



FAC-1 BRIEFING PAPER

Professor David Mosey, Centre of Construction Law, King's College London

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What is the FAC-1 Framework Alliance Contract?

From 2013 to 2018 King's College London Centre of Construction Law mentored a series of UK Government "Trial Projects" exploring new models of procurement. They found that audited savings and improved value were in part attributable to the integrated relationships and joint processes created under frameworks and alliances that supported these new models. However, 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"*.

Based on evidence from the Trial Projects and using other successful prototypes, King's College London Centre of Construction Law created the **FAC-1 Framework Alliance Contract** as a new standard form, developed in consultation with 120 organisations and published in June 2016. This form is endorsed by the Construction Industry Council and Constructing Excellence and is recognised in reports by the Construction Leadership Council and the Housing Forum.

FAC-1 is a versatile standard form framework alliance contract which has enabled and supported significant cost savings plus other improved value such as:

- innovations and improved design contributions
- extended warranties and more sustainable solutions
- local and regional business opportunities
- training and employment opportunities
- reduced carbon footprint and other environmental benefits
- improved safety and reduced accidents
- effective risk management and dispute avoidance.

FAC-1 has been adopted on procurements totalling over **£42 billion** in five different countries, and early users include:

- **Futures Housing Group**, a £30 million housing alliance with Travis Perkins and 23 SME contractors, which achieved agreed savings of over **9%** plus support for local businesses and communities
- **Kier Services Highways**, a £54 million highways supply chain alliance with multiple subcontractors and suppliers and with Surrey County Council, which achieved agreed savings of **8%** plus new apprenticeships and environmental improvements
- **Crown Commercial Service**, a £2.8 billion national framework alliance for project management and full design team services with Aecom, AHR Architects, Arcadis, AMEC Foster Wheeler Environmental and Infrastructure, Capita, Faithful & Gould, Gardiner & Theobald, Gleeds, Kier Business Services, Mace, McBains, Mott McDonald, Ridge, Turner &

Townsend and WYG, which is achieving agreed efficiencies through shared working methods and exchange of data

- **Football Foundation**, Football Association and Sport England, a £150 million modular changing-rooms alliance created with Cameron Consulting, Gleeds, Western Building Systems, Integra Buildings, Extraspace Solutions, Ashley House and Portakabin, and a £60 million mini-pitch programme alliance
- **Scottish Procurement Alliance**, a £1.5 billion new build and modular housing construction alliance, with provision for additional **FAC-1** contracts to be created by one or more clients, plus a £1.5 million consultant services alliance
- **LHC national consortium**, alliances that integrate £5.5 billion and £800 million schools and community buildings programmes, with provision for additional **FAC-1** contracts to be created by one or more clients
- **Your Housing Group**, a £44.5 million alliance with Wates and Keepmoat, and other housing alliance programmes ranging in value from £7.5 million to £200 million procured by clients such as Gentoo, Liverpool City Council, Royal Borough of Greenwich, North Devon Homes, Southern Housing Group, Epping Forest District Council and Places for People
- **Optivo**, a £150 million central purchasing body created with Axis Europe, Keepmoat, Kier Services, Mears and Osborne
- **Construction Leadership Council**, a “smart construction” programme for housing alliances that adopt modern methods of construction
- **Crown Commercial Service**, a national £1.2 billion modular framework alliance for use by central and local government clients, entered into with Actacom, Ashby & Croft, Caledonian Modular, Darwin Group, Eco Modular Buildings, Elite Systems (GB), Extraspace Solutions UK, Ideal Building Systems, Integra Buildings, Module-AR, ModuleCo Healthcare, ModuleCo, Net Zero Buildings, Pickerings Hire, Portakabin, Premier Modular, REDS10 (UK), Rollalong, McAvoy Group, Wernick Buildings, Western Building Systems and Cotaplan
- **Crown Commercial Service**, a national £30 billion collaborative construction contractor framework due to be awarded in 11 lots during 2019 for use by central and local government clients, with provision for additional **FAC-1** contracts to be created by one or more clients and with options for BIM, project bank accounts, integration of capital and operational works.

