

Draft
Not Yet Approved for Publication

WHEN PARTNERING DOESN'T WORK (WELL)

An Analysis of Less Successful Partnering Cases

**Prepared for the
U.S. Army Corps of Engineers**

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Why a Study about “Less Successful” Cases?

Often, when projects go very well, it isn't possible to isolate those factors that made them a success. Many of the factors that make a project a success may not even be in the control of the immediate people involved, so it is hard to isolate the value of any one thing people did. As a result, it's sometimes more useful to look at cases which were not entirely successful, to see what differences there were between the successful cases and the less successful cases.

The U.S. Army Corps of Engineers has made a significant commitment to the use of a technique called “partnering” on projects involved multiple parties, such as contractors, subcontractors, or other governmental agencies. Partnering is designed to break down the organizational barriers that block performance, and empower a team representing all the organizations to implement the program in a way that maximizes the resources of the participating organizations. It is a tool for creating the spirit of teamwork even though the participants represent different organizations and interests.

Research shows that partnering reduces costs, shrinks delays, and preserves working relationships between the organizations. But sometimes it works better than others. The case studies reported here were cases where partnering appeared -- at least on the surface -- to be less successful. The purpose in analyzing these cases was to illuminate “lessons learned” that could be applied to future partnering efforts.

These case studies are based on a series of phone interviews with Corps personnel and officials of contractors involved in the actual cases. Names have been dropped and other identifying characteristics of the case have been changed so that the full attention will be on what was learned. In the spirit of partnering, the goal is to “Fix the problem, not the blame.”

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THE SPILLWAY CASE

Background and Chronology

The Spillway Case involved a \$30 million dollar addition to an existing dam. The site is an isolated rural location.

Here's a brief chronology of events on the project, and the partnering process that was used:

1994

- Bids were submitted in October 1994, and the procurement process was expedited, so that work could begin in time so that an endangered species of birds would become accustomed to the sound of construction equipment before mating season began.
- The ABC Construction Company (a fictitious name) was awarded the contract, and a pre-construction conference was held at the end of December. ABC is a large firm, with excellent financial and management resources and a good reputation. ABC management has also been an enthusiastic supporter of partnering.
- The Corps expressed an interest in partnering in the Request for Proposal, and ABC accepted the offer. Because the Corps did not have a Resident Engineer on site, the partnering workshop was postponed for approximately four months.
- There was a "transition meeting" in which members of the Corps design team met with the on-site team from both Corps and contractor to explain the rationale behind the design specifications.

1995

- The partnering workshop was held in April 1995. Most participants remember the session as both "typical" and reasonably successful. An agreement was made to conduct monthly partnering sessions for on-site personnel, including completion of an evaluation scorecard, and quarterly meetings including senior management.
- ABC began work on the project, but was impeded by an extremely wet rainy season.
- Problems arose almost immediately among the on-site Corps/ ABC personnel. ABC's on-site Project Superintendent, was perceived by the Corps as extremely aggressive and domineering. The Corps'

Resident Engineer was inexperienced in his role, and was reported to be “very nice but unable to deal with confrontation.”

- In bidding the contract, ABC made several assumptions about how the work would be done. The specifications called for checkerboard placement of concrete to reduce cracking. ABC had completed a similar project for the same Corps District several years earlier, and had used lane paving of the spillway, which had produced a produce that both ABC and the Corps found fully satisfactory (and cheaper) on that project.

ABC did some quiet checks with acquaintances in the Corps who were not involved in this immediate project to determine whether it was likely that the Corps would accept lane paving once again. Based on those conversations, ABC made a decision to submit its bid assuming lane paving, even though the specifications required checkerboard paving. ABC also conducted test drilling and identified a source of “select impervious material” on the site that the RFP specified was to come from an outside commercial source, and bid assuming they could use the on-site material.

Ultimately, the Corps was unwilling to permit ABC to use lane paving. The Corps permitted ABC to use the on-site material but requested a credit because it produced a cost-savings not anticipated in the RFP. ABC and the Corps disagreed on whether there should be a credit, or how much it should be.

- The first major delay occurred in September - October 1995 when problems arose around the work of a specialty subcontractor and different site conditions than had been expected. There was a 12-week delay related to this. The claim related to this issue has not yet been resolved.
- During the later part of 1995, ABC decided it had to take steps to change the personnel on site, and it replaced its Project Superintendent.
- Soon thereafter, the Corp’s Resident Engineers and his Deputy both took jobs at other locations.
- At some point during this period, the Corp’s Area Engineer and ABC’s Regional Manager (the senior ABC manager assigned to the project), held a one-day meeting in which they each meet with the “other side’s” staff and listened to their complaints, then compared notes.

- There was a temporary Resident Engineer for a few months, until a permanent Resident Engineer could be assigned.
- After several weeks on the job, the new Resident Engineer fired ABC's Quality Assurance Manager.

1996

- In April 1996, during anchor drilling, the first hole collapsed. The Corps had specified the drilling method, but it proved inadequate. A specialty contractor had to come in using an entirely different type of equipment. This caused significant delays, because the anchor drilling was the critical path on the schedule. ABC and the Corps are in strong disagreement on compensation for the delay. When they were unable to agree, ABC proposed the use of an outside neutral advisor, splitting the cost. According to ABC, the neutral expert's recommendation came close to ABC's figures, but the Corps was unwilling to accept his recommendation. This claim is still pending.
- Monthly and quarterly partnering meetings continued throughout the entire process.
- The project was completed in December 1996. A barbecue dinner was held on-site, with both Corps and ABC staff, to celebrate completion.

THE VALUE OF PARTNERING

The individuals interviewed were asked to rate the partnering process on a scale of 1-10, with 10 meaning "outstanding." Their scores ranged from 0 - 6.5, with a mean of 3.4.

Generally, people at higher levels gave the highest scores for the partnering process. In fact the Corp's Area Engineer stated that his relationship with ABC's Regional Manager was the best he'd ever had with a contractor. He rated the partnering at 3.5 down at the ground, but at 7.5 between himself and the Regional Manager.

