

A REVIEW OF PARTNERING ARRANGEMENTS WITHIN THE CONSTRUCTION INDUSTRY AND THEIR INFLUENCE ON PERFORMANCE

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SUMMARY

This paper examines the concept of partnering within the construction industry and considers the perceived advantages and disadvantages of this form of contractual relationship. It reviews the partnering arrangements presently being used and considers their influence on the enhancement of performance and the improvement of working relationships within the allied design and construction teams.

A major expectation associated with partnering is that it will assist in reducing conflict between parties in construction projects. This assumption is examined and its validity is determined. Partnering is still a relatively new concept in the United Kingdom, the paper therefore concludes by examining its future potential and possible implications on the future of the construction industry in the United Kingdom.

KEYWORDS: Partnering; Collaboration; Conflict; Trust; Teamwork; Commitment

INTRODUCTION

The construction industry has, for many years, engaged in contractual arrangements which have often been more adversarial than cooperative. This has led to strained working relationships between the various members of the construction team and has affected the performance of construction projects. A more enlightened approach to the management of the design and construction teams has needed to be considered in order to improve this performance. One significant way forward appears to be the use of partnering arrangements between the parties engaged in construction contracts.

Sir Michael Latham in his report 'Constructing the Team' (1) recognised the role that Partnering could play in reducing conflict and improving efficiency in the construction industry within the United Kingdom and recommended its use. Since then a number of Partnering arrangements have been entered into and their performance has been analysed and compared with alternative contractual relationships. It is clear from this that there are a number of advantages to be gained from Partnering, but there are also problems that need to be overcome. Partnering requires a completely different approach to the contractual relationships by all those involved. This must go further than simply paying lip service to its attributes. If this can be achieved, then Partnering can provide a significant contribution to the improvement of productivity, quality and profitability allied to reductions in cost, time and litigation, within the construction industry.

THE CONCEPT OF PARTNERING

A definition of Partnering is provided by the National Economic Development Council as (2):

"A long term commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of each participant's resources".

It must first be established how Partnering differs from other alliances. Primarily it is not the same as a Partnership. A Partnership is a legally binding commitment to act together as one organisation, whereas Partnering is a symbiotic relationship between two or more parties based on trust, dedication to common goals expressed as mutually agreed and measurable targets for improving services and works and an understanding of the expectations and values of all concerned in the relationship. This relationship may last for one project (so called 'Project Partnering') or over a series of projects (so called 'Strategic Partnering'). It is synonymous

with a Joint Venture, except that Joint Ventures tend to be formed between contractors or contractors and specialists to pool expertise or resources for a specific project. Partnering brings the client into the alliance and should also, where practicable, involve the design team. It should allow companies or practises to retain their own identities within a collaborative enterprise.

There is no universal Partnering agreement. Every arrangement needs an agreement tailored to the individual requirements of the participants and the project or projects being undertaken. The Latham report (3) indicated the type of clauses that may be considered appropriate in such an agreement. They include:

- A specific duty for all parties to deal fairly with each other, and with their subcontractors, specialists and suppliers, in an atmosphere of mutual co-operation
- Firm duties of teamwork, with shared financial motivation to pursue those objectives. These should involve a general presumption to achieve 'win-win' solutions to problems which may arise during the course of the project
- A wholly interrelated package of documents which clearly defines the roles and duties of all involved, and is suitable for all types of project and for any procurement route
- A choice of allocation of risks, to be decided as appropriate to each project but then allocated to the party best able to manage, estimate and carry the risk
- While taking all possible steps to avoid conflict on site, providing for speedy dispute resolution if any conflict arises, by a pre-determined impartial adjudicator/referee/expert
- Providing for incentives for exceptional performance

The agreement will normally be for a stipulated period and contain clauses enabling the parties to terminate the agreement should they so wish.

THE ESTABLISHMENT OF PARTNERING

The aims of a partnering arrangement may be listed as (4) :

- Establishing productive working relationships
- Co-operating for mutual advantage
- Avoiding unnecessary or destructive conflict
- Aiming to optimise working effectiveness

Through this cooperation and exchange of ideas all parties are committed to the common objectives of achieving the best value for money, the highest quality relative to cost and the satisfaction of the client.

