

Partnering the Public Sector

Guidelines for Partnering in the Public Sector

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DRAFT FOREWORD

The avowed aim of partnering of reducing adversarialism and improving relationships between those involved in construction projects is one which all involved in the construction industry can identify with. Its success in producing better results in the private sector in the UK and elsewhere and in the public sectors of the United States, Australia and Canada renders it imperative that it should be implemented where the parties so wish on UK public sector contracts. Fears that this is precluded by the European Union public procurement directives and by UK government legislation including Compulsory Competitive Tendering are unfounded and providing that open competition prevails in the appointment of contractors there is nothing to prohibit partnering in the UK public sector whether on work commissioned by central government and its agencies or by local authorities. This document sets out guidelines of how this should be done and I commend the process to you.

To be signed by the Auditor General or someone of importance

GENERAL DISCLAIMER

Whilst reasonable care has been taken in the preparation of this Toolbox, no responsibility is accepted by the Working Group or the publishers for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any loss, however occasioned, to any person by reliance on it.

INTRODUCTION

In his report 'Constructing the Team' Sir Michael Latham recommended that since Partnering may bring significant benefits, advice should be made available to facilitate its introduction on work for the public sector. That is the purpose of this document. It aims to provide those inexperienced in Partnering with assistance on its implementation on their project or scope of work.

The document is primarily aimed at the public sector and takes into account the various European Union and UK Government regulations which are designed to ensure competition and transparency in transactions on behalf of the public. Whilst the processes that it describes are appropriate to work for both central government and local authorities, they can also be applied in the private sector.

The document is in three parts. It begins with a general description of the malaise in the construction industry that has given rise to Partnering and continues with an outline of the processes, the principles and the benefits that it can offer.

The second and main part of the document is a Toolbox in which a step by step guide is given on each of the elements of Partnering. Starting with the decision within the client organisation, (a Government Department, Agency or local authority), to try Partnering, the Toolbox progresses through each main step of the process finishing with the monitoring of its effectiveness. It illustrates the process with Examples of either actual documents drawn from successful Partnering arrangements or fictional examples. These Examples can be used as presented, or adapted to suit the specific needs of the parties. At the end of each section of the Toolbox, an example of good practice drawn from a real situation is also provided.

Finally the document examines the training and coaching needs of Partnering and some sources of appropriate training materials.

The Guidelines set out the way in which Partnering could be approached by public sector bodies. However it should be stressed that each project will turn on its own facts and the Guidelines may need to be adapted as necessary. In adapting the provisions of the Guidelines public sector clients should consult their own in-house legal department.

It is also emphasised that the Guidelines are written in the light of the law, as at April 1st 1996, and cannot take into account changes in the law which may affect Partnering. By way of example, the Housing Grants, Construction and Regeneration Bill seeks to introduce compulsory adjudication into construction contracts.

EXECUTIVE SUMMARY

The current interest in Partnering stems from two main sources. First a perceived rise in adversarialism between contracting parties in the construction industry leading to time-consuming disputes and possible litigation which is not conducive to the timely and satisfactory completion of projects. Secondly from heightened recognition of the benefits that greater harmony and co-operation can yield. Partnering aims to reduce this adversarialism and to promote co-operation between the parties for the benefit of all concerned.

Partnering has several forms. That which is particularly appropriate to the public sector is called Post Award Project Specific Partnering. This allows an openly competitive process of selecting contractors to be adopted. Thus the European Union's Public Procurement requirements are respected. It is also fully compatible with the requirements of Compulsory Competitive Tendering (CCT) as imposed under the various local Government Acts.

Unless mutually agreed otherwise, the Partnering arrangement is not intended to be legally binding and therefore does not supersede the contract. The legal rights and obligations of the parties are set out in the contract. The form of Partnering described in this document is an arrangement arrived at by the parties (ideally including sub-contractors and suppliers) after the contracts have been awarded. It is about the aspirations and working relationships that will be established within this legal framework. It is important however that the client makes clear their intention to Partner when inviting tenders to enable bidders to understand the environment that they may be working in.

Partnering has been defined by the Reading Construction Forum as "*a managerial approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of each participant's resources. The approach is based on mutual objectives, an agreed method of problem resolution and an active search for continuous measurable improvement*". (1)

Partnering is usually initiated within the client organisation where there must be commitment to its adoption at the most senior levels. Champions - the sentinels of the process - must be deployed at key points within the organisation. Since the intention to Partner will have been expressed in the tender documentation, interested contractors will also be making appropriate preparations which may include the appointment of a Champion. Attitudes consistent with Partnering must be inculcated particularly into the project teams. People whose temperament is unsuitable should not be included in the project team.

The Partnering process should begin immediately after the award of contract - although there have been instances of where it has been introduced much later in the project as a means of re-establishing relationships where an adversarial situation has arisen. A strategy is developed between the parties and a Workshop convened at which all those involved or affected by the project are present. With the assistance of an independent Facilitator alignment of objectives and attitudes is achieved and enshrined in a Project Charter. Procedures are established which allow for the monitoring of performance, the process of continuous improvement and the avoidance or speedy resolution of disputes.

Additional workshops may be held throughout the project to reinforce the Partnering culture.

Partnering is a relatively new concept but it is being widely adopted by best practice public sector clients in a number of countries including Canada, Australia and the USA. Significant benefits already reported include:

- Improved communication
- More responsiveness to perceived problems
- More awareness of opportunities
- Reduction in disputes
- Improved performance
- Improved quality
- Improved safety
- Greater certainty of outturn cost

In the USA, the Army Corps of Engineers who are the public sector body with the greatest experience of Partnering have found a 9% improvement in cost and an 8% improvement in time on their partnered projects over similar ones carried out on a non-partnered basis⁽²⁾.

The Reading Construction Forum have estimated that typically with Project Specific Partnering, cost savings of 2 - 10% can be achieved, whilst its cost is less than 1%⁽¹⁾.

The main section of this document comprises a Toolbox in which the principal tools for the implementation of Post Award Project Specific Partnering can be found. Particular emphasis is placed on the contractor/partner selection process since it is at this point that particular account must be taken by public sector clients of the various regulations prescribing open and competitive tendering for public sector work. Other than this the process is similar for both public and private sector work and in fact the procedures described in this document could well be considered best practice guidance for both public and private clients.

PART 1 THE CONCEPT OF PARTNERING

1.1 INTRODUCTION

There is ample evidence that in recent years relationships between clients and contractors on construction projects have become increasingly adversarial. This indeed is a major theme of Sir Michael Latham's report '*Constructing the Team*'⁽³⁾ and provides part of the reason why he chose that particular title.

The direct outcome of this lack of harmony is an increasing number of disputes which, with goodwill, might have been avoided, and an increasing resort to litigation as resolution is hindered by the hardening attitudes of the parties.

The consequences do not stop there however. An atmosphere of mistrust permeates projects and relationships degenerate such that the teamwork and mutual respect that is necessary for their successful completion breaks down. Rather than having common goals each party formulates its own divergent goals. This adversarialism, which affects construction work for both the private and the public sectors, operates against the primary objective of delivering a quality project, safely, on time, within budget and with a satisfactory outcome for all concerned.

Whilst adversarialism with all its consequences has become a widespread feature in construction there remain examples of co-operative relationships such as that between Marks and Spencer and Bovis which have endured for many years and which by implication have been successful. Nor apparently has adversarialism always been the norm; many still involved in the industry can remember when it was otherwise. What is needed is a means of re-establishing the goodwill, the trust and the wish for each party to be successful. In short there is a need to put the handshake back into contracting. That is the purpose of Partnering.

In the remainder of Part One, the concept of Partnering will be discussed, its successes in various applications described, the legitimacy of its application to the public sector examined and finally its fundamental mechanisms outlined. Part Two will offer practical advice on how these mechanisms can be introduced into public works for a more successful outcome.

1.2 PARTNERING DEFINED

Partnering is both an attitude of mind and a series of procedures which commit the parties to focus on creative co-operation and to work to avoid confrontation. Its essential component is trust. The Reading Construction Forum have defined it as follows:

"Partnering is a managerial approach used by two or more organisations to achieve specific business objectives by maximising the effectiveness of each participant's resources. The approach is based on mutual objectives, an agreed method of problem resolution and an active search for continuous measurable improvements" (1).

Essentially however Partnering is a generic term that embraces a range of practices of varying degrees of formality which are designed to promote more co-operative working between contracting parties. The above definition is helpful because it focuses on several of the key elements that must be a feature of Partnering in whatever form it takes.

1.3 FORMS OF PARTNERING

Although co-operative working can take many forms, Partnering broadly speaking can be categorised as follows:

- **Strategic Alliances or Term Partnering**
These arrangements are for a period of time rather than a single project.
- **Project Alliances or Project Specific Partnering**
These arrangements are for the duration of an individual project and the contract may be awarded competitively.

Both of these alternatives are widely practised in the private sector. A variation of the latter more suited to the public sector is the following:

- **Post Award Project Specific Partnering**
Here the contract is subject to the normal competitive processes. As the name suggests the Partnering arrangement is entered into after the contract has been awarded. However the intent to Partner should be a criterion in the award process.

This is the form of Partnering that is specifically covered in Part 2 but many of the general principles described in the document apply to all forms of Partnering.

1.4 THE AIMS OF PARTNERING

Whatever the form of Partnering the objective is to align and unite the parties behind the goal of completing the project or scope of work in a cost effective, timely and mutually satisfactory and beneficial manner. Having established objectives which are shared by all, working relationships between the parties can be built upon a basis of mutual respect, trust and integrity. In such an

atmosphere, disputes can be avoided or speedily resolved and resort to litigation may be unnecessary.

1.5 THE KEY FEATURES OF PARTNERING

It has been suggested that the essence of Partnering is the recognition of common goals and the creation of an atmosphere of trust, teamwork and goodwill which will facilitate the achievement of these goals. In Project Specific Partnering it is imperative to capture the benefits within the duration of a single project, as there is little time for experimentation and it is as well to recognise at the outset what the key elements of successful Partnering are. These fall into two categories. First are the 'attitudinal factors' that must be shared by all concerned.

- All parties and all individuals must be fully committed to making the arrangements work. This commitment needs to run throughout the Partnering organisations. Individuals unable to commit themselves totally should be re-assigned.
- Fairness must be seen to prevail. Each partner's interests and concerns need to be fully taken into account by all of the others.
- Trust is essential; all parties need to feel confident of the others' goodwill and integrity. With trust comes sharing and openness and a commitment to help each other to achieve the goals of the project.

The second category of essential elements are the techniques and procedures which underpin these attitudes. They are:

- Selection Procedures - these are constructed so that the parties involved in the Partnering process are compatible and committed. This normally involves a two-stage process of selection by questionnaire and interview.
- The Workshop - all parties and stakeholders attend a Partnering Workshop at which the objectives for the project and of the parties are aligned and the ground rules for the Partnering arrangement established.
- The Charter - sets out the aspirations and expectations of the parties and the relationships that they hope to achieve. It is not intended to be a contractual document nor does it supersede the contract. Whilst the contract establishes the legal relationship between the parties, it is the Charter which is concerned with the working relationships. It is in effect a statement of how the parties intend to conduct themselves.
- The Communications Structure - open and full communications between the parties is a necessary condition of Partnering. The structure of communications and relationships at all levels both on and off-site is agreed at the Workshop.

- Evaluation Procedure - continuous monitoring is essential to ensure that the Partnering relationship is being successful in achieving its objectives and those of the project. This is facilitated by a jointly formulated and agreed procedure.
- Dispute Avoidance Procedure/Resolution Procedure - a jointly agreed procedure must be established for the avoidance and resolution of issues arising. The objective is to have the issue resolved at the earliest possible opportunity at the lowest possible level of authority, subject to any contractual and/or statutory rights of the parties.
- Continuous Improvement Procedure - one of the main benefits of Partnering is that there is a continual process of seeking opportunities to improve performance.

Each of these essential elements is explained more fully in Part 2 of these Guidelines.

1.6 THE SPECIAL REQUIREMENTS OF THE PUBLIC SECTOR

Accountability of public authorities in the spending of taxpayers' money, and open and transparent competition are fundamental requirements of Her Majesty's Government and of the various authorities themselves. The European Union Procurement Directives also provide for fair and open competition. Public sector clients wishing to introduce Partnering into their procurement arrangements would need to be assured that it does not run foul of such requirements. The intention here is to seek to provide such assurance not by analysing in detail the various regulations, but by reproducing the advice of various official bodies.

The key statutory requirements for public procurement are set by:

- Article 85 of the Treaty of Rome concerning Competition Policy, and Articles 30 & 59, the purpose of which is to ensure the free movement of goods and services between member states.
- Single European Act 1987
- The European Union's Public Procurement Regime comprising the Public Works Directive, the Public Supplies Directive and the Public Services Directive which have been taken into UK legal system by the Public Works Contracts Regulations 1991, the Public Services Contracts Regulations 1993, and the Public Supply Contracts Regulations 1995.

These impose certain obligations on the procurer which aim to ensure fairness in the selection of contractors.

- The Local Government Planning and Land Act 1980 and the Local Government Act 1988 which impose Compulsory Competitive Tendering on local authorities and certain other defined authorities.

The requirements of these various regulations are taken into account in Part 2 of these Guidelines. We set out below a number of official comments in support of the view that Partnering and the open competition requirements of the Public Procurement Regime are not mutually incompatible.

"Partnering is acceptable under EU rules if:

- *it is competitively arranged;*
- *the client's needs and objectives are clearly stated;*
- *the contract is for a specified period; and*
- *safeguards for future competition are incorporated."*

Construction Procurement by Government

Scrutiny Report 1995 (4)

"Although co-operation will normally be more beneficial than an adversarial relationship there are important conditions for Partnering which must apply, particularly in the public sector.