All but one individual said that the project, no matter how troubled, had gone better because of partnering, although not necessarily much better. The most frequent reason given was that partnering provided a communication channel which led to quicker action to resolve the personnel problems that plagued the project. Several commented that given the cast of characters they would have had problems no matter what. But partnering helped with resolution, and with timely elevation. Another individual commented that he would have rated the partnering process at 0 initially, but it got up to about a 6 towards the end.

Another say that the partnering had to go to extremes -- "into the overtime period" -- to work, but in the final analysis it helped to get things resolved.

The two negative comments about partnering were: (1) partnering provided "another chance for the contractor to try to get out of performing to the specs," and (2) the partnering concept got in the way of quality control discussions.

ISSUES

Here are some of the explanations offered for why the process did not go well:

Staffing

Virtually everybody acknowledges that the mix of personalities originally at the site just didn't work. Had the Corps had a Resident Engineer who was more willing to be more confrontational, things would have come to a head faster and been resolved sooner. Each "side" had one other very difficult personality who eventually left before things began to be resolved.

ABC perceived the Corps staff at the site as generally inexperienced and lacking knowledge about this kind of construction. ABC acknowledges problems with their Project Engineer, but believe they acted in good faith to get the problem fixed. They point out that the Corps did not act promptly to remove its problem people.

The Corps acknowledges that it had difficulty getting an experienced Resident Engineer. Because of the remote location, some of the Corp's best engineers refused to go to the project. The Corps also acknowledges that another key person was on this project because of personality problems with prior supervisors. The Corps is admittedly constrained in its ability to act quickly to resolve personnel problems.

ABC also saw the Corps has having no one clearly in charge. They felt that authority was always shifting around, and the Corps did not give people on the ground the authority to make decisions. The Corps said that because some of its staff on the ground were inexperienced, there was more involvement from the Area and District offices than there might otherwise have been.

ABC's Bid

ABC did gamble that the Corps would accept its proposal to use the lane paving that had worked so well on a previous project. Corps staff continue to feel that the differences in the site justified their decision. ABC also gambled that the Corps would accept on-site materials (which the Corps did, but asked for a credit from ABC).

From the Corps perspective, the fact that ABC came in expecting major accommodations set the tone for the contract. Several Corps people expressed shock at a statement by an ABC Vice President that ABC had not bid to the specs, but assumed the lane paving construction method. Others reported a conversation between a senior Corps Official and the ABC Regional Manager in which the Regional Manager asked if the Corps was “really” going to partner on this project and the Corps official replied that they certainly would so long as ABC had bid to the specifications.

The Corps saw ABC as always out to cut an edge to make a buck, although they acknowledged that ABC ultimately seemed concerned about the adequacy of the product. In a number of instances they felt ABC didn’t understand all the reasons for a specification, but when the Corps wouldn’t change the specifications, ABC people would get very upset and accuse the Corps of being rigid. Another factor influencing Corps behavior is that years of consultation and discussion, involving many parts of the organization, go into Corps’ specifications. This results in people feeling that they have less freedom to change specifications than a private contractor might have.

ABC perceived Corps’ staff as very rigid. They saw the Corps as willing to do nothing for the convenience of the contractor, even if it didn’t cost the Corps anything. They contrasted the Corps’ behavior on this project with that on other Corps’ projects and on projects for other government agencies.

Attitude Towards Partnering

Both sides saw the other as having a distorted view of partnering. Both sides also saw senior management from both organizations as committed to partnering, but not the on-site staff.

All the Corps participants who attended the partnering workshop remember ABC’s on-site Project Superintendent as saying something in the partnering workshop to the effect that: “I’ve done this for 30 years, just get out of my way and let me get the job done.” At the time they chose to ignore the remark, but later came to believe it was prophetic.

Corps staff characterize ABC as using partnering as a club to try to force changes in specifications. They believe ABC sees partnering as a way to make the project easier for the contractor. The Corps District sees partnering as dealing with the gray areas about how to go about meeting the specs, not as a way of changing the specs themselves.

ABC believes the Corps is hung up on the specs, and that when one guy takes a stand, everybody just rallies around without questioning whether that stand makes sense. ABC believes that partnering focuses more on whether the product is good and does the job. If there's a method that would do as good a job, even if it's not in the specs, then, in a partnering relationship, it should be considered.

Management on both sides felt some frustration at being able to get its own staff on-site to work in a manner consistent with a partnering process.

Partnering Workshop

Generally speaking, people were satisfied with the partnering workshop. Several participants have participated in a number of partnering sessions and they thought it about average, neither exceptionally good nor bad in comparison to others.

ABC expressed concern that the partnering workshop took place four months after the project started. The reason for this is that the Corps did not have its Resident Engineer in place until then. ABC staff wonder whether this delay contributed to the problems on the site. Corps personnel did not feel this delay made any difference.

There were comments that the partnering session was very large, involving 35-40 people.

Follow-Up Sessions

Both the Corps and ABC were very diligent in attending monthly and quarterly follow sessions, and management on both sides made a significant commitment of time to address problems that arose.

Scorecard

During the partnering session, a commitment was made to use an evaluation score card in on-site monthly meetings, and also in quarterly meetings between the Corps Area Engineer and ABC's Regional Manager.

Use of the scorecard on-site did not turn out to be helpful. It degenerated into a bitch session each time. Upon reflection, this was probably because the scorecard was used to evaluate each other, not the relationship. The evaluation should really be focused on "how we are doing" not each other's deficiencies.

The scorecard did not prove effective at the senior manager level either because -- since they didn't have direct experience of what was going on at the site -- their evaluation was based solely on what their staff had told them. Senior managers did find value in talking about how they were doing at their own level.

Another individual commented that all the evaluation focused too much on whether they have problems, not how well they were working them out. The emphasis should be on the process, not the fact that problems arise. On a big project like this, problems are inevitable.

Best Value Contracting

One individual, who has worked in the private sector as well as for the government, suggested that partnering really only makes sense if it is teamed with "Best Value Contracting." Best Value Contracting does not require the government to accept the lowest bid. The government is able to look at the personnel, management plan, and resources of the bidders and take that into account in selecting the winning contractor. This creates a better climate for partnering because the contractor is not totally driven by price, and weight can be given to providing top-notch personnel.

