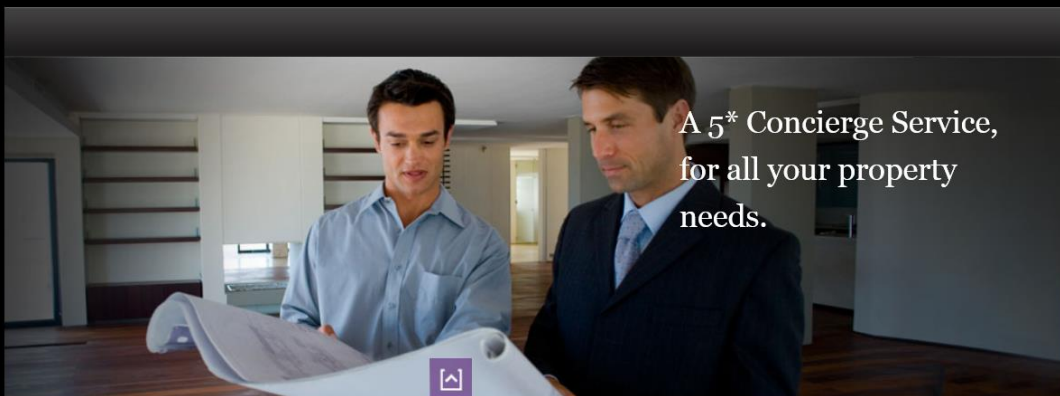


# Winsper

## Property Specialists

Sales | Lettings | Design | Build

## Asset Procurement Procurement V Partnering



As At  
13 February 2012

Author  
D Winsper

## PROLOGUE

The attitude to partnering and framework arrangements by clients in the construction industry varies. For example, BAA had been a major exponent of such arrangements until the current Capital Programmes Director, Steve Morgan said:

“I want a cooperative incentivised relationship with my contractors but I don’t want to be their partner. That is important. I want to be their customer.” (New Civil Engineer, 23<sup>rd</sup> July 2009)

Conversely, Network Rail is moving from a traditional approach to procurement towards partnering. Ian Ballentine, Programme Director of Network Rail said:

“The whole point of partnering is to get better integration of the supply chain, getting it involved earlier, and trying to reduce bureaucracy and aligning goal objectives. You can encourage suppliers to innovate and ensure they are rewarded for doing so. This is about how you can incentivise people to go the extra mile.” (New Civil Engineer, 24<sup>th</sup> November 2011)

Consider the following:

- The concept of collaborative procurement strategies;
- The perceived advantages / disadvantages of these strategies to both clients and contractors, including the wider supply chain;
- Critical evaluation of the reasons for the existence of such conflicting attitudes to partnering between major clients; and
- Conclusions and recommendations

### Steve Morgan: Keeping Them Keen

23 July 2009 | By Antony Oliver



In the three months since Steve Morgan joined BAA as its new capital programmes director, he has ripped up just about every rule in the airport operator's long established procurement book. Antony Oliver finds out what's changed.

From the moment Sir John Egan, then chairman of BAA, published his influential Rethinking Construction report into UK construction efficiency in 1996 BAA has been at the forefront of innovative procurement policies.

This began with the desire to achieve predictable performance using long term frameworks, partnerships and alliances with its supply chain. By 2000, the format had moved to a second generation of frameworks and the Terminal 5 (T5) agreement which saw BAA control costs by taking on project risk.



#### RELATED ARTICLES

- ▶ Heathrow car park contract awarded  
18 March 2011
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23 August 2011
- ▶ New job orders are Fox's top prey  
20 April 2011
- ▶ Heathrow Terminal 2 tops out  
29 February 2012
- ▶ Government rubber-stamps

### Network Rail: Changing track

24 November 2011 | By Alexandra Wynne



## EXECUTIVE SUMMARY

The two opposing views of BAA and Network Rail, highlights the on-going disparity between the construction organisations and the wishes of industry bodies (CIB, RICS, ICE), as directed in the Latham Report (1994) 'Constructing the Team' and subsequently the 12<sup>th</sup> Working Group of the Construction Industry Board (CIB) in 1997, in regards to 'Partnering' as the preferred 'Best Practice' over the more traditional construction procurement strategy.

