

CPR DISPUTE PREVENTION BRIEFING: CONSTRUCTION

Partnering

Aligning Interests, Collaboration,
and Achieving Common Goals

BY FRANK CARR

with the CPR PARTNERING SUBCOMMITTEE of the
CPR CONSTRUCTION ADVISORY COMMITTEE

ABOUT CPR

Our Mission

CPR Institute is a nonprofit organization based in New York City. Our mission is to spearhead innovation and promote excellence in public and private dispute resolution, and to serve as a primary multinational resource for avoidance, management and resolution of business-related and other disputes.

To fulfill our mission, CPR is engaged in an integrated agenda of research and development, education and advocacy. We are also the leading proponent of self-administered ADR and serve as an appointing authority for parties in need of neutrals.

Fulfilling the CPR Mission

CPR was founded in 1979 as the Center for Public Resources from a coalition of leading General Counsel dedicated to identifying and applying appropriate alternative solutions to disputes thereby mitigating the extraordinary costs of lengthy court trials. That determination is still at the heart of CPR's activities today.

We are pioneers and leaders in the area of dispute resolution. We were the first organization to bring together Corporate Counsel and their law firms to find ways of mitigating the extraordinary costs and delays of litigation, while achieving more satisfying and lasting results through appropriate alternatives, like negotiation, mediation, and arbitration.

We believe that the culture and practice of the way in which businesses settle disputes, nationally and internationally, needs vast revision in order to untie the bonds of lengthy and excruciatingly expensive litigation.

We believe that every effort to promote the appropriate use of mediation, arbitration, and other strategies must continue to be explored and used. And, we believe that CPR has an unparalleled role in exacting these changes.

We fulfill our mission by:

- Convening high-level meetings between General Counsel, Deputy General Counsel, Senior Partners, and Managing Partners at members-only meetings and programs, as well as through the efforts of our member committees and task forces.
- Providing up-to-the-minute research information and case law in our other printed publications, online materials, and CPR in-person or electronic counseling on ADR procedures and drafting.
- Resolving disputes via our Panels of Distinguished Neutrals, our non-administered procedures, and our unparalleled ability to get parties to the table.

CPR Construction Advisory Committee

Principal Authors

Frank Carr

Carr, Swanson and Randolph LLC

Partnering Sub-Committee

Richard K. Allen

Stantec Inc.
N. Springfield, Vermont

Stephen D. Butler

Parsons Brinckerhoff, Inc.
(Co-chair, CPR Construction Advisory Committee)

Marc Frilet

FRILET-Societe d'Advocats
Paris, France

James P. Groton (*retired*)

Sutherland Asbill & Brennan LLP
Atlanta, Georgia

Betty Hum

Intel Corporation
Chandler, Arizona

James Keil

Adaptive Consulting
Westbrook, Maine

Lowell Noteboom

Leonard Street and Deinard
Minneapolis, Minnesota

Robert Peckar

Peckar & Abramson
River Edge, New Jersey

Mabry Rogers

Bradley Arant Rose & White LLP
Birmingham, Alabama

George Anthony Smith

Weinberg Wheeler Hudgins Gunn & Dial LLC
(Co-chair, CPR Construction Advisory Committee)

Cathy Cronin-Harris

CPR Senior Consultant
New York, New York

Table of Contents

CPR Introduction	1
Dispute Resolution Stages and Steps	2
Construction Contract Options	3
Construction Fact Sheet	4
Partnering.....	5
• What is Partnering.....	5
• Origins.....	5
• Benefits	6
• Costs	7
• Success.....	7
Putting Partnering to Use	9
• Detailed Partnering Phases	9
• Misperceptions and Barriers to Use	11
• Best Practices from the Field	11
Summary	15

