

Chapter 24

PARTNERING¹

by
Lester Edelman
Frank Carr
Charles L. Lancaster

Partnering is designed to create a positive, disputes-avoidance atmosphere during contract performance. Partnering uses team-building activities to help define common goals, improve communication, and foster a problem-solving attitude among a group of individuals who must work together throughout the contract. While Partnering can be used to improve all kinds of working relationships, this article will concentrate on owner/contractor relations in construction contracts.

A central objective of Partnering is to encourage contracting parties to change their traditional adversarial relationships to a more cooperative, team-based approach and to avoid disputes. The Partnering concept, therefore, is significant because it offers the most efficient form of dispute resolution—dispute prevention. Indeed, the benefits of successful Partnering go beyond avoiding disputes and include improved communication; increased quality, efficiency and on-time performance; improved long-term relationships; and a fair profit and prompt payment for the contractor.

What is Partnering?

How many times have you reached the end of a construction project only to be faced with a number of unresolved conflicts, many of them in litigation? As an alternative to litigation, ADR offers techniques for resolving conflicts during construction by establishing a partnering relationship between the owner and the contractor. Partnering lays the foundation for better working relations on a project, including better dispute resolution. Partnering helps develop a cooperative management team by taking steps before construction begins to change the adversarial mindset, to recognize common interests, and to establish an atmosphere of trust and candor in communications. This team has the ability to appreciate the roles and responsibilities each will have in carrying out the project.

Partnering is the re-creation of an owner-contractor relationship that promotes achievement of mutually beneficial goals. It involves an agreement in principle to share the risks involved in

¹ See also Edelman, Lester, Frank Carr, and Charles L. Lancaster. *Partnering*. IWR Report 91-ADR-P-4. Ft. Belvoir, VA: IWR, USACE, 1991.

completing the project, and to establish and promote a nurturing partnership environment. Partnering is not a contractual agreement, however, nor does it create any legally enforceable rights or duties. Rather, Partnering seeks to create a new cooperative attitude in completing government contracts. To create this attitude, each party must seek to understand the goals, objectives and needs of the other—their “win” situation—and seek ways that these objectives can overlap.

Why Use Partnering?

From the beginning of a typical construction project, the structure of the relationship promotes an adversarial attitude between the parties. There are two distinct management teams, each making independent decisions with the intent of reaching their own goals for the project. These decisions directly affect the path each party chooses to achieve its goals—but they are often made in a vacuum, without regard for the other party’s interests and expectations. Communication may be limited—or non-existent! Conflicts are inevitable as paths diverge and expectations are not met. Each party remembers the worst stereotypes of the other, and they seem to block the way to its goals. An adversarial management style takes over and the goals each party had for the project get lost in preparation for litigation. The stage is set for future conflict and, often litigation. It’s as if two people are planning to travel together to a common destination, but each has his own map and refuses to show it to his companion!

The bottom line is clear: The adversarial management relationship jeopardizes the ability of either side to realize its expectations. The result is increased costs for the taxpayer and declining profit margins for the contractor. This is truly a lose-lose outcome for all.

Both the government and contractors have recognized the need for a better way of doing business. Efficiency and productivity must be increased. Neither group can afford the costly posturing that the present adversarial climate promotes. Partnering offers the chance to change from an adversarial style to a more cooperative, synergistic relationship that takes full advantage of the strengths of all team members.

Perhaps it was best summed up by Dan Burns, former Chief of Construction in Mobile:

“The end and result [of current ‘adversary management’] is a continuing upward spiral of risk and cost: risk of the contractor going broke, risk of projects taking much longer than necessary for completion, and risk of significant cost overruns. These costs do not go to productive facilities, but instead to overhead, litigation, and contesting experts. Partnering seemed to offer the opportunity of harnessing the capabilities, talents, and positive energies of both owner and contractor groups and focusing them on mutually agreed-upon goals. It offered the opportunity for all parties to change preconceived attitudes in order for both to win in the long run.”

How Does Partnering Work?

Partnering creates a climate for success by building a cooperative management team, each dedicated to a win-win atmosphere. To do this, the members of the team must undergo a change in mindset and discover how it is in their best interest to cooperate. The concepts of principled negotiation, where solutions are sought that serve the fundamental interests of both negotiating parties, are introduced.