- *There must be competition at the outset to select the partner and periodic re-competition thereafter.*
- *There must be a clear definition of the contractual responsibilities of both parties.*
- *There should be specified and measurable milestones for improved performance as part of the contract with a partner."*

Setting New Standards 1995 (5)

"Since Partnering may bring significant benefits, the Latham Report (paragraph 1.12) recommends that advice be given to public authorities so that they can experiment with such arrangements which must be sought through a process of competition"

*Ministry of Defence. Management of the Capital Works Programme
Report by the Comptroller and Auditor General, May 1995 (6)*

"Post Tender Partnering Arrangements are permissible under CCT providing that all Tenderers are made aware of the intent to partner prior to or with the invitation tender and that the arrangements do not favour one bidder over others"

*Local Government Division
Department of the Environment*

Local Government

Local authorities are subject to additional restraints to those imposed on national agencies. Furthermore there is a view in Local Government that it has striven to promote best practice in its construction projects and does not perceive that there has been a general increase in adversarialism within its area of operations.

The restraints on local government actions such as:

- legislation and central government practice governing local government's financial regime particularly as it affects capital projects;
- local government's legal regime - statutory and common law provisions governing local authorities administration including CCT;
- detailed scrutiny by auditors, local government ombudsman, councillors and local people;
- the democratic environment within which local government operates;

limit the scope for informal co-operative arrangements and require that all actions are documented and closely regulated by contracts, and are transparent. Local authorities will also have their own internal procedures for ensuring that fair and open competition is maintained. However, the principles underlying Partnering are likely to be valuable to local authority contracts adapted as necessary to meet the points made above.

Many of the recommendations of the handbook "Quality in the Balance"⁽⁷⁾ published by the Local Government Management Board to provide guidance to Local Authorities in respect of competition would be facilitated by Partnering.

The key to meeting the requirements of transparency in public sector Partnering lies in the selection process. This is detailed in Part 2.3 of this document.

1.7 PARTNERING IN PRACTICE

During the past five years best practice clients and contractors in several countries including Canada, Australia, the United States and the UK have increasingly adopted a Partnering approach. It is also significant that with the development of Post Award Project Specific Partnering, which is the approach covered in these Guidelines, it is within the public sectors of these countries where transparency requirements are broadly similar that the greatest growth has occurred.

Although the process is relatively new, several practitioners are already reporting both qualitative and quantitative benefits. These include:

- **Improved Communications**
Shared objectives, openness and trust encourage good communication generally, and provide early warnings of potential problems.
- **Flatter and More Responsive Organisational Structures**
Partnering encourages a higher level of empowerment at less senior levels within the organisation. This results in a reduction of the levels of decision-making which in turn produces a quicker response to problems and opportunities.
- **Reduction in the Costs Associated with Disputes**
This includes both litigation costs and the internal costs of preparing defences to claims and expensive record-keeping for defensive purposes, although all contractual notices must still be given.
- **Effective Co-operation**
Allows a joint response to problems and opportunities without fear of contractual penalties.
- **Improved Performance**
Partnering stimulates a continuous search for opportunities for improved performance. This is in contrast with traditional contracting methods which can result in performance being determined at the award of the contract and change being resisted for fear of contractual penalty.
- **Higher Quality**
A Partnering approach facilitates quality management systems. A report by FMI,⁽⁸⁾ a management consultant, into Partnering in the US construction industry in August 1993 which surveyed 200 construction projects found that quality had improved on 65% of them due to Partnering.
- **Improved Safety**
Safety has featured in the progress monitoring systems used in Partnering from the earliest days. The recently introduced Construction Design and Management Regulations state that the client, the designers and the contractors should now all co-operate and work together on project health and safety. These provisions are entirely compatible with Partnering.
- **Greater Certainty of Outturn Costs**

Partnering results in more effective working to budget and time. The FMI report mentioned above stated that on average the projects surveyed were completed 5% below budget and 18% ahead of programme.

- **Removal of Speculation from Tenders**
Traditional anticipation of claims income in tenders is removed by Partnering and the market becomes more favourable to technical and managerial quality than commercial expertise thereby reducing overall construction costs and improving efficiency and value for money.
- **Investment in Skill**
Partnering promotes an investment in skill and technology that has been lacking in the UK construction industry compared with foreign competitors.

The Reading Construction Forum has estimated that typically with project Partnering, cost savings of 2-10% are achieved; with strategic Partnering savings of 30% are realistic over time. The cost of Partnering is very small, adding less than 1%.⁽¹⁾

One of BP's North Sea projects, the Andrew/Cyrus Development, which is the subject of Project Alliancing (see 1.3) has already saved some 35% on the pre-sanction estimate for the project. Even greater savings are anticipated on the outturn costs of the project and completion is expected 6 months ahead of schedule.

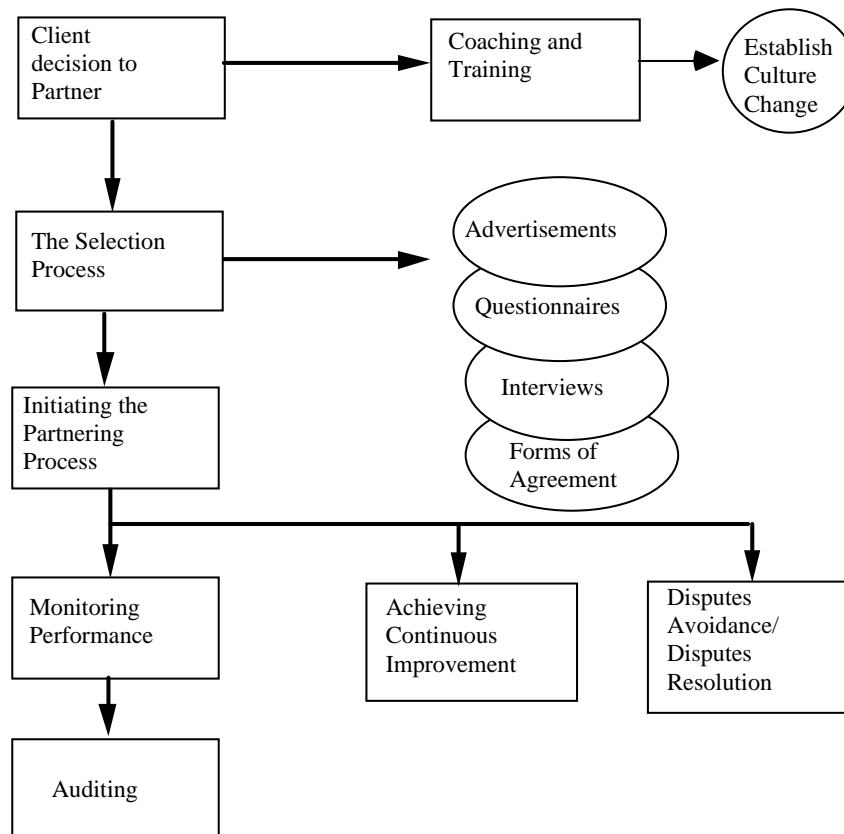
The organisation with the greatest experience of Post Award Project Specific Partnering and therefore best able objectively to assess the benefits is the US Army Corps of Engineers.⁽²⁾ It is a public sector body and is subject to appropriate transparency and accountability requirements. It has made a comparison of 16 partnered and 29 non-partnered projects averaging about \$10 million each and has found that there was a 9% improvement in cost and 8% improvement in time on the partnered projects.

PART 2 IMPLEMENTING PARTNERING - A TOOLBOX

2.1 INTRODUCTION

The objective of this section is to lead anyone contemplating Partnering through each stage of the process. The steps are illustrated in Figure 1 below.

Figure 1 The Partnering Process



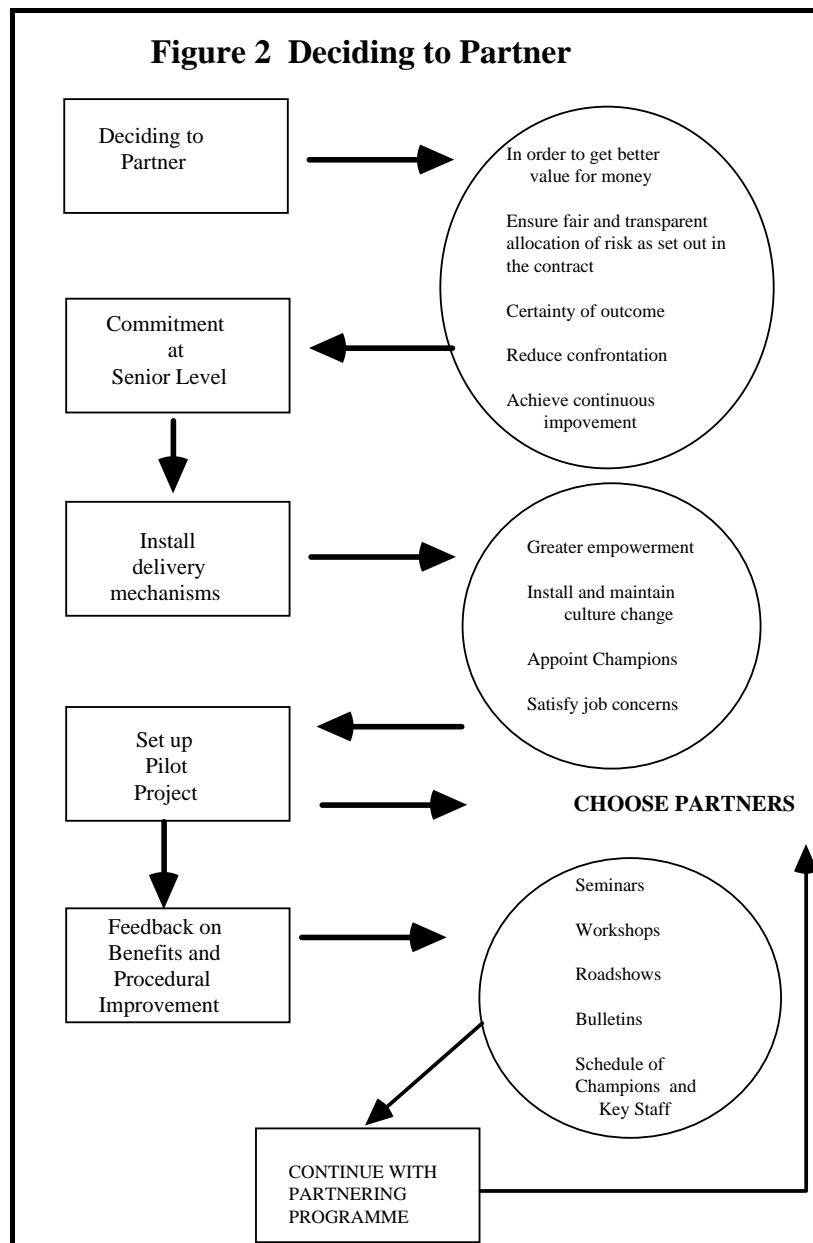
Each of the steps is explained in detail in the sections that follow, starting with the decision within the host organisation (usually the client) to Partner, through the process of selecting the partners (contractors and suppliers), initiating the Partnering process, implementing techniques for monitoring performance, achieving continuous improvement, avoiding/resolving disputes, and ending with the auditing process.

In each of these sections the appropriate tools and techniques that have been developed to assist the Partnering process are explained and examples of established good practice given.

Whilst the full application of the techniques of Partnering are more appropriate to projects of significant size, they do represent well-tried and successful practices and may be used perhaps in modified form to advantage on projects of all sizes.

2.2 DECIDING TO PARTNER

The first step in the Partnering process is made when the client organisation decides to give Partnering a try. In this section we explain the key considerations and the internal changes that must be made as a pre-requisite to successful Partnering. These are presented schematically in Figure 2 below. However it is recognised that many clients will not immediately wish to launch into full scale Partnering for all their projects or activities. Nevertheless the procedure described here is appropriate and can be used in a pilot project. After experience has been gained in this a client may wish to extend the process to other projects.



Key Considerations

The reasons why a client might consider Partnering will vary according to circumstances. However with respect to public sector clients the key considerations will include:

- Better value for money
- Improved management of risk
- Greater certainty of outcome
- Transparency of risk and incentives
- Reduced confrontation
- Achieving continuous improvement

Commitment at the Top

Whatever the reason for deciding to try Partnering full commitment to it must be secured at the very highest levels within the client organisation. The issues must be fully debated at this level and the nature and impact of the internal changes that will be necessary fully understood. An audit of the culture and human assets within the relevant section of the client organisation will be needed. Having made this commitment, steps should be taken to secure the attitudinal changes amongst key personnel that are necessary for successful Partnering. The extent to which attitudinal changes are perceived to be necessary will determine the extent and speed of applying the Partnering process.

A key appointment at this stage is that of the Partnering Champion. He is the initial Champion appointee within the client organisation and will oversee the development of the process both within his organisation and on the project. He will be the senior of an eventual network of Champions who will be responsible for maintaining the integrity of the Partnering process throughout the project. The role of the Champions is described further on page 28.

Attitudinal Changes

This is often referred to as a culture change. Essentially in the first instance attempts are being made to change the mindset of personnel in the client organisation that has developed from the traditional adversarial approach and which includes:

- Suspicion
- Withholding information for tactical advantage
- Inappropriate transference of risk
- Rigidity and the creation of obstacles
- Confrontation

to one which includes:

- Openness
- Trust
- Co-operation

- Fair sharing of risk and reward
- Seeking Improvement
- Understanding others' objectives and interests.