ABC Construction would still have been a strong competitor under Best Value Contracting, but might have been under less pressure to gamble that it could get changes on specifications. Several Corps managers commented on what they perceived as efforts by ABC to cut corners on the project. They described ABC's work force as poorly skilled and were surprised at the lack of equipment supplied by ABC. They attributed this in part to the remoteness of the site, which made it hard to get workers. But also said that the low-bid procurement process pushes contractors into this.

The individual advocating Best Value Contracting said he was very surprised by what he found at the site because ABC was a firm with huge resources and an excellent reputation. But this project left a very bad taste in his mouth because of the poor workers, lack of equipment, and scrimping on the safety and quality assurance programs.

INNOVATIONS

There were two innovations during the project. The first was the "transition meeting," in which design staff were brought to the site to discuss the reasons behind the specifications. This was intended to make a better transition between the people involved in the design of the project, and the people involved in construction. In this particular case, the meeting did not seem to make a

difference. But the manager who set up the meeting continues to think it is a very good idea, and will be using the technique on future projects.

The other innovation during this project was the session in which the senior ABC manager sat in with Corps staff and listened to all their complaints, and the senior Corps managers sat in with ABC staff. Both managers saw this as a very useful meeting, and would use the technique again as appropriate.

THE NEW OFFICE BUILDING CASE

Background and Chronology

This project involved the construction of a very large office building -- 640,000 square feet -- under extremely compressed time limits. The client organization (the organization that would occupy the building when it was finished) was moving from a base that had been closed, and was required by law to be off the base by a specified date. The Secretary of Defense had made a public commitment that the date would be met. Moving the organization temporarily to an interim facility was not considered an option either politically or from a cost perspective -- it would have cost at least \$30,000,000 to house the organization in an interim facility. The client required extremely sophisticated communication capabilities, so the construction itself was more difficult than a normal office building.

1992

- Construction began in October 1992. The project was scheduled for completion in three years, at an estimated cost of \$189 million.
- The design of the facility had also been completed in a very compressed time. As a result, there were problems with the design that showed up during construction and provided a basis for numerous change orders and claims.
- Corps staff report that there was some anxiety when it was announced that the XYZ Construction was selected. This firm had built another major building in the area for the Corps, and there had been lots of claims and the Corps saw this contractor as very litigious. So the Corps was somewhat anxious, but determined to make the project work. In actuality, XYZ was not the only prime contractor on the job, although its contract was for approximately \$100 million. Additional contracts were issued for the very sophisticated communications work, for office furniture (which was a \$14 million contract all by itself), and for moving the client from its old offices to the new building.
- XYZ Construction accepted the Corp's offer to use partnering.
- The initial partnering session included XYZ and representatives of all responsible parties on the government side (a fairly sizable group which included the Corps, the client organization, and officials from the garrison commander's office). No subcontractors participated, nor did the other prime contractors. Most participants in the partnering workshop described it as a "typical" partnering session. However, one Corps participant observed that the first inkling of future problems

came during the first session. He felt the contractor came into the session as if it were a negotiating session, with a list of things they wanted the Corps to do for them.

- The Deputy Garrison Commander (a civilian) also set up a partnering process where representatives of all the government entities met regularly to resolve issues. At the project level, all entities met weekly, at a higher level they met monthly, and still higher they met quarterly. While serving as the “champion” of partnering for the governmental entities, the Deputy Garrison Commander had no involvement with XYZ Construction. That relationship was left up to the Corps.

1993

- According to Corps’ participants, the partnering process went exceptionally well during the first year. At the end of the first six months there was a one-day refresher session. At the end of it, everybody was feeling very good about each other.
- However, shortly thereafter, XYZ’s Project Manager quit. Corps staff claim he told them he was so frustrated with XYZ management that he quit in disgust.
- Corps’ staff report that when the new project manager came on board there was an immediate change in style. There were a number of formal requests for Information, instead of things being handled informally, and the Corps perceived the new project manager as “building a paper wall.”
- A number of significant disputes arose very quickly, particularly about environmental issues -- at one point there were even threats from the garrison that the Area Engineer would be thrown in jail because of the environmental problems on the job. The Corps perceived XYZ as being totally non-responsive to its efforts to get these issues resolved, and saw the entire relationship as going down hill from there on.
- From XYZ’s perspective, their biggest problem was that they would submit change order proposals but would never get an answer. They were doing the work, but the Corps didn’t give them timely responses to their proposals, so they couldn’t get paid for the work. They saw this as undercutting the entire partnering process. This hurt not only XYZ, but also all its subcontractors.
- There was one more six-month partnering refresher session. The XYZ project manager participated, but no one from XYZ senior management attended. There was an effort to grade the partnering

relationship using the charter goals as a basis for grading. XYZ graded the partnering process considerably higher than did the Corps. The XYZ Project Manager thought the session ended with good feelings. Corps staff saw the session as so conflictual and antagonistic that they dropped any mention of further follow-up sessions. The client representative also saw the session as full of tension.

1994

- In February, the client representative moved physically into the on-site project engineering facility, sharing it with the Corps.
- The Corps seriously considered firing the contractor, but felt trapped by the time pressure to complete the job. Months would have been lost getting a new contractor on board. The contractor, on the other hand, perceived the Corp's project engineer as rigid and utterly unreasonable.
- The relationship between the Corps' project engineer and XYZ's project manager had become so bad that the client representative assumed a more significant role in resolving conflicts. Towards the end of the project, there were many issues resolved informally between the client and XYZ which the client would then communicate to the project engineer for formal documentation. (This level of client involvement in Corps projects is extremely unusual). The client organization was highly motivated to get things resolved, even if it cost more money, because of the political and economic costs of not completing the project on schedule.
- At one briefing the Deputy Garrison Commander had to stand up and tell an audience including seven general officers that based on the then current level of completion the project would not be completed on time. He was informed that this was not a possible answer.
- Because of the high priority for the project, many change orders were written, and the client made funds available for these changes.

