



# **PROCUREMENT – BEST VALUE? PARTNERING: THE WAY FORWARD**

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**Tom Connolly**

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# **PROCUREMENT – BEST VALUE? PARTNERING: THE WAY FORWARD**

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## **Introduction**

There is no doubt that the adversarial nature of the construction industry causes inefficiency. Clients who have tried a new ‘partnering’ approach have themselves also experienced problems including:

- lack of clarity in contracts;
- uncertainty of outcome cost;
- loss of diversity of contracting skills;
- specialist contractors working as subcontractors;
- concern over efficiency of contractor delivery.

In response to these problems there have been many organisations developing bespoke procurement strategies. However, the ‘one strategy fits all’ approach has fundamental problems of its own, including:

- the changes to clients’ current practices are not kept to a minimum;
- the strategy does not address the individual needs of the client.

In reality, whatever strategy is adopted, its success or failure will depend on how well it achieves *all* of the eight fundamentals set out below.

## **Communication**

Each party involved in the choice and delivery of capital expenditure, whether operators, owners, maintainers, contractors, designers or suppliers should be effectively involved at all stages in the delivery process, irrespective of their contractual status. There needs to be a practical approach to engaging the parties, with inclusive discussions leading to the identification and delivery of common goals.

One of the essential vehicles for effective communication can be the contract document. This needs a radical re-think in the way that contracts are used.

Logic dictates that as a project progresses, the people involved in representing the stakeholders will change. For example, the team that develop the design will not necessarily go on to deliver that design on site.

In its rebirth as a communication tool it is a necessity that the contract is developed in a way which reflects the team approach. The first job of the

team is to identify the 'core objectives' of the project, and these should be listed at the front of the contract. As the designs are developed the 'agreed contract document' should be developed. This document should then be used to communicate the agreed design to the site teams to enable them to monitor the build quality.

Effective communication is also key to achieving the other fundamentals.

### **Right size supplier and contractor base**

Traditionally, clients engaged contractors, suppliers and sometimes consultants on a rotational basis from a large list. Each party had a small workload with the client and had no incentive to develop their business to fit in with the client's needs. The client was also losing any possible 'economy of scale', whilst paying for high tendering costs. Additionally, any initiative to develop continual learning initiatives or a knowledge pool with the supply chain is ineffective with an oversized supply chain.

Conversely, in some 'partnering' arrangements, large batches of diverse work are placed with one entity. No one is the master of all trades, so the chosen party will not be efficient across the whole programme. In addition, the developed local base of suppliers and contractors, as traditionally used, is forced to deal through this one company. This has, at the very least, a detrimental effect on communication, adding a further contractual layer and inevitable additional cost.

To achieve the right balance, the number of contracting partners must be large enough to ensure diversity and allow benchmarking. Conversely, the number must be small enough to ensure that the client is a key client for the supply businesses, and to allow continual learning initiatives to work throughout the supply chain.

It is also essential that when choosing supply chain partners an assessment is made, amongst other things, of the parties':

- ability to contribute to the team;
- willingness to learn continually from projects undertaken; and
- readiness to join an 'alliancing relationship' with the other team members adopting core values.

### **Financial benchmarking**

There is a possibility that contractors and suppliers exclusively engaged on negotiated contracts will work less efficiently. This is because each business needs budgetary constraints to incentivise managers to continually improve the efficiency of the business. Financial benchmarking, of some type, is therefore an essential part of any procurement strategy. One of the benefits of competitive tenders is that they achieve financial benchmarking, but often at the expense of the other fundamental objectives.

The ideal situation is when the procurement strategy places incentives on all stakeholders to continually look for ways of improving their delivery. This could be achieved by offering the incentive of repeat business by, for example, managing the client's projects into a revolving programme. Each project or batch of projects is then given to a project team, including designers and constructors, on the understanding that as long as the team performs they will be awarded repeat business. Conversely, as soon as performance suffers through complacency, a new team is formed for future projects.

With this method one of the fundamental problems in competitive tendering is overcome. For clients it is not the contractor's tender price which is important, it is the total bill at the end of the project. If the team is monitored against delivered output costs then this problem is overcome.