FAC-1 has been translated and adapted for publication in Brazil, Bulgaria, Germany and Italy. International uses include:

- **European Bank for Reconstruction and Development**, a mining project in **Kazakhstan**, where **FAC-1** will integrate multiple FIDIC contracts
- **Liscate Municipality**, a Euros 5 million new build school in **Italy**, where **FAC-1** has integrated roles and commitments in relation to Building Information Modelling
- **Milan University**, a Euros 335 million PFI campus redevelopment, where **FAC-1** will integrate an **Italian** public private partnership
- **Ecological Sequestration Trust**, an international infrastructure programme
- In **Germany**, where **FAC-1** will integrate supply chain relationships and added-value processes on a combined commercial/residential mega-project
- In **Bulgaria**, where **FAC-1** integrates supply chain contracts supporting a FIDIC-based embassy reconstruction project.

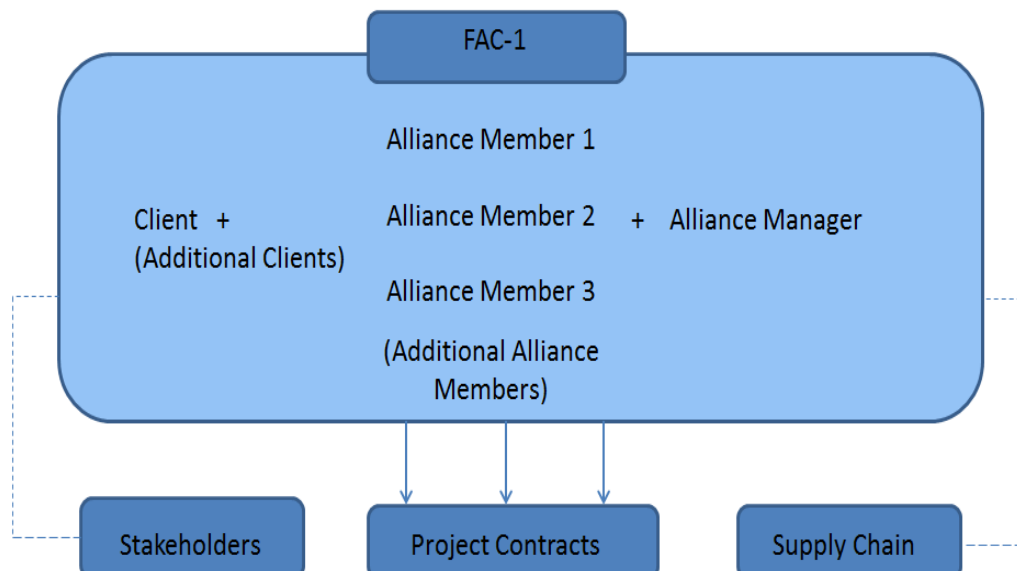
How does FAC-1 work?

Successful projects and programmes of work are often supported by alliancing systems that enable major cost savings and other improved economic and social value, but nearly all the best framework

alliance contracts have been developed confidentially for individual clients. **FAC-1** is the first publicly available standard form that is 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.

FAC-1 sets out:

- the “*Alliance Members*” including the “*Client*”, an in-house or external “*Alliance Manager*” and any combination of selected consultants/ contractors/ suppliers/ providers, 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 early 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).



FAC-1 is a framework contract- “*An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts awarded during a given period, in particular with regard to price and , where appropriate, the quantity envisaged*”, Reg.33(2) Public Contracts Regulations 2015.

FAC-1 is an alliance contract- *“A horizontal agreement between the respective partners capture(s) the principles within the commercial model, particularly those that jointly incentivise performance and create collaboration”*, Infrastructure Client Group Alliancing Code of Practice 2015.

FAC-1 proven benefits

➤ **Savings and improved value in procurement and delivery**

FAC-1 reduces the cost and time spent by clients and bidders in drafting and agreeing bespoke documents. It follows closely the Ministry of Justice multi-party framework alliances which achieved savings of **£42 million** with:

- *“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)

Ministry of Justice framework alliance contracts have led to post-contract agreed savings of between **20%** and **26%** plus a range of other improved value.

