Partnering in the Construction Industry

B. Darshanie Taraka Perera BSc (Hons) TCInst.CES
Quantity Surveying, University of Reading, UK

Introduction

Partnering is considered a radical departure from conventional procurement approaches in the construction industry. According to the Joint Contracts Tribunal's (JCT) practice note on partnering: it is neither a particular procurement approach, nor is it a particular type of contract: it is about culture and the way in which the participants view and manage the project.

The key objective of developers when implementing any form of construction contract is the appointment of appropriately skilled and experienced contractors on the basis of the right price, programme and risk allocation. In a market where the balance of power between the contractors and employers is shifting, this objective is increasingly hard to achieve. Partnering is a process that is being used with increasing frequency in the UK and is slowly being recognised in the UAE as a solution for the afore-mentioned matters.

Partnering has been defined by number of authors in different words. However the essences of all those definitions means that it is a management approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of each participant's resources.

Partnering in construction contracting started getting earnest attention in the UK through the Latham report 'Constructing the Team' (1994). Sir Michael Latham drew attention to the benefits of partnering in order to avoid the problems in conventional adversarial procurement methods. The concept has been well supported by Sir John Egan's report 'Rethinking Construction (1998)'. In it, he emphasized the need of applying principles of the automobile industry, such as total quality management, lean production principles, integrated supply chain etc, into the UK construction industry.

Development of Partnering

There are three generations of partnering. Those are

- Project Partnering – First Generation of Partnering
- Strategic Partnering – Second Generation of Partnering
- Strategic Collaborative Working – Third Generation of Partnering

Project Partnering - First Generation of Partnering

Project partnering is a set of actions taken by the work teams that form a project team to help them cooperate in improving their joint performance. Specific actions are agreed upon by the project team taking into account the project's key characteristics, and their own experience and normal performance. The choice of actions is guided by a structured discussion of mutual objectives, decision-making processes, performance improvements and feedback. The essential actions of project partnering are shown in Figure 1.

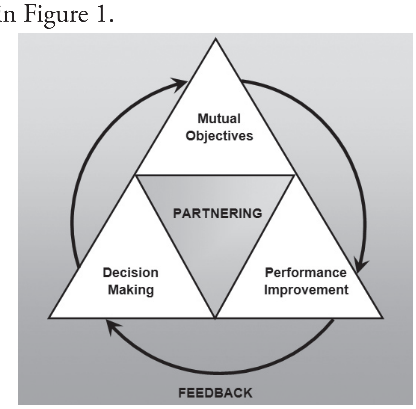

Figure 1- The essential actions of artnering
(Partnering in the construction industry, John Bennett & Sarah Peace - 2006)

Strategic Partnering – Second Generation

Strategic Partnering is a set of actions taken by a group of clients, consultants, contractors and specialists to help them cooperate in improving their joint performance over a series of projects. The essential actions of strategic partnering are shown in Figure 2.

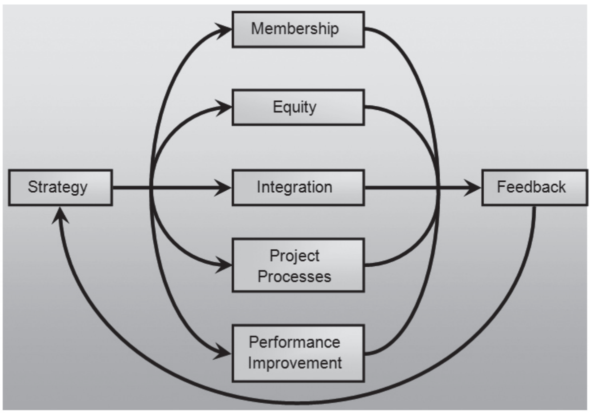

Figure 2 – Seven Pillars of Partnering - (Partnering in the construction industry, John Bennett & Sarah Peace - 2006)

Strategic Collaborative Working - Third Generation of Partnering

This is a set of actions by a group of consultants, contractors and specialists to help them cooperate in establishing and continuously developing a long term business based on an integrated construction cycle that links client use of constructed facilities with their development and production. The process of strategic collaborative working is shown in Figure 3.

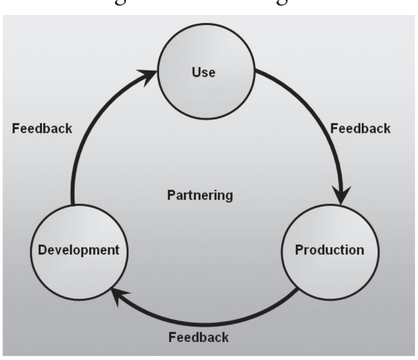

Figure 3 - Strategic Collaborative working - (Partnering in the construction industry, John Bennett & Sarah Peace - 2006)

Selecting Appropriate Partners

The success of partnering greatly depends upon the continuing will of the participants to make the relationship work, being primarily about teamwork even though team members are from different organizations. Therefore, selecting correct partners is an important factor.