Barclay Mowlem in Australia have developed a system for establishing a partnering arrangement (5). At the start of each contract, the parties involved set a list of objectives, ranging from the completion date to the financial targets of each partner. They then agree to pursue these targets as a team and monitor their performance against them throughout the projects life.

This formula was used by Barclay Mowlem on the Nepean Hospital scheme in Western Sydney. An initial meeting was set up to introduce the concept of partnering. This was attended by all participants in the project, consultants, client, project manager, contractor and major subcontractors. Following this the project charter was drawn up, comprising a mission statement which set out the general aims of the team and a list of ten partnering objectives which set out the specific goals. These formed the benchmark against which project performance was measured during the project. Once in place, the charter was supported by a series of meetings which involved different sectors of the project hierarchy and ensured that the project performance was measured against each of the specific goals and that unsolved problems were discussed and solutions found.

Julia Pokora and Colin Hastings identify nine key building blocks for creating effective partnership performance (6). These are:

Effective screening for fit - There should be compatibility between organisations if they are to work together. There may be problems where the history, culture, values, management style and systems of the partners are not compatible.

The right contractual foundation - A contractual base which encourages joint problem solving, information sharing and risk taking, should be sought. There should be a move away from an adversarial approach to working and a move towards joint incentives to minimise costs and maximise performance.

Agreeing what the stakeholders want - Different stakeholders will have different priorities and success criteria for a project.

Stakeholders should be encouraged to be explicit about what is important to them and ways should be devised for exploring and resolving differences in the spirit of problem solving, rather than attempting to avoid or minimise potential areas of conflict.

Team start up and team building - Personal relationships and shared understanding can be developed through team start up workshops.

Making visible different capabilities - Partners should exchange knowledge and experience in a mutually advantageous way. It therefore needs to be established what knowledge and experience each organisation has for exchange.

Joint scoping - The client and key parties must work together in defining the scope and specification of the project. There must be a determination to reach a commonly understood and agreed view of what is to be done and how it is to be done.

Partnership information and communication systems - Compatibility of information and communication systems of each participating organisation needs to be ensured.

Ground rules for co-operation - There must be a charter or agreement which summarises the expectations of each party and outlines their aspirations concerning how they want to work, the behaviours expected of people and the practical methodologies used to achieve this.

Learning review and dissemination - Where the relationship is to endure beyond the initial project, there will be a period of evolution in an innovative way. Attention needs to be paid to the learning process and systems established for reviewing this learning process. Where good practice is established it may be beneficial to disseminate it to others.

When entering a partnering agreement there are a number of contractual issues that need to be considered. Christopher Meara suggests these may include (7):

- What effect established benchmarking will have upon the improvements strived for by the parties
- What redress an injured party can claim if the agreement is breached
- Whether it provides recompense in the event that either party invokes the termination provisions
- Whether there are any guarantees that the consultants and contractors will be appointed for any or all of the individual projects

Although Partnering arrangements should be based on mutual trust and collaboration it is still advisable to check the legal implications of the agreement. Christopher Hill outlines six areas where complications may arise (8) :

- *Fiduciary relationships* - The law assumes that, unless otherwise agreed, partners are required to maintain a higher standard of conduct towards one another than is expected in a normal contractual relationship. Each party may be considered to be the agent of the other when dealing with a third party. Thus a contractor partner can bind the employer when entering into subcontracts
- *Long term liabilities* - Insurance arrangements need to be used to assign project risk amongst the members of the Partnering agreement.
- *Tangible and intangible benefits* - The parties need to draw up a memorandum of understanding stating how they are going to achieve the intangible benefits, such as co-operation with each other, that will bring about cost savings. Some agreements incorporate detailed cost saving targets and formulae for calculating incentive payments to contractors. These arrangements need careful and detailed drafting.
- *Dispute resolution* - It is naïve to believe that disputes can be avoided in alliances. Experience has shown that a multistage process that, in its early stages, allows an interest based settlement to be reached between senior managers, and progresses through adjudication and mediation to binding arbitration, is the most effective method of resolving disputes between parties engaged in long term contractual relationships such as Partnering
- *EU and UK public procurement rules* - Partnering agreements entered into by public sector clients or private utilities potentially breach both European Community directives and United Kingdom compulsory competitive tendering rules. However, it is usually possible to structure partnering arrangements to prevent any breach of the rules.
- *Restrictive Trade Practices Act 1976 and Article 85 of the Treaty of Rome* - Partnering is an agreement between two parties to restrict the acquisition of construction services and, as such, may need to be registered under the Restricted Trade Practices Act. The parties may then be required to demonstrate that the restrictions are not significant. Similarly with Article 85 of the Treaty of Rome which prohibits any agreement which may affect trade between member states of the European Union and which has as its object or effect the prevention, restriction or distortion of competition. It is likely that most businesses in construction markets have too small a share of any given market for a Partnering arrangement to

have a sufficiently appreciable effect on competition for this Article to apply.