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/325950/Cookham_Wood_case_study_CE_format_130614.pdf;
http://constructingexcellence.org.uk/wp-content/uploads/2015/12/Trial-Projects-North-Wales-Prison-Case-Study_Final.pdf).

FAC-1 is also based on the SCMG £200 million multi-party housing framework alliance which achieved 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 a multi-party structure, the *Alliance Members* have a shared system of open performance measurement and rewards in their agreed *“Objectives, Success Measures, Targets and Incentives”*. This reflects recognition in the

Infrastructure Client Group Alliancing Code of Practice 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.*”

➤ Risk management

It is critical to create a system for the active management of risks, and **FAC-1** includes a *Risk Register* in Schedule 3 which is kept up to date by the *Alliance Manager*, subject to approval by a *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, contractors and other providers need to understand how the achievement of *Objectives* and *Success Measures* affects 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 member’s framework alliance 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 to achieve improved value

A major problem arises if a framework contract does not create the conditions most likely to achieve improved results. The failure of a framework is a client failure too, and re-procurement creates huge costs for the client and the bidders. Therefore, it is worth building into a framework alliance contract the commitment of all parties to implement specific activities designed to improve value.

FAC-1 does this by providing for agreed *Alliance Activities* designed to achieve *Improved Value* (clause 6), linked to agreed deadlines under a *Timetable* set out in Schedule 2. These activities include the proven “*Supply Chain Collaboration*” system governing the joint review and agreed improvement of tier 2/3 supply chain relationships.

Using FAC-1 with other standard 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 *Project Contract* forms in any jurisdiction.

For example, **FAC-1** can be combined with all and any of the following standard form *Project Contracts*:

- Any of the FIDIC/ICC/JCT/NEC/PPC/TAC contract forms, sub-contracts and term contracts
- Any of the ACA/ACE/CIC/FIDIC/JCT/NEC/RIBA/RICS consultant appointments.

Supply Chain Collaboration

FAC-1 incorporates *Supply Chain Collaboration* as used, for example, by Surrey County Council and Kier on their highways alliance *Trial Project*, recognized as a client-led case study in the 2018 “Project 13 Blueprint”. Contractual systems that are now embodied in **FAC-1** helped the alliance to achieve improved *Supply Chain* relationships leading to:

- agreement by *Alliance Members* of **12%** post-tender cost savings which were sustained over a five year period

- “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>)

Project procurement and prices

FAC-1 is compatible with any *Project* procurement model under a *Direct Award Procedure* and *Competitive Award Procedure* and can support:

- traditional or design and build or construction management, with any level or combination of contributions from design consultants, tier 1 contractors and tier 2/3 sub-contractors/suppliers
- integration of activities under related *Project Contracts*
- integration of the capital and operational phases of each *Project*.

For early involvement of tier 1 contractors and tier 2/3 sub-contractors and suppliers, **FAC-1** draws on evidence obtained from the UK Government Trial Projects using “Two Stage Open Book”, “Cost Led Procurement” and “Integrated Project Insurance” procurement and delivery processes.

Limited early involvement on a *Project* can also be achieved under **FAC-1** by issue of *Orders* in respect of *Pre-Contract Activities* (clause 7 and Appendix 3). *Orders* need to be integrated with the terms of the relevant *Project Contracts*.

Framework Proposals and *Framework Prices* are submitted by *Alliance Members* and are confidential as between the *Client*, the *Alliance Manager* and each other *Alliance Member*. They will vary according to whether the *Framework Alliance Contract* governs the appointment of consultants, tier 1 contractors, tier 2/3 sub-contractors/manufacturers/suppliers or a combination of different roles and disciplines.

There is an option for *Framework Prices* to identify *Profit* and *Overheads* separate from other costs, and this enables *Alliance Members* to gain *Improved Value* from *Supply Chain Collaboration* and other joint *Alliance Activities* without eroding margins (clause 4.3). There is also provision in **FAC-1** for agreed payment in respect of *Pre-Contract Activities* and *Alliance Activities* (clause 8).