At a later stage when partners have been selected similar changes must be made within their organisations also.

Steps for Effecting the Attitudinal Change Within the Client Organisation

A Steering Group including the Partnering Champion should be formed within the relevant sections of the client's organisation whose role is to monitor and report back progress to senior management. (This group may also be involved in the selection of partners). They should appoint additional Champions at various levels within the affected sections of the organisation and provide them with appropriate training (see page 55). The Facilitator (see page 31) has a significant role to play in training (see also Part 3) and should be appointed at this stage by the Steering Group. These are key appointments and the success in achieving the necessary attitudinal changes within the organisation will depend on the effectiveness of those appointed.

All affected staff must be made aware of the necessary organisational changes and of the attitudinal changes expected of them. Presentations should be made describing the process, the changes in relationships and the impact on people and jobs. Workshops may be held where questions can be raised and answered. The Steering Group may act as mentors to personnel affected by the change, smoothing the path to acceptance.

Job concerns need special attention. Partnering will fail if the "culture" is not accepted at all levels from top management down to the workforce and the essential commitment to it needs continuous reinforcement. Similarly the necessary changes will not happen without considerable effort and coaching. Some otherwise valuable people may be temperamentally unsuited to Partnering. These must be identified through a process of continuous assessment and provided with coaching. If this fails they should be redeployed out of the programme. Partnering requires total commitment. Without a core of committed and informed key staff within the client organisation it will be impossible to spread the culture change to partners.

Delivery Mechanisms

The operation of the Partnering process once it has begun requires that decisions on technical, relationship and contractual matters must be made as close to the workforce as possible. Organisational change is required which will produce:

- Organisations that are less hierarchical
- Shortened lines of communication
- People close to the workforce being given the data and clearly defined powers to make decisions.

Pilot Project

The Partnering process may be tested on a pilot project. This should be staffed with the key personnel who have been identified and assessed during the process described above and found to be suitable albeit with some coaching.

The outcome of this project and the effect of Partnering will be evaluated and the lessons learned, analysed and stored for future reference. The newly experienced staff will be required to provide the benefit of this knowledge to future projects. Experience on this project should determine how far and how fast the client can extend Partnering to other activities or projects.

Examples of Good Practice

The Benefits Agency Estates

The Benefits Agency Estates manage the facilities occupied by the Benefits Agency. The Benefits Agency (BA) is an Executive Agency for the administration of a range of Social Security benefits. This service is delivered through a network of local offices spread across the country.

Prior to 1st April 1996 the BA was divided into 3 Territories each headed by a Territorial Director. Together with the Agency's Chief Executive and the Finance and Personnel Directors they form the BA's Management Team. (Currently there is a simple North/South division of the UK).

There is further sub-division into Areas, each the responsibility of an Area Director. These Areas were themselves divided into 159 local management units known as Districts, each headed by a District Manager.

Estates staff in all three Territories were given presentations. In the Southern Territory where the arrangement was to be piloted additional information of the intent to Partner was given. A User Group was formed to monitor developments and report back to colleagues in the other Territories.

Not only had Estates personnel to be convinced of the benefits of Partnering but their customers (i.e. Area Directors) needed to accept the case for creating such a working relationship. In order to get customer acceptance a separate series of presentations was made to each Territorial Director and his associated Area Directors. The content of these presentations was largely based upon the same material as that used for Estates staff.

As the exercise proceeded those staff in the Southern Territory immediately affected by the proposal were kept informed of developments via periodic User Group meetings. When the three companies competing for the Partnering contract were asked to give a formal presentation of their

individual proposals a selected audience of estates staff and customers was also invited to attend and evaluate each company's contribution.

The above demonstrates the care that has to be taken to instil the commitment to the process within an organisation that has decided to Partner.

2.3 THE SELECTION PROCESS

Introduction

Following the decision to try Partnering on a particular project or contract and having completed the process of inculcating its values within the client organisation, the next step is to select the partner(s). It is the purpose of this section to explain how this is done.

Although what follows appears to concentrate on the relationship between the client and the main contractor, the relationship with sub-contractors and main suppliers should also be put on a Partnering basis if the positive values that it encourages are to permeate the entire project. The principles set out below are applicable at all contractual interfaces.

With regard to the public sector the procurement process is governed by rules created by the European Union, HM Government and by various international regulations. The purpose of these rules is to ensure openness, fairness and accountability where public money is concerned and whilst they do not present barriers to Project Specific Partnering (see Section 1.6) they do modify the selection process and must be taken into account by it. The main rules are:

- The European Union's Public Procurement Directives and the related UK Regulations*
- Compulsory Competitive Tendering (in the case of local authorities and certain other defined authorities listed in the Local Government Planning and Land Act 1980 and the Local Government Act of 1988)

Relevant points from the European Union's Public Procurement Rules are considered below after which the main elements of the selection process as they are modified by these Rules, are discussed.

European Union's Public Procurement Directives

The Directives, while requiring competition to be transparent and open to contractors from all member states, include a number of elements which assist Partnering.

As an alternative to lowest price, contract award can be made according to 'the most economically advantageous offer', provided the criteria for this are clearly stated prior to tendering. These can include criteria relating to Partnering such as:

- Understanding and experience of Partnering
- Organisation structure proposed to effect Partnering
- Methods proposed to spread Partnering throughout the organisation

- * Reference to "European Union Public Procurement Rules" is to the EEC Treaty, the EC procurement directives as implemented in UK legislation, rulings of the European Court of Justice and other relevant EU law. Departments can obtain advice and guidance on the European Union Public Procurement Rules from PP Division, HM Treasury

Award procedures for public works will be either:

Open - where all interested parties must be allowed to tender.

Restricted - where only selected persons may tender.

Negotiated - the Negotiated Procedure can only be used under the very limited circumstances provided for in the Regulations (see CUP Guidance Note No. 51)⁽⁹⁾. (Because of this the Negotiated procedure is not covered by this document).

The Open and Restricted Award Procedures for public works are illustrated schematically in Figures 3(a) and 3(b) overleaf and the essential difference between the two is highlighted.

Whilst public authorities have a free choice of which of these two procedures to adopt, authorities wishing to Partner generally follow the Restricted route. The Open Procedure suffers from the disadvantage pointed out by Latham of allowing unlimited numbers to be invited to tender and is therefore only referred to in this document for comparison purposes.

Compulsory Competitive Tendering

In addition to their obligations under the Treaty of Rome and the EC Public Procurement Directives, in awarding contracts local authorities are bound by the requirements of Compulsory Competitive Tendering (CCT) if they wish to carry out work themselves. That is, a local authority can only carry out certain defined works or services in-house, through its own Direct Labour Organisation or Direct Service Organisation, if it has first gone to tender and won the contract in open competition with external contractors.

The requirements of the CCT regime are laid down in Part III of the Local Government, Planning and Land Act 1980, Part I of the Local Government Act 1988 and Sections 8-10 of the Local Government Act 1992, together with secondary legislation. These place a particular responsibility on local authorities to ensure that the competition process is carried out fairly.

The DOE has also issued statutory guidance on the Conduct of CCT (Circular 5/96) which represents the Secretary of State's views on how local authorities should conduct the letting of all contracts subject to CCT. The guidance identifies five key principles for good tendering practice:

- The tendering process should be clearly open and fair;
- The tendering process should be tailored to meet market as well as local authority needs;

- Tenders should specify the services required (outputs) rather than prescribe the methods needed to achieve it (inputs);
- There should be clear procedures for evaluating quality;
- Tenders should not put private contractors at a disadvantage.

CCT is compatible with partnering arrangements between the public and private sector. Indeed one of the objectives behind the recent introduction of longer statutory contract periods for some blue collar services was to provide a greater incentive to contractors to invest in the services and in longer term relationships.

Post tender partnering arrangements would be permissible under CCT provided that all tenderers were made aware of the provision for them prior to, or with, the invitation to tender and that the arrangements did not favour one bidder over others. This can include presentations showing how the tenderers intend to satisfy the client's requirements.

Partnering arrangements can be considered with all contractors, including trade contractors, subcontractors and suppliers.

Figure 3 (a) Choosing a Partner (Restricted Procedure)

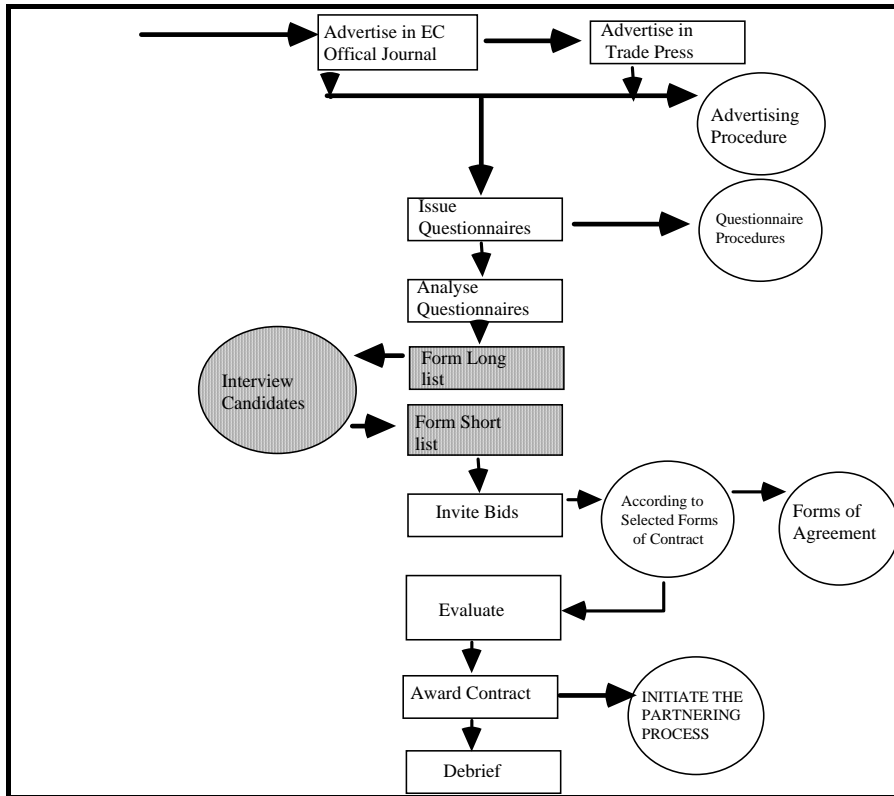
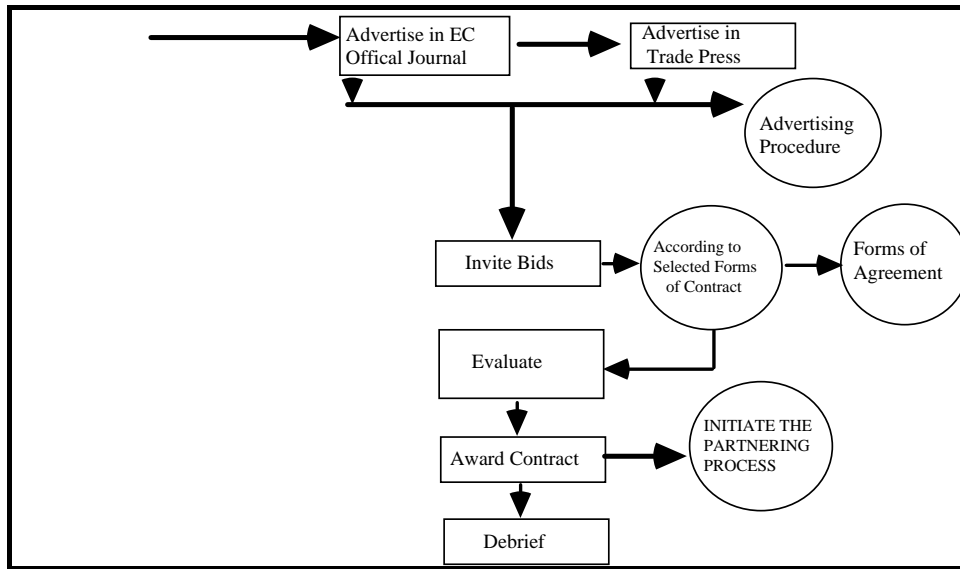


Figure 3 (b) Choosing a Partner (Open Procedure)



Post-tender partnering arrangements are permissible under CCT provided that all tenderers are aware of the provision for them prior to, or with, the invitation to tender and that the arrangements did not favour one bidder over others. This can include presentations showing how the tenderers intend to satisfy the client's requirement.

The DOE Guidance on the Conduct of Compulsory Competitive Tendering (Circular 5/96)⁽¹⁰⁾ sets out the key principles of competition and, inter alia, encourages authorities to adopt clear procedures for evaluating quality and price in assessing bids for both blue and white collar work. Authorities are also encouraged to adopt output rather than input based specifications for services as a means of considering different and more efficient proposals for providing a service. The five key principles of good tendering practice specified in the DOE Circular 5/96⁽¹⁰⁾ are :

- The tendering process should be clearly open and fair;
- The tendering process should be tailored to meet market as well as local authority needs;
- Tenders should specify the services required rather than prescribe the methods needed to achieve it;
- There should be clear procedures for evaluating quality;
- Tenders should not put private contractors at a disadvantage.

Partnering arrangements can be considered with all contractors, including trade contractors, subcontractors and suppliers.

The Stages of the Selection Process

The selection process described in this section comprises six main steps:

- Briefing contractors on commitment to Partner.

- Advertising the intention of the client, including the intent to partner.
- Pre-qualifying potential tenderers
- Inviting tenders
- Awarding contracts to successful tenderers
- De-briefing unsuccessful tenderers.