The collaborative approach benefits Client, Designer Team, Main Contractor and Sub-Contractors alike and in addition improves the supply chain through the overarching three strands that of; Mutual Objectives, Problem Resolution and Continuous Improvement, resulting in a 'Helical Spiral of Continuing Improvements' for all.

Organisations now seek to 'Match' their 'Work Bank' and Capital Expenditure against the traditional or collaborative construction route, to achieve best effect for the company in view of savings in cost, time, risk and disputes, whilst improving mutual trust, respect and problem resolution. The Royal Institute of Chartered Surveyors, through their 2010 Research Conference have proposed a model for organisations to best select a procurement strategy, contained within 'Selecting an Appropriate Procurement Strategy', whilst also issuing a 'Code of Practice for Strategic Collaborative Working'.

The trend as discussed by the RICS is weighted towards the traditional approach still (84.4% – 2007) but the momentum is with 'Partnering', with a swing started in 2001 of some 15.6% in 2007.

**Table 1 – Trends In Procurement**

|                            | 1985 %       | 1987 %       | 1989 %       | 1991 %       | 1993 %       | 1995 %       | 1998 %       | 2001 %       | 2004 %       | 2007 %       |
|----------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Lump Sum – Firm BQ         | 59.3         | 52.1         | 52.3         | 48.3         | 41.6         | 43.7         | 28.4         | 20.3         | 23.2         | 13.2         |
| Lump Sum – Spec & Drawings | 10.2         | 17.7         | 10.2         | 7.0          | 8.3          | 12.2         | 10.0         | 20.2         | 10.7         | 18.2         |
| Lump Sum – Design & Build  | 8.0          | 12.2         | 10.9         | 14.8         | 35.7         | 30.1         | 41.4         | 42.7         | 43.2         | 32.6         |
| Target contracts           | -            | -            | -            | -            | -            | -            | -            | -            | 11.6         | 7.6          |
| Remeasurement – Approx. BQ | 5.4          | 3.4          | 3.6          | 2.5          | 4.1          | 2.4          | 1.7          | 2.8          | 2.9          | 2.0          |
| Prime Cost Plus Fixed Fee  | 2.7          | 5.2          | 1.1          | 0.1          | 0.2          | 0.5          | 0.3          | 0.3          | <0.1         | 0.2          |
| Management Contract        | 14.4         | 9.4          | 15.0         | 7.9          | 6.2          | 6.9          | 10.4         | 2.3          | 0.8          | 1.1          |
| Construction Management    | -            | -            | 6.9          | 19.4         | 3.9          | 4.2          | 7.7          | 9.6          | 0.9          | 9.6          |
| Partnering Agreements      | -            | -            | -            | -            | -            | -            | -            | 1.7          | 6.6          | 15.6         |
| <b>Total</b>               | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> |

An analysis of BAA and Network Rail show considerable change to their 'Work Bank' at the time of each statement discussed, which had a direct effect on their procurement strategy. BAA in early 2008 had finished Terminal 5 (T5 – Heathrow) and resorted to small / medium scale projects. Conversely, Network Rail embarked on Control Period 4 in 2011, a large scale program of capital expenditure and hence the 'Partnering' route.

Finally, whilst 'Partnering' is voluntary and different in law to 'Partnership', case law does exist, as discussed in the COBRA Report of 2010.