## **Clarity**

Partnering can lead to a lack of clarity as to the respective obligations and responsibilities of the parties. Time must be taken within any procurement process to ensure that the scope of each party's obligations is fully understood by all other parties. In other words, clarify the detail. This will lead inevitably to less price fluctuation and less likelihood of disputes.

At whatever stage in the design process the price is set, taking the opportunity to clarify what is and is not included in a party's contract, and who is taking what risk, will achieve this fundamental objective.

This links to the view that one of the aims of the contract is to avoid disputes between the parties. It should be recognised that issues will arise during the progress of a project which need clarification. The contract should therefore deal with ongoing clarifications, possibly with a cross party panel dealing with such issues which, if successfully dealt with, could avoid them developing into disputes between the parties.

## **Choice and control of final product**

In the early stages of the procurement process, the optimum investment solution for the client should be determined. If a unique solution was developed for each project, for 200 projects the client would get 200 solutions. However, there may be a decision to standardise a solution across a range of projects to minimise operation and maintenance costs. The optimum solution for the client, therefore, may not be the optimum solution for each project. For such standardisation there is inevitably a degree of imposition of solutions.

The procurement process must achieve a balance whereby the parties should be encouraged to challenge solutions and parameters set early in the process, without being allowed to unilaterally change them.

The process should further ensure that, working within agreed parameters, the delivery team develop a solution which is adopted and signed up to by all the parties, and which:

- is just sufficient to meet the client's original need;
- will last until the programmed replacement date; and
- will be a sound investment in the long term.

A balance must be struck whereby the client has enough control to ensure all its needs are met, but the team is allowed sufficient flexibility to ensure that the most economical way of achieving the client's aims is found.

### **Measure success**

The team should agree fundamental deliverables (timescale, contents and price) at an early stage and then evaluate the success of the team against these fundamental deliverables by hard objective measures, such as:

- was the scheme finished on time?
- within the original budget?
- were there any financial surprises for the client?
- did the final product satisfy the quality standards agreed by the team?
- were there any health and safety incidents?
- did the scheme minimise disruption to the environment?
- what was the perception of the client's customers?

Each contributor to the team should (ideally) receive the same score. If the team delivers, then the team can be rewarded, perhaps with follow-on work. The results from the previous project should be used by the team when commencing the follow on work, ensuring continual improvement.

This approach removes subjectivity, ensures consistency and promotes a true 'no blame' culture.

For any team not performing, it is important to focus on what affected the performance, and address this for future projects. For any one party who consistently under performs, this will be evident from the effect they have on overall team performance across a number of projects and they can be removed from the team.

### **Team risk management**

In some 'partnering' approaches, there is a belief that risk events are less likely to affect the project. There is a danger, therefore, that the parties may not manage risks for partnering contracts as well as for traditional ones.

On the other hand, a team-managed risk approach can expand risk management to events missed in more traditional contracting; the teams identify and deal with problems which previously would have caused disputes between them.

Encompassing team risk management will ensure more certainty of out-turn price, by management and mitigation of a wide range of traditional and project specific risks.

This is illustrated in the figure on page seven. The top box shows the rigid distribution of risks between parties which can be produced by traditional procurement methods. For example, when using a JCT '98 or ICE 7th edition form of contract,<sup>1</sup> each party knows the risks to which they are exposed. However, each party may develop a defensive position: 'if it is not one of my risks it must be his'. In addition, there is no incentive on either party to think laterally to ensure that between them they have considered and managed each risk which can effect that particular project.

The middle box in the figure shows the dangers of some modern procurement methods. Each party enters into a comfort zone and somehow the risks which were clearly distributed in the traditional method have slipped into that dangerous grey area. In addition neither party is considering project specific risks.

The bottom box shows a procurement strategy which is effectively managing risks. The parties have between them identified all possible risks on the project, including any unique and specific ones. They have then encompassed these into a risk management system for the project and at some stage taken time out to clearly distribute the risks between the parties.

