➤ **Activities that achieve improved value**

A framework alliance should create the conditions most likely to achieve the results that the *Client* and the other *Alliance Members* are seeking, and it is important to clarify the commitments of *Alliance Members* to implement specific activities designed to improve value.

FAC-1 provides for agreed *Alliance Activities* intended to achieve *Improved Value* (clause 6), and these are linked to agreed deadlines under the *Timetable* (Schedule 2). These activities include the “*Supply Chain Collaboration*” system for the joint review and agreed improvement of tier 2/3 supply chain relationships (clause 6.3).

Supply Chain Collaboration

FAC-1 incorporates *Supply Chain Collaboration* as a collaborative system for agreeing how to improve economic and social value. This is based on work by Surrey County Council with Kier and other supply chain members under a highways alliance where systems equivalent **FAC-1** achieved:

- 15% post-tender agreed cost savings in return for establishing collaborative working methods, minimum annual workflow, closer involvement in design and planning, prompt payment and free storage space
- “*Improved whole life value, including agreement of a ten-year warranty for material and pavement design*”
- “*Improved quality control through joint risk assessments and integrated team agreement of appropriate surface treatments and monitoring work on site*”
- “*Improved apprentice commitments*”
- “*Lean programming of individual tasks leading to time savings*”
- “*Innovation through collaborative working, for example to increase recycling and reduce landfill*”. (<https://www.gov.uk/government/publications/procurement-trial-case-study-report-highways-maintenance>)

Using FAC-1 with project contract forms

Clients and their teams use different standard form *Project Contracts*, whether for reasons of familiarity or the type and size of each *Project*. **FAC-1** recognises that *Improved Value* and improved working practices can be created at a strategic level using systems that precede and sit alongside the award of these *Project Contracts*. **FAC-1** is designed for use with any one or more *Project Contract* forms including FIDIC.

FAC-1 and Building Information Modelling

Successful use of digital technology such as Building Information Modelling (*BIM*) is closely linked to the interfaces and systems established in an alliance. These links are described in the King’s College London report “*Enabling BIM Through Procurement and Contracts*” (<https://www.kcl.ac.uk/law/research/centres/construction/enabling-bim/ebimtpac-form.aspx>).

FAC-1 provides the option for *BIM* to underpin the agreed approaches to design, supply chain engagement, costing, *Risk Management* and programming.