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## INTRODUCTION

1. The traditional approach to construction procurement has evolved over the last one hundred and fifty years as a Client v Contractor relationship, adversarial at worst and was borne from the long established principal drivers, that of; Time, Cost and Quality. Traditional strategies encompassed single stage lump sum tendering through negotiation or competition, sequential or accelerated procurement through consultants and Design and Build (D&B) strategy, as a single point responsibility and was regarded as 'Best Practice'. These procurement strategies have developed over the last twenty years (Circa 1990 Onwards), and evolved into Partnering and Framework Arrangements, to minimise the clients exposure to risk and assure costs, by the development of a fully integrated and efficient supply chain and procurement process. This stemmed from Sir Michael Latham's Report, 'Constructing The Team'<sup>1</sup>, published in 1994 and was implemented by the 12<sup>th</sup> Working Group of the Construction Industry Board (CIB)<sup>2</sup> in 1997.
2. Partnering within the construction industry, should not be confused with Partnerships, which has a specific legal meaning and various business liabilities associated with it although partnering case law does exist, as discussed in the COBRA 2010 Report<sup>3</sup>.
3. This paper seeks to understand why some businesses have resorted back to traditional procurement strategies and contractual arrangements, such as BAA and why some organisations are just starting to embrace Partnering and Framework Agreements, for example Network Rail.

## Concept of Collaborative Procurement Strategies

4. The concept of collaborative procurement strategies is to distance the traditional approaches, which often resulted in protracted contractual claims involving arbitration and litigation and move towards partnering and framework agreements. This allows the Client AND Design Team, Main Contractor, Sub-Contractor and Supply Chain to benefit through;

- A Cohesive Strategy – Considering the needs of all stakeholders.
- Significant Savings – Through volume and innovative design concepts.
- Improved Service Levels – Stakeholder 'Buy In'.
- Resource Optimisation.
- Collaborative Approach.

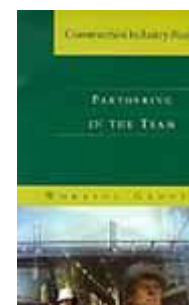
Achieved by analysis, relevant strategy and correct implementation, which attains value for money.

## Advantages / Disadvantages of Procurement Strategies

### **Traditional.**

5. Traditional strategies are based on the Client v Contractor model, which always results in an adversarial relationship, whichever process is used. Some of the varying processes have been stated in paragraph 1 above, other examples include Management Procurement, Management Contracting and Construction Procurement. All have common, but not exclusive, advantages and disadvantages as similarities exist in sequential processes. They are as stated below;

- Certainty of cost.
- Certainty of design.
- Time certainty of construction.
- Most commonly used method.
- Good for small to medium scale construction.
- Client Risk passed to the Contractor.
- Well understood by the industry.
- Open and transparent processes.



Some of the disadvantages are;

- Emphasis on only one of the three key drivers will have a negative effect on the others.
- The process is slow, as by nature it is sequential.
- Loss of control of the design and build by the Client, the emphasis being with the Contractor.
- Developing Client Briefs cannot be entertained under this system, without incurring large penalties within Time and Capital.
- Poor track record on delivering projects on time and to a budget.

## Partnering.

6. Partnering (Project Partnering & Strategic Partnering) attempts to supersede all of the above strategies, with its clear three strands (Identified by Sir Michael Latham)<sup>1</sup>, that of Mutual Objectives, Problem Resolution and Continuous Improvement. Drilling down on these principles the advantages to the Client<sup>3</sup>, Main Contractor<sup>4</sup> and Sub Contractors<sup>5</sup> are clear;

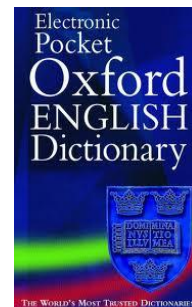
- Definable and Measurable objectives, leading to a continual improvement cycle, through constant review.
- Profitability for all organisations involved, via an 'Open Book' policy, cost saving and project improvements.
- Bonds of mutual trust established across organisations.
- Confidentiality is adhered to.
- Bureaucracy is removed, through trust, especially at the design / tendering stage.
- Partnering minimises the risk of corruption.
- Encourages a mutual respect for other team members.
- All Agreements and Contracts become largely obsolete, as trust is established.
- Commitment by all organisations is established through 'Buy In, By All'.
- Healthy respect for all organisations within the partnering relationship.
- Due Diligence is achieved through a plethora of Subject Matter Experts (SME's), contained within all organisations.
- Problem resolution is identified early and resolved quicker, utilising SME's. Thus empowering individuals.
- Apportioning blame retreats and organisations work closer together.
- Job satisfaction is increased, due to a 'Non Adversarial' relationship.
- Any lessons learnt, are carried forward to the next partnership project.
- Reduces post-contract disputes and litigation.

