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**128.250.128.82**

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## Standard

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**Journal:** Construction Business Review  
**Citations:** September/October():46-48 1991  
**Author:** DP Johnson  
**Title:** Partnering, Who Cares?  
**ISSN:** 1059406X

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ment of value engineering changes and constructability improvements.

The owner is not the only team member who benefits. Lewis points out that the architect/engineer will minimize exposure to errors and omission liability for document deficiencies through early identification of problems and cooperative prompt resolution, minimizing cost impacts. And the A/E has an enhanced role in decision making process as an active team member in providing interpretation of design intent and solutions to problems. Administrative costs are reduced because defensive case building is eliminated and claim administration and defense costs are avoided.

Equity involvement of contractors and suppliers in a project increases the opportunity for innovation and implementation of value engineering changes in their work. This

improved decision making avoids costly claims, saves time and money, and increases productivity. When the contractor is a team member, the probability of the project's financial success is greater because of non-adversarial, win/win attitude towards problem resolution, says Lewis.

Partnering is a process which responds to the need for building trusting relationships on the project. Trust is essential in a service business. Without it, the construction project slows to an unacceptable pace, inspection costs go up, margins decline, and disputes often lead to claims and litigation. Nobody wins.

*Louis R. Bainbridge and William A. Abberger are consulting group directors for the Quality and Productivity Improvement Group of FMI (formerly Fails Management Institute) in Denver, Colorado and Tampa, Florida, respectively.*

## PARTNERING, Who Cares?

**W**hy should an owner or contractor care about establishing or developing a contract administration relationship outside the four corners of the contract? Because the contract is silent on what may be the most important component of a successful construction contract—how well the major stakeholders to the contract work and play together.

Increased use of the courts, Boards of Contract Appeals, and declining profit margins in the construction industry are clear indicators that something is wrong with the way we do business. Evangelists of alternative dispute resolution (ADR) preach a new religion for reducing litigation costs through various dispute settlement techniques such as mediation and arbitration. However, even proponents of ADR recognize that dispute avoidance is still the preferred method for performing a contract. Many owners and contractors believe that postponing dispute resolution to the end of the project allows them to quantify all disputed impacts, and does not divert attention away from contract completion. The truth is that facts surrounding any dispute, unlike wine, do not get better with age.

The idea that the contract begins with the award is false. Even a firm fixed-price sealed bid contract begins long before the date of award. The accuracy of site information,

by  
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quality of effort in the preparation of plans and specifications, bid preparation, owner or contractor reputation, project complexity, selection of subcontractors, and selection of project personnel by all parties set

the stage for contract performance. A failure to attend to any of these items may portend a troublesome project.

### WHY PARTNERING?

Anyone who has been in the construction business for any length of time has been involved in a "good" project. On a "good" project, dedicated people participate in contract performance. People who communicate well, emphasize problem solving and enhance trust at every opportunity breed success. However, absent a strategy, plan, and commitment to implementation, the chances for achieving a win-win project for all stakeholders falls into the category of a hope or a prayer.

Through partnering a single management agenda can be established. The purpose of the partnering agenda is to:

- establish lines of communications,
- identify and manage critical contract elements,
- clarify roles and responsibilities,

- determine clarification processes and a method for
- dispute resolution methodology, and
- help with teambuilding.

Individual elements of a partnering agreement are important, but less so than the mere agreement by all stakeholders to jointly manage mutually agreed upon aspects of contract performance. As participants learn to "work and play well" relative to agreed upon items, a cooperative attitude is likely to spill over to other areas of contract performance.

### THE PARTNERING PROCESS

The partnering process is whatever the parties decide it should be. There is no magic formula. The objective is only to increase the likelihood of a "good" project. How structured or formal the process is depends on the participants.

Subsequent to the contract award, representatives of the owner, prime contractor, and subcontractors or suppliers must agree on partnering as a strategy for contract performance. But agreement must be voluntary. Individuals who will structure the partnering must be agreed upon by the parties. In general, participants should include those individuals who will interact on a regular basis, key technical experts, and those individuals who have ultimate decision making authority.

The participants will officially come together for the first time in a partnering workshop. Ideally, the workshop will occur prior to the notice to proceed, but at least as early as possible. Employing a neutral facilitator will help promote teambuilding and communication. A facilitator assures that all parties can participate in the process. Dominance by any individual or group should be avoided. Unless everyone participates, the buy-in so necessary for success will not be achieved.

One essential goal of partnering is to eliminate a mentality of "us" and "them" and replace it with a "we" for both owner and contractor.

Early on, the parties should identify project goals that are a requisite to a mutual win. These can include meeting the design intent, establishing value engineering goals, maintaining the schedule, an abbreviated review periods for contract submittals, minimizing paperwork generated for the sole purpose of case building or posturing, or a no

litigation commitment. As important as identifying goals is identifying processes necessary to achieve them. Regardless of the specific objectives identified the most important ingredient to the overall process is that those objectives be achieved through mutual discovery. The more overlap the parties see in their interests, the greater the motivation to constructively participate. Mutual discovery occurs when the parties concurrently arrive at a common interest through dialogue.