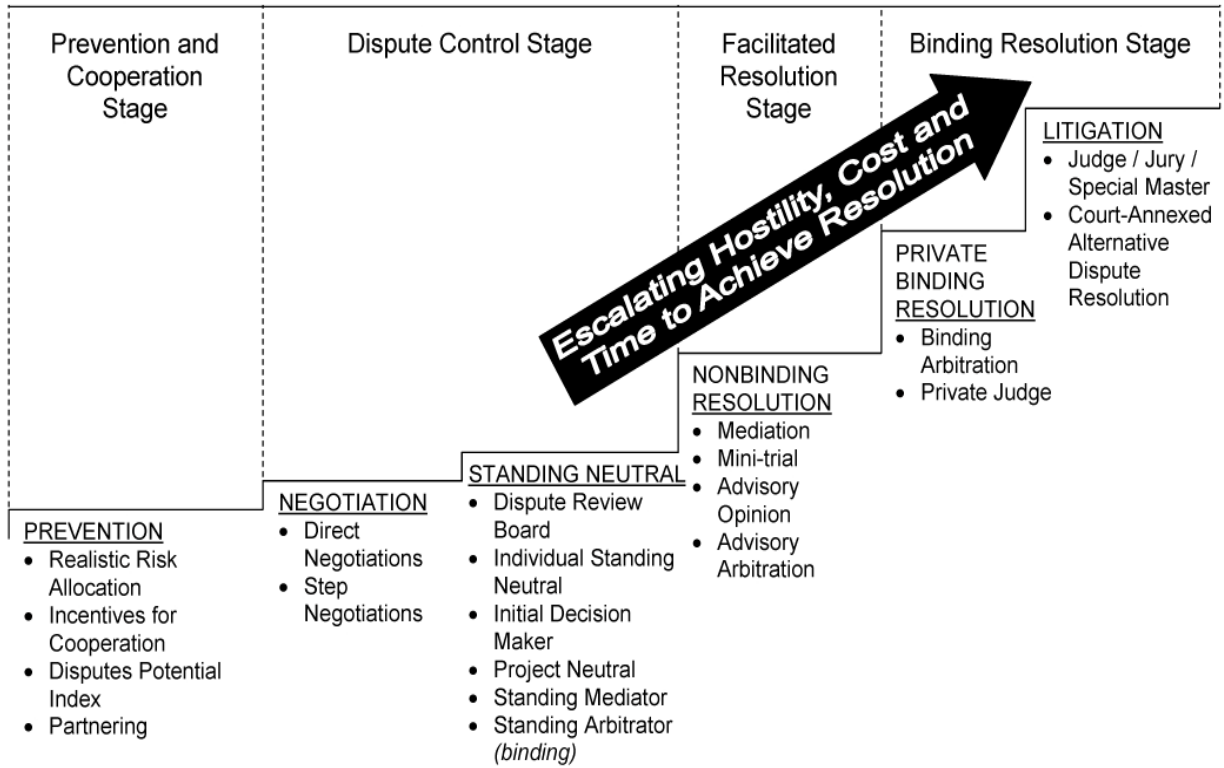
CPR Introduction

This booklet presents partnering concepts to companies and their advisers considering using partnering in construction projects. CPR has traditionally fostered application of cost-effective resolution devices such as mediation, which introduces an outside third party into the resolution picture. CPR, however, invites a focus on broader conflict management systems. These systems foster mutual problem solving by encouraging use of preventive devices available during the contracting stage to dampen conflict escalation. And, they emphasize conflict control devices that encourage party-controlled solutions when disputes erupt before parties resort to outsiders via use of traditional mediation, arbitration or litigation.

As an effective preventive practice, partnering may be useful beyond the construction arena in long-term joint ventures and complex contractual arrangements that are prone to conflict. Partnering fosters better communication, collaboration and problem-solving; it limits conflict and preserves the profits, relationships and reputations that can provide a competitive advantage to business.

CPR hopes this briefing on partnering will foster adoption and adaptation of partnering to other contexts. The following complementary charts, showing dispute resolution steps and CPR's construction contract options, demonstrate how partnering fits into a system of superior conflict management that starts with prevention and ends with efficient conflict resolution devices.

Dispute Resolution Stages and Steps ¹



¹ The original version of this Step Chart appeared in the 1991 CPR Publication "Preventing and Resolving Construction Disputes." It was later reformatted by the Dispute Avoidance and Resolution Task Force ("DART"), and more recently revised and updated by James P. Groton for presentations at international dispute prevention conferences in China, Finland and England.

Construction Contract Options

To effectively prevent and manage disputes, contracting parties should consider selecting and using at least one process from each of the following multistep conflict management categories. When entering into contracts, parties can agree to use initial collaboration and preventive practices, to be followed by one or more efficient on-site conflict management techniques such as Step Negotiations, DRBs or Standing Neutrals, before resorting to costlier external non-binding or binding processes.

Contract for Dispute Prevention

- Equitable Risk Allocation Provisions (See CPR's Realistic Risk Allocation Briefing)
- Incentive Agreements for Cooperation
- Disputes Potential Index (Created by the Construction Industry Institute)
- Partnering (See CPR's Partnering Briefing)

Contract for Early Non-Binding In-Project Processes to Control Disputes

Additional contract terms allow early in-project non-binding intervention appropriate to the particular project and can enhance ability to solve problems efficiently:

- Negotiation
- Multistep Negotiation
- Single Standing Neutral or Dispute Review Board (See CPR's Dispute Review Board and Standing Neutral Briefing)
- Initial Decision-Maker (See AIA Forms, 2007) or Project Neutral (See Consensus.DOCS Forms, 2007)
- Dispute Review Board
- Alternatively, in special situations the Standing Neutral could be a Standing Arbitrator or Standing Mediator
- Arbitrator or Standing Mediator; or the parties could name a dispute specialist to recommend processes when disputes arise.

Contract for External Non-Binding Resolution Processes

Contract provisions can incorporate external non-binding processes if in-project intervention fails, such as:

- Mediation
- Early Neutral Evaluation
- Expert Non-Binding Evaluation
- Mini-Trial
- Advisory Arbitration (*Non-binding*)

Each of these can loop back to negotiation.

Contract for External Binding Resolution Processes

Binding processes are available if in-project intervention or external non-binding processes fail:

- Private Judge
- Arbitration or
- Litigation

Before final decision, each of these can loop back to negotiation.

