

The Way Forward? The Use of Partnering as the Basis of Construction Contracting

John M.D.BACON, United Kingdom

Key words: Partnering construction contracts, non-legally-binding relationship, trust, commitment, mutual objectives, proven improvement, workshops, collaboration, project charter.

SUMMARY

Employers and Contractors who work closely together will, sooner or later, reach a stage in their relationship when they want to move even closer together, just like couples. This process is carried out in the business world, in exactly the same way as with human beings.

If two companies want to merge so much that they become inseparable and, in effect, one party, we call it a **merger**. The two companies become one and the same company. With humans, we call it **marriage**. However, if the companies want to get very close together, but still retain their own independent natures, then, in business, we call this **partnering**. With humans, we call it **living together**.

This Paper reports how Partnering and collaboration as has been implemented in the UK, and briefly explores :

- What is Partnering ?
- The aims of project partnering
- The Benefits of Partnering
- What is needed for partnering to work ?
 - the corporate and human commitment to mutual objectives,
 - the potential for, and, realisation of proven improvement,
 - a quick, simple, painless, problem-resolution process.
- The Project Charter
- How Workshops help to achieve partnering
- Typical UK approach to Partnering Workshops
- Who should Participate in the Workshops ?

But, the whole of the construction team must be educated in, must know, and most importantly of all, must be committed to the success of a non-adversarial style of contract. There is no place for traditional prejudices with non-confrontational contracting.

The Way Forward? The Use of Partnering as the Basis of Construction Contracting

John M.D.BACON, United Kingdom

1. INTRODUCTION

Employers and Contractors who work closely together will, sooner or later, reach a stage in their relationship when they want to move even closer together, just like couples. This process is carried out in the business world, in exactly the same way as with human beings.

If two companies want to merge so much that they become inseparable and, in effect, one party, we call it a **merger**. The two companies become one and the same company. With humans, we call it **marriage**.

However, if the companies want to get very close together, but still retain their own independent natures, then, in business, we call this **partnering**. With humans, we call it **living together**.

In business, just like with humans, there are however, different degrees of honesty, faithfulness and commitment between partners !! There are many different types of “partnering”. You must always look at the details of a partnering deal to see what it means. The word ‘partnering’ means entirely different things to different people. It is a carelessly used word.

In business, again just like with couples, sometimes, a close relationship turns sour, and then there is a bust up and this is usually accompanied by a huge fall-out. With humans, we call this **divorce**; in business, we usually call this a **really big expensive legal problem !**

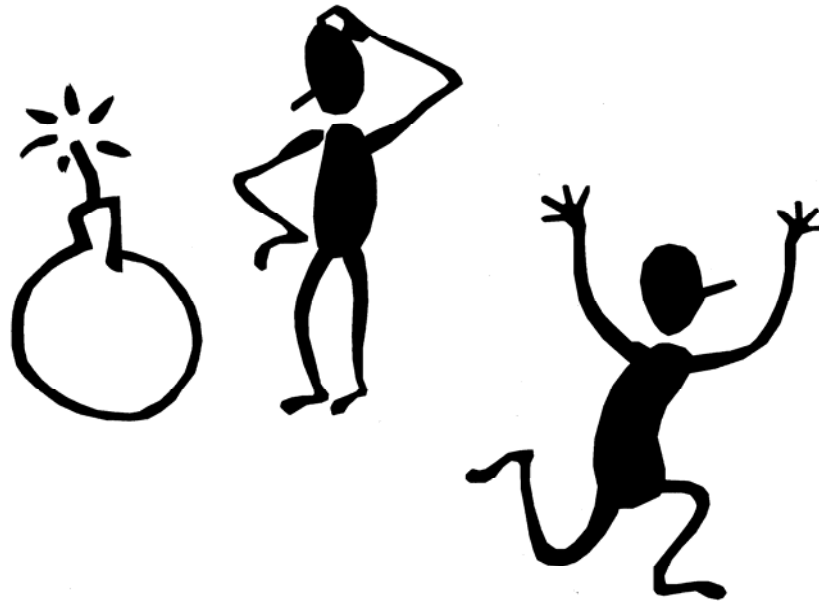
This Paper explores whether the World is yet ready for the same degree of Partnering and collaboration as has been implemented in the UK, and indeed whether it can be said to have worked in the UK.