Although teamwork will not eliminate all problems, the fostering of trust by clarifying expectations and agendas assists all parties in concentrating on problem solving not case building.

A problem solving mechanism should be a critical part of any partnering agenda. Certainly, ADR techniques such as mediation, arbitration, mini-trials, or the formation of a dispute resolution review board can be a

part of the mechanism. Because these alternatives are still adversarial, it is preferable to adopt joint problem solving, win-win negotiation, and an expedited decision making process, as alternatives to more formal dispute resolution methodologies.

Disputes are resolved through an elevation process as opposed to potential litigation. Elevation brings problems within each organization to the highest level necessary to resolve them. Elevation can eliminate personality conflicts or style differences that could impede issue resolution. Control and resolution of contractual differences must remain a management or corporate prerogative. No action is not an option. Timely decisions and effective communication will enhance cooperation.

### LESSONS LEARNED

There must be absolute commitment from the top leaders of participating organizations to the partnering process. Employees tend to watch where leaders walk, not how they talk. And problems will develop, partnering is not a panacea. The minute any organization's leadership begins to balk at carrying out the tenets of the partnership, the stampede to abandon ship will begin.

Success depends on commitments being honored. To stay the course, one approach is to designate organizational champions. These champions must be high enough

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in their respective organizations to understand the vision and be willing, in the face of adversity, to keep the process moving in a constructive manner.

Each partner must try to understand the position of other partners to the agreement. This includes their culture, goals, and organizational constraints. Identify and understand the strong and weak points of all partners. Not to use that information against them but in order to help them achieve their goals. One component necessary to understanding your partners is to clarify expectations. Develop a common language. It is so important to deliver on your commitments you better know what your partner thinks they are.

With partnering, owners and contractors will devote more effort to contract administration. This can be a serious problem for all parties if they have not budgeted for it. Resolving misunderstandings or disputes takes time, and contractors should include that in their bid and owners in their budget. Although this increased effort may increase costs in the short term, the long-term gain will be more than an offset.

Each organization needs its own team approach to problem solving. Teamwork must be fostered both internal to your organization as well as with your partner. People tend to support decisions or solutions they have helped participate in resolving. And the converse seems to be true for those that are excluded from the process. Intra-organizational teamwork can help streamline internal procedures. Faster response times to partner enquiries are often needed. Old ways of doing business may be inadequate to respond to the requirements of your partners.

To be responsive, maintain flexibility during contract performance. One technique is to emphasize the value engineering (VE) program. Under this program both the owner and the contractor can monetarily share in innovative ideas resulting in contract savings.

When problems appear to be stuck, at whatever level, see to it that those issues are elevated immediately. Problems should not fester to a point that they detract from the partnership. This does not mean that individuals should be allowed to defer issue resolution or decision making to a higher level when it is within their sphere of authority to resolve. When two or more individuals could have resolved the problem and deferred, the first question asked should be why. Make sure people are empowered to resolve problems and given the freedom to exercise their authority without risk. Absent that empowerment, upper management will find all problems being elevated to their level for final decision.

Plan for follow up workshops. The stakeholders can decide how structured these workshops should be. It is critical to reassemble the partners to see how the agreement is working. Eventually, most participants discover that the bloom leaves the rose. Periodic rejuvenation is

requisite to a good relationship. Partnering is very similar to a good marriage, it requires constant attention. The parties should not begin to feel ignored or non-essential to the process.



Participants should maintain a sense of realism—partnering does not eliminate problems. At best it enhances trust, creates an environment in which resolution of disputes is the standard not the exception, and permits all partners to celebrate project completion and move on to the next job without outstanding litigation hanging like a dark cloud over their respective organizations.

Recognize effort as well as success. Partnering is trying to develop a new way of doing business or at the very least capturing the way "good" owners and contractors currently do business. It must be remembered that what gets rewarded gets done. Recognize people who contribute to doing business the way your organization is trying to encourage. Not every effort will be successful, but often the attempt is just as important as the outcome.

Reduce the partnering agreement to writing and have the participants to that agreement sign the document. It is important to embody your understandings in a hard copy. Something that can be referred to when memories begin to fade. It is also interesting how the simple ritual of affixing a signature can enhance commitment. People seem to take something they have signed more seriously.

Partnering has proved an innovative, powerful management tool for transforming often negative, litigious and cost-defective construction relationships into positive, cooperative, ethical and profit-building experiences. Based on cooperation, it is rooted in empathy for one's partner and mutual trust and respect in each partner's integrity. The goal is to realize successful contracts in which all partners are clearly winners. **CBR**

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