Briefing Contractors

The effectiveness of a Partnering programme is enhanced by clear explanations of purpose and procedure through seminars and workshops. This can also overcome the limitations of pre-qualification procedures and pre-disposed contractors to the Partnering programme.

Advertising

Both the EC Public Works Directive and CCT require construction works to be advertised, in the former case in the *Official Journal of the European Communities* and in the latter in the local and national specialist press. The intent to Partner should be made clear in these advertisements.

Pre-Qualification

Under both the Restricted and Open Procedures applicants are likely to be subject to pre-qualification processes. In the Open Procedure this will be based on fundamental issues of financial resources and technical competence and the pre-qualification material will accompany the invitation to tender. In the Restricted Procedure the forming of long and short lists of pre-qualified applicants will be based on an objective assessment of data provided by tenderers in response to questionnaires sent out by the client. The questionnaire can include matters which may be relevant to an assessment of the tenderer's suitability for Partnering.

This is supported by the definition provided by the European Court of Justice in the Beentjes Case.⁽¹¹⁾ In considering what was permitted at each stage the Court ruled that at the selection stage "The criterion of specific experience for the work to be carried out was a legitimate criterion of technical ability and knowledge for ascertaining the suitability of contractors". From this it can reasonably be inferred that as experience of working in a Partnering mode can be regarded by a contracting authority as a necessary criterion for the work to be carried out it can figure at the selection stage for works contracts.

An illustrative methodology of a selection process under the Restricted Procedure is set out in the following paragraphs.

The Restricted Procedure

The assessment of the replies to the questionnaires will be used in forming the long list. They will also be the basis for further questioning at interviews to form the short list.

The short list candidates are usually interviewed by assessors (evaluators) who each concentrate on different aspects.

Candidates are scored against agreed criteria on the response to questions asked by the assessor and a final score is produced on a summary checklist. An example of such a checklist is illustrated in Figure 4 overleaf. The results from these summaries are discussed amongst the assessors and amendments can be made by unanimous decision supported by written argument. An accurate record should be kept of all interviews. These form an integral part of the auditing process referred to later.

Local Authority clients acknowledge the value of this procedure but may feel that they would be prevented by time and resource restraints from adopting a 2-stage approach. They are more likely to dispense with the formation of a short list and proceed directly to a tender list from the assessment of questionnaires.

The selection procedure described is very much in line with the recommendations of "Quality in the Balance"⁽⁷⁾ referred to previously on page 6.

Inviting Tenders

Under the Restricted Procedure tenders are invited from the candidates on the short list. If the "most economically advantageous offer" route is chosen, tenders can be based on both quality and price considerations. These can include matters relating to Partnering providing they have been specified as the relevant factors behind the criterion of the "most economically advantageous offer" in the contract notice or invitation to tender documentation.

Price should be objectively weighted against quality (including Partnering) in a matrix that takes price and non-price factors into account. The criteria to be used should be made available to all tenderers. It has been stated that "*The aim of the evaluation process is to select the proposal which represents the best overall value for money*"⁽¹²⁾

Both the Construction Industry Board's Working Group 4 in its draft paper on Quality/Price Mechanism⁽¹²⁾ and "Quality in the Balance"⁽⁷⁾ describe scoring systems for the evaluation of tenders on the basis of price and quality which would be suitable for the inclusion of Partnering criteria.

Contract Award

As suggested above the contract may be awarded on both price and non-price factors. Non-price factors may include the tenderer's understanding of the client's objectives and requirements. Knowledge of and willingness to Partner can be part of these requirements and included in an evaluation of the "most economically advantageous offer". Again with reference to the Beentjes case (see page 18) the European Court of Justice ruled that where the contract was to be made on the "most economically advantageous offer" it was left to the authority inviting the tenders to choose the criteria on which it proposed to base its decision, subject to the choice being limited to criteria aimed at

Figure 4

INTERVIEW SUMMARY

INVITEES				
Criteria	Possible Points	Points Awarded	Weighting	Weighted Points
1. Presentation at Interview*	5		2	
2. Response to Questions*	5		3	
3. Scheme Specific Thoughts	5		3	
4. Response to Ground Investigation arrangements	5		4	
5. Proposed Organisation Structure*	5		5	
6. Response to Specimen Design	5		5	
7. Response to Method of Payment	5		2	
8. Evaluation of CVs of key personnel*	5		3	
9. Response to QA/QC Role*	5		5	
10. Response to Planning	5		5	
11. Response to Traffic Management	5		5	
12. Design and Construct Experience	5		5	
13. Joint Venture/Consortium Ability	5		2	
14. Health and Safety Record	5		5	
15. Avoidance of disputes*	5		5	
16. Corporate Structure	5		5	
17. Contractors particular strengths and weaknesses*	5		5	
TOTAL POINTS				
FINAL RANKING				

Evaluator Signature Evaluator Signature

Evaluator Signature Evaluator Signature

Date.....

* **These criteria could be relevant to Partnering**

** **In addition to the above criteria Local Authorities can also include environment, race and equal opportunities**

identifying an offer which was the most economically advantageous. As Partnering can demonstrate economic benefits, criteria based on Partnering will have economic impact and should be acceptable criteria to the Commission.

In awarding contracts local authorities must not have regard to non commercial matters as set down by Part II of the Local Government Act 1988.

In the circular from the DOE dated 2 April 1996 it states that there may be elements of performance that are difficult to quantify and price realistically and these need to be included in the evaluation. Questions relating to Partnering could fall into this category. In addition to the above, authorities may ask 6 approved questions about a firm's race relations policy.

Following award, agreement is made to Partner, and details of the arrangement will be finalised. However, the essential elements of this arrangement should have been described in the tender documentation as follows.

The intention of the parties

A Charter

A monitoring of performance

Continuous improvement

Resolution of disputes

Good communications

Definition of roles of:

- Champions
- Facilitators
- Adjudicators
- Disputes Resolution Board

The Contract

The general elements of construction contracts are shown in Figure 5 below. The provisions that are affected by Partnering are shaded and these have to be carefully examined.

The Partnering arrangement should co-exist with the construction contract as a separate document without modifying the provisions of that contract. However if a standard form is used for the main contract any clause that would interfere with the Partnering process should be changed beforehand (i.e. pre invitation to tender). "*Customisation of such documentation is acceptable but local authorities will need to justify significant variations if challenged*"¹⁰ Particular attention should be given to clauses:

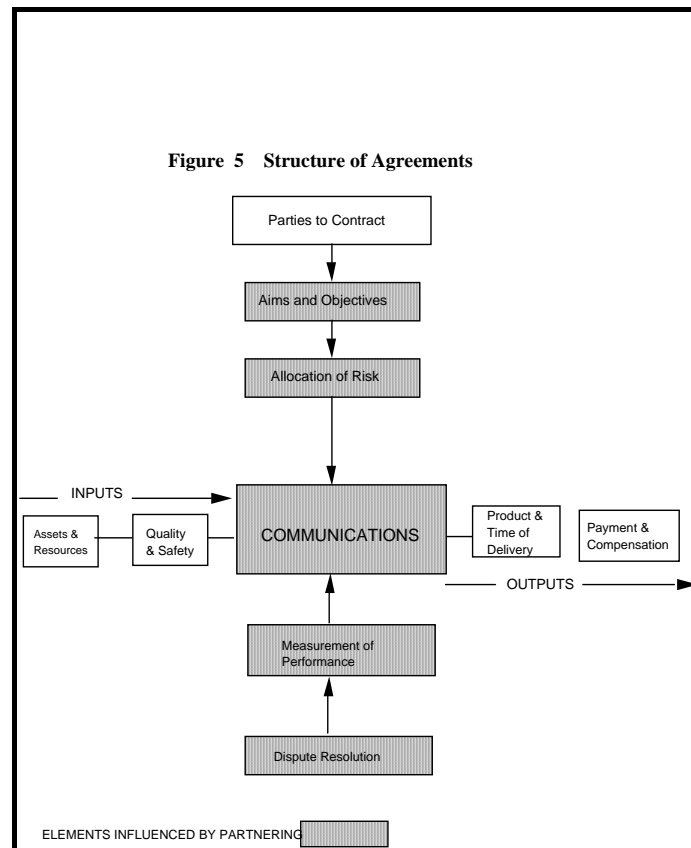
Giving notices

Resolving disputes

Controlling information and communication

Debriefing

When a contract is awarded the unsuccessful tenderers should be individually debriefed on the reasons for their failure. This also applies to failure to get onto a prequalification long or short list.



Example of Good Practice

The Arizona Department of Transportation (ADOT)

ADOT is prevented by public accountability from prequalifying only those contractors who state that they are prepared to Partner. Prequalification can only be on matters of technical competence and financial resources. However some regard can be made to previous performance.

ADOT has overcome this selection disability by widespread dissemination of its intent through seminars and workshops. These have focused on 5 topics:

- What is Partnering
- Why do we need Partnering
- Does Partnering really work
- What does Partnering involve
- ADOT's implementation procedure

Initially ADOT held a conference on 2nd and 3rd October 1991 which was attended by 722 delegates representing ADOT departments, contractors,

engineers, subcontractors and suppliers. There have been a series of follow up workshops. ADOT set itself the target of making its intention clear to all stakeholders in its activities. In inviting delegates it emphasised that the success of implementing Partnering in the ADOT highway construction programme would only be achieved through mutual participation and commitment.

Success has been reported through bulletins and conferences and the result is that now all large projects are on a Partnering basis.

While contracts are awarded on a low bid basis and the Partnering agreement is on a voluntary basis overlaying and not affecting in any way the basic construction contract the Partnering philosophy has been firmly entrenched by the above programme. This has changed the bidding environment to one where no claims are expected. Bidders expect to enter into Partnering agreements. The Partnering agreement takes the form of a covenant of good faith and fair dealing as illustrated below. This is provided for in the special conditions of the contract. The Dispute Resolution Procedure is also provided for in these conditions.

The following Example demonstrates how Partnering can be entered into successfully on a voluntary basis by careful preparation of the marketplace even where public accountability requirements are paramount.

COVENANT OF GOOD FAITH AND FAIR DEALING

This contract imposes an obligation of good faith and fair dealing in its performance and enforcement.

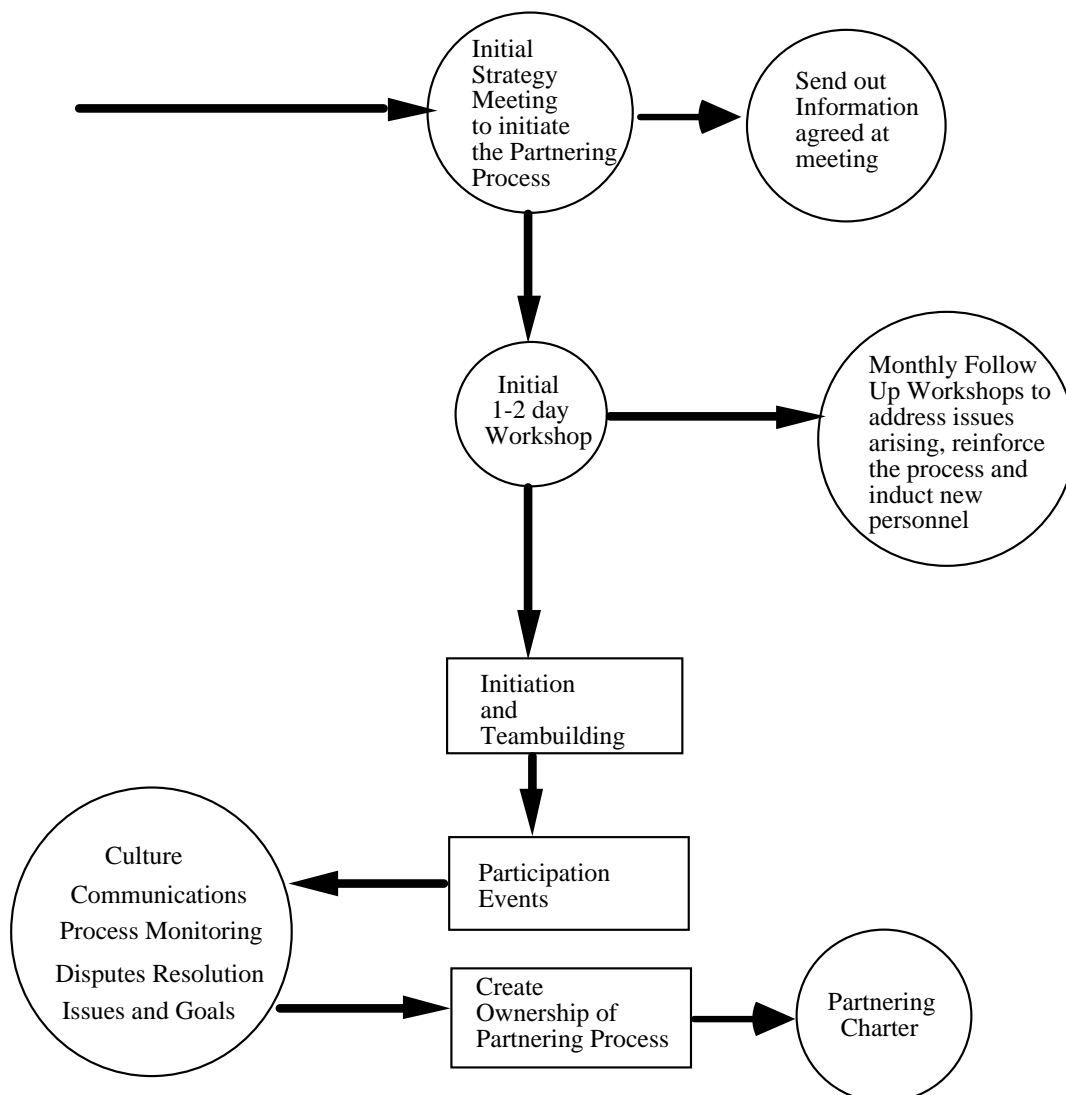
The Contractor and the Department, with a positive commitment to honesty and integrity, agree to the following mutual duties:

- A. *Each will function within the laws and statutes applicable to their duties and responsibilities.*
- B. *Each will assist in the other's performance.*
- C. *Each will avoid hindering the other's performance.*
- D. *Each will proceed to fulfil its obligations diligently.*
- E. *Each will co-operative in the common endeavour of the contract.*

2.4 INITIATING PARTNERING

It is essential as quickly as possible after the award of contract to initiate the Partnering process of aligning objectives, creating trust and establishing teamwork amongst all those concerned with the project. The process for achieving this is agreed at the Initial Strategy Meeting between the parties but the key tool for inculcating the culture amongst those concerned with the project is the Workshop. This section sets out the steps for initiating the Partnering process by describing first the main instruments which are the Initial Strategy Meeting, the Workshop(s) and the Partnering Charter and then the roles of the key individuals, the Champions and the Facilitators. The sequence of events is demonstrated schematically in Figure 6 below.

