

DB/4  
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Novation

a form of  
D&B

# 1 Evaluation of Novation contract

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Integrated system  
innovative  
effect, role change

## 2 Definitions - Oxford Dictionary

Novation:

- Substitution of new debtor
- contract for former one

make new

## 3 Definitions - RAIA

Royal Australia Institution of Architects  
3-5 bidders.  
after novation: client → contractor  
contract: client → contractor  
design team

- a form of design and construct agreement
- the client initially employs the consultant team to prepare 30% - 80% overall design before calling tenders from building contractors
- the consultant team is then novated to the contractor who takes responsibility for the project to completion

## 4 Definitions - in simple terms

- the client engages design consultants to create a suitable design proposal
- the consultants then develop the design in detail to the client's requirements
- before the design is fully documented, the proposal is tendered out to selected contractors
- the winning contractor will work out the remaining design with the consultants
- the contractor accepts responsibility for the full design and construction of the building
- the contractor is also required to hire the client's design consultants, hence the name novation contract

## 5 Characteristics - 1

- the services of the design team are, though originally rendered to the clients, novated to the contractor
- the design team will serve the contractor and be paid by him
- origin of novate - you have a new boss
- there is a significant risk shift to novation contractor

## 6 Characteristics - 2

- the contractor assumes legal responsibility for the adequacy and the effectiveness of all design
- including the design that was produced for the client by that design team under their initial engagement
- the design does not need to be fully complete before tendering
- design and construction phases can proceed concurrently once the contractor is appointed
- the contractor can have some involvement in the design of the building

## 7 Characteristics - 3

can facilitate  
fast-tracking, b  
longer time require  
as after certain  
design completed,  
call up contractor  
bid.

Novation contract: mixture of traditional system + DB system (hybrid)

original design  
- client gives instruction → better satisfy client's requirement

- the client has greater influence in design than in the design and build system
- the client is given a firm price for the design and construction work
- the client may invite a number of contractors to tender, ensuring competition for the work
- the novation contractor is the only one with direct contractual links with the client

## 8 Pre-novation stage like traditional system

- the consultants submit alternative design concepts until the client finds one that he considers acceptable
- the acceptable design is documented, designed and detailed up to certain stage before contractors are invited to tender
- the contractors tender for the project
- the contractors discuss with the design team the methods of construction and work out a design proposal for the unfinished aspects of the project with the client's consultants

## 9 Pre-novation contractual pattern (P.T.O.)

## 10 Post-novation stage like DB system

- once the contract has been novated, the contractor hires the consultants
- the consultants are paid by the contractor instead of the client, and their first point of loyalty is to the contractor
- they form a project team that designs and constructs the building
- the remaining undefined design is documented and let out to tender in subcontract packages, while construction proceeds

## 11 Post-novation contractual pattern (P.T.O.)

## 12 Assessment on time

- allows a fast track approach hence faster than procured by traditional system
- allows shorter project duration and an early commencement of construction

## 13 Assessment on cost

- the firm price assures the client of his financial commitments
- competition assures reasonable tender prices
- however the tender bids may be inflated
- contractors may consider the risks of accepting responsibility for the accuracy of someone else's design

## 14 Assessment on quality

- the client and his consultants have direct control of a substantial part of the design phase
- the design may show more originality and aesthetic appeal than the design and build approach
- however at the post novation stage, problems arise as to who is responsible for the quality control and supervision of the project

## 15 Assessment on accountability

- the contractor is to accept full responsibility of both design and construct, there is only one person to blame

Suitable for economic depression, decline of construction industry.

1995 - slaughter house in Sheung Shui (A&D)  
1st project

# Novation

- however communication between the client and the consultant team is lost at post novation stage
- the novation contractor may pass some of the design work and responsibility down to the specialist subcontractor
- novation is almost pyramided down

## 16 Advantages - 1

- fast track system can be implemented
- the amount of documentation and detailing may be less demanding
- team members are familiar with each other
- selective competition can ensure that tenders are priced reasonably
- the client can select on the basis of the design proposal as well as other aspects

## 17 Advantages - 2

- the client has a firm, guaranteed price for the work
- the contractor takes full responsibility for all aspects of the building work
- lines of communication between the contractor and the client are direct
- the client can impose more emphasis on the design content
- designers can introduce more imaginative and aesthetically appealing design

## 18 Disadvantages - 1

- the contractors accept the contractual risk should the consultant's design be unworkable or deficient
- contractors may inflate overall tender price to cover the additional risks
- quality assurance and supervision of the project may be inadequate
- the direct communication between the client and the design team is lost at the post novation stage

## 19 Disadvantages - 2

- all subcontractors will be appointed by the contractor. Hence the client's privilege and benefits of having a lower price will be taken away
- the contractor may force the specialist subcontractors to accept the risk of design work
- only a limited number of companies with a proven record of both designing and constructing
- after novation, the consultants are paid by the contractor. This may disadvantage the consultants as the contractor may not be as financially stable as the client

## 20 Typical uses

- suitable for large projects where they demand:
  - a fixed timetable and budget for the project
  - a fast track assembly
  - control over important aspect of the design work
  - responsibility of the design and construction rests with the one contractor

## 21 Risk allocation - the client

- 'single point' responsibility releases client's risk on the origin of defects
- overlapping of design and construct reduces risk on time overruns
- price certainty as a result of lump sum tendering reduces risk on

Architect may not express their real feelings as Contractor is the boss now and employer's interest may be neglected

## cost overruns

- greater risk of poor quality because of lack of supervision
- opportunity of changes is restricted

## 22 Risk allocation - the contractor

- assumes all responsibility and cannot claim for design omissions, ... etc. from the pre-novation stage
- bears the single point responsibility
- has to accept contractual risk as to the performance of design consultants

## 23 Risk allocation - design consultants

- contractor may not be as financially stable as the client
- a new boss-subordinate relationship with the contractor may create a difficult adjustment if the consultant has never worked with the contractor before

## 24 Industry perception - client

- a wide ranging opinions
- all considered novation was a practical procurement system
- but would be selective where it was used
- in general they considered novation would facilitate transfer of most risk to the contractor
- but the up-front premium and possible inflated price may not result to the most cost effective alternative

## 25 Industry perception - design consultants

- some felt that having the contractor as the boss was rather difficult to adjust
- most did not see it as a too onerous demand
- did not express concerns at the problems with respect to payment

## 26 Industry perception - contractors

- large contractors see it as a great opportunity and support its use
- they can display their superior management skills and gain a market edge over their competitors
- they also enjoy a direct financial rewards by introducing innovative design measures to improve constructability
- effort to administer variations can be reduced significantly
- small and medium contractors express great concern on the additional risks of design warrant, cost and time management of the project