7. All these advantages are cumulative and it is incumbent on the partnering organisations to continue to work together, possibly under a Framework Agreement. Thus relationships are strengthened and built upon, working together towards common objectives and consolidating 'Best Practice'.

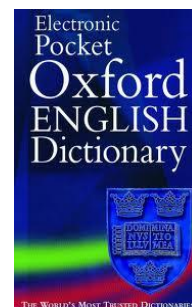
8. As a secondary effective, the supply chain has become sympathetic to the partnering relationships and have benefited by rationalising and streamlining their processes and thus profited by reducing cost and improving standards.

Some disadvantages to Partnering exist and they are;

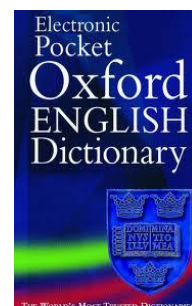
- Dependency. As per Baird Textiles v Marks & Spencer<sup>6</sup>, there is a danger that the smaller company becomes dependant on the larger one and risks all.
- Responsibility. Whilst trust should be paramount, it may be difficult to pin down responsibility if there is a failing.



Client



Prime Contractor



Sub-Contractor

Before:  
THE VICE-CHANCELLOR  
LORD JUSTICE JUDGE  
LORD JUSTICE MANCHESTER

BAIRD TEXTILE HOLDINGS LIMITED  
- and -  
MARKS & SPENCER plc

(Transcript of the Handed Down Judgment of Smith Bernal Reporting Limited, 190 Fleet Street London EC2A 2AG  
Tel No: 020 7421 4040, Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

- Commitment. Whilst smaller organisations might commit wholeheartedly, with all resources to the partnership, larger organisations may be less so and not fully be on-board with the relationship.
- Misunderstandings within the partnering agreement will have a tendency to lead to disputes, with difficulty apportioning blame.

9. On balance, partnering remains the main thrust of the ICE<sup>7</sup> & RICS<sup>8</sup> papers, but this strategy still requires an overarching contract, such as JCT98, JCT SBQ 2011 and JCT SPC 2000<sup>9</sup>.

10. In the 2010 the Royal Institute Of Chartered Surveyors published a paper entitled 'Selecting an Appropriate UK Procurement Strategy'<sup>10</sup>, as part of their COBRA 2010 Research Conference, which summarised the various options and it is incumbent on the Client to 'Match' their requirements and project objectives with the characteristics, advantages and disadvantages of the various procurement strategies, through a systematically and logical approach. The paper also introduces a model to aid the selection of various procurement methods.

11. In addition, the paper contains historical figures, as to the decline of the traditional procurement process (admittedly still dominant (D&B), but waning) and the emergence of the partnering agreement, as seen below.

**Table 1 – Trends In Procurement**

|                            | 1985 %       | 1987 %       | 1989 %       | 1991 %       | 1993 %       | 1995 %       | 1998 %       | 2001 %       | 2004 %       | 2007 %       |
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| Partnering Agreements      | -            | -            | -            | -            | -            | -            | -            | 1.7          | 6.6          | 15.6         |
| <b>Total</b>               | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> | <b>100.0</b> |

## Recent Authoritative Direction

12. Recent articles relating to Partnering from authoritative institutions include;

- RICS Research<sup>11</sup> - Partnering practice in the relationship between clients and main contractors.
- RICS Partnering in the Construction Industry<sup>12</sup> - A Code of Practice for Strategic Collaborative Working.
- ICE Partnering Addendum<sup>13</sup> – Conditions of contract and schedules to be used in conjunction with a bi-party contract.