There are three basic steps involved in establishing the Partnering relationship. Since Partnering is an attitude change aimed at building a new relationship, it is important as a first step to establish the new relationship through personal contact. Success in a Partnering arrangement depends on the personal commitment of the management team. This commitment is built through personal relationships that must be formed early and reinforced throughout the project. The second step in Partnering is crafting a joint mission statement that includes common objectives in specific detail. Achieving these objectives will mean success for both the owner and the contractor. Finally, Partnering identifies specific disputes avoidance processes designed to head off problems, evaluate performance, and promote cooperation.

These steps instill the Partnering relationship, but team spirit is also an essential ingredient of partnering. Through a series of joint workshops, guided by professional facilitators, Partnering builds team spirit. The emphasis in the workshops is on identifying shared interests and focusing on cooperative effort.

There are, however, other elements in Partnering. Here's a list of some of the considerations:

- Prepare early for Partnering.
- Secure top management support and commitment to Partnering.
- Identify Partnering Champions.
- Choose participants for the Partnering workshop.
- Select neutral facilitators for the Partnering workshop.
- Conduct the joint workshop.
- Create a partnering Charter.
- Arrange regular follow-up sessions.
- Plan combined activities.

Establishing cooperative processes for evaluating progress and solving problems is another feature of Partnering. Evaluation mechanism should be specific in measuring the achievement of the objectives that will make the project a success.

A system for problem solving, which will provide for expedited decisions, should be established.

Public Involvement and Dispute Resolution

The last but the most essential element is committed people. Partnering needs champions at a high management level and other champions throughout the organization who are willing to take risks, use professional judgment, and make decisions in a new cooperative environment. Partnering is people who believe in cooperation, rather than confrontation, as the most effective and efficient way to achieve their goals.

How Do We Know It's Working?

When Partnering is working, old adversarial patterns change and a new spirit pervades the working relationship. This new spirit has many indicators. Look for these signs of successful Partnering.

- **Sharing.** The partners share a common set of goals.
- **Clear Expectations.** Each partner's expectations are clearly stated up front and provide the basis for working together.
- **Trust and Confidence.** Partners' actions are consistent and predictable. Trust is earned when one's actions are consistent with one's words. We must "walk the talk."
- **Commitment.** Each partner must be willing to make a real commitment to participate in the partnership.
- **Responsibility.** Responsibility is recognizing and accepting the consequences of our choices. Partners are accountable to each other and should agree up front on measures for mutual accountability.
- **Courage.** Partners have the courage to forthrightly confront and resolve conflict.
- **Understanding and Respect.** Partners understand and respect each other's responsibilities, authorities, expectations and boundaries, as well as any honest differences between them.
- **Synergy.** The partnership is more than the sum of the partners. The relationship is more powerful than any of the partners working alone because it is based on the collective resources of the partners.
- **Excellence.** Partners expect excellence from each other and give excellence in return.

These are the positive indicators of a successful Partnering effort. If you look closely at the list again, it's clear that most of these indicators are based on the ability of the partners to communicate and solve problems.

What Concerns Are There About Partnering?

Some people have expressed a concern that Partnering may place the owner and the contractor "too close," and that distance between the parties is needed to maintain objectivity and proper oversight. Unfortunately, this adversarial attitude leads to some very expensive and counterproductive actions. Not only is the climate of trust and communication hindered, but distance between the parties can allow room for an expensive "wall of paper" to rise between the parties. Documents are exchanged to being building a case for litigation.

Another concern is the view that contract requirements may be relaxed in the interest of Partnering. This concern, however, is based on a misconception about the nature of Partnering. Partnering does not mean that the public interest should take a back seat to the interests of the parties. All Federal procurement laws and regulations must be complied with by the parties. But this does not mean that the government and the contractor may not seek to cooperate to achieve project goals that will benefit all involved. In a Partnering relationship, the contractor should understand and appreciate government regulatory requirements; and the government should understand and appreciate the contractor's expectations.

Some individuals have said that Partnering is all relationships and no substance, that the benefits are intangible and not worth the extra effort and expense. Experience has shown others that there are benefits, both tangible as well as intangible. And the expense is not great, even when a facilitated initial workshop and follow-up sessions are used. Costs are shared by the government and the contractor.

Perhaps the most telling comment, however, may be that, no matter what the tangible advantages, Partnering represents the fair way of doing business. One Corps manager wrote: "I have field employees who say it's a pleasure to come to work and not be afraid to advise the contractor of any perceived problem and be proud of working on the project as a team member."