

## PARTNERING



### WALKING THE TALK OF PARTNERING

No one would deny the desirability of an effective partnership – two parties working together in harmony to achieve a common objective. Partnering has been likened to a marriage.

A successful partnership like a marriage requires, among many things, a realistic expectation of the outcome, careful planning, commitment, patience – and of course, a contract. When a marriage starts expectations are high and the contract and the law is an irrelevance. If the marriage goes wrong the courts decide the terms of the divorce – usually an expensive business. Sometimes people turn to marriage guidance councillors or people who have experience of difficult issues and how to overcome them.

When partnering contracts go wrong the parties are often left with a situation where the contract administration has often been neglected to some degree or other and the contractual responsibilities have become blurred. In order to avoid the pitfalls and mistakes that are prevalent in partnering contracts that have gone bad and also to deal with the inevitable challenges of partnering it is prudent to appoint a partnering adviser – an individual or small team with the requisite skills and experience of partnering.

A partnering advisor employed on partnering contracts is a role that fulfils a similar function to a marriage councillor. The partnering advisor helps partnering contracts function well and helps overcome any problems and challenges in a constructive way with a firm and realistic approach from someone who has ‘been there.’ They introduce constructive challenge and ensure that both parties fulfil both their contractual and behavioural obligations.

**In particular the partnering adviser duties might include the following areas:**

- Provision of fair and constructive advice as to the partnering process

- Development of the partnering relationships and the operation of the partnering contract.
- Preparation of a partnering charter
- Attendance at partnering team meetings
- Development of key performance indicators
- Development of key processes
- Development of supply chain partnering arrangements
- Assisting in avoidance and resolution of disputes

Partnering and behavioural-based contracts often include agreements to agree. This magnifies the risk of uncertainty for the parties but as long as there are some hard contractual terms and conditions to fall back on the parties have a backstop position – always assuming of course that the performance or behaviour often done with the best of intentions by one or both of them has not affected the fall back position.

There are many professionals with experience of the Public Private Partnership contracts and the main partnering forms of contract that include PPC 2000 and TPC2000, NEC/ECC and the JCT Constructing Excellence. However there are few with the practical commercial experience that can make this complex contracting vehicle work

successfully. Nothing seems to highlight mistakes and a lack of basic competence in the construction process than a partnering contract as the level of visibility that each party has of each other's performance is far greater. This is a good thing as once identified the problem can be addressed through training or other support. This of course assumes both parties have the same level of commitment, and the requisite resources to give that support. However in the absence of that commitment or level of support resource there can be a negative effect that if incorrectly addressed can lead to a defensive and blame culture – the exact opposite of that intended under a partnering contract and which can adversely affect good collaborative behaviour in case it is considered as biased or the result of 'having gone native'.

Everyone can talk a good partnership, but results only come when the talk is converted to action.

#### **The TALK includes:**

- Aligned objectives
- Key performance indicators
- Risk managed by the party most competent to manage it
- No 'man marking'
- Co-operative and collaborative working
- Non-adversarial working
- A contract administrator or project team that can guide the successful delivery of the project through its design and construction.

#### **The WALK includes finding the answers and practically applying those answers to, inter alia, the following questions:**

- How do both sides profit from the relationship where one is incurring a cost and the other is seeking to maximise revenue?
- How does one measure performance against properly set targets?
- How does one reconcile the use of risk registers as a management tool as against a contractual obligation?
- How realistic is non man marking which results,

for example, in self certification and possible over payment?

- How does one ensure that the contract administrator or project team has sufficient resources and the core competencies and skills to deliver a successful project under a partnering contract?

### **KEY ELEMENTS FOR SUCCESSFUL PARTNERING**

#### **PRE-CONTRACT**

- Clear, specific, measurable, achievable objectives understood and agreed by all parties
- A clear understanding of what each partner wishes to achieve from the relationship supported by realistic targets that in turn are used to incentivise performance.
- Clear apportionment of risk/responsibility in both contractual and management terms
- The necessary competencies should be present in the team, with man marking where necessary, particularly regarding payment and certification
- An integrated team commitment, enthusiasm and a 'can do' attitude in all team members.
- Realistic expectations and timescales
- Fair and realistic contractual terms and conditions
- Clear organisation structures and processes understood by all parties.

#### **POST CONTRACT**

- Mandated processes and procedures particularly as regards record keeping and contractual obligations.
- Strong and consistent leadership
- Timely decision making
- Clear communication.

Aside from the skills and the focus a partnering advisor brings to a partnership there are several other benefits to using one:

**Impartiality.** A partnering advisor should be an 'honest broker'. A partnering advisor can bring the one skill that can never be provided by any of the

parties involved – impartiality. No matter how impartial and objective any of the parties involved may feel themselves to be they probably aren't and, in the unlikely event that they are, none of the other parties will believe it anyway! In the unhappy event of a crisis during the project all parties' objectivity will undoubtedly be called into question.

**Knowledge and experience.** A partnering advisor can facilitate the agreement of partnering Agreements as part of the contract documentation, which should also include reasonable terms and conditions, realistic expectations and timescales and clear apportionment of risk.

**Direction.** The partnering advisor will provide the team with clear direction and ensure that the team remains focussed on the needs of the client, customers and end users.

**Focus.** A partnering advisor must ensure that the teams he coordinates deliver. Like all parties in the team he has an agenda. His objective is utterly transparent – it is to ensure the team is successful thereby ensuring and enhancing his good reputation.

**Structure.** A partnering advisor will ensure that clear organisational structures and processes are in place, bringing his experience of previous partnering projects to their design.

**Teambuilding.** A partnering advisor has an overview of the partnership's commitment to people in terms of training and safety and will foster a mutual interdependence among team members.

**Value for money.** A partnering advisor will ensure that lowest price is not the only deciding factor and that whole life costs are considered. He will employ tendering procedures, which enable quality, and hard evidence of commitment to continuous improvement and teamwork to be taken into

account. He will build a team founded on integrity, excellence, enthusiasm and a 'can do' mentality, not price alone.

**Listening.** A partnering advisor can ensure that a supportive atmosphere prevails where innovative solutions to overcoming obstacles to achieving the objective are welcomed and championed by the team regardless of their origin.

**Competence.** A partnering advisor can ensure, from an impartial, knowledgeable perspective that the team offers the competencies and commitment necessary to achieve its objectives and that it remains strong and coherent and moves towards achievement of the goal.

A good partnering advisor should do all of the above and more, walking the talk of effective partnering.

*IS Consulting has provided practical partnering advice to Network Rail Metronet Tubelines and Surrey County Council Essex County Council and worked with Contractors including Balfour Beatty, Jarvis, Amey, Carillion, AMEC and Montpellier PLC on significant value PPP and partnering projects.*