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Background

- Partnering
  “A management approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of each participant’s resources. The approach is based on mutual objectives, an agreed method of decision making and an active search for continuous measurable improvements”

- “Trusting the Team by the Reading Construction Forum”
Key factors of partnering include:
- clear specific objectives/aims
- maximising effectiveness of each others resources
- collaborative working
- selection of partners and advisers
- commitment and teamwork
- performance measurement/continuous improvement

Partnering is likely to incorporate other good practice/best practice:
- early involvement, improved buildability, supply chain management etc.
- risk analysis, management and fair allocation
- strong project management and programming
- openness and exchange of information
- good communications
- whole life costing and value engineering

1990’s Growth in partnering and collaborative working, Sir Michael Latham, Sir John Egan etc.
- Rethinking Construction
- Guide to Project Team Partnering
- Association of Consultant Architects
  - “the full monty of partnering and modern best practice”
  - Endorsed by Constructing Excellence
- 2003 First amendments
- 2004 Used on over £9Bn per annum of construction works (RICS)
- 2005 TPC2005 Term Partnering Contract
- 2008 Most recent amendments
**Construction Phase**

- Early Warning System
- Advanced Evaluation of Changes
- Operation of Core Group
- Project Timetable
- Agreed Incentives
- Problem Solving Hierarchy

**Partnering Documents**

- Project Partnering Agreement
  - Original provides for up to 8 parties but could be more
- Partnering Terms (plus any Special Terms)
- Partnering Timetable
- Consultant Services Schedule
- Consultant Payment Terms
- Project Brief
- Constructor’s Services Schedule
- Project Proposals
- Price Framework
- KPI’s and Targets
- Risk Register
- Additional and amended Partnering Documents
Mutual Cooperation

• “Who agree working in mutual cooperation…” – Project Partnering Agreement

• “The Partnering Team members shall work together and individually in the spirit of trust, fairness and mutual cooperation for the benefit of the Project, within the scope of their agreed roles, expertise and responsibilities as stated in the Partnering Documents.” Clause 1.3 of Partnering Terms
Mutual Cooperation

- "Who agree working in mutual cooperation..." – Project Partnering Agreement
- "The Partnering Team members shall work together and individually in the spirit of trust, fairness and mutual cooperation for the benefit of the Project, within the scope of their agreed roles, expertise and responsibilities as stated in the Partnering Documents." Clause 1.3 of Partnering Terms
- "The Partnering Team members shall work together and individually, in accordance with the Partnering Documents, to achieve transparent and cooperative exchange of information in all matters relating to the Project and to organise and integrate their activities as a collaborative team." Clause 3.1 of Partnering Terms
- "...trust, fairness, mutual co-operation, dedication to agreed common goals and an understanding of each other’s expectations and values" Clause 4.1(i) of Partnering Terms

Mutual Cooperation

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Mutual Cooperation/Good Faith

- No doctrine of “good faith” in UK Law
  - Contrary to English Contract Law
  - Subjective moral arguments
- Implied into certain areas of Law
  - Duty to disclose latent defects
  - Duty to carry out work with skill and care
  - To co-operate, at least as far as necessary to allow a contractor to carry out works
Mutual Cooperation/Good Faith

Birse Construction Ltd v St Davids Ltd [1999] BLR 194

- Parties entered into a non-binding “partnering charter”
- Judge Humphrey Lloyd
  - “...clearly intended to provide the standards by which the parties were to conduct themselves and against which their conduct and attitudes were to be measured.”
  - "parties have taken extra care over and above the usual contract terms to create a different approach to the contract and had reflected these intentions in express words and actions"
- NB: No comment about the charter was made at all when case remitted to TCC for full trial

Mutual Cooperation/Good Faith

Balfour Beatty v Docklands Light Railway (1996) 78 BLR 42

- "not for the court to decide whether the contractor had made a good bargain or a bad one; it can only give effect to what the parties intended"
- However, in indicating that good faith is an active principle:
  - “the court would be greatly concerned at the implication of accepting [the employer’s] argument if to do so would leave the contractor without any effective means of challenging partial, self interested or unreasonable decisions by the employer...”
  - “…if the contractor can prove a breach of his duty, it will be entitled to a remedy. If it cannot, and cannot establish any other breach of contract, it will under this contract be entitled to none”

PPC2000 Key Points

- Integrates entire Partnering Team under single multi-party contract
- Partnering Team
  - Client involvement
  - Interested Parties
- Core Group
- Covers the entire duration of the design, supply and construction process
- Team-based Partnering Timetable and Project Timetable
- Pre-construction phase better controlled with involvement of Specialist sub-contractors and suppliers in design development
- Commencement Agreement
PPC2000 Key Points

- Trust, fairness and mutual cooperation
- Measurement of performance
  - against agreed KPI's
  - agreed financial benefits or sanctions
- Agreed Maximum Price
- Profit and Overhead
- Incentives
- No LAD's
- Problems and disputes – Problem-Solving Hierarchy
  - period to resolve
  - Core Group
  - conciliation, mediation or other ADR
  - (adjudication) arbitration or litigation

2008 Amendments include:
- Scheduling of KPIs and targets
- Greater emphasis on agreed incentives
- Model forms of Partnering Timetable and Risk Register
- Sustainability improvements
- Project Bank Account option
- Relaxation of tight time limits following user feedback
- Problem Solving Hierarchy in place earlier
- TPC2005 brought closer in line with PPC2000 and SPC2000

Who is Using PPC2000?

- See handout...
- Housing
- Education
- Healthcare
- Central Government
- Leisure/Hotels
- Offices and General Building
- Transport and Engineering
Useful Reference Sources

- www.ppc2000.co.uk
  - Members area
  - Free membership
  - Case Studies
  - User group
  - Newsletter
  - Conferences
- www.partneringadvisers.co.uk
  - Site under development but still useful

Concluding Thoughts

- OGC recommended – Achieving Excellence
- PPC2000 is strongly supported, especially by central and local government
- PPC2000 cannot be adopted lightly
  - major cultural change required
  - major re-education required
- Unlikely to be appropriate on small contracts
- Not appropriate on all one-off contracts
- Increased management time needs to be considered
  - and costed