The partners may be selected through personal or business contacts, by recommendations and in some instances through competitive tendering. Similar to conventional contracts, prospective firms should be evaluated on their technical skills, managerial expertise, financial resourcesand the like. However, unlike with conventional contracts, the cultural fit of the firms is important here. This is a fact which is difficult to evaluate. Therefore the most important facts to be considered under the culture of an organisation are:

- Ethical values of the organisation
- Business practice with respect to dealing with other stake holders
- Commercial objectives of the company

Available Forms of Contract

Even though some landmark publications such as the 'Egan Report' state that "Effective partnering does not rest on contracts", it has now become a fundamental requirement to have a contractual background for partnering arrangements. According to the JCT practice note, partnering is better served by the existence of an underlying contract. The Joint Contracts Tribunal (JCT), Institute of Civil Engineers (ICE) and Association of Consultant Architects Ltd. (ACA) have provided different forms of contracts which comply with partnering arrangements.

The JCT - Constructing Excellence Contract has been drafted to provide a document that underpins collaborative working and the formation of integrated teams within the supply chain. This includes:

- a series of bi-lateral contracts that adopt a collaborative approach within a common framework
- a multi-party Project Team Agreement which enables members of the Project Team to reinforce their collective approach to guiding the successful delivery of a project
- the active identification and management of project risks through the mandatory maintenance and updating of a Risk Register
- the flexible allocation of identified risks to the

party best able to manage the consequences of their occurrence

The ICE published NEC Partnering Option X12 is primarily derived from the 'Guide to Project Team Partnering' published by the Construction Industry Council. It is not a separate agreement but has been drafted as a secondary option for incorporation into the existing NEC family of contracts.

Option X12 is intended for multi-party partnering where the agreement can consist of single or multi-projects. All parties who are intended to make up the project's partnering team will require the inclusion Option X12 in their contracts respectively.Key features of Option X12 include:

- The parties must recognize that by entering into the contract, they are undertaking responsibilities in addition to those detailed within the basic NEC contract. Responsibility is still retained for all the sub-contractors in the chain below.
- Where one party misses a particular target, due to poor performance, thereby letting the other members down, all parties may lose their bonus for that target.
- Option X12 does not include direct remedies between non-contracting partners to recover losses suffered. Remedies (if any) are a matter between the parties under their individual contracts. This will apply to all levels of the chain who are part of the partnering team

PPC 2000 was published by the ACA and is the first standard form of contract for project partnering. The authors of PPC2000 claim that it puts partnering relationships into a contractual context. It was launched by Sir John Egan and was recommended by several bodies such as the Housing Forum, Construction Industry Council in the UK
Some of the key features included in this form are as follows.

- the integration of the project team under a single multi-party contract, in which all parties - client, consultants, contractors and specialists - have rights, obligations and liabilities with respect to each other
- governs the pre-construction phase as well as the construction phaseprovides a procedural framework that supports the partnering process
- Supply chain management on an open book-basis
- Core group responsible for management of partnering arrangements
- A formal risk management procedure
- A partnering adviser to assist the project team
- Non-adversarial dispute resolution process

Benefits of Partnering

- Time and cost savings are the most highlighted advantages of partnering. Literature shows that project partnering can reduce costs by 30% and time by 40%, whilst strategic collaborative working can reduce costs by 50% and time by 80%.
- Commitment to mutual objectives and a well constructed decision making/problem resolution process greatly reduces the extent of claims and litigation experienced.
- Improvements in quality control, reductions in defects, lower life-cycle costs, and greater sustainability can be achieved.
- Time reductions in selection process and design enable faster starts to projects.
- Designs can be improved through the early involvement of contractors. It improves the buildability and creates savings in time and cost. In strategic partnering the understanding gained through repetitive projects enhances the entire team's input.
- Synergistic teams can be built by focusing on mutual objectives. Stake holders in a project can meld into a true team rather than merely a group with disparate goals.
- Efficiency is improved through organising administrative functions and focusing on direct project issues, rather than defensive posturing. Where strategic partnering is used, staff time is reduced by avoidance of going through repetitive learning curves.
- Partnering breeds greater co-operation and thus responsiveness to short-term emergencies or changing project and business needs.
- Partnering creates an environment and culture which is favourable for value management and the identification of innovative solutions can greatly improve project performance.
- The concentration of the whole team on customer objectives makes the programming of construction work more effective and hence improves certainty. Both cost and time creep can be kept in check more efficiently. Contractors and consultants can benefit

from a known workload.
- Improved safety performance can be achieved through the understanding of joint systems and procedures more thoroughly.

Drawbacks of Partnering

- In a demand driven market it is the clients who do not see immediate benefits from partnering, as it is seen to blunt competitive pricing. In this case contractors would rather like the idea for this exact reason, as well as work continuity, better resource planning and business sustainability. Again, if not based on long-term shared benefits, successful partnering is unlikely to evolve.
- Organizations trying to establish a partnering culture may face severe problems in competing to win other projects.
- Partnering relationships may restrict firms from developing more profitable new businesses.
- Forming teams from people who fit the partnering ideal may exclude creative individuals, new ideas and distinctive skills.
- Powerful partners may dictate terms and conditions to weaker partners who depend on them for future work and so cooperative teamwork can be impossible in some instances.
- Changes in commercial and organizational conditions may vitiate partnering.
- Targets that expect too much and too soon may vitiate partnering.
- Having strategic collaborative working relationships too often may disturb individual projects in the interests of long-term development.
- Partnering can be undermined by targets that can be achieved only at the expense of those further down the supply chain.
- For some, changing the thinking that it is necessary to win every battle at the other stakeholders expense will be difficult.