1995

- Normally, the contractor would complete construction, then other contractors (such as communications, furniture, and movers) would be permitted into the building. In an effort to complete the program on schedule, XYZ, the client, and the Corps agreed to a plan to complete some portions of the building first, and let other contractors begin work in those portions of the building while XYZ was completing other portions. At the very end, the client was actually occupying some

portions of the building while other portions were still under construction.

- During the final rush to completion, disputes arose among the various subcontractors, between XYZ and its subcontractors, and between the various prime contractors. One fight broke out. The employee of one subcontractor urinated on new office furniture because he believe he was being rushed too much by the furniture installers. There was also some theft, with each contractor or subcontractor blaming the other.
- The building was occupied in September 1995, on schedule, having passed all inspections.
- The building itself has won prizes, and everybody acknowledges that the building itself is a resounding success. The Deputy Garrison Commander won a prize as the outstanding civilian employee of the year in his Division..
- There were approximately \$10 million in recognized change orders issued during construction (about a 10% cost increase, undoubtedly due in good part to the hurry-up on design and the tight deadlines). This involved 650-700 change orders, most for small amounts. There are still \$4-6 million in outstanding claims, primarily with four subcontractors. There is no litigation pending.

The Value of Partnering

In this case, the assessment of the worth of partnering differs significantly based on who's doing the assessing. The Deputy Garrison Commander, who had little to do with XYZ Construction, believes partnering was a major success. It wasn't easy, but it gave him the leverage to pull together 5-6 governmental entities, each with a different sense of vision, and complete a gigantic task with an almost impossible schedule. The client representative, who came on the scene later in 1993, questioned whether there ever was a partnering agreement in place. If there was, she claims, the groundrules certainly weren't very clear and they fell apart when the pressure increased. Her agency wants to use partnering more, and is considering this case as an example of what they want to avoid. The Corps project engineer says that "it could have been even worse without partnering," but adds that he doesn't think it will ever be much better "with a company like XYZ." His boss rates the value of partnering on this project in the low mid-range, although he is a strong supporter of partnering generally. A senior manager from XYZ considers the overall project to be a success, but gives partnering between XYZ and the Corps a 1-2 on a scale of 10. XYZ's Project Manager rates it a little higher, about a 4, and describes it as "not a total bust, but below average." He adds that it probably would have been worse without partnering

Issues

Here are some of the issues people raised for why partnering did not work as well on this project:

Taking the Contractor's Past History Into Account

Corps staff reported they were worried when they heard XYZ was the low-bidder because of its history on a previous project. There had been numerous claims on that project, and XYZ had a reputation of being adversarial. But government contracting procedures require acceptance of the low bid. So long as the contractor's behavior is legal, the fact that the contractor is rumored to be adversarial cannot be taken into account. There would be the danger that unfounded and unproved rumors could influence contractor selection.

Processing of Change Order Proposal

XYZ is extremely bitter about the manner in which the Corps processed change order proposals. There were as many as 650-700 change orders on the project, so large sums of money were involved. They would submit a bid and hear nothing for months. They wouldn't know whether the bid was disputed or not. Under Corps procedures, the individual who reviews these proposals is not the person who authorized the change order, so this individual has not past history on why the change order was needed. As XYZ describes it, their first communication with this individual would be 6-8 months after the proposal was submitted. The first thing this individual would say was: "I don't have all the documentation on this, can you fill in the gaps." They would spend most of the first meeting educating this individual. Often he did not even have full documentation, and then would spend part of the meeting just photocopying basic document. Then the Corps' representative would go away and review it, and they would wait to hear his response. XYZ acknowledges that the problem seemed to be Corps staffing. The individual who processing proposals was first hired as a consultant, then he became a full-time employee. The District Office also sent down some staff, when XYZ went to the District Engineer and complained. But XYZ feels it should not have had to go to the District to complain. There should have been some Corps employee who cared that things weren't getting processed, and who would have notified management that there was a build-up of unprocessed proposals.

XYZ makes two recommendations: (1) the partnering charter should contain language about how quickly change orders proposals will be possible, with a provision -- much like the dispute resolution provision -- that if the issue isn't resolved within a certain number of days, it can be

taken to a higher level of management; and (2) the person issuing the change order should be the person reviewing the proposal, because he has the knowledge of why the change order was issued in the first place.

XYZ argues that the failure to process change order proposals quickly had a particularly harmful effect on subcontractors. They believe that the Corps' lack of interest in addressing the contractor's basic survival needs undercut the entire partnering process. They do say that the Corps was very good about processing and paying their monthly progress payment. Apparently the difference in attitudes came from the fact that the people reviewing change orders were from a different part of the organization from those processing monthly progress payments.

Multiple Primes/Subcontractors Not Included

Particularly in the final phases of the project, the integration of the work of all the prime contractors, and XYZ's subcontractors, became a major issue. Only XYZ was included in the partnering workshop. Virtually everybody agrees that major subcontractors should have been included in the partnering from the beginning.

The suggestion was also made that there be only one prime contract. Coordinating multiple prime contractors became a challenge, and XYZ felt it was often put in the position of having to make things happen with the other primes because the Corps had not control over the other primes.

Differences in the Definition of Partnering

The contractor argues that "partnering" can be used two ways: (1) it can be a rationale or philosophy that enables people to be reasonable; or (2) it can be a set of agreements on how disputes will be resolved. On this project, the contractor argues, it became more of a cliché or buzzword, "let's do this in the spirit of partnering," rather than an agreement on how to resolve issues. Corps staff believe that after the first year, partnering was just used as rhetoric whenever the contractor wanted something from the Corps. They believe they bent over backwards to go the extra mile, but began to stiffen their backs when they felt they were being taken advantage of. The client agrees that XYZ "used the concept of partnering to manipulate the government." But she quickly adds: "A lot of the things we were asking were unreasonable. We were applying tremendous schedule pressures, and there was never enough money. We were asking for agreement, but we had nothing to offer." XYZ claims that the Corps would constantly come to them saying "we need you to partner on something" but there was no reciprocity in addressing XYZ's problems, like the unprocessed change order proposals. Everyone acknowledges that XYZ's willingness to begin moving the client in at one of the building

while finishing up work on the other end was a major concession on its part.