Construction Fact Sheet

A. Facts about Construction, from a 2009 National Research Council Study ²

Yearly U.S. construction	\$1.16 Trillion
Yearly worldwide construction	\$4.6 Trillion
Value of U.S. construction as % of GDP	10%
Percentage of U.S. workforce employed	8%
Estimated yearly transactional costs of disputes	\$4 Billion to \$11 Billion

B. Mean Transaction Costs of Negotiation, Mediation & Arbitration ³

In his 2006 Ph.D thesis, researcher Richard J. Gebken reported on a study of the direct and indirect transactional costs required to resolve disputes on 44 projects involving 57 contracting organizations. The dispute resolution methods used to resolve those disputes were Negotiation, Mediation, and Arbitration. He found that the relative mean transaction costs of resolving disputes through these three methods were:

Negotiation Cost Mean in 18 projects:	\$330,199
Mediation Cost Mean in 15 projects:	\$1,212,433
Arbitration Costs Mean in 11 projects:	\$1,167,182

While Gebken found that the stand-alone processes of Arbitration and Mediation differed only slightly in costs, Negotiation costs were 75% less than the costs of Mediation. He attributed the relatively higher costs of Mediation in large part to the fact that the mediations of the disputes that were resolved by that method occurred late in the dispute resolution process, and involved prolonged discovery and depositions.

C. Percentage of Various Transaction Costs for Resolving Disputes via Negotiation, Mediation & Arbitration⁴

During the course of analyzing the sources of transactional costs incurred in the three methods of dispute resolution that he studied, Gebken found that as the hostility of dispute resolution increased from Negotiation to Arbitration (see above), outside counsel fees increased. He also found that expenditures for Negotiation involved substantial in-house costs.

Transactional Costs in Construction Disputes	Aggregate Costs of Arbitration, Mediation & Negotiation ⁵	Only Arbitration Costs ⁶	Only Mediation Costs ⁷	Only Negotiation Costs ⁸
Outside Counsel	61%	75%	58%	40%
Management & Staff	16%	8%	8%	41%
Consultants/Expert Witnesses	11%	6%	6%	10%
In-House Counsel	5%	3%	3%	6%
Forum Fees	3%	8%	8%	1%
Other Costs	4%	8%	0%	2%

² *Advancing the Competitiveness and Efficiency of the U.S. Construction Industry*, National Research Council, National Academies Press, 2009, at pages 11 and 18.

³ Richard J. Gebken, *Quantification of Transactional Dispute Resolution Costs for the U.S. Construction Industry*, at pages 115, 127 and 156 (May 2006, Ph.D Dissertation at The University of Texas at Austin) (Gebken's study did not evaluate the costs of preventing or resolving disputes through Partnering or Dispute Review Boards.)

⁴ *Ibid.*, p. 111.

⁵ *Ibid.*, p. 109; Aggregate costs represent the total percentage of costs for all dispute resolution methods studied compared to percentages for specific ones. (Partnering, Dispute Review Board, and Standing Neutral costs were not studied.)

⁶ *Ibid.*, p. 110.

⁷ *Ibid.*

⁸ *Ibid.*

Partnering

What Is Partnering?

Partnering is a management best practice aimed at preventing and mitigating conflict in commercial ventures by aligning two or more organizations throughout the life of a project. It reorients adversarial goals to a set of mutual goals, establishes more open communication, establishes methods to address disputes and creates a collaborative atmosphere to reap economic benefits, improve working relationships, and prevent litigation. Although partnering has had its greatest success in the construction industry within the United States, the process is applicable to any business relationship in a joint project or program. It promotes an environment for sharing risk, encouraging teamwork, addressing issues in a timely manner, and attaining common goals. It forges together quality management concepts with team-building, collaborative problem solving, and selection of intelligent dispute management and resolution processes.

The partnering process ideally begins when two or more stakeholder organizations contract to work together on a project. The partnering process has the following distinct phases more fully detailed at page 9, below:

1. **Contract Award:** Stakeholders contractually agree to use partnering at the start of a project.
2. **Post-Award Partnering Planning:** Stakeholders select a third-party neutral facilitator, followed by identification of all necessary stakeholders on the project and determination of time and agenda for the initial partnering meeting, often referred to as the Kick-Off Workshop.
3. **Kick-Off Workshop:** The facilitator helps participants: communicate goals, needs and interests; identify potential project disputes and persons to address disputes that surface; establish time frames and “resolution ladder steps” including ADR mechanisms to use if problems cannot be resolved by the stakeholders; and write the partnering Charter.
4. **Periodic Partnering Meetings:** Monthly or quarterly meetings are held to determine issue status, revisit and modify resolution ladder steps, if necessary, and evaluate and measure meeting of tangible and intangible objectives so adjustments can be made.
5. **Project Completion:** Final evaluations are completed with any lessons learned to improve processes in the future and individual partnering contributions are recognized.

Origins

Partnering emerged in the construction industry in the late 1980s. Total quality management (TQM) was changing the nature of conducting business in the United States while the legal and business communities were facing a rapid rise of claims and litigation in commercial construction cases.