But first, what exactly is Partnering ?

2. WHAT IS PARTNERING AND WHAT DOES IT AIM TO ACHIEVE?

Partnering is a pro-active, co-operative approach to doing business, developing a long-term commitment between key players involved in a project(s) to achieve specific business and project objectives.

Partnering maximises the effectiveness of every participants’ resources through creating a relationship based on trust, mutual respect, integrity of action and common goals.



It focuses the parties respective energies and expertise into achieving the required objectives in an optimum manner, instead of diverting resource into fighting each other in order to gain a superiority.

Partnering is often **not** a clear legal relationship, but an informal, non-legally-binding working relationship emphasising

- team building
- the clear definition of common project values and objectives
- synchronised systems for rapid problem-recognition and resolution
- frequent joint evaluation of partnership effectiveness.

Partnering does not rely on the small print in the Contract to keep the partnering alive and well; it relies on the continued will of the participants who want to make the partnering relationship work. As soon as the partnering spirit no longer burns in the belly of the participants, then the partnering relationship is over. The spirit of partnering, of the co-operative effort, is captured on a one-page Charter signed by all key stakeholders.

Partnering may be applied strategically on a series or programme of projects (strategic partnering) or tactically on specific individual projects (project partnering). While the potential benefits of long-term strategic applications are greater, so also are the risks. Therefore organisations often trial the approach using project partnering, and then move on to strategic partnering once satisfied of the benefits.

The aims of project partnering include:

- Setting mutual project objectives by co-ordination, team building, open communication and trust, rather than confrontation.
- Achieving better project buildability through earlier contractor involvement, mutual recognition and development of opportunities to improve.
- Lowering the overall project cost by identifying unnecessary work, scope, cost and time escalation's, delays, or unresolved issues or problems.
- Reducing the project time and improving quality.
- Establishing a more dynamic project organisational structure and clear lines of communication.
- Measuring achievements against reset targets and industry benchmarks
- Achieving mutual benefits to be derived from longer term considerations, including introducing a culture of continuous improvement and regular value-engineering scrutiny.

But these aims would be similar to what all contracting parties seek in their contracts. How does Partnering in particular achieve any of those objectives ?

3. THE BENEFITS OF PARTNERING

The benefits of partnering will vary according to the specific nature of individual organisations. Typical benefits that are most commonly cited are described below.

Customer focus: customer objectives are given high priority through the explicit identification **by both parties** of mutual objectives.

Less claims and litigation: commitment to mutual objectives and a well constructed problem-resolution process greatly reduces the extent of claims and litigation experienced.

Enhanced quality: evidence suggests significant improvements in quality control and reductions in remedial work through applying partnering techniques.

Relationships clear: all efforts by all personnel by all parties committed to the Partnering process are focused on achieving optimum results.

Improved efficiency: from rationalising administrative functions and focusing correspondence 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.

Faster projects: selection processes and design and construction times can be reduced.

Greater certainty: the concentration of the whole team on customer objectives makes the programming of construction work more effective and thus improves certainty. Both cost and

time creep can be kept in check more efficiently. Contractors and consultants can benefit from a known workload.

Responsiveness: partnering breeds greater co-operation and thus responsiveness to short-term emergencies or changing project and business needs.

Synergistic teams: by focusing on mutual objectives the stakeholders to the project meld into a true 'team', rather than merely a group of stakeholders with disparate goals.



Improved design: through the involvement of contractors at early stages in a project. In strategic partnering the improved understanding gained through repetitive projects enhances the entire team's input.

Innovation: partnering creates an environment and culture which is conducive to Value Management and the identification of innovative solutions which can greatly improve project performance.

Better safety records: as partners get to understand joint systems and procedures more thoroughly.

For each project or situation the potential benefits of partnering must be weighed carefully against its risks and costs. Ultimate rewards are generally worth the investment with significant claimed potential project cost reductions over five years of strategic partnering.