Figure 6 Initiating the Partnering Process



Initial Strategy Meeting

The Initial Strategy Meeting should take place as soon as possible after the award of a contract by the principals of the main contracting parties to agree methods of installing the Partnering culture in their joint undertaking. This meeting should be attended by:

- Project Owner
- Project Sponsor
- Project Manager
- Senior Executive of Contractor
- Project Manager's or Client's Site Representative
- Contractor's Site Manager
- Consultants
- Partnering Champions (see page 28)
- The Facilitator (see page 31)

The Strategy Meeting should decide on the principles and objectives of the Partnering process to be applied to the particular undertaking. The following questions should be addressed:

- What is Partnering and how is it to be applied to the undertaking?
- What has already been decided?
- What has to happen next?
- What will the difficulties and issues be ?
- How do we proceed?

The meeting will make preliminary selection of the various Champions whose nomination will be finally confirmed at the Workshop. Champions should be installed at key levels in the respective organisations both on and off site. These people must be fully committed to the Partnering process and have full support within the Partnering organisational structure.

The date, venue, agenda of and the parties to attend the Initial Workshop will be decided at the Strategy Meeting and this will be sent to the delegates to this Workshop with other information agreed at the meeting. They will be asked to prepare lists of issues they wish to raise. Its purpose is to ensure that all attendees at the Workshop are fully briefed and their concerns taken into account. The Strategy Meeting may decide to set up a subcommittee to attend to the detailed arrangements for the Workshop.

Initial Workshop

The initial Partnering Workshop is the most important element of the process. It is here that the aspirations for the Partnering arrangements are set out and the process of establishing the culture amongst all those involved in the project begins. Whilst the initial Workshop is clearly the most important, additional workshops may be used throughout the project to maintain and reinforce the Partnering culture.

The initial Workshop should be held about 3 weeks after the start of the contract. However there have been cases where Partnering, via the mechanism of the Workshop, has been successfully introduced later in order to remedy adversarial relationships that have already developed. The Workshop will be attended by key personnel of the parties to the project including representatives of the client, contractors, subcontractors, consultants, and the main suppliers. Also invited to attend may be others affected by the project including representatives of the work force, the utilities, adjacent communities and users of facilities affected by the works. A venue away from the sites and offices of the contracting parties should be chosen. An hotel with suitable conference facilities would be ideal. Participants should not normally exceed 40.

The Workshop which should be monitored by an independent professional Facilitator, has as its principal objectives, to promote teamworking, to get people with apparently divergent interests to willingly work together, to communicate freely and to develop common goals relating to the success of the project. Brainstorming techniques are used to identify the problems that are likely to affect the project, and to jointly agree solutions. At the end of the Workshop those attending should have a sense of ownership of the Partnering process.

The Workshop agenda should include the following:

- An introduction by the client's Partnering Champion and a sharing of views and expectations of the Workshop
- An overview of the Partnering process given by the Facilitator
- Presentations identifying the usual causes of conflict and discussions on avoidance
- Problem solving exercises using live issues, attempting to secure mutually advantageous solutions and establishing a project code of ethics. These activities should be undertaken by small teams reporting back to and promoting discussion with the whole group.
- Identification of goals for the project. These also should be undertaken by small teams, reporting back to the plenary group.
- The identification of issues that may be barriers, problems or opportunities. These issues may relate to the Partnering process, the project or both. These activities will use brainstorming techniques and encourage the formation of constructive ideas. They will be monitored by the Facilitator.

- The summary of issues may be allocated to teams to develop specific action plans followed by a group discussion and finalisation of the action plans.
- The establishment of a Dispute Resolution Procedure
- The establishment of monitoring criteria and procedure
- The election of 'Champions'
- The drawing up of a Partnering Charter assisted by the Facilitator
- Workshop summing up by the Partnering Champions of both client and contractor

The Facilitator will produce and circulate a written account of the Workshop including agreed procedures, e.g. for monitoring performance etc. and ascribing actions to individuals.

In addition to the formal business to be conducted the Workshop provides a good opportunity for networking. Relationships can be established that would normally take months to achieve under traditional contracting practice.

Other Workshops

During the course of a project there should be further periodic Workshops to monitor the performance of the process and to identify opportunities and resolve problems.

On completion of a project there should be a Workshop to summarise and evaluate the results of the Partnering process and to provide feedback for the future.

The Partnering Charter

The Partnering Charter is drawn up at the initial Workshop by the participants with the assistance of the Facilitator. This document represents the common commitment of all the participants to the Partnering process.

The general matters that should be addressed in the Charter are listed below and an example of an actual Charter is shown in Figure 7 on page 29.

- A statement committing the parties to abide by the aims of Partnering (see 1.4 on page 2) including a description of how people should behave to each other, emphasising what should be encouraged and what should be avoided leading amongst other things to the following:

Co-operation on all matters including decision making
Fair allocation of risk to those best able to manage it and benefit from it
Continuous search for improvement and a fair sharing of incentives for success

- An expression of intent to communicate freely:
 - Seeking opportunities, and solutions to problems
 - Giving early warning on potential problems
 - Adopting a no-blame attitude
- Acknowledgement by the client that the contractors and suppliers should make a fair return on their efforts and that the client will help to achieve this within the constraints of the contract.
- Acknowledgement that problems may occur during the currency of the contract. In addition to co-operating to solve these expeditiously try to identify mechanisms for ensuring that such problems do not reoccur.
- Acknowledgement that relationships may deteriorate due to disputes being left unresolved. Agree to involve the Disputes Resolution Procedure agreed at the Workshop as speedily as possible and to maintain its integrity. (See Section 2.7).
- Strong expression of ownership of the Partnering process as described at the Workshop and wish to maintain its effectiveness throughout the duration of the contract. Commit to monitoring its performance in accordance with the procedure set up at the Workshop and to investigate any deviations from acceptable standards so that corrections can be made as soon as possible.
- Have a commitment to a safe project with a high quality outcome and undertake as individuals to comment on these matters whenever concern is felt.
- Attach to the Charter a list of factors identified at the Workshop which will either lead to or impede success of the Partnering process. Make a commitment to attend to these and to maintain an equivalent list throughout the duration of the project.
- The Charter must be signed by all participants at the Workshop. Whenever problems arise in relationships or at other appropriate times this document should be brought to each party's attention. It should also be displayed prominently at progress meetings and in project offices both on and off site.

The Charter should also contain as many specific points of interest and importance to the parties and the project as possible. Every effort should be

made to avoid the production of a bland document that contains standard words of meaningless comfort.

The Champions and their Role

Partnering requires a high level of commitment. Keeping this commitment in place and maintaining the integrity of the Partnering process at all times is the first priority of the Champions. They are the sentinels of the process.

Champions must be negotiators and persuaders rather than commanders. As they will have to explain the Partnering process to others at all levels within the organisation they must have the ability to communicate and make presentations. This ability can be enhanced by training.

Figure 7

EXAMPLE OF A PARTNERING CHARTER

The initial appointment of a Champion will be in the client organisation. This will be made immediately after the client's decision to adopt a Partnering approach. This initial appointee, who will be referred to as the Partnering Champion throughout this document, will be responsible for initiating and nurturing the Partnering process in his own organisation and in spreading the culture to all personnel involved in Partnering. He/she must have the full backing of the top management of his/her organisation.

The Partnering Champion will be involved in the selection and monitoring of Facilitators. He/she should be involved in the selection process for partners, whether they be contractors, subcontractors or main suppliers. They will be involved in the selection, training and monitoring of additional Champions at other levels in their organisation.

Since the client will have made his intention to Partner clear in the tender documentation prospective, contractor partners should appoint a counterpart Partnering Champion to spread the culture throughout his organisation.

Following the award of a contract, on large projects Champions will be appointed at various levels. The number of Champions required depends on the size of the project but there should be at least one person with this responsibility in each of the organisations who are party to the Partnering arrangement. On large projects Champions should be installed at key points within the project process both on and off site. On a small site a single Champion may be appointed, who could be the project manager. If he is not, he must have a strong enough link to the next level of command for his views on the Partnering process to prevail.

To succeed in this assignment the Champions must be "empowered" and have the full support of senior members of the organisation to whom they report. They must be given all the data necessary to function in this role and must have terms of reference that allow them to reach joint decisions with their opposite numbers in the partner's organisation.

Champions will play lead roles in Partnering workshops and team building exercises. Champions will keep up to date with the latest Partnering practices and from time to time will disseminate this information by means of workshops and seminars to the remainder of the staff both on sites and permanent offices. They will continuously review other Partnering relationships at their level and take whatever steps within their power to remedy apparent defects.

If an organisation is involved in Partnering to a large scale it is likely to need a department that is solely committed to the Partnering process.

On a large project the various Champions should meet together from time to time to review the process.

The Facilitator(s)

Facilitators should be independent. They should be knowledgeable in the Partnering process and experienced in the construction industry. They will conduct workshops. However they are there to offer passive assistance and should not allow their own views to influence the decision making of the Workshop. They should concentrate on ensuring that the participants understand the Partnering process, getting the parties to work together and, from the background, give subtle direction and advice ensuring that everyone is participating.

A good facilitator should possess:

- Communication and listening skills
- A basic understanding of construction
- Organisational skills
- Flexibility
- Problem solving and conflict management skills
- A willingness to become familiar with the project and the people
- Accessibility throughout the duration of the project

Good Facilitators will be a positive role model and will have the personality to persuade, coach and train people to make the adjustment to the new culture. They will not offer personal opinions, attack or criticise participants or their ideas or get personally involved in any problems.

Facilitators should be appointed as soon after the award of contract as possible. This may be the client's choice verbally confirmed by the Contractor.

Payment of the Facilitator's fees and costs and the costs of the Workshop should be shared equally by the client and contractor.

Facilitators should participate in the Strategy Meeting and should implement the decisions of that meeting for the conduct of the Initial Workshop as described on page 25. Subsequently they will conduct the Initial Workshop in the manner and to the extent decided by the Strategy Meeting.

After the Initial Workshop Facilitators will prepare and distribute a written record of the proceedings of the Workshop. The Facilitators should receive copies of Partnering Performance Evaluation reports as illustrated in Figure 5 and should participate in periodic review workshops. Again they should prepare and distribute written reviews of these workshops. They should also be involved in the Post Project Evaluation Workshop and report.

Examples of Good Practice

CHEVRON - ALBA FIELD, NORTH SEA

The decision to Partner on the Alba Field developed out of a Quality Improvement Programme. Workshops involving team building were initiated progressively as the workforce built up. These initial workshops were of two to three days duration and were in venues detached from the job sites where people could get together over the total period of the workshop. These were followed by modular workshops dealing with real issues.

The Quality Improvement Programme required people involved in a problem to sit down together and solve it face to face. Champions were appointed at various levels to assist in the problem solving.

A Review Board comprising the various Champions was established to resolve all outstanding problems. There were no hidden agendas, communications were open and continually monitored to ensure that that remained the case.

The degree of integration between the personnel of Chevron and their main contractor Brown & Root was so complete that it was difficult to identify people as belonging to the separate companies.

Both contractor and client staff went to the same in-house and outside training courses.