TQM focused on initiating improvements in process and services, ensuring quality workmanship, and addressing customer satisfaction and needs. At the same time, the business and legal communities were experimenting with alternative dispute resolution (ADR) techniques such as mediation, arbitration, dispute review boards, and mini-trials to resolve cases in forums other than litigation.

These two concepts, TQM and ADR, along with the techniques of team-building and collaborative problem solving, eventually forged together to design a new process that came to be know as “partnering.”⁹

⁹ The project-specific partnering described in this briefing is distinct from the original form of “partnering,” a long-term strategic alliance between an owner and a contractor, a process originally pioneered by DuPont and other members of the Construction Industry Institute. In this form of partnering, an owner who is likely to have multiple projects over a period of years enters into an open-book trusting relationship with a contractor in which the owner pays the contractor all construction costs and a guaranteed fee. The contractor gives up the opportunity for a possible higher profit that

Early proponents and leaders in the partnering movement in construction included the Construction Industry Institute at the University of Texas, the U.S. Army Corps of Engineers, and the Associated General Contractors of America (AGC).

The organization with the earliest partnering program was the U.S. Army Corps of Engineers in approximately 1990. Today, partnering is used by numerous organizations throughout the construction industry in both the private and public sectors. Additionally, there are many organizations, including government agencies that have written a partnering clause into their construction contracts that now require use partnering.

On the international stage, the partnering process also has been favorably received in many English speaking countries such as Australia, Canada, England, Wales, and Scotland. Other countries such as Hong Kong and Norway also use partnering. In these countries, partnering is credited with: better team performance, improved communications, savings in costs, reduced delivery time, and increased user satisfaction.

Benefits

Stakeholders who have participated in partnering report both tangible and intangible benefits. In fact, the intangible benefits that improve working relationships are regarded as the elements that have revolutionized the construction industry. When disputes inevitably arise, partnering offers a system of communication, identification of the dispute, teamwork and respect, instead of the traditional pattern of diminished communications, confrontational job-site finger pointing, distrust of management, and countering hostility with hostility.

Tangible Benefits linked to contract elements (e.g. time, budget, quality, conflict resolution and safety):

- Completes projects on time and within budget,
- Improves quality performance,
- Enhances efficiency and cost effectiveness,
- Produces substantial value engineering savings,
- Reduces paperwork,
- Lowers claims and expedites early resolution of disputes with almost no need to resort to litigation,
- Resolves equitable adjustment claims at the project level, and
- Improves safety with no lost-time accidents and increases productivity.

Intangible Benefits linked to human interaction (e.g. trust, communication, respect, recognition and integrity):

- Improves relationships on the job by nurturing a synergistic bond of cooperation and teamwork,
- Creates an atmosphere for better open communication,
- Builds trust,
- Eliminates surprise,
- Encourages empowerment to anticipate, surface and resolve problems,
- Sets a higher degree of appreciation, recognition and respect among project participants,
- Establishes a better working environment,
- Provides more innovative and creative solutions to problems,
- Increases customer satisfaction,
- Enhances business reputation.

might be earned on a lump-sum contract, but benefits by being insulated from loss and, most importantly, the prospect of performing future work for that owner. The owner gets a contractor whose learning curve increases from project to project, making for greater efficiency and lower overall costs when it uses the contractor for future projects. This form of partnering is used by many large industrial companies today to great advantage. Since governmental bodies typically are required to award each project to the lowest bidder and therefore cannot guarantee future work to the same contractor, the U. S. Army Corps of Engineers adapted the partnering concept for use on specific projects.

Costs

The final costs of partnering are minimal compared to the costs of the project. Although partnering costs vary, they are usually less than .0005 of the total contract price in most projects. The actual out-of-pocket direct dollar costs for using partnering generally range from \$500 to \$10,000 over the life of the contract. When an internal facilitator is used and is not paid specifically for such facilitation (as when a government employee in a public contract plays the role of facilitator), the only added costs for partnering are the costs of food and a room which can be as low as \$500 to \$2000.

The factors that impact the partnering costs are: facilitator fees and expenses, kick-off workshop costs, follow-up meeting costs, and printing expenses. The largest cost is usually for the facilitator. But many companies and government agencies use internal facilitators at no additional marginal cost for smaller dollar contracts that are not complicated. The workshop and follow-up meeting costs are generally small and include room rental, if any, food and beverages for the participants. When the kick-off workshop spans more than a day and is held at a distance from the stakeholders' offices, there are occasionally additional expenses for lodging and transportation. Finally, printing costs are required for framed copies of the partnering Charter for distribution to the stakeholders and, sometimes, to all the participants.

When considering the costs associated with moving a claim through the litigation process, the costs of partnering are quite small in comparison. A single contract claim that is litigated will cost more than the entire partnering process.