THE BENEFITS OF PARTNERING

Supporters of Partnering advocate its use by extolling benefits such as improved efficiency, reduced costs, reliable quality, faster construction, completion on time, continuity of work, sharing of risk, reliable flow of design information and lower legal costs. To this list must be added the benefits which accrue from the collaborative arrangement itself. Elizabeth Mills list these as (9) :

- Motivating innovation
- Improving co-operation between design and implementation teams, giving rise to a product more suited to client needs
- Increasing the willingness to solve design and site problems which will, in turn, reduce delays and inefficiencies
- Encouraging the sharing out of identified savings in time and cost
- Reducing potential claims
- Encouraging good service and improving subcontract quality and timeliness
- Speeding up of decision making
- Establishing a relationship between parties that may lead to future work

Much of the interest surrounding Partnering is centred on improvements in efficiency and profitability and reductions in costs. Various studies have been undertaken on Partnering arrangements to attempt to quantify these benefits. The United States Army Corps of Engineers have been using Partnering arrangements for a number of years. They found that it resulted in the following major benefits (10) :

- A reduction in overall project costs of up to 5%
- A reduction in client's costs of up to 10%
- A reduction in time taken to reach completion by up to 6%
- A reduction in cost overruns by between 80 and 100%
- A virtual elimination of time overruns
- A reduction in paperwork of up to 75%
- An increase in contractor's profits of between 4 and 9%
- Significant improvements in site safety
- Improvements in morale amongst the project team

Professor John Bennett and Sarah Jayes from the Centre for Strategic Studies in Construction, The University of Reading, suggested improvements in cost savings of 2 - 10% for Project Partnering and savings of 30%, over time, with Strategic Partnering, in their report on Partnering arrangements both in the United Kingdom and abroad (11).

Such benefits appear to stem from an atmosphere of mutual trust and collaboration which exists within a Partnering environment. The contractor is able to develop a special relationship with the client similar to that which exists in a design and build contract. The client's requirements can be discussed and strategies developed for achieving them. The contractor, meanwhile, can offer savings in his costs due to reductions in abortive tendering made possible by the price negotiation arrangement. This can be extended to subcontractors as well, who can either be brought into the Partnering arrangement themselves or can provide the contractor with a reduced price for 'guaranteed' work, in a similar way to that utilised in serial contracting. Further savings may accrue from a reduction in variations during the project which results directly from a better understanding by all concerned in the Partnering arrangement of the client's needs early in the design process.

The design process itself can benefit from the contractor's contribution. By focusing on buildability issues at this stage, efficiency can be improved considerably during the construction phase. In addition considerable improvements in productivity and reductions in the amount of abortive work undertaken can result from an enhanced communication network which embraces all the major parties in the Partnering arrangement, the client, the consultants, the project manager, the contractor and the major subcontractors. Advances in Information Technology have enabled information to flow more speedily and accurately between organisations. It has been estimated in an Australian study (12), that 66% of the factors affecting overall project performance come into play in the pre-construction phase, with 22% in the construction phase and the remaining 12% due to external factors.

It is also clear that greater savings are likely to spring from a long term alliance than may be possible where the Partnering arrangement only lasts for one project. There are bound to be improvements in working methods and communication systems resulting from the evolutionary development of the Partnering relationship.

In a Partnering arrangement created by the contractor SDC and the Rover car group, a 30% reduction in required resources compared with those required under the traditional procurement route was achieved and the project was completed nine weeks earlier (13). See Figure 1 below.