OK – this sounds great ! So what is needed for partnering to work ?

4. WHAT IS NEEDED FOR PARTNERING TO WORK?

There are three key aspects of partnering:

- the corporate and human commitment to mutual objectives,
- the potential for, and, realisation of proven improvement,
- a quick, simple, painless, problem-resolution process.

These elements are resolved during a workshop and embodied in a written Charter, which is signed by all key stakeholders.

4.1 Mutual objectives: the team must establish that individual stakeholder-needs are best served through the pursuit of mutual goals. Pre-requisites to identifying these goals are; organisational compatibility (between the cultures and values of the different organisations entering the agreement) and the displacement of traditional adversarial attitudes and stereotypes.

It is crucial to understand that there are two level at which mutuality **MUST** be achieved

- at the corporate level; the respective companies have to commit to each other in a very clear and evidenced manner so that each other truly believes the integrity and the honesty of the other's commitment. This means that each company will have to manage their staff and personnel in such a manner that they encourage appropriate Partnering behaviour.
- and similarly, all the respective companies personnel have to commit at a personal level to the Partnering ethos. If individual persons embody old fashioned confrontational practices, then they have to be removed or re-educated.

After overcoming potential obstacles, mutual goals may include:

- reduced costs
- workload continuity
- guaranteed profits
- transferred and shared risks
- reliable quality
- reduced legal and arbitration costs
- quick construction
- smooth flow of design information
- much more certain completion on time
- greater efficiency

4.2 Proven Improvement

One of the fundamental benefits sought through partnering is the improvement of various aspects of project delivery. This improvement can occur in design processes and administration by challenging inefficient activities and streamlining procedures.

Partnering is the ideal climate for Value Management. All stakeholders become fully committed to value management and value engineering workshops and the pursuit of client objectives to deliver the project(s) in the most capital efficient manner.

However, these benefits must be proven in order for partnering to gain the top management support necessary for its survival. It is therefore essential to establish firm targets (through benchmarking or other means) and transparent mechanisms of performance measurement.

The potential for improvement is even greater when financial incentives and bonuses are attached to the achievement of these targets through the reinforcement of mutual objectives.