Key Personnel

Corps staff see the loss of XYZ's original project manager as the key turning point, and the beginning of the problems. XYZ certainly acknowledges a major personality clash between the Corps' project engineer and its own project manager, and describes the Corps Project Engineer as "someone who was always keeping score, but the score was his personal score, not the community score." Changes in either the project engineer or project manager were not possible due to time constraints.

Whether conflict was inevitable, given the two personalities, is not clear. It is clear, however, that if partnering is to survive a major transition such as a change in project engineer or project manager., considerable effort must be expended to protect the continuity of the partnering relationship when there is a change in key personnel.

Focus on Dispute Resolution Not Avoidance

Corps staff report that much of the emphasis in the initial partnering workshop was on how to avoid disputes. They felt some pressure because they feel that the Corps Alternative Dispute Resolution (ADR) approaches creates pressure to avoid litigation. They felt the "dispute avoidance" approach weakened their position during negotiations. They recommend that the emphasis be put instead on "how we'll resolve disputes." The contractor also recommended that the emphasis be less on partnering as "rhetoric" and more on procedures for resolving disputes. One of the problems

Involvement of Contracting Officer

The client representative reports that based on this case, her agency is looking at much more active involvement of the contracting officer in future partnering. She says they are even considering having the contracting officer chairing the partnering session. Her observation is that the Corps contracting officer did not participate after the contract was in place. XYZ would announce that it wasn't contractually bound to do something and the project engineer could do little about it. She saw the Corps project engineer as trying very hard but just not having enough authority to do the job. She says: "It's nice to say we share everything in common, but the reality is that the relationship is based on what's in the contracts."

Involvement of Client in Decision Making

One extremely unusual aspect of this case was the direct involvement of the client in on-site decision making during the final year of the project. One interviewee described the typical attitude of the Corps of Engineers as: "We're engineers, we know about this stuff. Get out of our way, we'll talk to you again when the building is done." From a Corps perspective, it's extremely hard to control costs and manage a project if the contractor has "two bosses" who can be played off each other.

On this project, the relationship between the Corps Resident Engineer and the XYZ project manager was so bad, that during the last year some issues got resolved between the on-site client representative and the XYZ project manager, with the Corps merely documenting the changes. This worked, though, only because there was a deep-pockets client who was willing to pay for these changes.

Inequality in Evaluating Performance

The contractor believes that the evaluation system is one-sided. At the end of the project the contractor could receive an unsatisfactory rating from the project engineer that could affect its ability to get future contracts. On the other hand, if the project engineer was unreasonable, as the contractor firmly believes, there's no reciprocal way the contractor can express its dissatisfaction with the performance of Corps personnel. If they're supposed to be "partners," there should be some equality on this count, they believe.

Follow-Up Sessions

There were two follow-up sessions. The second follow-up session was the first session in which the new XYZ project manager participated. Following this session the Corps concluded that further sessions would serve no useful purpose.

XYZ believes the Corps opted out of partnering at this point, and just started issuing orders. There was a charter saying that issues would be discussed openly before becoming a dispute. But they feel the Corps just reverted to its old style of management of issuing directions, and saying: "If you disagree, file a claim."

Funding for Partnering

The Deputy Garrison Commander, who believes partnering was the key to keeping the numerous governmental entities working together, reports that there were no funds set aside in the project for partnering. As he

describes it: "Here was a project costing several hundred million dollars, and every time we wanted to have a partnering session we were scraping to come up with a few thousand dollars." He believes that partnering costs should be a budgeted item in the process, not something that everybody has to pull together out of other parts of the project budget.

Innovations

There were no innovative uses of partnering reported on this project.

THE TEST FACILITY CASE

The Test Facility is designed to test airplanes at temperatures up to 165 degrees Fahrenheit and down to -65 degrees. The original facility was built in 1948. This renovation project involved completely gutting and renovating the old building. The test facility is large enough to test any airplane that flies.

The key to the facility is a thermal vapor barrier system that both insulates and keeps the building vapor-tight despite tremendous expansion and contraction resulting from the variations in temperature. The old building was no longer vapor-tight, and ice cycles would form that could fall down and damage the airplanes. With the thermal barrier and advanced refrigeration and heating systems, the test facility is a very high technology building.

The test facility is operated by another branch of the military, for whom the Corps acts as construction contractor. This was not the first project the Corps had done for the test facility. In fact, there was considerable bad blood between the Corps and the test facility over a prior project, including left-over personal animosity between some of the test facility staff and Corps staff involved in the renovation project.

One of the constraints on the renovation project was that the test facility continued to be operated during the design phase. This meant that the designers could not conduct all the tests in the facility they would like to have done to determine the actual condition of the building. Nothing could be done to jeopardize the integrity of the existing thermal barrier until all testing was concluded.

The Corps proposed to manage the entire project using the partnering approach, beginning with partnering between the Corps and the test facility. Partnering was included in all contracts with designers or contractors.

THE DESIGN PHASE

The government estimated that design would cost \$4.5 million. When the bids were opened, the design contractor that was ranked highest technically bid \$8 million dollars. Despite extensive negotiations this contractor refused to lower its bid significantly. This caused the test facility staff to question the Corps on its original estimate, but the Corps insisted its original estimate was reasonable.

The Corps then turned to the second-ranked designer, the International Engineering Company (a fictitious name). International had also bid approximately \$8 million, but in negotiations was willing to reduce its bid to approximately the government's estimate. However, the test facility staff were sufficiently concerned that during the first partnering session they even asked the designer's staff whether they were comfortable with their bid.

The initial partnering session was held at a resort location in California. It was hosted by International Construction (the agreement was that each organization would host one of the sessions). Everyone considered the initial partnering session a success. One indication that things were going to work differently was that the government proposed a truncated organizational structure that bypassed a number of reviews that would have slowed-up the project.