Success

The U.S. Army Corps of Engineers ("the Corps") experienced an 85% reduction in construction claims and litigation by using partnering to prevent escalation of disputes through better communication and problem solving, and by using ADR to resolve disputes that could not be otherwise resolved. The Corps in Oregon found an 80%-100% reduction in cost growth over project life due to partnering, and a 67% reduction in paper work. Improved safety, as well as a reduction in delay, litigation and claims, were also found.¹⁰

The Corps' partnering program was followed within a short time by the Maryland State Highway Administration and the Arizona Department of Transportation at the state level. These agencies also experienced measurable benefits from partnering, and quickly adopted partnering as a best business practice on construction projects.¹¹ Partnering is used by the highway departments of 46 of the 50 states.¹²

Killian & Gibson studied the US Naval Facilities Engineering Command (1993-2002) and found that partnering & design-build initiatives reduced litigation at the Armed Services Board of Contract Appeals from 24.9 to approximately 11 per year.¹³

Kurgan's Study of the Army Corps of Engineers (2005) showed litigated cases declined from 67.3 before 1993 to 28.0 per year after 1993 and attributed such decline to use of partnering, design-build and cost-plus contracts, best value contracts, and a policy toward settlement.¹⁴

¹⁰ Harmon, *Resolution of Construction Disputes: A Review of Current Methodologies*, Leadership & Management in Engineering 187 at 196 (October 2003) (citing ADR studies by others).

¹¹ See F. Carr & B. Polkinghorn, *A Best Practices Manual for Partnering* (2007) (this analysis is based on the Maryland State Highway Administration's partnering program and process) (Polkinghorn is executive director and associate professor at the Conflict Resolution Center at Salisbury University in Salisbury, Md.)

¹² Harmon at 196, at footnote 10 above.

¹³ Richard J Gebken, *Quantification of Transactional Dispute Resolution Costs for the U.S. Construction Industry at 46-47* (May 2006, Dissertation for the Ph D from The University of Texas at Austin) at footnote 3, above.

¹⁴ *Ibid.*, p. 48.

Deloitte & Touche's "Insights into Construction Reports" (by Flanigan in 2000 at p. 34) noted that "the familiarity with and use of ADR techniques has improved for ...contractors reflecting improved owner (customer) relationships and, possibly, the effectiveness of both partnering and quality programs."¹⁵

Prof. Thomas J. Stipanowich's 1996 empirical study of dispute resolution costs and benefits found partnering saved the following median number of dispute resolution days: for attorneys (6 days); for design professionals (60 days); and for contractors (45 days). Attorneys were likely reporting trial days saved.¹⁶

¹⁵ Ibid., p. 53-54.

¹⁶ Ibid.

Putting Partnering to Use

Detailed Partnering Phases

Phase 1: Contract Award

Getting an early start to the partnering process increases the potential for achieving the greatest success. When stakeholders wait until problems arise on the project to initiate partnering, the chances for success are diminished because communications are generally poor, personnel at the job-site are confrontational, and any trust between management is greatly diminished or totally gone.

As a result of this risk, many organizations that are experienced in partnering include a partnering clause in the contract between the stakeholders, and direct the process to start immediately after contract award. If the contract does not have a partnering provision, then the stakeholders can initiate partnering by entering into a post-award agreement. The key point is to have the stakeholders agree to use partnering early in the relationship, before any disagreements have arisen.

Phase 2: Post-Award Partnering Planning

The selection of the facilitator for the partnering kick-off workshop is one of the first steps taken by the major stakeholders (owner and prime contractor) in the post-award planning phase. This early selection allows the facilitator to begin working closely with the major stakeholders to plan the timing, content, and agenda for the kick-off workshop. In larger more complex construction projects, external facilitators are used; while in smaller construction projects, internal (owner employees) facilitators are often used to guide the Kick-off Workshop.

A first step during this phase is for the facilitator and the major stakeholders to identify all other stakeholders that can potentially affect the project and invite them to the workshop. These other stakeholders may include the design firms, principal subcontractors, suppliers, public utilities, and the end user of the project.

The final planning actions are to pick a date, time and place for the Kick-off Workshop that is acceptable and convenient to the stakeholders and to set the agenda for the workshop. The Kick-off Workshop location is often at a neutral site such as a hotel meeting room or conference center meeting room.

Phase 3: Kick-Off Workshop

The core of the partnering process is the Kick-off Workshop. Typically, the Kick-off Workshop is scheduled to last one to two days. The size and complexity of the project along with the past partnering experience of the stakeholders is used to decide its duration.

At the Kick-off Workshop the stakeholders have the chance to meet each other in an informal setting and communicate directly with their counterparts (work on team building, and learn from others their goals, needs, and interests). The informality is established by allowing business casual dress and providing refreshments such as coffee, fruits, and pastries for participants as they arrive and lunch later in the day. Further, the facilitator assists in establishing the informal atmosphere of the Kick-off Workshop by making the design of the room open and conducive to face-to-face communications among the participants.

The next step in the process generally depends on the working history of the stakeholders and their partnering background. When stakeholders are new to the partnering process, the facilitator may conduct a short and simple team-building exercise to have them realize the benefits of working together rather than pulling separately. In workshops with more experienced and supportive stakeholders, team building exercises are rarely conducted because the participants want to get to the more substantive activities.