4.3 A Quick, Simple, Painless Problem Resolution Process

While Partnering alleviates the extent and severity of disputes or differences of opinion that may arise on a project, there are inevitably times when disputes will arise. It is essential that an effective issue resolution procedure is established so that disruption to the project and the partnering climate is minimised or eliminated altogether. This is often no more than the agreed speedy escalation up the respective chains of command to a sufficiently high level of management that this issues in disagreement, can be speedily addressed to a mutually satisfactory level. If in fact, an issue escalates up to the respective CEO level and is still not capable of satisfactory mutual resolution, then the Partnering has broken down and that is the end of it.

~~~~~

We've mentioned the Project Charter a few times already. What is that ?

### **5. THE PROJECT CHARTER**

During an initiation workshop the project Charter will be developed to establish and set down the mutual objectives and values to be followed by all the parties through out the course of the Partnering. The Charter should be inspirational and be displayed publicly and widely throughout the project, in order to motivate and maintain the partnering initiative to all personnel and to all visitors throughout the life of the project.

### **6. HOW WORKSHOPS HELP TO ACHIEVE PARTNERING**

Workshops provide the essential amicable-discussion forum (and sometimes, not all that amicable !, but always constructive) through which the key elements of a partnering initiative may be identified, assessed, constructed and implemented.

A variety of workshops are used at different stages in the partnering process and the differing needs of the organisations involved. Typical selections of partnering workshops can be devised for each client organisation on a completely bespoke basis (tailored to suit each specific client's requirements).

It is critical that these workshops are conducted in a structured format and expertly facilitated in order to obtain optimum results.

## **7. TYPICAL UK APPROACH TO PARTNERING WORKSHOPS**

Partnering workshops adopt a structured, group, problem-solving methodology, typified by a participatory, rather than adversarial, approach. Each workshop is customised to the precise needs of the client and the particular problem at hand in order to achieve optimum results in a fast-track manner. The workshop itself is nested within a sequence of meetings that helps to build a desire for workshop results and enables the precise customisation of workshop formats.

For most workshops there is an absolute requirement for strong and experienced external facilitators, operating externally to an organisation, who must:

- control the diversity of professional backgrounds and individual attitudes.
- break down traditional attitudes and stereotypes.
- maximise the advantage of a clean, fresh and objective approach to the review.
- overcome the pattern of established relationships.

Facilitation experts, who are trained in many different disciplines, encourage unorthodox perspectives on problem solving. The obvious is challenged, divergent thinking encouraged and explored to see if it leads anywhere, and creative solutions treasured.

## **8. WHO SHOULD PARTICIPATE IN THE WORKSHOPS?**

Experience shows that it is very important to place a strong emphasis on the selection of participants to the workshop. To ensure the greatest commitment to, and benefit from, workshop decisions, it is essential that the choice of participants is made strategically: to include all decision makers key to the delivery of the service, product or project.

This means that at the very early initiating Workshops, it is very important that the key senior managers and stakeholders of the respective parties attend. There can be no going back or subsequent overturning of decisions and commitments made at Workshops because, whilst as we have said before, such agreements and commitments are not legally binding, if they are not corporately adhered to, then the Partnering fails and simply does not exist. Partnering is a continuously voluntary participation philosophy.

It is important that the key stakeholders will participate in the workshop. Through participation in problem solving, individuals gain ownership and commitment to the solutions adopted and to the goals represented.

Typically, the parties will use a process of "political cascading" to expand the group of stakeholders from the client briefing onward, to include those who have the greatest stakes (either for or against) in the subject matter of the workshop and in its resultant decisions and actions. This cascading process also means that as the project develops, the participants at the Workshops tend to creep lower down the food chain so as to include the personnel who are actually developing the detailed products of the respective parties objectives.



## 9. SUMMARY BENEFITS OF NON-ADVERSARIAL CONSTRUCTION CONTRACTS

At the risk of leaving something out, and for the benefit of those who will only read the last two sections of this Paper (!), the following g represents the crystallisation of the benefits of collaborative working on construction contracts :-

- Alternative methods of construction can be evaluated by the purchaser in conjunction with the contractor in an open-book accounting environment
- Greater emphasis on sharing risks properly i.e. The party who is best able to mitigate the risk, takes the liability for the consequences of that risk
- “us and them” situation is not allowed on partnering contracts
- Substantially reduced incidence of claims and time and cost over-runs