The partnering plan that was agreed upon was quite thorough. Every six months the team would have a full-fledged facilitated partnering session. In addition, the full team would meet monthly for a problem-solving session on project issues. Each session would begin with the development of an issues chart. There was careful documentation of trends, with a "metrics" handout every month. There was agreement on a communications and document flow. Some participants described the process itself as "as good as any I've ever seen." All participating organizations were extremely complimentary towards the partnering facilitator, and virtually all said they have recommended him for other partnering jobs.

However, the head of the test facility was not present at the first partnering session. One participant claims to have heard that the facility director was unwilling to sit in the same room with the Corps project manager based on what had occurred on the earlier project the Corps completed for the facility. This antagonism was described by one participant as "the worst he'd ever seen on a project."

Another issue raised in that first session proved to be quite significant. The designer asked why the contracting officer was not a participant in the partnering sessions, and the Corps said they would check on that. At each subsequent session the same question was asked, with no concrete answer. The designer argued that the team couldn't really make commitments because the contracting officer wasn't present. Even if the team would agree on a solution the contracting officer could (and did) refuse to accept it. Finally the designer went directly to the contracting officer. According to the designer, the contracting officer said that nobody with a warrant was ever going to attend the partnering sessions unless specifically directed to by OCE. He claimed that he'd gotten burned on a prior partnering effort, and since he was a short-timer he could be brutally frank: "If you think the Corps has really signed up for partnering you're crazy. All this talk of a major paradigm shift is just BS."

Almost immediately after design began there were major disputes between the Corps and the designer about what was expected. As the designer sees it, the problem was that they were working to the negotiated agreement (upon which the designer based its reduced bid) while the new engineering manager, who came on board after the negotiations were concluded, kept trying to refer to the District Design Manual. The designer believes the engineer manager was offended that he hadn't been included in the negotiations, and never really

accepted the outcome of the negotiations. Others in the team acknowledge that the engineering manager either didn't agree with the negotiated agreement, or didn't seem to be familiar with all its provisions; either that, or the terms were vague (although the designer denies this, claiming that the agreements were documented in meticulous fashion).

The other problem was that the basis for all the estimates was a project description that had been prepared for the test facility by another contractor. The project book was 4-5 inches thick, and at first this reassured everybody that the project was well thought through. However the designer claims that by the third month into design it was already clear that the project book was "really detailed on the stuff that didn't matter and loosey-goosey on the stuff that did." From the designer's perspective, this left the test facility free to interpret what the project book meant. According to the designer, the test facility was in the process of testing out the work the Corps had done previously and finding all kinds of problems with it. The designer feels that the test facility staff, whether consciously or not, were changing the specifications as they went along based on what they were learning from the problems with the earlier work the Corps had done. The result was that the specifications were becoming what the lab wanted now, not what was in the contract. As the designer sees it, there were "rubber criteria and rubber expectations." From his perspective, the test facility was claiming it was "clarifying things" when it was really pressing for things that weren't in the original scope. At the same time, according to the designer, the Corps was becoming very legalistic.

At the end of the project International Engineering submitted a \$3.8 million claim, although this includes work performed by the designer during the construction phase as well. Some in the team believe that the fundamental problem was money all along. They argue that the design firm's original bid of \$8 million was probably right in the first place, and the fact that the firm that was ranked highest technically wouldn't budge was probably a good sign of what the work really required. International insists it is able to document every reduction in its price based upon a change in specifications or revisions to its work plan during the negotiations, but also claims that the results of the negotiation were ignored and the specifications themselves became a moving target.

THE CONSTRUCTION PHASE

According to some participants, the Project Management Plan said that the contractor was to be brought on board during the design phase, to be a part of finalizing the specifications. The plan was to pre-qualify a short list, and the short-listed companies would be included in the design review process. Apparently the Project Management Plan was not reviewed by Construction, and when the Corps Chief of Construction heard this plan he opposed it totally. The Project Manager was sick at the time and by the time he got back he could not

get this decision overruled although both he and the test facility staff protested the decision.

The first time the Request for Proposal was sent out, all bids were for far more money than had been estimated by the Corps. Since no one was willing to go back to Congress and ask for more money, the project was readvertised and one contractor, the Major Construction Company (a fictitious name), was near the original estimate although it was not among the firms ranked highest technically. The firm that was technically the best was \$10 million higher.

A contract was issued for a fixed price of \$52 million. A majority of this went to subcontractors. \$9 million was for the thermal vapor barrier subcontractor alone.

Major Construction Company was enthusiastic about the prospect of partnering, and quite enthusiastic about the project, in part because it had worked with a number of the team members on the previous project for the test facility and felt they would be able to work with them in a positive manner. In fact, Major Construction was stunned to find out during the first partnering session that the test facility was unhappy with the earlier project, and had even thought of protesting the award. Major Construction had actually won a National Excellence Award for the work it had done on the earlier test facility project. Apparently the Corps had been very satisfied, but the test facility had been very unhappy with both the Corps and Major Construction.

Aside from this the partnering session was generally considered a success. The same facilitator was used. The same basic partnering process was to continue, with facilitated partnering sessions at six-month intervals, and once a month team problem-solving sessions.

The only question that has been raised about the first partnering session during construction is whether Major Construction should have included some of its major subcontractors. Major points out that it had 48 subcontractors and would have had trouble getting most of the subcontractors interested at this early stage. Major's subcontractors were included in subsequent team meetings when their part of the work was a subject of discussion.

Almost immediately Major Construction ran into major problems. First, they found asbestos and also lead paint, which required the use of expensive removal techniques. Then they found that the concrete on the south side of the building was badly deteriorated, almost near collapse. This was something that could not have been determined until the old thermal barrier was removed. The temperature fluctuations in the building had caused much more damage to the old building than had been anticipated.

Everything was slowed down, and there was "a frantic effort" to figure out what to do. According to government participants, all the problems were not due to

conditions in the old building. They claim that Major Construction and its largest subcontractor, involved in the thermal barrier, both had on-site management problems that slowed the work.

By the 4th Quarter of 1995 the project looked like it could be way over budget and very late. Some people even questioned whether the project could be completed. Federal law would permit only a \$2 million expenditure beyond what Congress authorized, and there were serious questions whether that had been enough money in the first place, let alone after the discovery of asbestos and deterioration.