A significant step at the Kick-off Workshop is to have the stakeholders work directly on conflict prevention tools. Typically, this involves two tasks. First, the facilitator asks the participants to identify issues for resolution—rocks-in-the-road—that are present or foreseeable. Use of the Construction Industry Institute's Disputes Potential Index may prove beneficial in this regard.¹⁷ Then the participants engage in joint problem solving and action planning on several of the rocks in the road. This may include a discussion on the use of DRBs or other forms of standing neutrals as well as use of mediation or other ADR processes in the event disputes are not resolved by the DRB process. Additionally, the participants also work to develop an "issue resolution ladder."¹⁸ This tool is used to get the stakeholders to quickly identify future issues that will need resolution and to move them timely toward a solution. The ladder identifies names of individuals across organizational boundaries to address future issues as they arise, and establishes times for them to handle an issue before it must move up to the next rung on the ladder. This process prevents issues from being hidden or being ignored.

A final workshop activity is to create an implementation plan for sustaining the partnering relationship after the Kick-off Workshop is concluded. This plan usually includes scheduling periodic partnering meetings to follow up on the workshop enthusiasm and having the stakeholders evaluate in written form or by oral interview how well the relationship is working.

At the end of the Kick-off Workshop, the stakeholders prepare a written Charter as a visual reminder of their mutual commitment to the partnering vision, goals, and relationship. It is usually a one-page document signed by all the participants at the end of the workshop. A typical Charter expresses the stakeholders' vision for the project, a statement of mutual goals, and a list of positive behavior objectives.

Typical common goals often stated in the Charter are:

- Substantial Reduction in Litigation
- Completion On-Time and With-Budget
- Better Safety with No Lost-Time Accidents
- Total Customer Satisfaction
- Resolve Issues at the Lowest Level

Behavior objectives often include statements similar to:

- Work as a Team
- Build Trust
- Be Open and Honest in Communications
- Treat Others with Respect
- Have Fun

Phase 4: Periodic Partnering Meetings

After the Kick-off Workshop, periodic partnering meetings are conducted monthly or quarterly. A core action at the periodic meetings is to check on the issues that are still pending and to address new issues that may become problems. As a result, action plans developed at the Kick-off Workshop may be reviewed and, if necessary, modified and new action plans for problems just arising may be developed. A conflict resolution action plan, including mediation, is often developed here when disputes are not getting resolved.

Also, at times during contract performance there is a need to check on whether the stakeholders are meeting the partnering goals and other objectives specified in the Charter. This evaluation is usually accomplished by the use of a printed evaluation form with indicators relating to the mutual goals and behavior objectives. It is completed by each stakeholder participant. This feedback allows the stakeholders to measure the success of

¹⁷ The Disputes Potential Index is a predictive tool that uses questions and answers about key project indicators from participants. Responses are fed into a computer program that provides predictive scores measuring the potential of the project to generate disputes, with particular emphasis on eight specific project features thus providing a focus for preventive measures.

¹⁸ For additional information on issue resolution ladders, see Carr, *Partnering, With a "Ladder," Sustains Government Contracting*, 19 *Alternatives to the High Cost of Litigation* 191 (September 2001).

the partnering relationship and make necessary adjustments to the project (tangible) and the working attitudes (intangible). A final item on the meeting agenda is to discuss upcoming activities.

Phase 5: Project Completion

When the project is complete, the stakeholders can use final evaluation forms to measure whether the project goals were met and what was accomplished by the partnering process. These evaluation forms can also be used to suggest partnering program changes. Finally, to bring closure to the partnering effort on a positive note, the stakeholders may want to schedule an activity for the all participants. The activity is often a lunch, dinner or family picnic with all the stakeholders present.

Misperceptions and Barriers to Use

Probably the biggest misperception of partnering is that it requires no effort and is a means to get what “you” want. Unfortunately, partnering is neither a magic wand nor a panacea. The partnering process requires hard work and cooperation to improve relationships between stakeholders, resolve problems, and achieve common goals. It is more than a one day “feel good” meeting. There must be commitment and dedication among all stakeholder participants throughout the life of the project to the partnering values of integrity, respect, honesty, trust and teamwork.

Other misconceptions about partnering concern what it is and what is its impact on the contract. First, partnering is not just another team-building process. It is so much more. Although the partnering process does strive to build teamwork, it also focuses on establishing common goals, identifying and resolving problems, improving communications, and achieving mutual success. Regarding the impact on the contract, the partnering process does not change the contract obligations. Partnering merely establishes a framework for the stakeholders to use for working together in a cooperative and efficient manner.

Although the partnering process is generally accepted today as a best management practice, there are barriers that remain within various organizations and in the minds of some individuals. These barriers include:

- Viewing partnering as a process that enables you to “win” all you can at the expense of the other stakeholders.
 - Being wedded to the status quo.
 - Feeling a lack of sincere senior management support for the partnering process.
 - Lacking clear information about the partnering process.
 - Maintaining an attitude of distrust.
 - Letting individual egos get in the way of working together.
 - Failing to recognize that stakeholders may have common goals.
 - Waiting until problems arise before initiating the partnering process.
 - Trying to shortcut the partnering process by not having a plan throughout the project life.
- Having a litigious mind-set.

Best Practices from the Field

Direct feedback from participants in an empirical research study of the Maryland State Highway Administration study and the author’s personal experience regarding the partnering processes support the following best partnering practices.