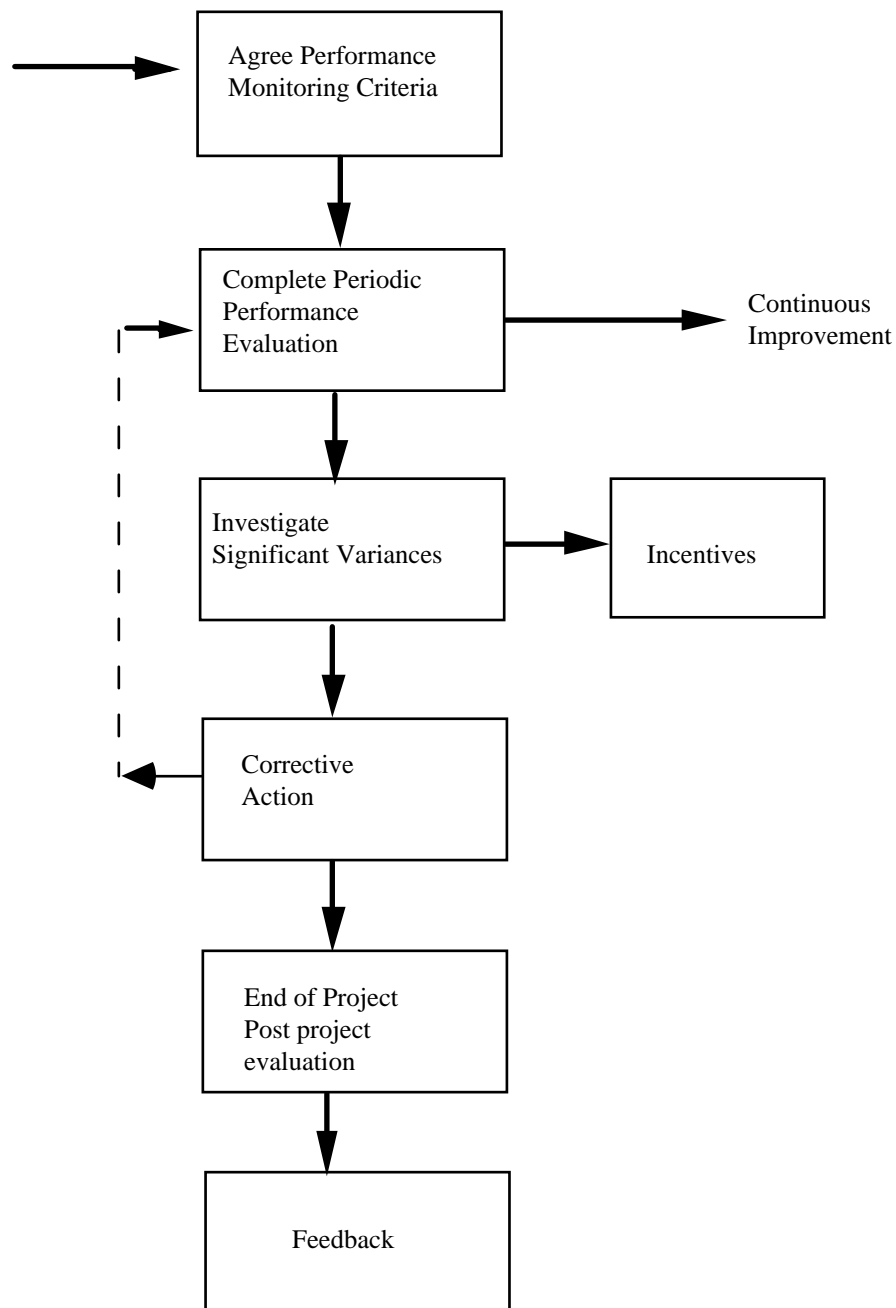
The above is an example of the use of Workshops to instil the culture of Partnering on to a project.

2.5 MONITORING PERFORMANCE

Establishing Monitoring Criteria

The aim of the monitoring process is to ensure that the objectives set out in the Partnering Charter remain on track, that the performance monitoring criteria agreed at the initial Partnering workshop are met and to provide information for the continuous improvement process. The elements of the monitoring process are illustrated in Figure 8.

Figure 8 Monitoring Performance



The monitoring criteria established at the initial Partnering workshop relate both to relationships and to project performance.

Performance evaluation systems generally are designed to:

- Record achievement in relation to the stated project objectives
- Be fair and equitable to each partner
- Promote understanding and commitment
- Reinforce open and direct communication
- Be easy to administer
- Develop a team-working environment
- Provide feedback to foster continuous improvement

While much of the reporting is on a subjective basis even this can be related to meaningful numerical measure of value if the reporting is widespread and the criteria are given weightings.

Items that can be chosen and weighted include the following:

- Safety
- Quality
- Commitment
- Issue Resolution
- Dispute Avoidance
- Co-operation
- Communication
- Budget Control
- Programme Control
- Public Relations
- Timely Paperwork

Budget control and programme control can also be given specific numerical targets.

Performance Evaluation Reports

Performance Evaluation Reports are normally made monthly by individual members of the various teams assessing the team performance. They are collected and summarised separately for contractor and client and are discussed at monthly meetings of representatives of the Partnering organisations where a consensus is agreed.

It is quite normal for each summarised report to consist of between 20 and 40 individual assessments. An example of such a report is shown in Figure 9 on page 35. As indicated above by weighting the criteria a degree of objectivity is achieved. A specific weighting procedure should be devised for each project and should relate to those factors that are considered important for the project.

Figure 9

PARTNERING PERFORMANCE EVALUATION				
Name/Job Title: Jim Smith		Date: 6 June 1980		
Project: Highbridge				
Partnering performance is to be scored in 10% increments for the project each month against the following criteria. The weightings are set for the project. Comments should be made to support the evaluations. Add a page if you wish to identify important decisions				
Criteria	Score (10% - 100%)	Weighting (100%)	Total	Comments
1. Co-operation	60%	20%	12%	Good but could be faster
2. Communication	80%	25%	20%	Really good sharing
3. Tackling problems	70%	20%	14%	Good
4. Teambuilding	80%	15%	12%	Excellent
5. Identifying Opportunities	50%	20%	10%	Need more brainstorming
			68%	
<p>General Comments: Generally good but a number of areas need more work such as co-operation and opportunities.</p> <p style="text-align: right;">Jim Smith</p>				

Investigate Significant Variances

Performance evaluation reports may show results that significantly depart from the standard set out at the Workshop. Where this is the case the results should be examined and discussed and reasons for them sought. The reports may also indicate opportunities for improvement that should be followed up. The results may suggest topics for brainstorming sessions.

Establish Corrective Action

If the results are unacceptably below the norm they have to be investigated and corrective action plans drawn up by the management responsible for the operation. These should be detailed and should allocate specific responsibility.

Post Project Evaluation

At the end of a project a Post Project Evaluation report is prepared by the client's and contractor's Project Champions assisted by the Facilitator, which summarises the results from the periodic reports and produces feedback material for future use. This material is also used in the development of the Partnering process and in producing case studies for future Workshops and seminars. Areas for further study are identified.

Partnering should be treated as a live continuous process.

Incentives

Incentives should be considered both for organisations and individuals. In respect of individuals, performance reporting and issue identification should involve incentives. These are designed to stimulate a continuous interest and a measure of constructive competition. However care must be taken to ensure that the benefits are fairly shared by all contributors. Benefits may be non-monetary.

Significant savings in cost that result from improvement in performance should also be shared in agreed proportions between the Partnering organisations. The arrangement should be included in the contract documents. This procedure should be established at the beginning of the project and should be based on auditable calculations.

Examples of Good Practice

MOLECULAR BIOLOGY RESEARCH FACILITY, UNIT III AT THE UNIVERSITY OF CALIFORNIA, SAN DIEGO

The contract was awarded by the University to Blake Construction Company Inc. Because of some initial difficulties the introductory Partnering Workshop was held more than 2 months after the award of the contract. By that time some adversarial relationships had developed on certain items between the client and the contractor's project managers.

Following the initial 2-day Partnering Workshop half day follow up meetings were held at 6 monthly intervals.

At each of the follow up meetings in addition to the performance evaluation summaries being compared against the criteria and discussed, the progress of specific problem solving activities were evaluated for effectiveness.

These problem solving exercises related to a number of perceived obstacles. Examples of these were:

- Communication
- Change order and field order approvals
- Submittal process

Although the Workshop procedure began late it brought the whole project back into line and removed the adversarialism that had originally developed.

The above example shows how performance evaluation procedures identified and helped to remedy problems that had occurred on a project even where adversarial relationships had started to take hold because of delays in getting the process started.

2.6 CONTINUOUS IMPROVEMENT

The Steps to Improvement

The achievement of continuous improvement is one of the prime motives for Partnering. Without a commitment to continuous improvement the full range of benefits from Partnering will not be realised.

The steps to achieving continuous improvement are:

Clear goals have to be established.

People have to be convinced that change and improvement is in their best interest.

Organisational barriers to change have to be eliminated.

Open forums for exchange of views and debate have to be set up.

A simple measurement system should be set up which immediately focuses attention on key issues.

Ideas should be systematically assessed to ensure that they can be developed into opportunities.

Targets should be continually reviewed.

Management interest and appreciation should be continually displayed.

There must be a no blame attitude.

Recognition and reward must be maintained.

The continuous improvement process is illustrated in Figure 10 overleaf.

Elements of Improvement

There are four essential elements to achieving improvement:

Attitude

Knowledge

Techniques

Training and Coaching

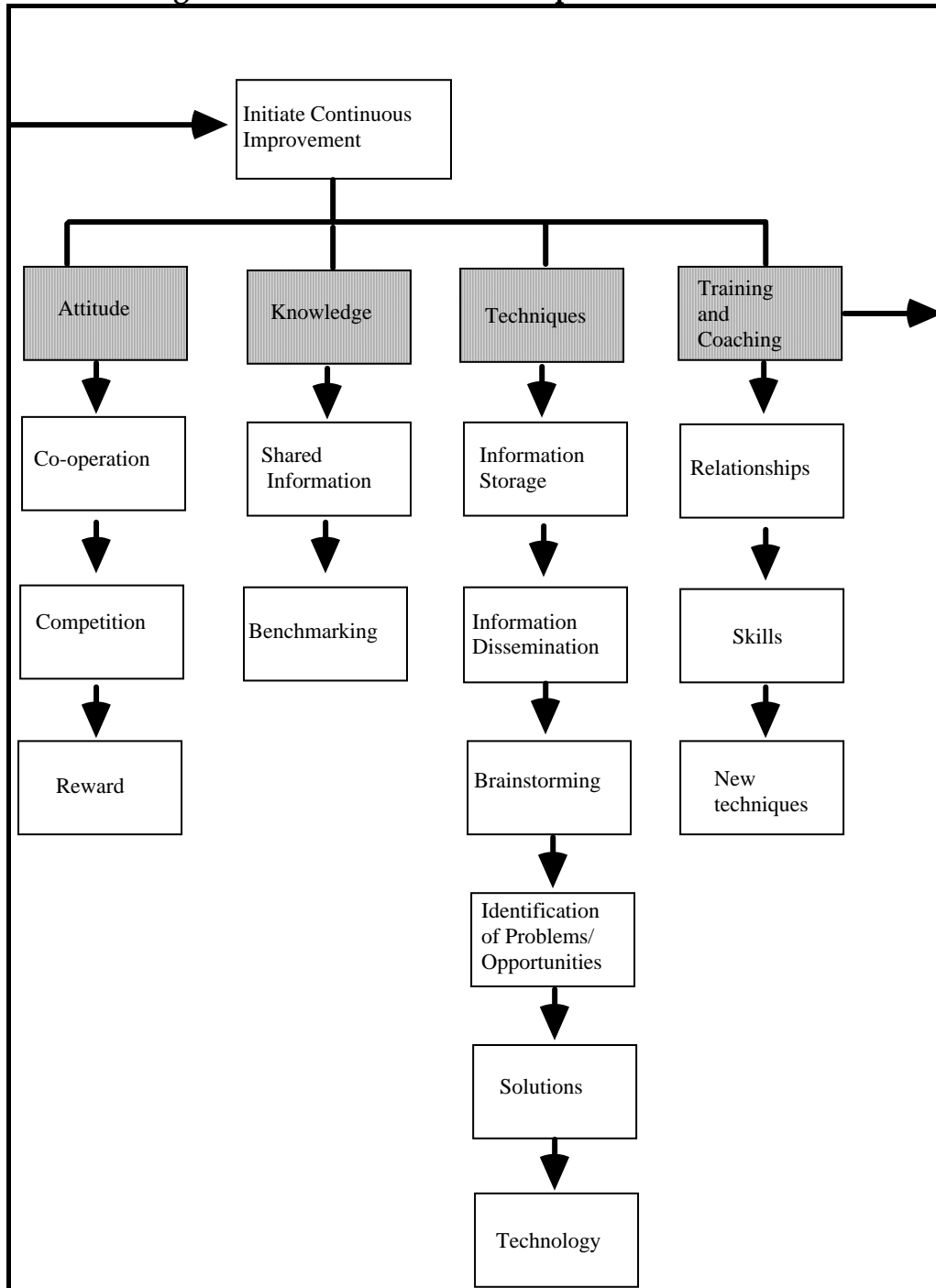
Attitude

The most important driver of continuous improvement is attitude. This is fostered through the teamworking promoted by Partnering and the Workshop(s). The attitude aimed at is co-operative but constructively competitive as both client's and contractor's staff are competing to find issues and opportunities for improvement. Rewards and recognition stimulate these activities.

Knowledge

Partnering promotes the sharing of information. This allows problems and opportunities to be examined from a variety of directions. It speeds up the removal of barriers and it also provides for early warning of problems so that a greater range of solutions may be considered. It allows shared knowledge to be used in making value judgements.

Figure 10 The Continuous Improvement Process



Techniques

A variety of techniques are made accessible by the Partnering process.

The techniques used in continuous improvement fall into five main categories:

- Information storage
- Information dissemination
- Brainstorming

Identification of problems and opportunities
Providing solutions and making comparative evaluations of alternatives
Technology related to new processes

These are standard and well known techniques and are not themselves specific to Partnering. However Partnering introduces a structured and formalised approach to the process of continuous improvement and provides a stimulus to the participants.

Training and Coaching

Coaching in a Partnering environment involves encouragement to look beyond immediate individual boundaries and to think as teams. The use of facilitators aids this process. Breaking down barriers is a continual coaching activity. Setting and upgrading targets to expand goals is an activity that benefits from coaching.

Training is more generally dealt with in Part 3.