### **Incentivise throughout project delivery**

Consider each team member (including the client's own staff) and ask: What incentive do they have to perform? For example:

- why should they look at innovative cost saving solutions?
- why should they pay suppliers on time?
- why should they ensure timely completion?
- why should they pass on cost savings when the price is set?
- why should they consider operation, maintenance and power costs?

This is not meant to be a full list but the message is clear: consider what is driving each organisation and ensure that in achieving their aims they achieve the goals of the rest of the team.

In essence, each organisation should 'buy into' one common goal and all should be incentivised to achieve this. Such incentives may not only include profit share, but also the reward of follow-on work, giving continuity of workload for each party.

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1 Standard Form of Building Contract, Private with Quantities, 1998 edition, The Joint Contracts Tribunal Ltd and ICE Conditions of Contract, Measurement Version, 7th edition, September 1999, The Institution of Civil Engineers.

## Summary

The construction industry has a long history (going back over hundreds of years) of competitive tendering, and as a result an adversarial culture has developed. This approach was nevertheless successful in achieving some of the fundamentals. The competitive approach encouraged financial benchmarking, albeit only at one stage of the project, and the contract documents ensured some control of the product and had at least a degree of clarity.

In some cases, clients that have pioneered a partnering approach found that they achieved all that the traditional approach delivered and more. The right size supply chain and the measurement of success ensured continuous improvement and has, together with incentivisation, significantly reduced disputes.

However, some partnering arrangements led to an extra tier of communication, loss of financial benchmarking, lack of clarity in contracts, and loss of control of the final product. Clients were pleased at the improvement, but questioned if they were getting real value for money.

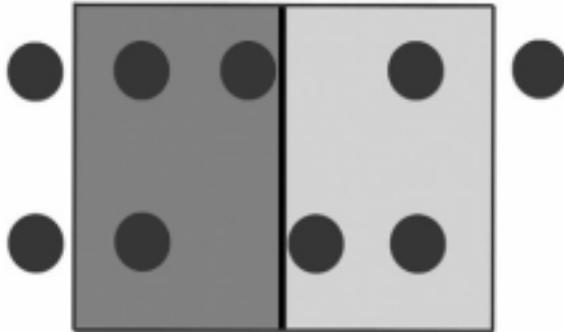
In short, the 'traditional' and 'first partnering' approaches both had their strengths; but the key to success is developing the next generation of 'partnering'. This not only builds on the lessons learned from both the traditional and the early partnering approaches, but also ensures that all the fundamentals set out above are achieved with success guaranteed to all involved in the process.

**Tom Connolly** is a chartered civil engineer and procurement consultant with Edwards Geldard solicitors' construction team based at their Derby office. He has 16 years experience in the construction industry working for both contractors and clients; he qualifies as a solicitor in August 2003.

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RISK  
traditional view



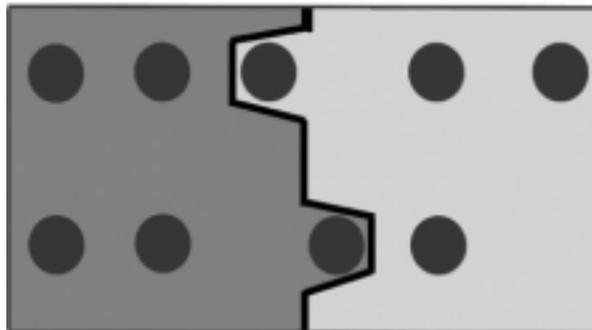
parties know their risks,  
but job specific risks not  
identified

RISK  
partnering ---- dangers



parties risk **not** as well  
defined, and job specifics  
still not identified

RISK  
partnering ---- team risk management



parties consider **all** risks  
together and define who  
bears what risks

*'The object of the Society  
is to promote the study and understanding of  
construction law amongst all those involved  
in the construction industry'*

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Jackie Morris  
67 Newbury Street  
Wantage, Oxon OX12 8DJ  
Tel: 01235 770606  
Fax: 01235 770580  
E-mail: [admin@scl.org.uk](mailto:admin@scl.org.uk)

Website: [www.scl.org.uk](http://www.scl.org.uk)