1. Best Practice: Start with a Partnering Business Plan within Your Organization

Although partnering can be used by an organization in all its contracts or on an ad hoc basis, an organization greatly benefits by having a clear business plan on how to implement a total partnering program in order to maximize its benefits. This is typically a three-pronged approach of securing senior management support, conducting training, and publishing materials for guidance. Since this is a significant management undertaking, an organization that wants to change its past business practice requires a detailed plan as the

vehicle for change. Planning starts with a clear vision of the partnering concept, an understanding of the process changes that are required, and the people who will be involved in the transition. Often the planning process for the partnering program begins with a carefully selected design team assisted by an experienced partnering facilitator.

2. Best Practice: Secure Top Management Support

Top management support from the highest level down, including legal counsel, is essential to establish an effective partnering program. Individuals within any organization need to know that the partnering concept is fully supported by top management prior to those individuals making any changes in their relationships with other organizations. Since change involves some degree of risk for individuals and the organization, it becomes imperative that management clearly conveys its support for the process. Also, when management supports risk taking, bold organizational moves, such as the incorporation of partnering, can occur.

3. Best Practice: Conduct Internal Partnering Training

A corporation or government agency that wants to establish a partnering program on a project should conduct training programs within the organization at the start of the program. Training should promote awareness of the partnering concept and process, clarify the organization's interests in the use of partnering, demonstrate management support, and facilitate acceptance at all strategic levels within the organization. The training should include a mix of operational and management employees from all levels within the organization. In addition to having training skills, the partnering trainer should have a good grasp of the partnering concept, be experienced with partnering, understand the organization's partnering program and be able to communicate effectively with participants.

4. Best Practice: Specify Partnering in Requests for Proposal or Bid Documents and in Contracts

When the owner offers partnering as part of its request for proposal or bid process, the owner is sending a clear message that it recognizes the value of partnering and is committed to the process. In preparing their responses, contractors are willing to assume more risk knowing that the issues will be addressed promptly and solutions will often result from joint problem solving. The incorporation of a partnering clause in a contract creates a win-win atmosphere for the parties.

5. Best Practice: Hold an Early Partnering Kick-Off Workshop when Entering Partnering Agreements

As soon as two or more organizations agree to work together under a contract, the partnering process should start by holding a Kick-off Workshop. When partnering is delayed, too often the parties engage in old adversarial habits that reinforce competitive relationships making the partnering initiative not only more difficult to undertake but also less likely to have a constructive impact on the participants or project. By starting its interaction early, the team will likely reinforce the maximum benefits that partnering offers, such as: developing better means and channels of communication, planning for issue resolution, reinforcing collaborative problem-solving as the key means of decision making, and the achieving common goals.

6. Best Practice: Use an Experienced Partnering Facilitator

A problem is emerging that many inexperienced partnering facilitators view partnering as nothing more than a team building session and conduct it as such. The kick-off workshop is likely to be more effective when the facilitator has an expert understanding of: 1) the partnering concept/process; 2) knowledge of the particular industry in which the process is being used; and, 3) experience in collaborative problem solving and/or conflict intervention. Facilitators need to recognize that their role in the partnering process goes beyond mere facilitation of team-building and must include the design of a joint creative problem-solving process and the establishment of an implementation plan for the relationship. Finally, the facilitator must be perceived as neutral by all stakeholders.

7. Best Practice: Identify the Key Internal and External Stakeholders

The partnering process can only work if the right people get to the table for the Kick-off Workshop. This applies to both internal and external stakeholders. The partnering facilitator should also assist in identifying the internal and external participants and assure that the participants are from similar management levels within each organization. This balance is important and substantially assists in building direct and appropriate organizational communication by bringing participants “face-to-face” with their counterparts.

8. Best Practice: Establish Effective Communications

Partnering requires effective communications among all the stakeholders to manage conflict and achieve mutual project goals. It begins by bringing the stakeholders together at the kick-off workshop to identify and address their expectations, issues (existing or potential), and goals in a collaborative non-confrontational atmosphere. Developing formal and informal communication channels further reinforces trust among the stakeholders. It also facilitates recognition that issues will arise on the project and that these require expeditious and clear communication to resolve in order to prevent litigation.

9. Best Practice: Draft a Simple Partnering “Charter”

The Charter is a written document adopted by the stakeholders at the kick-off workshop that creates a tangible symbolic reminder of their commitment to the partnering process and their mutual vision for the project. It is usually a one-page document that is signed by all the participants at the end of the workshop. The content of the Charter will vary from project to project but generally it contains the stakeholders’ mutual vision, their set of common goals, and the behaviors that the stakeholders will adhere to during the project. The facilitator needs to make sure that the participants understand the value of the Charter and that the drafting process is neither time consuming nor complicated.

10. Best Practice: Hold Informal Periodic Partnering Progress Meetings

Partnering progress meetings are held periodically after the kick-off workshop to implement, monitor and evaluate the partnering process as well as to continuously address changes to the project or program. These meetings are a good place to get the right stakeholders to the table to focus on resolving current or forthcoming issues and to review their continued commitment to the vision and goals underlying the relationship. Attention to project monitoring is the first line of conflict prevention. The development of a conflict resolution action plan, including mediation, can occur here. On smaller projects, the parties often use internal facilitators or project managers to facilitate these meetings.