## Analyses of BAA and Network Rail

13. To correctly analyse the statements given to the 'New Civil Engineer' publication by both Steven Morgan (BAA) and Neil Ballentine (Network Rail) in 2009 and 2011 respectively and in conjunction with the above information, the history of both companies must first be understood. In particular, are the historical small, medium and large scale projects around the time of the statements and their future construction project books for both organisations, as this will have a direct bearing on their procurement strategies.



The Royal Institution of Chartered Surveyors' (RICS) COBRA 2010 Research Conference  
Selecting an Appropriate UK Procurement Strategy

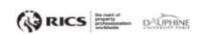
Author: Neil Morgan  
Date: 2010  
Version: 1.0  
© RICS 2010

**1. ABSTRACT**  
The procurement strategies available to the UK have changed in recent years. This has led to the emergence of a number of new procurement strategies. The Institute of Chartered Surveyors (RICS) has conducted a research project to assess the suitability of various procurement strategies to meet client requirements. Each of the available strategies has its own strengths, weaknesses and limitations, which make it more appropriate under certain specific circumstances.

The publication of procurement methods has led to a need for systematic and objective methods for identifying suitable procurement strategies for projects. To ensure a systematic approach to procurement selection, client requirements and project objectives need to be carefully defined and aligned with the characteristics of the various procurement strategies.

By comparing historical and existing RICS Contracts to the Survey 2010 strategy has been used to suggest the circumstances under which each of the available procurement methods can be used. The paper additionally provides a historical framework aimed at the development of a model for selecting building procurement methods.

Keywords: construction, client requirements, strategic, selection



ICE Conditions of Contract  
First Edition

CONDITIONS OF CONTRACT AND SCHEDULES TO BE USED IN CONJUNCTION WITH A BI-PARTY CONTRACT

Partnering Addendum

Institution of Civil Engineers  
Association of Consulting Engineers  
Civil Engineering Contractors Association

May 2005

## Company Profiles, Background and Future Projects.

### British Airport Authority (BAA).<sup>14</sup>

14. BAA is a Spanish owned organisation, which is responsible for six airports within the UK, including London Heathrow. Its parent company is FGP TopCo Ltd and has revenue streams of some £2,267M Sterling (2008). At present BAA has no large scale construction projects and over the last few years has concentrated on securing more airport assets worldwide, in conjunction with services and capacity. However, at the time of the statement to the 'New Civil Engineer', BAA had just completed the Terminal 5 (T5) construction (March 2008), a large scale project costing £4.2Bn and up to that point had a large 'Work Bank' of major complex projects.

### Network Rail.<sup>15</sup>

15. Network Rail was borne from the ashes of Rail Track and due to the collapse of Rail Track was solely focused on infrastructure and reducing the inherited £25Bn debt. This debt financing was government backed, to allow reinvestment in the railway. Network Rail is a 'For Profit', private organisation, with no shareholders and contracted mainly by the government. In the past, Network Rail's 'Work Bank' has been mainly medium sized construction concentrating on a lean organisation achieved through a single program management office, concentrating on Operational Maintenance and Efficiency, however in recent years the company has established a major program of works, such as the Midland Mainline Electrification, as part of Control Period 4 (£4Bn Spend). It is noteworthy that the High Speed 2 (HS2) Rail Link IS NOT a Network Rail major project and is in fact a separate entity, controlled and constructed by HS2 Ltd.

16. However, the major projects inference still rings true.

### Evaluation of the Company Statements.

17. Therefore, BAA 's portfolio has changed and does not have the 'Work Bank' of large projects to warrant continuing in Partnering and Framework Agreements, although useful whilst constructing T5<sup>16</sup>, in that it allowed paralleling, with no sequential staging or phasing, with huge savings in cost and time which was to the benefit of T5. It now returns to a more traditional procurement strategy, to squeeze the market and get the best from competitive tendering. Its 'Work Bank' now is easily definable and in no way complex.