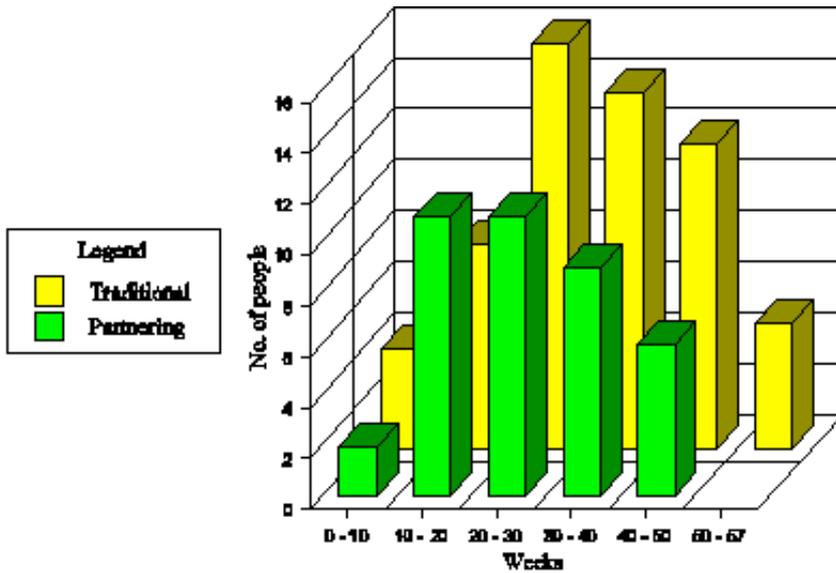


Figure 1 Resource Comparison: Traditional v Partnering

The fact that all the team was on board early meant it was possible to concentrate effort at the beginning of the project. This created thinking time, which reduced potential problems and consequently the human resources required in the middle and at the end of the project.

There are also benefits to be gained from the use of participative management techniques in Partnering arrangements. When a team gets together to set common goals it establishes mutual trust and a commitment to achieve those goals. It is not surprising then that once the project is underway, pressures will be self imposed by each member of the team to achieve the targets that they have helped to set.

CONCERNS REGARDING PARTNERING

Perhaps the greatest concern regarding this method of working relates to the need for openness, trust and commitment by all the parties concerned. Contractual relationships within the construction industry have for so long been founded on mistrust and adversarial practices, that it is not easy to jettison such attitudes in favour of a more enlightened approach. This does not come overnight. It has been estimated that in a traditional contract arrangement, approximately 30% of total project cost can be attributed to the employment of layers of additional staff, lawyers and Quantity Surveyors by the client, the consultants and the contractors whose job it is to 'check the checkers' and defend and guard each interface. It is necessary, therefore to dispense with the old adversarial culture and to foster and develop a new Partnering culture. The contrast between the two may be seen as:

ADVERSARIAL CULTURE	PARTNERING CULTURE
Information is power	Openness
Exclusivity	Inclusivity
Poor communication	Good communication
Hidden agendas	Straight talking
Setting people up	Helping people
Working against	Working with
Preventing	Enabling
Independence	Interdependence

People often prefer to work as individuals than as part of a team committed to common goals. Part of the problem has been the increasing use of specialisation in project teams. Belbin in his research on team roles at work (14) noted that the specialist is the

dedicated, single minded professional who provides knowledge and skills in rare supply. The characteristic of specialists is that they are chiefly interested in their technicalities and contribute on this restricted front. For successful project completion these specialists have to learn to work together.

This is particularly prevalent amongst design professionals. There needs to be total integration of the consultants who form the multi-disciplinary design team. Selecting and matching the individuals involved in this process becomes an important step in successfully managing the design process. In addition, it is imperative that barriers between the different professional disciplines are broken down as early as possible. This may be improved with the move towards a common educational policy for building professionals. Under traditional forms of contract the architect will be given the management role of both the design and construction phases of the project but will have no financial responsibility. Thus the designers are not accountable for the consequences of their management, not only in terms of quality but also in terms of cost and time. This cannot be accepted in a Partnership arrangement. Partnering requires a change in philosophy and its success depends on the commitment of every party to the common goals.