Examples of Good Practice

BP - ANDREWS/CYRUS DEVELOPMENT NORTH SEA

The original BP estimate was £450m based on previous records of similar work. At this cost the project was not viable. Within six months of appointing key contractors initially on a cost reimbursable basis an estimate of £373m was produced with a first oil delivery date of 1 January 1997. This was the estimate that was approved by BP to sanction the development of the field. Subsequently through a process of continuous improvement revised estimates have been made at various stages from £365m reducing to £325m then further reducing to £290m with the delivery dates improving from 15 October 1996 through 1 September 1996 to 15 July 1996.

This has been achieved by all parties working together and sharing information.

As each new improved level of estimate was reached there were "away days" set up to encourage participants to brainstorm to new levels of improvement.

All the contractors saw the total make-up of the sanction estimate. This was the first time that this was ever done in BP as in the past figures which BP considered to be commercially sensitive were always kept hidden. This gave an added sense of team working and total ownership of the estimate and the project to each company and each individual. Each company was given a comprehensive copy of the total estimate. Information was shared completely between all of the companies involved.

Initially until the sanction estimate was achieved payment was made by BP to the contractors on a cost reimbursable basis. Thereafter incentive arrangements were introduced which involved sharing savings on target costs on a 54% to the contractors and a 46% to the client basis. If there were cost overruns these were also shared on a similar basis but as far as the contractor was concerned this loss was capped at a £27m total.

The above is a good example of the use of formal process improvement techniques and the benefits that can accrue from them. It also shows how essential the full sharing of information is in the procedure.

2.7 DISPUTES AVOIDANCE/DISPUTES RESOLUTION

The avoidance or early resolution of contentious issues is one of the primary aims of Partnering and the extent to which this is achieved is one of the key objective measures of the success or otherwise of the Partnering arrangement.

In order to achieve these aims it is essential to install a dispute avoidance/resolution procedure that can be accommodated within the construction contract. Where a standard form of contract is used amendments should be made prior to tenders being sought. This is to ensure consistency with the Partnering objectives e.g. the Disputes Resolution and Notification of Claims Procedures should be compatible with what is intended to form part of the Partnering arrangements and reflect the non-adversarial approach to dispute resolution. Both central and local government should seek the assistance of their in-house legal department in making such amendments. In addition to the contractual mechanisms (which will usually include adjudication and arbitration) a non-contractual Disputes Resolution Procedure should be agreed post-contract at the initial Workshop and be incorporated into the Partnering arrangement.

The entire procedure incorporating both the contractual and non-contractual mechanisms is set out schematically in Figure 11 on page 43 and described in pages that follow. Whilst adjudication is not currently compulsory the Housing Grants, Construction and Regeneration Bill seeks to make it so, in all construction contracts.

Disputes Escalation Ladder

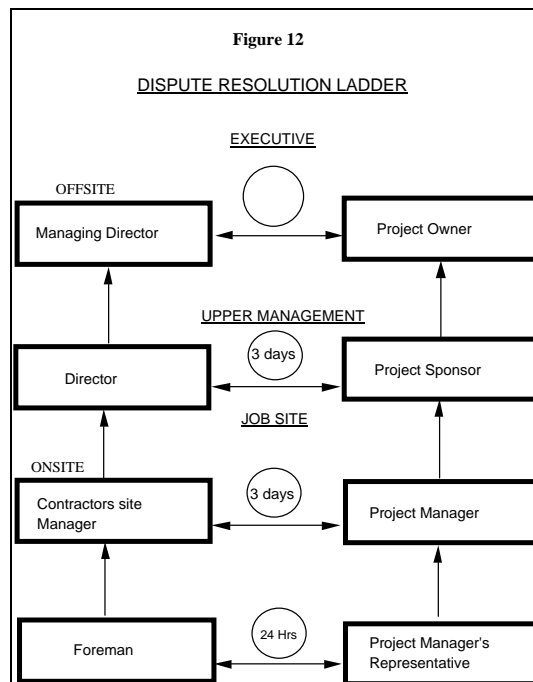
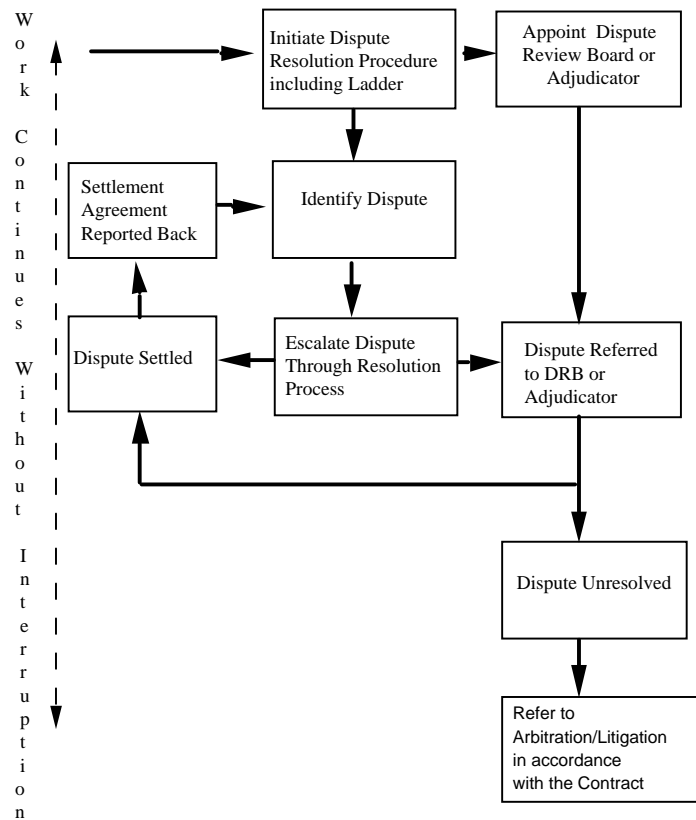
Consistent with the spirit of Partnering the preferred method of such non-contractual process of avoidance/resolution is usually face to face by the individuals concerned involving the use of a Disputes Escalation Ladder. At the initial Workshop a Disputes Escalation Ladder is usually set up, with up to three levels at which disputes can be resolved on site with a further two levels off site. An example of such a ladder is provided in Figure 12 on page 43.

The first point of resolution is at the place where the dispute occurs. It is desirable that it is settled here but, if not, it should only be held at this level for a short duration, for example 24 hours. If the dispute is not resolved here the Dispute Notification Form (see Figure 13 page 45) will be issued passing the dispute for settlement to the next level on the ladder.

If the majority of disputes are to be settled at the first level before being passed for resolution to the next stage, a great deal of care must be given to deciding the degree of empowerment of staff here. This again reinforces a main principle of Partnering, namely effective empowerment at work interfaces. The example suggests that up to three working days should be

allowed for resolution at subsequent levels. This of course is a matter to be decided when the ladder is first agreed but in the interest of speedy resolution this time period needs to be adhered to.

Figure 11 Dispute Resolution/Avoidance



It is desirable that the appropriate Champions are involved in this dispute resolution process and shown on the Ladder.

Contractual Dispute Resolution Process

In addition to the non-contractual resolution of disputes the construction contract may provide for a variety of mechanisms such as:

- Adjudication
- Disputes Review Board
- Arbitration

It is suggested that these should only be used after the non-contractual escalation process has failed to provide a solution. The formality of the contractual procedures may help to stimulate settlement by the non-contractual and more informal route.

The time limit for referral to adjudication or to a Dispute Review Board after failure to reach agreement by the escalation ladder should be stated in the construction contract. However recourse to adjudication/DRB should not be made conditional on prior use of the Disputes Escalation Ladder.

Adjudication

This involves the appointment of an Adjudicator (an independent third party). The construction contract should provide that:

- (i) The Adjudicator is
named in the contract; or
selected from a pre-agreed list; or
in the absence of an agreement he will be appointed by
whichever body has been given the task in the construction
contract.
- (ii) The Arbitration Acts should be expressly stated not to apply to the adjudication procedure so that the adjudicator is free from the formalities which are attached to an arbitration. An adjudication procedure should also be provided. A number of bodies provide such a procedure, e.g. CEDR.
- (iii) The adjudicator's decision is to be written and expressed to be final and binding unless written notice is given with (x) number of days of the adjudicator's decision being given to the parties. In any event the decision should be expressed to be binding until completion of the works (or in major projects some other suitable cut off date) and capable of prompt implementation by the parties without set off, counter claim or abatement. After completion (or before if the parties so agree) the dispute should be capable of reference to arbitration

and/or to the Court (in suitable circumstances) provided that the notice of dispute is given within the time period referred to in the construction contract.

Figure 13

DISPUTE NOTIFICATION FORM

Dispute No: _____

Dispute declared at Level One on _____ at _____
(Date) (Time)

Description of Problem or Dispute:

(Attach Additional sheets if Needed)

Sent to Level Two on _____ at _____
(Date) (Time)

Dispute Received at Level Two on _____ at _____

Result of discussions at Level Two: Resolved: _____ Escalated: _____

If resolved give a brief description of Resolution:

(Attach Additional sheets if Needed)

Sent to Level Three on _____ at _____
(Date) (Time)

Dispute Received at Level Three on _____ at _____
(Date) (Time)

Result of discussion at Level Three: Resolved: _____ Escalated: _____

If resolved give a brief description of Resolution:

(Attach Additional Sheets if Needed)

If the construction contract is amended so as to make the adjudicator's decision final and binding for all purposes the parties may find it more difficult to enforce that decision because the Court retains a residual jurisdiction on matters of law. A final and binding adjudicator's decision will also militate against swift resolution of the dispute in circumstances where, for example, large sums of money turn on that decision.

Dependent upon the procedure adopted in the construction contract, submissions may be oral and/or written. It is usual for the parties to pay their own adjudication costs and to pay the Adjudicator's fee equally.

Dispute Review Board ("DRB")

On major projects a DRB may be more appropriate than adjudication.

DRB's usually consist of three members; one is chosen by the client and another by the contractor. Together the members choose the third.

The DRB is a standing Board set up at the beginning of the project. Its members are made familiar with the project by being supplied on a regular basis with information such as progress reports, plans and specifications. They make regular periodic visits to sites.

The DRB members should have complementary expertise and must be available to be called at short notice to resolve a dispute.

By virtue of there being three members of a DRB the parties generally tend to have more confidence in them in the case of large disputes.

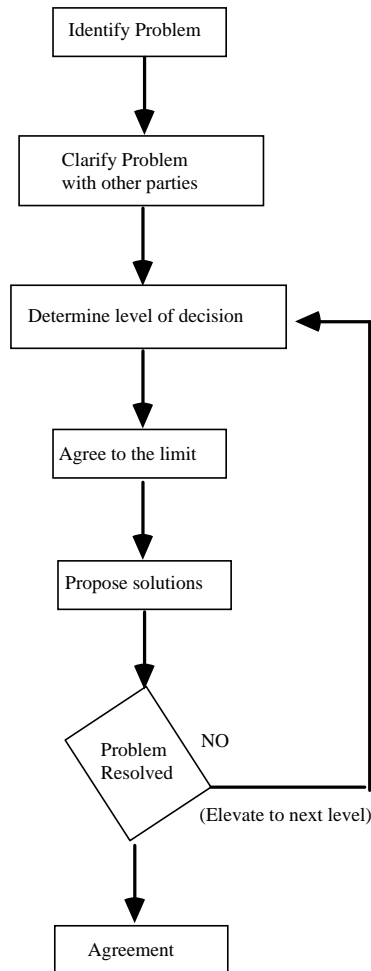
Recording the Resolution Process

All disputes and the terms of their settlement should be recorded. A sample Disputes Notification form is provided as Figure 13 on page 45. The Form provides for a brief written report on the dispute and for an account of its resolution at each stage. It is important that this report is fed back to the level at which the dispute originated in order to maintain faith in and commitment to the process. Whilst every effort must be made to resolve the issue at each stage there should be no blame or criticism at the dispute being escalated up the ladder. However if failure to reach agreement demonstrates a lack of understanding of the spirit and principles of Partnering further coaching of the individuals concerned may be required.

Examples of Good Practice

SAINSBURYS DISPUTE RESOLUTION PHILOSOPHY

To assist in describing the method of dispute resolution employed by Sainsbury whilst Partnering, the following flowchart is useful.



Firstly the problem must be identified and clarified with other interested parties. At the first Workshop, levels of seniority are established at which decisions can be made and a time limit is mutually agreed to resolve the dispute. If at the end of this time period the dispute cannot be resolved it is moved up one level by all involved parties. Ultimately this could end with the Chief Executives of those parties involved if necessary.

This procedure works on the premise that having empowered staff at the start of the project, human nature will, wherever possible, ensure that a dispute is resolved at the first attempt. Failing this, and if having moved up the line with no resolution, the dispute will be shelved until completion of the contract. This course of action can be agreed at the first Workshop and form part of the Partnering Charter that all parties sign. Whilst it should always be a last resort, litigation may be commenced at the end of the contract if the disputes identified and shelved during the contract have not been resolved, thereby ensuring that the contract has been completed on time.