Potential Barriers to Successful Partnering

Although much of the literature has concentrated on the success of partnering, some writers have alleged that they have missed the importance of the social and psychological issues associated with the application of partnering in an industry which is traditionally adversarial. It is also criticised by some authors that partnering is not appropriate for all procurement arrangements.

In the Royal Institute of Chartered Surveyors (RICS) research paper done by Wood (2005), analysis was done on the prevailing literature written on potential barriers to partnering. It shows that some writers have contended that partnering is a long way from resulting in the contractor benefits claimed by some authors. Wood has categorized the barriers under two main headings, cultural and economic barriers. These are briefly mentioned below.

Cultural Barriers

- Difficulties in establishing real trust between client and main contractor are a major barrier and are time consuming. Publications such as ‘Towards positive partnering’ (Barlow et al, 1997) have positively supported that notion.
- Absence of openness and honesty in either party has been identified as barriers.
- Behaviour of individuals is another barrier. Even though senior members of the organizations have realized the partnering ethos, the lower level teams, particularly at the site level, may not understand the new approach. Wood (2005) shows that the commercial staffs are found to be more difficult to adapt in this respect as they are used to addressing problems in a contractual manner rather through pragmatic solutions.
- Difficulty in changing the ’lowest cost’ mentality is found to be another barrier. Wood argues that some clients are obsessed with lower tender prices in the tender stage rather than looking at what they are going to pay later.
- The complexities that can emerge due to cultural differences of the organizations have been identified as another barrier.

Economic Barriers

- As a principle, risk ought to be transferred to the party who is most capable in managing that. However, discrepancies in allocating risk create many problems. This has been identified as a major economic barrier.
- The mechanism of sharing pain/gain is another barrier. This should be fair and reasonable for either party. However there are many criticisms about the percentages of sharing the pain and gain.
- The client’s use of their buying power in an adversarial way, described as ‘leverage’, is another factor that could affect the partnering ethos.

The Impact of Market Changes

While the current economic crisis weighs heavily on construction industries everywhere, in super-fast developing countries like UAE, the impact is probably more prominent than in most other countries. Many researchers have proved that developers still having partnering agreements in place now say that they are paying more than the market rate for contractors' services. The easiest decision is to abandon partnering and return to more traditional procurement methods.

However contractors are still willing to engage in partnering arrangements under the economic down turn as they believe it to be a better way to exist in the market while earning a secured profit.

Conclusion

Partnering has been identified as an improved solution to the adversarial culture of conventional construction contracts. It is a well tested method in the UK construction industry, yet is not very popular in the UAE. The project partnering concept has been developed over the last two decades in three generations. Partnering contracts were based on a non-binding agreement called a 'non-binding partnering charter' in the beginning. However this has been changed due to discrepancies the contracting parties had to face because of the non-existence of a legally binding contract. There are several forms of contract catering to this requirement.

Even though partnering has provided a number of benefits, there are drawbacks as well. Furthermore, it has been identified barriers to successful partnering under the categories of 'Cultural and Economic barriers'. However, the concept has been proven to be unsuccessful under the current economic down turn.

REFERENCES

- Bennett J. and Peace S. (2006); Partnering in the Construction Industry; a code of practice for strategic collaborative working; Butterworth-Heinemann
- Broome J; Procurement Routes for Partnering; a practical guide; London; Thomas Telford
- Bennett J. and Jayes S.; The Seven Pillars of Partnering (1998); Reading Construction Forum
- Bacon J (October 2009), A Quick Guide to Partnering; Journal of the Chartered Institution of Civil Engineering Surveyors; pp 30-35
- Construction Industry Board, working group 12; Partnering in the Team (1997); London; Thomas Telford
- Egan J; Rethinking Construction (1998)
- Clamp H. et al (2007); Which Contract: choosing the appropriate building contract; Fourth Edition; RIBA Publishing
- Latham M; Constructing the Team (1994); Department of the Environment
- The Joint Contracts Tribunal Limited; Practice Note 4 (2001), Partnering
- Thomas C.; Profitable Partnering for Lean Construction (2004); Blackwell Publishing
- Walker I; Wilkie R; Commercial Management in Construction (2002); Blackwell Publishing
- Wood G; Partnering Practice in the Relationship between Clients and Main Contractors; RICS Research Paper Series; Volume 5, Number 2; April 2005

Viking Grain Storage v T H White Installation (1980)

The contract concerned the supply of grain silos. The grain developed mould whilst stored, due to inadequate ventilation.

Held that the defendants were liable for not provideding goods fit for their purpose.