A meeting was held between the Corp District Chief of Construction, the District Engineer, test facility management, and the General who headed the command where the test facility is located. The Project Manager was not in attendance. The conclusion reached during this meeting was that the project was "in a ditch" and major changes had to be made. The District Engineer sent in the District's chief contract administrator to take over the project and "make it happen." This individual was appointed Area Engineer, replacing a man who was having serious health problems, many of them stress-related. The Corps Project Manager was essentially cut out of the picture and has since left the Corps.

In January 1996 the new Area Engineer held a series of negotiations with Major Construction and its subcontractors. Everybody acknowledged that some additional money was due to Major Construction and its subcontractors because of the unanticipated condition of the building. But the Area Engineer estimated that the amount due was in the range of \$2-2.5 million, while Major Construction said it would need \$7.5 million to make it whole. They also disagreed vigorously on the responsibility for the time delays. When they were unable to reach agreement, the Area Engineer issued a unilateral change order directing Major Construction and its subcontractors to complete the project by December 1996, allowing just under \$2 million in additional funds.

The Corps felt it had to take this action because it was perilously close to the statutory limit. The General in whose command the test facility was located adamantly refused to go back to Congress for any more money. Going back to Congress is virtually a "career-stopper," according to some of the participants.

As a result, the Corps had to take a hard line on everything, restricting its ability to compromise and reach settlements. Major Construction responded by drawing a hard line as well, refusing to do any work unless a written change order was prepared, even for very small changes. However, work continued on the project.

From the contractor's perspective, everything changed with the change in personnel. Prior to this, they were working with people who they knew and trusted from working together previously. They characterized the attitude of the first Area Engineer as "If I owe it to you I'm going to pay it as soon as I can."

Under the new Area Manager the attitude was “don’t spend a dime without written authorization.” As a result of this change they felt burned, as if they’d trusted the Corps too much, and acknowledge that they began to insist on written direction for everything.

Efforts were made to keep the partnering on track. A facilitated partnering session was held early in 1996 and then again in June 1996. After the June session, everybody concluded there was no point to further sessions. However, the monthly team sessions continued (and continue until this day), and the team was able to agree on some changes in specifications that could reduce costs to keep the project from going over the legal allocation.

December 1996 came and went, but construction continued. Finally, on May 31, 1997 the first airplane was rolled into the facility. The test facility took official occupancy on June 1, and is operating the facility. There is, however, a long punch list of final repairs and changes, and Major Construction still has people on the site resolving these issues.

All contractual issues remain. Major Construction Company has filed a claim for \$17 million, including all subcontractors and suppliers.

Major’s Vice President describes the project as “the most financially abusive project in Major’s history,” and says it is a significant achievement that Major is still in business. There have been numerous bankruptcies among Major’s subcontractors and suppliers, and the project is acknowledged by all sides to have been a financial nightmare for everybody.

Major attributes the bankruptcies to this project. Others in the team argue that some of the subcontractors’ financial problems came about on other projects, or through the subcontractors own mismanagement. Others question whether the subcontractors had a clear idea of the scope, and question whether they should have signed the subcontracts with Major. Major says it has extended funds for some of the subcontractors, but acknowledges that there “are no friends left among the contractors.”

One of the reasons for the financial problems of subcontractors and suppliers was that the Corps had only one individual to negotiate all A/E change orders. Given the time pressures, this individual concentrated on the larger change orders and the change orders on the critical path. This meant that a small subcontractor might be owed \$200,000 for many months while larger change orders, or change orders more crucial to the project, were constantly put ahead of it. This could threaten the financial survival of a smaller firm. Others in the team claim that the negotiator was a millstone around even the Corps’ project manager’s neck, and that it was usually necessary to go to his boss to get anything done in a timely manner.

Major Construction is particularly concerned because 97% of its customers are government clients. It prides itself on maintaining an excellent relationship with its clients, and is disturbed that it may have incurred irreparable damage to its reputation.

POTENTIAL FOR RESOLUTION

There has been some discussion of using Alternative Dispute Resolution (ADR) techniques to resolve the sizable outstanding claims. Otherwise these claims will be fought out through litigation for many years.

There was an effort to use an third-party fact-finding approach on the International Engineering claims. Another engineering company was hired to analyze International's claims. While the third-party substantiated some of International's claims, its estimate of what was due to International was considerably less than International's claim. International was very unhappy with the analysis, and refused to accept most of it. There is some discussion about going to mediation later in 1997.

There is some very preliminary discussion of using ADR techniques on the Major Construction Company claims.

ANALYSIS

Exactly what happened on the project is still a subject of considerable dispute, and participants are still defending positions because of the \$20+ million in claims still on the table. Here are some of the various interpretations that were offered:

- Some participants -- possibly most -- believe that the project was underfunded from the beginning. Some of the advocates for this interpretation point out that the best qualified firms were not willing to submit bids anywhere near the Corps' estimates. They believe this should have been the "tip-off" that the Corps estimates were too low. Both International Engineering and Major Construction say they have reviewed their estimates many times and claim they could have completed the project on schedule and in budget had it not been for the changing specifications and unanticipated conditions in the old building. Others point out that if the Corps estimates had been any higher, questions would have been asked about whether the project should have been a completely new building instead of a renovation. If the new building option had been raised, the new building might have been located at another command, and the existing test facility might have been shut down.