FAC-1 and Building Information Modelling

Successful use of Building Information Modelling (*BIM*) is closely linked to the interfaces and systems established in the procurement model and contract terms, and some leading *BIM* trial projects have used a multi-party framework alliance. These are described in the King’s College London research report “Enabling BIM Through Procurement and Contracts”, which can be downloaded at <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. Provision for *BIM* is set out in **FAC-1**:

- In relation to the *Framework Programme* in the *Framework Documents*

- In relation to each *Project* in the *Template Project Documents*.

FAC-1 provides the means to obtain *Improved Value* through *BIM* including:

- Data transparency and team integration (through the multi-party structure and Schedule 1 *Objectives*)
- Agreed software (in the clause 1.9.3 communication systems and Schedule 5 *Template Project Documents*)
- Integration of documents enabling and supporting *BIM* (in the *Framework Documents* and *Template Project Documents*)
- Agreed *BIM* deadlines, gateways and interfaces (in the Schedule 2 *Timetable* and the clause 6 *Alliance Activities*)
- Flexibility to agree any combination of *BIM* contributions (through the multi-party structure and under clause 1.11 and the Appendix 2 *Joining Agreements*)
- Flexibility to bring in *BIM* contributions from specialist sub-contractors and manufacturers (through clause 6.3 *Supply Chain Collaboration* and clause 7 *Orders*)
- Direct mutual licences of *Intellectual Property Rights* (in clause 11)
- Integration of *BIM* management with governance and clash resolution (in the clause 1 *Core Group* and *Early Warning* provisions and the clause 5 *Alliance Manager* role)
- Flexibility to obtain *BIM* contributions from additional *Alliance Members* involved in the occupation, operation, repair, alteration and demolition of a completed *Project* (under the clause 1.11 and Appendix 2 *Joining Agreements* and the definition of *Operation* as a feature of *Improved Value*)
- Potential for the *BIM* team to learn and improve from *Project* to *Project* (under the Schedule 1 *Success Measures* and *Targets* and under the clause 5 and Schedule 4 *Direct Award Procedure* and *Competitive Award Procedure*).

FAC-1 and bespoke drafting

FAC-1 has been reviewed and tested by clients, lawyers, consultants and contractors in multiple jurisdictions. It provides flexibility for completion of the *Framework Alliance Agreement* and its Schedules, including the *Legal Requirements* and *Special Terms*, in ways that can reflect legal requirements and specific needs arising in any sector and under any legal system.

FAC-1 additional materials

Regular updates are provided on the **FAC-1** website www.allianceforms.co.uk.

Detailed analysis of **FAC-1** and guidance on how to use it in practice are set out in “*Collaborative Construction Procurement and Improved Value*” (Wiley 2019). This book describes the research that underpins **FAC-1** and summarises numerous case studies. It reviews specific provisions and their approach to:

- Cost and quality criteria for selection of *Alliance Members*
- *Objectives*, *Success Measures* and *Incentives*
- Decision-making through the *Core Group* and development of a collaborative culture

- Award of work and interfaces with *Project Contracts*
- Engagement with *Stakeholders*
- *Supply Chain Collaboration* and other *Alliance Activities* designed to achieve *Improved Value*
- *BIM* and related *Intellectual Property Rights*
- Prices and payment
- Collaborative change and *Risk Management*
- Problem- solving and alternative dispute resolution.

This book also includes tables illustrating how to complete **FAC-1** and explains the amendments made in the Bulgarian, German, Italian and Portuguese translations.

A series of videos exploring the varied uses of **FAC-1** include:

- How Can the Law Improve Construction Projects?
https://www.youtube.com/watch?v=TN_QBeg_7Pk
- What is the Impact of FAC-1 on Construction?
<https://www.youtube.com/watch?v=NmvETRmJFEE>
- How can FAC-1 improve value and safety on housing projects?
<https://www.youtube.com/watch?v=o6LxJsNlo4U>
- How has FAC-1 helped deliver better value highways?
<https://www.youtube.com/watch?v=ucX6TUoyZIA>
- Delivering a BIM alliance in Milan
<https://www.youtube.com/watch?v=g1hLNEAVOLU>