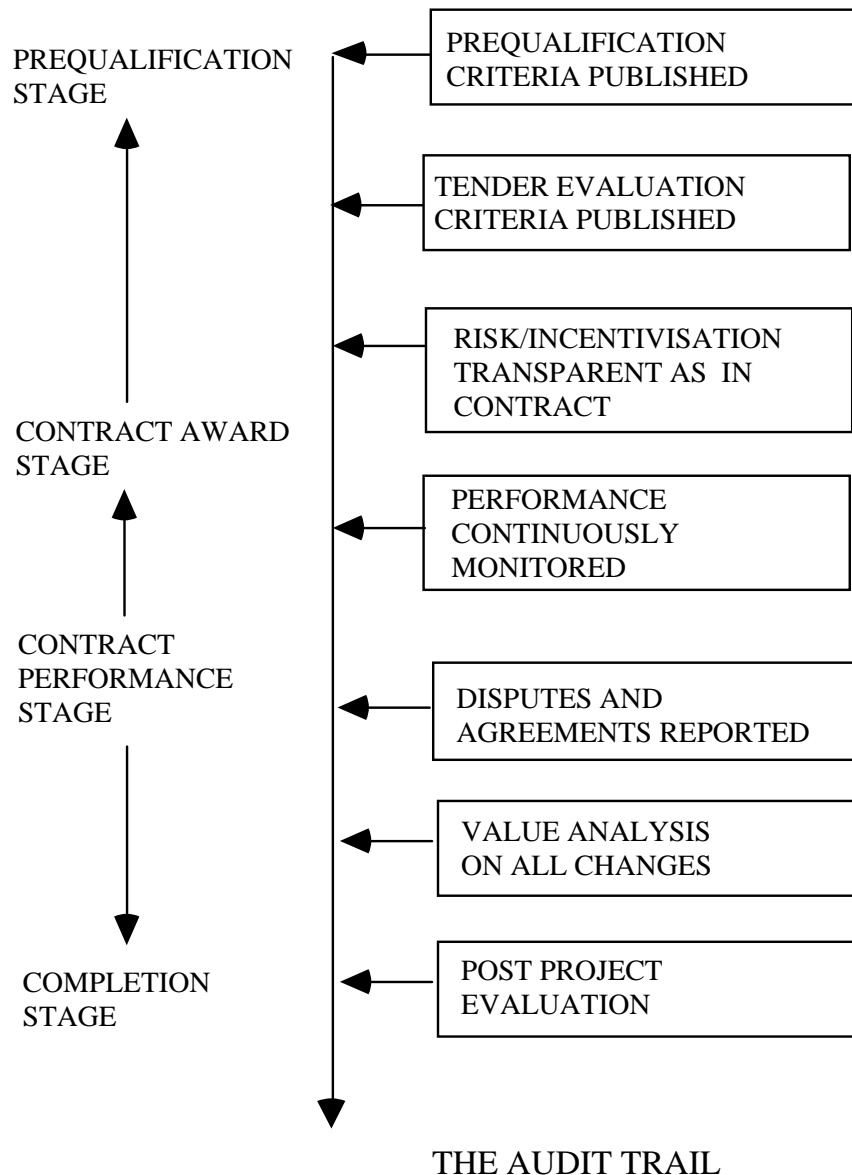
This example illustrates the step by step process involved in successful dispute resolution and in particular gives clear emphasis on the need to empower staff at the operational levels.

2.8 AUDITING THE PROCESS

Transparency

Procurement for the public sector is governed by regulations which require transparency in pre-contractual and contractual relationships. There can be no hidden agendas, all decisions that have monetary implications must be open to scrutiny. Each step of the Partnering process is auditable and this criterion can therefore be met. In the section below the Audit Trail is described beginning with the schematic illustration in Figure 14.

Figure 14 Auditing the Process



The proposed Partnering procedure for public works is subject to both the EU Public Procurement Rules and the UK Government's Regulations on Compulsory Competitive Tendering, as well as organisations' own standing orders and other internal rules. These require pre-qualification procedures and contract award procedures that ensure transparency of the various activities involved in administering the Partnering arrangements.

Selection Award Criteria

Selection award criteria both for pre-qualification and contract award are required to be clearly stated in notices and tender documentation.

In particular if the 'most economically advantageous' route is proposed for contract award the criteria for this must be clearly stated in the information provided to all tenderers.

Unsuccessful tenderers and candidates for pre-qualification to tender must be individually debriefed on the causes of their lack of success if they so request.

Continuous Monitoring

The process is continuously monitored and reported on. Changes are subjected to value analysis and the benefits reported in writing.

Dispute Resolution

The resolution of disputes must be recorded in writing and reported back to all interested parties.

Post Project Evaluation

At the end of the contract a detailed close out report is written and is available for inspection by all participants.

Records

Written records are kept of all the sequences shown in Figure 10.

PART 3 TRAINING AND DEVELOPMENT

3.1 INTRODUCTION

Whilst Partnering is not a difficult concept and indeed to many people corresponds to "common sense", some of the skills needed to make it effective need to be learned. The purpose of this section is to identify these skills and then to suggest how they can be developed.

Partnering involves the adoption of ways of working that in the recent past have not been the normal practice in the construction industry. Making the change is not easy; at times of stress there is a natural tendency to revert to familiar practices. This should be resisted if we are to achieve the permanent culture change required.

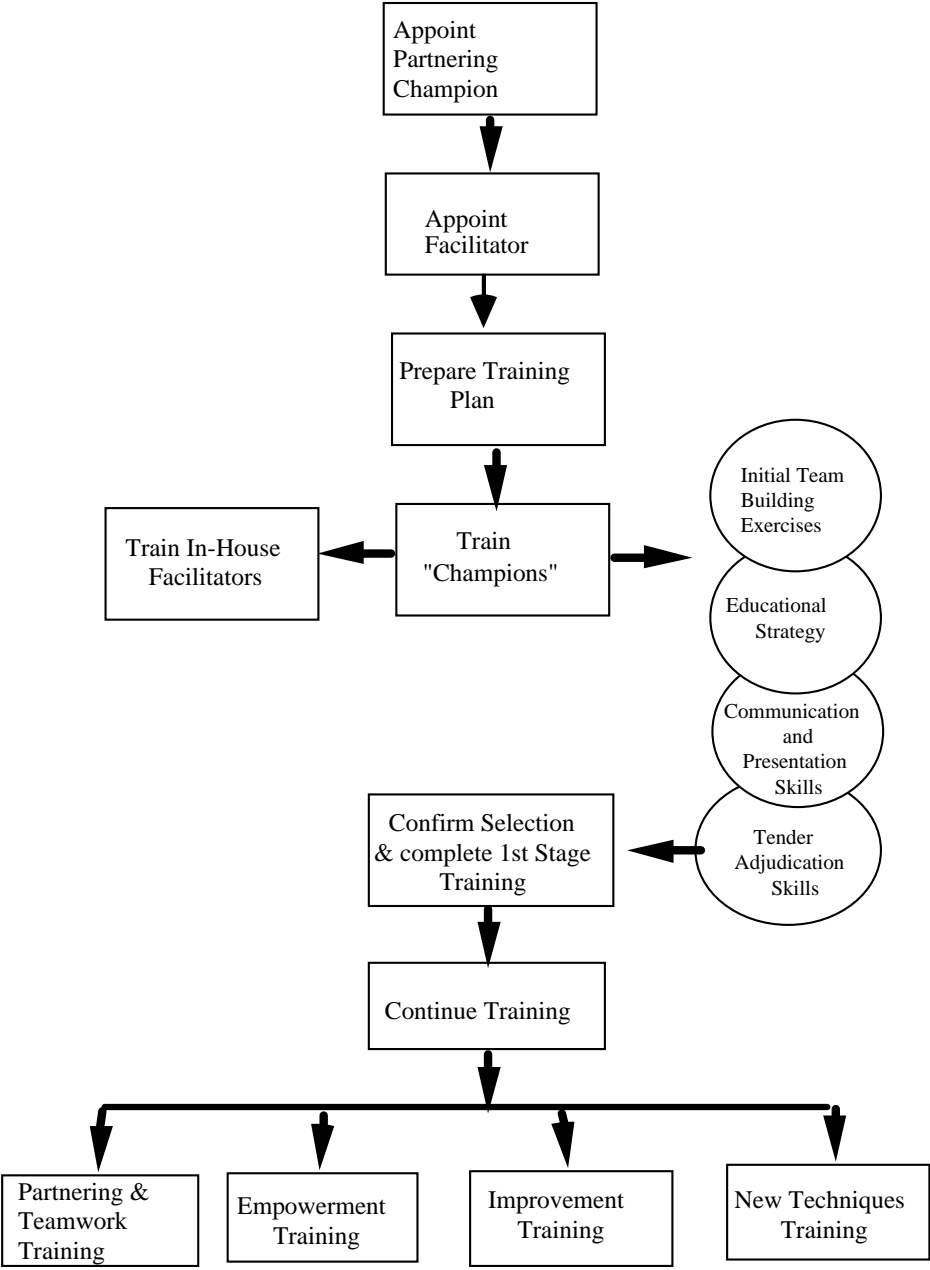
Seminars explaining the Partnering process are not enough to make the required fundamental attitude changes. Training is needed and alongside it should be a continuous assessment of the suitability of the people for the relationships that are to be maintained. Some people may never adapt. Such people may have excellent records in previous situations and their unsuitability may not be detected at an initial selection interview. Only when they take part in structured training where their responses to examples of live issues can be analysed may it be possible to confirm their suitability. Training is necessary therefore not only in the knowledge and techniques of the Partnering process but also in the attitudinal requirements, including:

- seeking joint solutions to problems
- wanting to communicate and share information
- trusting rather than blaming
- helping to find improvements

Teamworking is the essence of Partnering and team building through Workshops is a prominent feature of the training programme. Some of this training might be relatively formal and supervised by specialists whilst other aspects could better be described as coaching and may be undertaken by the Partnering Champions. Thus the training effort starts with his appointment and from there develops in a process similar to that illustrated in Figure 15.

In this section we consider first the training requirements of those intending to Partner and then examine the source of training material.

Figure 15 Training, Team Building and Selection of Staff



3.2 TRAINING REQUIREMENTS

Training for Partnering starts in an organisation with the appointment of a Partnering Champion. The first training assignment is therefore the training of the Partnering Champion which may be by attendance at an external course enhanced over time by experience.

The Facilitator has a key role in training. Current practice suggests that in-house training in facilitated Workshops is more effective than external courses. Therefore training of other personnel including other Champions should follow the appointment of the Facilitator.

The Training Plan

After the appointment of the Facilitator, the Facilitator and the Partnering Champion will prepare a training plan. The training plan should include the following:

- The objectives of the plan
- The personnel to be trained
- A process for determining and reviewing their training needs
- The training modules to be used
- The structure of the training Workshops
- The training programme.

Training in Workshops

Training will principally be carried out in facilitated Workshops. These will both be structured around special modules and will also be part of the normal periodic Partnering Workshop programme, as referred to on page 24.

Initially Workshops will be set up to train the various Champions who will be appointed at sites and central offices. Some of these Champions may be involved in the selection of partners and therefore training as assessors and tender adjudicators will be included. They will also be involved in transmitting the Partnering philosophy throughout the organisation and training in communications and presentation skills will also be needed.

Teambuilding exercises will be an important part of these sessions both to provide the environment of shared learning and also to educate the participants in constructing teams later.

In-house Facilitators may also be trained in specially devised Workshops.

The initial training Workshops may also be used to confirm that the selection of the key personnel has been successful.

Training in Workshops is a continuous process.

Special Training Requirements

Special training Workshops and seminars may be organised during a project. These will cover particular needs such as:

- Education on the Partnering process and training in team working.
- Training for empowerment - Accepting greater degrees of responsibility and discretion needs training and this training is best carried out in a facilitated Workshop in a team situation with cross fertilisation of ideas from other team members.
- Training in the skills associated with continuous improvement - These include:
 - Brainstorming techniques
 - Identification of opportunities
 - Value Management
- Training in any new job skills the continuous improvement process has identified. This may involve external modular training courses.

Feedback

Facilitators have the task of maintaining records of Workshops and assessments of the people attending them. These records provide an important source of information on training needs and on the development of both individuals and the training process.

3.3 SOURCES OF TRAINING MATERIAL

Training of Champions and Facilitators

As previously stated training first needs to be provided to the Partnering Champion. If Partnering is to progress in the UK there will also need to be training available to build up a stock of expert independent Facilitators.

The Reading Construction Forum have produced two-day training modules for Champions and Facilitators. It can be expected that other similar courses may become available as Partnering develops

There are also a number of training videos on these subjects.

Partnering and Teamworking Training

Partnering and Teamworking requires tailored modules as follows:

The Partnering process

- a general explanation and history of Partnering
- a specific description of the way it will be applied

Teamworking

Workshops

These are best produced to suit the specific requirements of an organisation by the Facilitator under the direction of the Partnering Champion using materials available in the marketplace.

It is best that the material used in the training Workshops is produced by the Facilitator in accordance with the training plan and is not generalised course material which may not be entirely suitable.

There is plenty of background information available which can be supplemented by the Facilitator's own knowledge and experience. The Institute of Management for instance provides a large number of checklists.

Training for Empowerment

Training for empowerment is intended to equip people for taking greater responsibilities in settling issues at their working level.

It involves developing skills in three areas:

- Leadership
- Communication
- Negotiation

Leadership programmes are as available in the market as teamworking ones. Both communications and negotiation skills are the subject of many books and training videos.

As before in-house modules prepared for use in facilitated Workshops are more effective than external courses.

Training for Continuous Improvement

Training for continuous improvement is aimed at equipping people to recognise and develop opportunities. The techniques used are the same as those used in Total Quality Management^(13 & 14) and include the following:

- Pareto analysis
- Cause and effect diagrams
- Stratification
- Check sheets
- Scatter diagrams
- Control charts
- Flow charts
- Histograms
- Method statements
- Comparative scenarios
- Resourced schedules
- Lead time schedules
- Discounted cash flow
- Brainstorming

This list is by no means exhaustive but is intended to provide an illustration of the range of techniques to be encompassed. They are readily available on the market and are best used in association with in-house training Workshops.

New Techniques Training

This training is required when the process of identifying ways of improving operations on a project requires the teaching of new skills in order to implement the changes. These will be tailored to suit the requirements and may need personnel to be sent on external courses. Learning to operate new machinery comes into this category.

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