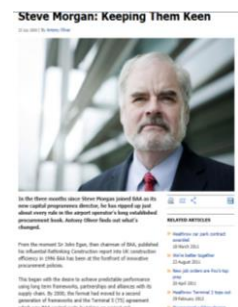
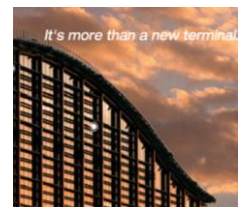
18. Conversely, Network Rail now find themselves in a position whereby they require flexibility in their Design & Development, they need to control costs and more importantly have 'Cost Certainty', obtaining the lowest price

The traditional procurement route, will be the slowest route for Network Rail and this organisation cannot afford to be held back at any juncture and hence the new direction of a partnering arrangement. This will lead to efficiency savings and will drive down costs further.

In addition, as a lean organisation, partnering allows Network Rail to establish an efficient design process, with the ability to utilise SME's from partner organisations, allowing the market to innovate and reduces the organisation's Research & Development (R&D) budget. This in turn will incentivise Network Rail.

19. Couple all this with the macro-economics circa 2008 and beyond and both companies are seeking the 'Best Bang For Their Buck' mentality.

20. It can be stated that these two statements, contained within the respective volumes of the New Civil Engineer<sup>17</sup>, are a result of changing factors, which are;





- Change in Program of Works.
- Change in Capital expenditure.
- Macro-Economics (Post 2008).

## **CONCLUSIONS**

21. To conclude, both traditional procurement strategies and partnering have various advantages and disadvantages, as explained in this paper. However, the weight is with partnering, which has emerged from 2001 to the present and in 2007 accounted for 15.6% of all procurement conducted, on an upward trend. Overarching these advantages and disadvantages are three main factors, that of; a significant change in a company's program of works, an uplift in capital expenditure and macro-economics.

Project and Strategic Partnering has the potential to save project costs, improve design and guarantee time to all; Clients, Main Contractors, Sub-Contractors and the supply chain through mutual objectives, problem resolution and continuous improvement.

This process should not be viewed as cyclical, plan-do-review, but as a 'Helical Spiral of Continuing Improvements'.

In addition, authoritative direction from RICS and ICE point towards Partnering as holding the momentum with in construction procurement strategies.

Whichever procurement method is chosen, fundamentally a contract is required. However, how much reliance is placed upon it will be a direct result of the strategy.

## **RECOMMENDATIONS**

22. Whenever an organisation has uplift in its 'Work Bank', embarks on major large scale construction with high capital expenditure, then a partnering strategy should be considered. Conversely, if a company has a reduction in the above, then a more traditional approach MAY be beneficial.

A sharp change in macro-economics should also trigger a review of the organisations procurement strategy.

### **[E Signed]**

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## DEFINITIONS

### Legal Definitions

#### 1. **Contract;**

*'An agreement between persons that obliges each party to do or not to do a certain thing'*. Technically, a valid contract requires an offer and an acceptance to that offer, and, in common law countries, consideration'. This emanates from Common Law and Legislation.

#### 2. **Contract Law;**

*'That body of law that regulates the enforcement of contracts'*. Contract law has its origins thousands of years as the early civilisations began to trade with each other, a legal system was created to support and facilitate that trade. It refers extensively to old Roman contract law principles, such as 'consensus ad idem' or 'caveat emptor'. English law requires every contract contain considerations. As before Contract Law resides in Common Law and Legislation.

#### 3. **Partnering;**

*'Partnering is a structured management approach to facilitate team working across contractual boundaries. Its fundamental components are formalised mutual objectives, agreed problem resolution methods, and an active search for continuous measurable improvements'*. – 'Partnering In The Team', CIB<sup>2</sup> (1997)

#### 4. **Partnership;**

*'A contractual relationship between two or more persons carrying on a joint business venture'*. Where all partners are jointly liable for that business venture, both professionally and personally.

#### 5. **Framework Agreement;**

*'An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regards to price and, where appropriate, the quality envisaged'*. – European Union Procurement Directive<sup>7</sup>.

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