11. Best Practice: Develop Meaningful Partnering Measurements

Precise measurement tools are necessary to obtain meaningful objective and subjective feedback on the effectiveness of the partnering process, both during and at the end of the project. Partnering is a continuous process for improving the working relationship among the stakeholders. Periodically during performance the stakeholders need to know how well partnering is working and whether an adjustment or intervention may be necessary to increase its overall effectiveness. This can be accomplished by the use of standardized measurement tools that rate certain aspects of partnering such as communication, cooperation and respect, issue resolution, teamwork, safety and job progress. Qualitative measures could include: indicators of cooperation, trust, recognition, respect and appreciation of others.

12. Best Practice: Develop Partnering Materials

The publication of partnering materials is necessary to establish an effective partnering program. These materials should be clear and concise, and provide a complete explanation of the partnering process, the organization’s procedures, and the possible benefits.

The materials can be pamphlets, field guides, training manuals and web sites. The pamphlets are usually small handouts that describe the partnering process, the benefits of partnering, and how to initiate the process. Often organizations use pamphlets to encourage the use of partnering with its business clients. A Field Guide is primarily an internal document that explains the management's interest and goals in partnering, a description of the partnering procedures, the selection of facilitators, partnering forms, and internal measurement tools to evaluate the success of partnering. The training materials consist of the manuals and handouts that are used to conduct partnering training. A website is a helpful tool because it can contain all of the materials already described and provide additional information on the partnering program, such as partnering coordinators, training opportunities, and contracts with partnering.

13. Best Practice: Conduct Outreach to External Stakeholders and Others

In most projects, partnering is voluntary. Consequently, the organization promoting partnering must present a clear description of partnering to stakeholders who are directly involved in project development via contracts and sub-contracts. Moreover, involving external stakeholders who can affect the project's development, such as neighbors, environmental groups, utilities, other infrastructure interests, and government officials, can enhance the effectiveness of the process and add value to the project. Partnering proponents, familiar with its dynamic and benefits, should also seek to educate future users by making presentations at trade association meetings or conferences and by publishing in trade journals.

14. Best Practice: Discuss Problem Solving and Issue Resolution

When it comes to effective partnering, a balance must be struck between substance and process. Participants at the kick-off workshop often come with the desire to discuss project issues. Participants should be able to discuss these issues and develop action plans to resolve the most critical of them. This is both highly productive and builds trust among the stakeholders. The development of an "issue resolution ladder" with the names of responsible individuals at each level within an organization who will deal with issues as they arise is an excellent conflict prevention tool. Finally, in more complex and costly projects, if the contract does not require some other form of ADR prior to initiating litigation, the parties need to discuss it. Such discussions might include either use of specific ADR processes or a multistep ADR system that moves from negotiation to resolution on-site by selected individuals (e.g. Initial Decision Maker referenced in the revised AIA form contract of October 2007 or a Standing Neutral or non-binding recommendations of a Dispute Review Board). It can include facilitated negotiation by a person outside the project, such as mediation, and then use of a binding process such as a binding DRB determination, arbitration or litigation. Another alternative might be to agree to internal negotiations and then hire a dispute resolution specialist to help stakeholders chart the path needed for disputes that cannot be resolved by negotiation on site.

15. Best Practice: Identify Partnering Champions

Too often stakeholders assume that once a successful kick-off workshop is over the partnering relationship will continue to flourish on its own with no further nurturing. This is false sense of comfort and a plan for disaster. Partnering at this time needs someone to step forward and be responsible for the guidance and implementation of the process. A partnering "champion" who thoroughly understands the practical utility of partnering and believes in its value can play this role. Before partnering begins to falter, the champion needs to keep the momentum of the process going and on track. Such champion should always be monitoring the process indicators as well as the pulse of the stakeholders' relationships and should work closely on the agenda for all periodic meetings. Ideally, the champion will be a person who is also well known and respected by other stakeholders.

16. Best Practice: Provide for Recognition

All partnering programs should acknowledge both the efforts of individuals that made the process work and the quality projects that partnering has helped to create. Sincere and meaningful recognition for past deeds and hard work is always appreciated and also provides motivation for future cooperation. Recognition can take various and diverse forms. It can be as simple as a public "thank you" and a sincere handshake or a formal award ceremony with the presentation of a plaque or other memento. Simply match the type of recognition to the intrinsic value you place on the contribution of others.

Summary

The best way to summarize partnering is to examine consistent themes from federal, state, and private organizations using partnering in the United States and internationally. The general consensus: partnering produces consistent and substantial tangible and intangible benefits.

Partnering is, in essence, common sense in action. By getting the right people (all stakeholders) in the right place (the kick-off workshop) at the right time (at the start of the project prior to disputes arising) doing the right thing (working on communications, team building, problem-solving, and visionary planning) great things can happen (the achievement of common goals and expectations). Clearly, a management best practice in construction, partnering offers as much potential for building success in other segments of the business community.