- Another interpretation is that the test facility was changing its specifications as it went along. At the time it was beginning to use the previous facility built for it by the Corps (and Major Construction), and was finding it was having to make major changes. According to this interpretation, the test facility is used to time and materials contracts, so its sole focus was what it needed in the facility, not the contract specifications.
- Virtually everybody acknowledges that the statutory cap on funding put everybody in a position where they had to play “hardball.” The General responsible for the command where the test facility is located refused to seek additional Congressional authorization. There are differing interpretations of this as well. Some argue that if they had gone back for more money, Congress would not have provided more money but the scrutiny would have led to simply shutting down the project unfinished. Others argue that the General simply refused to acknowledge problems, or less charitably, was unwilling to admit to problems on his watch while being considered for a promotion (which he received).
- Several participants observed that on partnered projects there are “two cultures,” the partnering culture and the procurement culture. In many ways these two cultures are antithetical. This project made a serious effort at partnering, but floundered when the project did not have enough money and reverted to the procurement culture.
- Government participants claim that both Major Construction and its subcontractor for the thermal vapor barrier had problems on-site during the first six months that were solved only by replacing on-site managers or greatly increasing involvement by higher company officials.
- There was considerable personal antagonism from the very beginning left over from the previous project, involving the Corps, the test facility, and Major Construction Company.
- The test facility had little experience with a fixed price contract and did not trust the Corps to manage the contract in its interests based on its experience on the earlier project.
- The original Corps contracting officer was not “on-board” with partnering, and by the time a new contracting officer was appointed who would be involved in the partnering, he was up against the statutory limit and had to take a very hard line.
- Other say that the fatal flaw was the contracting method itself. Given the highly specialized nature of the project and the inability to properly inspect

the facility during design, they claim the contract should have been a time and materials contract.

EVALUATION OF THE PARTNERING

Virtually all the participants had prior experience with partnering so were able to evaluate this partnering process compared to others. The partnering process itself was considered to be very complete, and the facilitator was judged to be excellent. The partnering process was also given high marks for producing candor during team meetings. Major Construction describes the partnering as “wonderful” for the first half of the project, and “excruciatingly painful” for the second half.

Almost everyone agrees that the partnering effort was swamped by the circumstances of the project itself. A number of participants commented that without the partnering the project would never have been completed, and point out that the monthly problem-solving sessions continue to this day.

Some believe that the Corps procurement and negotiation procedures were never consistent with partnering. Also, some of the commitments made in the Project Management Plan were overridden by the Corps’ Construction Division, and both Construction and Engineering outweighed the influence of Project Management to the point that negotiated agreements were ignored in favor of established procedures.

Others claim that the test facility staff never trusted the Corps, and that managers to whom the test facility report were never willing to be part of a team, simply refusing to acknowledge problems that were very real. Others fault the test facility staff for never accepting the terms of the contract as a legitimate constraint.

Most agree that nothing could really have changed the outcome except some very major decisions. These decisions could have been: (1) to stop the project until there were more understanding of why contractors were consistently bidding much higher than the Corps’ estimates, or (2) to seek more funding from Congress. Some argue that partnering actually prevented dealing with these issues. People just kept stretching, trying to accommodate to make the partnering work. The result is that the hard decisions didn’t get forced.

LESSONS LEARNED

Here are lessons learned from each case:

The Spillway Case

- Partnering is not a substitute for experienced, compatible and skilled personnel on the job. If the mix of people and skills is wrong, all partnering will do is surface the problem more quickly. If there are major problems, both sides need to act quickly to change the personnel.
- Partnering is worthwhile even on problem projects because it does force issues out into the open and escalates them more quickly to senior management for resolution.
- Partnering is extremely difficult when the contractor comes in expecting changes in the specifications. Even if the contractor is right that changes could be made, coming in expecting changes sets up an atmosphere where both sides start seeing each other as having hidden agendas, being rigid, etc.
- There needs to be more discussion of what partnering means during the partnering workshop. This shouldn't be "motherhood and apple pie," but should be targeted at very concrete issues on the project or involve discussion of case studies that illustrate different interpretations of partnering.
- Statements made during the partnering workshop that seem to be "out of synch" with partnering should be thoroughly discussed at that time. Such comments should not be passed over in an effort to create a team atmosphere.
- Evaluation processes -- such as use of scorecards -- should be targeted on the relationship or process, not on deficiencies of the participants or on the number of problems that have arisen. They also need to be based on the participant's personal experience of the process, not what they are hearing from their staffs.
- Management (either Corps or contractor) cannot assume that because it supports partnering, its staff will also. Partnering is as much an attitude as a specific behavior (such as attending a meeting). While management can force compliance on the behavior, the attitude must come from within the staff itself.
- More effort needs to be made to understand the reasons for the specifications. Unless everybody has an appreciation of why the specs were written the way they were, discussions about changes will degenerate into power struggles.
- Partnering is most likely to work in an environment in which working together is rewarded. This environment may be easier to create using a Best Value Contracting process, rather than one focused solely on price.

The New Office Building Case

- Ensure that important subcontractors (or other prime contractors, if there are any) are included in the partnering sessions
- Recognize that partnering between all the government representatives may be equally important as partnering with the contractor
- While a concern for prevention of disputes is important and legitimate, too much emphasis on prevention can create an “avoidance at any cost” mentality which is not productive. Place the emphasis on resolution of disputes rather than mere avoidance.
- A change in major staff, such as a project manager, should be treated as a major event, and should result in a re-visiting of the partnership relationship at a level similar to project kick-off.
- Provide for partnering in the initial project budget, so that putting together the money each time is not a barrier.
- Consider involving the contracting officer in the partnering sessions, perhaps even in a “championing” the process role.

The Test Facility Case

Since this project continues to be controversial, there is not complete agreement on the lessons learned. Here are a few lessons that are largely agreed-to by the participants:

- Partnering can only do so much; it cannot make up for a lack of money, weak management, or personal antagonism that precedes the project.
- Even on a bad project, partnering makes things somewhat better.
- While partnering typically force problems out in the open sooner, it may allow senior management to avoid making hard decisions because everybody in the partnering team keeps stretching to keep the problems from breaking the project. Sometimes it might be better if senior management had to simply acknowledge that things were broken, and make the hard decisions to get more money or amend the contract.
- For partnering to work, Corps contracting officers -- and people with equivalent authority from all the other parties -- must be included in the partnering team and subscribe to the partnering philosophy.

- Fixed price contracts -- particularly on unique or technically challenging projects -- do not provide a congenial climate for partnering because risk is not shared. The nature of a fixed price contract tends to push people into assigning blame for any problems, rather than working through them as if they were "our" problem.
- If there has been partnering during the design phase, and then the contractor is included at the construction phase, there are some awkward "new kid on the block" issues that must be worked through. Including the contractor in the later stages of design could have value for building relationships in the team, reducing costs, and ensuring the contractor understands the scope.