- Non-adversarial forms of contract allow all the expertise of the respective parties to be devoted to the successful and timely outcome of the project. This is especially important on high risk projects
- Enables faster starts to be made to projects
- The early involvement of the contractor in the design stage (even if the contractor is not responsible for the design) enables improved “buildability” to be incorporated into the design and thereby create savings in time and cost
- Ability to more harmoniously incorporate modifications into the project without generating claims consequences
- But, the whole of the partnering team must be educated in, must know, and most importantly of all, must be committed to the success of a non-adversarial style of contract. There is no place in non-confrontational contracting for traditional prejudices.

## 10. CONCLUSION

This Paper therefore summarises how Partnering typically operates in the UK. Collaboration or Partnering or Alliancing, as it is variously known, has been around in the UK as a principal contractual methodology for some 20 years or so, although some would say that it had been utilised, by a small number of companies well before the mid 1980’s.<sup>1</sup>

---

<sup>1</sup> The Bovis Group has successfully operated a Management Contracting (or a Construction Management) style of company Contract methodology in the UK (both of which constitute an elemental form of collaborative contract) ever since the late 1960’s, but in these styles of contract, the Partnering ethos does/did not typically

It is not a style of contracting that sits comfortably with the traditional adversarial contracting methods (“us and them”), and, as a fact, it has had mixed success in use in the UK. An increasing number of major players on the UK construction scene, have used Partnering with outstanding success, and those successes have led to the establishment of major term agreements between different parties that have withstood the test of time, by achievement. It is indeed now so successful that a number of standard forms of Contract are now available for use on Alliancing contracts.

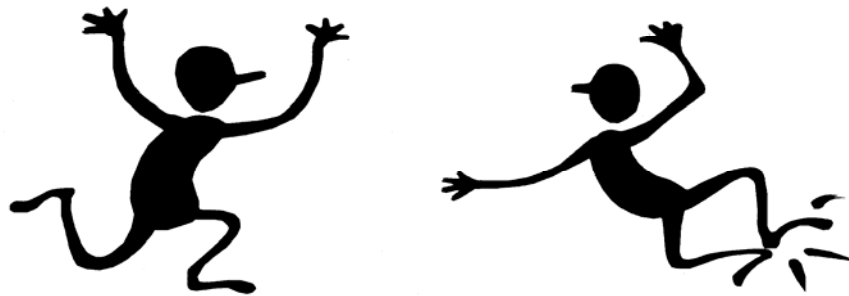
In other cases, former Alliancing partners have fallen out on construction contracts and complained bitterly that the process was a complete shambles and that they should never have been lulled away from the conventional adversarial practices within construction which have been seared in the fires of centuries of precedent ! These cases are generally, very few, but they do exist, and where they do, the falling out has invariably occurred because one of the parties (very often the Employer, rather than the Contractor) has **NOT** corporately accepted the trusting and committed philosophy which the method necessitates. This situation typically occurs when the direction of a Board changes with a change of Board or of Board personnel, and what had previously been a committed and trusting commercial relationship between parties when the contract was negotiated and established, changes.

However, adherents to the philosophy of collaboration and Alliancing, and those who have taken part in successful non-confrontational construction contracting, invariably become passionate about Alliancing and its use as a highly successful way of dealing with difficult, complex and large construction projects.

As one who has had the privilege of being the Commercial Director of a number of such collaborative and otherwise exceedingly difficult projects which turned out to be a major success, it is clear to me, that Alliancing and collaboration within the construction and heavy engineering industries, is the correct and proper way forward for the industry.

---

extend down to the actual executing subcontractors of the work. Also in the UK, the centralised state-owned electricity generating Board of the time (The CEGB) did famously (perhaps infamously might be more appropriate !) let an ambitious and exceedingly complex and large collaborative Target Cost contract at Dinorwig in Wales in the 1970's, which was not a success and which set back collaborative contracting in the UK by at least 10 years, if not longer. The mid 1980's represents the effective first time that major mega projects began to be tendered for, and let on a collaborative or Alliancing basis.



**Will it be this ?**

**Or this ?!!**



## **BIOGRAPHICAL NOTES**

John M.D.Bacon. FRICS FCIArb FInstCES FICE  
Chartered Arbitrator. Chartered Quantity Surveyor  
President. The Institution of Civil Engineering Surveyors.  
Partner EC Harris LLP.

Fellow Royal Institution of Chartered Surveyors  
Fellow Chartered Institute of Arbitrators  
Fellow Institution of Civil Engineering Surveyors  
Fellow Institution of Civil Engineers.  
Member of Council of Institution of Civil Engineering Surveyors since 1982  
Chairman of Institution of Civil Engineering Surveyors 1991 - 1994  
Specialised for past 30 years in Civil Engineering commercial management, procurement and the resolution of contractual differences on major national and international projects. Former full-time international civil engineering commercial and arbitral trouble-shooter. Member of the UK Government's Trade Delegation to Egypt (September 1998). Lecturer, writer, occasional broadcaster and contractual and arbitral civil engineering commercial consultant.

## **CONTACT**

John M.D Bacon.  
EC Harris LLP, 7 –12 Tavistock Square  
Lynton House  
London WC1H 9LX  
UNITED KINGDOM.  
Tel. + 44 777 580 8006  
Fax + 44 151 488 0919  
E-mail [john.bacon@echarris.com](mailto:john.bacon@echarris.com)

Institution of Civil Engineering Surveyors.  
Dominion House, Sibson Road, Sale, Cheshire M33 &PP  
UNITED KINGDOM.  
Tel. + 44 161 972 3100  
Fax. + 44 161 972 3118  
E-mail [president@ices.org.uk](mailto:president@ices.org.uk)