In any commercial arrangement there are always areas of potential conflict. In traditional forms of construction contract these have centred around programming of works, start and completion dates, information processing and distribution, pricing variations and facilitating payment to maintain adequate cash flow. Because of this, procedures have been developed to deal with these aspects. If Partnering is going to overcome these areas of conflict then a new form of contractual arrangement needs to be designed. Andrew Hemsley suggests that the target cost contract may have the mechanisms to achieve this (15). The contractor is brought in at an early stage in the design and agrees a target cost for the project with the client. The contractor is then able to provide advice on buildability, programming and value engineering. When the project has been built all costs incurred by the contractor are audited by the quantity surveyor. If there is a saving this is shared between the contractor and the client. It is important that the target cost is set at the right level. If it is too high then there will be no incentive to be efficient, as savings will follow whether efficiency is achieved or not. If it is too low then no efficiency savings will ever be possible. The consultant team is in place to monitor compliance with the contract. Poor work is not paid for within the target costs, so quality is maintained. Variations by the client result in a change to the target cost.

Public sector bodies have also been wary of partnering arrangements because of concerns that the arrangements might fall foul of accountability rules, Government policy or European Commission directives. Recently the United Kingdom Government has issued a strategy for Government procurement which clarifies the ground rules (16). It states that Partnering within the public sector will be possible if:

- It does not create an uncompetitive environment
- It does not create a monopoly
- The partnering arrangement is tested competitively
- It is established on clearly defined needs and objectives over a specified period of time
- The construction firm does not become over-dependent on the partnering arrangement

THE FUTURE POTENTIAL OF PARTNERING

Although Partnering arrangements have been used successfully in the construction industries of other countries for a number of years, it is still a relatively new concept in the United Kingdom. Despite this it has been used successfully on a number of projects and has recruited a number of supporters, with very few detractors. This has been brought about by a willingness on the part of a number of major clients to identify organisations in each category of construction service, project managers, design consultants, contractors and subcontractors, who are prepared to work within new contractual relationships and form an alliance which is committed to establishing the client's needs and aims and offering innovative solutions to their attainment.

The concept is working well in the private sector and has now been given the opportunity to be practised in the public sector. One area that may particularly benefit from such a development is the Private Finance Initiative, where the Government teams up with the private sector to fund large infrastructure projects. Under such an initiative the Government may be prepared to put in half of the money and contractors would join with funding organisations for the remainder. The contractor may be offered a 5 - 10% equity stake as an incentive to get the project finished on time and within budget and architects and engineers could also come in with a 5% equity stake as an incentive to complete the design details on time (17).

Partnering requires a completely new culture to that which has existed in the past. What is needed is to select those firms which are most sympathetic to the culture of those with whom they are working within the alliance and then rationalise their structures and objectives to the benefit of all. Where Partnering arrangements do fail it is either because the participating organisations could not bring themselves to be open, trustworthy and committed to the common goals or that they were unwilling to invest the time and money in developing the system and to ensure it worked.

REFERENCES

1. **Latham, M.** Constructing the Team: Final report of the Government/Industry review of procurement and contractual arrangements in the UK construction industry. HMSO, London, 1994.
2. **National Economic Development Office: Construction Industry Sector Group.** Partnering: Contracting without Conflict. Business Round Table, London, 1991.
3. **Latham, M.** Op cit.
4. **Pokora, J & Hastings, C.** Building Partnerships: teamworking and alliances in the construction industry. In Construction Papers, 54, 1995.
5. **Macneil, J.** Australian test team. In Building, 11 August 1995, pp 48-49.
6. **Pokora, J & Hastings, C.** Op cit.
7. **Meara, C.** Choose your partners. In Building, 3 November 1995, p 35.
8. **Hill, C.** ...but don't trust too much. In Building, 24 November 1995, p 39.
9. **Mills, E.** Teams with common goals. In Building, 18 August 1995, p 25.
10. **US Army Corps of Engineers**
11. **Bennett, J & Jayes, S.** Trusting the team: The best practice guide to Partnering in construction. Centre for Strategic Studies in Construction, The University of Reading, 1995.
12. **CIDA & Australian Institute of Quantity Surveyors.** Project performance update: a report on the time and cost performance of Australian building projects completed 1988-1993. CIDA & Australian Institute of Quantity Surveyors, 1993.
13. **McLellan, A.** Keeping the faith. In New Builder, 12 May 1995, pp 16-19.
14. **Belbin, R. Meredith.** Team roles at work. Butterworth Heinemann, London, 1993.
15. **Hemsley, A.** Incentives for teamwork. In Building, 12 January 1996, p 25.
16. **Treasury's Central Unit on Procurement.** Setting new standards: A strategy for Government procurement. HMSO, London, 1995.
17. **Spackman, C.** Building Partnerships. In Building, 19 November 1993, pp 29-35.